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Dr. Virgilijus VALANČIUS

President of the European
Association of Judges

Président de l'Association
Européenne des Magistrats

Präsident der Europäischen
Vereinigung der Richter (EVR)

Introductory word

Éditorial

Einleitungswort

Dear Members of the EAJ,

I am happy to present you the second issue of the e-Newsletter of the EAJ, which henceforth will bear the name „Euro-iustitia“, as did its predecessor bulletin of the EAJ.

In this issue you will find the most important information about the EAJ meeting in Trondheim (23rd and 27th of September 2007), as well as the later activities of the EAJ, including the cooperation with the Council of Europe (CCJE, CEPEJ, etc.) and the institutions of the European Union.

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

Chers Membres de l'AEM,

Je suis heureux de vous présenter un deuxième Bulletin électronique d'information de l'Association Européenne des Magistrats (AEM). Il y a quelques années l'AEM avait édité une revue imprimée, intitulée „Euro-iustitia“, c'est pourquoi le Bulletin électronique d'information sera intitulé Euro-iustitia en respectant la continuité du travail de l'AEM.

Dans ce deuxième numéro de Bulletin électronique d'information vous trouverez une information sur la réunion de l'AEM du 23 et 27 septembre 2007 à Trondheim (Norvège), sur les activités de l'AEM qui seront liées avec la participation aux travaux des Institutions Européennes, du CCJE, de la CEPEJ etc.

Sehr geehrte EVR Mitglieder,

ich freue mich Ihnen die zweite Ausgabe des e-Newsletters der EVR präsentieren zu können, der weiterhin den Namen „Euroiustitia“ tragen wird, genauso wie sein Vorgänger - das Bulletin der EVR.

In dieser Ausgabe finden Sie wichtige Informationen, sowohl über das Treffen der EVR in Trondheim (23. und 27. September 2007), als auch über die neusten Aktivitäten der EVR, einschließlich der Zusammenarbeit mit den Institutionen des Europarates (CCJE, CEPEJ, etc.) und der Europäischen Union.

Das Jahr 2007 war intensiv für die EVR, als eine internationale Organisation, die die Rechte der Richter verteidigt. Die EVR hat

6 resolutions, concerning legislative developments and other initiatives in the countries of various member associations, (i.e. Hungary, the Ukraine, Sweden and other member states) which the EAJ judged were inconsistent with the principle of judicial independence. Just before Christmas, the EAJ has received the worrying message from Turkey, in which the Union of Judges and Prosecutors of Turkey (YARSAV) claimed that serious restrictions were being imposed on the freedom of association of the members of the judiciary in that state. Although Turkey is not a member of the EAJ, given Turkey's membership of the Council of Europe and its application for membership of the European Union, the EAJ considered it to be its duty to react immediately. I therefore sent letters to the national authorities of Turkey, copies of which you will find in this issue of the „Euro-iustitia“.

During the year 2008 the EAJ will continue to monitor the position of the judiciary and judges in all the member states. The EAJ will support the efforts for the creation of a common European legal space, in particular by contributing to the activities of the institutions of the Council of Europe and European Union, as well as by participating in various projects, workshops and conferences.

L'année 2007 pour l'Association Européenne des Magistrats fut très intensive. L'AEM avait adopté 6 résolutions sur les mesures adoptées par les organes des pouvoirs législatifs et exécutifs qui pourraient porter atteinte à l'indépendance des juges en Hongrie, en Ukraine, en Suède et dans les autres états. Á la fin de décembre 2007, l'AEM a reçu des nouvelles sur les événements graves et significatifs en Turquie. YARSAV (l'Association des Magistrats et des procureurs de Turquie) avait informé l'AEM à propos des restrictions de la liberté d'association des juges. Attendu que la Turquie est un pays candidat à l'Union Européenne et elle même déjà membre du Conseil de l'Europe. Mais la Turquie n'est pas membre de l'AEM. Pourtant l'AEM avait décidé de réagir contre les mesures adoptées par les institutions de la Turquie. Vous trouverez dans ce numéro de l'Euro-iustitia une lettre de l'AEM adressée aux institutions de la Turquie.

En 2008 l'AEM continuera à tenir en observation l'indépendance, l'efficacité et le rôle des Juges dans les membres de l'AEM. L'Association Européenne des Magistrats fera des efforts pour la création en Europe d'un espace juridique commun. L'AEM participera aux activités du Conseil de l'Europe et des institutions de l'Union Européenne en prenant part à plusieurs projets, aux séminaires ou aux conférences.

En espérant que ce numéro de l'Euro-iustitia sera intéressant, veuillez agréer Mesdames, Messieurs, l'expression de mes sentiments les meilleurs.

6 Resolutionen verabschiedet, die Gesetzesentwürfe und andere Initiativen in Ungarn, der Ukraine, Schweden und anderen Mitgliedstaaten betreffen, welche mit der richterlichen Unabhängigkeit unvereinbar sind.

Unmittelbar vor Weihnachten hat die EVR eine beunruhigende Nachricht aus der Türkei bekommen. Der dortige nationale Verein der Richter und Staatsanwälte (YARSAV) hat über Beschränkungen der Vereinigungsfreiheit für Richter in diesem Staat berichtet. Obwohl die Türkei kein Mitglied der EVR ist, fühlte sich die EVR verpflichtet unverzüglich zu reagieren und hat einen Beschwerdebrief an die nationalen Institutionen der Türkei gesendet. Den Inhalt dieses Schreibens finden Sie in dieser Ausgabe der „Euroiustitia“.

In 2008 wird die EVR weiterhin die Lage der Richterschaft und der Richter in den Mitgliedsstaaten beobachten und die Anstrengungen unterstützen, einen gemeinsamen europäischen Rechtsraum zu entwickeln. Dazu wird die EVR zur Tätigkeit der Gremien des Europarates und der Europäischen Union beitragen und an verschiedenen Projekten, Seminaren und Konferenzen teilnehmen.

Within the EAJ

The Meeting of the EAJ

(Trondheim, 23rd and 27th September 2007)

An ordinary meeting of the EAJ took place in Trondheim (Norway) on the 23rd and 27th September 2007. The meeting was chaired by the President of the EAJ V. Valancius. Besides the delegates representing their respective national associations, also in attendance were the Honorary Presidents of the EAJ, Mr. Ernst Markel and Mr. Günter Woratsch, the IAJ First Vice President Mr. José Maria Bento Company and the IAJ Vice President Mr. Bjorn Solbakken, together with the Deputy Secretaries-General Mr. Giacomo Oberto and Mr. Lucio Aschettino. During the meeting, the following Resolutions were adopted:

1. A Resolution concerning Hungary (expressing the support of the EAJ for the efforts to resolve the issues, noted by the Resolution passed at the EAJ meeting in Valencia on 30th of March 2007 with the Hungarian government);
2. 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);

3. A Draft open letter to the President of the Republic of Poland (to be sent by the President of the EAJ V. Valancius to the Head of State of Poland);
4. A Resolution concerning the remuneration of judges in Sweden (expressing concerns about the new system for the remuneration of Swedish judges, in particular the individualisation of judges' salaries);
5. A Resolution concerning the Ukraine (expressing concerns about the situation in the Ukraine regarding the issue of the disciplinary liability of judges).

The text of the above-mentioned resolutions as well as a Summary report of the Trondheim meeting can be found on the website of the EAJ:

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

The next meeting of the EAJ will take place on the 22nd - 25th May 2008 in Turku, Finland, and for the year 2009 it will be in Krakow, Poland.

Activities concerning problems of the member associations

The Resolutions of the EAJ, concerning **the Ukraine, Poland and Hungary**, adopted at the EAJ meeting in Trondheim, were sent to the authorities of those countries as well as to Mr. Franco Frattini, Vice President of the European Commission responsible for Justice, Freedom and Security, on the 10th of October 2007.

On the 15th October 2007 the president of the EAJ V. Valancius sent letters to Mr. Branko

Crvenkovski, President of the **Former Yugoslav Republic of Macedonia**, Mr. Ljubi a Georgievski, President of the Assembly of the Former Yugoslav Republic of Macedonia, Mr. Nikola Gruevski, Prime Minister of the Former Yugoslav Republic of Macedonia, Mr. Mihajlo Manevski, Minister of Justice of the Former Yugoslav Republic of Macedonia and Mr. Dane Iliev, President of the Supreme Court of the Former Yugoslav Republic of Macedonia.

The letters expressed concerns about the situation of Margarita Tsatsa-Nikolovska, the judge of the European Court of Human Rights (ECHR) in respect of the Former Yugoslav Republic of Macedonia, who was facing problems in returning to her position as a judge of the Supreme Court, which she had held before her appointment to the ECHR.

A copy of the letter was also sent to the relevant authorities of the Council of Europe: the President and Secretary General of the Parliamentary Assembly of the Council of Europe, as well as the Secretary General and Deputy Secretary General of the Council of Europe.

Participation in projects concerning the judiciary and the rule of law

During the year 2007, the President of the EAJ V. Valancius represented the EAJ by participating as an expert in two important projects: (i) **the project of assessment of the legal regulation of the disciplinary liability of judges in the Ukraine**, and (2) **the project of assessment of the selection and appointment procedures of judges in the Ukraine**. Both were part of the Joint Programme of the Council of Europe and the European Commission to improve the functioning of the judiciary in the Ukraine.

The conclusion of the assessment reports was that although the legal regulation of the selection, appointment procedures and disciplinary liability of judges in the Ukraine are generally in line with the relevant European standards, there are some obvious shortcomings of the present system. One of the most important was the absence of provisions for the participation by an independent institution containing substantial judicial representation in the procedures for the initial appointment of judges. The High Council of Justice of the Ukraine, whose involvement is necessary for any judicial appointment, cannot be regarded as being such an independent institution because it does not meet the requirement that “at least one half of those who sit there are judges elected by their peers following methods guaranteeing the widest representation of the judiciary”. Furthermore, the existing system of disciplinary liability of judges is not sufficiently clear. Under the present system there is still the possibility of political influence over the

selection, appointment and promotion of judges.

The President of the EAJ V. Valancius was invited to participate as an expert in the “**Judicial Integrity round table**”, organized by the **CEELI institute**. This was held in Prague (Czech Republic) on 4th - 6th October 2007.

The round table focused on such issues as the cultural sources of the problem of corruption and improper influence; the nature of outside pressures on judges; the problem of ex parte communications; mechanisms for dealing with improper influence; the proper balance between independence and accountability; strategies for building public confidence in the judiciary; the need for judicial participation in budget formulation; the role of national judicial conferences in building integrity; how to bring about the political will for judicial reform; a review of successful efforts in promoting judicial integrity; and a discussion of successful international programmes in fostering judicial integrity.

The EAJ has agreed to cooperate with Chemonics International, an international development firm located in Washington, D.C, in two projects: **the Building Recovery and Reform through Democratic Governance (BRDG) project in The Congo** and **The Technical Assistance for Separation of Powers Programme (SPP) in Serbia**. The proposals on the projects mentioned above have been submitted to the United States Agency for International Development.

Other activities of the EAJ

On the 17th December 2007 the European Association of Judges received a letter from the **Union of Judges and Prosecutors of Turkey** (YARSAV), informing the EAJ about the recent legislative developments in the Republic of Turkey which restricted the freedom of association of members of the judiciary.

As the situation described in the letter seemed to require an urgent response from the EAJ, once an e-mail consultation with the member associations had been completed, the decision

was taken immediately to send a letter to the President, the Speaker of the General Assembly, the Prime Minister and the Minister of Justice of Turkey. These letters stated, in the name of the EAJ, our concerns about the situation if it was as described in the letter of the YARSAV. The letters requested information about the current status of freedom of association of members of the judiciary in Turkey. The letter, a copy of the text of which you will find at the end of this newsletter, was sent on the 27th December 2007.

Cooperation with the Council of Europe



The 8th Plenary Meeting of the Consultative Council of European Judges (CCJE)

(Strasbourg, 21st - 23rd November 2007)

The 8th plenary meeting of the CCJE was held in Strasbourg from 21st to 23rd November 2007. The EAJ was represented in the Meeting by Mr. Duro Sessa (Croatia). You will find his report at the reports section of this e-newsletter.

During the Meeting, the CCJE adopted Opinion No. (2007) 10 on “The Council for the Judiciary at the service of society” (CCJE (2007) 5) and decided to transmit it to the Committee of Ministers for appropriate action. The EAJ had prepared its remarks on the draft Opinion No. 10 before its adoption and presented them to the CCJE. You will find those remarks at the end of this e-newsletter.

A working group was formed to prepare a draft CCJE Opinion concerning the quality of judicial decisions. This will be submitted to the 9th plenary meeting of the CCJE.

The next plenary meeting of the CCJE will be held on the 12th - 14th November 2008 and the meetings of its Working Group (CCJE-GT)

from the 31st of March to the 2nd April and on the 16th - 18th June 2008.

Abridged report of the CCJE meeting:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2007\)16&Language=lanEnglish&Ver=original&Site=DG1-JudProf-CCJE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2007)16&Language=lanEnglish&Ver=original&Site=DG1-JudProf-CCJE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

Text of the Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

The 10th Plenary Meeting of the European Commission for the Efficiency of Justice (CEPEJ)

(Strasbourg, 5th - 6th December 2007)

The 10th plenary meeting of the CEPEJ was held in Strasbourg from the 5th to the 6th December 2007. On this occasion, the CEPEJ also celebrated its 5th anniversary with various personalities of the European legal field.

The EAJ was represented in the Meeting by the President of the Association V. Valancius.

Before the meeting of the CEPEJ, the EAJ had presented its comments on some topics in the agenda, specifically item 6 - Process for evaluating European judicial systems and item 9 - Quality of justice: discussion of the draft "Checklist for promoting quality of justice". You will find the above-mentioned remarks at the end of this e-newsletter.

During the meeting, the CEPEJ decided to publish on its website and in the "CEPEJ Studies" series the following studies (based on the CEPEJ study on the evaluation of judicial systems):

- Access to justice in Europe,
- Monitoring and evaluation of the court system: a comparative study,
- Use of information and communication technologies (ICT) in judicial systems of European states,
- The execution of court decisions.

It was also decided to set up a pilot peer review cooperation process on judicial statistics, and to this end the meeting approved the objectives and methodology of this process (CEPEJ-GT-EVAL(2007)25). The CEPEJ-GT-EVAL was requested to implement the review, to assess its results and to report on them at its next plenary meeting, with a view to extending this process.

The CEPEJ has also adopted the Guidelines for a better implementation of the existing recommendations of the Council of Europe concerning penal mediation (CEPEJ(2007)13), family and civil mediation (CEPEJ(2007)14) and on alternatives to litigation between administrative authorities and private parties (CEPEJ (2007)15). It decided to forward them to the Committee of Ministers, the CDCJ, the CDPC and other relevant committees of the Council of Europe, so that they could utilise them. The CEPEJ invited its members to ensure a wide dissemination of the recommendations among the relevant national institutions and organisations. The CEPEJ also solved other important issues.

The 11th plenary meeting of the CEPEJ will take place in Strasbourg on the 2nd - 3rd July 2008.

More about the 10th Plenary Meeting of the CEPEJ:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2007\)28&Language=lanEnglish&Ver=original&Site=DG1-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2007)28&Language=lanEnglish&Ver=original&Site=DG1-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

2008 Programme of activities of the CEPEJ, approved by the 10th Plenary Meeting of the CEPEJ:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2007\)19&Language=lanEnglish&Site=DG1-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2007)19&Language=lanEnglish&Site=DG1-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

Update of the Recommendation No. R (94)12 of the Committee of Ministers

The 3rd meeting of the Group of Specialists on the Independence, Efficiency and Role of Judge (CJ-S-JUST) was held in Strasbourg on the 8th - 9th of November 2007. The EAJ was represented in the Meeting by Mr. G. Reissner. You will find his report at the end of this e-newsletter.

During the meeting, the CJ-S-JUST:

1. Considered the draft Recommendation No. R (94) 12 revised on the independence, efficiency and role of judges and its explanatory memorandum;

2. Finalized these texts.

Meeting report of the CJ-S-JUST and the revised text of Recommendation No. R (94) 12 of the Committee of Ministers:

http://www.coe.int/t/e/legal_affairs/legal_cooperation/steering_committees/cdcj/CJ_S_JUST/Default.asp#TopOfPage

Cooperation with the European Union institutions



Justice and Home Affairs Council of the European Union

Portugal took over the presidency of the EU from Germany on the 1st July 2007 and handed over to Slovenia on the 31st December 2007.

On the 14th September 2007 at Coimbra, Portugal, the President of the EAJ V. Valancius had a meeting with the Minister of Justice of Portugal, Mr. Alberto Costa. Possible means of cooperation between the EAJ and the Justice and Home Affairs Council of the European Union were discussed.

During the discussion, the President of the EAJ pointed out that, in the opinion of the EAJ, the potential for using the expertise of the European judiciary is still not fully appreciated

by the European institutions. He stressed that the institutions of the EU still only see the legal processes in the particular member states through the prism of the executive. He pointed out that the experience of the judiciary could be successfully used in the process of preparation of Rome II Regulation; implementing the E-justice project, and other important projects directly relating to the implementation of justice and designed to improve the functioning of judicial systems. The Minister of Justice of Portugal acknowledged, that dialogue with the European judiciary could bring more "life" to the EU legal system and that this would undoubtedly be useful.

*Public Hearing of the Committee on Civil Liberties,
Justice and Home Affairs of the European Parliament*

(Brussels, 8th October 2007)

The Public Hearing of the Committee of the European Parliament on Civil Liberties, Justice and Home Affairs Parliament, on the topic of “Judges and legislators in a multi-level protection of fundamental rights in Europe” took place in Brussels on the 8th October 2007.

The president of the EAJ V. Valancius was invited to participate in panel 3 – “Rising awareness among national judges on fundamental rights”. With a view to the adoption of the new multi-annual programme 2007-2013 of the European Commission, aimed at raising the awareness of fundamental

rights protection within society generally, but also in particular amongst European judges, the participants of the panel were invited to answer a number of questions. These were: (i) what should be done to improve knowledge and awareness among judges of national courts about existing systems of fundamental rights protection? (2) How could the changes in this field at the European level influence the work of the judges? (3) What could be done to help judges in their work?

You will find the speech of Mr. V. Valancius at the end of this e-newsletter.

Research Project “Fundamental Rights and Citizenship”

The European Association of Judges has received a proposal from Ms Silvana Sciarra, Professor of European Labour and Social Law at the University of Florence, to participate in a Research Project funded by the European Commission, DG Justice and home affairs (whose call for proposals is expected shortly).

The subject matter of the project is: “Fundamental Rights and Citizenship”. The topics to be covered, within the main framework of Fundamental Rights and Citizenship, are: the enforceability of fundamental rights (dialogues between international courts; the role of constitutional courts; evaluation and comparison of standards of protection); dignity (special emphasis on bioethics); freedom (special emphasis on the right to privacy and the right to profess a religious belief); welfare rights and employment rights.

It is envisaged that the project will take 2 years. It will use seminars in which judges from various European countries specialising in the

different fields covered in the project and at different levels of the judiciary will participate. The EAJ will be requested to help select judges to be involved in the seminars. (The judges’ commitment would last only for the few days of each seminar).

This proposal is very interesting and is an important opportunity for the EAJ to increase its role at the European level, and to participate in the academic debate about fundamental rights and the role of judges in their implementation. Therefore the EAJ has agreed to take part in it.

As well as the EAJ, the project will involve the following academic institutions: LUISS Guido Carli Rome (coordinator), Italy; Law Department of the Turin University, Italy; Durham European Law Institute, Durham University, UK; Department of Political Sciences and Gender Studies, CEU Budapest, Hungary.

Cooperation with the Academy of European Law



After meeting Dr. Wolfgang Heusel, the director of the Academy of European Law (ERA), in Vilnius, Lithuania the President of the EAJ V. Valancius sent Dr. Heusel a letter proposing to discuss the opportunities of a possible closer collaboration between the ERA and the EAJ. One of the main aims of the EAJ is to improve the knowledge of European law and the judicial co-operation between the concerned judiciaries across the borders as well as to support the efforts for the creation of a common European legal space by using the potential of national judiciaries. In this field the activities of the EAJ and the ERA have a great deal of complementarity as ERA promotes the

awareness, understanding and good practice of European Community law. Dr. Heusel welcomed the idea of developing and deepening the cooperation between the EAJ and ERA and noticed that such cooperation would be very acceptable as judicial training at this moment is very important on the European stage.

Dr. Wolfgang Heusel also informed that the President of the EAJ V. Valancius was appointed a member of the ERA Board of Trustees. The Board of Trustees advises the ERA's Management Board on strategy and the implementation of its annual activities, in particular the planning of events.

Annexes



YARGIÇLAR VE SAVCILAR BİRLİĞİ YARSAV

Subject: *The independence of judiciary in Turkey and YARSAV*

Ankara, 04.12.2007

To the presidencies of association of judges and/or prosecutors of europe

Dear Sir/Madam;

I'm writing you today all of you as the president of a college organization because of an urgent matter.

The closure of the Union of Judges and Prosecutors of Turkey against its will is on the agenda of the Turkish parliamentary.

The Union of Judges and Prosecutors of Turkey (YARSAV) was founded by 501 judges and prosecutors from the whole country on 26.06.2006, after in the year 2004 the legal restrictions that hindered founding of this kind of associations in Turkey were abated.

The number of our members has grown to 1025 until this moment.

YARSAV formed its bodies through a first general assembly by elections on 26.11.2006.

YARSAV is as you would know an over- and non politic association of the profession founded by civil and free will, aiming the independence of judiciary and the rule of law.

After the founding of YARSAV the Ministry of Justice prepared a draft law seeing this development as a threat against its power over the judiciary which lasts since decades.

In this draft law it was foreseen that after the entering in force of this law YARSAV would be closed and an only one common public organization of profession in whole country established.

The provisional administrative board of the mentioned organization, which the Ministry of Justice wanted to establish, was according the rules put in this draft law determined by the Ministry itself.

This organization would be an organization which contradicts the rules set by the Turkish Constitution in its chapter as regards the executive power too, since the organization would be placed under the administrative and financial guardianship of the executive power and would not reflect the rule of separation of powers within the state.

This draft law that fell out of date because of the ending of the legislative period in first half of 2007. But it has been renewed in the new legislative period by the government again.

By the way it submitted the draft to the Turkish Parliament again the government showed its decisive undemocratic attitude towards this issue.

The political will that says “yes” to an association in judiciary, but acts with the undemocratic idea that not the members of the judiciary should establish this kind of organizations but the government itself.

Since Turkey is in a progress procedure as regards the membership to the European Union and although it was declared in the letters written to the European Union therefore in 2005 and 2006 that there were no more legal bans for an association of judges and public prosecutors, the preparing of the mentioned draft law is causing worry, because of the difference of the discourse of the political power within and outside of the country.

And it is another contradiction again, that in the workings lead by the government, in which a new constitutional draft is discussed, an article for the closure of YARSAV is being put.

On 29.11.2007 is the draft law mentioned above, which foresees the closure of YARSAV, accepted by the majority votes of the governing party, after it was discussed in a commission of the Turkish Parliament namely the Commission for the Harmonization to the European Union, although the General Secretariat of European Union Affairs which has the duty to follow up the harmonization with the EU in Turkey had opposed the draft.

After this phase this draft will be discussed in the Constitution and Justice Commissions of the Turkish Parliament too. Following this phases, which we estimate will not last much, the draft will be taken in the agenda of the Turkish Parliament and if it should be accepted as a law, YARSAV will be the first legal entity of citizens which is closed by law since 1981, the year after the military coup.

There is furthermore an investigation in procedure which seeks the dissolution of YARSAV too, because of the fact that the Governor of Ankara which has legally the duty to register YARSAV as a legal entity to the associations register had demanded on July 2007 from YARSAV to take out of its Statute the articles as regards the independence of law, commenting that YARSAV could not defend the independence of judiciary, this was the duty of the state.

Beyond this there has been already a law put into force today which foresees the selecting of candidate judges and prosecutors by the Ministry of Justice which is against the Turkish Constitution and independence of judiciary.

We believe that the urgently response to the undemocratic attitudes of the government can change this present negative picture against YARSAV and independence of judiciary in Turkey and help YARSAV which fights for the independence and rule of law in Turkey.

In 9th December 2007 there will be a demonstration in Ankara led by Turkish Bar associations and over 200 non governmental citizen organizations by gathering of ten thousands with the warning “take care of your judiciary” to react against this threat.

Furthermore we hope that sending of letters and e-mails without any delay regarding this issue to the President of Turkey, President of the Turkish Parliament, Turkish Prime Ministry, Turkish Ministry of Justice, Turkish Ministry of Foreign Affairs and newspapers, news agencies both in your land and in Turkey will be helpful to prevent the closure of our organization, which has the same aim as yours, namely the impartial and independent judiciary.

We think that this letters and e-mails should express to the political power that the closure of YARSAV by means of law would be seen as a symbol for the decreasing level of the independence of the judiciary in Turkey and show the government the sensibility of our college associations like yours in the whole world towards similar steps against the independence of the judiciary.

I will thank you in advance for your sensitiveness as well as support regarding this issue and moreover will be honoured to be in touch for new cooperation.

With my deepest respects.

04.12.2007

Ömer Faruk EMİNAĞAOĞLU

*President of the Union Of Judges and Prosecutors
Turkey*

Association Européenne des Magistrats

*Groupe Régional de
l'Union Internationale des Magistrats*



European Association of Judges

*Regional Group of the
International Association of Judges*

The President

Dr. Virgilijus VALANČIUS

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To:

27th December 2007

*His Excellency Mr. Abdullah Gül
The President of the Republic of Turkey*

Re: Freedom of Association in Turkey

Your Excellency,

The European Association of Judges (EAJ) is honoured to address you, expressing its distinguished respect for all efforts of your country for improving and strengthening the rule of law and in particular the independence of the judiciary as the third state power.

The EAJ is an association of 38 free-formed national and representative judges associations, among them all states of the European Union, under the roof of the International Association of Judges (IAJ), and 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 the judges in the member states, therefore a constant discussion is held on the independence of the judiciary and status of judges, because inherent to the judicial independence.

The European Association of Judges has recently received the letter from the Union of Judges and Prosecutors of Turkey (YARSAV), informing

about the recent legislative developments in the Republic of Turkey, restricting the freedom of association of the members of the judiciary. We were informed, that the draft law, intending to constrainedly close the Union of Judges and Prosecutors of Turkey and establish the only one common public organization of judicial profession, placed under the administrative and financial guardianship of the executive power, is presently under consideration.

The EAJ stands with the principles of the relevant international and European documents, first of all, the European Convention on Human Rights and Fundamental Freedoms (ECHR), the Article 11 of which guarantees everyone the freedom of assembly and association. It is universally accepted, that the members of the judiciary are entitled to freedom of expression, belief, association and assembly like other citizens, and that judicial associations play the fundamental role when defending the independence and the interests of the judicial profession (See inter alia

Principle IV of the Recommendation No. R 12 (94) of the Committee of Ministers to Members States On Independence, Efficiency and the Role of Judges; Para 8 of the Basic Principles of the Independence of the Judiciary, adopted by the Seventh Crime Congress, Milan, August 1985, endorsed by the General Assembly of the United Nations Organisation in Resolution 40/32; Para 1.7 of the European Charter on the Statute for Judges, adopted in Strasbourg, July 1998). The international documents, mentioned above, created a common European standard, acknowledged and respected in all member states of the Council of Europe and the European Union.

We would like to draw your attention to the fact, that, taking into account the role which is played by the independent judicial associations in a democratic society, any unjustifiable restriction

placed on the freedom of association of the members of the judiciary can also be regarded as violation of the fundamental principle of judicial independence.

Asking for your appreciation the EAJ allows itself to express its concerns about the situation, as it is described in the letter of the YARSAV and dares to ask you for the information whether in an actual fact the judges and prosecutors in Turkey are prevented from freely forming their professional organisations or remaining the members of the organizations already created.

We have the honour to communicate our high respect,

Yours sincerely

(Virgilijus Valančius)

Consultative Council of the European Judges (CCJE)

Remarks of the President of the European Association of Judges Virgilijus Valančius
on the draft Opinion No. 10

“Council for the Judiciary in the service of society”

The European Association of Judges (further on - the EAJ) welcomes the important work accomplished by the CCJE by drafting the Opinion No. 10 “Council for the Judiciary in the service of society”.

The International Association of Judges (www.uim-iaj.org) has already dealt with a similar topic and stated that the Councils for the Judiciary (hereafter “the Councils”) should be a means by which a buffer is placed between the judiciary and the other powers of the state, so that it can protect the judiciary from undue influence from the powers of the executive arm of the state, rather than be an instrument of it.¹ It was thus indeed very important to try to identify the core elements in relation to the composition and functions of the Councils with a view to strengthening democracy and in order to protect the independence of the judiciary.

In the opinion of the EAJ, the draft Opinion No. 10 is a comprehensive and accurate piece of work, dealing with the most important issues relating to the status, composition and functioning of the Councils. Whilst the EAJ does not wish to detract at all from the value of the work that has been done, we would like to draw your attention to several considerations:

1. The proposal to expand the judicial representation on the Council would be supportive of the position of the judiciary. In the view of the EAJ the statement of Para 18 of the draft Opinion (in so far as it advocates that at least 75% of the Council should be judicial members might be left as it is. That would help to strengthen the both the self-governance as well as real independence of

the judiciary. On the other hand the proposal probably needs more detailed reasoning to support it.

2. On the other hand, we do not accept that there are strong reasons to adopt the proposal of the ENCJ, viz. to give preference to a mixed composition of Councils, as opposed to Councils composed solely of judges (Para 16, Conclusion B. a) of the draft Opinion). As both options are used in practice by the Member States, and as, in the opinion of the EAJ, both options have their own advantages and disadvantages, we believe that the original wording of Para 16 of the draft Opinion, which does not directly advocate any of the mentioned compositions, is more suitable.
3. The EAJ suggests that some Paragraphs of the draft Opinion need further elaboration. For example, it would have been advantageous to list at least some examples of functions of the Councils that would require an all-judges panel (Para 20 of the draft Opinion). The same applies to the description of functions that may require lay representatives of the public: (Para 45 of the draft Opinion).
4. In the Para 55 of the draft Opinion, the reference to the CCJE Opinion No. 4 might be elaborated upon.
5. Principle VI 3 of the Recommendation No R (94) 12 on the independence, efficiency and role of judges provides that “where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or

¹ Conclusions of the 1st Study Commission of the IAJ “The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system”. Vienna, 12th November, 2003

which is a superior judicial organ itself.“ In this regard the wording of the Para 64 of the draft Opinion, providing that „there should be a right to appeal to the Council for the Judiciary“ seems to deviate from the wording of the Recommendation we have quoted. As the draft Opinion does not advocate Councils composed solely of judges, we think that it is reasonable to ask the question and discuss whether all Councils, irrespective of their composition, can be considered as being “superior judicial organs”.

6. The CCJE’s Opinion No. 1 does not exclude the possibility of judicial appointments to a Council being made by one or more political bodies, provided that the procedure itself is independent and protected from appointments on improper motives. In this regard the wording of Para 48 of the draft Opinion may be regarded as, possibly, too assertive.

European Commission for the Efficiency of Justice (CEPEJ)

Remarks of the President of the European Association of Judges Virgilijus Valančius
on item 6 of the agenda

Process for evaluating European judicial systems

10th plenary meeting, 5th - 6th December 2007

A year ago the European Association of Judges (EAJ) was pleased to welcome the CEPEJ report “European judicial systems - Edition 2006” as a unique and valuable project, aiming to overview the current state of the national judiciaries at the Council of Europe Member States. The specific studies presented today as the result of exploitation of the mentioned CEPEJ report underline once more the usefulness of the mentioned unique piece of work done by the CEPEJ. Every report presented is a result of thorough and comprehensive work, containing valuable information on topics, vital for the functioning of national judiciaries, as well as the proper basis for the discussions on various positive national practices that may be shared among the member states in order to achieve the better results of functioning of their judicial systems.

One wishing to distinguish between the topics, covered by the reports, presented for the approval and publication, with the view of finding the most important one would indeed face the overpowering task. However, with proper regard to the importance of all the

topics to be discussed, the EAJ would like to draw particular attention to the Report on the Monitoring and Evaluation of Court System.

The monitoring and evaluation of the judiciaries today can reasonably be regarded as one of the „hottest“ topics both at the national and European levels. Since the growing demand for justice in most countries are faced with limitations of the budget for the justice system, theory and practice suggest the possibility to assess the quality of judicial activity, with reference also to social and economic efficiency. However, as the Consultative Council of European Judges (CCJE) has reasonably noted, a number of problems arise when applying to justice assessment criteria that do not take into account its specificities. Even if modern information technology allows very sophisticated data to be collected, the difficulty remains as to what variables should be measured and how and by whom the results should be interpreted².

There is indeed a direct link between the monitoring and evaluation of judicial systems

² CCJE Opinion No 6, Paragraphs 33, 40

and judicial independence. The results of evaluation of judicial systems may not stimulate introducing the national policies aiming to evaluate the activities of particular judges on the basis of statistical data without due respect to the guarantees of judicial independence. New Public Management can be used for the management of the courts. But even here care must be taken not to infringe the independence of the judiciary in an indirect way³.

The EAJ therefore strongly supports the careful approach chosen by the authors of the mentioned report. In particular, we would like to support the idea that due to the complex relationship between judicial independence and accountability a normative framework has had to be developed in order to operate monitoring

and evaluation systems within the principles of constitutional law. Only after establishing the normative framework and institutional one can start looking at operating an effective evaluation and monitoring system⁴. It is indeed also true that institution building is not simply a matter of setting up units and tasking them with the job of monitoring and evaluating courts. There is a matter of training personnel, having a strong normative basis, building trust within the respect of balance of powers⁵. The independence of monitoring institutions is also of paramount importance. The monitoring and evaluation procedures must be free from any political considerations. Otherwise the aim to improve the functioning of national judiciaries can not be reached.

3 Conclusions of the 1st Study Commission of the IAJ, meeting in Montevideo, Uruguay, 21st - 24th November 2005

4 Conclusions of the Report „Monitoring and Evaluation of Court System: A Comparative Study“

5 Ibidem

Remarks of the President of the European Association of Judges Virgilijus Valančius
on item 9 of the agenda

Quality of justice: discussion of the draft “Checklist for promoting quality of justice”

10th plenary meeting, 5th - 6th December 2007

The Checklist on the quality of the judiciary and the courts, prepared by the CEPEJ-GT-QUAL, is a comprehensive and useful tool, designated to help to determine the main elements of the quality of national justice systems. It contains detailed questionnaires covering 3 dimensions: national level, court level and the level of individual judges, and may become a useful tool for the national institutions for the improving the functioning of justice in their respective states.

In no case derogating from the uncontested value of the work which is done, we would like to draw your attention to the several important issues to be addressed when speaking about the evaluation of judicial systems:

1. There is indeed a direct link between the monitoring and evaluation of judicial systems and judicial independence. The results of evaluation of judicial systems may not stimulate introducing the national policies aiming to evaluate the activities of particular judges without due respect to the guarantees of judicial independence. Already in 1995 the International Association of Judges (IAJ) has noted, that there is a need of a preliminary distinction between an appraisal of the individual action of judges and the pre-determination of general rules concerning the evaluation and appraisal of the action of each jurisdiction as a whole. The appraisal of the individual action of judges, in the opinion of the IAJ, constitutes a

strictly internal problem of each jurisdiction. Such a problem mainly concerns those who are responsible for their organisation, i.e., in most countries represented here, the heads of the jurisdiction and, in those countries where such a system does not exist, a judicial body vested with appropriate powers to that effect, such as a Superior Council of the Judiciary.⁶ This position is also supported by the Consultative Council of European Judges (CCJE), which is of the opinion that the evaluation of “quality” of the justice system, i.e. of the performance of the court system as a whole or of each individual court or local group of courts, should not be confused with the evaluation of the professional ability of every individual judge. Professional evaluation of judges, especially when aiming at decisions influencing their status or career, is a task that has other purposes and should be performed on the basis of objective criteria with all guarantees for judicial independence.⁷ As it is impossible at the moment to rely upon widely accepted criteria, quality indicators should at least be chosen by wide consensus among legal professionals, it being advisable that the independent body for the self-governing of the judiciary play a central role in the choice and the collection of “quality” data, in the design of the data collection procedure, in the evaluation of results, in its dissemination as feed-back to the individual actors on a confidential basis, as well as to the general public; such involvement may reconcile the need for a quality evaluation to be carried out with the need for indicators and evaluators to be respectful of judicial independence⁸.

Although this is indeed true that the quality of the justice system may not be assessed properly without taking into account the level of individual judge, proper attention must be paid to the mentioned considerations when trying to define the

quality indicators, applied to the activities of the individual judges, at the European level.

2. Speaking about the quality criteria at the national and court level, the EAJ supports the opinion of the CCJE, that “quality” of justice should not be understood as a synonym for mere “productivity” of the judicial system and that a number of problems arise when applying to justice assessment criteria that do not take into account its specificities⁹. Criteria of productivity, based on cost and speed, cannot be applied to the specific jurisdictional function of judges. The quality of judicial decisions depends on the ability of judges to do justice in individual cases and not on the number of judgements they are able to deliver in a given time. Therefore the EAJ does not in general support the idea of measuring the functioning of judicial systems on such criteria as target setting at national level (2.3), public reports on the quality of the court (3.1.2), registration of the „productivity“ of judges and courts (3.1.6), existence of „quantitative evaluation system regarding the production of each judge“ and so forth.
3. Some evaluation criteria, provided by the Checklist, in the opinion of the EAJ probably is too much dependent on the legal traditions of each state in order to propose them as a general European standard. For example, the deliberation of the annual report on the functioning of judicial system in the parliament (2.2) can be found not consistent with the constitutional traditions of some Member States. On the other hand, such deliberation may be given the positive evaluation only if the principles of separation of powers and judicial independence are respected. Rules on participation of citizens in judicial role (3.1.5), supervisory discussions and peer review (3.2.3) may also vary from state to state, moreover, some of those practices may be found inconsistent with the procedural independence of individual judges.

6 Conclusions of the 1st Study Commission of the IAJ, meeting in Tunis, 10th - 14th September, 1995

7 CCJE Opinion No 6, Paragraph 34

8 CCJE Opinion No 6, Paragraph 43

9 CCJE Opinion No 6, Paragraphs 33,42

Presentation by the President of the European Association of Judges Virgilijus Valančius
to the Public Seminar

“Judges and Legislators in a multi - level protection of fundamental rights in Europe”

Brussels, 8th October 2007

**Mr. Chairman,
Dear Members of the European Parliament,
Ladies and Gentlemen,**

It is indeed a great pleasure to me to have an opportunity to address you today on such an important topic – raising awareness among national judges on fundamental rights. As the representative of the organisation, representing the European judges, and being a judge myself, I am particularly happy about the fact, that this event is a form of dialog between legislature and judiciary when pursuing aims common for all of us.

In my short presentation I will try to give the answers to all the three questions posed from the perspective of the European Association of Judges (EAJ), which I am honoured to represent in today's meeting. But first of all let me start by introducing you shortly the aims and activities of the EAJ.

The European Association of Judges - EAJ - is a European judges' organisation under the roof of the International Association of Judges - IAJ. Within the IAJ it is the biggest regional group. The IAJ was founded in 1953 as a professional non-political international organization, grouping national associations of judges admitted to the Association by decision of its Central Council. Among the aims of the IAJ is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedoms.

Due to the existence of the specific interests and problems, faced by the judiciary of Europe, in 1991 the European Group of the IAJ has been structured, organizing its own annual meetings

since 1992. According to the Statutes, the object of the EAJ is to further the objects of the International Association of Judges, where this is best done in a European context.

One of the aims of the EAJ is to improve the knowledge of European law and the judicial co-operation between the concerned judiciaries across the borders as well as to support the efforts for the creation of a common European legal space by using the potential of national judiciaries. The EAJ shares the strong conviction that experience and legal knowledge of judges contribute to better European legal provisions and their proper application. In pursuing its aims the EAJ organises sessions and working groups, assesses drafts and gives opinions on all issues of legal concern, participates in congresses and workshops and co-operates with the relevant European institutions. The EAJ aims not alone to defend and represent the interests of European judges and magistrates as well as other members of the judiciary enjoying judicial status, but in the same way endeavours to strengthen and support the rule of law as well as judicial independence and impartiality on a European level and in all member states, as a privilege not of authorities of the judiciary but of the citizens coming to the courts in search of their rights.

Currently the EAJ groups together 38 member associations - most representative, free and voluntary formed judges' organisations of each country, strictly non-political, equal distant to all political parties and similar groups,

and independent from all lobbies and other groups of influence. It is well known for its non-governmental character and as the most important and biggest European representation of judges. All members of the European Union are represented at the EAJ. The EAJ has been granted an observer's status at the CCJE, ENCJ, CEPEJ and other institutions.

Now let me try to give a short answer to the today's questions from the perspective of the EAJ.

“How [can] the changes [in the field of fundamental rights protection] at the European level influence the work of magistrates?”

Indeed, the effect of such changes is difficult to predict with precision. However, with reference to the previous experience of the EAJ in this field, it can be said without reservation, that changes will become a new challenge for national judges, first of all because of the necessity to apply national laws in the light of new legislation on the European level. When applying the national law, judges are expected to observe the general principles of Community law, use not only the methods of interpretation of national legal system, but interpret and apply rules in conformity with EU legislation. Speaking more precisely, the national courts, being at the same time the European courts, must ensure the protection of rights, granted to their nationals by the EU law. This requires not only knowledge of the existing legal rules. This requires also the understanding of the functioning of the different systems of fundamental rights protection. If to remember that national judges operate mostly at the specific national context, it seems not so surprising that this task can be regarded as a serious challenge for all the national judiciaries, not to speak about the judiciaries of the new EU member states. On the other hand it is obvious, that the efficiency of the European mechanisms of the fundamental rights protection depends mostly on the ability and readiness of the national judiciaries to apply the relevant European law.

„What should be done to improve knowledge and awareness amongst judges of national courts about existing systems of fundamental rights protection?”

Answer to this question would be – the judicial training should be induced, both at the national and European level. Firstly, there must be financial assistance to the EU Member States to help with further education of national judiciaries on the issue of fundamental rights protection. Taking into account the interconnection between the efficiency of the EU law and the abilities of the national judiciaries, we consider this kind of training to be of common European interest. Secondly, there must be further education of judges not only at the national, but also at the European level. This kind of training could, in our opinion, be successfully coordinated by the Academy of European Law in Trier (ERA), which is widely known for its input into the dissemination of knowledge, promotion of the awareness, understanding and good practice of EU law. The ERA could cooperate in fulfilling this task with the European Court of Human Rights at Strasbourg and the European Court of Justice at Luxembourg. Thirdly, the practice shows that study visits are extremely effective method of judicial training. Therefore we consider that the financial assistance to the EU Member States to enable judges of to go for further study to the courts, dealing with fundamental rights, such as European Court of Human Rights at Strasbourg would be purposive.

It's needed to underline that the EAJ in turn is prepared for full co-operation with the European institutions in the field of judicial training and all the spheres concerning the access to justice and judicial co-operation, as it was done in the past.

„What could be done to help judges in their work?”

The basic form of assistance is indeed the propagation of knowledge, already referred to above. However, I would like to draw your attention to another very important way of

helping national judges. We must understand that in the field of fundamental rights protection the judiciary cannot stand alone. It is indeed the task for all the state institutions to foster and promote the protection of fundamental rights as the concurrent element of the state based on the rule of law.

The experience of the EAJ shows, however, that the relations between the judiciary and the other branches of state power are not always sufficiently cooperative. It happens so that representatives of other state powers ignore the court decisions or get involved into the unfounded critics of the judicial system and members of the judiciary as a whole. This in turn may demolish the public trust in justice system as an independent and impartial state authority. The EAJ has already taken numerous steps to remind the national authorities of the EU member states, that judicial independence is not a privilege of the members of the judiciary, but a necessary pre-requisite to the rule of law and a fundamental guarantee of a fair trial and that as one of the main pillars of a democratic

state, it must be respected and upheld by all state institutions, including the legislature and executive.

We think that one of the ways to help the national judiciaries in their task is the assistance from both the European Parliament and the European Commission while impressing on the representatives of the executive and legislative powers of the EU member states the following vital matters which must never be forgotten:

- (i) the fundamental importance of judicial independence and the essential requirement that judicial decisions on fundamental rights by courts are respected; and
- (ii) that EU laws on fundamental rights must be observed by all; by executive powers as well as all other natural and legal persons, otherwise the most fundamental right of all in a democratic society - the right to live by "the rule of law" - will be undermined.

Thank you very much for your attention.

Reports from the meetings

Report of the 3rd Meeting of the CJ-S-JUST

presented by Mr. Gerhard REISSNER (Austria)

(Strasbourg, 8th - 9th November 2007)

I had the honour to participate in the 3rd meeting of the Group of Specialists on the Independence, Efficiency and Role of Judges (CJ-S-JUST) on behalf of the EAJ, which was guaranteed the status of an observer. The expectations of the group that the terms of reference for its work, which were going to expire at the end of 2007, would be prolonged were not met by the committee of ministers. Therefore the group in the very short time of the meeting had not only to finalise the proposal of amendments of the recommendation but also to draft an amended explanatory memorandum, a document that in the past has been of outmost importance for the interpretation of the Recommendation. Due to the very effective chair of Edwin Kilby from the UK the group could fulfil its task. In line with the intentions of the EAJ important statements and conclusions of the European Charter on the statute for judges as well as of the Opinions of the Consultative Council of European Judges (CCJE) were included in this new draft of an amended text of Recommendation R 94(12), which will have the title Recommendation No R (94) 12 revised“. Central points of revision deal with the procedure of appointment and career decisions concerning judges including judges at international courts; high councils of the judiciary and their composition, training of judges, responsibility of judges and procedure in cases of offences or misconduct of judges, requirements of the remuneration of judges (in line with the conclusions of the EAJ's working party on remuneration). If all these proposals

would be accepted by the committee of ministers (after passing the steering committee CDCJ) this would be a great step forward. Also the document still would be a recommendation only, this text will be an important source of arguments when fighting for an improvement of the independence of the judiciary and the rule of law in the respective European countries. The International Association of Judges has a great impact on this development by the fact that its president Maja Tratnik, former president of the EAJ was member of the group of experts. In the end of the meeting there was a crucial point of the discussion, when facing the fact that constitutional judges in many European states have a very different status, way of recruitment, completion of office, which is in contradiction to some of the statements in the Recommendation, but in the end this obvious problem did not lead to a change of the text as it was elaborated by the group before. In the name of the EAJ I thanked the chair, the group-members and the scientific experts for their excellent work.

Meanwhile I was informed, that the discussion on the draft, which was intended to be scheduled for January or February was postponed. It will be on the agenda of the steering committee not sooner than in June. Even if there will not be any objections of the steering committee a decision of the Committee of Ministers is not to be expected before the end of the year.

Report of the 8th Plenary Meeting of the CCJE

presented by Mr. Duro STESSA (Croatia)

(Strasbourg, 21st - 23rd November 2007)

I have been asked by the President of the EAJ V. Valancius to represent the EAJ on the regular meeting of the CCJE held in Strasbourg from 21st to 23rd of November 2007.

As I am also the delegate of Croatian judiciary at this consultative body of the Council of Europe I was there in both capacities.

My personal view on the topic of this year meeting “The Council for judiciary at the service of society” corresponded fully with the remarks of the President of EAJ. So there was no conflict of interests on my side representing the EAJ and Croatia at the same time.

Main reason lays in the fact that Croatia has the High Judiciary Council (HJC) for 12 years now,

and judges in Croatia as in Europe see HJC as strong guarantee of their independence.

It would take too long to report on all discussions regarding main document produced at the Meeting, so I would like to stress that it is result of compromise between those opinions of the participants who advocated that only judges should be members of the HJC, and those who thought that HJC should have mixed composition to reflect and involve society in process of appointment of judges.

Broad discussion also was held on the question of tasks and duties which HJC should have not to turn work of it from main reason of its existence.