



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**1ST MEETING OF THE
SUB-COMMISSION ON THE JUDICIARY**

Venice, 14 December 2006

MEETING REPORT

The Sub-Commission on the Judiciary met for the first time in order to discuss the Venice Commission's position regarding judicial appointments. It was chaired by Ms Suchoka and the discussions were based on a Secretariat's memorandum (see document CDL-JD(2006)001) that provided an overview of the matter by bringing together previous opinions of the Venice Commission.

One of the reasons to discuss this topic was the mandate given by the Committee of Ministers of the Council of Europe to the **Consultative Council of European Judges (CCJE)** to elaborate an **opinion on the structure and role of the Judicial Service Commission** or equivalent body and **to consult on this issue with the Venice Commission**.

The CCJE has prepared a questionnaire on the topic and sent it to its members. It will report on the results at its 3rd European Conference of Judges on the topic "Which Councils for Justice?" on 26-27 March 2007 in Rome. A representative of the Venice Commission will be invited to attend this Conference as well as the working group on the elaboration of the CCJE opinion.

In substance, the Sub-Commission found that, in Europe, a variety of different systems for judicial appointments exist and that there is **no single model** that would apply to all countries.

In older democracies, systems exist in which the executive power has a decisive influence on judicial appointments. Such systems may work well in practice and allow for an independent judiciary because these powers are restrained by legal culture and traditions, which have grown over time.

New democracies, however, have not yet had a chance to develop such traditions, which can prevent abuse. It is therefore the Sub-Commission's opinion that **in new democracies, explicit constitutional provisions are needed as a safeguard** against political abuse in the appointment of judges.

The Sub-Commission was of the opinion that judicial appointments are **not an appropriate subject for a vote by Parliament** because of the danger that political considerations might prevail over the objective merits of a candidate (in this respect, a distinction should be made between judges of ordinary courts and constitutional courts).

The **prevailing model** for guaranteeing judicial independence is the establishment of a **Judicial Council** or Judicial Service Commission, which – according to the Sub-Commission – should be endowed with constitutional guarantees for its independence.

Such a Council should have a decisive influence on the appointment and promotion of judges and any disciplinary measures taken against them.

A substantial part or a majority of the **members of the Judicial Council** should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament, among lawyers or law professors.

In parliamentary systems, the **chairmanship of the Judicial Council** could be attributed to the Head of State, whereas in (semi-) presidential systems, the chairman of the council could be elected by the Council itself from among the non judicial members of the Council.

A **balance** needs to be struck **between judicial independence** and self-administration on the one hand **and** the necessary **accountability** of the judiciary on the other, in order to avoid the negative effects of corporatism within the judiciary. In this context, it is necessary to ensure that required disciplinary procedures against judges are carried out effectively and are not marred by undue peer restraint.

With respect to entry conditions, a distinction may be made between systems with a judicial career, where judges enter the profession after finishing their law studies where competitive entrance examinations may be appropriate, and countries where judges are selected amongst experienced lawyers.

The Sub-Commission invited the Secretariat to revise document CDL-JD(2006)001 in the light of the discussions and to send it to the members of the Sub-Commission for remarks. These remarks should then be reflected in a further version of the text to be finalised at a meeting of the Sub-Commission to be held in March 2007.