

DECLARATION OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE) ON THE REFORM OF THE JUDICIARY OF SERBIA

The Consultative Council of European Judges (CCJE);

Having regard to the implementation in Serbia of a Law on Judges providing for the termination of the duties and rights of judges elected or appointed under the former Constitution, as from 31 December 2009;

Recalling that the situation concerning the termination and re-appointment of Serbian judges was examined on several occasions and was considered in several texts, issued on international level, and in particular in a Declaration by the CCJE on 24 November 2008, in which the CCJE expressed concern that the legislation being proposed then may infringe judicial independence;

issues the following Declaration:

1. A re-appointment process with respect to all judges of a country is not at all obvious, even within the context of a reform at the constitutional level and of the judiciary itself;
2. The termination of Serbian judges violated the principle of irremovability of judges, as well as the implementing of the above mentioned piece of legislation infringed international standards, and also ignored the recommendations of the Venice Commission on how to apply the criteria suggested in its Opinion n° 528/2009.
3. A termination of office of individual judges for lack of professional capacity or other legitimate reasons might have been ordered, nonetheless, by way of disciplinary sanction, with the due process guarantees of the European Convention of Human Rights (see Recommendation n° R(12) 94, Principle VI (2) and (3));
4. The central goal of the National Judicial Reform Strategy, adopted by the Serbian National Assembly on 25th May 2006, was “to regain the public trust in the Republic of Serbia’s judicial system” (Part I C of the Reform Strategy). The re-election process and the way it was exercised raises concerns that the aim of establishing a Serbian judiciary deserving due trust at national and international level may not be attained.
5. In any case, in order to reduce these effects, those judges that have not been re-elected:
 - (a) should be informed in writing of the specific reasons for which their office has been terminated;
 - (b) should be granted an effective remedy before an independent body which should be composed by judges appointed according to criteria, and using a procedure, agreed by the relevant actors; due process guarantees of the European Convention of Human Rights should be applicable; international bodies such as the Venice Commission and the CCJE, as well as international and national judges’ associations, should be associated to this independent instance as observers;
 - (c) pending review of decisions of termination, those judges who have been removed, should be provided sufficient means to cover their living expenses;
6. The CCJE remains ready to assist the relevant Serbian authorities by providing opinions, if so requested. The CCJE will follow the further developments and asks its Serbian member to present a report at its next plenary meeting.