

Consultative Council of European Judges (CCJE)

Opinion no 5 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on the law and practice of judicial appointments to the European court of human rights

1. The CCJE in its 4th meeting in Strasbourg, 24-28 November 2003, took note of the report dated May 2003 of the International Center for the Legal Protection of Human Rights (Interights) on "Law and Practice of Appointments to the European Court of Human Rights".

2. The CCJE welcomes the conclusions and recommendations proposed by the report. It regards them as an important step towards implementing the recommendations contained in its Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, which the CCJE wishes to affirm, concerning:

(a) the appointment process for judges on international courts, in particular paragraph 56 of that Opinion stating:

"The CCJE agreed that the importance for national legal systems and judges of the obligations resulting from international treaties such as the European Convention on Human Rights and also the European Union treaties makes it vital that the appointment and re-appointment of judges to the courts interpreting such treaties should command the same confidence and respect the same principles as national legal systems. The CCJE further considered that involvement by the independent authority referred in the paragraphs 37 and 45 should be encouraged in relation to appointment and re-appointment to international courts. The Council of Europe and its institutions are in short founded on belief in common values superior to those of any single member State, and that belief has already achieved significant practical effect. It would undermine those values and the progress that has been made to develop and apply them, if their application was not insisted upon at the international level."

Paragraphs 37 and 45 advocate the intervention of an independent authority with substantial judicial representation in relation to all judicial appointments.

(b) the tenure of office, in particular paragraphs 57 and 52 stating:

"It is a fundamental tenet of judicial independence that tenure is guaranteed until a mandatory retirement age or the expiry of a fixed term of office."

"The CCJE considered that where, exceptionally, a full-time judicial appointment is for a limited period, it should not be renewable unless procedures exist ensuring that:

- i. the judge, if he or she wishes, is considered for re-appointment by the appointing body and
- ii. the decision regarding re-appointment is made entirely objectively and on merit and without taking into account political considerations."

3. The objective criteria for appointment as a judge to the European Court of Human Rights are fixed in Article 21 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which states:

“The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.”

4. The CCJE which consists of national judges from the 45 members States of the Council of Europe, emphasises the fundamental importance which it attaches to the appointment to the European Court of Human Rights of judges who not only meet such criteria but are the best candidates available for such appointment. The integrity and reputation of the Court, and so also of the Convention, depends upon this.