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10.1 Consultative Council of European Judges (CCJE)

Opinion no.11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions

Item to be prepared by the GR-J at its meeting of 17 February 2009

GENERAL INTRODUCTION

1. The quality of justice is a constant and long-standing concern of the Council of Europe, as shown in particular by the conventions, resolutions and recommendations adopted under the Council's auspices on ways of facilitating access to justice, on improving and simplifying procedures, on reducing the courts' workload and on refocusing judges' work on purely judicial activities[2].

2. In this context and in compliance with its terms of reference, the Consultative Council of European Judges (CCJE) has decided to devote Opinion No. 11 to quality of judicial decisions, which is a major component of quality of justice.

3. Clear reasoning and analysis are basic requirements in judicial decisions and an important aspect of the right to fair trial. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR), for example, requires states to establish independent and impartial tribunals and promote the introduction of efficient procedures. The fulfilment of this obligation acquires real meaning when judges are, as a result, enabled to administer justice justly and correctly, in relation to their findings both in law and in fact, for the ultimate benefit of citizens. A high quality judicial decision is one which achieves a correct result - so far as the material available to the judge allows - and does so fairly, speedily, clearly and definitively.

4. With this in mind, the CCJE has already pointed out that judicial independence must be regarded as a citizens' right; it stated in its Opinion No. 1 (2001) that the independence of the judiciary "is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice". The CCJE has, in its opinions since 2001, put forward a number of suggestions as to how each system may not only guarantee that court users have a right of access to the courts, but also ensure, through the quality of the decisions given, that they can have confidence in the outcome of the judicial process[3].

5. This opinion does not aim to challenge the basic principle that the assessment of the intrinsic quality of each judicial decision should only take place through the exercise of rights of recourse established by the law. This principle is a key consequence of the constitutional guarantee of independence of judges, regarded as one of the main features of the Rule of Law in democratic societies.

6. The CCJE considers that judges, whose task is to give quality decisions, are in a particularly good position to initiate a discussion on the quality of judicial decisions and to determine the factors for such quality and the conditions for assessing it.

7. A judicial decision must meet a number of requirements in relation to which some common principles can be identified, irrespective of the specific features of each judicial system and the practices of courts in different countries. The starting point is that the purpose of a judicial decision is not only to resolve a given dispute providing the parties with legal certainty, but often also to establish case law which may prevent the emergence of other disputes and ~~to~~ ensure social harmony.

8. The report of Ms Maria Giuliana CIVININI, based on the replies given by the CCJE members to a questionnaire[4], shows that countries have a very wide range of approaches to the assessment and improvement of quality of judicial decisions. It also emphasises that while the arrangements for assessing quality depend on the particular traditions of each legal system, all countries are nevertheless similarly committed to continuing improvement of the conditions under which judges have to give their decisions.

9. "Judicial decision" is used in this Opinion to mean a determination which decides a particular case or issue and is given by an independent and impartial tribunal within the scope of Article 6 of the ECHR including:

- decisions given in civil, social, criminal and most administrative matters;
- decisions given at first instance, on appeal or by supreme courts, as well as by constitutional courts;
- provisional decisions;
- final decisions;
- decisions in the form of judgments or orders given by tribunals sitting as a panel or as a single judge;
- decisions given with or without the possibility of minority opinions;
- decisions given by professional or non-professional judges or by courts combining the two (*échevinage*).

PART I. QUALITY FACTORS OF JUDICIAL DECISIONS

A. The external environment: legislation and economic and social context

10. The quality of a judicial decision depends not only on the individual judge involved, but also on a number of variables external to the process of administering justice such as the quality of legislation, the adequacy of the resources provided to the judicial system and the quality of legal training.

1. The legislation

11. Judicial decisions are primarily based on laws passed by legislatures or, in common law systems, upon such laws and upon principles established by judicial precedent. These sources of law not only decide what are the rights that users of the system of justice have and what conduct is punished by criminal law, but also define the procedural framework within which judicial decisions are taken. Thus the choices made by legislatures influence the type and volume of cases brought before courts, as well as the ways in which they are processed. The quality of judicial decisions may be affected by over-frequent changes in legislation, by poor drafting or uncertainties in the content of laws, and by deficiencies in the procedural framework.

12. Therefore the CCJE considers it desirable that national parliaments should assess and monitor the impact of legislation in force and legislative proposals on the justice system and introduce appropriate transitional and procedural provisions to ensure that judges can give effect to them by high quality judicial decisions. The legislator should ensure that legislation is clear and simple to operate, as well as in conformity with the ECHR. In order to facilitate interpretation, preparatory works of legislation should be readily accessible and drawn up in an understandable language. Any draft legislation concerning the administration of justice and procedural law should be the subject of an opinion of the Council for the Judiciary or equivalent body before its deliberation by Parliament.

13. To achieve quality decisions in a way which is proportionate to the interests at stake, judges need to operate within a legislative and procedural framework that permits them to decide freely on and to dispose effectively of (for example) the time resources needed to deal properly with the case. The CCJE refers to the discussion of "case management" in its Opinion No. 6 (2004)[5].

2. Resources

14. The quality of a judicial decision is directly conditioned by the funding made available to the judicial system. Courts cannot operate efficiently with inadequate human and material resources. Adequate judicial remuneration is necessary to shield from pressures aimed at influencing judges' decisions and more generally their behaviour[6] and to ensure that the best candidates enter the judiciary. The assistance of a qualified staff of clerks, and the collaboration of judicial assistants, who should relieve the judges of more routine work and prepare the papers, can evidently contribute to improve the quality of decisions delivered by a court. If such resources are lacking, effective functioning of the judicial system to achieve a high quality product will be impossible[7].

3. Judicial actors and legal training

15. Even if one focuses only on the actors within the justice system, the quality of the performance of the judicial system depends clearly on the interaction of many roles: the police, prosecutors, defence lawyers, clerks, the jury where applicable, etc. The judge is only one link in the chain of such co-actors, and not necessarily even the final one as the enforcement stage is of equal importance. Even when one concentrates only on the quality of judicial decisions, it follows from what has already been said that judges' performance of their role is, although central, not the only factor conditioning the production of a judicial decision of quality.

16. The quality of judicial decision depends among others factors on the legal training of all the legal professionals involved in the proceedings. Therefore the CCJE wishes to emphasise the role of legal education and training in general.

17. This means, for judges in particular, that there should be high quality legal training at the start of a legal professional career[8] and a continuous training programme thereafter to maintain and improve professional techniques. Such training needs not only to equip judges with the abilities necessary to give effect to changes in domestic and international legislation and legal principles, but should also promote other complementary skills and knowledge in non-legal matters, giving them a good background understanding of the issues coming before them.

18. Judges also need training in ethics and communication skills to assist them in dealing with the parties in judicial proceedings as well as with the public and the media. Particular importance attaches to training to improve their organisational capacities in the areas of efficient case preparation and management (for example, by use of IT, case management, working techniques, judgment/decision writing techniques - including guidelines with general models for drafting decisions, normally leaving judges some freedom to choose their individual style), all this with the aim of managing trial cases without unnecessary delay or unnecessary steps[9].

19. Furthermore, court presidents should be trained in the management of human resources, strategic planning to regulate and manage case flows, as well as efficient planning and use of budgetary and financial resources. Administrative staff and court assistants should be specially trained in preparing the hearings and monitoring and ensuring the smooth progress of cases (for example, in relation to the use of IT, case and time management techniques, drafting of judgments, foreign languages, communication with the parties and the public and legal research). This will assist to relieve judges of administrative and technical duties and allow them to focus their time on the intellectual aspects and management of the trial process and decision-making.

B. The internal environment: professionalism, procedure, hearing and decision

20. The quality of judicial decisions also depends on internal factors such as judges' professionalism, procedures, case management, hearings and elements inherent to the decision.

1. The professionalism of the judge

21. Judges' professionalism is the primary guarantee of a high quality judicial decision. This involves a high level legal training of judges in accordance with the principles defined by the CCJE in its Opinions N° 4 (2003) and N° 9 (2006), as well as the development of a culture of independence, ethics and deontology in accordance with Opinions No. 1 (2001) and 3 (2002).

22. A judicial decision may need not only to take account of the relevant legal material but also to have regard to non-legal concepts and realities relevant to the context of the dispute such as, for example, ethical, social or economic considerations. This requires the judge to be aware of such considerations when deciding the case.

23. The procedures for evaluating or giving guidance in respect of judicial performance by judicial authorities are capable of improving their competence and the quality of judicial decisions.

2. The procedure and management of the case

24. If the outcome is to be a high quality decision which will be accepted both by the parties and by society, the procedure must be clear, transparent and satisfying the ECHR requirements.

25. However, the mere existence of a procedural law meeting these requirements is not sufficient. The CCJE is of the opinion that the judge must be able to organise and conduct the proceedings actively and accurately. The proper development of the proceedings is conducive to the quality of the final product – the decision[10].

26. Whether a decision is given in a reasonable time in accordance with Article 6 ECHR can also be regarded as an important element of its quality. However tension can arise between the speed with which a proceeding is conducted and other factors relevant to quality such as the right to a fair trial also safeguarded by Article 6 ECHR. Since it is important to safeguard social harmony and legal certainty, the time element must obviously be considered, but is not the only factor to be taken into account. The CCJE refers to its Opinion No. 6 (2004) where it underlined that "quality" of justice cannot be equated with simple "productivity". The qualitative approach must also take into account the capacity of the judicial system to address the demands upon it according to the general objectives of the system, among which the speediness of the procedure is only one element.

27. Some countries have established standard models of good practices in case management and conduct of hearings. Such initiatives should be encouraged to promote good case management by each judge.

28. The importance of consultations between judges at which information and experiences can be exchanged should also be stressed. These enable judges to discuss case management and to address difficulties met in the application of legal principles and possible conflicts in the case law.

3. The hearing

29. The hearing should comply with all ECHR requirements, thus ensuring for parties and society at large compliance with the minimum standards of a properly designed and fair trial. The proper development of the hearing will have a direct impact on the parties and society's understanding and acceptance of the final decision. It should also give the judge all the elements necessary for the proper assessment of the case; therefore it has a critical impact on the quality of the judicial decision. A hearing should be held whenever the case law of the ECHR so prescribes.

30. A transparent and open hearing as well as compliance with the adversarial principle and the principle of the equality of arms are necessary prerequisites if the decision is to be accepted by the parties themselves and by the general public.

4. The elements inherent to the decision

31. To be of high quality, a judicial decision must be perceived by the parties and by society in general as being the result of a correct application of legal rules, of a fair proceeding and a proper factual evaluation, as well as being effectively enforceable. Only then will the parties be convinced that their case has been properly considered and dealt with and will society perceive the decision as a factor for restoring social harmony. To achieve these aims, a number of requirements must be met.

a. Clarity

32. All judicial decisions must be intelligible, drafted in clear and simple language - a prerequisite to their being understood by the parties and the general public. This requires them to be coherently organised with reasoning in a clear style accessible to everyone[11].

33. Each judge may opt for a personal style and structure or make use of standardised models, if they exist. The CCJE recommends that judicial authorities compile a compendium of good practices in order to facilitate the drafting of decisions.

b. Reasoning

34. Judicial decisions must in principle be reasoned[12]. The quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be neglected in the interests of speed. Proper reasoning requires judges to have proper time to prepare their decisions.

35. The statement of the reasons not only makes the decision easier for the litigants to understand and be accepted, but is above all a safeguard against arbitrariness. Firstly, it obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful; secondly, it enables society to understand the functioning of the judicial system.

36. The reasons must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain of reasoning which led the judge to the decision.

37. The reasoning must reflect the judges' compliance with the principles enunciated by the European Court of Human Rights (namely the respect for the right of defence and the right to a fair trial). Where provisional decisions concern individual freedoms (e.g. arrest warrants) or may affect the rights of individuals or assets (e.g. the provisional custody of a child or the preventive attachment of real property or the seizure of bank accounts), an appropriate statement of the reasons is required.

38. The statement of the reasons must respond to the parties' submissions, i.e. to their different heads of claim and to their grounds of defence. This is an essential safeguard because it allows litigants to ensure that their submissions have been examined and therefore that the judge has taken them into account. The reasoning must be free of any insulting or unflattering remarks about the parties.

39. Without affecting the possibility or even the obligation for judges to act on their own motion in certain contexts, judges need only respond to relevant arguments capable of influencing the resolution of the dispute.

40. The statement of reasons should not necessarily be long, as a proper balance must be found between the conciseness and the proper understanding of the decision.

41. The obligation on courts to give reasons for their decisions does not mean replying to every argument raised by the defence in support of every ground of defence. The scope of this duty can vary according to the nature of the decision. In accordance with the case-law of the European Court of Human Rights[13], the extent of the reasons to be expected depends on the various arguments open to each party , as well as on the different legal provisions, customs and doctrinal principles as well as the different practices regarding presentation and drafting of judgments and decisions in different states. In order to respect the principle of fair trial, the reasoning should demonstrate that the judge has really examined all the main issues which have been submitted to him or her[14]. In the case of a jury, the judge's charge to the jury must clearly explain the facts and issues that the jury must decide.

42. In terms of content, the judicial decision includes an examination of the factual and legal issues lying at the heart of the dispute.

43. When examining factual issues, the judge may have to address objections to the evidence, especially in terms of its admissibility. The judge will also consider the weight of the factual evidence likely to be relevant for the resolution of the dispute.

44. Examining the legal issues entails applying the rules of national, European[15] and international law[16]. The reasons should refer to the relevant provisions of the Constitution or relevant national, European and international law. Where appropriate, reference to national, European or international case-law, including reference to case-law from courts of other countries, as well as reference to legal literature, can be useful or in a common law system essential.

45. In common law countries, decisions of higher courts that settle a legal issue serve as binding precedents in identical disputes thereafter. In civil law countries, decisions do not have this effect but can nevertheless provide valuable guidelines to other judges dealing with a similar case or issue, in cases that raise a broad social or major legal issue. Therefore the statement of the reasons, deriving from a detailed study of the legal issues addressed, needs to be drawn up with special care in such cases in order to meet the parties' and society's expectations.

46. In many cases, examining the legal issues means interpreting legal rules.

47. While recognising the judges' power to interpret the law, the obligation of the judges to promote legal certainty has also to be remembered. Indeed legal certainty guarantees the predictability of the content and application of the legal rules, thus contributing in ensuring a high quality judicial system.

48. Judges will apply the interpretative principles applicable in both national and international law with this aim in mind. In common law countries, they will be guided by any relevant precedent. In civil law countries, they will be guided by case law, especially that of the highest courts, whose task includes ensuring the uniformity of case law.

49. Judges should in general apply the law consistently. However when a court decides to depart from previous case law, this should be clearly mentioned in its decision. In exceptional circumstances, it may be appropriate for the court to specify that this new interpretation is only applicable as from the date of the decision in issue or from a date stipulated in such decision.

50. The volume of cases reaching higher courts can also affect both the speed and the quality of judicial decision-making. The CCJE recommends the introduction of mechanisms appropriate to the legal traditions of each country to regulate access to such courts.

c. Dissenting opinions

51. In some countries judges can give a concurring or dissenting opinion. In these cases the dissenting opinion should be published with the majority's opinion. Judges thus express their complete or partial disagreement with the decision taken by the majority of judges who gave the decision and the reasons for their disagreement, or maintain that the decision given by the court can or should be based on grounds other than those adopted. This can contribute to improve the content of the decision and can assist both in understanding the decision and the evolution of the law.

52. Dissenting opinions should be duly reasoned, reflecting the judge's considered appreciation of the facts and law.

d. Enforcement

53. Any order made by or following a judicial decision should be written in clear and unambiguous language, so as to be readily capable of being given effect or, in the case of an order to do or not do or pay something, readily enforced.

54. As interpreted by the European Court of Human Rights, the right to a fair trial enshrined in Article 6 ECHR implies not only that the judicial decision must be given within a reasonable time, but also that it must be, where relevant, effectively enforceable for the benefit of the successful party. Indeed the Convention does not establish theoretical protection of human rights, but aims to ensure that the protection it provides is given practical effect.

55. Such order must accordingly have the following major characteristics:

(i) It must first of all, where relevant, be enforceable in terms of wording: this means that the decision must include operative provisions that clearly state, without any possibility of uncertainty or confusion, the sentence, obligations or orders imposed by the court. An obscure decision which is open to different interpretations impairs the effectiveness and credibility of the judicial process.

(ii) An order must also be enforceable under the relevant system of execution: that is how it will be effectively executed. There are in most legal systems procedures whereby execution may be stayed or suspended. A stay or suspension is undeniably legitimate in some cases. But it can be sought for tactical purposes, and the inappropriate grant of a stay or suspension can lead to paralysis of the judicial process and permit procedural strategies designed to make court decisions inoperative. To ensure the efficiency of justice, all countries should have procedures for provisional enforcement[17].

56. An order of good quality (in a non-criminal matter) may be useless without the existence of a simple and efficient procedure for executing it. It is important that this procedure be subject to judicial supervision, by judges able to resolve any difficulties that may arise during the process of executing the decision, according to efficient procedures which should not involve undue costs for the parties.

PART II. EVALUATION OF THE QUALITY OF JUDICIAL DECISIONS

57. The CCJE stresses that the merits of individual judicial decisions are primarily controlled by the appeal or review procedures available in national courts and by the right of access to the European Court of Human Rights. States should ensure that their national procedures meet the requirements laid down in decisions of the latter Court.

A. The substance of the evaluation

58. Since the nineties, there has been a growing awareness that the quality of judicial decisions cannot be evaluated properly by assessing solely the intrinsic legal value of the decisions. As shown in the first part of this Opinion, the quality of judicial decisions is influenced by the quality of all the preparatory steps that precede them and therefore the legal system as a whole has to be examined. Moreover, seen from the perspective of the court users, it is not only the legal quality *stricto sensu* of the actual decision that matters; attention has also to be paid to other aspects such as the length, transparency and conduct of the proceedings, the way in which the judge communicates with the parties and the way in which the judiciary accounts for its functioning to society.

59. The CCJE underlines that any method of evaluating the quality of judicial decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis.

60. The evaluation of the quality of judicial decisions must be done above all on the basis of the fundamental principles of the ECHR. It cannot be done only in the light of considerations of an economic or managerial nature. The use of economic methods must be considered carefully. The role of the judiciary is above all to apply and give effect to the law and cannot properly be analysed in terms of economic efficiency.

61. Any quality evaluation system should strictly aim at promoting the quality of judicial decisions and not serve as a mere bureaucratic tool or an end in itself. It is not an instrument of external control of the judiciary.

62. The CCJE recalls that the evaluation of the quality of justice, i.e. of the performance of the court system as a whole or of any individual court or local group of courts, should not be confused with the evaluation of the professional ability of any individual judge for other purposes[18].

63. Evaluation procedures should aim, above all, at identifying the need, if any, for amendment of legislation, for changing or improving judicial procedures and/or for further training of judges and court staff.

64. The subjects, methods and procedure of evaluation should be defined properly and be understandable. They should be determined by judges or in close co-operation with judges.

65. The evaluation must be transparent. Personal or identifying data of judges must remain confidential.

66. The evaluation of the quality of judicial decisions should not make judges deal with the facts or reach their decision on the substance of a case in a uniform way, without taking into account the circumstances peculiar to each case.

67. Any evaluation of judicial decisions must take into account the different types and levels of courts, the different kinds of disputes and the differing skills and expertise required to resolve them.

B. The evaluation methods (including bodies entrusted with the evaluation of the quality of judicial decisions)

68. The CCJE stresses that (especially if use is made of quantitative and qualitative statistics) it is desirable to combine different methods of evaluation, linked to different quality indicators and multiple information sources. No single method should prevail over others. Evaluation methods can be accepted, provided that they are considered with the necessary scientific rigour, knowledge and care and are defined in a transparent way. Moreover, the evaluation systems must not challenge the legitimacy of judicial decisions.

69. The CCJE considers that states are not necessarily bound to adopt the same evaluation system and methodological approach; and that, although it is not within the scope of this Opinion to undertake a detailed commentary on the various quality evaluation systems, it is nevertheless possible, on the basis of national experiences, to draw up a list of the most suitable methods.

1. Self evaluation by judges and evaluation by other actors within the justice system

70. The CCJE encourages peer review and self evaluation by judges. The CCJE also encourages the participation of "external" persons (e.g. lawyers, prosecutors, law faculties professors, citizens, national or international non-governmental organisations) in the evaluation, provided that the independence of the judiciary is fully respected. Such external evaluation must not of course be used as a method of compromising judicial independence or the integrity of the judicial process. The first point of reference in the evaluation of judicial decisions must be the availability of a timely and effective appeal procedure.

71. By their case-law, their examination of judicial practices and their annual reports, superior courts may contribute to the quality of judicial decisions and their evaluation; in this respect, it is of

utmost importance that their case-law is clear, consistent and constant. The superior courts may also contribute to the quality of judicial decisions by developing guidelines for the lower courts, in which attention is drawn to the applicable principles, in accordance with the relevant case-law.

2. Statistical methods

72. The quantitative statistical method involves taking statistics at court level (statistics on cases pending as well as cases filed and cases decided, the number of hearings in each case, cancelled hearings, the length of proceedings, etc.). The quantity of the work done by the court is one of the yardsticks for measuring the capability of the administration of justice to meet citizens' needs. This capability is one of the indicators of the quality of justice. This method of analysis accounts for court activities, but cannot alone be sufficient to assess whether the actual decisions delivered are of satisfactory quality. The nature of the decisions depends on the merits of each individual case. A judge may, for example, have to give a series of associated decisions in cases of little merit. Statistics are not an accurate guide in every situation, and must always be placed in context. This method allows nonetheless an assessment whether cases have been handled within an appropriate timeframe, or whether a backlog exists which may justify the allocation of additional resources and the taking of measures aiming at its reduction or elimination.

73. In a qualitative statistical method, decisions are classified according to their type, subject and complexity. This method allows a weighting of different types of cases to establish an efficient and correct distribution of work and the minimum and the maximum workload that can be required from a court. A feature of this method is that it takes into account the specificities of certain cases or types of issue, so as to make allowance for those where, although the number of decisions given is limited, a considerable amount of work is involved. The difficulty about qualitative statistical assessment lies, however, in defining which factors to take into account and in determining which authorities are competent to establish them.

74. Both the limited number of appeals and the number of successful appeals can be objectively ascertainable and relatively reliable quality indicators. However the CCJE stresses that neither the number of appeals nor their rate of success necessarily reflects on the quality of the decisions subject to appeal. A successful appeal can be no more than a different evaluation of a difficult point by the appeal judge, whose decision might itself have been set aside had the matter gone to a yet higher court[19].

3. The role of the Council for the judiciary

75. National or international bodies in charge of the evaluation of judicial decisions should be composed of members who are fully independent of the executive power. In order to avoid any pressure, in the states where a Council for the Judiciary[20] exists, this Council should be entrusted with the evaluation of the quality of decisions. Within the Council, data processing and quality evaluation should be undertaken by departments other than those responsible for judicial discipline .For the same reason, where there is no Council for the Judiciary, the evaluation of the quality of decisions should be undertaken by a specific body having the same guarantees for the independence of judges as those possessed by a Council for the Judiciary.

MAIN CONCLUSIONS AND RECOMMENDATIONS

a) **The external indicators on which the quality of judicial decision depends** include the quality of laws passed by **legislatures.** Therefore it is important that national parliaments assess and monitor the impact of legislation in force and legislative proposals on the justice system.

b) The quality of decision making depends on **the allocation of adequate human, financial and material resources** to each judicial system as well as **the maintenance of financial security for each judge** within that system.

c) The quality of legal education and **training of judges and other legal professionals** are of paramount importance in ensuring a judicial decision of high quality.

d) It is also important to provide training of judges in non legal matters and to train **court** staff in order to relieve judges of administrative and technical duties and allow them to focus on the intellectual aspect of decision making.

e) The standard of quality of judicial decisions is clearly the result of **interactions between the numerous actors in the judicial system**.

f) The **professionalism** of the judge is the primary guarantee for the quality of a decision and an important part of the **internal environment influencing a judicial decision**. Professionalism involves a high level legal training of judges, as well as the development of a culture of independence, ethics and deontology. It requires the judge to be aware of not only legal material but also non-legal concepts.

g) Other elements of the internal environment affecting the judicial decision are the **procedure and management of the case.** Procedure must be clear, transparent and predictable. The judge must be able to organise and conduct the proceedings actively and accurately. The decision must be given in a reasonable time. However, the speediness of the procedure is not the only factor to be taken into account, since judicial decisions must safeguard the right to a fair trial, social harmony and legal certainty.

h) **Standard models of good practices in case management** should be encouraged, as well as consultation meetings between judges.

i) **A hearing** should be held whenever the case law of the European Court of Human Rights so prescribes and should comply with all ECHR requirements, thus ensuring for litigants and society at large observance with the minimum standards of a properly designed and fair trial.

j) A fair conduct of the proceedings, correct application of legal principles and evaluation of the factual background as well as enforceability are the key elements contributing toward a high quality decision.

k) The decision must be intelligible and **drafted in clear and simple language, with each judge being permitted** however to choose his or her own style or to make use of standardised models.

l) The CCJE recommends that judicial authorities compile **a compendium of good practices** in order to facilitate the drafting of decisions

m) **Judicial decisions must in principle be reasoned.** Their quality depends principally on the quality of its reasoning. Reasoning may involve interpreting legal principles, taking care always to

ensure legal certainty and consistency . However, when a court decides to depart from previous case law, this should be clearly mentioned in its decision.

n) The CCJE recommends the introduction of **mechanisms** appropriate to the legal traditions of each country **to regulate access to higher courts**.

o) **Dissenting opinions** of judges, where allowed, can contribute to improve the content of decision and can assist both in understanding the decision and the evolution of the law. These opinions should be duly reasoned and should be published.

p) Any order made by or following a judicial decision should be written in clear and unambiguous **language**, so as to be readily capable of being given effect or, in the case of an order to do or not do or pay something, **readily enforced.**

q) The CCJE stresses that the merits of individual **judicial decisions are controlled by the appeal or review procedures** available in national courts and by the right of access to the European Court of Human Rights.

r) **The judicial system as a whole has to be examined** in order to **evaluate** the quality of judicial decisions. Attention should be given to the length, transparency and the conduct of the proceedings.

s) The evaluation must be done on the basis of fundamental principles of the ECHR. It cannot be done only in the light of considerations of an economic or managerial nature.

t) Any method of evaluating the quality of judicial decision should not interfere with the independence of the judiciary as a whole or on an individual basis, should not serve as bureaucratic tool or an end in itself, and should not be confused with the evaluation of the professional abilities of individual judges for other purposes. Moreover, evaluation systems must not challenge the legitimacy of judicial decisions.

u) Above all any evaluation procedure should aim at identifying the need, if any, for amendment of legislation, for changing or improving judicial procedures and/or for further training of judges and court staff.

v) The CCJE stresses that it is desirable that **different methods of evaluation are combined**. Evaluation methods should be considered with the necessary scientific rigour, knowledge and care, as well as defined according to transparent means.

w) The CCJE encourages peer review **and self evaluation** by judges. The CCJE also encourages the participation of "external" persons in the evaluation, provided that the independence of the judiciary is fully respected.

x) By their case-law, their examination of judicial practices and their annual reports, **superior courts** may contribute to the quality of judicial decisions and their evaluation; in this respect, it is of utmost importance that their **case-law is clear, consistent and constant**.

y) The evaluation of the quality of decisions must lie in the power of the **Council for the judiciary,** where it exists, or of an independent body with the same guarantees for the independence of judges.

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[1] This document has been classified restricted until examination by the Committee of Ministers.

[2] All the texts on these issues demonstrate the spirit in which the Council of Europe addresses the need of quality of justice: "in the Council of Europe's view, the quality approach cannot refer to a single decision, but, as part of a comprehensive approach, depends on the quality of the judicial

system, including judges, defence lawyers and court personnel, as well as the quality of the process leading up to decisions. The Council of Europe therefore recommends that efforts to improve the situation focus on each of these points" (unofficial translation), (Jean-Paul JEAN, "La qualité des décisions de justice au sens du Conseil de l'Europe", Colloquy organised on 8 and 9 March 2007 by the Faculty of Law and Social Sciences, University of Poitiers, on "The quality of judicial decisions" – see "CEPEJ Studies" N°4).

[3] See also the conclusions of the Conference on the quality of judicial decisions which was organised in the Supreme Court of Estonia in Tartu (18 June 2008) with the participation of the Estonian judicial community and the Working Party of the CCJE.

[4] See the questionnaire on the quality of judicial decisions and the replies on the website of the CCJE: www.coe.int/ccje.

[5] Specifically concerning procedural laws, the CCJE wishes to recall here its Opinion No. 6 (2004), by which it recommended, in view of ensuring quality judicial decisions delivered in a reasonable timeframe, that legislators make optimal choices in the balance between length of trials and availability of ADR, plea-bargaining schemes, simplified and/or accelerated and summary procedures, as well as procedural rights of the parties, etc. Furthermore, financial resources should be guaranteed for ADR schemes.

[6] See CCJE's Opinion N° 1 (2001), paragraph 61.

[7] See CCJE's Opinion N° 2 (2001).

[8] See CCEJ's Opinion No. 4 (2003).

[9] Brochures, case studies of good and bad practices, standard models for writing judgments together with methodologies, fact sheets and bench books, developed for training purposes could be broadly disseminated among judges.

[10] In its Opinion No. 6 (2004), the CCJE, developing the principles set out in Recommendation No. R (84) 5, stressed the importance of the judge's active role in the management of civil proceedings (see in particular paragraphs 90-102 and 126).

[11] Reference should be made in this connection to Opinion No. 7 (2005) of the CCJE, especially paragraphs 56 to 61.

[12] Exceptions may include, among others, decisions involving the management of the case (e.g. adjourning the hearing), minor procedural issues or essentially non-contentious issues (judgements by default or by consent), decisions by an appeal court affirming a first instance decision after hearing similar arguments on the same grounds, jury decisions and some decisions concerning leave to appeal or to bring a claim, in countries where such leave is required.

[13] See in particular ECr.HR : Boldea vs Romania, 15 February 2007, § 29; Van de Hurk vs the Netherlands, 19 April 1994, § 61.

[14] See in particular ECr.HR : Boldea vs Romania, 15 February 2007, § 29; Helle vs Finland, 19 February 1997, § 60.

[15] The expression "European Law" is intended to include the *acquis* of the Council of Europe and European Community Law.

[16] See Opinion No. 9 (2006) of the CCJE.

[17] See Opinion No. 6 (2004) of the CCJE, paragraph 130.

[18] See Opinion No. 6 (2004) of the CCJE, part B paragraph 34 and Opinion No. 10 (2007) of the CCJE, paragraphs 52 to 56 and 78.

[19] See Opinion No. 6 (2004) of the CCJE, paragraph 36.

[20] These Councils for the Judiciary should be constituted and operate in the manner recommended by the CCJE in its Opinion No. 10 (2007).