

CEPEJ-GT-QUAL(2022)11

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Working Group on Quality of Justice (CEPEJ-GT-QUAL)

33rd meeting – 20-21 October 2022

Hybrid meeting

MEETING REPORT

Introduction

1. The Working Group on Quality of Justice (CEPEJ-GT-QUAL) of the European Commission for the Efficiency of Justice (CEPEJ) held its 33rd meeting in Strasbourg, on 20-21 October 2022. The meeting was chaired by Joao ARSENIO DE OLIVEIRA (Portugal). The agenda and list of participants are attached to this report as Annexes I and II respectively.

Evaluation of the performance of judges

2. The concept note on evaluation of the performance of judges (CEPEJ-GT-QUAL(2022)9) was presented by Stergios KOFINIS (Greece) and Wim DAVID (Belgium). The work undertaken previously by different actors (Consultative Council of European Judges (CCJE), European Network of Councils for the Judiciary, International Association of Judges etc.) was underlined. Members emphasised the “sensitivity” of the issue, as it touches upon judicial independence and impartiality, but also efficiency and quality of judicial work. Any work to be conducted shall be respectful of judge’s independence, including by taking into account the perception of judges themselves as to how the evaluation is affecting their independence. It was mentioned that in some countries, including European countries and at present times, the procedures and tools of judicial evaluation, although having arguably a legitimate purpose, can be used to exercise pressure on judges.

3. The discussions further referred to different models of evaluation of judges and whether the focus shall be put on evaluating the quality of judges’ work, or rather on efficiency criteria and indicators. It was mentioned that, if a system puts the emphasis on statistical data, judges might come under pressure of statistics, which could affect the quality of their work, particularly adjudication. The model applied in Kosovo* and on which CEPEJ has provided expert review in the framework of its cooperation project was briefly presented by the observers representing the Kosovo Judicial Council.

4. As the concept note envisages several scenarios for the way forward, the discussions focused on two options:

- focusing on subjects which are not thoroughly developed in the opinions, recommendations, guidelines, or other documents of the European and international actors. In particular, it may be useful to identify specific indicators and methods for measuring the quality of a judge’s work.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

As pointed out in the concept note, even though all institutions dealing with the subject agree that quality should be the focus of evaluation procedures, there are not clear guidelines on how quality should be measured, in contrast to the measurement of quantitative criteria.

- it may be also useful to compile and systematise previous work and good practices.

5. Most comments supported the first option presented above. Exploring in detail the specific indicators and methods of measuring the quality of judges' work is viewed as a priority. This area seems to better correspond to the CEPEJ-GT-QUAL mission, where it can provide more information and expertise. The CEPEJ-GT-QUAL could put forward recommendations on the "criteria of quality" and differentiate quality and quantity in view of accomplishing the evaluation of the performance of judges. Another controversial issue that deserves attention is who should conduct the evaluation and the composition of the corresponding body. For this purpose, it can be interesting to research through the CEPEJ network the practices applied in member States.

6. With a view to follow up, it was proposed to invite two consultants, including a CCJE expert to further elaborate on the concept note and to develop a questionnaire through which relevant information will be sought within the CEPEJ network.

HELP module on CEPEJ tools on quality of justice

7. Gilles ACCOMANDO (France) presented the purpose and main characteristics of the future HELP training module on CEPEJ tools, as well as the details concerning the advancement of the drafting of the specific module focusing on quality of justice and court users. Some tools developed by the CEPEJ-GT-QUAL are not reflected in the current version of the module, for example the Guidelines on breaking up judges' isolation. Any initiative by the members to get involved in the on-going drafting work will be much welcome.

8. The Secretariat mentioned that the training module will be adaptable to national contexts and will be used in cooperation programs to promote awareness raising and training on topics covered by the key CEPEJ tools. The work is being pursued in coordination with other Working Groups and HELP coordinator.

Better implementation of the CEPEJ European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment

9. Matthieu QUINIOU (France), acting in the capacity of coordinator of the Artificial Intelligence Advisory Board (AIAB) of the CEPEJ, explained the steps by which the Board started its activity since September 2022.

10. Joao ARSENIO DE OLIVEIRA explained that the working group would like to understand how it can better contribute to and support the work of AIAB in this regard.

11. The AIAB has been tasked to develop a draft operationalisation concept note, before initiating further coordination with the CEPEJ-GT-QUAL. Operationalisation is a less ambitious objective than certification or labelling, which consists in the development of an assessment tool (guidelines or/and checklist) aiming at ensuring that the AI tools are compliant with the Ethical Charter's key principles, the satisfactory implementation of which by different stakeholders requires more specific guidance.

12. Further discussions focused on such aspects as:

- how can the CEPEJ-GT-QUAL have an added value in the AI debate – with the key point being the human rights perspective? That is why supporting the developers in understanding the Ethical Charter principles is fundamental.
- who are target groups of the AIAB future tool?
- should it take the form of guidelines or of a checklist?
- should it focus on the phase of "training" an AI, or on the phase of deploying it?

13. The CEPEJ-GT-QUAL members agreed that the tool should be addressing primarily the developers; it should have an inciting demarche. The States or the EU, as well as the users, especially from the judiciary, may decide to use this tool as a reference document.

14. The importance of explaining to Justice professionals what they need to do to ensure the compliance of AI they intend to develop or to apply with the Ethical Charter. It was suggested to develop a new mission fiche for AIAB on awareness raising for judges.

15. Developments under the Committee on Artificial Intelligence (CAI) of the first draft of a Convention on AI were also evoked.

16. It was convened that AIAB would present during its next meeting the draft operationalisation concept note. The intention was recalled that, after its approval by CEPEJ Plenary, ideally in June 2023, the tool at the heart of the operationalisation concept, will need to be 'tested' via a pilot project, which could include the 'sandbox' methodology.

17. Further steps related to the development of the Resource Centre on Artificial Intelligence (AI) and cyberjustice, which are more closely followed by CEPEJ-GT-CYBERJUST, were also mentioned. At the request of CEPEJ-GT-QUAL members, CVs of AIAB members would be shared with them.

Ensuring gender diversity in the recruitment and promotion of judges

18. Iustina IONESCU (Romania), scientific expert, presented the draft guidelines on ensuring gender diversity in the recruitment and promotion process of judges (CEPEJ-GT-QUAL(2022)10). The discussions focused on the structure of the document and on its provisions.

19. Thus, the general comments and recommendations referred to the following:

- a. according to the feedback from the CEPEJ Network of pilot courts, as well as from jurisdictions represented in the meeting by CEPEJ-GT-QUAL members, in many members States, the gender balance in courts is showing men's underrepresentation with worsening tendencies. It is, therefore, recommended adding to the introduction a reference to the human rights approach of the guidelines as opposed to human resources management approach;
- b. for the same reason and also in the introduction it is recommended to specify that the guidelines are adaptable in terms of implementation, depending on the specific situation regarding gender representation in the judiciaries of member States;
- c. unless there is a very solid reason to mention women, to make the text more neutral, for example by referring to the "underrepresented gender";
- d. current *Chapter III. Non-discrimination and combating gender stereotypes* with its guideline 11 should be placed at the beginning of the document (after the Introduction and as the first guideline);
- e. Guideline 12 from the *Chapter IV. Work and family life balance*, should be preferably placed as the first guideline of the *Chapter II. Ensuring gender equality in the career promotion of judges*. The "part-time" work arrangements deserve more attention, as they are becoming increasingly important for creating work and family life balance.

20. In conclusion, the CEPEJ-GT-QUAL adopted provisionally the Guidelines and proposed to the scientific expert to review them in line with the conducted discussion. The reviewed text (in *track changes*) would be submitted to the members for a final written approval and the Guidelines would be proposed for adoption during the CEPEJ Plenary meeting in December 2022.

Mediation in administrative matters

21. Sabine BOUSSARD (France) and Karim SALEM (Egypt), scientific experts, presented the draft Guide on administrative mediation. They explained the concept of administrative mediation and the key points of the recommended measures to encourage and promote the recourse to mediation in

administrative disputes, as well as the intention to attach to the guidelines a compendium of good practices (to be submitted to the members before mid-November).

22. The CEPEJ-GT-QUAL's scientific expert on mediation, Maria Conceição de Oliveira, highlighted that the mediation in administrative matters has progressed and is more widespread in European countries. The value of this document will be increased with examples of good practices. The document should be addressed to public authorities with a view to regulate and facilitate administrative mediation.

23. The document should also refer to the Committee of Ministers Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties and on its provisions to improve the dialogue between the administrations and the citizens, with which the Guide should be better "synchronised".

24. Members of the CEPEJ-GT-QUAL and other participants exchanged on national experiences, legal frameworks and institutional settings, good practices in the implementation of administrative mediation, as well as the main challenges in the way of its broader application. Proposals were made with a view to further improving the text of the draft Guide.

25. In conclusion, the CEPEJ-GT-QUAL adopted provisionally the draft Guide on promoting mediation to settle administrative disputes in Council of Europe member States and proposed to the scientific experts to review them in line with the conducted discussion. The reviewed text (in *track changes*) of the draft Guide, accompanied by a compendium of good practices as an appendix, would be submitted to the members for a final written approval. Subsequently, it would be proposed for adoption during the CEPEJ Plenary meeting in December 2022.

Consultation of CEPEJ-GT-SATURN regarding Committee of Ministers Recommendation Rec(86)12 to reduce the excessive workload of judges

26. Eva KONECNA, Secretary of CEPEJ-GT-SATURN, presented the initiative of CEPEJ-GT-SATURN to propose an update to the Committee of Ministers Recommendation Rec(86)12 concerning measures to prevent and reduce the excessive workload in the courts. CEPEJ-GT-SATURN has drawn up a draft Opinion. It decided to consult CEPEJ-GT-QUAL as regard the revision of the part on ADR and the annex to the Recommendation containing examples of non-judicial tasks of which judges in some states could be relieved according to the particular circumstances of each state.

27. Members of the CEPEJ-GT-QUAL have been invited to comment on the draft Opinion, by the end of November 2022, so that the Secretariat can share these comments with CEPEJ-GT-SATURN.

Access to justice of people with disabilities

28. The Secretariat presented the consultations conducted since the last meeting with a view to identifying and contracting a scientific expert who would prepare an in-depth study on the good practices and recent developments in the European justice systems with a view to further improving the access to justice of persons with disabilities.

29. The contacted candidates declined the invitation to cooperation by referring either to lack of time or the complexity of the task and the remuneration being proposed. Some of them expressed concern as to the added value of future CEPEJ guidelines, in the light of recent development of the "International Principles and Guidelines on Access to Justice for Persons with Disabilities". The opinion was expressed that investing more efforts in encouraging and supporting the implementation of the said documents issued by the UN would have a greater positive impact on facilitating the access to justice for persons with disabilities.

30. The initiative to develop CEPEJ Guidelines to improve the access to justice and the quality of judicial services for persons with disabilities remains relevant and could serve the following objectives:

- contribute to a better understanding of the underlying principles and normative content of the fundamental right to access to justice;

- identify good practices on ensuring the access to justice for persons with disabilities through the CEPEJ network;
- based on the findings of previous steps, develop practical guidance to member States, including different actors and stakeholders of the justice system.

31. Members of the CEPEJ-GT-QUAL were invited to recommend to the Secretariat other potential candidates to act as a scientific expert. The Secretariat would undertake further attempts to engage an expert and to initiate consultations with the organisations representing and/or engaged in the protection and promotion of the rights and interests of persons with disabilities.

Other issues

32. Places and dates for meetings in 2023 were discussed and subsequently confirmed by the Secretariat as follows:

- a. Strasbourg: 27-28 February;
- b. Venice: 12-13 October.

APPENDIX 1

AGENDA

CEPEJ-GT-QUAL(2022)OJ2

Strasbourg, 20 September 2022

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Working Group on Quality of Justice (CEPEJ-GT-QUAL)

33rd meeting – 20-21 October 2022

DRAFT AGENDA

The working documents are available on the collaborative workspace.

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| 1. | Opening of the meeting
Adoption of the agenda |
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| 2. | Better implementation of the CEPEJ European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment <ul style="list-style-type: none"> - Role of Artificial Intelligence Advisory Board of the CEPEJ (AIAB) - Development of the Resource Center on Artificial Intelligence (AI) and cyberjustice - Possible operationalisation of the CEPEJ Charter <p><i>Expert in charge: Matthieu Quiniou (France)</i></p> |
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| 3. | Ensuring gender diversity in the recruitment and promotion of judges
Examination of the draft guidelines on ensuring gender diversity in the recruitment and promotion process of judges |
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- Expert in charge: Iustina Ionescu (Romania)*
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| 4. | Mediation in administrative matters
Examination of the draft Guide on administrative mediation and appendix (compendium of good practices) |
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- Experts in charge: Sabine Boussard (France) and Karim Salem (Egypt)*
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| 5. | Access to justice of people with disabilities
Examination of the concept note on access to justice of people with disabilities and next steps |
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- 6. Evaluation of the performance of judges**
Examination of the concept note on evaluation of the performance of judges and next steps
Members in charge: Wim DAVID (Belgium) and Stergios KOFINIS (Greece)
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- 7. HELP module on CEPEJ tools on quality of justice**
Discussion on the state of play
Member in charge : Gilles Accomando (France)
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- 8. Consultation of CEPEJ-GT-SATURN regarding Rec(86)12 to reduce the excessive workload of judges**
Presentation by Eva Konecna, Secretary of CEPEJ-GT-SATURN
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- 9. Any other issue**
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APPENDIX 2

LIST OF PARTICIPANTS

MEMBERS / MEMBRES

Gilles ACCOMANDO, Directeur de l'École de formation du barreau, Paris, FRANCE

Joao ARSENIO DE OLIVEIRA, Head of Department, International Affairs Department, Directorate-General for Justice Policy - Ministry of Justice, Lisbon, Portugal (**Chair of the GT-QUAL / Président du GT-QUAL**)

Nino BAKAKURI, Judge of the Supreme Court, Georgia

Merethe ECKHARDT, Director of Development, The Danish Court Administration, Centre for Law, Training and Communication, Denmark

Stergios KOFINIS, Administrative Judge at First Instance Administrative Court of Thessaloniki, Greece

Wim DAVID, Juge à la Cour d'appel de Bruxelles, BELGIQUE

SCIENTIFIC EXPERTS / EXPERTS SCIENTIFIQUES

Matthieu QUINIOU, Avocat, Paris, France

Sabine BOUSSARD, Directrice du Centre de recherches en droit public (CRDP) et Responsable du Master de droit public de l'Université Paris Nanterre, France

Karim SALEM, Magistrat au Tribunal administratif du Caire, Doctorant à l'Univ. de Strasbourg, Egypte

Iustina IONESCU, Lawyer and Legal expert, Bucharest, Romania (*online participation*)

OBSERVERS / OBSERVATEURS

INTERNATIONAL UNION OF JUDICIAL OFFICERS / UNION INTERNATIONALE DES HUISSIERS DE JUSTICE ET OFFICIERS JUDICIAIRES (UIHJ)

Patrick GIELEN, Huissier de justice, Expert de l'UIHJ, UCCLE, Belgique (*online participation*)

EUROPEAN EXPERTISE AND EXPERT INSTITUTE / INSTITUT EUROPEEN DE L'EXPERTISE ET DE L'EXPERT (EEEI)

Jean-Raymond LEMAIRE, Président honoraire (*online participation*)

Jean-Louis LODOMEZ, Avocat (*online participation*)

EUROPEAN UNION OF RECHTSPFLEGER AND COURT CLERKS / UNION EUROPEENNE DES GREFFIERS DE JUSTICE (EUR)

Jean-Jacques KUSTER, Administrator (*online participation*)

INVITED DELEGATIONS / DELEGATIONS INVTEES

KOSOVO¹

Qerim ADEMAJ, Deputy Head of the Kosovo Judicial Council and

Besnik RAMOSAJ, Director of Statistics department at the Kosovo Judicial Council

SECRETARIAT

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Katia DI STEFANO

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¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.