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Editorial

Dr. Virgilijus VALANČIUS

President of the European Association of Judges

Dear Members of the EAJ,

Quite a short time passed since the previous issue of the Euro Iustitia in March and considering that most of the institutions and we as well had summer holidays this issue is comparatively short. Despite this the events reflected in this E-newsletter are of great importance and these last months I could say were not very significant quantitatively but qualitatively they were really influential, productive and fruitful.

As always in this issue you will find the most important information about the last EAJ meeting, which took place in Turku on 22nd-24th May 2008, as well as the other activities of the EAJ, including the cooperation with different European institutions.

During its spring meeting the EAJ composed the Executive Committee as a body which will assist the President of the EAJ to perform its everyday duties and officially represent the EAJ in European institutions.

Safeguarding fundamental principles such as the rule of law in democratic societies and the independence of the judiciary the EAJ has adopted 3 resolutions, concerning legislative

developments and other initiatives in the countries of member associations (i.e. France, Poland and Slovenia), which the EAJ decided could endanger the independence and the impartiality of justice.

A very significant recent event I would also call the launch of the Justice Forum. Established by the European Commission it is expected to be a platform for dialogue with stakeholders on European Union justice policy. The EAJ accepted the invitation to join the Justice Forum and I do believe that our Association, representing i.a. all member states of the European Union, will give a substantial contribution to the Justice Forum's work.

And the last but not least important news is that the printed booklet reflecting the EAJ's activities was published this June. I hope that this booklet which provides all the general information about EAJ's organization and activities will be interesting not only to the member associations of the EAJ but also to our present and prospective counterparts within Europe.

Within the EAJ

The Meeting of the EAJ

(Turku, 22nd and 24th May 2008)

The spring meeting of the EAJ took place in Turku, Finland, on 22nd-24th May 2008. The meeting was chaired by the President of the EAJ V. Valancius. In attendance were the IAJ President Maja Tratnik, the Honorary Presidents Mr. Sidnei Beneti, Mr. Ernst Markel and Mr. Günter Woratsch, First Vice President Mr. José Maria Bento Company, Vice President Mr. Bjorn Solbakken, the Secretary-General Mr. Antonio Mura, Deputy Secretary-General Mr. Giacomo Oberto, as well as the delegates, representing their respective associations. Delegates from 32 member associations were present.

The assembly adopted 3 resolutions:

1. Resolution concerning the composition of the Judges' High Council (*Conseil Supérieur de la Magistrature*) of France (reacting to the French Magistracy's concern about the modifications planned by the French government regarding the composition of the Judges' High Council whereby there would be only a minority of judges on the authority in charge of their career and discipline, but a majority of representatives directly nominated by the executive and legislative powers).
2. Resolution concerning the remuneration of judges in Poland (stressing that internationally approved documents as

The European Charter on the Statute for Judges, The Universal Charter of Judges, The Judges Charter in Europe and the European Charter may not be fulfilled by the Polish government).

3. Resolution concerning the remuneration system in Slovenia (expressing concern on the non-compliance, by Government and Parliament, of a judgement of the Constitutional Court concerning judges, resulting in the undermining of the role of judges and trespassing upon the principle of separation of powers).

The mentioned Resolutions can be found at the end of this e-newsletter and on the website of the EAJ:

<http://xoomer.alice.it/goberto/turkuen.htm>

According to the decision of the assembly of the EAJ, resolutions of the EAJ, concerning France, Poland and Slovenia, adopted at the EAJ meeting in Turku, were sent to the authorities of the mentioned countries. The EAJ received letters from the President of the French Senate and the French National Assembly. No reaction from Poland and Slovenia has been received.

The next meeting of the EAJ will take place on 5th-12th September 2008 in Yerevan, Armenia, it will be held in connection with a meeting of the International Association of Judges.

Composition of Presidency Committee of the EAJ

At the meeting of the EAJ held on 23rd September 2007 at Trondheim, Norway, members of the EAJ discussed a proposal by the German delegation to strengthen the structure of the EAJ Presidency. Following a discussion at Trondheim, it was agreed that a Working Party should be established to consider whether or not the present Presidency arrangements should be altered and, if so, how. It was arranged by delegates that the Working Party should consist of Sir Richard Aikens (United Kingdom), who would act as a chairman, Mr. Pol van Iseghem (Belgium) and Mr. Lothar Jüneman (Germany).

The Working Party had analysed the present Statutes of the EAJ (which were adopted by the EAJ General Assembly at Dubrovnik in 2003), the existing constitutional structure of the EAJ, practical questions related to the

current Presidency workload, need of possible assistance, etc. The Working Party indicated three possible “models” on the possible changes to the present Presidency arrangements.

During the meeting in Turku the Working Party presented the findings of the Working Party on the structure of the EAJ. Finally, after a long debate during the meeting the Executive Committee (EC) was composed, implementing the provision of the Article 4, Para 3 of the Statutes of the European Association of Judges. Mr. Chose Maria Bento Company (Spain), Mr. Bjorn Solbakken (Norway), Mrs. Viviane Lebe Dessard (Belgium) and Mr. Duro Sessa (Croatia) were appointed members of the Executive Committee.

Working Party’s report can be found at the end of this e-newsletter.

Other activities of the EAJ

On 11th April 2008 the Romanian Association of Magistrates and Lawyers (AMA) was celebrating the 75 years anniversary of the establishment and the Romanian Magistrates Association (RMA) was celebrating the 15th anniversary of its activity. President of the EAJ Mr. V. Valancius in his presentation during the anniversary conference introduced the aims and activities of the EAJ and noted that the EAJ is aware of specific problems in the justice system, currently debated in Romania, namely the extrajudicial activities of judges. During the conference the issues of unified legislation and unified jurisprudence, lawyer’s and magistrate’s ethics were discussed, it was debated about the AMA’s transformation to the RMA, about the traditions of the Association and its perspectives.

The speech of Mr. V. Valancius can be found at the end of this e-newsletter.

Meeting of the International Association of Judges Regional African Group took place on the 26th-31st March 2008 in Casablanca. President of the EAJ Mr. V. Valancius had participated at this meeting. The main topic discussed at the meeting of Casablanca was “Means of Guaranteeing Judicial Safety”. During the meeting were discussed issues regarding threats to judicial safety and the international experience on guaranteeing judicial safety: cases of the Netherlands, Indonesia, United States of America and Morocco.

The EAJ in June has published the booklet about the European Association of Judges providing information about the EAJ’s organization, goals, structure, statutes, meetings, resolutions adopted and member associations with their contacts. The text of the booklet can be found on the website of the EAJ:

http://xoomer.alice.it/goberto/EAJ_newsletter.htm

Cooperation with the Council of Europe



The 11th Plenary Meeting of the European Commission for the Efficiency of Justice (CEPEJ)

(Strasbourg, 2nd - 3rd July 2008)

The 11th plenary meeting of the CEPEJ was held in Strasbourg from 2nd to 3rd of July 2008. The EAJ as an observer was represented by Mr. Duro Sessa, the member of the EC of the EAJ. You will find his report at the end of this e-newsletter.

During this meeting, the CEPEJ adopted the **Checklist for the quality of the judiciary and the courts** and the CEPEJ report on “European judicial systems – Edition 2008”.

Regarding the new Report on European Judicial Systems – Edition 2008, which is planned to be published in October 2008, Mr. Sessa during the plenary meeting of the CEPEJ suggested that pension system for judges should be examined through Europe. He also expressed the opinion that report is not completed in the part which examines court as users of a state budget if fees and taxes which court are benefiting to the state budget are not considered.

The 12th Plenary Meeting of the CEPEJ will be held on 10th-11th December 2008 in Strasbourg.

The Checklist for the quality of the judiciary and the courts can be found on the CEPEJ website:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

More about the 10th Plenary Meeting of the CEPEJ:

<https://wcd.coe.int/ViewDoc.jsp?id=1318341&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6>

Cooperation with the European Union institutions



Launch of the Justice Forum

The European Commission has established the Justice Forum in order to provide a platform for dialogue with stakeholders on EU justice policy. The Justice Forum was set up by the Commission's Communication on the creation of a Forum for discussing EU justice policies and practice (COM (2008) 38 of 4 February 2008) in order to promote a dialogue between the Commission and stakeholders in the justice systems of the Member States. The Justice Forum will discuss not only existing EU legislation but also possible future legislation, in order to ascertain whether the objective of creating an Area of Freedom, Security and Justice is being met.

The Justice Forum was officially launched on Friday 30th May 2008 in Brussels. The European Judges' Association has been invited to participate in it and was represented by the President.

The Justice Forum will take part in exercises designed to assess transposition and the success of measures at a later date. Furthermore the Justice Forum may be called upon to assist in providing an external assessment in drafting the Commission's Report on implementing legislation on an ad hoc basis.

An important aspect of the Justice Forum's work will be to identify best practice. This could

be promoted by way of projects under the EU financial programmes. Moreover, the Justice Forum will be involved in selecting the winner of the "Crystal Scales of Justice" prize. As from 2009, the prize will be awarded for both criminal and civil justice projects on a biennial basis.

The Justice Forum's work will include examining the issue of statistics, as currently there is lack of compatible statistics which makes it difficult to compare justice systems in a meaningful way.

The Justice Forum's work will be presented in the form of annual reports, occasional studies and a website.

On 10th July the **Sub Group meeting regarding the mutual recognition** took place in Brussels. The German Judges Association was asked to delegate a judge to this meeting, it was decided that Dr. Peter Schneiderhan will represent the EAJ. As Mr. Schneiderhan reported most of the participants expressed doubts about

the existence of mutual trust as the necessary foundation of mutual recognition. The lack of minimal procedural safeguards and the missing possibility for judges in the executing member state to intervene where named as the most significant problems. Quite a number of participants asked for a public policy clause as a way out of these problems. Besides, more training of judges, prosecutors and defence lawyers into the legal systems of other member states was seen as a way to enhance mutual trust. This was taken on by the Commission, who promised to do ahead itself with more training programs and asked the member states to spent more money and time of members of the judiciary on this. The secretariat general of the council announced to publish handbooks for the recent legal instruments to give practitioners more information how to use these instruments.

The next meeting of the Forum, which will be held in September, will address the problems of e-justice.

Cooperation with the Academy of European Law



On December 2007 the President of the EAJ Mr. V. Valancius was appointed a member of the Board of Trustees of the **Academy of European Law (ERA)** based in Trier (Germany). The Board of Trustees advises the Executive Board and Management Board particularly with regard to the planning of the programme of events. The board met on 7th June 2008 in Trier. During this meeting the members of the Board of Trustees were divided into 10 working groups to discuss in depth some topics: WG 1 Judicial Cooperation in civil matter and consumer

protection, WG 2 Competition law, state aid, public procurement and IP law, WG 3 Financial services, banking, company law and taxation, WG 4 Police and judicial cooperation in criminal matters, asylum and immigration, WG 5 Constitution, institutions and fundamental rights, WG 6 Labour law, social law and anti – discrimination, WG 7 Environmental law, climate change and energy, WG 8 Methodology, WG 9 Improving services for lawyers in private practice, WG 10 Business plan 2012. Mr. V. Valancius took part in WG 4 and WG 7.

Annexes

Association Européenne des Magistrats

*Groupe Régional de
l'Union Internationale des Magistrats*



European Association of Judges

*Regional Group of the
International Association of Judges*

Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

*European Association of Judges
at its meeting held in Turku (Finland) on May 22nd - 24th, 2008
has adopted the following*

Resolution

Concerning the Composition of Judges' High Council of France

1. The European Association of Judges takes notice of the modifications planned by the French government regarding the composition of the Judges' High Council (*Conseil Supérieur de la Magistrature*) whereby there would be only a minority of judges on the authority in charge of their career and discipline, but a majority of representatives directly nominated by the executive and legislative powers.
2. The European Association of Judges recalls and emphasises that, with regard to the competent authority in the field of the judges' selection, career and discipline, the European authorities have, for many years, established fundamental rules in order to preserve the independence and the impartiality of justice.
3. In this regard, the European Association of Judges refers to:
 - Recommendation R94-12 of the Council of Europe Ministers' committee, which requires that the competent authority should be independent from the government and the administration.
 - The European Charter on the Statute for Judges enacted by the Council of Europe
- in 1998, which requires the creation of an authority independent from the executive and legislative powers within which at least half of its members have been elected among the judges by their peers.
- The Consultative Council of European Judges, which, in its opinion n°10 adopted in Strasbourg in October 2007 which requires the creation of an authority within which there is a substantial majority of judges elected by their peers.
4. The European Association of Judges also emphasises that these standards have not been enacted for the benefit of judges or their corporate interest, but as the sole means of ensuring the necessary independence of Justice within a democratic society.
5. The European Association of Judges expresses its grave concern with regards these developments in France. It appeals to the French government to observe scrupulously the standards universally acknowledged of an independent judiciary, which is essential if citizens are to have full trust and confidence in the judicial system.

Turku, May 23rd, 2008

Association Européenne des Magistrats*Groupe Régional de
l'Union Internationale des Magistrats***European Association of Judges***Regional Group of the
International Association of Judges*

Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

*European Association of Judges
at its meeting held in Turku (Finland) on May 22nd - 24th, 2008
has adopted the following*

Resolution

Concerning the Remuneration of Judges in Poland

The European Association of Judges has been made aware of certain concerns of the Polish Judges Association. They are:

- a. the mechanism for the creation of judges' remuneration and which is set every year is dependent on the political will of the executive power.
- b. the lack of any legal remedy for the judges to challenge the executive power to change the level of the basis of their remuneration.
- c. the mechanism for the creation of judges remuneration which is inadequate. It has led to a decreasing of judges remuneration and a blurring of the separation of powers settled in the art. 10 of the Polish Constitution.
- d. creation by the executive power of a basis of judges' remuneration on a level which is inconsistent with art. 178 par. 2 of the Polish Constitution and which weakens every year the value of the judge's remuneration

The European Association of Judges is concerned:

1. that the Polish system of remuneration for judges results in a considerable difference

between the level of real income of a judge and other national economic indexes.

2. As a result of this unacceptably large difference, it is the opinion of the European Association of Judges that the fundamental principles set out in such internationally approved documents as a The European Charter on the Statute for Judges, The Universal Charter of Judges, The Judges Charter in Europe and the European Charter are not fulfilled by the Polish government.

In expressing the above concerns, the EAJ urges the Polish authorities to be vigilant to observe those universally recognised standards of judicial independence. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges.

The EAJ urges the competent Polish authorities to ensure universally recognised standards of judicial independence are upheld at all times and that no measures are taken which might compromise them.

Turku, May 24th, 2008

Association Européenne des Magistrats*Groupe Régional de
l'Union Internationale des Magistrats***European Association of Judges***Regional Group of the
International Association of Judges*

Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

*European Association of Judges
at its meeting held in Turku (Finland) on May 22nd - 24th, 2008
has adopted the following*

Resolution

Concerning the Remuneration System in Slovenia

The European Association of Judges at its meeting in Turku, Finland, has been informed again by the Slovenian Association of Judges about the current situation regarding remuneration of judges in Slovenia. The Slovenian Association of Judges is a member of the European Association of Judges.

The information given by the Slovenian Association of Judges refers, inter alia, to a decision of the Constitutional Court of the Republic of Slovenia from December 2006 declaring the salary reform of judges unconstitutional, which decision is being ignored by Government and Parliament.

In addition the European Association of Judges has been made aware:

1. The remuneration of judges is disproportionate to the burden of their responsibility and is insufficiently balanced with the remuneration of members of the two other Powers of the State.
2. The salary reform relating to judges in Slovenia has reduced in effect the remuneration of judges while increasing the salaries for public employees thus creating an unacceptable imbalance.

The European Association of Judges emphasizes the importance of compliance with the obligations in the following international legal instruments, guaranteeing, inter alia,

the financial independence of judges. These international documents and principles among others are:

Principle III 1.b of the Recommendation No R (94) 12 of the Committee of Ministers of the Council of Europe: "...judges remuneration should be guaranteed by law" and "commensurate with the dignity of their profession and burden of responsibilities"

Point 61 of the Opinion No 1 of the Consultative Council of European Judges (CCJE):

"The CCJE fully approved the European Charter's statement (in principle 6.1.)"

Principle 6.1. of the European Charter on the Status of Judges: "Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality."

Article 13 of the Universal Charter of the Judge adopted by the International Association of Judges in 1999: "The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on results of the judges work and must not be reduced during his or her judicial service."

Paragraph 8 of the Judges Charter in Europe (adopted by the European Association of Judges in 1998): “Judicial salaries must be adequate to ensure that the judge has true economic independence and must not be cut at any stage of a judge’s service”.

The European Association of Judges is gravely concerned with the non-compliance, by Government and Parliament, of a judgment of the Constitutional Court concerning judges, resulting in the undermining of the role of judges and trespassing upon the principle of separation of Powers.

The European Association of Judges requests the Government and Parliament of Slovenia to

comply with the decision of its Constitutional Court and its international obligations regarding the remuneration of its judges in the establishment of a system for judges’ salaries that is balanced.

The European Association of Judges recognizes that only by the provision of proper remuneration can a credible separation of powers be obtained.

The European Association of Judges is supportive of the endeavours of the Slovenian Judiciary in this regard.

Turku, May 24th, 2008

Association Européenne des Magistrats*Groupe Régional de
l'Union Internationale des Magistrats***European Association of Judges***Regional Group of the
International Association of Judges*

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Report of Working Party

*on the composition of the Presidency Committee of the European Association of Judges***1. Background**

At the meeting of the European Association of Judges (“EAJ”) held on 23rd September 2007 at Trondheim, Norway, members discussed a proposal by the German delegation to strengthen the structure of the EAJ Presidency. It was proposed that the Statutes of the EAJ should be altered so as to create one or more offices of Vice – President. It was also proposed that these Vice – Presidents should be elected by member associations at a General Assembly of the EAJ. This matter had previously been raised by the German delegation at the EAJ meeting in Valencia in April 2007. Following a discussion at Trondheim, it was agreed that a Working Party should be established to consider whether or not the present Presidency arrangements should be altered and, if so, how. It was agreed by delegates that the Working Party (“WP”) should consist of Sir Richard Aikens (UK), who would act as chairman, Mr Pol van Iseghem (Belgium) and Mr Lothar Jünemann (Germany). The WP was instructed to report to the President of the EAJ in sufficient time so that if any delegation wished to make formal proposals for changes to the Constitution of the EAJ, this could be done in time to be considered before and at the EAJ’s meeting in Turku, Finland, on 23rd-25th May 2008.

2. The Present Statutes of the EAJ

The present Statutes of the EAJ were adopted unanimously by the EAJ General Assembly at Dubrovnik in 2003. Article 4 of the Statutes of the EAJ sets out the status and position of the

President of the EAJ and his powers and also the status and powers of the General Assembly of the EAJ. Article 4 provides:

- “1. *The President represents the EAJ and directs the association.*
2. *The President shall be elected every other year by the General Assembly and shall be one of the Vice – Presidents of the International Association of Judges.*
3. *The President may appoint judges from member associations to form an executive committee to assist him with his work.*
4. *The General Assembly may establish permanent working groups to deal with recurring topics.*
5. *In the appointment of judges for an executive committee and in the selection of members of permanent other working groups due weight should be given to ensure representation of the different geographical areas and legal traditions of Europe.*
6. *The General Assembly may appoint judges from member associations to represent it on a permanent basis with European or International Organisations. The General Assembly may at any time revoke such an appointment.”*

3. Article 7 deals with the procedure for amending the Statutes of the EAJ. It provides as follows:

- “1. *These Statutes may be amended by the General Assembly upon the proposal of either the President or at least three ordinary*

members, submitted to the General Secretariat not less than three months before the meeting of the General Assembly. Within one month of receipt of such a proposal, the Secretariat General must circulate it to all members of the association.

2. *In order to amend the Statutes there must be a vote in favour by majority of not less than two thirds of the votes cast and of not less than half the members of the association.*
3. *A member may authorise the delegate of another member to vote on its behalf. Article 3, section 5,¹ applies.”*

4. The Two considerations

In the opinion of the WP, the question of whether there should be changes to the Presidency arrangements of the EAJ involves two distinct issues. Both of these must be considered. The first issue is whether there is a “democratic deficit” in the present constitutional structure of the EAJ. The second issue is a more practical one: does the President of the EAJ need the assistance of Vice – Presidents in order to be able to discharge fully all his functions? In order to help the WP assess the second issue, the present and two immediate past – Presidents of the EAJ² were invited to answer some questions about how much work they had to do as EAJ President and how much of their time it took during their period in office.

5. Issue One: Is there a “democratic deficit”?

Under the present Statutes of the EAJ, there is only one elected officer of the Association, who is the President. By Article 4.2 of the Statutes he is elected every other year by the members of the EAJ at a General Assembly. The President of the EAJ has to be one of the Vice – Presidents of the International Association of Judges (“IAJ”), of which the EAJ is, of course, a regional organisation. By Article 5.1 of the Statutes of

the IAJ, there are to be six Vice – Presidents of that Association. Article 5.4 of the IAJ Statutes provides that there must be at least one Vice – President from each regional group of the IAJ, including the EAJ. Vice – Presidents of the IAJ are elected by the whole membership of the General Council of the IAJ, that is by all the member associations who are present at the General Council when the election of officers takes place every other year: see Article 5.4 of the Statutes of the IAJ.

6. The effect of the Statutes of the EAJ and the IAJ, taken together, therefore, is that the members of the EAJ can only elect as their President someone who has already been elected a Vice – President of the IAJ. Although that person must be a representative of a national association which is a member of the EAJ, two things should be noted. First, any representative of a national association can be nominated as a candidate to stand for the post of a Vice – President of the IAJ.³ A candidate does not have to be nominated by the membership of a regional group, such as the EAJ. Secondly, a candidate who is elected as a Vice – President of the IAJ (who “comes from” the EAJ), will have been elected by the votes of EAJ member associations and (almost certainly) also by the votes of national associations who are not members of the EAJ.

7. It can be argued that these constitutional arrangements of the IAJ and the EAJ represent a careful balancing act. The requirement that Vice – Presidents of the IAJ must be elected by all the membership in a General Council of the IAJ means that no one can become a President of a Regional Group (such as the EAJ) without first being approved by the membership of the IAJ as a whole. Thus, the argument runs, a President of a Regional Group will be responsive to the considerations of the IAJ as a whole, because he was first elected a Vice – President of the IAJ before being elected as President of the Regional Group concerned. In this way, it is argued, the influence of powerful regional groups, such as

¹ Article 3 section 5 of the Statutes states: “A member may give the delegate of another member written authorisation to vote on its behalf at meetings of the General Assembly. No more than one such authorisation can be given to the same delegate”.

² They are, respectively: Mr Virgilijus Valančius, Ms Maja Tratnik and Prof Dr Ernst Markel.

³ See Article 3 of the Regulations Under the Constitution of the IAJ, headed “Voting”.

the EAJ (which is easily the largest and most powerful) can be restricted.

8. The opposite argument is that these constitutional arrangements are unfair to the members of the EAJ. This is because their effect is that the membership of the EAJ does not have a completely free choice in who it can elect as its President – the EAJ can only elect someone who has already been elected a Vice – President of the IAJ.

9. This “democratic deficit” might be remedied by changing the Statutes of the EAJ in two respects. First, so as to provide for the election of one or more Vice – Presidents of the EAJ, the election being by members of the EAJ only. Secondly, so as to provide that a person could only be elected as President of the EAJ if he or she had previously been elected as a Vice – President of the EAJ. This could still fit in with the requirement of the present Article 4.2 of the EAJ Statutes.⁴ The effect of the change would mean, in practice, that a person who had been a Vice – President of the EAJ would become the “official” candidate of the EAJ to be a Vice – President of the IAJ. So a person who had been elected a Vice – President of the EAJ could be elected as a Vice President of the IAJ and that person would then be eligible to be elected as President of the EAJ.

10. This arrangement would not prevent other delegates from member associations in the EAJ from standing as candidates to be a Vice – President of the IAJ. (That frequently happens anyway). But such a person, if he/she had not been a Vice – President of the EAJ, would not be eligible to be elected as President of the EAJ.

11. The WP notes the provisions of Article 4.4 of the Statutes of the EAJ. So far as we are aware, the General Assembly has not been invited by the President of the EAJ to establish any permanent working groups. Nor has the General Assembly been asked to appoint judges from member associations to represent it on a permanent basis with European or International

organisations in accordance with Article 4.6 of the EAJ Statutes.

12. Issue Two: Practical Considerations

It is clear from the very helpful responses that we have received that the work of the President of the EAJ is now considerable. It can be divided up into the following categories: (i) work relating to internal EAJ matters, including issues raised by member associations of the EAJ; (ii) work relating to European institutions, such as the EU Commission, the Council of Europe, the European Parliament, the European Court of Justice; and (iii) work relating to the IAJ; and (iv) work relating to the EAJ’s relations with judges’ associations and other bodies outside Europe, such as the UN.

13. The responses from the present and former Presidents indicated that the workload of EAJ business varies, depending on the time of year and whether an IAJ or EAJ meeting is imminent. However, at the least it involves several hours a week of reading and responding to all kinds of correspondence. In addition, all three of our correspondents stated that they attended personally a number of meetings and conferences throughout the year, as representatives of the EAJ. It is usually not possible for a President to attend personally to all invitations. If the President thinks that the EAJ should be represented at a meeting or conference, but he/she cannot go or it is impractical to do so, then a representative will be nominated by the President on an *ad hoc* basis. The practice of Presidents has been to ask the General Assembly to give the President power to choose the most appropriate person to represent the EAJ if the President cannot attend, bearing in mind the provisions of Article 4.5 of the Statutes of the EAJ.

14. Because the President of the EAJ is its representative, invitations to attend meetings and conferences are nearly always sent to the President himself. The past Presidents of the EAJ made it clear in their responses to us that frequently the body making the invitation expects the President of the EAJ to attend the

⁴ Therefore a President of the EAJ would still be a member of the Presidency Committee of the IAJ.

meeting/conference personally. Because of the number of invitations that are currently issued, that is not possible. However, the Working Group thinks there can be no doubt that speeches, papers or presentations given by the elected President of the EAJ will carry more weight with other institutions than will his unelected nominee.

15. Article 4.3 of the Statutes of the EAJ provides that the President may appoint judges from member associations to form an executive committee to help him with his work for the EAJ. If this is done, then the principles set out in Article 4.5 must be followed. However, we understand that no executive committee has been formed under the terms of Article 4.3 since the present EAJ Statutes were adopted in 2003.

16. Should any changes be made to the present arrangements?

In summary, the position of the EAJ is as follows: it has 38 member associations.⁵ It is the largest regional group in the IAJ. It is a very active group. Its opinions are keenly sought by European institutions and by International organisations on matters concerning judicial independence, representation and organisation in Europe. The EAJ President has a heavy work – load as the sole elected representative of the EAJ. At present there is no executive committee to assist the President, although that could be established under Article 4.3 and 4.5 of the Statutes of the EAJ. Apart from the President of the EAJ, who is elected in the manner we have set out in paragraphs 5 and 6 above, there are no other elected officers of the EAJ.

17. The fundamental principles which underlie all the work of the IAJ and the EAJ are: the rule of law in democratic societies and the independence of the judiciary. In our view, these principles must be reflected in the way the IAJ and the EAJ conduct their internal affairs as well as how they deal with governments, parliaments or other institutions. The WP thinks that there is scope for further

demonstrating the EAJ's adherence to these principles, particularly to that of democracy, by making some changes in the way that the EAJ's internal structure is organised. We also think that it is time that the President of the EAJ had assistance in carrying out his duties, particularly in representing the EAJ in dealings with other European institutions. But if the EAJ is to have other representatives, we think that it may well be advantageous for them to be elected representatives of the EAJ membership.

18. There are several alternative forms that the changes could take. We emphasise that it is for the EAJ General Assembly to consider whether any changes should be made and, if so, what they should be. We will indicate three possible "models", but we will not recommend one particular "model" in this report. We believe it is for the General Assembly of the EAJ to decide, after discussion, whether it wishes to make any change at all and, if it does, which "model" it prefers as a matter of principle. If the General Assembly of the EAJ decides to adopt either the first or the second of the three "models" set out below, then the new procedure could be adopted by a resolution of the General Assembly, passed by a simple majority. However, if the General Assembly decides it should adopt the third of these "models", then the WP will need to produce detailed draft of new wording to the EAJ Statutes for all members to consider and vote upon in accordance with Article 7.1 and 7.2 of the Statutes.

19. The first possible "model".

The first proposal is that the General Assembly invites the President to form an executive committee, in accordance with the principles of Articles 4.3 and 4.5 of the Statutes. The General Assembly could debate how many should comprise the committee. Our suggestion is that the Committee should consist of at least two but no more than four members. The General Assembly could also invite the President to seek nominations from delegates of member associations for appointment to the executive committee. If there were more candidates than positions, the General Assembly could invite

⁵ This includes Armenia, which is at present an extraordinary member.

the President to allow it to have an “advisory” vote on who the President should appoint. None of this is provided for in the present Statutes. However, there is nothing in the Statutes to prevent this from being done, provided that it has the consent of the President, who has the sole power of *appointment* of an executive committee under the current Statutes.

20. If this course were adopted, then it would be for the President and the newly formed executive committee to decide how to apportion the work of the EAJ President between themselves. The President and the executive committee would have to report together to the General Assembly of the EAJ at its biannual meetings.

21. The second possible “model”.

The second model is a variation on the first one. The General Assembly would invite the President to form an executive committee, which would consist of two persons, called “Vice – Presidents”. The General Assembly would invite the President to seek nominations from delegations of member associations for appointment as a member of the executive committee and “Vice – President of the EAJ”. If there were more than two candidates, then the General Assembly would invite the President to allow it to vote on who he should appoint and he would agree to be bound by the result. Again, this is not provided for in the Statutes, but there is nothing in the Statutes’ provisions to prevent this course from being adopted, provided the President agreed.

22. Neither of these proposals would involve any changes to the current Statutes of the EAJ.

23. The third possible “model”.

The third suggestion is more radical and would require a change to the EAJ Statutes. That can only be undertaken if the provisions of Article 7.1 and 7.2 are followed. A change to the Statutes would require a majority of two thirds of the votes cast by not less than half of the members of the EAJ.

24. The proposed changes to the Statutes would be: first, a new provision for the election of Vice – Presidents of the EAJ by the members in General Assembly. We would suggest there should be no more than two Vice – Presidents. Presumably, as with the President, elections would take place every other year. There would need to be new provisions for the nomination of candidates.⁶ There may also need to be new provisions for proxy voting procedures.

25. The second new provision would stipulate that the candidates for President of the EAJ will only be chosen from amongst those who had previously been elected as Vice – President of the EAJ. This change would be achieved by adding a sentence to Article 4.2 of the present Statutes of the EAJ.

26. Conclusions

Our overall conclusion is that the President should be assisted in his work for the EAJ by providing him with further officers of the EAJ. In principle those who assist the President in carrying out his functions as the representative of the EAJ should have the approval of the members of the EAJ in General Assembly. This conclusion can be implemented in either an informal manner, using the present Statutes, or in a formal manner, which will require an amendment to the Statutes. It is for the General Assembly to decide which “model” to adopt – if any. If the formal “model” is preferred, this will require the WP to produce a detailed draft of proposed changes to the Statutes of the EAJ. The WP would be willing to prepare such a draft, if required.

Richard Aikens

Pol van Iseghem

Lothar Jünemann

19th February 2008

⁶ Compare Article 3 of the IAJ Regulations under the Constitution, which stipulates that nominations of candidates seeking election as office holders in the IAJ must be presented in written form at the first session of the meeting of the Central Council during which the election is to take place.

Presentation of Dr. Virgilijus Valančius

President of the European Association of Judges

Anniversary conference celebrating 75 years since the establishment of AMA and 15 years of activity of RMA, Bucharest, 11.10.2008.

Ladies and gentlemen, High authorities of the Romanian Association of Magistrates,

• It is a great honour for me to address this meeting as a President of the European Association of Judges. I am sincerely grateful for your kind invitation to celebrate with you the double anniversary of the Romanian Association of Magistrates.

First of all let me start by introducing you shortly the aims and activities of the EAJ.

The EAJ is an association of 38 free-formed national and representative judges associations, (among them all states of EU) under the roof of the International Association of Judges (IAJ). Within the IAJ the EAJ is the biggest regional group. The IAJ was found in 1953.

I would like to highlight that the EAJ is independent from governments, political parties and other groups of influence on national or supranational level.

It belongs to the duties of the EAJ to monitor the situation of the judiciary and judges in the member states. Among the aims of the IAJ is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee human rights and freedoms, to improve the knowledge of European law and the judicial cooperation between the concerned judiciaries across the borders. In pursuing its aims the EAJ organizes sessions and working groups, assesses drafts and gives opinions on all issues of legal concern. The EAJ aims not only to defend and represent the interests of European judges and magistrates, but in the same way to support the rule of law as well as judicial independence and impartiality as a privilege of the citizens coming to the courts in search of their rights.

• The year 2007 was intensive for the EAJ as for the international organization in the cause of protecting judicial independence and the interests of the judiciary. The EAJ has adopted 6 resolutions, concerning legislative developments and other initiatives in the countries of various member associations (i.e. Hungary, the Ukraine, Sweden a.o.), which the EAJ judged were inconsistent with the principle of judicial independence.

Inter alia:

- A resolution concerning Poland (expressing concerns about the legislative developments in Poland aimed at reducing the effectiveness of judicial self-government in favour of the executive branch of the government, namely the Minister of Justice, and at weakening the guarantees of judicial independence)
- A resolution concerning the remuneration of judges in Sweden (expressing concerns about the new system for the remuneration of Swedish judges, in particular the individualization of judges' salaries);
- A resolution concerning the Ukraine (expressing concerns about the situation in the Ukraine regarding the issue of the disciplinary liability of judges).
- And not to forget a resolution adopted in 2006 on the case of Romania in Siofok (expressing concerns about the legislative developments in Romania aimed at introducing administrative control over court decisions which have already been subject to the appeal procedures and also making judges subject to disciplinary and pecuniary liability for their decisions).

During the year 2008 the EAJ continues to monitor the position of the judiciary and judges in all the member states. I strongly believe it is **vital**, that we promote judicial independence at every level of the judiciary. And so I ask you to think about actively promoting judicial independence as well. It certainly complements your mission as a Romanian Association of Magistrates.

I would like to stress that the EAJ will be there to support the Romanian magistrates' statute and independence.

- We are also aware of specific problems in the justice system, currently debated in Romania, namely the extrajudicial activities of judges.

The situation, where judges take part in various election offices instituted for election of local public administration, and also have the competence to solve the complaints and notifications, arising in the development of the election of local public bodies procedure, to put it mildly, could be described as a subject to discussion about a judiciary independence and impartiality.

Also its worthy to point out that, in most cases the workload of judges is immense. The burden of extrajudicial activities of judges could lead to situation where it may become difficult for a judge to make sure cases are thoroughly examined because the burden placed on judges is unreasonable. That must be avoided. The judiciary system does not own machine for printing money and employ as many judges as it will be needed to make sure that the judiciary system functions properly.

Media in many countries has become obsessed with judicial salaries, entitlements and pensions and so society at times naively regard judicial life as an easy life. But judges have to decide major controversies involving governments, corporations, citizens, etc. Issues are hotly contested and in some areas of the law emotions run very high. Moreover, there is a great pressure on judges to resolve the dispute in order to please everybody for a time being.

Ladies and gentlemen,

correct me if I'm wrong, but as far as we understand, the Romanian judicial system faces a permanent outside pressure.

Article 2 of the Basic Principles on the independence of the judiciary, endorsed by the United Nations General Assembly in November 1985, stipulates that "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".

The concept of an independent judiciary requires judges to decide cases in a manner faithful to the law **without fear or favor** and free from political and external pressures.

At the end of the Eighteenth Century the English philosopher John Locke, who strongly influenced the English Revolution of 1688 and the American Revolution of 1776, stated that established laws with the right to appeal to **independent judges** are essential to a civilized society and that societies without them are still "in a state of nature".

Do not misunderstand me. This independence does not imply judges can make decisions based on personal preferences. We, judges, are and must be accountable. Our decisions, where inappropriate or wrong, are appealed and reversed. Courts, however, are no more immune from public commentary, scrutiny, and criticism. We also should be criticized, but not on the ground, that our decisions contradict the government or powerful parties involved in a case.

It might be difficult to ignore political winds or the pressure of the mass media in making judicial decisions. The psychological pressure on judges could be immeasurable. And unfortunately judges do not possess an army to protect justice.

But judges must be able to resist political popularity for the moment and rest their decisions upon the law. An independent judiciary assures people that court decisions will be based on the nation's laws and constitution, not on shifting political power or the pressures of a temporary majority.

Ladies and gentlemen, dear colleagues,

there is no easy way to be a judge – especially, there is not an easy way to be a judge in a country, which has experienced transitions relatively recently as well, which over lived few “grey” periods in the near past.

Yes, the profession of a judge is demanding, complex and often unrewarding but, I would

like to stress, vital. The judicial system serves as a safeguard of the human rights and freedoms (it is symbolical, that today I say that in the Hall of Human Rights).

I would like to share with you an answer to all difficult and delicate questions that could arise in your daily judge practice (words of Sir Paul Judge, Royal Society of Arts):

“The **rule of law** is **the key**, so maintain ethics in difficult conditions: even when it is hard to find a level playing field and you are in the minority.”

Thank you again for the rare privilege of speaking to you this morning.

Report of the 11th Plenary Meeting of European Commission for the Efficiency of Justice (CEPEJ)

presented by Mr. Duro SESSA (Croatia)

(Strasbourg, 2nd - 3rd July 2008)

On request of President of EAJ Mr. Virgilijus Valančius I have been asked to participate in work of regular plenary meeting of CEPEJ and to represent our Association which has status of observer to this body of Council of Europe.

Meeting took place in Strasbourg from 2nd to 3rd of July 2008.

1. Information by the President of the CEPEJ and the Secretariat

The CEPEJ

- **took note** of the information given by its President, its members and its Secretariat who participated in various fora where the work of the CEPEJ was introduced and discussed;

2. Recent developments in the judicial field in the Council of Europe member states

- **took note** of the information given by representatives of member states on recent domestic developments in the judicial field and **invited its members** to forward to the Secretariat written information and useful references which could be included in the area "country profiles" of its web site;

Reports have been given by different countries:

- **Belgium**- Representative explained that main efforts in the country in field of justice is in improving working methods in the courts.
- **Denmark** - Reduction of court is in progress from 82 to 24.
- **Norway** - New dispute act is in force which introduces more active role of a judge in civil proceedings.
- **Montenegro** - New Strategy on Reform on judiciary is adopted and new laws on courts, HJC, criminal procedure Law on obligations etc. are waiting to be adopted.

- **Italy** - Representation was made by representative of MEDEL about recent changes in criminal justice which are not approved by judges.
- **Azerbaijan** - New specialised courts are to be founded and salaries of judges have been increased.
- **Austria** - Redefinition of court statistic is in progress.
- **Armenia** - New Law on Courts has been adopted and new Administrative, Criminal and Civil Courts have been established and School for judges as well.
- **Nederland** - Number of courts is going to be reduced even more.
- **Finland** - Reduction of District court to number of 37.
- **Poland** - It was reported by that discussion in Poland is going on about salaries for judges. Also system of appointments and development of careers is questioned. **My impression is that representation from delegate form Poland wanted to diminish real situation in Poland as it was represented on Meeting in Turku.**
- **United Kingdom** - Mayor changes are in progress regarding establishment of Supreme Court, reform of Family justice and new Directorate for Access to justice.
- **Germany** - No mayor changes are going on in the Country. It was reported about decision of the Supreme Court. Supreme Court stated that if in criminal case length of procedure is outside of acceptable standards that time has to be taken in account when imposing jail sentence to the accused person. (i.e. if proceedings is one year longer than it should be, and if jail sentence should be 5 years court has to declare jail sentence which will be one year shorter)

- **Croatia** - mayor changes are going on in amendments to the law on Courts, Civil Procedure Act and Criminal Procedure Act. This law is transferring investigative phase of proceedings from courts (investigative judges) to the Public prosecutor.
- **Georgia** - Efforts have been made to introduce more specialization of judges and courts which are reduced from 70 to 21. Also HJC is introduced where judges as members are in majority. Disciplinary proceedings are conducted by judges, appeal is guaranteed and case is then decided by special panel of the Supreme Court.
- **Serbia** - lot of changes are planned regarding establishing Judicial academy, HJC, reduction of number of courts, engaging retired judges to reduce backlog in courts. All reforms are waiting new government to be established.

(Situation in countries is represented in this report according to order of representation at the meeting.)

3. 2007 Activity Report of the CEPEJ

- **approved** the 2007 Activity Report of the CEPEJ (CEPEJ(2008)1) and **decided** to forward it to the Committee of Ministers for approval;

New Report on European Judicial Systems - Edition 2008 is planned to be published in October 2008.

In this stage Report is confidential.

I took the floor couple of times suggesting that pension system for judges should also be examined through Europe regarding the question of remuneration of judges, and that report is not completed in the part which examines court as users of a state budget if fees and taxes which court are benefiting to the state budget are not considered.

4. Evaluation process of judicial systems

- **welcomed** the excellent work achieved jointly by the members of the CEPEJ-GT-EVAL chaired by Mr Jean-Paul JEAN (France),

the scientific-expert, Ms Marta ZIMOLAG and the Secretariat to prepare the draft report and **thanked them warmly** for the efforts dedicated to this exercise within a strict timeframe; it **thanked** the national correspondents who had coordinated the national answers to the evaluation Scheme and had fully cooperated with the experts so that they could submit a preparatory work of quality;

- **noted with satisfaction** that the report includes the results of a survey carried out in 45 European states and that it was a unique exercise considering the number of fields addressed and countries concerned; it **underlined** that the report took place in the framework of a regular process aimed at progressively defining a core of essential quantitative and qualitative data to be collected and processed similarly in all member states;
- **adopted**, in accordance both with the Action Plan of the 3rd Summit of the Heads of State and government and with its Statute, the "Report on European judicial systems – Edition 2008" (CEPEJ(2008)3), provided that:
 - comments could be indicated by the delegations to the Secretariat before 15th July 2008 and that the discussions during the present meeting were taken into account;
 - further comments could be drafted before the end of July 2008 by **the experts of the CEPEJ-GT-EVAL, under the authority of the CEPEJ Bureau, who were instructed** to do so to facilitate the reading and understanding of the statistical data; these comments would be made available to the members of the CEPEJ on the restricted web site at the beginning of August 2008;
- **decided** to forward the final report as soon as possible to the Committee of Ministers so that it could take note of it;
- **decided** that the Report would remain confidential until the Committee of Ministers has taken note of it and **invited** all its members and observers to strictly respect

this rule of confidentiality so as to ensure the relevance and coherence of the publication by the Council of Europe;

- **instructed the experts of the CEPEJ-GT-EVAL** to prepare a synthesis of the report to facilitate its understanding and reading; this synthesis would be submitted to the members of the CEPEJ for being approved through a written procedure and published together with the report;
- **instructed the Secretariat** to organise the appropriate publication and dissemination of the report, including through its website, once the Committee of Ministers had taken note of it;
- **decided** to publish *in extenso*, on its website, all the individual answers of the member states to the evaluation Scheme; therefore it **invited** each delegation to check that the national answers appearing on the CEPEJ website had indeed been updated and, where appropriate, to submit to the Secretariat a consolidated version of these answers before 15th September 2008; it **agreed** that a State which would not wish to make its data public could request it before 15th September 2008;
- **agreed** to pursue the evaluation exercise within the framework of a new cycle whose timeframe would be discussed at the next plenary meeting; therefore it **instructed the CEPEJ-GT-EVAL**, in cooperation with the *Groupe de pilotage* of the SATURN Centre – as regards lengths of proceedings – to study the opportunity to revise some questions of the evaluation scheme and **entrusted its Secretariat** to adapt the electronic version of the evaluation scheme so as to take into account the comments by the national correspondents as regards the use of this tool;
- **agreed**, in accordance with its medium-term activity programme, to pursue the analysis of the facts and figures presented in the report, including by opening the exploitation of the data to researchers who would wish to benefit from the scientific support of the CEPEJ, according to modalities to be defined with the CEPEJ-GT-EVAL, under the authority of the CEPEJ Bureau;

- having due regard to the usefulness of the peer evaluation cooperation process on judicial statistics as it results from the pilot exercise with France, Poland and Bosnia and Herzegovina, **instructed the CEPEJ-GT-EVAL** to propose at the 12th plenary an appropriate follow up in the light of the conclusions of these visits, so as to enlarge this evaluation process and **invited other member states** to propose their candidature;
- **invited the member states which wish to do so** to submit to the Secretariat before the end of 2008 an updating of some 2007 judicial data according to the document "Key data for justice in Europe" (CEPEJ(2007)27);

5. Judicial time management

- **took note** of the work carried out by the *Group de pilotage* of the SATURN Centre;

6. Quality of justice

- **adopted** the Checklist for the quality of justice systems and courts (CEPEJ(2008)2), **decided** to forward it to the Committee of Ministers, the CCJE, the CCPE and other relevant committees of the Council of Europe so that they can make good use of it and **invited its members** to ensure a wide dissemination of it among the relevant national institutions and organisations;
- **took note** of the on-going work within the CCJE on the quality of judicial decisions which is expected to complement usefully this document, as another example of good cooperation with other committees of the Council of Europe;
- **took note** of the other on-going works within the CEPEJ-GT-QUAL;

7. CEPEJ Network of Pilot Courts

- **thanked** the Court of Appeal of Catania (Italy) for having invited the Network of pilot courts to held its 3rd plenary meeting on 24th October 2008 within the framework of the European Day of justice; **agreed** that only those pilot courts which had actively participated in the

work of the CEPEJ within the last year would be invited to this meeting;

- **agreed** to organise, within the framework of this Network, a specific working group on second instance issues regarding the court of appeals;
- **welcomed** the proposals by Albania and Montenegro to appoint a pilot-court to represent their countries within the Network;

8. Targeted co-operation of the CEPEJ with member states

- **took note** of the will of Bulgaria to implement the activities agreed by the CEPEJ at its 10th plenary meeting on criteria for the classification of courts and criteria for evaluating individual judges;

9. Relations between the CEPEJ and the other bodies of the Council of Europe

- **took note** of the information on the activities of the Consultative Council of European Judges (CCJE), the Consultative Council of European Prosecutors (CCPE) and the European Committee of Legal Cooperation (CDCJ) and **appreciated** the good cooperation with these bodies;

10. Co-operation with the European Union

- **took note** of the information given by the representatives of Slovenia and France, talking on behalf of the outgoing and incoming presidencies of the European Union, on the recent and foreseen developments within the Union in the field of justice;
- **took note with great satisfaction** of the Communication of 4th February 2008 by the

European Commission setting up the Justice Forum where the CEPEJ is called to play a pre-eminent role and **decided** to cooperate fully to the activities of this Forum, so that the partners can benefit from the CEPEJ's works and expertise and the synergies aimed at improving the efficiency and quality of justice in Europe can be strengthened;

- **invited its members** to forward to the Secretariat all the information on the celebration of the 6th European Day of Justice in October 2008;
- **noted with satisfaction** that 38 candidatures had been submitted for the Crystal Scales of Justice which will be awarded in Catane on 24th October 2008; furthermore **agreed** that the Prize "the Crystal Scales of Justice" could now be awarded every year, one year being dedicated to initiatives in the civil law field, and one year to the initiatives in the criminal law field;

11. Observers to the CEPEJ

- **took note** of the request by the *European Criminal Bar Association* (ECBA) to be granted the observer status with the CEPEJ and **entrusted its Bureau** to examine further this request and make recommendation on this issue to the 12th plenary meeting;

Presidency of the Meeting, **thanked** observes for their concrete contribution to activities of CEPEJ and **invited** them to further contribute to the implementation of its programme of activities.