

Strasbourg, 6 November 2020

## **CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)**

### **CCJE Opinion No. 23 (2020)**

### **The role of associations of judges in supporting judicial independence**

#### **I. Introduction**

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Judges (CCJE) has prepared the Opinion on the role of associations of judges in supporting judicial independence.
2. This Opinion has been prepared on the basis of previous CCJE Opinions, the CCJE Magna Carta of Judges (2010) and relevant instruments of the Council of Europe, in particular the European Charter on the Statute for Judges (1998) and Recommendations of the Committee of Ministers CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities and CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe, Report of the European Commission for Democracy through Law (Venice Commission) on the Freedom of Expression of Judges (CDL-AD(2015)018), Common Guidelines on the Freedom of Associations of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). It also took into account the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct, the Universal Charter of the Judge of the International Association of Judges, the first report of the UN Special

Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association of 21 May 2012 (A/HRC/20/27) and the third report of 24 June 2019 of the UN Special Rapporteur on the independence of judges and lawyers, which deals with the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors.

3. The Opinion also takes account of the replies of the CCJE members to the questionnaire on the role of associations of judges in supporting judicial independence, and of the summary of these replies and the preliminary draft prepared by the expert appointed by the Council of Europe, Judge Gerhard REISSNER<sup>1</sup>.

## II. Scope of the Opinion

4. In 12 of the 35 member States, which answered the questionnaire, there is only one association of judges. In the majority of those member States, there is more than one association.
5. The survey of the member States showed that there is a great variety of associations of judges. Their qualifications for membership are different, their objectives diverge, and their size and representativeness vary greatly.
6. Some associations are open to judges of a certain court level only, e.g. Supreme Court judges sometimes have their separate association. Others are composed of judges of a certain specialisation. The most common associations of this type are separate associations of judges of administrative courts. There are also women judges' associations<sup>2</sup>. However, in most cases, associations allow all judges to become members.
7. Membership of all types of associations is voluntary. Therefore, the size of the association as far as the number of members is concerned may be quite different and - what is even more important - the representativity of an association, which is the ratio of the judges who are members of the association compared to all judges who could be members of that association, varies considerably.
8. Associations of judges may have legal personality. Most of them are established under a law on civil associations. They can also be constituted as informal groups of judges.
9. All associations of judges provide a network and platform to exchange and communicate between their members. The main objectives of the vast majority of associations are to promote and defend the independence of judges and the rule of law, and to safeguard the status and adequate working conditions of judges. Other important objectives are the training of judges, ethics of judges, and contributing to judicial reforms and to legislation.
10. For the purpose of this Opinion, associations of judges are self-governing non-profit organisations with or without legal personality composed of members who voluntarily apply for membership.
11. In the majority of associations, membership is open to judges including, in most cases, also retired judges. In some associations, trainee judges and judicial assistants could

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<sup>1</sup> Judge REISSNER was the President of the CCJE in 2012-2013, and a long-standing member of the CCJE Working Group.

<sup>2</sup> The existence of women judges' associations has been reported by Bosnia and Herzegovina, Italy, Slovakia, Ukraine and the United Kingdom.

also become members. In some associations, especially if there is a common career for judges and prosecutors, prosecutors can also be members.

### III. International and European framework

12. The Universal Declaration of Human Rights<sup>3</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>5</sup> grant everybody the right to associate, that is the right to form and to join associations.
13. As all individuals, judges enjoy these fundamental rights, which are protected by the above-mentioned documents<sup>6</sup>. In exercising their right to freedom of peaceful assembly, judges should bear in mind their responsibilities and avoid situations which could be regarded as being incompatible with the authority of their institution or inconsistent with their duty to be, and to be perceived as, independent and impartial<sup>7</sup>.
14. The right to associate is not only in the interest of a judge personally. As regards judges, this right is in the interest of the whole judiciary as well. The right for judges to associate is explicitly granted in the UN Basic Principles for the Independence of the Judiciary<sup>8</sup>, the Bangalore Principles of Judicial Conduct<sup>9</sup> and the Universal Charter of the Judge<sup>10</sup>.
15. In Europe, the right to form associations of judges was further developed in 1998 by the European Charter on the Statute for Judges<sup>11</sup> and in 2010 by Recommendation (2010) 12 of the Committee of Ministers of the Council of Europe on Judges, Independence, Efficiency and Responsibilities (Recommendation (2010)12)<sup>12</sup> and by the CCJE Magna Carta of Judges (Fundamental Principles)<sup>13</sup>. The European Charter underlines the contribution of associations of judges to the defence of the rights which are conferred on judges by their status, Recommendation (2010)12 echoes this and names the most central element of a judge's status, which is independence, and adds as an additional task the promotion of the rule of law. The Magna Carta of Judges addresses this objective as "defence of the mission of the judiciary in the society". Such developments in terms of broadening the tasks can also be seen when analysing the objectives of associations of judges, where today more and more the focus on the status of judges is accompanied by an equally strong awareness of raising regard for the rule of law.

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<sup>3</sup> Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948, Article 20/1.

<sup>4</sup> International Covenant on Civil and Political Rights adopted by the UN General Assembly on 16.12.1966.

<sup>5</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (of 4.11.1950), Article 11 /1.

<sup>6</sup> CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and partiality, para 27.

<sup>7</sup> Compare also with the third report of the UN Special Rapporteur on the independence of judges and lawyers on the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors, 24 June 2019, Recommendation 107.

<sup>8</sup> United Nations Basic Principles on the Independence of the Judiciary (endorsed by the General Assembly on 29.11.1985) para 9.

<sup>9</sup> Bangalore Principles of Judicial Conduct, Principles 4-6.

<sup>10</sup> Universal Charter of the Judge (adopted by the IAJ on 14.11.2017) Article 3/5.

<sup>11</sup> European Charter on the Statute for Judges: principles 1.7 und 1.8.

<sup>12</sup> Recommendation (2010)12, para 25.

<sup>13</sup> CCJE Magna Carta of Judges (Fundamental Principles) (17.11.2010), para 12.

#### IV. Rationale and objectives of the associations of judges

16. Judges are basic cornerstones within States built on democracy, the rule of law and human rights<sup>14</sup>. It is a logical consequence of this role that the above-mentioned European standard-setting documents envisage, and the statutes of many associations of judges express as central goals, two overriding objectives: 1) establishing and defending the independence of the judiciary; 2) fostering and improving the rule of law. Both objectives foster the effective enjoyment of the fundamental right to a fair trial by an independent and impartial tribunal set forth in Article 6 of the ECHR.
17. The first objective for an association of judges of establishing and defending independence encompasses among other factors defending judges and the judiciary against any infringements of independence, claiming sufficient resources and satisfactory working conditions, aiming for adequate remuneration and social security, rejecting unfair criticism and attacks against the judiciary and individual judges, establishing, promoting and implementing ethical standards, and safeguarding non-discrimination and gender balance.
18. The second objective for an association of judges of fostering and improving the rule of law encompasses among other factors contributing to training, exchanging and sharing knowledge and best practices, contributing to the administration of justice in conjunction with those who are responsible for it, contributing to reforms of the justice system and law making, fostering the knowledge and information of the media and the general public about the role of judges, the judiciary and the rule of law.
19. The objectives mentioned so far are not exclusively objectives of associations of judges. Several other actors within and outside the justice system play a role in reaching them. To succeed, mutual respect, openness, support and co-operation will be helpful.
20. Associations of judges can also facilitate meetings with representatives of civil society who are able to express society's expectations of the justice system and the administration of justice<sup>15</sup>.
21. An obvious objective of an association of judges is the creation of a network among its members. It brings together judges who exercise their tasks on their own or in a panel of judges, having nevertheless common interests and needs. Providing the opportunity of dialogue and critique between judges helps to improve independence by self-criticism from within the judiciary and to develop a strong value-based justice system. Being together in an association leads judges to an exchange of experience and best practices<sup>16</sup>. This is most fruitful in the case when judges of different court levels and jurisdictions come together. Associations of judges may also be the place for deepening the knowledge of specialised judges and in that way contributing to the consistent application of the law. And last, but not least, associations of judges help in developing a common spirit for the independence of the judiciary, human rights and the rule of law.

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<sup>14</sup> Regarding the role of the judiciary, see CCJE Opinion No. 18 (2015) on the position of the judiciary and its relations with the other powers of state in a modern democracy.

<sup>15</sup> CM/Rec(2010)12, para 20.

<sup>16</sup> Like in the case of exchanges among judges of the same court since in many member States, meetings among them are held aiming "to disseminate legal developments in case law and good professional practice", see the CEPEJ report on "Breaking up judges' isolation - Guidelines to improve the judge's skills and competences, strengthen knowledge sharing and collaboration, and move beyond a culture of judicial isolation" of 6 December 2019, CEPEJ(2019)15, p. 8.

22. Associations of judges also facilitate transborder co-operation and enable exchanges with associations in other member States. They associate also at European level through a number of European judicial associations and organisations. In this way, national associations of judges open the door for international exchange of experience for their members, and they play an important role in disseminating European standards within the national communities of judges.
23. Based on the above-mentioned important aspects of associations of judges and their significance for supporting the core values of judicial systems in member States, the CCJE considers it highly desirable that in every justice system at least one such association of judges exists.

## **V. How associations of judges may reach their objectives**

### **A) Within the judiciary**

24. In fostering and defending the independence of judges and the judiciary, associations of judges have to carry out a wide range of activities. The independence of an individual judge requires an independent judiciary<sup>17</sup>. Independence precludes not only influence from outside but also from within the judiciary<sup>18</sup>. Associations of judges can often deal with threats, unfair criticism and attacks. But it is much more difficult to counter undue interference in the form of decisions by competent authorities influencing the career of judges (appointment, promotion, transfer, disciplinary and evaluation procedures and so on) or of all kinds of decisions regarding court administration.
25. The competence for such decisions is entrusted to Councils for the Judiciary, court administration bodies, presidents of courts, and sometimes even to the executive power (the Government or the Minister of Justice). To achieve their objectives, associations of judges therefore have to be in contact with, and address, these bodies.
26. Such contacts should be based on openness, mutual respect for their respective roles and jurisdictions and willingness to listen to each other's arguments. Associations of judges should not intervene in career decisions, but they can monitor whether the competent actors follow the correct procedure and apply the correct criteria.
27. Court administrators should be aware that associations of judges not only transmit the position of their members, but they are a melting pot of the experience of their members. Very often, it is practitioners who know best what is needed in practice. The CCJE has recommended that bodies of judges of a court should advise the court president<sup>19</sup>. In a similar way, associations of judges might also play such an advisory role vis-a-vis court administrators or court administration bodies of all levels.
28. Especially at the level of the court administration, which is responsible for adopting various directives and regulations, the involvement of associations of judges as regards strategic objectives and important matters of general application might be fruitful and advisable.

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<sup>17</sup> CM Recommendation (2010)12, para 4.

<sup>18</sup> ECtHR *Parlov-Tkalcic vs. Croatia*, No. 24810/06, para 86, *Agrokompleks vs. Ukraine*, No. 23465/03, para 137 et alt.

<sup>19</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para 19.

29. In the majority of member States, decisions on the career of judges and/or the administration of courts are entrusted to the Councils for the Judiciary<sup>20</sup>. Their general mission is to safeguard the independence of the judiciary and of individual judges and the rule of law<sup>21</sup>. Thus, the tasks of the Councils for the Judiciary and the overriding objectives of associations of judges coincide. Many times, there will be conformity of views, but different opinions may nevertheless arise between associations of judges and the Councils for the Judiciary, the latter usually having a mixed composition of judges and non-judges. An open exchange of opinions should take place in such situations.
30. In its search for best practices, the CCJE learned that in two member States<sup>22</sup>, there are consultative councils consisting, *inter alia*, of representatives of associations of judges and prosecutors where matters regarding their professional interests, including their status, working conditions, remuneration and other such matters, are discussed and non-binding recommendations on relevant legislative amendments are prepared. The CCJE recommends such initiatives.
31. The CCJE has taken note that in several member States, the association of judges has a certain influence on the selection of members of the Council for the Judiciary either by having the right to forward an opinion on candidates<sup>23</sup>, supporting candidates who need a certain number of colleagues proposing them<sup>24</sup>, having the possibility of nominating judges<sup>25</sup> or a legal duty to nominate candidates<sup>26</sup>, or having a legally based formal position regarding selection<sup>27</sup>, or even electing members themselves<sup>28</sup>.
32. Provided that it does not infringe the independence of the work of the Council for the Judiciary, such participation in the selection of its members could be welcomed. Care must be taken, however, that such a system does not lead to the politicisation of the election and the following work of the Council. In any case, there should be no discrimination and members of an association of judges should be free to become members of a Council for the Judiciary.
33. Many associations of judges are involved in the training of judges either by organising training or developing training materials and training facilities themselves<sup>29</sup>, by providing experienced trainers or at least by forwarding recommendations to the institution in charge of organising the training. The CCJE, in its Opinion No. 4 (2003) on appropriate initial and in-service training for judges at national and European levels, indicates that the judiciary should play a major role in, or itself to be responsible for, organising training, and that training should not be entrusted to the executive or legislative powers<sup>30</sup>. The

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<sup>20</sup> CCJE Opinion No. 10 (2007) on the Council for the Judiciary at the service of society, para 42.

<sup>21</sup> Ibid, paras 8ff and 41f.

<sup>22</sup> Belgium (Conseil consultatif de la magistrature), Bulgaria (Partnership Council).

<sup>23</sup> Bulgaria (Partnership Council).

<sup>24</sup> Romania, Spain.

<sup>25</sup> Norway (proposal of judges members of Appointment Board), Slovakia (proposal like every civic association).

<sup>26</sup> Azerbaijan (two nominations for each of seven judges members positions).

<sup>27</sup> The Netherlands.

<sup>28</sup> North Macedonia (president and one member and deputies).

<sup>29</sup> Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Germany, Greece, Lithuania, Montenegro, North Macedonia, Poland, Romania, Russian Federation, Slovenia, Spain, Switzerland, Ukraine, United Kingdom.

<sup>30</sup> CCJE Opinion No. 4 (2003) on appropriate initial and in-service training for judges at national and European levels, para 16, see also European Charter on the Statute for Judges, para 2.3.

involvement of associations of judges, which are close to the needs and practical experience of their members, is therefore very appropriate.

34. Ethical principles of professional conduct should be drawn up by judges themselves<sup>31</sup>. The fact that judges voluntarily associate and that there is a forum for exchange and debate guarantee a strong commitment on the part of the judges to any principles of conduct drawn up by associations of judges<sup>32</sup>, or development of such principles where associations of judges are at least intensively involved<sup>33</sup>.
35. For the same reasons, associations of judges are also well placed to establish a body to advise judges confronted with a problem related to professional ethics or the compatibility of non-judicial activities with their status<sup>34</sup>.
36. In some member States, associations of judges represent judges in disciplinary proceedings if they request representation. There can be no objection to judges' associations representing their members in disciplinary proceedings and contributing to ensuring a fair procedure, especially if such proceedings are abused in order to orchestrate the removal of certain judges. But care must be taken to avoid any appearance that associations of judges are protectors of judges guilty of misconduct. Fostering a credible accountability of judges and of the judiciary is an important task of associations of judges.

#### **B) In relation to other powers of state**

37. The CCJE considers that associations of judges should avoid orienting their activities according to the interests of political parties or candidates for political office, and they should not involve themselves in political issues which are outside of their objectives.
38. Associations of judges represent the experience and opinion of judges, and they need ways to forward their considerations and proposals to the other powers of state. The CCJE agrees with the observations in the explanatory memorandum to Article 1.8 of the in the European Charter on the Statute for Judges that "judges should be associated in the determination of the overall judicial budget and the resources earmarked for individual courts, which implies establishing consultation or representation procedures at the national and local levels. This also applies more broadly to the administration of justice and of the courts" and that "consultation of judges by their representatives or professional associations on any proposed change in their statute or any change proposed as to the basis on which they are remunerated, or as to their social welfare, including their retirement pension, should ensure that judges are not left out of the decision-making process in these fields".
39. The Committee of Ministers of the Council of Europe has considered that "participatory democracy, based on the right to seek to determine or to influence the exercise of a

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<sup>31</sup> CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paras 48 lit ii and 49 lit iii; see also Recommendation (2010)12, para 73.

<sup>32</sup> There are codes of ethics elaborated by associations of judges in Austria, Bulgaria, Croatia, Denmark, Finland, Iceland, Italy, Malta, The Netherlands, Norway, Slovenia, Spain, Switzerland.

<sup>33</sup> Other involvement of association of judges in establishing ethical standards: Azerbaijan, Belgium, Estonia, Germany, Ireland, Lithuania, Luxemburg, Montenegro, North Macedonia, Romania, Slovakia, Sweden, Turkey, Ukraine, United Kingdom.

<sup>34</sup> CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para 49 lit iv and Recommendation (2010)12, para 74.

public authority's powers and responsibilities, contributes to representative and direct democracy and that the right to civil participation in political decision-making should be secured to individuals, non-governmental organisations (NGOs) and civil society at large"<sup>35</sup>. In relation to non-governmental organisations, the Committee of Ministers acknowledged "the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities"<sup>36</sup>. NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation<sup>37</sup>.

40. The CCJE is convinced that these possibilities of participation should also be entrusted to associations of judges, although they are not organisations which represent civil society, but organisations, the members of which are holders of positions within the third power of state. The CCJE, in its Opinion No. 18 (2015) on the position of the judiciary and its relations with the other powers of state in a modern democracy, provides guidance as far as the discussion with other powers of state<sup>38</sup>, the dialogue with the public<sup>39</sup>, and the need for restraint in the relations between the three powers<sup>40</sup> are concerned. This Opinion should in a similar way be used as a source of guidance as regards the relations between judges' associations on the one hand, and the legislative and executive powers on the other hand.
41. The CCJE endorses the participation of associations of judges in the legislative procedure in the case of draft laws regarding the justice field which are put forward by the executive power. When reform commissions or similar strategic project groups are established, representatives of associations of judges nominated by their association should be involved. More generally, the opinion of associations of judges should be requested and considered by the executive power at all levels in respect of judicial reforms and projects including budgetary issues and the allocation of resources, working conditions and all aspects of the status of judges.
42. In some member States, the formal participation of associations of judges in the procedure of drafting and amending laws is ensured by formal regulation by law or by-law<sup>41</sup>. In several other member States, this is at least steady practice<sup>42</sup>. The CCJE welcomes practice which provides associations of judges with the possibility to consider and comment on intended legislation in matters connected with the status of judges and the administration of courts, for which an appropriate time should be provided and the results of which should be taken seriously into consideration. At the same time, associations of judges should stay out of politically controversial subjects outside their objectives.
43. The CCJE sees it as an essential task of associations of judges to engage responsibly in the search for possibilities of improving further the justice system and strengthening the rule of law.

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<sup>35</sup> Guidelines for Civil Participation in Political Decision Making, CM (2017) 83, preamble.

<sup>36</sup> Recommendation CM/Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe, preamble, para 2.

<sup>37</sup> *Ibid.*, para 77.

<sup>38</sup> CCJE Opinion No 18 (2015) on the position of the judiciary and its relations with the other powers of state in a modern democracy, para 32.

<sup>39</sup> *Ibid.*, para 33.

<sup>40</sup> *Ibid.*, para 40 and paras 53 to 55.

<sup>41</sup> Austria (as regards the ordinary courts), Estonia, Germany, Greece, Iceland, Montenegro, The Netherlands, Romania, Slovakia.

<sup>42</sup> Finland, Italy, Poland, Switzerland.

### **C) In interaction with society at large**

44. Associations of judges are particularly well placed to play a role in informing the media and the general public about the work and priorities of the judiciary, including the duties and powers of judges, and the role of the judiciary and the other powers of state in a democratic state governed by the rule of law.
45. The CCJE notes with satisfaction that many associations of judges contribute in a significant and effective manner to measures aimed at fostering the relations and the understanding between the judiciary and the public, such as court education programmes, information materials, open court events, public debates, presentations, other outreach programs etc.<sup>43</sup> Such measures are most effective if they are exercised by those who work in the system. Associations of judges should therefore involve themselves in these activities. It would also appear to have become more common that associations of judges organise conferences, exercise pro-active media policies and make use of social media in their work, all steps that the CCJE welcomes.
46. Associations of judges sometimes work together with NGOs in the pursuit of certain objectives. This may improve the likelihood of achieving such shared goals, provided that any politicisation is avoided.

## **VI. What is needed for associations of judges to fulfil their tasks**

### **A. General guidelines**

47. In 2014, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted Joint Guidelines on Freedom of Association<sup>44</sup> (hereafter Guidelines on Freedom of Association), which deal with the fundamental right to form and join associations. The CCJE agrees with these Guidelines. Most of the standards which are laid down in that document can also be applied for associations of judges.
48. In particular, the CCJE recalls the following standards:
  - a) everyone is equally entitled to the right to associate<sup>45</sup>;
  - b) formation and registration (where applicable) should not be unnecessarily burdensome or discouraging<sup>46</sup>;
  - c) the principle of self-government should be respected and enabled<sup>47</sup>, which means among other things that any influence from outside on the objectives and on their

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<sup>43</sup> CCJE Opinion No. 7 (2005) on justice and society, chapter A: Relations of the courts with the public, paras 10 to 20, and CCJE Opinion No. 6 (2004) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement, chapter A: Access to justice, paras 11 to 18.

<sup>44</sup> Venice Commission and OSCE/ODIHR Joint Guidelines on the Freedom of Association, VC CDL-AD (2014)046 resp. OSCE/ODIHR Legis Nr. GDL-FOASS/263/2014.

<sup>45</sup> Ibid., paras 122 ff.

<sup>46</sup> Ibid., para 151.

<sup>47</sup> Ibid., paras 169 and 171.

- implementation, on the internal structure<sup>48</sup> and the selection of the officers of an association of judges<sup>49</sup> should be forbidden;
- d) the possibility to be involved in a transparent law-making process and dialogue<sup>50</sup> and to comment on state reports to international actors should be granted<sup>51</sup>;
  - e) a termination or suspension of activities should be possible only in very exceptional limited cases<sup>52</sup> and should be reviewed by an independent tribunal<sup>53</sup>;
  - f) the use of new technologies should be allowed as it is for everyone; surveillance measures which specifically aim to observe associations and blocking of websites should be forbidden<sup>54</sup>.

## **B. Special position of judges**

- 49. Regarding associations of judges, it seems necessary to consider some features stemming from judges' special position and tasks. Judges have to be independent and impartial. They have not only to be independent and impartial but also to seen as such. Judges form the judiciary, which is one of the three powers of the state, but it is a power which is vested in individual judges or their panels.
- 50. For the judiciary as a state branch of power, it is not as easy as it is for the executive or the legislative powers, both streamlined by political parties and hierarchies, to constitute a common will and to communicate in a united way with the other powers, the media and society at large.
- 51. Judges also enjoy the fundamental right of freedom of expression<sup>55</sup>, although individual judges are limited by rules of confidentiality regarding their cases and other information when it comes to issuing statements and expressing their thoughts.
- 52. The impact of the statement of one judge certainly has limited effect. Associations of judges can contribute to remedy these inherent disadvantages in two ways. They can help to find a common position and they can convey this position effectively to outside actors.
- 53. If there is more than one association of judges within the justice system, associations of judges sometimes have different positions with regard to certain common problems. Although pluralism enriches the democratic debate on justice, the CCJE welcomes putting efforts into finding a common position on important issues in order to have a strong impact on other actors within and outside the justice system.
- 54. The CCJE recognises the importance and value of associations of judges. They have the potential to significantly contribute to the rule of law in the member States even if the above-mentioned features of associations composed of judges result in special limitations and awareness.

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<sup>48</sup> Ibid., para 175.

<sup>49</sup> Ibid., para 174.

<sup>50</sup> Ibid., paras 183 and 184.

<sup>51</sup> Ibid., para 186.

<sup>52</sup> Ibid., paras 244, 245, 251.

<sup>53</sup> Ibid., paras 244 and 256.

<sup>54</sup> Ibid., paras 265, 270, 271.

<sup>55</sup> ECtHR judgments in *Baka v. Hungary*, 23 June 2016; *Harabin v. Slovakia*, 20 November 2012; see also Article 11 of the ECHR.

55. The CCJE is convinced that the requirement for associations of judges to be independent and self-governing bodies is an essential element which, on the one hand, is an aspect of the fundamental right to form and join associations, but is also closely linked to the independence of judges and the judiciary and the principle of division and balance of state powers. Although associations of judges are not the bearers of these constitutional rights, in practice, pressure and influence can indirectly be put on judges and the judiciary if influence on associations of judges is exercised.
56. Therefore, it is absolutely necessary that the objectives, internal structure, membership, and selection of officers of associations of judges are free of external influence or control.
57. Membership of an association should not have any influence on the career of judges, and it should offer neither advantages nor disadvantages. Members should not be obliged to disclose their membership<sup>56</sup>, thereby being subjected to an interference in their right to privacy concerning such sensitive data. Considering that associations of judges protect their interests in this regard, membership data must be treated like that of trade unions, for which disclosure is excluded<sup>57</sup>. Even if regulations require judges to declare assets and interests in order to make transparent possible conflicts of interest, that cannot include declaring the membership in associations of judges, because there is no conflict of interest between such membership and the exercise of the judicial functions.

### **C. Resources and governance**

58. Depending on the range of objectives and means foreseen to implement them, associations of judges need resources to different extents. Membership fees are the primary source of income for most associations. The fees should not be discriminatory or prohibitive and thereby risk excluding judges who cannot afford them.
59. Often, additional financial or other equipment will be necessary. The CCJE endorses the demand in the Guidelines on Freedom of Association that “associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities”<sup>58</sup>. Whatever funding is available, it must be transparent and must not impair or give the impression of impairing the independence of associations of judges.
60. Many associations earn some income from publications, training activities, organising seminars, conferences and other events or participating in national or international projects. Others benefit from their assets, from donations, legacies and subsidies. If such additional sources of income are used, utmost care has to be taken that the independence of the association is not infringed and that not even the appearance of influence on the activities of the association arises. This also has to be considered if the support is provided from the state budget and is based on certain conditions. Spending public money out of the state budget results normally in some financial control. Therefore, caution should be observed not only in respect of becoming dependent on

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<sup>56</sup> See CCJE Bureau’s Opinion on the Amendments of 11.8.2017 of the Bulgarian Judicial System Act of 2.11.2017 (CCJE-BU(2017)10), paras 10 to 16.

<sup>57</sup> *Ibid.*, para 13, and International Labour Organisation (ILO) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (Revised) Edition, 2006, para. 866.

<sup>58</sup> Joint Guidelines on the Freedom of Association, para 32.

such funding but also in respect of the control exercised, which may never include control of the content or priority of activities.

61. Funding the associations of judges should not harm their non-profit character, which means that the generation of income must not be their primary purpose. An association must not distribute among its members any profits arising from its activities but should invest them in the association for the pursuit of its objectives<sup>59</sup>. Associations of judges should have in place strict transparency rules about their funding.

#### **D. Internal structure**

62. Associations of judges claim to act on behalf of their members and to be guided by a common will. This requires a democratic structure within the association and decisions to be taken and activities exercised in a transparent way. This is even more important if associations, due to their high representativeness, intend to speak on behalf of all judges or all judges of a certain jurisdiction.
63. To meet these requirements, the CCJE recommends that officers of the association (president, executive board, others) should be elected in a democratic, non-discriminatory way by their members or delegates elected by their members. Decisions of the board or other executive organs should be transparent and reasoned. An open dialogue between members and officers should be established, giving a fair chance to each group within the association to be heard, without any discrimination.

#### **E. Relations with political parties**

64. Associations of judges and their officers should not be part of, or inclined towards, a political party. Attempts by political parties or groups to influence the politics of the association or the elections of its officers should be clearly rejected. Representatives of the association should not be seen as agents of political groups but as actors who are committed only to the requirements of the justice system. This does not mean that associations of judges do not interact with political parties. In order to convey and fight for the needs and necessary reforms of the justice system, the rule of law and respect for human rights, associations of judges may have to engage, if debates are necessary, in exchanges with political parties having committed themselves to democracy and the rule of law.
65. The CCJE is not in favour of systems where different groups of members within an association are sponsored, designated or supported by different political parties, especially during times of campaigns for the election of officers of the association.

#### **F. Associations of judges and trade unions**

66. Judges' working conditions, their remuneration, pension and security should be safeguarded by the State. Thus, judges face a similar challenge to protect and improve their personal situation as other individuals vis-a-vis their employers, and in this respect, associations of judges have similar interests as trade unions.

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<sup>59</sup> Ibid., para 43.

67. Judges can also form trade unions and join trade unions<sup>60</sup>. Legislation may impose some restrictions on these rights in respect of judges, but these restrictions must not totally deprive judges of these fundamental rights<sup>61</sup>.
68. The practice of membership of judges in trade unions in member States varies considerably. In some member States, legal and cultural tradition sees such membership as incompatible with the position and the role of a judge. In other member States, some judges are members of trade unions and of associations of judges at the same time. And there are some associations of judges who are recognised as trade unions or see themselves as such<sup>62</sup>. Sometimes, the status as a trade union provides them with additional means.
69. These different traditions have to be respected. Nevertheless, the CCJE has to underline that care must be taken that, if trade unions are dominated by party politics, such politicisation does not affect the judges and their image. Otherwise such practice could lead to allegations of bias and lack of impartiality.

## **VII. Status, objectives and role of international associations of judges**

70. During the last decades, Europe very quickly developed a common legal space. On the one hand, more and more instruments for cross-border co-operation between the national judiciaries were created. On the other hand, under the umbrella of the ECHR and the jurisprudence of the European Court of Human Rights, the common European fundamental values have impacted directly on national legal systems and their functioning. In parallel, the development of jurisprudence and the power of standard-setting and of execution of common regulations was partly shifted to actors at European level. These new European institutions were created and filled by way of the influence of members of the national executive or legislative powers.
71. The developments described above have been accompanied by steps by representatives of national judicial powers to become involved also at the European level. Several European associations of judges have been established, some of which are federations of national associations, while others have as their members judges of different countries, and others again provide membership for national associations as well as individual members.
72. For their members, such associations provide an important opportunity to exchange experiences of different legal systems and of the interpretation of common standards and values.
73. Like national associations of judges, the European associations of judges are committed to the objectives of defending and fostering the independence of judges and the judiciary and safeguarding and promoting the rule of law.
74. They try to establish a dialogue with actors at European level, to contribute to standard-setting at this level and to draw the attention of European authorities to problems in the justice systems in member States.

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<sup>60</sup> Commentary to Bangalore Principles of Judicial Contact, para 176.

<sup>61</sup> See ECtHR *Matelly v. France*.

<sup>62</sup> Finland, France, Greece, Luxemburg (association is a non-registered subsection of a union for public servants), The Netherlands.

75. European associations of judges observe the developments of justice systems in member States and their conformity with European standards. They are a melting point of vast experience and a platform for exchange between national judiciaries while also working to promote European standards. European associations contribute considerably to informing their members about European developments and new jurisprudence and standard setting, as well as to training on European standards.
76. By their membership in European associations of judges, national associations have a better opportunity to signal problems to the European authorities and they can strengthen their own influence due to the reputation of European associations. In member States themselves, arguments are sometimes taken more seriously if they are put forward by a European actor.
77. The CCJE, which has accepted European associations of judges as observers, is grateful for their fruitful contributions to its reflections. It recommends that other European actors follow this example in order to involve these associations in their work.

#### **VIII. How member States should deal with associations of judges**

78. The main objectives of associations of judges - fostering and defending the independence of judges and of the judiciary, the rule of law and human rights - are aligned with the fundamental principles of the Council of Europe and the commitments of its member States. This common interest should lead to common efforts of associations of judges and member States.
79. States must not only refrain from applying unreasonable indirect restrictions on the right to assemble peacefully and to associate and on the right to freedom of expression<sup>63</sup> but must also safeguard these rights<sup>64</sup>.
80. Member States should therefore provide a framework, which makes it possible for judges to freely exercise their right to associate and within which associations of judges can fruitfully work to fulfil their objectives.
81. Associations of judges and member States should engage in an open and transparent dialogue based on trust, on all relevant issues regarding the justice system.
82. Politicians should refrain from trying to influence judges or their associations to support interests of party politics neither by threats, unjustified accusations or media campaigns nor by providing professional promotions or benefits for the officers or the members nor by other means.
83. Member States should use their influence on European institutions and support initiatives to establish and facilitate a dialogue between these institutions and European associations of judges.

#### **IX. Conclusions and recommendations**

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<sup>63</sup> See ECtHR *Kudeshkina v. Russia* (26.02.2009).

<sup>64</sup> For negative and positive obligations, see ECtHR *Öllinger v. Austria*, para 35 et alt; see the Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association of 21 May 2012 (A/HRC/20/27), paras 33-42.

1. Associations of judges are self-governing non-profit organisations composed of members who voluntarily apply for membership.
2. The CCJE considers it highly desirable that in every justice system, at least one such association of judges exists.
3. Member States have to provide the framework in which the right of judges to associate and the right to freedom of expression can effectively be exercised, and they have to refrain from any interventions which might infringe the independence of the associations of judges.
4. The most important objectives of associations of judges are to establish and defend the independence of judges safeguarding their status and seeking to ensure adequate working conditions for them, and to foster and improve the rule of law.
5. Associations of judges can also play an important role as regards the training and ethics of judges and contribute to judicial reforms.
6. By virtue of their role and work, associations of judges may provide a decisive contribution to the functioning of the justice system and the rule of law. In all cases, such contribution should be important and valuable.
7. It is advisable that associations of judges be provided with a possibility to consider and comment on intended legislation in matters connected with the status of judges and the administration of courts.
8. A dialogue between court administrators and representatives of associations of judges, based on openness and mutual respect for their respective roles will foster the effectiveness of the justice system and its reforms.
9. Associations of judges are well placed to inform the media and the public at large about the role and functioning of the judiciary and judges.
10. Associations of judges should avoid orienting their activities according to the interests of political parties or candidates for political office, and they should not involve themselves in political issues. Their activities should be restricted to the field of their objectives.
11. Associations of judges should be structured in a democratic way. Financing and decision-making should be transparent at least for the members.
12. Judges cannot be obliged to disclose their membership in an association of judges.
13. Associations of judges facilitate transborder co-operation and enable exchanges with associations in other member States. They associate also at European level through a number of European judicial associations and organisations.
14. The associations of judges at European level play a significant role in promoting and protecting European values and European legal standards in the field of the rule of law and human rights. Therefore, national and international authorities should pay due attention to the work of those associations.

15. The CCJE recommends that European institutions rely on, and make use of, the experience and observations which European associations collect from different member States and judicial systems.
16. CCJE promotes regular exchanges between associations of judges and European stakeholders.