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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES**

**(CCJE)**

**OPINION No. 7 (2005)**

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

**TO THE ATTENTION OF THE COMMITTEE OF MINISTERS**

**OF THE COUNCIL OF EUROPE**

**ON “JUSTICE AND SOCIETY”**

adopted by the CCJE

at its 6<sup>th</sup> meeting

(Strasbourg, 23-25 November 2005)

**INTRODUCTION**

1. For 2005 the Consultative Council of European Judges (CCJE) was given the task<sup>[1]</sup> of adopting an opinion on "Justice and Society" for the attention of the Committee of Ministers of the Council of Europe.

2. In this regard, the CCJE considered the following points which appear in the Framework Global Action Plan for Judges in Europe:

- ❑ relations with the public, the educational role of the courts in a democracy (see Part V b of the Action Plan),
- ❑ relations with all those involved in court proceedings (see Part V c of the Action Plan);
- ❑ accessibility, simplification and clarity of the language used by the court in proceedings and decisions (see Part V d of the Action Plan).

3. The preparatory work was carried out on the basis of:

- consideration of the *acquis* of the Council of Europe as well as of the results of the 5<sup>th</sup> meeting of the Presidents of European Supreme Courts on “The Supreme Court: publicity, visibility and transparency” (Ljubljana, 6-8 October 1999), the Conference of the Presidents of the Associations of Judges on “Justice and society” (Vilnius, 13-14 December 1999) and the European Ministerial Conference on Mass Media Policy (Kyiv, Ukraine, 10-11 March 2005);

- replies by delegations to a questionnaire (with an explanatory note) prepared by the Vice Chair of the CCJE and submitted to the CCJE plenary meeting which took place in Strasbourg on 22-24 November 2004;

- a report prepared by the specialist of the CCJE on this topic, Mr Eric COTTIER (Switzerland);

- the contributions of participants in the 2<sup>nd</sup> European Conference of Judges on the theme of "Justice and the Media", organised by the Council of Europe within the framework of the Polish Chairmanship of the Committee

of Ministers on the initiative of the CCJE in co-operation with the Polish National Council of the Judiciary and with the support of the Polish Ministry of Justice (Cracow, Poland, 25-26 April 2005)[2];

- a draft opinion prepared by the Working Party of the CCJE (CCJE-GT) in 2005.

4. In preparing this Opinion, the CCJE also considered the “Warsaw Declaration”, issued by the Third Summit of Heads of State and government of the Council of Europe, held in Warsaw on 16-17 May 2005, whereby the Summit reaffirmed the commitment “to strengthening the rule of law throughout the continent, building on the standard setting potential of the Council of Europe”. In this framework, the Heads of State and government stressed “the role of an independent and efficient judiciary in the member States”.

5. This Opinion concerns (A) the relations of the courts with the public, with special reference to the role of the courts in a democracy, (B) the relations of the courts with those involved in court proceedings, (C) the relations of the courts with the media, and (D) accessibility, simplification and clarity of the language used by the courts in proceedings and decisions.

## **A. THE RELATIONS OF THE COURTS WITH THE PUBLIC WITH SPECIAL REFERENCE TO THE ROLE OF THE COURTS IN A DEMOCRACY**

6. The development of democracy in European states means that the citizens should receive appropriate information on the organisation of public authorities and the conditions in which the laws are drafted. Furthermore, it is just as important for citizens to know how judicial institutions function.

7. Justice is an essential component of democratic societies. It aims to resolve disputes concerning parties and, by the decisions which it delivers, to fulfil both a “normative” and an “educative” role, providing citizens with relevant guidance, information and assurance as to the law and to its practical application[3].

8. Courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes relative thereto; the public at large have respect for and confidence in the courts' capacity to fulfil that function[4]. However, the understanding of the role of the judiciary in democracies - especially, the understanding that the judge's duty is to apply the law in a fair and even-handed manner, with no regard to contingent social or political pressures – varies considerably in different countries and socio-economic settings in Europe. The levels of confidence in the courts' activity are consequently not uniform[5]. Adequate information about the functions of the judiciary and its role, in full independence from other state powers, can therefore effectively contribute toward an increased understanding of the courts as the cornerstone of democratic constitutional systems, as well as of the limits of their activity.

9. Most citizens' experience of their court system is limited to any participation they might have had as litigants, witnesses, or jurors. The role of the media is essential in broadcasting information to the public on the role and the activities of the courts (see section C below); but, aside from communication through the media, the CCJE's discussions have highlighted the importance of creating direct relations between the courts and the public at large. Integrating justice into society requires the judicial system to open up and learn to make itself known. The idea is not to turn the courts into a media circus but to contribute to the transparency of the judicial process. Admittedly, full transparency is impossible, particularly on account of the need to protect the effectiveness of investigations and the interests of the persons involved, but an understanding of how the judicial system works is undoubtedly of educational value and should help to boost public confidence in the functioning of the courts.

10. The first way to make judicial institutions more accessible is to introduce general measures to inform the public about courts' activities.

11. In this connection, the CCJE would refer to its recommendations in Opinion No. 6 (2004) regarding the educative work of courts and the need to organise visits for schoolchildren and students or any other group with an interest in judicial activities. This does not alter the fact that it is also the state's important duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system.

12. This form of communication is more effective if those who work in the system are directly involved. Relevant school and university education programmes (not confined to law faculties) should include a description of the judicial system (including classroom appearances by judges), visits to courts, and active teaching of judicial procedures (role playing, attending hearings, etc.)<sup>[6]</sup>. Courts and associations of judges can in this respect co-operate with schools, universities, and other educational agencies, making the judge's specific insight available in teaching programmes and public debate.

13. The CCJE has already stated in general terms that courts themselves should participate in disseminating information concerning access to justice (by way of periodic reports, printed citizen's guides, Internet facilities, information offices, etc.) ; the CCJE has also already recommended the developing of educational programmes aiming at providing specific information (e.g., as to the nature of proceedings available; average length of proceedings in the various courts; court costs; alternative means of settling disputes offered to parties; landmark decisions delivered by the courts) (see paragraphs 12-15 of the CCJE's Opinion No. 6 (2004)).

14. Courts should take part in general framework programmes arranged by other state institutions (Ministries of Justice and Education, Universities, etc.). But, in the CCJE's opinion, courts should also take their own initiatives in this respect.

15. Whereas relations with individual justice users have traditionally been dealt with by the courts, albeit in an unstructured way, courts have been reluctant in the past to have direct relations with the members of the general public who are not involved in proceedings. Publicity of hearings in the sense enshrined in Art. 6 of the European Convention on Human Rights (ECHR) has been traditionally viewed as the only contact between courts and the general public, making the mass media the sole interlocutors for courts. Such an attitude is rapidly changing. The duties of impartiality and discretion which are the responsibility of judges are not to be considered today as an obstacle to courts playing an active role in informing the public, since this role is a genuine guarantee of judicial independence. The CCJE considers that member states should encourage the judiciaries to take such an active role along these lines, by widening and improving the scope of their "educative role" as described in paragraphs 9-12 above. This is no longer to be limited to delivering decisions; courts should act as "communicators" and "facilitators". The CCJE considers that, while courts have to date simply agreed to participate in educational programmes when invited, it is now necessary that courts also become promoters of such programmes.

16. The CCJE considered direct initiatives of the courts with the public, not depending on the activity of the media and/or actions for which other institutions are responsible. The following measures were considered and recommended:

- creation of offices in courts in charge of reception and information services;
- distribution of printed materials, opening of Internet sites under the responsibility of courts;
- organisation by courts of a calendar of educational fora and/or regular meetings open in particular to citizens, public interest organisations, policy makers, students ("outreach programmes").

17. A specific discussion was devoted by the CCJE to these "outreach programmes". The CCJE notes with interest that in some countries courts have been known to organise, often with the support of other social actors, educational initiatives that bring teachers, students, parents, lawyers, community leaders and the media into the courts to interact with judges and the justice system. Such programmes usually incorporate the use of professionals with prepared resources and provide a network for teachers' professional development.

18. Some actions are tailored for individuals who, because of their socio-economical and cultural conditions, are not completely aware of their rights and obligations, so that they do not exert their rights or, worse still, find themselves involved in legal proceedings due to not carrying out their obligations. The image of justice in the neediest social groups is therefore dealt with through programmes that are closely linked to arrangements for "access to justice", including but not limited to legal aid, public information services, free legal counsel, direct access to the judge for small claims, etc. (see section A of the CCJE's Opinion No. 6 (2004)).

19. The CCJE recommends a general support from the European judiciaries and the states, at the national and international levels, for judicial "outreach programmes" as described above; they should become a common practice. The CCJE considers that such programmes go beyond the scope of general information to the public.

They aim at shaping a correct perception of the judge's role in society. In this context, the CCJE considers that – while it is for the Ministries of Justice and Education to provide for general information on the functioning of justice and to define school and university teaching syllabi – courts themselves, in conformity with the principle of judicial independence, should be recognised as a proper agency to establish "outreach programmes" and to hold regular initiatives consisting in conducting surveys, arranging focus groups, employing lawyers and academics for public fora, etc. In fact, such programmes have the goal of improving the understanding and confidence of society with regard to its system of justice and, more generally, of strengthening judicial independence.

20. In the CCJE's opinion, in order to develop the above programmes judges should be given the opportunity to receive specific training as to relations with the public. Courts should also have the possibility to employ staff specifically in charge of liaising with educational agencies (public relations offices, as mentioned above, could also be given this task).

21. It seems to the CCJE that a role co-ordinating the various local initiatives, as well as promoting nationwide "outreach programmes", should be given to the independent body mentioned in paragraphs 37 and 45 of its Opinion No. 1 (2001). This independent body may also, by incorporating the use of professionals with prepared resources, satisfy more sophisticated information needs issuing from policy makers, academics, public interest groups.

22. The CCJE has already advised that appropriate funding, not subject to political fluctuations, should be provided for judicial activities and that judicial bodies should be involved in decisions concerning budget allocations by legislatures, e.g. through a co-ordination role of the above mentioned independent body (see Opinion No. 2 (2001), paragraphs 5, 10 and 11). The CCJE recommends that adequate funding should also be provided for activities explaining and making transparent the judicial system and the principles of justice in society by the court system itself, according to the principles stated in its Opinion No. 2 (2001). Expenses related to "outreach programmes" should be covered by a special budget item, so that they are not charged to the operating budget of courts.

23. The CCJE's discussions showed that, in order to effectively shape a correct perception of justice in society, similar principles, as developed for judges, may apply for public prosecutors. Bearing in mind the *acquis* of the Council of Europe concerning public prosecutors<sup>[7]</sup>, it seems important to the CCJE that public prosecutors, with regard to the part of the proceedings falling within their jurisdiction, should contribute to the supply of information to the public.

## **B. THE RELATIONS OF THE COURTS WITH PARTICIPANTS IN COURT PROCEEDINGS**

24. The image that the public has of the justice system is influenced by the media, but is also very much shaped by the impressions gleaned by citizens who participate in trials as parties, jurors or witnesses.

25. Such impressions will be negative if the justice system, through its actors (judges, public prosecutors, court officials), appears biased or inefficient in any way. Negative perceptions of this kind will easily spread.

26. The CCJE has dealt in previous Opinions (especially Opinions No. 1 (2001), No. 3 (2002) and No. 6 (2004)) with the need for judges to maintain (in fact and in appearance) strict impartiality and for courts to achieve a just resolution of disputes within a reasonable time. The present Opinion is concerned with the avoidance or correction of ignorance and misapprehensions about the justice system and its operation.

27. The CCJE considers that, in order to foster better understanding of the role of the judiciary, an effort is required to ensure in so far as possible that the ideas that the public has about the justice system are accurate and reflect the efforts made by judges and court officials to gain their respect and trust concerning courts' ability to perform their function. This action will have to show clearly the limits of what the justice system can do.

28. To improve their relations with the public, a number of justice systems or individual courts have set up programmes which help to shape: (a) the ethical training of judges, court staff, lawyers, etc; (b) court facilities; (c) judicial proceedings.

### **a) ethical training of judges, court staff, lawyers, etc**

29. Some training programmes are intended to ensure that courts are seen, under all aspects of their behaviour, to be treating all parties in the same way, i.e. impartially and without any discrimination based on race, sex, religion, ethnic origin or social status. Judges and court staff are trained to recognise situations in which individuals may feel that a biased approach is, or seems to be, being taken, and to deal with such situations in a way that enhances confidence in and respect for the courts. Lawyers organise and are given special ethical training to prevent them from contributing, whether intentionally or not, to mistrust of the justice system.

#### **b) court facilities**

30. Some programmes tackle the causes of potential mistrust vis-à-vis the courts that lie in their internal organisation. For instance, moving the public prosecutor's chair away from the bench and placing it at the same level as the defence will reinforce the impression of equality of arms which a court is supposed to convey. Likewise, the removal from court premises of any visual allusion, for example to a specific religion or political authority, may help to dispel fears of unwarranted bias or a lack of independence of judges. Allowing the accused to appear without handcuffs in court even if he or she has been detained pending trial – save in cases where there is a security risk – and replacing enclosures in courtrooms with other security measures can help to give a clearer impression that the presumption of innocence which defendants enjoy is effectively guaranteed by the courts. A mention should also be made of the benefits, in terms of improving courts' transparency, of setting up court reception services to provide the users of judicial services with information about the conduct of proceedings or the progress made in a particular case, to help users with formalities and, if the layout of the buildings so requires, to accompany them to the office or the courtroom they are looking for.

#### **c) judicial proceedings**

31. Some measures are intended to do away with those parts of the proceedings which may cause offence (compulsory religious references in oaths, forms of address, etc.). Others are intended to introduce procedures which ensure for example that, before appearing in court, parties, jurors or witnesses are received, on their own or in group, by court staff who describe to them, either orally or using audiovisual material produced in collaboration with social scientists, what their court experience is expected to be like. The aim of these presentations is to dispel any misconceptions about what actually happens in courts.

32. The CCJE supports all the steps described in paragraphs 29, 30 and 31 where they strengthen the public perception of impartiality of judges and enable justice to be carried out properly.

### **C. THE RELATION OF THE COURTS WITH THE MEDIA**

33. The media have access to judicial information and hearings, according to modalities and with limitations of established by national laws (see, e.g. Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings). Media professionals are entirely free to decide what stories should be brought to the public's attention and how they are to be treated. There should be no attempt to prevent the media from criticising the organisation or the functioning of the justice system. The justice system should accept the role of the media which, as outside observers, can highlight shortcomings and make a constructive contribution to improving courts' methods and the quality of the services they offer to users.

34. Judges express themselves above all through their decisions and should not explain them in the press or more generally make public statements in the press on cases of which they are in charge. Nevertheless it would be useful to improve contacts between the courts and the media:

- i) to strengthen understanding of their respective roles;
- ii) to inform the public of the nature, the scope, the limitations and the complexities of judicial work;
- iii) to rectify possible factual errors in reports on certain cases.

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35. Judges should have a supervisory role over court spokespersons or staff responsible for communicating with the media.



36. The CCJE would refer to the conclusions of the 2<sup>nd</sup> European Conference of Judges (see paragraph 3 above) in which the Council of Europe was asked both to facilitate the holding of regular meetings between representatives of the judiciary and the media and to consider drafting a European declaration on relations between justice and the media complementing Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings.

37. States should encourage exchanges, in particular by round tables, on the rules and practices of each profession, in order to highlight and explain the problems they face. The CCJE considers that the Council of Europe could usefully establish or promote such contacts at European level, so as to bring about greater consistency in European attitudes.

38. Schools of journalism should be encouraged to set up courses on judicial institutions and procedures.

39. The CCJE considers that each profession (judges and journalists) should draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases. As the experience of states which already have such a system shows, the judiciary would define the conditions in which statements may be made to the media concerning court cases, while journalists would produce their own guidelines on reporting of current cases, on the publicising of the names (or pictures) of persons involved in litigation (parties, victims, witnesses, public prosecutor, investigating judge, trial judge, etc.), and on the reporting of judgments in cases which attracted major public interest. In conformity with its Opinion No. 3 (2002), paragraph 40, the CCJE recommends that national judiciaries take steps along these lines.

40. The CCJE recommends that an efficient mechanism, which could take the form of an independent body, be set up to deal with problems caused by media accounts of a court case, or difficulties encountered by a journalist in the accomplishment of his/her information task. This mechanism would make general recommendations intended to prevent the recurrence of any problems observed.

41. It is also necessary to encourage the setting up of reception and information services in courts, not only, as mentioned above, to welcome the public and assist users of judicial services, but also to help the media to get to understand the workings of the justice system better.

42. These services, over which judges should have a supervisory role, could pursue the following aims:

- to communicate summaries of court decisions to the media;
- to provide the media with factual information about court decisions;
- to liaise with the media in relation to hearings in cases of particular public interest.
- to provide factual clarification or correction with regard to cases reported in the media (see also paragraph 34, iii above). The court reception services or spokesperson<sup>[8]</sup> could alert the media to the issues involved and the legal difficulties raised in the case in question, organise the logistics of the hearings and make the appropriate practical arrangements, particularly with a view to protecting the people taking part as parties, jurors or witnesses.

43. All information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner.

44. The question of whether TV cameras should be allowed into courtrooms for other than purely procedural purposes has been the subject of wide-ranging discussions, both at the 2<sup>nd</sup> Conference of European Judges (see paragraph 3 above) and at meetings of the CCJE. Some members of the CCJE have expressed serious reservations about this new form of public exposure of the work of the courts.

45. The public nature of court hearings is one of the fundamental procedural guarantees in democratic societies. While international law and national legislation allow exceptions to the principle that judicial proceedings should be conducted in public, it is important that these exceptions should be restricted to those permitted under article 6.1. of the ECHR.

46. The principle of public proceedings implies that citizens and media professionals should be allowed access to the courtrooms in which trials take place, but the latest audiovisual reporting equipment gives the events

related such a broad impact that they entirely transform the notion of public hearings. This may have advantages in terms of raising public awareness of how judicial proceedings are conducted and improving the image of the justice system, but there is also a risk that the presence of TV cameras in court may disturb the proceedings and alter the behaviour of those involved in the trial (judges, prosecutors, lawyers, parties, witnesses, etc.).

47. Where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge both to decide on filming conditions and to interrupt filming broadcasting at any time. These and any other necessary measures should protect the rights of the persons involved and ensure that the hearing is properly conducted.

48. The opinion of the persons involved in the proceedings should also be taken into account, in particular for certain types of trial concerning people's private affairs.

49. In view of the particularly strong impact of television broadcasts and the risk of a tendency towards unhealthy curiosity, the CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective.

50. There may be overriding reasons justifying the filming of hearings for specific cases which are strictly defined, for example for educational purposes or to preserve a record on film of a hearing of particular historical importance for future use. In these cases, the CCJE emphasises the need to protect the persons involved in the trial, particularly by ensuring that filming methods do not disrupt the proper conduct of the hearing.

51. While the media plays a crucial role in securing the public's right to information, and acts, in the words of the European Court of Human Rights, as "democracy's watchdog", the media can sometimes intrude on people's privacy, damaging their reputation or undermining the presumption of their innocence, acts for which individuals can legitimately seek redress in court. The quest for sensational stories and commercial competition between the media carry a risk of excess and error. In criminal cases, defendants are sometimes publicly described or assumed by the media as guilty of offences before the court has established their guilt. In the event of a subsequent acquittal, the media reports may already have caused irremediable harm to their reputation, and this will not be erased by the judgment.

52. Courts need therefore to accomplish their duty, according to the case-law of the European Court of Human Rights, to strike a balance between conflicting values of protection of human dignity, privacy, reputation and the presumption of innocence on the one hand, and freedom of information on the other.

53. As stated in the conclusions of the 2<sup>nd</sup> European Conference of Judges(see paragraph 3 above), criminal-law responses to violations of personality rights (such as reputation, dignity or privacy) should be limited to quite exceptional cases<sup>[9]</sup>. However, the courts do have a duty to ensure that civil damages are awarded, taking account not just of the damage incurred by the victim, but also the seriousness of the infringements suffered and the scale of the publication concerned.

54. The courts should be entitled, in exceptional cases that are strictly defined in order to avoid any accusation of censorship, to take urgent measures to put an immediate stop to the most serious infringements of people's personality rights (such as reputation, dignity or privacy), through the confiscation of publications or through broadcasting bans.

55. When a judge or a court is challenged or attacked by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice, the CCJE considers that, in view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

#### **D. ACCESSIBILITY, SIMPLIFICATION AND CLARITY OF THE LANGUAGE USED BY THE COURTS IN PROCEEDINGS AND DECISIONS**

56. The language used by the courts in their procedures and decisions is not only a powerful tool available to them to fulfil their educational role (see paragraph 6 above), but it is obviously, and more directly, the "law in

practice" for the specific litigants of the case. Accessibility, simplicity and clarity of the language of courts are therefore desirable<sup>[10]</sup>.

57. The CCJE notes that in some European countries, judges believe that very short judgments reinforce the authority of the judgment; in some other countries, judges feel obliged, or are obliged by the law or practice, to explain extensively in writing all aspects of their decisions.

58. Without having the aim to deal in depth with a subject which is heavily influenced by national legal styles, the CCJE considers that a simple and clear judicial language is beneficial as it makes the rule of law accessible and foreseeable by the citizens, if necessary with the assistance of a legal expert, as the case-law of the European Court of Human Rights suggests.

59. The CCJE considers that judicial language should be concise and plain, avoiding - if unnecessary - Latin or other wordings that are difficult to understand for the general public<sup>[11]</sup>. Legal concepts and rules of law may be quite sufficiently explained by citing legislation or judicial precedents.

60. Clarity and concision, however, should not be an absolute goal, as it is also necessary for judges to preserve in their decisions precision and completeness of reasoning. In the CCJE's opinion, legislation or judicial practice concerning reasoning of judgments should provide that some form of reasoning always exists, and that sufficient discretion is left to the judge in choosing whether to give, where permissible, an oral judgment (which may be transcribed from a recording upon request or in case of need) and/or a short written reasoned judgment (e.g. in the form of the "*attendu*" style decision adopted in some countries) or an extensive written reasoned judgment, in all those cases in which reference to established precedents is not possible and/or the factual reasoning so requires. Simplified forms of reasoning may apply to orders, writs, decrees and other decisions that have a procedural value and do not concern the substantive rights of the parties.

61. An important aspect of accessibility of law, as enshrined in judicial decisions, is represented by their ready availability to the general public<sup>[12]</sup>. In view of this goal, the CCJE recommends that at least all Supreme Court and other important court decisions be accessible through Internet sites at no expense, as well as in print upon reimbursement of the cost of reproduction only; appropriate measures should be taken, in disseminating court decisions, to protect privacy of interested persons, especially parties and witnesses.

## SUMMARY OF THE RECOMMENDATIONS AND CONCLUSIONS

### A. The relations of the courts with the public with special reference to the role of the courts in a democracy

A.1. It is the state's important duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system (see paragraph 11 above).

A.2. Relevant school and university education programmes should include a description of the judicial system, visits to courts, and active teaching of judicial procedures. Courts and associations of judges can in this respect co-operate with schools, universities, and other educational agencies, making the judge's specific insight available in teaching programmes and public debate (see paragraph 12 above).

A.3. Courts should take part in general framework programmes arranged by other state institutions and take an active role in providing information to the public (see paragraphs 14 and 15 above).

A.4. The following measures are thus recommended (see paragraphs 16 to 19 above):

- creation of offices in courts in charge of reception and information services;
- distribution of printed materials, opening of Internet sites under the responsibility of courts;
- organisation by courts of a calendar of educational fora and/or regular meetings open to citizens, public interest organisations, policy makers, students, etc.;
- "outreach programmes" and programmes for access to justice.

A.5. Judges should be given the opportunity to receive specific training as to relations with the public and courts should also have the possibility to employ staff specifically in charge of liaising with educational agencies



(see paragraph 20 above).

A.6. A role co-ordinating the various local initiatives, as well as promoting nation-wide "outreach programmes", should be given to the independent body mentioned in paragraphs 37 and 45 of its Opinion No. 1 (2001) (see paragraph 21 above).

A.7. Adequate funding, not charged to the operating budget of courts, should be provided to the courts for activities explaining and making transparent the principles and the mechanisms of justice in society as well as for expenses related to "outreach programmes" (see paragraph 22 above).

A.8. Public prosecutors, with regard to the part of the proceedings falling within their jurisdiction, should contribute to the supply of information to the public (see paragraph 23 above).

## **B. The relations of the courts with participants in court proceedings**

B.1. The CCJE considers that, in order to foster better understanding of the role of the judiciary, an effort is required to ensure in so far as possible that the ideas that the public has about the justice system are accurate and reflect the efforts made by judges and court officials to gain their respect and trust concerning courts' ability to perform their function. This action will have to show clearly the limits of what the justice system can do (see paragraphs 24 to 27 above).

B.2. The CCJE supports all the steps aiming at strengthening the public perception of impartiality of judges and enabling justice to be carried out (see paragraphs 28 to 32 above).

B.3. Such initiatives may include (see paragraphs 28 to 32 above):

- training programmes in non-discrimination and equal treatment organised by courts for judges and court staff (in addition to the similar programmes organised by lawyers or for lawyers);
- court facilities and arrangements designed to avoid any impression of inequality of arms;
- procedures designed to avoid giving unintended offence and to ease the involvement of all concerned in judicial proceedings.

## **C. The relations of the courts with the media**

C.1. The CCJE considers that it would be useful to improve contacts between the courts and the media (see paragraph 34 above):

- to strengthen understanding of their respective roles;
- to inform the public of the nature, the scope, the limitations and the complexities of judicial work;
- to rectify possible factual errors in reports on certain cases.

C.2. Judges should have a supervisory role over court spokespersons or staff responsible for communicating with the media (see paragraph 35 above).

C.3. The CCJE considers that states should encourage exchanges, in particular by round tables, on the rules and practices of each profession and that the Council of Europe could usefully establish or promote such contacts at European level, so as to bring about greater consistency in European attitudes (see paragraph 36 and 37 above).

C.4. Schools of journalism should be encouraged to set up courses on judicial institutions and procedures (see paragraph 38 above).

C.5. The CCJE considers that each profession (judges and journalists) should, draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases (see paragraph 39 above).

C.6. The CCJE recommends that an efficient mechanism be set up, which could take the form of an independent body to deal with problems caused by media accounts of a court case or difficulties encountered by a journalist in the accomplishment of his/her information task, to make general recommendations intended to prevent the recurrence of any problems observed (see paragraph 40 above).

C.7. It is also necessary to encourage the setting up of reception and information services in courts under the supervision of the judges in order to help the media to get to understand the workings of the justice system better by (see paragraphs 41 and 42 above):

- communicating summaries of court decisions to the media;
- providing the media with factual information about court decisions;
- liaising with the media in relation to hearings in cases of particular public interest;
- providing factual clarification or correction with regard to cases reported in the media.

C.8. The CCJE considers that all information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner (see paragraph 43 above).

C.9. The CCJE considers, that where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge both to decide on filming conditions and to interrupt filming broadcasting at any time. These and any other necessary measures should protect the rights of the persons involved and ensure that the hearing is properly conducted. Furthermore, the opinion of the persons involved in the proceedings should also be taken into account, in particular for certain types of trial concerning people's private affairs (see paragraphs 44 to 48 above).

C.10. The CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective (see paragraph 49 above).

C.11. The CCJE considers that there may be overriding reasons justifying the filming of hearings for restricted use specified by the court (for example for educational purposes or to preserve a record on film of a hearing of particular historical importance for future use), in these cases, it is necessary to protect the persons involved in the trial, particularly by ensuring that filming methods do not disrupt the proper conduct of the hearing (see paragraph 50 above).

C.12. The CCJE considers that criminal-law responses to violations of personality rights should be limited to quite exceptional cases. However, the judges do have a duty to ensure that civil damages are awarded, taking account not just of the damage sustained by the victim, but also the seriousness of the infringements suffered and the scale of the publication concerned. The courts should be entitled, in exceptional cases, to take urgent measures to put an immediate stop to the most serious infringements of people's personality rights through the confiscation of publications or through broadcasting bans (see paragraphs 51 to 54 above).

C.13. When a judge or a court is challenged or attacked by the media for reasons connected with the administration of justice, the CCJE considers that in the view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges (see paragraph 55 above).

## **D. Accessibility, simplification and clarity of the language used by the courts in proceedings and decisions**

D.1. The CCJE considers that accessibility, simplicity and clarity of the language of courts are desirable (see paragraphs 56 to 58 above).

D.2. The CCJE considers that judicial language should be concise and plain, avoiding - if unnecessary - Latin or other wordings that are difficult to understand for the general public. Legal concepts and rules of law may be quite sufficiently explained by citing legislation or judicial precedents (see paragraph 59 above).

D.3. In the CCJE's opinion, judicial reasoning should always be precise and complete, though simplified reasoning may be appropriate in procedural matters, and judges may, where permissible, give their reasoning orally (subscription to later transcription if required) rather than in writing (see paragraph 60 above).

D.4. The CCJE recommends that at least all Supreme Court and other important court decisions be accessible through Internet sites at no expense, as well as in print upon reimbursement of the cost of reproduction only;

however appropriate measures should be taken in disseminating court decisions, to protect privacy of interested persons, especially parties and witnesses (see paragraph 61 above).

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[1] See specific terms of reference of the CCJE for 2004-2005, adopted by the Committee of Ministers at the 876<sup>th</sup> meeting of the Ministers' Deputies (17 March 2004, item 10.1).

[2] The Conference participants – i.e. judges and other people with a professional interest in the subject, including representatives of the media and international organisations, parliamentarians and experts on the subject under discussion – focused, on the one hand, on the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case-law of the European Court of Human Rights, and Council of Europe texts and other instruments on the right to public information, which the press effectively safeguards, and, on the other, on the requirements of the right to a fair public trial by an independent and impartial tribunal with a view to protecting human dignity, privacy, the reputation of others and the presumption of innocence, the ultimate aim being to find ways of striking a balance between conflicting rights and freedoms.

[3] See Conclusions of the Fifth Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 2.

[4] See, e.g., European Court of Human Rights, case *Sunday Times vs. United Kingdom*, judgment of 26 April 1979, Series A, No. 30 where the notions mentioned in the text are said to be included in the phrase "authority of the judiciary" contained in art. 10 of the ECHR.

[5] See Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

[6] See Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

[7] See, on this subject, Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System.

[8] See Conclusions of the 5<sup>th</sup> Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 4, where it is also made clear that a spokesperson should not give a personal opinion on a decision already delivered or a case still pending.

[9] See paragraph 28 of the Action Plan adopted by the Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005), whereby the necessity of a review of the situation in member States regarding legislation on defamation was affirmed.

[10] See Conclusions of the 5<sup>th</sup> Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 1.

[11] See Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

[12] See Conclusions of the 5<sup>th</sup> Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 1.