

**MEDEL ON THE 2007 CCJE OPINION
CONCERNING COUNCILS FOR THE JUDICIARY**

Alvor (Portugal), February 2nd, 2007

1. Foreword. - Independence, impartiality, and professionalism of the judge, who recognizes over himself only the power of the law, effectiveness of the jurisdiction, are the necessary conditions for the existence of the rule of law in a modern democracy.

MEDEL fully appreciates the CCJE's initiative to organize a European Judges' conference on the topic of councils for the judiciary.

The analytical questionnaire circulated for the preparation of the conference, and the following elaboration of an opinion on the matter, which we look forward to, give us the opportunity to disseminate information and to start a reflection on the possibility to envisage a European model of judicial council.

Obviously, the reflection on a European model doesn't mean that we should aim at a single model; the coexistence of different models is a fact and it derives naturally from different national traditions, balance of powers, States' constitutional constructions.

In addition, we note from our experience and from the answers to the questionnaire, that several countries do not provide in their system for a judicial council.

As a starting point, we have to underline that our shared values are: rule of law, separation of powers, independence of the judiciary. In particular the protection of the independence of the judiciary in most European countries appears to be strengthened by the creation, often at constitutional level, of an independent body for the self-government of the judiciary.

2. Analysis of the Responses to the Questionnaire. - Coming to analyze the replies to the questionnaire we note:

Part I: in principle, the separation of judicial power from legislative and executive power is guaranteed all over Europe; indeed, this constitutes a minimum requirement for the very inclusion in the Council of Europe. Nevertheless, the influence of the executive power can reveal itself indirectly, through mechanisms of appointment of judges and prosecutors, or appointment of heads of judicial and prosecution offices.

Part II: some councils for the judiciary are designed as independent bodies governing the judiciary, while other bodies are more focused on ensuring the efficient administration of court services.

Part III: the composition of council for the judiciary consists normally of magistrates elected by their colleagues and of representatives of the bar and the academy, with different balances. The role of the Ministries of Justice varies from the presidency of the council bodies, to generic membership, up to the exclusion from the body, reflected in the chairmanship of an external organ, like the head of State.

Part IV: resources are in some countries autonomous, in some others dependent from the Ministries of Justice.

Part V: the tasks of councils for the judiciary normally deal with appointment of judges and prosecutors, career, transfer, training, evaluation of performance, disciplinary procedures, budget and services of courts, inspections. These tasks may be shared with other bodies or assigned exclusively to these: Ministry of Justice, Academy for the judiciary, Supreme court.

Part VI: such division of tasks may lead to a close cooperation in the interest of the efficiency of the justice service, or to undue interferences.

Part VII: councils for the judiciary are mostly involved in the reformation processes going on in their respective countries.

Part VIII: in countries where a council for the judiciary is not present, its creation is discussed and frequently supported by judges' associations.

3. Elements for a Common Approach to the Definition of the Role of Judiciary Councils. – MEDEL's position and propositions on this topic have been stated in the document approved on January 16th, 1993 in Palermo, "Elements d'un Statut Européen de la Magistrature".

[abstract]

III. LE CONSEIL SUPERIEUR DE LA MAGISTRATURE

3.1. Le conseil supérieur de la magistrature est chargé de l'administration et de la discipline de la magistrature. Il assure le pluralisme de la magistrature. Il garantit l'indépendance des magistrats.

Il pourvoit au recrutement, décide de l'affectation des magistrats et organise la formation professionnelle.

De sa propre initiative, ou à la demande des autres pouvoirs, le conseil supérieur de la magistrature adresse au parlement ou au gouvernement des avis et recommandations concernant la politique judiciaire.

3.2. Le conseil supérieur de la magistrature est composé au moins pour moitié de magistrats élus par leurs pairs selon la règle de la représentation proportionnelle. Il comporte de plus des personnalités désignées par le parlement. Ses membres sont nommés à temps.

3.3. Le parlement vote le budget de la justice sur les propositions du conseil supérieur de la magistrature et du gouvernement.

Le conseil supérieur de la magistrature dispose d'un budget pour exécuter ses missions.

3.4. Les réunions plénières du conseil supérieur de la magistrature sont publiques, sauf le huis-clos visé à l'article 8.2. alinéa 2.

Les procès-verbaux, décisions, rapports, avis et recommandations, ainsi que le budget et les comptes, font l'objet d'une publicité appropriée. Les décisions relatives au recrutement, à l'affectation et à la discipline des magistrats sont motivées et passibles du contrôle de légalité d'une Cour suprême.

Chaque année, le conseil supérieur de la magistrature remet au parlement un rapport sur ses activités et sur l'état de la justice.

In coherence with these proposals we would like to insist on the issues which, in our opinion, are fundamental in guaranteeing a democratic and independent Justice.

The core functions of a judicial council lie in the protection of independence of the judiciary and promotion of professionalism of magistrates in the framework of the rule of law and in a framework of mutual respect for the separation of powers.

In this respect, councils for the judiciary prove to be an effective mechanism, and we strongly recommend its adoption in countries where such a structure isn't already provided for.

We also observe that in order to ensure to its full extent the independence of the judiciary, a high level of independence of prosecutors has to be guaranteed, possibly by the same council of the judiciary that exercises such functions with respect to judges, or by the implementation of a similar yet separate self-government body.

The minimum tasks of such self-government bodies should refer to career, transfer of magistrates, and disciplinary proceedings. Such bodies should also devote proper attention to the good functioning of court administration and of the justice service as a whole.

Also, in order to provide magistrates with effective cultural means to carry out their function in agreement with the prerogative of independence, councils should deal with initial and in-service training of judges.

These tasks constitute the indispensable minimum for the defense of judicial independence by a Council of Judiciary. We also want to underline that the Council, through its formation and functioning, should act as guardian of pluralism within the Judiciary. As such, it should also be endowed with consultative functions on matters of judicial policy.

Lastly, we stress the need to ensure that the member of the Judiciary be elected to the Council by their fellow Judges, and that the appointment of lay members respect plural representation.