

Speaking points for the exchange of views between Judge Anke Eilers, President of the CCJE, and the Committee of Ministers

(1476th meeting of the Ministers' Deputies (CM Room),
Strasbourg, 27 September 2023)

Dear Chairperson,
Madam Secretary General,
Excellencies,
Distinguished guests,

I am very pleased to have the opportunity to present the work of the Consultative Council of European Judges (CCJE) to the Committee of Ministers of the Council of Europe.

At the outset, I would like to quote Hans Dietrich Genscher, German minister of foreign affairs (from 1974 to 1992), one of the architects of the European legal framework:

“It is not the right of the stronger, but the strengthening of the right that best protects the interests of all states.”

These words are very relevant and of particular importance today. Europe has to face significant challenges. Its stability and its security architecture are at stake since Ukraine has been invaded by Russia.

At the same time, we observe threats to the rule of law and the independence of justice in some member states. This is not a recent development, but it continues to evolve. As well we are witnessing a partial loss of a common legal culture in Europe.

Therefore, strengthening the rule of law and promoting judicial independence is more important today than ever. It is crucial for the rule of law to strengthen the legitimacy of the European standards. In this respect, the CCJE plays an important role and is an indispensable institution within the Council of Europe.

This became particularly clear when I presented the work of the CCJE in the Conference in Ukraine in October 2022 on the Justice System of Ukraine in Wartime – National and International Legal dimensions.

1.

I would like to underline the importance of an independent and impartial judiciary for the rule of law. It is its precondition. Only independent and impartial judges may render national judgments in line with the letter and spirit of the European Convention on Human Rights. I would like to seize this opportunity to stress the vital importance of the judicial profession in safeguarding the rule of law and human rights in all member States of the Council of Europe.

The CCJE has developed specific expertise and standards as a unique body, composed exclusively of serving judges from all member states, with a mandate focusing on practical aspects of the status of judges and their independence and impartiality.

Therefore, the CCJE plays an important role as an advisory body of the Council of Europe which brings together the best European practices, transforms them into soft law standards and in doing so creates a common legal culture in Europe. In doing so, the CCJE follows the priorities of the Council of Europe Strategic Framework.

To date, the CCJE has delivered 25 Opinions. The European Court of Human Rights relies continuously and increasingly on the CCJE's Opinions as a source of law. In this way, the Opinions become part of the European jurisprudence. The Opinions are instrumental for the development of common European standards for an independent judiciary and are therefore crucial elements of guaranteeing the rule of law in Europe.

CCJE Opinions are also used in the reports and opinions of the Venice Commission and other bodies or institutions of the Council of Europe. Quotations and references to CCJE Opinions are often made in various member States in official documents, including in the judgments of national courts and in the legislative processes.

2.

Developments in a number of member States concerning respect for the fundamental principles of judicial independence and the separation of powers, brought to our attention by the CCJE members themselves or by national, international and European associations of judges, confirm the importance of continued vigilance in protecting the independence of the judiciary.

These concerns have also been voiced within the Organisation, by the Secretary General, the European Committee on Legal Co-operation (CDCJ) and the Venice Commission to name a few. The CCJE is fully committed to safeguarding the independence of the judiciary, and grateful for the continuing support and trust of the Committee of Ministers in carrying out its work.

3.

I would like to report that I took part in several important national and multinational events where I highlighted the relevant CCJE standards.

I participated in the 10th Annual Meeting of the Secretary General with the Heads of the Monitoring and Advisory Bodies, which took place on 17 January 2023.

The question was discussed of why, despite many measures and efforts of the Council of Europe, a loss of confidence in the rule of law can to some extent be observed in Europe.

One of the main reasons is the disregard for judicial independence and the separation of state powers. It is against the rule of law if politicians or political parties influence the work of judges. It is against the rule of law if judges cannot defend their independence and express their respective views. Corrupt judges deciding not according to the applicable law put the legal culture at risk as well.

I have already stressed at that time that the differences in the various legal cultures are, *inter alia*, one of the root causes for these developments and that we must continuously work together to establish a common legal culture in Europe.

I wish to thank once again the Secretary General for this excellently organised high-level event and the opportunity to discuss important issues among all monitoring and advisory bodies of the Council of Europe.

4.

The CCJE aims to create and maintain that common legal culture in Europe based on the European Convention on Human Rights. This is achieved through the adoption of the Opinions and regular statements on violations of these standards in member States.

In this context, in 2021, the CCJE adopted an important Opinion No. 24 dealing with the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems. While reaffirming the principles set out in its Opinion No. 10 of 2007 on the Council for the Judiciary at the service of society, the CCJE considered that it was necessary to take stock of developments both at international and domestic levels since 2007. In 2021, the CCJE aimed to provide further guidance to policy makers, legislators, judges, and other stakeholders on essential aspects covering the key bodies of judicial self-governance called upon to safeguard judicial independence and impartiality.

Opinion No. 24 highlights the competence, tasks, organisation, and composition as well as resources at the disposal of the Councils for the Judiciary, their legitimacy and accountability,

their relations with other actors including civil society, mass media, anti-corruption bodies, and other pertinent issues. The Opinion provides a set of clear practical recommendations.

I participated in March 2022 the International Round Table in Rome on the topic of “Shaping judicial councils to meet contemporary challenges” where I presented our Opinion No. 24, which was very well received.

As it is stressed in the Opinion, while there is no one single model for a Council for the Judiciary in member States, every Council should have adequate competences to defend the independence of the judiciary and individual judges, so that individual judges are free to decide cases without undue influence from outside or inside of the judiciary.

5.

Another aspect is crucial for legal culture: It has to be guaranteed that judges may speak out when the rule of law and judicial independence are threatened. The freedom of expression of judges is a cornerstone of the rule of law. The CCJE saw that freedom of expression of judges is being challenged, along with other professional groups, and that it was necessary to provide some guidance to judges across member States to be able to rely upon when it came to various aspects of judicial expression.

Therefore, the CCJE adopted on 2 December 2022 Opinion No. 25 on freedom of expression of judges.

At a time where democracy, separation of powers and judicial independence are a concern, the freedom of expression of judges is crucial as they must be able to freely raise their concerns and speak up about any backsliding. Judges have to be resilient and have a duty to speak out in defence of judicial independence, the constitutional order and the restoration of democracy, both at national and international level.

Freedom of expression is also necessary in view of the public’s right to be informed about important matters in a democratic society, such as the right to a fair trial, including an impartial and independent court and the functioning of the justice system.

At the same time, freedom of expression of judges is not without limitations. It should in particular take into account the presumption of innocence, protection of private and family life, importance of preserving public trust in the judiciary and other aspects. Judges are required to refrain from acting like politicians. Their professional duties do impose a number of restrictions on their freedom of expression.

The objective of the Opinion was to find the right balance between freedom of expression of judges and its permissible restrictions. One important point is to make sure that lawful and justified restrictions on judicial expression are not used as a pretext for suppressing it in a disproportionate or even abusive manner.

In this respect, the Opinion 25 is a milestone in forming a common European legal culture.

6.

Let me finally add that the CCJE has also delivered Opinion No. 21 in 2018 on preventing corruption among judges. This Opinion is closely linked with the concept of judicial independence. The latter enables integrity, and integrity reinforces independence. Judicial integrity has become even more important nowadays in the context of numerous attacks on the judiciary. This Opinion is as well a milestone on the way to a common European legal culture and was extremely relevant this year.

7.

The judiciary in Europe must also work according to effective working methods. Therefore, the CCJE is working on its Opinion No. 26 on the use of technologies in the judicial system which will be adopted by the plenary meeting of the CCJE on 1 December 2023.

This Opinion will try to identify common standards in view of the modern technological challenges faced by our profession. This interesting and important Opinion examines the advantages as well as disadvantages of the use of technologies by judges. Technologies may promote speed and efficiency in the administration of justice. But it is also important to apply them in ways that maintain and enhance the fundamental principles of the rule of law and in particular, the judicial independence and impartiality.

8.

And last but not least, I would like to mention that the CCJE, in the course of its work, continued its active co-operation with the European Court of Human Rights and other bodies and institutions both inside and outside of the Council of Europe, including the Venice Commission, the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of European Prosecutors (CCPE), the Group of States against Corruption (GRECO) and other institutions. The CCJE members are in very high demand on the international arena, and they participate in many important events, giving them the opportunity to highlight the standards of the CCJE, as well as of the Council of Europe in general, including the key Recommendations of the Committee of Ministers. Also, a number of high-profile and important international judicial and bar associations have observer status with the CCJE and closely co-operate with it. For

example, in elaborating its Opinion No. 24 in 2021 that I have already mentioned, the CCJE coordinated with the European Network of Councils for the Judiciary (ENCJ) which provided a useful input.

Dear Chairperson,
Madam Secretary General,
Excellencies,
Distinguished guests,

With your kind permission, I would like to conclude my presentation at this point, and I would like to thank you for your kind attention. I look forward to addressing any questions you might have.