

Consultative Council of European Judges (CCJE)

Opinion no 2 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights

1. The Consultative Council of European Judges (CCJE) has drawn up this opinion on the basis of the responses of States to a questionnaire, texts prepared by the Working Party of the CCJE and texts prepared by the Chair and Vice Chair of the CCJE and the specialist of the CCJE on this topic, Mr Jacek CHLEBNY (Poland).

2. The CCJE recognised that the funding of courts is closely linked to the issue of the independence of judges in that it determines the conditions in which the courts perform their functions.

3. Moreover, there is an obvious link between, on the one hand, the funding and management of courts and, on the other, the principles of the European Convention on Human Rights: access to justice and the right to fair proceedings are not properly guaranteed if a case cannot be considered within a reasonable time by a court that has appropriate funds and resources at its disposal in order to perform efficiently.

4. All the general principles and standards of the Council of Europe on the funding and management of courts place a duty on states to make financial resources available that match the needs of the different judicial systems.

5. **The CCJE agreed that although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations.** Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. **Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.**

6. In the majority of countries, the Ministry of Justice is in turn involved in presenting the court budget to, and negotiating it with, the Ministry of Finance. In many countries, prior judicial input takes place in the form of proposals made either directly or indirectly by courts to the Ministry of Justice. However, in some cases, courts present budget proposals to the Ministry of Finance direct. Examples are the Supreme Courts of Estonia and of Slovakia for their own budgets and the Supreme Courts of Cyprus and of Slovenia for courts of all levels. In Switzerland the Federal Supreme Court has the right to submit its own budget (approved by its Administrative Commission, consisting of three judges) to the Federal Parliament, and its President and Secretary-General have the right to appear to defend its budget before Parliament. In Lithuania a Constitutional Court decision of 21st December 1999 established the principle that each court had the right to have its own budget, separately itemised in the State budget approved by Parliament. In Russia, the Federal Budget must make separate provision

for the budget of the Constitutional Court, the Supreme Court and other common law courts and the Federal Court of Arbitration and other arbitral tribunals, *and* the Council of Russian Judges has the right not only to participate in the negotiation of the federal budget, but also to be represented in its discussion in the chambers of the Russian Federal Assembly. In the Nordic States recent legislation has formalised the procedure for co-ordinating court budgets and submitting them to the Ministry of Justice – in Denmark the Court Administration (on whose steering committee the majority of the members are representatives of different courts) fulfils this role. In Sweden the National Courts Administration (a special governmental body, with a steering committee, the minority of whose members are judges) fulfils a like function, with obligations to prepare rolling three-year budgets.

7. In contrast, in other countries there is no formal procedure for judicial input into the budget negotiated by the Minister of Justice or equivalent to fund court costs, and any influence is informal. Belgium, Croatia, France, Germany, Italy (save for certain disbursements), Luxembourg, Malta, Ukraine and the United Kingdom all provide examples of legal systems within this category.

8. The extent to which the court system is considered to be adequately funded is not always related to the extent to which formal procedures exist for proposals by or consultation with the judiciary, although more direct judicial input was still regarded as an important need. The replies to the questionnaire too often reveal a wide range of deficiencies, from, in particular, a shortage of appropriate material resources (premises, furniture, office and computer equipment, etc) to a total lack of the kind of assistance that is essential to judges for the modern exercise of judicial functions (qualified staff, specialist assistants, access to computerised documentation sources, etc). In Eastern European countries especially, budgetary restraints have led Parliaments to constrict the monies made available for court funding to a relatively small proportion of that required (e.g. 50% in Russia). Even in Western European countries, budgetary constraints have operated to limit courtrooms, offices, IT and/or staff (in the latter case, meaning sometimes that judges cannot be freed from non-judicial tasks).

9. One problem which may arise is that the judiciary, which is not always seen as a special branch of the power of the State, has specific needs in order to carry out its tasks and remain independent. Unfortunately economic aspects may dominate discussions concerning important structural changes of the judiciary and its efficiency. While no country can ignore its overall financial capability in deciding what level of services it can support, the judiciary and the courts as one essential arm of the State have a strong claim on resources.

10. Although the CCJE cannot ignore the economic disparities between countries, the development of appropriate funding for courts requires greater involvement by the courts themselves in the process of drawing up the budget. **The CCJE agreed that it was therefore important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.**

11. One form which this active judicial involvement in drawing up the budget could take would be to give the independent authority responsible for managing the judiciary – in countries where such an authority exists¹ – a co-ordinating role in preparing requests for court funding, and to make this body Parliament's direct contact for evaluating the needs of the courts. It is desirable for a body representing all the courts to be responsible for submitting budget requests to Parliament or one of its special committees.

12. Management of the budget allocated to the courts is an increasingly extensive responsibility requiring professional attention. The CCJE discussions have shown that there is a broad distinction between, on the one hand, systems in which management is undertaken by the judiciary or persons or a body answerable to the judiciary, or by the independent authority with appropriate administrative support answerable to it and, on the other, those in which management is entirely the responsibility of a government department or service. The former approach has been adopted in some new democracies, as well as other countries because of its

perceived advantages in ensuring judicial independence and in ensuring the judiciary's ability to perform its functions.

13. If judges are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task. In any event, it is important that judges are responsible for all administrative decisions which directly affect performance of the courts' functions.

Conclusion

14. The CCJE considered that States should reconsider existing arrangements for the funding and management of courts in the light of this opinion. The CCJE in particular further draws attention to the need to allocate sufficient resources to courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights.

¹ See the Opinion N° 1 (2201) on standards concerning the independence, efficiency and role of judges, under the heading "the appointing and consultative bodies"