COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 17/02/11 CAHDI (2011) 1

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW

(CAHDI)

Committee of Ministers' decisions of relevance to the CAHDI's activities, including requests for CAHDI's opinion

41st meeting
Strasbourg, 17-18 March 2011

Secretariat of the Public International Law and Anti-Terrorism Division,
Directorate of Legal Advice and Public International Law, DLAPIL

Fax 33 (0)390215131 - cahdi@coe.int - www.coe.int/cahdi

TABLE OF CONTENT

1. CAHDI

CM/Del/Dec(2010)1101/10.3E / 10 December 2010

**Committee of Legal Advisers on Public International Law (CAHDI) –
Abridged report of the 40th meeting (Tromsø, 16-17 September 2010)
(CM(2010)139)**

Decision

"The Deputies took note of the abridged report of the 40th meeting of the CAHDI, as it appears in document CM(2010)139."

2. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE AND REPLIES OF THE COMMITTEE OF MINISTERS TO THE PARLIAMENTARY ASSEMBLY'S REQUESTS

2.a CM/Del/Dec(2011)1105/3.1E / 10 February 2011

**Parliamentary Assembly –
1st part of the 2011 Session (Strasbourg, 24-28 January 2011) –
Texts adopted
(2011 Session (Provisional Compendium of texts adopted))**

Decisions

"The Deputies (…)

4. concerning Recommendation 1953 (2011)[1] – "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes"

a. agreed to communicate it to the European Committee on Crime Problems (CDPC) and to the Steering Committee for Human Rights (CDDH) for information and possible comments by 15 April 2011;

b. in the light of possible comments, invited their Rapporteur Group on Legal Co-operation (GR-J) to prepare a draft reply for adoption at one of their forthcoming meetings;"

(…)

2.b CM/Del/Dec(2011)1102/2.4E / 14 January 2011

**"The situation in Kosovo* and the role of the Council of Europe" –
Parliamentary Assembly Recommendation 1923 (2010)
(GR-DEM(2010)CB11, Parliamentary Assembly REC_1923 (2010) and CM/AS(2010)Rec1923 prov2)**

Decision

"The Deputies adopted the reply to Parliamentary Assembly Recommendation 1923 (2010) on "The situation in Kosovo* and the role of the Council of Europe", as it appears at Appendix 3 to the present volume of Decisions."[2]

---

[1] Recommendation 1953 (2011) appears as **Appendix I** to the present document

*All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

[2] The reply of the Committee of Ministers appears as **Appendix II** to the present document.

3. WORK UNDERTAKEN BY OTHER ENTITIES OF THE COUNCIL OF EUROPE

3.a CM/Del/Dec(2010)1095/10.1E / 14 October 2010

European Committee on Crime Problems (CDPC)
Abridged report of the 59th plenary session (Strasbourg, 7-10 June 2010)
(CM(2010)91 and GR-J(2010)CB8)

Decisions

"The Deputies

1. invited the CDPC to provide an opinion to the Committee of Ministers on the criteria and procedure to be followed as regards the accession of non-member states to Council of Europe conventions in the criminal law field, in order to contribute to the extension of these conventions beyond Europe;"

(…)

3.b CM/Del/Dec(2010)1095/10.4E / 14 October 2010

Cybercrime Convention Committee (T-CY) –
Abridged report of the 5th plenary meeting (Paris, 24-25 June 2010)
(CM(2010)109)

Decisions

"The Deputies

1. encouraged non-member states with the required legislation and proven co-operation capacity to accede to the Convention on Cybercrime [ETS No. 185] (Budapest Convention);

2. invited the T-CY, in close co-operation with the European Committee on Crime Problems (CDPC), to provide an opinion to the Committee of Ministers on the criteria and procedure to be followed, in conformity with Article 37 of the Convention, as regards the accession of non-members of the Council of Europe to the Budapest Convention;

(…)."

3.c CM/Del/Dec(2010)1097/4.7E / 15 November 2010

Steering Committee for Human Rights (CDDH) –
Draft Resolution CM/Res(2010)… on member states' duty to respect and protect the right of individual application to the European Court of Human Rights
(CM(2010)126 rev2)

Decision

"The Deputies adopted Resolution CM/Res(2010)25 on member states' duty to respect and protect the right of individual application to the European Court of Human Rights, as it appears at Appendix 6 to the present volume of Decisions."[3]

[3] The resolution appears as **Appendix III** to the present document

3.d CM/Del/Dec(2010)1098/10.2abcE / 19 November 2010

European Committee on Legal Co-operation (CDCJ)
a. Abridged report of the 85th plenary meeting (Strasbourg, 11-14 October 2010)
b. Draft Recommendation CM/Rec(2010)… of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities and its Explanatory Memorandum
c. Draft Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, and their Explanatory Memorandum
(CM(2010)147, CM(2010)147 add1 and CM(2010)147 add2rev)

Decisions

"The Deputies

1. adopted Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, as it appears at Appendix 5 to the present volume of Decisions[4], and took note of its Explanatory Memorandum, as it appears in document CM(2010)147 add1;

2. adopted the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, as they appear at Appendix 6 to the present volume of Decisions, and took note of their Explanatory Memorandum, as it appears in document CM(2010)147 add2rev;

3. taking into account decisions 1 and 2 above, took note of the abridged report of the 85th plenary meeting of the CDCJ, as it appears in document CM(2010)147, as a whole."

3.e CM/Del/Dec(2010)1099/10.1E / 25 November 2010

European Committee on Legal Co-operation (CDCJ) –
Draft Recommendation CM/Rec(2010)… of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling and its Explanatory Memorandum
(CM/Del/Dec(2010)1098/1.1, CM(2010)147 and CM(2010)147 add3rev)

Decisions

"The Deputies

1. adopted Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling, as it appears at Appendix 2 to the present volume of Decisions[5], and took note of its Explanatory Memorandum, as it appears in document CM(2010)147 add3rev;

2. noted the wider implications of profiling for society as a whole and invited the Secretary General to make arrangements for a more profound and transversal reflection on the subject, associating the relevant intergovernmental co-operation structures."

[4] The Recommendation appears as **Appendix IV** to the present document
[5] The Recommendation appears as **Appendix V** to the present document

3.f CM/Del/Dec(2010)1101/10.9E / 10 December 2010

**European Committee on Crime Problems (CDPC) –
Draft Council of Europe Convention on Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health and its Explanatory Report
(Parliamentary Assembly Opinion No. 276 (2010), CM(2010)30 prov6 and CM(2010)30 addprov6)**

Decisions

"The Deputies

1. took note of Parliamentary Assembly Opinion No. 276 (2010) on the "Draft Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health";

2. adopted the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health, as it appears at Appendix 17 to the present volume of Decisions, and took note of its Explanatory Report, as it appears in document CM(2010)30 addprov6[6];

3. invited the Secretary General to disseminate the Convention widely among non-member states that may be interested in becoming parties, in particular among those states with observer status with the European Pharmacopeia;

4. agreed to come back to the issue of the date and place of the opening for signature of the Convention at a forthcoming meeting."

3.g CM/Del/Dec(2011)1103/10.4E / 21 January 2011

**Consultative Council of European Judges (CCJE)
a. Abridged report of the 11th plenary meeting (Strasbourg 17-19 November 2010)
b. Opinion No. 13 (2010) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the role of judges in the enforcement of judicial decisions
c. Magna Carta of Judges (fundamental principles) of the CCJE to the attention of the Committee of Ministers of the Council of Europe
(CM(2010)169, CM(2010)169 corr, CM(2010)169 add1 and CM(2010)169 add2)**

Decisions

"The Deputies

1. took note of Opinion No.13 (2010)[7] of the CCJE on the role of judges in the enforcement of judicial decisions, as it appears in document CM(2010)169 add1;

2. recalling Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, adopted on 17 November 2010 and its Explanatory Memorandum, took note of the CCJE's "Magna Carta of judges (fundamental principles)"[8], adopted on the occasion of its 10th anniversary, as it appears in document CM(2010)169 add2;

3. agreed to transmit these two documents to the appropriate agencies in the member states and to the European Commission for the Efficiency of Justice (CEPEJ), the European Committee

[6] The Convention appears on the treaty website of the Council of Europe, under "New treaties": www.conventions.coe.int
[7] The Opinion No. 13 appears as **Appendix VI** to the present document
[8] This document appears as **Appendix VII** to the present document

on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Department for the execution of the judgments of the European Court of Human Rights, so that these bodies can take them into account in their work;

4. in the light of decisions 1 to 3 above, took note of the abridged report of the 11th meeting of the CCJE, as it appears in document CM(2010)169 and as amended by document CM(2010)169 corr, as a whole."

3.h CM/Del/Dec(2011)1103/10.2E / 21 January 2011

Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO)
a. Abridged report of the 8th meeting (Strasbourg, 13-17 December 2010)
b. Draft Council of Europe Convention on preventing and combating violence against women and domestic violence
(CM(2011)3)

Decisions

"The Deputies

1. agreed to transmit the draft Council of Europe Convention on preventing and combating violence against women and domestic violence, as it appears at Appendix II to document CM(2011)3, to the Parliamentary Assembly and invited the Assembly to give an opinion on the draft convention as soon as possible;

2. took note of the report of the 8th meeting of the CAHVIO, as it appears in document CM(2011)3, and of the fact that some delegations had indicated that the list of reservations contained in its paragraph 8 is not complete, and agreed to transmit it to the Parliamentary Assembly with this information."

APPENDICES

APPENDIX I

Parliamentary Assembly Recommendation 1953 (2011)[9]
"The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes"

1. The Parliamentary Assembly, referring to its Resolution 1785 (2011) on the obligation of member states of the Council of Europe to co-operate in the prosecution of war crimes, recommends that the Committee of Ministers:

1.1. urge member and observer states to sign and ratify the conventions mentioned in paragraphs 7 and 8 of the Resolution and review declarations and reservations limiting their applicability;

1.2. instruct the European Committee on Crime Problems and the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters to make an assessment – in transparent consultation with civil society – of the application of the *aut dedere aut iudicare* principle (either extradite or prosecute) and of arrangements to transpose into domestic law the principle of universal jurisdiction over war crimes and crimes against humanity;

1.3. inform the group of experts in charge of revising and modernising the European Convention on Extradition (ETS No. 24) of the Assembly's concerns with respect to co-operation of the member states in the prosecution of war crimes and invite it to take proper account of them in its work and invite civil society to contribute to the consideration of this point;

1.4. invite the Committee of Experts on Impunity of the Steering Committee for Human Rights to take this subject into account in its Draft Guidelines on Eradicating Impunity for Serious Human Rights Violations.

[9] Assembly debate on 26 January 2011 (5th and 6th Sittings) (see Doc. 12454, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Dorić). Text adopted by the Assembly on 26 January 2011 (6th Sitting).

APPENDIX II

Reply from the Committee of Ministers[10] on Parliamentary Assembly Recommendation 1923 (2010) on "The situation in Kosovo and the role of the Council of Europe"

1. The Committee of Ministers welcomes the Parliamentary Assembly's continued attention to the situation in Kosovo. The Committee of Ministers confirms its own commitment to the European perspective of all the people living there, who should benefit from the same level of standards for democracy, human rights and the rule of law as all other Europeans.

2. An overview of current Council of Europe action, particularly for those fields referred to in paragraphs 4.2, 4.3, 4.4, 4.8, 4.9 and 4.10 of Parliamentary Assembly Recommendation 1923 (2010), can be found in the appendix to this reply.

3. The monitoring mechanisms for the Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities are currently implemented on the basis of agreements with UNMIK and NATO. The Committee of Ministers believes that the monitoring process will only be truly meaningful if the relevant and competent authorities in Kosovo are directly involved in the monitoring process and responsible for following-up the recommendations. Furthermore, the Committee of Ministers shares the view of the Parliamentary Assembly that the implementation of other Council of Europe monitoring mechanisms is an indispensable component of a Council of Europe contribution to raising standards of democracy, human rights and rule of law in Kosovo. To achieve this goal, the Committee of Ministers has instructed the Secretariat to prepare a feasibility study.

4. In order to implement its co-operation activities effectively, the Council of Europe will align its interaction with the relevant and competent authorities in Kosovo to the practice of other status-neutral international organisations, such as the United Nations, the OSCE and the European Union and in full conformity with United Nations Security Council Resolution 1244/1999.

5. As part of his reform of the Council of Europe external presence, the Secretary General is at present considering ways and means to strengthen the capacities of the Council of Europe Office in Pristina, including in the areas of analysis and project development.

Appendix to the reply

Overview of Co-operation Programmes

Kosovo is a beneficiary to several regional Council of Europe/EU Joint Programmes concerning cultural and archaeological heritage, social security co-ordination and fighting cybercrime. An increase in Council of Europe activities to support the implementation of Council of Europe standards will require significant additional financial resources.

In the area of the rule of law, a Council of Europe/EU Joint Programme is being finalised to work on fighting economic crime. The project should be implemented in 2011 and will aim to strengthen institutional capacities to counter corruption, money laundering and the financing of terrorism in accordance with European standards through thorough assessments and recommendations for improving and streamlining of economic crime reforms. The regional project PROSECO, completed in July 2010, has had an important impact on strengthening judiciary co-operation. Further efforts to support improvement of the rule of law, notably reinforcing the judiciary will be considered.

The important activities for the preservation of cultural heritage are building the capacities to promote cultural heritage, both tangible and intangible, as a factor of economic and social development. The education project is contributing to inter-cultural education at all levels. Discussions on future activities for cultural heritage and education are currently underway between the beneficiaries, the Council of Europe and the European Union.

[10] Adopted at the 1102nd meeting of the Ministers' Deputies (12 January 2011)

Fostering reconciliation and inter-community dialogue are important goals for Council of Europe work as highlighted in paragraph 4.4 of Parliamentary Assembly Recommendation 1923 (2010). The Council of Europe supports the Pristina Institute for Political Studies and its participation in the Network of Schools of Political Studies. In this context several bilateral meetings between the Pristina Institute and the Belgrade Fund for Political Excellence have been held, as well as amongst the schools in the South-East Europe.

The Council of Europe has also provided modest financial support for several youth projects specifically aiming at inter-community reconciliation in partnership with the Association of Local Democracy Agencies and *"Sports sans Frontières"*. A multiethnic youth camp was organised from March to June 2010 and brought together the youth of different ethnic background and from different municipalities building the communication and co-operation bridges between them.

The Council of Europe is also working with local civic associations to promote multi-ethnic activities for children and launched in 2009 the Speak Out Against Discrimination Campaign, with the participation of French footballer and education activist Lilian Thuram. Young people from both communities have been taking part in the annual Peace Camp for conflict resolution for the past several years. Further initiatives in this area are being considered and should be a priority over the next few years.

Gender equality, violence against women and trafficking in human beings continue to be a challenge. The Council of Europe has been working closely with EULEX to inform its staff of GRETA standards. Both this sector and the sector of media independence should be better addressed in co-operation activities in order to bring Council of Europe standards more directly to bear upon legislation and practice.

Support for the protection of human rights will be strengthened through a new Council of Europe/European Commission Joint Programme "Enhancing human rights protection in Kosovo", which should start in 2011.

The Council of Europe has been focussing on the situation of the Roma, Ashkali and Egyptian communities for many years. The Commissioner for Human Rights and the Advisory Committee of the FCNM have given specific recommendations for improving access to housing, education and employment. The Dosta campaign as well as the Council of Europe/European Commission Joint Programme Intercultural Education and the Bologna Process have devoted resources and attention to training teachers of Romani language and school mediators, amongst other activities.

Under a Council of Europe/European Commission Joint Programme, the Council of Europe has been assisting the Statistical Office with the technical preparation of the population and housing census planned for 2011.

APPENDIX III

Resolution CM/Res(2010)25[11] on member states' duty to respect and protect the right of individual application to the European Court of Human Rights

The Committee of Ministers,

Reiterating its commitment to the system of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, hereinafter "the Convention") as the cornerstone of human rights protection in Europe;

Emphasising that the right of individuals to apply to the European Court of Human Rights (hereinafter referred to as "the Court") is a central element of the convention system and must be respected and protected at all levels;

Stressing that respect for this right and its protection from any interference are essential for the effectiveness of the Convention system of human rights protection;

Recalling that all States Parties to the Convention have undertaken not to hinder in any way the effective exercise of this right, as stipulated by Article 34 of the Convention;

Recalling that positive obligations, including to investigate, form an essential characteristic of the Convention system as a whole;

Recalling also that the Court's case law has clearly established that Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court and that non-compliance may imply a violation of Article 34 of the Convention;

Noting therefore with concern that there have been isolated, but nevertheless alarming, failures to respect and protect the right of individual application (such as obstructing the applicant's communication with the Court, refusing to allow the applicant to contact his lawyer, bringing pressure to bear on witnesses or bringing inappropriate proceedings against the applicant's representatives), as found in recent years by the Court;

Deploring any interference with applicants or persons intending to apply to the Court, members of their families, their lawyers and other representatives and witnesses, and being determined to take action to prevent such interference;

Recalling the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights (ETS No. 161);

Recalling its Resolutions ResDH(2001)66 and ResDH(2006)45 on the states' obligation to co-operate with the European Court of Human Rights,

Calls upon the States Parties to:

1. refrain from putting pressure on applicants or persons who have indicated an intention to apply to the Court, members of their families, their lawyers and other representatives and witnesses aimed at deterring applications to the Court, having applications which have already been submitted withdrawn or having proceedings before the Court not pursued;

2. fulfil their positive obligations to protect applicants or persons who have indicated an intention to apply to the Court, members of their families, their lawyers and other representatives and witnesses from reprisals by individuals or groups including, where appropriate, by allowing applicants and witnesses to participate in witness protection programmes and providing appropriate forms of effective protection, including at international level;

3. in this context, take prompt and effective action with regard to any interim measures indicated by the Court so as to ensure compliance with their obligations under the relevant provisions of the Convention;

[11] Adopted by the Committee of Ministers on 10 November 2010 at the 1097th meeting of the Ministers' Deputies

4. identify and appropriately investigate all cases of alleged interference with the right of individual application, having regard to the positive obligations already arising under the Convention in light of the Court's case law;

5. take any appropriate further action, in accordance with domestic law, against persons suspected of being the perpetrators and instigators of such interference, including, where justified, by seeking their prosecution and the punishment of those found guilty;

6. if they have not already done so, ratify the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights,

Decides also to examine urgently, particularly in the context of its supervision of the execution of judgments finding a violation of Article 34, to any incident of interference with the right of individual application and encourages the Secretary General to consider exercising his powers under Article 52 of the Convention where justified by the circumstances.

APPENDIX IV

Recommendation CM/Rec(2010)12[12] of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention", ETS No. 5), which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law", and to the relevant case law of the European Court of Human Rights;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Having regard to the opinions of the Consultative Council of European Judges (CCJE), to the work of the European Commission for the Efficiency of Justice (CEPEJ) and to the European Charter on the Statute for Judges prepared within the framework of multilateral meetings of the Council of Europe;

Noting that, in the exercise of their judicial functions, the judges' role is essential in ensuring the protection of human rights and fundamental freedoms;

Wishing to promote the independence of judges, which is an inherent element of the rule of law, and indispensable to judges' impartiality and to the functioning of the judicial system;

Underlining that the independence of the judiciary secures for every person the right to a fair trial and therefore is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system;

Aware of the need to guarantee the position and powers of judges in order to achieve an efficient and fair legal system and encourage them to commit themselves actively to the functioning of the judicial system;

Conscious of the need to ensure the proper exercise of judicial responsibilities, duties and powers aimed at protecting the interests of all persons;

Wishing to learn from the diverse experiences in member states with regard to the organisation of judicial institutions in accordance with the rule of law;

Having regard to the diversity of legal systems, constitutional positions and approaches to the separation of powers;

Noting that nothing in this recommendation is intended to lessen guarantees of independence conferred on judges by the constitutions or legal systems of member states;

Noting that the constitutions or legal systems of some member states have established a council, to be referred to in this recommendation as a "council for the judiciary";

Wishing to promote relations among judicial authorities and individual judges of different member states in order to foster the development of a common judicial culture;

Considering that Recommendation Rec(94)12 of the Committee of Ministers on the independence, efficiency and role of judges needs to be substantially updated in order to reinforce all measures necessary to promote judges' independence and efficiency, guarantee and make more effective their responsibility and strengthen the role of individual judges and the judiciary generally,

Recommends that governments of member states take measures to ensure that the provisions contained in the appendix to the present recommendation, which replaces the above-mentioned Recommendation Rec(94)12, are applied in their legislation, policies and practices and that judges are enabled to perform their functions in accordance with these provisions.

[12] Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies

Appendix to Recommendation CM/Rec(2010)12

Chapter I – General aspects

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional matters.

2. The provisions laid down in this recommendation also apply to non-professional judges**,** except where it is clear from the context that they only apply to professional judges.

Judicial independence and the level at which it should be safeguarded

3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.

6. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court. All persons connected with a case, including public bodies or their representatives, should be subject to the authority of the judge.

7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.

8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.

9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.

10. Only judges themselves should decide on their own competence in individual cases as defined by law.

Chapter II − External independence

11. The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.

12. Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of justice.

13. All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.

14. The law should provide for sanctions against persons seeking to influence judges in an improper manner.

15. Judgments should be reasoned and pronounced publicly. Judges should not otherwise be obliged to justify the reasons for their judgments.

16. Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law.

17. With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.

18. If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.

19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.

20. Judges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning. Permanent mechanisms to obtain such feedback set up by councils for the judiciary or other independent authorities would contribute to this.

21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.

Chapter III − Internal independence

22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.

23. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.

24. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.

25. Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law.

Chapter IV − Councils for the judiciary

26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.

27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.

28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.

29. In exercising their functions, councils for the judiciary should not interfere with the independence of individual judges.

Chapter V − Independence, efficiency and resources

30. The efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 of the Convention, legal certainty and public confidence in the rule of law.

31. Efficiency is the delivery of quality decisions within a reasonable time following fair consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction.

32. The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality.

Resources

33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.

34. Judges should be provided with the information they require to enable them to take pertinent procedural decisions where such decisions have financial implications. The power of a judge to make a decision in a particular case should not be solely limited by a requirement to make the most efficient use of resources.

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly encouraged.

38. All necessary measures should be taken to ensure the safety of judges. These measures may involve protection of the courts and of judges who may become, or are victims of, threats or acts of violence.

Alternative dispute resolution

39. Alternative dispute resolution mechanisms should be promoted.

Courts' administration

40. Councils for the judiciary, where existing, or other independent authorities with responsibility for the administration of courts, the courts themselves and/or judges' professional organisations may be consulted when the judicial system's budget is being prepared.

41. Judges should be encouraged to be involved in courts' administration.

Assessment

42. With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities, in accordance with paragraph 58.

International dimension

43. States should provide courts with the appropriate means to enable judges to fulfil their functions efficiently in cases involving foreign or international elements and to support international co-operation and relations between judges.

Chapter VI - Status of the judge

Selection and career

44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.

Tenure and irremovability

49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.

51. Where recruitment is made for a probationary period or fixed term, the decision on whether to confirm or renew such an appointment should only be taken in accordance with paragraph 44 so as to ensure that the independence of the judiciary is fully respected.

52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.

Remuneration

53. The principal rules of the system of remuneration for professional judges should be laid down by law.

54. Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration

when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

55. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.

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.

Assessment

58. Where judicial authorities establish systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court.

Chapter VII − Duties and responsibilities

Duties

59. Judges should protect the rights and freedoms of all persons equally, respecting their dignity in the conduct of court proceedings.

60. Judges should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties and, where necessary, explaining procedural matters. Judges should act and be seen to act without any improper external influence on the judicial proceedings.

61. Judges should adjudicate on cases which are referred to them. They should withdraw from a case or decline to act where there are valid reasons defined by law, and not otherwise.

62. Judges should manage each case with due diligence and within a reasonable time.

63. Judges should give clear reasons for their judgments in language which is clear and comprehensible.

64. Judges should, in appropriate cases, encourage parties to reach amicable settlements.

65. Judges should regularly update and develop their proficiency.

Liability and disciplinary proceedings

66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.

67. Only the state may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation.

68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the

guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.

70. Judges should not be personally accountable where their decision is overruled or modified on appeal.

71. When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.

Chapter VIII − Ethics of judges

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary.

APPENDIX V

Recommendation CM/Rec(2010)13[13] of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve ever closer union among its members;

Noting that information and communication technologies (ICTs) allow the collection and processing on a large scale of data, including personal data, in both the private and public sectors; noting that ICTs are used for a wide range of purposes including uses for services widely accepted and valued by society, consumers and the economy; noting at the same time that continuous development of convergent technologies poses new challenges as regards collection and further processing of data;

Noting that this collection and processing may occur in different situations for different purposes and concern different types of data, such as traffic data and user queries on the Internet, consumer buying habits, activities, lifestyle and behaviour data concerning users of telecommunication devices including geo-location data, as well as data stemming in particular from social networks, video surveillance systems, biometric systems and radio frequency identification (RFID) systems foreshadowing the "Internet of things"; noting that it is desirable to assess the different situations and purposes in a differentiated manner;

Noting that data thus collected are processed namely by calculation, comparison and statistical correlation software, with the aim of producing profiles that could be used in many ways for different purposes and uses by matching the data of several individuals; noting that the development of ICTs enables these operations to be performed at a relatively low cost;

Considering that, through this linking of a large number of individual, even anonymous, observations, the profiling technique is capable of having an impact on the people concerned by placing them in predetermined categories, very often without their knowledge;

Considering that profiles, when they are attributed to a data subject, make it possible to generate new personal data which are not those which the data subject has communicated to the controller or which she or he can reasonably presume to be known to the controller;

Considering that the lack of transparency, or even "invisibility", of profiling and the lack of accuracy that may derive from the automatic application of pre-established rules of inference can pose significant risks for the individual's rights and freedoms;

Considering in particular that the protection of fundamental rights, in particular the right to privacy and protection of personal data, entails the existence of different and independent spheres of life where each individual can control the use she or he makes of her or his identity;

Considering that profiling may be in the legitimate interests of both the person who uses it and the person to whom it is applied, such as by leading to better market segmentation, permitting an analysis of risks and fraud, or adapting offers to meet demand by the provision of better services; and considering that profiling may thus provide benefits for users, the economy and society at large;

Considering, however, that profiling an individual may result in unjustifiably depriving her or him from accessing certain goods or services and thereby violate the principle of non-discrimination; Considering furthermore that profiling techniques, highlighting correlations between sensitive data in the sense of Article 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter "Convention No. 108") and other data, can enable the generation of new sensitive data concerning an identified or identifiable person; further considering that such profiling can expose individuals to particularly high risks of discrimination and attacks on their personal rights and dignity;

Considering that the profiling of children may have serious consequences for them throughout their life, and given that they are unable, on their own behalf, to give their free, specific and informed consent when personal data are collected for profiling purposes, specific and appropriate measures for the protection of

[13] Adopted by the Committee of Ministers on 23 November 2010 at the 1099th meeting of the Ministers' Deputies

children are necessary to take account of the best interests of the child and the development of their personality in accordance with the United Nations Convention on the Rights of the Child;

Considering that the use of profiles, even legitimately, without precautions and specific safeguards, could severely damage human dignity, as well as other fundamental rights and freedoms, including economic and social rights;

Convinced that it is therefore necessary to regulate profiling as regards the protection of personal data in order to safeguard the fundamental rights and freedoms of individuals, in particular the right to privacy, and to prevent discrimination on the basis of sex, racial and ethnic origin, religion or belief, disability, age or sexual orientation;

Recalling in this regard the general principles on data protection in Convention No. 108;

Recalling that every person shall have the right of access to data relating to him or her and considering that every person should know the logic involved in profiling; whereas this right should not affect the rights and freedoms of others, and in particular not adversely affect trade secrets or intellectual property or the copyright protecting the software;

Recalling the necessity to comply with the already existing principles set out by other relevant recommendations of the Council of Europe, in particular Recommendation Rec(2002)9 on the protection of personal data collected and processed for insurance purposes and Recommendation Rec(97)18 concerning the protection of personal data collected and processed for statistical purposes;

Taking into account the Council of Europe Convention on Cybercrime (ETS No. 185 – Budapest Convention) which contains regulations for the preservation, collection and exchange of data, subject to conditions and safeguards providing for the adequate protection of human rights and liberties;

Taking into account both Article 8 of the European Convention on Human Rights (ETS No. 5), as interpreted by the European Court of Human Rights, and new risks created by the use of information and communication technologies;

Considering that the protection of human dignity and other fundamental rights and freedoms in the context of profiling can be effective if, and only if, all the stakeholders contribute together to a fair and lawful profiling of individuals;

Taking into account that the mobility of individuals, the globalisation of markets and the use of new technologies necessitate transborder exchanges of information, including in the context of profiling, and require comparable data protection in all the member states of the Council of Europe,

Recommends that the governments of member states:

1. apply the appendix to the present recommendation to the collection and processing of personal data used in the context of profiling notably by taking measures to ensure that the principles set out in the appendix to this recommendation are reflected in their law and practice;

2. ensure the broad dissemination of the principles set out in the appendix to this recommendation among persons, public authorities and public or private bodies, particularly those which participate in and use profiling, such as designers and suppliers of software, profile designers, electronic communications service providers and information society service providers, as well as among the bodies responsible for data protection and the standardisation bodies;

3. encourage such persons, public authorities and public or private bodies to introduce and promote self-regulation mechanisms, such as codes of conduct, ensuring respect for privacy and data protection, and put in place the technologies found in the appendix to this recommendation.

Appendix to Recommendation CM/Rec(2010)13

1. Definitions

For the purposes of this recommendation:

a. "Personal data" means any information relating to an identified or identifiable individual ("data subject"). An individual is not considered "identifiable" if identification requires unreasonable time or effort.

b. "Sensitive data" means personal data revealing the racial origin, political opinions or religious or other beliefs, as well as personal data on health, sex life or criminal convictions, as well as other data defined as sensitive by domestic law.

c. "Processing" means any operation or set of operations carried out partly or completely with the help of automated processes and applied to personal data, such as storage, conservation, adaptation or alteration, extraction, consultation, utilisation, communication, matching or interconnection, as well as erasure or destruction.

d. "Profile" refers to a set of data characterising a category of individuals that is intended to be applied to an individual.

e. "Profiling" means an automatic data processing technique that consists of applying a "profile" to an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

f. "Information society service" refers to any service, normally provided for remuneration, at a distance, by electronic means.

g. "Controller" means the natural or legal person, public authority, agency or any other body which alone, or in collaboration with others, determines the purposes of and means used in the collection and processing of personal data.

h. "Processor" means the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

2. General principles

2.1. The respect for fundamental rights and freedoms, notably the right to privacy and the principle of non-discrimination, shall be guaranteed during the collection and processing of personal data subject to this recommendation.

2.2. Member states should encourage the design and implementation of procedures and systems in accordance with privacy and data protection, already at their planning stage, notably through the use of privacy-enhancing technologies. They should also take appropriate measures against the development and use of technologies which are aimed, wholly or partly, at the illicit circumvention of technological measures protecting privacy.

3. Conditions for the collection and processing of personal data in the context of profiling

A. Lawfulness

3.1. The collection and processing of personal data in the context of profiling should be fair, lawful and proportionate, and for specified and legitimate purposes.

3.2. Personal data used in the context of profiling should be adequate, relevant and not excessive in relation to the purposes for which they are collected or for which they will be processed.

3.3. Personal data used in the context of profiling should be stored in a form that allows the identification of the data subjects for a period no longer than is necessary for the purposes for which they are collected and processed.

3.4. Collection and processing of personal data in the context of profiling may only be performed:

a. if it is provided for by law; or
b. if it is permitted by law and:

- the data subject or her or his legal representative has given her or his free, specific and informed consent;

- is necessary for the performance of a contract to which the data subject is a party or for the implementation of pre-contractual measures taken at the request of the data subject;

- is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the personal data are disclosed;

- is necessary for the purposes of the legitimate interests of the controller or the third party or parties to whom the profiles or data are disclosed, except where such interests are overridden by the fundamental rights and freedoms of the data subjects;

- is necessary in the vital interests of the data subject.

3.5. The collection and processing of personal data in the context of profiling of persons who cannot express on their own behalf their free, specific and informed consent should be forbidden except when this is in the legitimate interest of the data subject or if there is an overriding public interest, on the condition that appropriate safeguards are provided for by law.

3.6. When consent is required it is incumbent on the controller to prove that the data subject has agreed to profiling on an informed basis, as set out in Section 4.

3.7. As much as possible, and unless the service required necessitates knowledge of the data subject's identity, everyone should have access to information about goods or services or access to these goods or services themselves without having to communicate personal data to the goods or services provider. In order to ensure free, specific and informed consent to profiling, providers of information society services should ensure, by default, non-profiled access to information about their services.

3.8. The distribution and use, without the data subject's knowledge, of software aimed at the observation or the monitoring in the context of profiling of the use being made of a given terminal or electronic communication network should be permitted only if they are expressly provided for by domestic law and accompanied by appropriate safeguards.

B. Data quality

3.9. Appropriate measures should be taken by the controller to correct data inaccuracy factors and limit the risks of errors inherent in profiling.

3.10. The controller should periodically and within a reasonable time reevaluate the quality of the data and of the statistical inferences used.

C. Sensitive data

3.11. The collection and processing of sensitive data in the context of profiling is prohibited except if these data are necessary for the lawful and specific purposes of processing and as long as domestic law provides appropriate safeguards. When consent is required it shall be explicit where the processing concerns sensitive data.

4. Information

4.1. Where personal data are collected in the context of profiling, the controller should provide the data subjects with the following information:

a. that their data will be used in the context of profiling;

b. the purposes for which the profiling is carried out;

c. the categories of personal data used;

d. the identity of the controller and, if necessary, her or his representative;

e. the existence of appropriate safeguards;

f. all information that is necessary for guaranteeing the fairness of recourse to profiling, such as:

- the categories of persons or bodies to whom or to which the personal data may be communicated, and the purposes for doing so;

- the possibility, where appropriate, for the data subjects to refuse or withdraw consent and the consequences of withdrawal;

- the conditions of exercise of the right of access, objection or correction, as well as the right to bring a complaint before the competent authorities;

- the persons from whom or bodies from which the personal data are or will be collected;

- the compulsory or optional nature of the reply to the questions used for personal data collection and the consequences for the data subjects of not replying;

- the duration of storage;

- the envisaged effects of the attribution of the profile to the data subject.

4.2. Where the personal data are collected from the data subject, the controller should provide the data subject with the information listed in Principle 4.1 at the latest at the time of collection.

4.3. Where personal data are not collected from data subjects, the controller should provide the data subjects with the information listed in Principle 4.1 as soon as the personal data are recorded or, if it is planned to communicate the personal data to a third party, at the latest when the personal data are first communicated.

4.4. Where the personal data are collected without the intent of applying profiling methods and are processed further in the context of profiling, the controller should have to provide the same information as that foreseen under Principle 4.1.

4.5. The provisions under Principles 4.2, 4.3 and 4.4 to inform the data subjects do not apply if:

a. the data subject has already been informed;

b. it proves impossible to provide the information or it would involve disproportionate effort;

c. the processing or communication of personal data for profiling is expressly provided for by domestic law.

In the cases set out in *b* and *c*, appropriate safeguards should be provided for.

4.6. Information provided to the data subject should be appropriate and adapted to the circumstances.

5. Rights of data subjects

5.1. The data subject who is being, or has been, profiled should be entitled to obtain from the controller, at her or his request, within a reasonable time and in an understandable form, information concerning:

a. her or his personal data;

b. the logic underpinning the processing of her or his personal data and that was used to attribute a profile to her or him, at least in the case of an automated decision;

c. the purposes for which the profiling was carried out and the categories of persons to whom or bodies to which the personal data may be communicated.

5.2. Data subjects should be entitled to secure correction, deletion or blocking of their personal data, as the case may be, where profiling in the course of personal data processing is performed contrary to the provisions of domestic law which enforce the principles set out in this recommendation.

5.3. Unless the law provides for profiling in the context of personal data processing, the data subject should be entitled to object, on compelling legitimate grounds relating to her or his situation, to the use of her or his personal data for profiling. Where there is justified objection, the profiling should no longer involve the use of the personal data of the data subject. Where the purpose of the processing is direct marketing, the data subject does not have to present any justification.

5.4. If there are any grounds for restricting the rights set out in this section in accordance with Section 6, this decision should be communicated to the data subject by any means that allows it to be put on record, with a mention of the legal and factual reasons for such a restriction.

This mention may be omitted when a reason exists which endangers the aim of the restriction. In such cases, information should be given to the data subject on how to challenge this decision before the competent national supervisory authority, a judicial authority or a court.

5.5. Where a person is subject to a decision having legal effects concerning her or him, or significantly affecting her or him, taken on the sole basis of profiling, she or he should be able to object to the decision unless:

a. this is provided for by law, which lays down measures to safeguard data subjects' legitimate interests, particularly by allowing them to put forward their point of view;

b. the decision was taken in the course of the performance of a contract to which the data subject is party or for the implementation of pre-contractual measures taken at the request of the data subject and that measures for safeguarding the legitimate interests of the data subject are in place.

6. Exceptions and restrictions

Where it is necessary in a democratic society for reasons of state security, public safety, the monetary interests of the state or the prevention and suppression of criminal offences, or protecting the data subject or the rights and freedoms of others, member states need not apply the provisions set out in Sections 3, 4 and 5 of the present recommendation, where this is provided for in law.

7. Remedies

Domestic law should provide appropriate sanctions and remedies in cases of breach of the provisions of domestic law giving effect to the principles laid down in this recommendation.

8. Data security

8.1. Appropriate technical and organisational measures should be taken to ensure the protection of personal data processed in accordance with the provisions of domestic law enforcing the principles set out in this recommendation, to guard against accidental or unlawful destruction and accidental loss, as well as unauthorised access, alteration, communication or any other form of unlawful processing.

These measures should ensure a proper standard of data security having regard to the technical state of the art and also to the sensitive nature of the personal data collected and processed in the context of profiling, and evaluating the potential risks. They should be reviewed periodically and within a reasonable time.

8.2. The controllers should, in accordance with domestic law, lay down appropriate internal regulations with due regard to the relevant principles of this recommendation.

8.3. If necessary, the controllers should appoint an independent person responsible for the security of information systems and data protection, and qualified to give advice on these matters.

8.4. Controllers should choose processors who offer adequate safeguards regarding the technical and organisational aspects of the processing to be carried out, and should ensure that these safeguards are observed and that, in particular, the processing is in accordance with their instructions.

8.5. Suitable measures should be introduced to guard against any possibility that the anonymous and aggregated statistical results used in profiling may result in the re-identification of the data subjects.

9. Supervisory authorities

9.1. Member states should mandate one or more independent authorities to ensure compliance with the domestic law implementing the principles set out in this recommendation and having, in this respect, the necessary powers of investigation and intervention, in particular the power to hear claims lodged by any individual person.

9.2. Furthermore, in cases of processing that use profiling and entail special risks with regard to the protection of privacy and personal data, member states may foresee either:

a. that controllers have to notify the supervisory authority in advance of the processing; or

b. that this processing is subject to prior checking by the supervisory authority.

9.3. The above authorities should inform the public of the application of the legislation implementing the principles set out in this recommendation.

APPENDIX VI

Opinion No. 13 (2010) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the role of judges in the enforcement of judicial decisions

I. Introduction

1. The Committee of Ministers of the Council of Europe instructed the Consultative Council of European Judges (hereafter "CCJE") to adopt, in 2010, an Opinion "on the role of judges in the relation to the other functions of State and other actors in the enforcement of judicial decisions"[14].

2. The CCJE has drafted this Opinion on the basis of replies to a questionnaire received from 34 member states. The replies of almost all member states identify the existence of serious obstacles to effective and adequate enforcement of judicial decisions. These obstacles arise in the civil, administrative and criminal spheres. With regard to civil and administrative matters, member states report, in particular, the complexity and cost of the enforcement procedures. With regard to criminal matters, member states report for example inadequate prison conditions and laxity in the execution of penalties.

3. This Opinion will propose concrete means to improve the role of the judge in the enforcement of judicial decisions and not deal with the enforcement procedure in general.

4. In order to do so, the judge's role will be examined as regards the enforcement of judicial decisions in the civil, administrative and criminal fields, as well as of decisions taken by international courts, notably by the European Court of Human Rights (hereafter "the Court").

5. To draft this Opinion, the CCJE relies on Council of Europe documents, in particular:

- the European Convention on Human Rights (hereafter "the ECHR"), in particular Articles 5, 6, 8 and 13 and Article 1 of Protocol No. 1;
- the Interlaken Declaration adopted at the High Level Conference on the Future of the Court (19 February 2010);
- the Recommendation Rec(2003) 16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law;
- the Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement;
- the Recommendation Rec(2006) 2 of the Committee of Ministers to member states on the European Prison Rules;
- the Recommendation Rec(2008) 2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights;
- Report of the CEPEJ "European judicial systems" (2010 Edition);
- "Enforcement of Court decisions in Europe" (CEPEJ Studies No. 8);
- CEPEJ Guidelines for a better implementation of the existing Council of Europe's Recommendation on enforcement;
- 3rd Annual Report 2009 on the supervision of the execution of judgments of the Court;
- the Convention for the Protection of Personal Data (ETS No. 108);
- the views of the Commissioner for Human Rights: "The imperfect implementation of judicial decisions undermines confidence in the justice of states" (31 August 2009);
- the Conventions of the Council of Europe on enforcement of sentences and extradition: the European Convention on Extradition (ETS No. 24) and its protocols (ETS No. 86 and 98), the European Convention for the Supervision of Conditionally Sentenced or paroled (ETS No. 51), the European Convention on the International Validity of Criminal Judgments (ETS No. 70), the Convention on the Transfer of Sentenced Persons (ETS No. 112) and its Additional Protocol (ETS No. 167);

as well as the Court case-law on this matter, in particular:

- Hornsby v. Greece (19 March 1997, No. 18357/91);
- Burdov v. Russia No. 2 (15 January 2004, No. 33509/04);
- Akashev v. Russia (12 June 2008, No. 30616/05);

[14] See the 2010 terms of reference of the CCJE approved by the Committee of Ministers at the 1075th meeting of the Ministers Deputies (20th January 2010).

- Zielinski and Pradal and Gonzalez and Others v. France (28 October 1999, No. 24846/94 and acc);
- Cabourdin v. France (11 April 2006, No. 60796/00);
- Immobiliare Saffi v. Italy (28 July 1999, GC, No. 22774/93);
- Papon v. France (25 July 2002, No. 54210/00);
- Annoni Di Gussola and Desbordes and Omer v. France (14 November 2000, No. 31819/96, 33293/96).

II. General principles

6. Enforcement should be understood as putting into effect judicial decisions and also other judicial or non-judicial enforceable titles. It may involve an order to do, to refrain from doing or to pay what has been adjudged. It may involve the imposition of financial penalties or a custodial sentence.

7. The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 of the ECHR) is in vain if the decision is not enforced.

8. The enforcement procedure must be implemented in compliance with fundamental rights and freedoms (Articles 3, 5, 6, 8, 10, 11 of the ECHR, data protection, etc.).

9. The decision to be enforced must be precise and clear in determining the obligations and rights engaged in order to avoid any obstacle to effective enforcement.[15]

10. Decisions of the Court show that, in some cases, legislative or executive powers have attempted to influence enforcement through refusal or suspension or denial of resort to the police. They also have interfered in pending litigation by enacting provisions, often declared as being of a retroactive or interpretative nature, aiming at changing the foreseeable outcome of one or more court cases or introducing new remedies for their review.[16]

11. The enforcement of a decision must not be undermined by extraneous intervention whether from the executive or the legislator by imposing retroactive legislation.

12. The very notion of an “independent” tribunal set out in Article 6 of the ECHR implies that its power to give a binding decision may not be subject to approval or ratification, or that the decision may not be altered in its content, by a non-judicial authority, including the Head of State.[17] All branches of states should therefore ensure that the legal provisions providing for the independence of courts, existing in their constitutions or at the highest level of their legislation, are construed in such a way that they call for prompt enforcement of judicial decisions with no interference of other powers of the state, with the sole exceptions of amnesty and pardon in criminal matters. The suspension of enforcement of a judicial decision may only take place by way of another judicial decision.

13. There should be no postponement of the enforcement procedure, except on grounds prescribed by law. Any deferral should be subject to the judge’s assessment.

14. The enforcement agents should not have the power to challenge or vary the terms of the judgment.

15. If it is necessary for a party to have a decision enforced, the enforcement procedure should be easily initiated. Any obstacle to this, for instance excessive costs, should be avoided.

16. Enforcement should be swift and effective. Therefore necessary funds have to be provided for enforcement. Clear legal regulations should determine the available resources, the authorities in charge and the applicable procedure for their allocation.

17. Member states should provide for an accelerated or urgent enforcement procedure where delay might cause an irreversible wrong (some family cases, cases where the defendant has absconded, cases of expulsion, risk of damage to property, etc.).

---

[15] See Privalikhin vs. Russia of 12 May 2010: the Court reaffirmed that in order to decide if the execution delay was reasonable, the Court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was (see also Raylyan v. Russia, No. 22000/03, § 31, 15 February 2007).

[16] See for example, Immobiliare Saffi v. Italy, 28 July 1999, and other 156 cases v. Italy; Zielinski and Pradal and Gonzales and others v. France, 28 October 1999, §57; Cabourdin v. France, 11 April 2006.

[17] See for example, Van de Hurk v. the Netherlands, 19 April 1994; Findlay v. The United Kingdom, 25 February 1997, especially §77.

18. In order for judges to fulfil their tasks, the judiciary should be entrusted with the following missions concerning enforcement:

- an appeal to a judge if the enforcement is not initiated or is delayed by the relevant bodies; a judge should also be involved when fundamental rights of the parties are concerned; in all cases, the judge should have the power to grant just compensation;
- an appeal or complaint to a judge if there is any abuse in the enforcement procedure;
- an appeal to a judge in order to settle litigation concerning enforcement and to give orders to state authorities and other relevant bodies to enforce decisions; at the final stage, it should be up to the judge to use all possible ways to ensure enforcement;
- to identify and take due account of the rights and interests of third parties and members of the family, including those of children.

19. In some systems, parties may be forced to comply with the judicial decision by way of indirect coercion, for example by imposing fines or legal provisions stating that criminal charges may be brought in the case of a refusal to execute. The CCJE considers that such indirect enforcement measures, which should in all cases be provided by the law and allowed by the judge, both in the decision or even afterwards, are especially important to ensure enforcement in urgent matters, in matters in which the specific performance may not be substituted by an equivalent satisfaction and in family matters, in which the use of force may harm the interest of children. In view of the benefits associated with indirect coercion, the CCJE recommends that courts ensure the widest use of such remedies, which also allow in most cases a prompt enforcement.

20. The CCJE considers that a transparent regulatory framework, preferably of legislative nature, should apply to costs of enforcement. The amount of fees should take into account the nature of the activity required from the enforcement agents, not necessarily in proportion to the value of the claim. In case of a dispute, costs should be assessed by the court.

21. For purposes of guaranteeing access to justice, alternative legal aid or financing arrangements should be proposed to claimants who are unable to pay the costs of enforcement (by public funding or reduction of costs).

22. The vital importance of enforcement to comply with the Rule of law requires that data about enforcement are included in systems of evaluation of justice and in information on judicial systems provided to court users, the general public and the media, as proposed in Opinion No. 6 of the CCJE (Parts A and C).

23. The CCJE recommends that the Council for the Judiciary, or any other relevant independent body, publish regularly a report on the effectiveness of enforcement, including data on delays and their causes, as well as on different enforcement methods. A special section should deal with the enforcement of judicial decisions against public entities.

III. The role of the judge in the enforcement of judicial decisions in civil matters

24. Enforcement of a judicial decision shall not require the commencement of entirely fresh proceedings and enforcement procedures shall not permit reopening of the merits of the original judicial decisions. But the judge may have power to suspend or postpone enforcement to take account of the particular circumstances of the litigants, for example to give effect to Article 8 of the ECHR.

25. If the rule of law is to be maintained and litigants' trust in the judicial system is to be ensured, enforcement activities must be proportionate, fair and effective. For example, tracing and attachment of the defendants' assets should be made as effective as possible, while taking account of the applicable provisions on human rights, protection of personal data and the need for judicial review.

26. When the parties are free to dispose of their rights and where the parties together reach a lawful agreement on enforcement, no legal provision should prevent the agreement from taking effect.

27. The fundamental right of data protection should be reconciled with the possibility to use, within enforcement procedures, information contained in databases on assets of debtors. This requires a precise legal regulation of the procedure and the authorisation to resort to the database, with the aim to guarantee an effective and complete enforcement and prevent any misuse. All state organs in charge of databases

containing the information needed for effective enforcement should be bound to convey this information to the courts.

28. Repeated use of information on a defendant's assets in connection with subsequent proceedings to which the same defendant is a party should have a clear and specific legal framework (setting of strict time limits for retention of data, etc.) and be subject to all procedural prerequisites to start an enforcement procedure.

IV. The role of judges in the enforcement of judicial decisions in administrative matters

29. The CCJE considers that most of the principles set out regarding enforcement in civil matters also apply "*mutatis mutandis*" to enforcement in administrative matters, whether enforcement is against a private person or a public institution.

30. However, some special considerations arise concerning the execution of judicial decisions against public entities. These may arise in administrative law, but also in civil law disputes.

31. First, the CCJE considers that, in a state governed by the Rule of law, public entities are above all bound to respect judicial decisions, and to implement them in a rapid way "*ex officio*". The very idea of a state body refusing to obey a court decision undermines the concept of primacy of the law.

32. A large amount of cases brought before the Court concerns the non-execution of judicial decision by public bodies. A state should respect judgments delivered against it without delay and without requiring the claimant to use enforcement procedures. The Court has repeatedly admitted claims by claimants who have either not used such procedures, or have had to do so, saying that "a person who has obtained an enforceable judgment against the state as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed".[18]

33. When recourse to forced execution is necessary, states should ensure that their domestic legislations allow criminal and disciplinary prosecution of officials to whom refusal or delay of execution is attributable, as well as to question their civil liability.

34. States should recover against such officials any additional costs incurred due to refusal or delay of enforcement. Acts by public officials delaying or denying enforcement should always be subject to an effective judicial review.

35. Legislative interference with pending execution is impermissible above all when a public entity is the debtor.

36. The same enforcement agents, as for enforcement against private bodies, should be competent and the same procedural principles should apply. Judges should not suffer restrictions in applying the same legal provisions and in ensuring effective compensation for delays in the enforcement procedure (indexation, default interest at the same rate generally applicable, specific damages, other penalties).[19]

37. Judgments concerning a decision by an administrative authority denying an alien's right to stay on the state's territory frequently involve the question whether the alien could be expulsed. In this context, expulsion constitutes the enforcement of the authority's decision. The CCJE considers that, in order to secure effective judicial review, states should not prevent the court from examining the admissibility of expulsion in its final or interim decision concerning the act taken by the administrative authority.

---

[18] See Koltsov v. Russia, 24 February 2005, §16; see also Petrushko v. Russia, 24 February 2005, §18; Metaxas v. Greece, 27 May 2004, §19.

[19] Such compensation is also a direct requirement of the ECHR (in particular Article 1 of Protocol No. 1). According to the Court, the mere fact that the authorities complied with the judgments cannot by viewed as automatically depriving the applicant of his/her victim status under the Convention, if no adequate redress was offered for the delay in proceedings (see for example, Petrushko v. Russia, 24 February 2005, §15). The adequate compensation eventually paid after the delay must take into account the various circumstances with a view to compensate the gap between the sum due and the sum finally paid to the creditor and to compensate for losses of use (see for example, Akkus v. Turkey, 9 July 1997; Angelov v. Bulgaria, 22 April 2004; Eko-Elda Avee v. Greece, 9 March 2006). Redress may also be demanded for non-pecuniary damages (see for example, Sandor v. Romania, 24 March 2005). The absence of state responsibility for delay under these different heads of prejudice could not be justified by the impossibility of establishing any *culpa* or fault on the part of public authorities (see Solodyuk v. Russia, 12 July 2005, §16).

V. The role of judges in the enforcement of judicial decisions in criminal matters

38. In criminal matters, respect of the Rule of law requires the full implementation of criminal sanctions or penalties, regardless of the nature of the sentence imposed. Thus, member states should refrain from developing policies which result in minor penalties that are not actually enforced, whether for budgetary reasons, lack of prison accommodation or expediency. The result of such policies is to undermine the authority of judicial decision making, and thereby the rule of law itself.

39. A penalty may take the form of a term of imprisonment, a fine, or another sanction (for instance, professional prohibition, disqualification from driving, etc.). As a general rule, the actual implementation of such sanctions is not a matter for the judge to decide on; such measures are to be put into effect by prosecutors, police authorities or any relevant administrative authority. Either public or private officials, such as bailiffs may be appointed by a judge or another competent authority to carry out such duties. In any case, the performance of such powers and the implementation of penal measures have a direct impact on individual rights. The role of a judge is to protect and guarantee such rights within the framework of the judicial decision to be enforced.

40. A term of imprisonment may be looked at from two different standpoints. The first relates to modalities of the enforcement of the sentence, namely the duration and mode of implementation which may involve questions such as remission of sentence, parole, limited detention or provisional release under judicial supervision or electronic surveillance. The second standpoint relates to the physical or psychological conditions or the effects of imprisonment, which may give rise to questions as to the lawfulness of the detention itself or the conditions of the detention.

41. In some member states, the modalities of enforcement of the sentence may fall within the function of judges. In other member states, this category is dealt with by a parole board or other administrative authorities. In either case, the implementation of such measures must be subject to fairness in procedure and to judicial supervision and review.

42. Any alteration in the nature or location of the detention, for example by placement in a psychiatric institution because of the prisoner's mental health, must be subject to a right of appeal or judicial review.

43. Deprivation of liberty, of whatever nature, must at all times be in accordance with Article 3 and Article 8 of the ECHR. A person detained by police authorities or a sentenced prisoner must not, at any time, be subject to inhuman or degrading treatment. Human dignity must be protected at all times during detention. The requirements of Article 8.1 of the ECHR (respect for private and family life) must also be met, subject to the stipulations of Article 8.2 of the ECHR (possibility of interference by a public authority). It is the duty of the judge to protect and vindicate these rights and guarantees as applicable in each member state.

44. In some member states, the judge carries out *ex officio* the supervision of prison conditions. In other member states, the judge cannot assume *ex officio* jurisdiction in this matter. Whatever system in force, the legislation of each member states should enable the convicted person, his/her counsel as well as the prosecution to bring a case before the judge whenever the conditions of detention violate fundamental rights guaranteed by Articles 3 and 8 of the ECHR. This legislation should also provide mechanisms that allow independent administrative authorities to supervise prison conditions and to refer, if need be, a case to the Court.

45. Contact between a judge and enforcement authorities (Ministry of Justice, prison authorities, social services, the directors of prisons) will generally be limited to disputed enforcement issues, both in the event that such authorities are questioned on conditions of detention or modalities of implementation of the penalty, and in the event that they are requested to provide their opinion as to how the penalty is to be implemented. In all cases, the judge must take all necessary steps to be provided with all relevant information by the authorities. These authorities must also provide and submit such information to the parties contesting any relevant issue.

46. Implementation of non-custodial sentences which may have an impact on property (for instance fines, forfeitures or the closing of a business) or affect personal rights (such as a prohibition to exercise certain rights, disqualification from driving), may also give rise to legal issues. A convicted person must be able to address and request a judge to review any disputes which arise as a result thereof.

47. It is also necessary to ensure that judges, responsible for executing sentences, have specific training allowing them to clearly understand any legal, technical, social and human dimensions of this matter. Such

training must be devised and led in interaction with all the authorities or services involved in the process of implementation including judges, prosecutors, ministerial officials, prison staff and administration, directors of penal institutions, as well as social workers, lawyers and others.

VI. The role of judges in the enforcement on the international level

1. Implementation of decisions of the European Court of Human Rights

48. In its Opinion No. 9, the CCJE gave its viewpoint on the role of the judge regarding the implementation of international case-law, especially that of the Court. It has, notably, specified how the judge should comply with the Court's case-law.

49. When a state is condemned to pay compensation by the Court, the creditor should, in case of non-enforcement of the decision of the Court, have the right to request the enforcement by the national judge, without prejudice to measures which could be taken at a supranational level.

2. International co-operation and cross-border enforcement

50. At a time where justice is characterised by growing mobility and the development of international trade, the priority should be given to develop and promote an area of justice common to European citizens, by removing any remaining obstacles in the exercise of their rights. Thus judicial rulings must be recognised and enforced between member states without hindrance.

51. The principles of mutual trust and recognition are cornerstones of the construction of a European legal area, while respecting the diversity of national systems. Mutual recognition implies that decisions given at the national level have an effect in other member states, in particular in their legal system. It is therefore essential to increase exchanges between legal professionals. Their different networks should reinforce and restructure themselves and coordinate with each other.

52. Systematic European training for all judges and prosecutors should be provided; they should take part in training initiatives or exchanges in other states. Moreover, distance teaching programmes (e-learning) and common training material should be developed to instruct the judicial professions on how to deal with the European mechanisms (relations with the Court, the Court of Justice of the European Union (CJEU), use of the instruments of mutual recognition and judicial co-operation, comparative law, etc.).

a. In civil and administrative matters

53. In civil litigation, judicial rulings should be enforced directly and without any further intermediate measure. It will thus be necessary to move ahead gradually and cautiously with the process of eliminating the exequatur clause from certain decisions in civil and commercial matters.

54. Meanwhile, the speed of procedures and the effectiveness of the enforcement of court decisions should be enhanced by improved international arrangements regarding the taking and enforcement of provisional and precautionary measures.

55. In addition, mutual recognition could be extended to areas not covered yet by European law and essential to everyday life, such as inheritances and wills, matrimonial property regimes and the pecuniary consequences of the separation of couples.

b. In criminal matters

56. In criminal matters, international co-operation involves many areas. Examples to be recalled may concern the serving of a sentence in the country of origin, determined by a judicial decision issued in another country, extradition requests, the European Arrest Warrant, the recognition of judicial decisions in criminal matters, judicial cooperation, etc.

57. The enforcement of a foreign judgment is to be realised under a convention between states and is based on mutual trust in the judicial system of each of them. The judge in the country of enforcement must honour that trust. Thus, this judge shall not change or challenge the decision of the judge in the country of origin. He or she will not refuse the execution thereof other than on the grounds of exclusion provided in the convention between the countries of enforcement and of origin, or when the decision is contrary to the fundamental rights of the persons concerned.

58. However, in the area of transfer of condemned persons, the judge can adapt the sanctions pronounced by the foreign judge when this possibility exists under the convention binding the states concerned.

VII. Conclusions

A. The effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial is in vain if the decision is not enforced.

B. The very notion of an "independent" tribunal set out in Article 6 of the European Convention on Human Rights implies that its power to give a binding decision may not be subject to approval or ratification, or the decision altered in its content, by a non-judicial authority, including the Head of State.

C. All branches of states should ensure that the legal provisions providing for the independence of courts, existing in their constitutions or at the highest level of their legislation, are construed in such a way that they call for prompt enforcement of judicial decisions with no interference by other powers of the state, with the sole exceptions of amnesty and pardon in criminal matters. The suspension of enforcement of a judicial decision may only take place by way of another judicial decision.

D. There should be no postponement of the enforcement procedure, except on grounds prescribed by law. Any deferral should be subject to the judge's assessment. The enforcement agents should not have the power to challenge or vary the terms of the judgment.

E. In criminal matters, states should refrain from developing policies which result in minor penalties that are not actually executed.

F. The CCJE considers that, in a state governed by the rule of law, public entities are above all bound to respect judicial decisions, and to implement them in a rapid way "*ex officio*". The very idea of a state body refusing to obey a court decision undermines the concept of primacy of the law.

G. Enforcement should be fair, swift, effective and proportionate.

H. The parties should be able to initiate enforcement proceedings easily. Any obstacle to this, for instance excessive cost, should be avoided.

I. All enforcement proceedings must be implemented in compliance with fundamental rights and freedoms recognised by the ECHR and other international instruments.

J. The deprivation of liberty must be in accordance with the rights protected by Articles 3 and 8 of the ECHR, while having regard to the stipulations recognised by Article 8.2 of the latter. It is the duty of the judge to protect and vindicate these rights.

K. Whether the modalities of execution of a sentence are under the responsibility of the judge, a parole board or an administrative authority, the implementation of such measures must be subject to fairness in procedure and to judicial supervision and review.

L. The principles of trust and mutual recognition are cornerstones of the construction of a European legal area. Mutual recognition implies that decisions given at the national level have an effect in other member states, in particular in their legal system. It is therefore essential to increase exchanges between legal professionals. Their different networks should reinforce and restructure themselves and coordinate with each other.

M. The CCJE recommends that the Judicial Councils, or any other relevant independent body, should regularly publish a report on the effectiveness of enforcement. A separate section should deal with the execution of judgments against public entities.

APPENDIX VII

Magna Carta of Judges (fundamental principles) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe

Introduction

On the occasion of its 10th anniversary, the CCJE adopted, during its 11th plenary meeting (Strasbourg, 17-19 November 2010), a Magna Carta of Judges (fundamental principles) summarising and codifying the main conclusions of the Opinions that it already adopted. Each of those 13 Opinions, brought to the attention of the Committee of Ministers of the Council of Europe, contains additional considerations on the topics addressed in this document (see www.coe.int/ccje).

MAGNA CARTA OF JUDGES (fundamental principles)

Rule of law and justice

1. The judiciary is one of the three powers of any democratic state. Its mission is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.

Judicial Independence

2. Judicial independence and impartiality are essential prerequisites for the operation of justice.

3. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the state, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The state and each judge are responsible for promoting and protecting judicial independence.

4. Judicial independence shall be guaranteed in respect of judicial activities, in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

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.

9. The judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation).

10. In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law.

11. Judges shall ensure equality of arms between prosecution and defence. An independent status for prosecutors is a fundamental requirement of the Rule of Law.

12. Judges have the right to be members of national or international associations of judges, entrusted with the defence of the mission of the judiciary in the society.

Body in charge of guaranteeing independence

13. To ensure independence of judges, each state shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions.

Access to justice and transparency

14. Justice shall be transparent and information shall be provided on the operation of the judicial system.

15. Judges shall take steps to ensure access to swift, efficient and affordable dispute resolution; they shall contribute to the promotion of alternative dispute resolution methods.

16. Court documents and judicial decisions shall be drafted in an accessible, simple and clear language. Judges shall issue reasoned decisions, pronounced in public and within a reasonable time, based on fair and public hearing. Judges shall use appropriate case management methods.

17. The enforcement of court orders is an essential component of the right to a fair trial and also a guarantee of the efficiency of justice.

Ethics and responsibility

18. Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

19. In each state, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions, as well as disciplinary procedures.

20. Judges shall be criminally liable in ordinary law for offences committed outside their judicial office. Criminal liability shall not be imposed on judges for unintentional failings in the exercise of their functions.

21. The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

22. It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by compensation granted by the state, except in a case of wilful default.

International courts

23. These principles shall apply *mutatis mutandis* to judges of all European and international courts.