

DECLARATION

of the Consultative Council of European Judges (CCJE), adopted by the Bureau, upon delegation of the Plenary at its meeting in Strasbourg on November 14, 2008, concerning a draft law pending before the Serbian legislature providing for the termination of duties and rights of judges elected or appointed under previous laws.

1. By a letter dated 24 December 2007 and a further, more detailed, letter dated 4 November 2008, the Judges' Association of Serbia informed the Consultative Council of European Judges (CCJE) that a proposal of Law on Judges is being examined by the Serbian legislature, upon the initiative of the Serbian executive, providing for :
 - a) the termination, as of 31 December 2009, of duties and rights of judges elected or appointed under previous laws (art. 101);
 - b) the competence of the High Judicial Council to define the size of a new judiciary, to be elected by the Serbian National Assembly by 31 December 2009
 - c) the payment of compensation for six months for those judges that should not obtain re-election, to be extended for six more months if in that period the judge concerned acquires the right to a pension.

2. The CCJE discussed the above matter in its Bureau meetings held in Lisbon on 23 April 2008 and in Tartu on 17 June 2008 and further in the 9th Plenary meeting in Strasbourg on November 12-14, 2008.

In view of the above, the CCJE :

- a) considered that already the European Commission for Democracy through Law (Venice Commission), in its Opinion n° 405/2006 on the Constitution of Serbia and 464/2007 on the Draft Law on Judges and the Organisation of Courts in the Republic of Serbia, "pointed out the need for a re-appointment process with respect to all judges (...) was not at all obvious", even within a context of reforms at the constitutional level and of the judiciary itself (see paragraph 9 of the latter Opinion);
- b) considered that the principle of irremovability of judges and tenure until a mandatory retirement age or the expiry of a fixed term of office is a "fundamental tenet of judicial independence".

On this principle, please refer to:

- CCJE's Opinion n° 1 (2001) which refers also to the UN basic principles on the independence of the judiciary (1985), paragraph 12;
- Recommendation n° (94)12 of the Committee of Ministers of the Council of Europe Principle I (2) (a) (ii) and (3) and principle VI (1) and (2);
- the European Charter on the Statute of Judges (1998);
- the case-law of the European Court of Human Rights.

Both the Charter and the Recommendation contemplate that termination of office may be ordered by way of disciplinary sanction, with the due process guarantees of the European

Convention of Human Rights (see Recommendation n° R(12), Principle VI (2) and (3));

- c) considered that it does not appear, at this stage, that Serbia has undergone an interruption of continuity of its legal and political framework by the adoption of the Constitution on 30 September 2006 and of the Constitutional law on Implementation of the Constitution on 10 November 2006, and further considered that art. 7 of the latter law, providing that the first election of judges shall take place not later than 90 days from the date of the establishment of the High Judicial Council, should be construed in conformity with the principle of irremovability of judges (guaranteed by the Serbian Constitution both before and after 2006);
- d) expressed concern that the proposal of Law on Judges under examination by the Serbian National Assembly, which clearly calls for termination of judges who have tenure, may infringe judicial independence.

In view of the above, the Plenary :

- a) requests the delegation of Serbia at the CCJE to inform the High Judicial Council of Serbia - as guarantor of independence of Judges in that country – as well as the Judges' Association of Serbia of the above declaration;
- b) requests the delegation of Serbia at the CCJE to take all necessary steps, in agreement with the Bureau of the CCJE and the Secretariat of the Council of Europe, to ensure that, upon request of the relevant Serbian Authorities, a meeting could be organised, during which the matter could be further discussed.