CM-Public

Ministers' Deputies

CM Documents

CM(2015)164-add2 11 December 2015[1]

1244 Meeting, 13 January 2016

10 Legal questions

10.1 Consultative Council of European Judges (CCJE) –

c. Situation report on the judiciary and judges in the Council of Europe member States

Item to be prepared by the GR-J at its meeting on 12 January 2016

1. The present report has been prepared pursuant to the CCJE terms of reference (ToR) for 2014-2015 which specifies among the main tasks that "the CCJE shall provide targeted cooperation at the request of member States, CCJE members, judicial bodies or relevant associations of judges, to enable States to comply with the Council of Europe standards concerning judges".

2. The report is the second update to the report which was first adopted by the CCJE during its 12th plenary session (Strasbourg, 7-9 November 2011) and then during its 14th plenar session (Strasbourg, 13-15 November 2013), which was then submitted to the Committee of Ministers of the Council of Europe for information (hereafter the Situation Report of 2013). Th CCJE decided, during its 13th plenary session (Paris, 5-6 November 2012), to update the report every two years. The present updated report covers the period from October 2013 to October 2015 inclusive. It was adopted by the CCJE during its 16th plenary session in London (14-16 October 2015).

3. The report gives a summary of the information submitted to the CCJE concerning alleged infringements in member States of standards governing the status of judges and the exercise of their functions. It refers to the requests for legislative assistance submitted to the CCJE and the comments prepared as a follow-up, and it lists the information provided by the members and observers during the reporting period. As far as the situations have been assessed by the CCJE, the relevant documents are quoted. Comments of the member States on this report will be published on the website of the CCJE.

I. Introduction

4. On 19 May and 23 June 2015, the CCJE requested its members and observers to provide:

- any updates that are considered necessary on issues mentioned in the Situation Report adopted in 2013;
- information on new challenges and problems concerning the situation of the judiciary and judges in the member States.

5. Responses were received from the following members of the CCJE: Belgium, Czech Republic, France, Germany, Hungary, Ireland, Lithuania, Malta, the Netherlands, Poland, Slovakia, Switzerland and Ukraine. Responses were also received from the following observers of the CCJE: Association of European Administrative Judges (AEAJ), Council of Bars and Law Societies of Europe (CCBE), the European Network of Councils for the Judiciary (ENCJ) and the Association "Magistrats européens pour la démocratie et les libertés" (MEDEL).

6. This report is limited to the issues which have been raised in the requests addressed to the CCJE and to the issues mentioned by members and observers of the CCJE.

7. The categories of alleged infringements are:

a. infringements of the status, independence and security of tenure of judges;

b. infringements of the standards concerning the composition and functioning of Councils for the Judiciary;

c. cuts in the remuneration of judges,

d. lack of resources;

e. violation of the principle of *res judicata* of judicial decisions by other branches of the state, as well as non-enforcement of judicial decisions;

f. deficiencies in the organisation of judicial training;

g. absence of objective criteria for evaluating judicial work;

h. infringements of judges´ rights to freedom of association;

i. difficulties concerning codes of judicial ethics;

j. difficulties in relations between justice systems and the media;

k. access to justice;

l. liability of judges.

8. The Council of Europe has established an extensive regulatory framework intended to guarantee the rule of law and access to justice for all. Numerous instruments have been adopted which set out the requirements to be met in order to achieve these fundamental objectives.

9. The CCJE underlines the importance of examining any alleged infringements in the context of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law of the European Court of Human Rights (the Court). In doing so, the CCJE emphasises that the right to a fair trial is secured through an independent and efficient judiciary and the proper exercise of judicial responsibilities and duties.

10. In examining the alleged infringements, the CCJE has taken into consideration the European Charter on the Statute for Judges (1998) and Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities. The CCJE has also relied on its Opinions and the Magna Cart for Judges embodying the fundamental principles of the judicial profession (2010). Further, the CCJE has taken into account the UN Basic Principles on the Independence of the Judiciary (1985) and the 2014-2015 Report of the ENJC entitled “Independence and Accountability of the Judiciary”.

II. Overview of the issues submitted to the CCJE

A. Infringements of the status, independence and security of tenure of judges

11. The independence of judges requires the absence of interference by other state powers, in particular the executive power, in the judicial sphere. Therefore, it is not acceptable if th executive power is able to intervene in a direct and overbearing manner in the functioning of competent institutions with regard particularly to the selection of judges, their promotion or transfer, the imposition of disciplinary measures on judges or their dismissal. This may happen, for example, if the powers to deal with those matters are transferred from the Council for th Judiciary to the Ministry of Justice (see section B). Sometimes, legislation directly endangers the status, independence or security of tenure for judges.

12. The security of tenure for judges and their appointment until the statutory age of retirement is a corollary of independence (CCJE Opinion No. 1(2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraphs 52 and 57). This implies that a judge’s tenure cannot be terminated other than for health reasons or as a result disciplinary proceedings. However, “the existence of exceptions to irremovability, particularly those deriving from disciplinary sanctions, leads immediately to a consideration of the body and method by which, and the basis upon which, judges may be disciplined” (CCJE Opinion No. 1 (2001), paragraph 59).

A1. Selection and appointment of judges

13. The above-mentioned European and international documents (see section 10 above) underline that candidates for judicial office should be selected according to objective criteria based on merit and that the selection should be undertaken by an independent body. If a person or body outside the judiciary, such as the head of state, has the authority to appoint judges, the proposal of the independent body should generally be followed by the appointing authority.

14. The AEAJ stated, on 15 July 2015, that there were problems in the appointment of judges in Austria: Article 134(2) of the Federal Constitution envisaged that administrative judges of the provinces would be appointed by the government of a province. With the exception of the President and Vice-President of a court, the government had to call for proposals of three candidates (for appointment of new judges) of the plenary assembly of the administrative court (or of a committee to be elected by its members). The constitution did not state that such a proposal was binding. On the basis of this provision, four new judges were appointed for the Viennese administrative court, but the government had not followed the proposal of the administrative court. According to the AEAJ, this procedure is not in accordance with Article 47 of Recommendation Rec(2010)12. Furthermore, Article 11 of Recommendation Rec(2010)12 was not respected because the executive local state power intervened in the selection of judges. There was also a lack of transparency in the selection procedure undertake by the local authority.

15. The CCJE member in respect of the Czech Republic stated, on 29 May 2015, that the government had not respected even the limited rules of participation of the judiciary in the appointment procedure. The leader of the most powerful political party and the Minister of Finance had decided that the successful candidate, following the selection process for the position of Vice-President of the High Court, could not be appointed for this position; the Minister of Justice decided not to appoint him.

16. The CCJE member in respect of Ireland stated, on 1 July 2015, that in Ireland there was a keen interest to see a Council for the Judiciary set up on a statutory basis, and to provid for a greater transparency in the system of appointing and promoting judges. This was further promoted when in 2014, the Council of Europe’s Group of States against Corruption (GRECO) published its country report on Ireland. The recommendations of that body made in relation to issues touching on the judiciary such as a Judicial Council, transparency in promotions and appointments, an independent review body in relation to remuneration and related matters were fully in accordance with what the judiciary, through the Association of Judges of Ireland (AJI), had been seeking. The press release of the Irish Department of Justice and Equality on the subject of the GRECO report, dated 21 November 2014, quoted the Minister for Justice and Equality of Ireland as saying: “Some of the recommendations are already being addressed such as the establishment of a statutory judicial council and the review of judicial appointments and I look forward to making progress in these key reforms in the months ahead”.[2] The press release continued that “the proposed establishment of a statutory Judicial Council will promote excellence and high standards of conduct by judges as well as providing a means of investigating allegations of judicial misconduct that may from time to time arise. Similarly the review of the operation of the judicial appointments system is to ensure that it reflects current best practice, that it is open, transparent and accountable and that it promotes diversity”. The AJI prepared and submitted a document on this topic. The debate is continuing.

17. In the Situation Report of 2013, a problem concerning the appointment of judges was mentioned in Latvia. The AEAJ stated, on 15 July 2015, that the same structural legal situatic remained. However, no similar case had been reported since the last report.

18. The CCJE member in respect of Malta reported, on 19 May 2015, that judges were still being appointed directly by the government. In a report published on the same day (19 May 2015) by the newspaper “Times of Malta”, the government was criticised for the fact that since the election of a labour government in 2013, there had been 10 nominations to the bench. In 2013, the government was advised in a report, which it itself had commissioned, that the method of appointment of members of the judiciary should be changed. It has not yet done so. The government has said that it wanted to tackle the reform of the judiciary in a holistic way through one comprehensive Act of Parliament.

19. In the Situation Report of 2013, problems with the system of election of judges in Switzerland were mentioned. The CCJE member in respect of Switzerland stated, on 2 June 201 that this long-lasting tradition had not changed. The concern expressed in the Situation Report of 2013 was about the threats of certain members of Parliament, who indicated that they would not re-elect judges who were involved in rendering politically undesirable judgments. There was no suggestion of a general discussion about changing the system of re-election of

judges in Switzerland. Undue pressure of certain members of Parliament had not led to the non-re-election of judges. But re-election was sometimes abused to criticise indirectly unpopula judicial decisions. Thus, the judges of the Supreme Court who wrote an opinion that international law could prevail over constitutional norms, obtained clearly less votes than other judges in the most recent re-election.

20. In the previous report, problems of a structural impact of the executive power on the judiciary in Turkey were identified.

21. The impact of the executive power on the High Council of Judges and Prosecutors (HCJP) in Turkey has not diminished but rather has increased[3]. Shortly after the adoption of the Situation Report of 2013, the HCJP informed the CCJE about draft legal amendments which would: a) change the jurisdiction of the HCJP (see section B); b) expand the role of the Minister of Justice (MoJ) within the HCJP (see section B); c) change the organisation and administration of the Turkish Justice Academy (see section F); and d) terminate the offices of current office holders (Secretary General of the HCJP, Chief Inspector etc.).

22. The leading role of the MoJ, who still chaired the HCJP, was further enlarged. First, because the tasks, which previously were the tasks of the whole body, were declared to be the tasks of the chair; and secondly, by increasing the influence of the MoJ in the selection of key staff.

23. The draft also proposed to increase the influence of the MoJ on the inspection system. In addition to the existing inspections system of the MoJ, the inspectors of the inspection service of the HCJP would be limited to persons who had been placed on a list by the MoJ in advance. Such strong influence on the inspection system constituted an impact of the executive power on the judicial power which infringed the independence of the judiciary.

24. The MoJ would also be given the authority to initiate disciplinary proceedings against the members of the HCJP. The persons who should - as is clearly expressed in Opinion 10 of the CCJE on Councils for the Judiciary at the service of society (para 8 ff) and in Recommendation 2010/12 (Article 26) – defend the independence of the judiciary against the other powe of state, would be subordinated to a representative of the executive power as far as disciplinary measures were concerned.

25. The Bureau of the CCJE adopted a Comment on this draft law (CCJE-BU(2014)2) (concerning the jurisdiction of the HCJP, see section B below). The CCJE emphasised that it wa very clear from the draft amendments that the influence of the MoJ would be significantly increased, particularly in relation to the appointment of judges and prosecutors, allowing the MoJ to intervene in the functioning of the HCJP. Further, the competence of the HCJP would be reduced and the internal structure of the HCJP and the powers within the HCJP would be reorganised. The CCJE referred to its key standards and other European and international instruments and underlined that it was evident that the proposed amendments would be entirel contrary to these standards.

26. As regards the transitional provisions, the proposal that all the office holders of the HCJP would lose their position when the new law would come into effect, regardless of whether their positions would continue to exist, was a radical intrusion of the other powers of state in the central institutions of the judicial power and would manifestly violate judicial independence

A2. Lustration of judges

27. In recent years, several cases of lustration of judges have occurred in member States. The international established criteria for the exercise of lustration which is an extreme measure used historically after a change of the system from a totalitarian regime (e.g. communism) to democracy, have now been applied to other circumstances. Except in extreme circumstances, these procedures are always in conflict with the principle of permanent tenure of office, which is an important element of the independence of judges.

28. The Situation Report of 2013 dealt with the process of re-appointment of judges in Serbia, which was remedied by the Serbian Constitutional Court. According to information provided by the CCJE member in respect of Serbia, all judges have been reinstated.

29. On 11 June 2014, the CCJE received a request from the CCJE member in respect of Slovakia regarding the recently adopted Constitutional Act, which amended and supplemente the Constitution of Slovakia (4 June 2014) concerning the so-called “security reliability clearance” that all judges would have to undergo. The CCJE Bureau discussed this request and prepared its comments (document CCJE-BU(2014)4 of 1 July 2014), concluding that:

- The tenure of judges, which is an essential element of their independence, would be unduly questioned and endangered if, without concrete and reasonable suspicion, examinations of judges could be initiated.
- The lustration of all judges with tenure is not in conformity with international standards. The Slovak Republic had, for many years, been a state committed to the rule of law and, at the present time there was no post-revolutionary change from a totalitarian regime to a democratic state, which is the situation when, exceptionally, such means may be acceptable
- As a rule, it is inappropriate that material gathered by secret service institutions is used in procedures to decide if judges fulfil the necessary requirements established by clearly laid down laws. Any attempt to use against judges material which is gathered in the usual manner in which secret service institutions do so is likely to infringe seriously the independence of the judiciary.
- The influence of a secret service, which is part of the executive power of the State, on judges’ performance and career would conflict with the principles of separation of powers.

30. The CCJE member in respect of Slovakia reported on 27 May 2015 that in September 2014, a constitutional complaint was lodged by the President of the Judicial Council. The Constitutional Court declared the complaint admissible for further proceedings and suspended the effect of the act concerning the amendments. Thus, the “judicial cleansing” that should have started from 1 September 2014 was placed on hold.

31. The CCJE received a request for assistance and advice from the CCJE member in respect of Ukraine on 12 March 2014 concerning the draft Law “On the Restoration of Trust in the Judiciary of Ukraine”. The CCJE Bureau discussed the request and a representative of the CCJE was invited to participate in the assessment of this draft, which had been produced within the framework of the project "Strengthening the independence, efficiency and professionalism of the judiciary” of the Council of Europe in Ukraine, in March 2014. The draft proposed that judges would have to undergo a lustration process if they had participated in certain decisions during the “Maidan events” or regarding the elections of the last parliament or if they had issued a decision which had been the basis of a finding of a violation by the Court. Most of the proposals resulting from the assessment, which concerned improvements in the

procedure and regarding the composition and jurisdiction of a newly established commission, which would be entrusted to perform this lustration, were followed by the Ukrainian legislature. Other aspects of the assessment, especially the argument that the internationally established criteria for lustration in the classical sense, as expressed among others in the Resolution (1996)1096 of the Council of Europe's Parliamentary Assembly, did not apply to the situation in Ukraine because there had been no recent transfer from a totalitarian regime to a democratic system, were not followed. The legislative proposals remained unchanged.

32. The CCJE was also involved in the drafting of a Joint Opinion of the Venice Commission and the Directorate for Human Rights of the Council of Europe's Directorate General of Human Rights and Rule of Law on another proposed Ukrainian lustration law, the Law on Government Cleaning. This concerned many different types of public officials, including judges. Under this proposal, certain high ranking officials would lose their office automatically, others would do so if they had been in the Communist Party or one of its organisations, or who had been convicted on grounds of corruption, or "contributed to the usurpation of power" by the former Ukrainian president, or if there was a discrepancy between declared assets and income Again, it was not possible to convince the Ukrainian authorities that other means to engage the liability of judges, such as disciplinary procedures or criminal procedures, should be used.

33. Further, with the involvement of the CCJE, in a Joint Opinion of the Venice Commission and the Directorate for Human Rights, the Law on Fair Trial has been assessed. In its transitional provisions, this law included provision for a third lustration of judges. Every judge had to undergo a special assessment including a theoretical and practical test of his/her abilities and knowledge, which in extreme cases might lead to a dismissal by the competent authorities.

34. In all three assessments, it was underlined that the reform most urgently needed in order to safeguard international standards, was a constitutional reform. This should reduce the strong influence of the President and Parliament on the appointment and dismissal of judges and on the composition of the High Council of Justice. Such a reform remains under debate.

35. The Supreme Court of Ukraine sent its first motion concerning the constitutionality of provisions of the Law "On Government Cleaning" (the so-called "general lustration law") in November 2014. The motion argued that provisions about dismissals of judges, who had rendered judgments concerning the protest actions which took place in Kyiv in 2013-2014, were unconstitutional. It was also indicated that these judges would already be subject to possible dismissal under the provisions of the Law on "Restoration of Trust to the Judiciary" and consequently there was a situation of double jeopardy. The motion was accepted for consideration by the Constitutional Court of Ukraine in December 2014. A decision has not yet been rendered.

A3. Other attempts to end the tenure of office of judges

36. The means by which judges are held accountable and, if necessary, dismissed are either disciplinary procedures or – in case of extraordinary and therefore criminal misconduct - criminal procedures. Sometimes these means are misused.

37. The MEDEL stated, on 20 July 2015, that it had been following the case of the four judges dismissed from the Supreme Court of Georgia. In this regard, MEDEL reported that progress had been made since the parliamentary elections in October 2012. A further phase of judicial reform had been initiated by the new government in dialogue with representatives o the judiciary. Thus the amendments to the Law on Common Courts, even though carried out in a tense environment, had increased the independence of the judicial system. The government had expressed its political commitment not to interfere with the judicial system and the work of courts. Now, according to MEDEL it is imperative to ensure this commitment is made a reality. Regarding the four dismissed judges, in 2007, the Venice Commission (Opinion No. 408/2006) concluded that the law which had been used to dismiss a number of Georgian Supreme Court judges posed a threat to the principle of judicial independence, as did the action itself. The Opinion of the Human Rights and Civil Integration Committee of the Georgian Parliament (Kutaisi, 6 August 2013) concluded that a political prosecution had taken place with regard to the former Supreme Court judges and that the Parliament of Georgia should discuss the restoration of those judges' rights. The Parliament asked the High Council of Justice of Georgia for its opinion on the constitutionality of the dismissal of the judges. While the judges in the High Council of Justice of Georgia declined jurisdiction, the non-judges in the High Council of Justice of Georgia came to the conclusion that the dismissal was unconstitutional and in violation of the independence of the judiciary (18.03.2015). There are possibilities of reaching a friendly settlement of the case of *Laliashvili and others v. Georgia* (No. 88280) if their applications are considered admissible by the Court. However, the Court has taken no decision on the admissibility of Tamara Laliashvili's and the other judges' applications. Following the reinstatement of Judges Gvenetadze and Turava, further steps must be taken to reinstate the other judges - Tamara Laliasvili and Murman Isaev, who were illegally dismissed from the Supreme Court.

38. The CCJE Situation Report of 2013 addressed the problem of the termination of office of Hungarian judges, because of a reduction in the retirement age. The CCJE member in respect of Hungary reported that in the meantime, the judges concerned had either been reinstated or had been given financial compensation. They had had the possibility to choose, and most of them had chosen compensation.

39. The European Association of Judges (EAJ) informed the CCJE about the concrete case of two Turkish Judges (Metin Özçelik and Mustafa Başer) who had been suspended and arrested because it was alleged that decisions they had taken were illegal. A criminal investigation, on the basis that they were "supporting a terroristic organisation" had been started. The judges' decision to release some detainees was not enforced. Similar European and national reports in respect of Turkey received from individual judges and lawyers were also forwarded to the CCJE by the Director of Human Rights of the Council of Europe.

40. The Bureau of the CCJE, after having consulted its member in respect of Turkey, issued its Comment CCJE-BU(2015)5. The CCJE was neither in a position to establish the factua basis of the underlying case(s), nor was that its task, but it expressed serious doubts about the proceedings and decisions which had led to the suspension and arrest of the two judges. The appearance that the judges had been removed because of their decision making was very strong. This view was also reinforced by the many other claims that there had been transfers of judges against their will in recent months.

The CCJE reiterated that any decision to transfer judges because of their decision-making violated the principles regarding the independence of the judiciary and undermined confidence i the impartiality and independence of the judiciary as a whole. The CCJE also clearly condemned any attempt to block the ability of a judge to issue his/her decision. The CCJE underlined the duty of everybody, including the other powers of state, to accept and execute court decisions as being an essential requirement of a state, which follows the principles of the rule of law The CCJE quoted its Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions (particularly paragraph 7).

41. As a general clarification, the CCJE stressed that, although criminal investigations with respect to judges and courts were not illegal and there was no general immunity for judges, the authorities concerned had to observe, guarantee and provide for the proper functioning of the judiciary as the third power of the state. It followed from this that the greatest care should be taken before investigatory measures were employed by any prosecution authority which could have the effect of impeding or obstructing the functioning of judicial proceedings. With this in mind, suspending a judge and even arresting him/her on the ground that he/she had rendered or attempted to render a decision was justified only in absolutely exceptional circumstances. Such suspension and/or arrest would necessarily amount to the judge being prevented from exercising his/her duties in court whereas, as a rule, decisions that have been made by judges should only be challengeable on appeal.

The CCJE Bureau underlined that if the official performance of judges gave rise to criticism or even to disciplinary or criminal investigations, such proceedings must invariably follow the procedure set down by the relevant acts of the law, in accordance with the due process that was set out in such laws and carried out with the necessary procedural guarantees for all parties involved. To replace such formal proceedings by actions aimed at sanctioning individual judges because of judgments they had rendered, or in order to induce them to render specific judgments in future, was absolutely unacceptable.

A4. Transfer of judges

42. According to the report of the CCJE member in respect of Belgium, a reform of the judiciary includes also a new mobility policy to be imposed particularly on judges. The Legislatic Section of the State Council has issued a critical opinion about the reform including this element, which altogether is seen as likely to affect the substance of the constitutional principle of security of tenure. A warning of such developments had already been included in the Situation Report of 2013.

43. The “Groupement des magistrats luxembourgeois” addressed a letter to the CCJE on 2 October 2014, drawing attention to a change in the law on judicial organisation in Luxembourg. By this, the President of the Higher Court of Justice was empowered temporarily to delegate a judge of a district court to a post of another judge by order, made on the submissions of the State Attorney General or following the opinion of the latter.

44. This problem was discussed by the CCJE Bureau and CCJE comments were adopted (document CCJE-BU(2014)7). The CCJE reiterated the rule that the tenure of judges was a necessary corollary of their independence and that both must be guaranteed at the highest possible legal level by each member State of the Council of Europe. Judges should not receive a new appointment or be moved to another judicial office without their consent, except in cases of disciplinary sanctions or organisational reform of the judicial system.

45. On 16 October 2015, the CCJE member in respect of Luxembourg clarified that the situation was being resolved, in accordance with the comments of the CCJE.

46. In the course of 2015, the CCJE received several claims that judges in Turkey had been transferred from their offices to other offices because of the decisions they had made. The AEAJ stated that several administrative judges suffered from such threats to their independence by a transfer to other courts (mainly to taxation courts), sudden removal from certain cases, or the dismissal of judges as a result of decisions taken by them. Such problems have already been addressed in a more general way in the Situation Report of 2013.

A5. Direct pressure

47. In February 2015, the Council of Judges (CoJ) of Ukraine adopted Decision No. 1 and addressed an open letter to the public authorities of Ukraine and leading international organisations such as the Council of Europe (CCJE and other bodies) with an appeal to react to what was described as the menacing situation within the judiciary in Ukraine. As a result o the so-called "lustration laws”, several public officials had been dismissed by the competent bodies. Several judges had challenged these actions in courts. In the course of these court procedures, individuals and groups exerted pressure upon judges; the media expressed strong criticism of certain cases, and representatives of the Ministry of Justice of Ukraine and some MP’s even threatened some judges with dismissal and with holding judges responsible for giving decisions in certain cases which had not been given effect.

48. Among other grounds for judges’ complaints was the initiation of criminal proceedings concerning judges under Article 375 of Criminal Code of Ukraine, (“Delivery of knowingly unfair sentence, judgment, ruling or order by a judge (or judges)”), which were regarded by judges as an attempt to place undue pressure upon the courts. With this in mind, the CoJ of Ukraine decided to address the Prosecutor General of Ukraine with a proposal to examine the substantive grounds for the initiation of criminal proceedings under Article 375 of the Crimina Code. The CoJ had also drawn the attention of judges to the fact that they were legally obliged to inform law enforcement agencies about any intervention in their professional performance.

49. The CoJ, on 4 June 2015, emphasised the lack of a tendency of reduction of pressure on judges, which was confirmed by numerous complaints of individual judges to the CoJ. Actions by public organisations and individuals directed at expressing their own attitude to judicial authority were frequently followed by undue influence and attacks which tended to gain a systematic character. The number of MPs’ inquiries with requirements and offers concerning consideration of certain cases increased, which was essentially an intervention in the performance of judicial authorities.

50. On 20 February 2015, the Chairman of the District Administrative Court of Kyiv, Ukraine, addressed a letter to the Secretary General of the Council of Europe alleging that representatives of the prosecutor’s office and the police had searched certain courtrooms, judges and court staff, that this action was without foundation and that it had been intended as a means to put pressure on the judiciary. The Secretary General forwarded this complaint to the CCJE and the Consultative Council of European Prosecutors (CCPE) for review. The CCJE Bureau prepared its comments (document CCJE-BU(2015)4 of 5 May 2015) in response to this complaint, reiterating that the fundamental principles of the separation of powers, of the independence of the judiciary and of the personal independence of judges were necessary pre-requisites for a democratic society governed by the rule of law.

51. The CCJE member in respect of Ukraine, by a letter of 30 March 2015, brought to the attention of the CCJE the open letter by the CoJ of Ukraine, as well as its Decision No. 1, dated 5 February 2015. The members of the Bureau discussed this complaint and prepared a CCJE response on the matter, which was combined with the above-mentioned CCJE comments (document CCJE-BU(2015)4).

52. The CCJE member in respect of Ukraine stated, on 19 June 2015, that in February 2014, the President of the Supreme Court of Ukraine had appealed by an open letter to the Parliament to support the initiative of the President of Ukraine regarding the adoption of the law strengthening the guarantees of judicial independence, and the protection of the rights and safety of judges and their families. Numerous cases of undue pressure placed upon judges, attacks and intimidations were indicated as the reason for this initiative. The example of an armed attack and murder of the judge of a district court had motivated the writing of the letter. The murder of a judge of the district court of Kharkiv and members of his family still remained to be investigated. The above-mentioned draft law was withdrawn from the Parliament in November 2014. It would appear that in 2014, cases of threats and attacks on judges continued.

A6. Influence of the executive power on the administration of justice

53. The AEAJ reported on 15 July 2015, that, in relation to the newly established first instance administrative courts in Austria, in some of the Austrian provinces ("Länder"), the president of the administrative court, when exercising his/her administrative task, was subordinated to orders of the government of the province. In these provinces (e.g. Vienna), justice administration was influenced by the governments of the provinces to a great extent, which the AEAJ considered not to be in line with Articles 4 and 7 of Recommendation Rec(2010)12.

54. On 15 June 2015, the CCJE member in respect of Belgium informed the CCJE that in 2014, the Department of Justice lost autonomy in respect of staff recruitment. The judiciary, i one respect, is assimilated to a government administration: no magistrate, clerk or secretary can be appointed or promoted without the consent of the finance inspectorate, which checks only the financial and economic implications of such a move, but has no consideration for the functional necessity of members of the judiciary.

The law of 18 February 2014 aimed to transfer the management of the public service of justice to newly created bodies within the judiciary. Article 41 of the law leaves to the King the determination of the scope, phases and procedures for transferring management competences. This raises a question regarding the principle of legality of the proposed judicial organisation. The law of 18 February 2014 establishes a system of supervision by the Ministers of Justice and Finance over the management acts of the Court Colleges and the Cassatior Court. One of the instruments of this supervision is a management contract. This is a legal concept taken from the law on autonomous public enterprises. The stated objective is to impose priorities on the Colleges and the Court, to orient the means provided to them according to these priorities, and thus to enable the executive to play a significant role in establishing judicial policies. The law allows the Minister of Justice to replace a decision of the Court College by his/her own decision, following a request by the Management Committee of a judicial entity. There is also a double supervision set up for cancellation. The Court Colleges can cancel a decision of the Management Committee if it is found out to be contrary to a binding instruction or a management plan. In addition, the law creates a mechanism for monitoring and cancelling decisions of the Court Colleges and of the Management Committee of the Court of Cassation. This mechanism takes the form of two government commissioners who would attend the meetings of the Court College and the Management Committee of the Court of Cassation and who have the right of appeal against any decisions to the Minister of Justice.

The Court College and the Court of Cassation of Belgium consider that this entire system ignores the independence of the judiciary. It creates a danger of interference by the executive in the exercise of judicial power.

55. The AEAJ also reported the following intervention of the administration in the work of judges in Latvia. Even though the administrative judge had the right to set the date of the first (initial) court hearing in a specific case, in some of the regional courts (most of all in the administrative regional court), it was the respective president who set, in practice, the date of the hearings. This also had practical effects, as judges needed to postpone the hearing, because the judgment would not be ready to be pronounced at the date set. The AEAJ considered thi not to be in line with Articles 4 and 6 of Recommendation Rec(2010)12.

56. According to the report of the member of the CCJE in respect of Poland, common courts (district courts, regional courts and courts of appeals) in Poland had a guaranteed independence only when it came to adjudicating, because the judicial supervision over them was vested in the Supreme Court. However, the administrative supervision over common courts was vested in the Minister of Justice. The Minister of Justice was also in charge of the part of the budget relating to the operations of those courts, while in the courts themselves th minister's powers in this respect were delegated to officials reporting to the Minister – court managers (so called "directors of courts"). The strong position of an executive authority - that o the Minister of Justice - in relation to common courts has a long-standing tradition in the Polish legal system. The great importance of this tradition in interpreting the applicable regulations was endorsed by the Constitutional Tribunal, which, in its ruling of January 2009, declared the Minister of Justice's administrative supervision over common courts to be constitutional. The Constitutional Tribunal, in its ruling of March 2013, also found no unconstitutionality in the provisions of the Law on the organisational structure of the common courts, authorising the Minister to establish and dissolve common courts by means of a regulation. In both cases, it had been the National Council for the Judiciary that had taken the initiative by lodging a motio to examine the constitutionality of the statutory provisions.

The rulings by the Constitutional Tribunal received a negative reception from many legal commentators as they confined the constitutional notion of independence and the sovereignty of common courts to the sphere of adjudication. Meanwhile, the Council believed that the sovereignty of the judiciary should be upheld by stripping the Minister of Justice of all control over the operations of courts. The supervisory function should be taken over by an independent public authority, e.g. the National Council for the Judiciary of Poland or a dedicated court administrative authority established for that purpose. The Constitutional Tribunal's ruling continuing the right of the Minister of Justice to establish and dismiss common courts was also very critically received by local governments (counties). The reason was that since 1 January 2013, the Minister of Justice had dissolved 79 of the smallest district courts, integrating them in to larger entities as their local branches. 25% of all district courts were thus dissolved. These courts facilitated the exercise of citizens' right to a fair trial. Consequently, even though the Constitutional Tribunal indirectly declared the reform by the Minister of Justice to be constitutional, in 2014, the President of Poland submitted to Parliament a draft law which intended to reactivate most dissolved courts. The law was passed and from 1 January 2015 onwards, two years after the dissolution, most of the dissolved district courts were restored.

Despite the ruling by the Constitutional Tribunal of January 2009, the question of which areas of court operations should come under the Minister of Justice's administrative supervision remained a contentious issue: should it apply only to economic and financial operations of courts in their capacity as budgetary entities or could the Minister intervene also when it came to the efficiency of judicial proceedings and if so, to what extent? The amendment to the law on the organisational structure of common courts, adopted in 2011, which came into force from January 2013, increased the court management powers vested in court managers - officials reporting to the Minister of Justice, while limiting court presidents' control over court operations especially as concerned staffing policy regarding the administrative personnel. Court presidents, although formally still superior to court managers, were not, in fact, provided with effective instruments to allow them to influence the performance of court managers accountable to the Minister of Justice: (the Minister appoints and dismisses them, fixes their salary, grants bonuses and awards, promotes them etc.). The National Council for the Judiciary criticised the solutions adopted, emphasising their dysfunction and the threat they posed to the independence of courts as a branch of state power independent from the executive. In 2012, the Council proposed a motion for the Constitutional Tribunal, challenging their constitutionality. In November 2013, the Tribunal ruled that entrusting court managers with the competence to manage courts' administrative staff, overriding the court president, was constitutional.

57. A special problem, which was raised by the CCJE member in respect of Poland, were the latest amendments to the Law on the organisational structure of common courts, which concerned the relationship between judges/courts and the Minister of Justice. The independence of courts and judges under the administrative supervision of the executive power was one of the most important problems for the judiciary. The term "administrative supervision" was misleading because, in fact, it involved not only the administrative activities of the courts but als

aspects such as timeliness. The prerogatives of the Polish Minister of Justice also included: launching disciplinary proceedings against judges, secondment of judges (judges were delegated temporarily to the Ministry of Justice), supervision of the National School of Judiciary and Public Prosecution and influence on nominating the Presidents of the courts.

Faced with the introduction of a new amendment to the Law on the organisational structure of common courts that gave the Ministry of Justice the power to demand that presidents of the courts of appeal submit case-files to the Ministry, the National Council for the Judiciary, acting in defence of the independence of courts and judges, stated that this amendment was unconstitutional. The CCJE member in respect of Poland expressed the opinion that these regulations and especially the power of the Minister of Justice to obtain files of any cases, and i particular when it related to a dispute between an individual and state, could cast serious doubts as to whether there could be a fair trial performed by an independent and impartial tribunal. In the meantime, the Polish Constitutional Court ruled that the amendment was unconstitutional.

B. Infringements of the standards concerning the composition and functioning of Councils for the Judiciary

58. The independence of the judiciary can also be infringed by weakening the body which is charged with defending judicial independence, which, in many cases, is the Council for the Judiciary. There are different means of weakening this body: by changing the composition of the Council or the rules for the election of its members, by reducing its powers or by reducing the financial or other means at the disposal of the Council.

59. The Councils for the Judiciary are bodies whose purpose is to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system (Recommendation Rec(2010)12, Article 26). The CCJE in its Opinions No. 1(2001) on standards concerning the independence of the judiciary and the irremovability of judges (para 45), and No. 10(2007) on the Council for the Judiciary at the service of society, and the Venice Commission (Report on the Independence of the Judicial System, Part I: the Independence of Judges (para 32), adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)), and Recommendation Rec(2010)12 in Articles 26 to 29 a deal with this issue.

60. These documents also deal with the composition of the Councils. Recommendation Rec(2010)12 states that not less than half of the members of such councils should be judges chosen by their peers from all levels of the judiciary and also should respect pluralism within the judiciary. Opinion No. 10(2007) of the CCJE and the Magna Carta of Judges indicate that the Councils for the Judiciary should be composed of a substantial majority of judges elected by their peers. This Opinion also provides that judges should be elected through a methodology guaranteeing the widest representation of the judiciary at all levels. This text goes further in stating that the members of Councils for the Judiciary should not be active politicians or members of parliament, the executive or the administration.

61. In the Situation Report of 2013, the absence of a Council for the Judiciary in the Czech Republic was mentioned. The CCJE member in respect of the Czech Republic stated, on 2 May 2015, that since 2013, no significant progress had been made on this. The Czech Republic still did not have any form of the self-government of justice. The new Minister of Justice had even dissolved the commission for its creation.

62. The CCJE member in respect of France stated, on 11 September 2015, that the independence of judges was relatively well ensured through the involvement of the High Council fo the Magistrature (CSM) in the process of appointment and promotion. Although, formally, all appointments were subject to a Decree of the President of the Republic, the decision belonge to the CSM for the appointments to the Court of Cassation, for the first presidents of the courts of appeal and for the other court presidents. For all other judges, appointment or promotion was proposed by the Minister of Justice, who should then receive the agreement of the CSM. Thus, the responsibilities in the process remained shared between the executive and the judicial power to ensure the full independence of the latter. In France, there exists the principle of unity between judges and prosecutors: any magistrate could be appointed as judge or prosecutor and could, in the course of his/her career, change from one function to the other. The status of judges is nevertheless different: whilst a judge is independent and irremovable, a public prosecutor is in hierarchical subordination to the Minister of Justice who is at the top of this hierarchy; he/she could be moved without his/her consent. For appointments of prosecutors, the CSM had only an advisory role and the Minister had no obligation to comply with the opinion of the CSM on appointment. A reform aims at increasing the powers of the CSM by establishing the necessity of agreement of the CSM as a requirement for appointments of prosecutors.

63. Apart from this positive project, it is necessary to look at the composition of the CSM, as well as its competences. Already in the report of 2013, the composition of the CSM was criticised. The CCJE member in respect of France underlined that judges were in the minority in the CSM. He reported that the terms of appointment of members of the CSM were discussed, both with regard to the magistrates and the members who were from outside of the judiciary. He also mentioned the lack of competence of the CSM as regards the training of judges and on the determination of the justice budget. The debate on the reform of the CSM is still continuing.

64. The CCJE member in respect of Ireland stated, on 1 July 2015, that the debate and drafting of the legal basis for a Council for the Judiciary continued and was in a very advanced stage. It remained to be seen whether such legal provisions would be enacted before the next general election which would take place in spring of 2016 at the latest.

65. The CCJE member in respect of Malta reported, on 19 May 2015, that there was a debate in Malta on a reform of the Council for the Judiciary. The Council for the Judiciary comprised a majority of members of the judiciary, but it had no executive powers and could only issue warnings.

66. The CCJE member in respect of Slovakia stated, on 27 May 2015, that there had been important improvements regarding the Judicial Council. According to the Constitutional Act on amending and supplementing the Constitution of the Slovak Republic, since 1 September 2014, half the members of the Judicial Council (JC) were elected by their peers and half of them were nominated by the Ministry of Justice (3), elected by Parliament (3) and nominated by the President (3). The President of the JC, as well as the JC, itself were given wider competencies in certain cases concerning the judiciary.

67. The CCJE member in respect of Spain reported, on 10 October 2015, that in 2013, the General Council of the Judiciary was reformed by Organic Law No. 4/2013, and as a result, the members of this body were subsequently appointed by Parliament through a quota agreement between the main political parties. The General Council of the Judiciary was the organ which in Spain handled such sensitive issues as disciplinary sanctions and professional promotions of judges. With this link so obviously being political, the General Council of the Judiciar cannot guarantee the division of powers of the state. Rather to the contrary, its own configuration (being composed of judges and lawyers chosen by the political authorities) presented a potential threat to judicial independence.

68. The GRECO Report of 2013 adopted at its 62nd Plenary Meeting (Strasbourg, 2-6 December 2013), recommended the following in the paragraph relating to the judges in Spain: to analyse the legislative framework governing the General Council of the Judiciary and its impact on the actual and perceived independence; to envisage in law objective criteria and assessment rules for appointments to senior positions in the judiciary. The Spanish authorities have not yet submitted to GRECO the measures taken to implement these recommendations. The Organic Law No. 7/2015 of 21 July 2015, in force since 1 October 2015, contained elements which were contrary to judicial independence. The reform also had negative consequences for the workload of judges.

69. As mentioned above, on 10 January 2014, the CCJE received a request regarding the draft Law to amend the Law on the High Council of Judges and Prosecutors (HCJP) and Related Laws from the Deputy Secretary General of the HCJP of Turkey. In addition, the CCJE received, on 9 January 2014, a communication of concerns from MEDEL with an attached letter from YARSAV (Association of Judges and Prosecutors of Turkey) regarding the same draft Law. The EAJ also requested an examination of these amendments. The concern was that the amendments would endanger the independence of the HCJP and of the Turkish judiciary generally.

70. The CCJE Bureau prepared its comments on 12 February 2014 (document CCJE-BU(2014)2), in which it stated that the main reform of the proposed package, which concerned the powers of and within the HCJP, showed that the influence of the Minister of Justice would be increased very significantly, including in the form of influence over the appointment of judges and prosecutors, and it would allow the Minister of Justice to intervene in the functioning of the HCJP. The competence of the HCJP would be reduced, the internal structure of the HCJP and the powers within the HCJP would be reorganised, the Turkish Justice Academy would be restructured, the HCJP would no longer be in charge of in-service training, and the term of office of all management and other staff of the HCJP would be terminated when the new law comes into effect. All this was in conflict with the above-mentioned European standards.

71. The CCJE member in respect of Ukraine referred on 19 June 2015 to the fact that with the Law of Ukraine on “Restoration of Trust to the Judiciary” entering into force in April 2014 the powers of members of the High Council of Justice of Ukraine (HCJ) and the Supreme Qualification Commission of Judges of Ukraine (SQCJ), except the members appointed accordin to their position (President of the Supreme Court, Minister of Justice, Prosecutor General) would be terminated by the transitional provisions of this law. Thereby, the work of two main bodies dealing with issues of appointment of judges, of dismissal of judges and of bringing them to disciplinary responsibility would be paralysed. Also the powers of delegates of the Congress of Judges - the supreme body of self-government authorised to appoint members of HCJ and SQCJ and judges of the Constitutional Court, would be terminated. The Parliament, the President of Ukraine, the Congress of Judges, the Congress of Lawyers, the Congress of Representatives of Higher Law Educational Institutions and scientific institutions all had to appoint three members of the HCJ each, and the All-Ukrainian Conference of Prosecutors two members of the HCJ. The election of the new members of the HCJ by some of these bodies had been delayed due to different reasons, so that only in June 2015 at the earliest could the newly composed bodies start their work. Because of this delay, some judges ha had no opportunity to retire, or to be transferred to other courts. As for now, the quorum of the HCJ had been established. However, the majority of the Council for the Judiciary should consist of judges elected by their peers. This is still not the case and contradicts European standards.

C. Cuts in the remuneration of judges

72. The independence of judges also requires economic independence which should be stipulated by law. Recommendation Rec(2010)12 states that judges’ remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions and from the risk of corruption. The payme of a retirement pension, which should be in a reasonable relationship to their level of remuneration while working, should also be guaranteed. Specific legal provisions should be introduce as a safeguard against a reduction in remuneration aimed specifically at judges. The same proposal appears in CCJE’s Opinion No. 1 (2001) and in the European Charter on the Statute for Judges.

73. Even in times of economic crisis, the legislative and executive powers of various member States should understand that a serious reduction of judges’ salaries is a potential threat to judges’ independence and to the proper administration of justice, and may jeopardise (objectively and subjectively) judges’ work. Such measures, if necessary, should always be limited in time: see Opinion No. 2(2001) on the funding and management of courts with reference to the efficiency of the judiciary and Article 6 of the ECHR, para 12.

74. Several countries facing an economic crisis have opted for a cut in the salaries of public officials, including judges. Regardless of the rationale behind such measures, judicial remuneration cannot be reduced by a greater proportion than that of other public officials. Otherwise this would violate the principle of equality established as a general principle of law an it would contradict Article 54 of Recommendation Rec(2010)12.

75. In the Situation Report of 2013, reductions in the income of judges were reported in Cyprus, Czech Republic, Germany, Ireland, Italy, Latvia, Portugal, Slovakia, Slovenia and Spain. Since then, there have been no claims and no reports on developments from Italy, Latvia, Portugal and Spain.

76. The CCJE member in respect of Bulgaria mentioned, on 16 October 2015, the tension between the judiciary and the executive in this regard and that the Supreme Judicial Council of Bulgaria would address the CCJE on the problem of the remuneration of judges.

77. The CCJE member in respect of the Czech Republic stated on 29 May 2015 that one positive development could be identified: judges had been successful in their plea against the state, and the Supreme Court had decided that the cuts in their salaries were unlawful. The salaries of judges increased and the state had to return to them a part of the money not paid. Politicians (and journalists) used this occasion for unwarranted and large-scale attacks against judges.

78. The CCJE member in respect of Germany stated, on 4 July 2015, that, concerning the remuneration of judges in the years between 2003 and 2012, several cases had been pending before the Federal Constitutional Court. According to a recent decision of this court, there is a constitutional right to remuneration that is adequate to the position held (Article 33(5 of the German Constitution). Acts of Parliament regulating this remuneration could only be reviewed to see whether remuneration was “evidently inadequate”. Indicators for this were the following: significant differences over a period of several years between judges' remuneration and the salaries of other public employees; a significant difference with regard to developments of general wage levels over some years; a significant difference with regard to general price indices; inadequate steps of remuneration following rank and promotion; a significant difference of remuneration among the Länder (regions). The court held that there was a presumption of inadequate remuneration if at least three of these five indicators were

fulfilled. Further elements to be considered were: qualification and responsibility, other benefits (e.g. medical coverage), comparison to positions outside the public service (e.g. practicing lawyers), but also budgetary restrictions. According to the court, in order to ensure the consideration of these parameters, Parliament was under a duty to give reasons for the relevant legislation.

79. The CCJE member in respect of Hungary reported, on 30 June 2015, that significant progress had been made in the elaboration of a progression model, which followed the judge's career. The objective was to present a final draft career model for adoption by the Government in October 2015. The draft was prepared by the National Office for the Judiciary, the National Judicial Council, the Hungarian Association of Judges and the Union of Court Employees in cooperation and in partnership with the Supreme Court. An expert body had been set up to coordinate efforts to and conduct consultations with stakeholders. The initiative had general support in the judiciary. As a first step in a comprehensive review of the remuneration framework for the judiciary, the salaries of clerks (entry-level judicial officials without independent authority) and court secretaries (advanced-level judicial officials with independent authority in designated cases) were increased by 10% for 2015.

80. The CCJE member in respect of Ireland stated, on 1 July 2015, that one of the issues of judicial reform was the need for the establishment of an independent body to deal with the remuneration levels and terms of service of members of the judiciary, as well as amelioration of the very significant salary cuts introduced. So far as the establishment of an Independent Review Body in relation to remuneration was concerned, this was regarded as a particular priority by the Association of Judges of Ireland (AJI) and by members of the Irish judiciary at large. The issue was discussed in meetings between the judiciary and the government. In principle, there was not much opposition to the establishment of such a body. However, in the government's view, the issue had implications for, and a potential impact on, wider talks involving the government and the public service unions. For this reason, it is most likely that the issues will not be resolved before the forthcoming general election. The issue remained a major priority for the AJI though.

81. During the economic downturn, very substantial cuts were imposed on the Irish judiciary, in common with all others who were paid from public funds. As the Irish economy began to recover, the government started, on a very slow and gradual basis, the exercise of unwinding financial emergency provisions legislation. This unwinding would be of benefit to the judiciary but progress in this area is very slow indeed.

82. On 19 May 2015, the CCJE member in respect of Malta reported that the salary of judges was guaranteed by the Constitution, but their take-home pay was increased by allowances. It was not yet established whether these allowances could be reduced by the government, or whether they were also guaranteed. This uncertainty was seen as diminishing the independence of the judiciary.

83. On 27 February 2015, the Association of Judges of Montenegro approached the CCJE and requested its advice regarding the issue of the salaries of judges, especially because the Ministry of Finance of Montenegro had drafted a new law on salaries in the public sector, which allegedly contained serious negative developments for judges' rights.

84. The CCJE Bureau discussed this request and prepared the CCJE´s response on 14 April 2015 in which the CCJE welcomed the involvement of professional organisations set up by judges in decisions relating to the determination of their financial resources, and their allocation at a national and local level, and recalled Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, as well as several CCJE Opinions and the Magna Carta of Judges adopted in 2010, which Montenegro should consider and follow.

85. On 27 May 2015, the CCJE member in respect of Slovakia stated that difficulties still continued, judges were permanently underestimated, valorisation of judges' salaries was still suspended despite official declarations about a big improvement in the Slovak economy. Moreover, the forthcoming change in judges' social security scheme could cause significant cuts in the judges' pensions.

86. The AEAJ stated, on 15 July 2015, that regarding Slovenia, the problems reported by AEAJ in 2013 no longer existed. These problems concerned the statements made by some political parties that the remuneration of judges should be dependent on their performance. However, there has been no change in the law.

87. Regarding Sweden, the AEAJ referred, on 15 July 2015, to its letter of 13 January 2013 on the problem of remuneration of judges dependent on their performance, which was not line with Article 55 of Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities. As the AEAJ indicated, these problems still existed in Sweden. The work of judges should be assessed when deciding the salary for the purposes of a salary agreement with each individual judge; however, the employer must not let the result depend on what the judge decided in a certain case. Therefore, the annual increase of remuneration could vary between 1-5% (or more) within the same court. No salary raise at all (0 percent) had been used as a disciplinary action towards a "disobedient" judge.

88. On 19 June 2015, the CCJE member in respect of Ukraine reported that the law on "Judicial System and the Status of Judges", adopted on 7 July 2010, provided for a gradual increase in the salaries of judges so as to achieve a sufficient level of remuneration of judges according to European standards. Thus, since 1 January 2014, the official salary of the judge of a local court had to be equal to 12 minimum wages, and since 1 January 2015 – to 15 minimum wages. However, at the end of 2013, the provision on increase of an official salary in 2014 was suspended. In the summer of 2014, the restriction on the maximum amount of remuneration of a judge (including salary and additional payments) was introduced at the level of 15 minimum wages. At the end of 2014, the provision on increase of an official salary was cancelled, and therefore in 2015, the official salary of the judge of a local court remained at the level of 2013 - 10 minimum wages. In addition, the Law provided a restriction in 2015 of the maximum amount of remuneration of judges, including an official salary of the judge and surcharge for length of time in an administrative position, length of service and other additional payments, equal to 7 minimum wages. The Council of Judges of Ukraine repeatedly appealed to governing bodies of the state to reconsider these changes as they directly contradicted the Constitution of Ukraine and the European standards concerning the principles of judicial remuneration. Since April 2015, such restrictions had been cancelled at the legislative level. Other changes concerned the provisions on the pensions of retired judges. Thus, the above-mentioned Law on establishment of the official salary of a judge at the level of 10 minimum wages reduced the size of the monthly life-long maintenance of retired judges from 80% to 60% of the monthly maintenance of the judge. Since 1 June 2015, such payments had stopped altogether.

D. Lack of resources

89. Article 30 of Recommendation Rec(2010)12 states that 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 ECHR, legal certainty and public confidence in the rule of law. According to Article 33 of the same Recommendation, 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 ECHR and to enable judges to

work efficiently. In its Opinion No. 2 (2001), the CCJE has already underlined the requirement that sufficient resources be allocated to the courts to enable them to function in accordance with the standards laid down in Article 6 of the ECHR.

90. In the Situation Report of 2013, it was stated that the lack of adequate resources allocated to courts was a problem in Belgium, France, Ireland, Portugal and Spain.

91. The CCJE member in respect of Belgium reported, on 15 June 2015, about the policy of reduction of staff and budgets for the judiciary, which leads to competition between differer judicial entities to obtain a vital part of the available funding. Such reductions undermine the functioning of the judiciary and its ability to fulfil its constitutional mission. There has been a decision taken by the executive to fill only 90% of vacancies, even though the positions, which are not filled are guaranteed by law. The staff of the registries have not been replaced either even though it is also provided for by a legal framework. The number of such vacant positions represents 15 to 20% of the total number provided for by law. Several jurisdictions had to reduce the working hours of registries or the services provided to court users. Lack of judges as well as non-judge staff necessitated postponing cases scheduled for hearings or waiting until 2017 and beyond, for appointments.

The court buildings are poorly maintained and secured, thus creating a danger for the health and safety of those who work there as well of court users who have to appear there. The modernisation of the computer systems has not advanced. The reports, requests, complaints, warnings and formal notices addressed to the administration receive no answer or produce statements that there is no budget.

92. On 10 July 2015, the Council of Bars and Law Societies of Europe (CCBE) reported that in Belgium, the Minister of Justice in a recent interview had commented that no serious investment had been made in the judiciary for 100 years. According to the CCBE, this statement gives a clear picture of the dilapidated state of the judicial system. The CCBE stated that the discouragements and frustrations of all stakeholders and the lack of confidence of the court users have become real problems.

93. The CCJE member in respect of France stated, on 11 September 2015, that the judicial system was severely affected by budgetary difficulties. It appeared that the justice budget i France had escaped the drastic cuts imposed on other public services, but it must be stressed that this was because of the cost of the prison system, which absorbed a substantial share of the justice budget. The courts for their part suffered from lack of human resources, including judges, prosecutors and staff. Consequently, their management was forced to determine priorities in civil and criminal cases. Material resources were insufficient and the computer equipment was often inefficient and old and replaced very late. The court budgets did not ensure the timely payment to persons providing services to the justice system, including experts. It was unfortunately common for courts to be "in a state of cessation of payments" in the middle o a calendar year, so that persons received remuneration many months after their participation in court matters. Such a situation was likely not only to deter the best professionals from lending their support to the judiciary, but also to undermine the power of decision of judges, who sometimes hesitated to seek the assistance of these professionals, knowing the financial consequences.

94. The AEAJ stated on 15 July 2015 regarding Greece that the budget of 2015 for the judiciary was 561 million Euros, which corresponded to 0.36% of the overall State budget. Similarly, last year’s restrictions in the budget had also resulted in negative conditions, and there were clearly insufficient resources to fulfil the duties and the important role of ensuring the protection of human rights and fundamental freedoms. An efficient operation of the national judicial system was not possible. The fundamental lack of resources was not in line with Article 33 of Recommendation Rec(2010)12.

95. The CCJE member in respect of Lithuania stated, on 19 June 2015, that the status of judges and the judiciary was laid down in the Constitution and the judiciary should have total independence from the executive and the legislative branches. However, there was a long-standing problem which had not been solved due to the lack of funding. The insufficient level of security in most of the courts, except the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania, remained a problem. Any person could enter the premises of those courts (courtrooms and even the offices of judges and other personnel) unobstructed. Because of that, judges and personnel of the courts worried about their safety. According to th earlier legal regulations, the protection/security of courts was under the jurisdiction of the police, although in reality this was not carried out. When the laws were changed, those provisions had been abolished.

96. The CCJE member in respect of Malta reported, on 19 May 2015, that the European Union had issued an opinion that the overall number of members of the judiciary in Malta was one of the lowest in the EU and that it should be doubled. This opinion was submitted over a year ago, and nothing had been done so far, and the overall number of judges remained the same. Judges repeatedly complained that each of them had to do the job of two judges. The Government said it intended to appoint jurists to help judges with their decisions and thus speed up the process of delivery of judgments. There was, however, too much work for an individual judge, and hence the need for more members of the judiciary.

97. The CCJE member on behalf of the Netherlands communicated that judges were concerned about the workload and its negative impact on the quality of their work, as was reflected in a Manifesto that approximately 700 judges had signed and in a recent report of the audit commission which had visited all the courts of the country.

98. The CCJE member in respect of Slovakia reported, on 27 May 2015, that the permanent lack of financial, technical and personal resources and the increasing backlogs in the courts of all instances had led to a strike of the higher judicial staff and administrative employees in February 2015.

99. The CCJE member in respect of Ukraine stated on 19 June 2015 that already by the end of 2013, the State Judicial Administration of Ukraine had addressed the governing bodies and claimed a modification of the state budget for 2014, as only about 50% of the necessary amount of allocations had been provided to the judiciary. In 2014, the financing of the judicial system had remained somewhere at the level between that for 2011 and 2012. For 2015, only a third of the sum requested by the State Judicial Administration had been provided in the state budget. Those means which were put in the state budget for payment of salaries of judges and court staff would be sufficient only until October 2015.

100. The ENCJ reported its findings in the 2014-2015 Report on the Independence and Accountability of the Judiciary and of the Prosecution. One of the general conclusions (page 24 of the Report) is that, with regard to objective independence, funding of the judiciary is generally not well arranged, and judiciaries are dependent on discretionary decisions by the government. Court management is still often in the hands – directly or indirectly – of Ministries of Justice. It has proven to be difficult to change arrangements in both instances.

E. Violations of the principle of *res judicata* of judicial decisions by other branches of the state power, as well as non-enforcement of judicial decisions

101. The CCJE member in respect of Spain reported, on 10 October 2015, that Organic Law No. 7/2015 of Spain of 21 July 2015, in force since 1 October 2015, included a provision fo reinforcing the execution of judgments of the Court specifying actions in the case of violation of the rights recognised in the ECHR and its Protocols.

102. With regard to the non-enforcement of final court decisions, the AEAJ mentioned the situation in Greece, where final court decisions had been abolished by national laws (enacted in the context of the Economic Adjustment Programmes and Memoranda of Understanding).

103. The EAJ claimed that in Turkey, in the cases of the Turkish judges Özcelik and Baser, the delivery of decisions had been blocked (see above part A).

104. The AEAJ supported this claim and added that other court decisions had also not been enforced, most of them decisions of administrative judges. The AEAJ considered this not to be in line with Opinion No. 13(2010) of the CCJE, as well as Article 12 of Recommendation Rec(2010)12.

F. Deficiencies in the organisation of judicial training

105. The CCJE recalls that, according to Article 56 of Recommendation Rec(2010)12, judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. Article 57 of the same Recommendation states that an independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programs meet the requirements of openness, competence and impartiality inherent in judicial office. In its Opinion No. 4(2003) on appropriate initial and in-service training for judges at national and European levels, the CCJE has developed more detailed standards on the training of judges. According to para 16 of this Opinion, the training responsibilities shoul be entrusted not to the Ministry of Justice or any other authority answerable to the legislature or the executive, but to the judiciary itself or an independent body. According to para 8 of the CCJE Magna Carta of Judges, initial and in-service training is a right and a duty for judges.

106. There were no reports on new developments of training facilities in the Czech Republic and in Turkey, both of which reported deficits in the Situation Report of 2013.

107. The CCJE member in respect of France reported, on 11 September 2015, that the High Council for the Magistrature (CSM) lacked power over the training of judges.

108. The CCJE member in respect of Malta reported, on 19 May 2015, that advocates underwent no training at all before being appointed to the bench.

109. The CCJE member in respect of Poland stated, on 19 June 2015, that the National School of Judiciary and Public Prosecution, which was responsible for initial training (training fo candidates to become a judge or prosecutor) and for the training of serving judges, was supervised by the Minister of Justice, as had been mentioned in the Report of 2013. The Minister appoints and dismisses the school's director and deputy directors, fixes their salaries, sets the budget, has control over training curricula and even who is chosen as a lecturer. The National Council for the Judiciary had expressed its opinion that the Judicial Academy should be supervised by the Council, as its work and activities were related to the independence of courts and judges.

110. In Turkey, up to now, the High Council of Judges and Prosecutors (HCJP) has been responsible for the in-service training of judges. The draft law, which was mentioned above in section 21 of this report (and which was commented upon by the CCJE in the document CCJE-BU(2014)2) proposed that the responsibility for the in-service training of judges should be transferred to the Justice Academy, which should be completely restructured, current office holders should be dismissed and new members appointed. This would give a decisive influenc to the Minister of Justice. The CCJE stated that this amendment clearly contradicted European standards. Opinion No. 4(2003) of the CCJE on initial and in-service training of judges and Opinion No. 10(2007) on the Council for the Judiciary in the service of society state that the main influence on training should be the judiciary itself and not the Minister of Justice.

G. Absence of objective criteria for evaluating judicial work

111. In its Opinion No. 11(2008) on the quality of judicial decisions (paras 57 to 75), the CCJE developed standards for the evaluation of judges and of the justice system. The evaluatio of judges' performance must not threaten their independence. As with the appointment and promotion of judges, their evaluation should rely on objective and pre-determined criteria and b based solely on their professional competence. Any methodology for evaluation of the quality of judicial decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis. The evaluation of the quality of judicial decisions must be done above all on the basis of the fundamental principles of the ECHR. It cannot be done only in the light of considerations of an economic or managerial nature. The use of economic methods must be considered carefully. The role of the judiciary is above all to apply and give effect t the law and cannot be analysed properly in terms of economic efficiency.

112. In the Situation Report of 2013, it was claimed that in Poland, criteria were missing, and in Serbia, criteria were too statistical. There have been no reports on new developments in Poland and Serbia.

H. Infringements of judges' rights to freedom of association

113. No new problems were reported under this category.

I. Difficulties concerning codes of judicial ethics

114. No new problems were reported under this category.

115. The CCJE member in respect of Spain reported, on 10 October 2015, that following the report by GRECO of 2013, where it recommended that a code of ethics be adopted by judges and put at the disposal of the public, the General Council of the Judiciary of Spain had set up a Working Group to develop a code of ethics for the judicial career. This Working Group considered that the code of ethics must be above all a tool and a source of guidance in the performance of daily professional duties by judges.

J. Difficulties in relations between justice systems and the media

116. The CCJE is vigilant with regard to situations in which the media could be used by other powers (whether these be the state or private institutions or persons) to exercise pressure or exert influence on judges. A powerful or sustained criticism exercised by the media against a particular judicial decision may constitute such pressure. In particular, it is not acceptable that the media should be used by other state or private powers, in particular political powers, to directly attack individual judges' decisions.

117. The CCJE Opinion No. 7(2005) on justice and society, paras 22 to 55, deals with the sensitive relationship between judges and the media. Recommendation Rec(2010)12, Article 18, requests that the executive and legislative powers should not comment on judges' decisions in a way which could undermine the independence of, or public confidence in, the judiciary

118. In the Situation Report of 2013, problems between the justice system and the media were mentioned with regard to Italy, Poland and Slovakia. There is no update available for the situation in Poland and Italy for the period covered by the present report.

119. The CCJE member in respect of Slovakia stated, on 27 May 2015, that the situation had partially improved. However, criticisms of judicial decisions by politicians still took place.

K. Access to justice

120. Article 6 and 5 of the ECHR, and many other European and international legal instruments pronounce the right of everyone to have his or her rights assessed by a court. Effective enjoyment of this right must be available to everybody, not only in theory but in practice as well.

121. The CCJE member in respect of France stated, on 11 September 2015, that access to justice must be improved, in particular with regard to legal aid and contact with the courts by electronic means. The judicial system was too complex, characterised by the separation of administrative and general jurisdictions and the multiplicity of courts (high courts, district courts, commercial courts, councils for labour disputes, social security courts etc.) with different compositions and procedures. This was a source of artificial conflicts and delays in handling cases contrary to the requirements of Article 6 of the ECHR.

122. Regarding Greece, the AEAJ stated, on 15 July 2015, that under the aspect of “acceleration”, amendments to procedural provisions had been made. As a result, the right of access to justice and effective judicial protection (especially for economically weaker citizens) was no longer guaranteed, especially in taxation cases.

L. Liability of judges

123. The CCJE member in respect of Italy referred, on 16 October 2015, to the reform of civil liability of individual judges in Italy. A Law (No. 18/2015) has been adopted, based on the stated need to bring the Italian system into conformity with the decisions of the European Court of Justice (which concerned liability of the State, not of individual judges), reforming Basic Law No. 117/1988 on civil liability of individual judges. While maintaining formally unchanged the principle of indirect liability of the magistrates, the law broadened in general liability and *inter alia*: 1) changed the so-called "safeguard clause" (according to which there was no liability for interpretation of provisions of law or the assessment of facts and evidence); 2) redefine in a broader way the grounds for liability; 3) eliminated the filter of an immediate decision of admissibility on applications; 4) made mandatory the action of the state towards the magistrate found liable. Regarding the so-called "filter of admissibility", the provision contained in Law No. 117/1988, now abolished by the new law, the court, after hearing the parties, had to immediately declare the application inadmissible or otherwise arrange for the continuation of the process. This filter had the function not to keep the judge in a situation of uncertainty, even when no liability was evident, for the long time usually required to collect the evidence etc.

Conclusions

· It is clear from the reports and requests that have been received by the CCJE during the reporting period (October 2013 – October 2015), that there have been continuing concerns about the proper implementation of relevant standards of the Council of Europe in a number of member States.

· The CCJE repeats the statement made in its Opinion 1(2001), para 6: “what is critical is not the perfection of principles and still less, the harmonisation of institutions; it is the putting into full effect of principles already developed”.

· The CCJE expresses concern that there appear to have been trends which have the potential to jeopardise both the independence and also the appearance of independence of the judiciary, with the consequence that the trust that society will have in the judiciary is likely to be undermined.

· The CCJE draws the attention of the Committee of Ministers to these issues, as well as to the information provided by the CCJE members and other parties concerned. It also draws attention to the comments of the CCJE made in the context of its Opinions and other relevant standards. These issues and the comments on them which the CCJE feels obliged to make only serve to emphasise once again the importance of the Council of Europe’s work to improve adherence to the rule of law throughout Europe.

· In accordance with its mandate, the CCJE will continue to examine alleged infringements concerning the status of judges and the exercise of their functions. It invites the competent authorities of the member States to take note of this report and to comply with the relevant standards of the Council of Europe.

· The CCJE invites its members, the relevant national authorities, judicial bodies, associations of judges, and the organisations with observer status to the CCJE, to submit further information and comments on the issues listed in this report, and entrusts its Bureau with preparing regular updates of this report, which will be shared with the relevant bodies of the Council of Europe.

Appendix

01.10.2015

Opinions of the High Council of Judges and Prosecutors of Turkey Regarding the Report of the Bureau of the Consultative Council of European Judges dated 12 June 2015

The report dated 12 June 2015, which contains opinions of CCJE Office has been examined.

A holistic evaluation of the report shows that the report seriously contradicts itself in various points such as:

1) Although it was stated in the report that the CCJE Office was not in a position to examine or investigate the factual basis of the events that had allegedly taken place as mentioned in the complaints communicated to it, in its conclusions the report included some sentences which almost judged and accused our High Council, Inspection Board and other judges and prosecutors related to these events.

2) The report stated that our High Council had not raised an objection against the letter communicated to CCJE Office by Yorulmaz, Attorney at law. CCJE mission and duties do not include adjudication. Therefore, the reply provided upon communication of the letter by Yorulmaz and relevant request was a mere summary about the chain of events. It is clear that it was not an objection raised by the High Council.

Since it is not possible for the CCJE Office to examine or investigate this matter, expecting our High Council to raise an objection against the motion by Yorulmaz does not comply with CCJE's mission.

After all, if CCJE had seen a necessity for the evaluation of allegations mentioned by Yorulmaz in the letter, it could have requested the High Council to provide clear and detailed information on every allegation found concerning.

The fact that CCJE Office had stated it could not comment on whether the law concerning both substance and procedure was enforced accurately during the action taken sets forth the justification for the position adopted by our High Council in this respect.

3) If CCJE Office states that its functions include checking compliance of actions with European standards, this function has to be exercised fairly. In this context, a detailed review has to be conducted on issues of concern taking into account all types of information. We could not understand the rush within which CCJE made statements in this report, which almost accused and judged the High Council and all judges involved in the process.

4) The fact sheet submitted to CCJE Office by our High Council summarized the course of events without mentioning the details, which was a consequence of consideration given to the general operational principles of CCJE.

For purposes of reiteration, it is hereby underlined that our fact sheet was not written as a reply to Yorulmaz's motion, it only aimed at communicating information concerning the course of events.

Had the purpose been writing a reply to Yorulmaz's motion or an answer based on a request made asking for information from the High Council on issues that were of concern to CCJE Office, the justification for the writing of this report would have been eliminated because it would have been clearly stated that none of the issues mentioned in the report were true; efforts were undertaken to administer justice and combat against some series of events, which involved some unprecedented illegal acts; and action taken was not violating European standards.

However, we consider that it is possible to engage in cooperation, which did not take place at that stage. This cooperation is seen as an opportunity for shedding light on the relevant issues and correct mistakes.

All contributions potentially made by CCJE in line with its mission and the rule of law during the process of action taken by the High Council of Judges and Prosecutors to preserve and maintain confidence in justice having regard to the recent developments in the Turkish Judiciary will be appreciated and welcomed with gratitude.

[1] This document has been classified restricted until examination by the Committee of Ministers.

[2] See at http://www.justice.ie/en/JELR/Pages/PR14000330.

[3] In relation to this and other sections of the report dealing with the situation in Turkey, a written response was transmitted by the member of the CCJE in respect of Turkey during the CCJE plenary meeting on 14-16 October 2015, which is appended to this report and submitted to the Committee of Ministers of the Council of Europe.

Related documents

Committee of Ministers;Council of Europe

CM/Del/Dec(2016)1244/10.1 / 14 January 2016 / *English* / *CM-Public*
Consultative Council of European Judges (CCJE) – a. Abridged report of the 16th plenary meeting (London, 14-16 October 2015) - b. Opinion No. 18 (2015) of the CCJE on the position of the judiciary...

CM(2015)164-add1 / 08 December 2015 / *English* / *CM-Public*
Consultative Council of European Judges (CCJE) – b. Opinion No. 18 (2015) of the Consultative Council of European Judges (CCJE) on the position of the judiciary and its relation with the other powers...

CM(2015)164 / 07 December 2015 / *English* / *CM-Public*
Consultative Council of European Judges (CCJE) – a. Abridged report of the 16th plenary meeting (London, 14-16 October 2015) [1244 meeting]