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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Comments in respect of the case of Kuijt v. the Netherlands (application No. 19365/19)

Introduction

1. On 28 October 2025, the CCJE was invited by the President of the European Court of Human Rights (the Court), under Article 36 § 2 of the European Convention on Human Rights (ECHR) and pursuant to Rule 44 § 3 (a) of the Rules of Court, to submit written comments on the subject matter of the case *Kuijt v. the Netherlands* (application No. 19365/19) currently pending before the Grand Chamber of the Court.

Background

2. The case of *Kuijt v. the Netherlands* (application No. 19365/19) concerns a long-standing practice at the Supreme Court of the Netherlands whereby judges who

are not members of the judicial formation to which the case has been assigned, known as "reservisten", can participate in the deliberations on an individual case in the interest of safeguarding the uniform interpretation and application of the law. The applicant complains that, owing to this practice, her appeal on points of law was not heard by an independent and impartial tribunal established by law, as required by Article 6 § 1 of the ECHR.

Questions posed to the CCJE

3. In the above-mentioned invitation for the CCJE to submit written comments, it is suggested that the CCJE addresses the following questions, in light of the relevant standards that it has developed in its work:
 - A. Which types of mechanisms may be set up to ensure the uniform interpretation and application of the law by a superior court, while ensuring compliance with the right of the parties to a fair hearing before an independent and impartial tribunal established by law, in accordance with Article 6 § 1 of the ECHR?
 - B. Having regard to the requirements of Article 6 § 1 of the ECHR, may judges who are not members of the judicial formation to which the case has been assigned participate in the deliberations in camera, where such involvement serves the interest of ensuring the uniform interpretation and application of the law? If so, to what degree should the conditions of such participation as well as the role of these judges in deliberations be clearly defined? Is it appropriate for the regulation of these matters to be (entirely) left to the courts?
 - C. If such participation may be regarded as not inconsistent per se with the requirements of Article 6 § 1, what are the safeguards that should be in place to ensure the internal independence of the judges who are members of the formation to which the case has been assigned, with respect to the involvement in the deliberations of judges who are not members of that formation?
 - D. Should the parties to the proceedings be informed beforehand and/or afterwards about the participation of such judges in the deliberations on their case?

Comments of the CCJE

4. The CCJE examined these questions in the light of the standards developed in its Opinions.
5. The CCJE wishes to indicate, from the outset, that such practices as the one implemented by the Supreme Court of the Netherlands with the involvement of reserve judges in a judicial formation in addition to the judges composing it, have not yet been tackled directly in its Opinions.
6. However, the CCJE has developed standards on the independence of the judiciary which are relevant to this case.

7. The CCJE has also adopted standards on formal, semi-formal and informal procedures and mechanisms designed to delineate the role of courts in achieving consistent case law, which may also provide relevant guidance.
8. As a general observation, the CCJE stresses that judicial independence must be statutory, functional, and financial. It must 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.¹
9. Judicial independence must be guaranteed in respect of all judicial activities. In the exercise of their function to administer justice, judges must not be subject to any order or instruction, or to any hierarchical pressure, and must be bound only by law.²
10. The CCJE has also underlined the fundamental point that a judge is the holder of a State office and is thus servant of and answerable only to the law. It is axiomatic that a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary.³
11. Thus, the CCJE refers both to the external and internal independence of judges attributing equal importance to both types of independence which are necessary for their impartial decision making.
12. Furthermore, the CCJE has highlighted the potential threat to judicial independence that might arise from an internal judicial hierarchy. It has recognised that judicial independence depends not only on freedom from undue external influence, but also on freedom from undue influence which might in some situations come from the attitude of other judges.⁴
13. The CCJE has concluded that the independence of any individual judge in the performance of his or her functions exists notwithstanding any internal court hierarchy.⁵ Furthermore, judges must at all times adopt an approach which is impartial and also appears so.⁶
14. Therefore, as a general comment, any mechanism or procedure deployed to facilitate the nomination of a judicial panel to hear and determine a case and which includes the involvement of reserve judges, must strictly adhere to the above-mentioned requirements of internal judicial independence.

¹ Magna Carta of Judges (2010), para 3.

² Magna Carta of Judges (2010), paras 4 and 10.

³ Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para 64.

⁴ Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para 66.

⁵ Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, Conclusions, para 73(9).

⁶ Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, Conclusions on the standards of conduct, para 50(iii).

15. The CCJE has recognised the importance of consultations between judges at which information and experiences can be exchanged. These enable judges to discuss case management and to address difficulties met in the application of legal principles and conflicts in the case law.⁷
16. Courts are essentially collegial bodies. The CCJE encourages the establishment of bodies composed of judges of the court which play an advisory role and which co-operate with the court president and give advice on key issues.⁸
17. In this context, the CCJE adopted Opinion No. 20 (2017) where it emphasised the means for ensuring the uniform case law and referred to formal, semi-formal and informal mechanisms for that purpose.
18. It recognised, *inter alia*, that, while there are differences in legal traditions and organisation of judiciaries in member states,⁹ it is primarily the role of the supreme court to resolve contradictions in the case law. The supreme court must ensure uniformity of the case law to rectify inconsistencies and thus maintain public confidence in the judicial system.¹⁰
19. The CCJE points out that formal proceedings brought to appellate courts and, in particular, to supreme courts or courts of cassation have the most direct impact on the uniform interpretation and application of the law. Such proceedings in the supreme courts are for example (1) deciding an individual litigant's appeal (a final appeal on points of law; revision, cassation), (2) special appeals brought by a public prosecutor (or a similar public body) bringing to the supreme court (in civil cases) an important legal question with a goal of ensuring the uniform application of the law or development of law through case law, whereby such a recourse in most systems results in a declaratory judgment, not affecting the rights of the litigants in the case at hand, (3) rendering interpretational statements (which are called, for example, "uniformity decision", opinions, or principled legal opinions) in a purely abstract manner, not on appeal brought in an individual case and (4) preliminary rulings adopted in pending cases on narrowly defined points of law, upon the request of an inferior court.¹¹
20. In relation to semi-formal mechanisms referred to above, these may include, for example, regularly scheduled meetings of judges within a court, or with judges of different courts of the same level or with judges of a hierarchically senior court, such meetings can have either a purely informal character or they might be institutionalised to a certain extent. Issuing "guidelines" that leave room for

⁷ Opinion No. 11 (2008) on the quality of judicial decisions, para 28.

⁸ Opinion No. 19 (2016) on the role of court presidents, para 19.

⁹ Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 21.

¹⁰ Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 20.

¹¹ Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 16.

individual assessments in which attention is drawn to the applicable principles, in accordance with the established case law can have similar effects.¹²

21. The CCJE has also referred to purely informal mechanisms, such as informal consultations among judges seeking to establish consensus on several points of procedural and material law when practice shows divergent case law.¹³
22. The CCJE has stressed that while these semi-formal and informal mechanisms are intended to promote the uniform application of the law, the conclusions drawn in these contexts cannot infringe the independence of the individual judge.¹⁴

Conclusions

23. In approaching the above-mentioned questions, the CCJE again emphasises that such practices have not been addressed by it and the responses below are based on the standards it has developed on the independence of the judiciary which are relevant to these issues.
24. The CCJE concludes in relation to question (A) that member states have a certain margin of appreciation as regards the procedures and mechanisms they use to ensure the uniform interpretation and application of the law by a superior court. However, such procedures and mechanisms must respect the rights of the parties to a fair hearing before an independent and impartial tribunal established by law, in accordance with Article 6 § 1 of the ECHR. Furthermore, they cannot interfere with the independence and impartiality of the judiciary.
25. In respect of question (B), the CCJE notes that the reserve judges of the Supreme Court of the Netherlands attend *in camera* deliberations. However, judicial independence requires not only the absence of external influence but also the complete autonomy of judicial formations in their deliberations. Any practice permitting the participation of non-member judges in deliberations, even without decision-making authority, potentially risks undermining that autonomy and consequently the very essence of Article 6 § 1 of the ECHR.
26. Further, this could raise issues regarding the appearance of independence of the judicial formation, especially as the participation of reserve judges takes place in deliberations that are held *in camera*. This participation in the deliberations of reserve judges may also be perceived by judges of the formation themselves as influencing their subsequent decision making in a way that could weaken their internal independence.
27. Therefore, the safeguards of internal judicial independence must be clearly defined in relation to such a procedure.

¹² Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 17.

¹³ Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 18.

¹⁴ Opinion No. 20 (2017) on the role of courts with respect to the uniform application of the law, para 19.

28. As regards question (C), the CCJE stresses that clear safeguards must be laid down to protect the internal independence of judges. Court procedures, publicly available, should clearly differentiate the role of judges who are members of the formation to which the case has been assigned, from that of reserve judges who are not members of that formation.
29. In relation to question (D), the CCJE is of the opinion that, to preserve the transparency and impartiality of the judicial system, legal certainty and other principles of the rule of law, the parties to the proceedings must be informed in advance about the participation of the reserve judges in the deliberations on their case.