Recommendation CM/Rec(2010)12
of the Committee of Ministers to member states
on judges: independence, efficiency and responsibilities

(Adopted by the Committee of Ministers on 17 November 2010
at the 1098th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention", ETS No. 5), which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law", and to the relevant case law of the European Court of Human Rights;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Having regard to the opinions of the Consultative Council of European Judges (CCJE), to the work of the European Commission for the Efficiency of Justice (CEPEJ) and to the European Charter on the Statute for Judges prepared within the framework of multilateral meetings of the Council of Europe;

Noting that, in the exercise of their judicial functions, the judges' role is essential in ensuring the protection of human rights and fundamental freedoms;

Wishing to promote the independence of judges, which is an inherent element of the rule of law, and indispensable to judges' impartiality and to the functioning of the judicial system;

Underlining that the independence of the judiciary secures for every person the right to a fair trial and therefore is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system;

Aware of the need to guarantee the position and powers of judges in order to achieve an efficient and fair legal system and encourage them to commit themselves actively to the functioning of the judicial system;

Conscious of the need to ensure the proper exercise of judicial responsibilities, duties and powers aimed at protecting the interests of all persons;

Wishing to learn from the diverse experiences in member states with regard to the organisation of judicial institutions in accordance with the rule of law;

Having regard to the diversity of legal systems, constitutional positions and approaches to the separation of powers;

Noting that nothing in this recommendation is intended to lessen guarantees of independence conferred on judges by the constitutions or legal systems of member states;

Noting that the constitutions or legal systems of some member states have established a council, to be referred to in this recommendation as a "council for the judiciary";

Wishing to promote relations among judicial authorities and individual judges of different member states in order to foster the development of a common judicial culture;

Considering that Recommendation Rec(94)12 of the Committee of Ministers on the independence, efficiency and role of judges needs to be substantially updated in order to reinforce all measures necessary to promote judges' independence and efficiency, guarantee and make more effective their responsibility and strengthen the role of individual judges and the judiciary generally,

Recommends that governments of member states take measures to ensure that the provisions contained in the appendix to the present recommendation, which replaces the above-mentioned Recommendation Rec(94)12, are applied in their legislation, policies and practices and that judges are enabled to perform their functions in accordance with these provisions.

Appendix to Recommendation CM/Rec(2010)12

Chapter I – General aspects

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional matters.

2. The provisions laid down in this recommendation also apply to non-professional judges**,** except where it is clear from the context that they only apply to professional judges.

Judicial independence and the level at which it should be safeguarded

3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.

6. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court. All persons connected with a case, including public bodies or their representatives, should be subject to the authority of the judge.

7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.

8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.

9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.

10. Only judges themselves should decide on their own competence in individual cases as defined by law.

Chapter II − External independence

11. The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.

12. Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of justice.

13. All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.

14. The law should provide for sanctions against persons seeking to influence judges in an improper manner.

15. Judgments should be reasoned and pronounced publicly. Judges should not otherwise be obliged to justify the reasons for their judgments.

16. Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law.

17. With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.

18. If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.

19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.

20. Judges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning. Permanent mechanisms to obtain such feedback set up by councils for the judiciary or other independent authorities would contribute to this.

21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.

Chapter III − Internal independence

22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.

23. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.

24. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.

25. Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law.

Chapter IV − Councils for the judiciary

26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.

27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.

28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.

29. In exercising their functions, councils for the judiciary should not interfere with the independence of individual judges.

Chapter V − Independence, efficiency and resources

30. The efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 of the Convention, legal certainty and public confidence in the rule of law.

31. Efficiency is the delivery of quality decisions within a reasonable time following fair consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction.

32. The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality.

Resources

33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.

34. Judges should be provided with the information they require to enable them to take pertinent procedural decisions where such decisions have financial implications. The power of a judge to make a decision in a particular case should not be solely limited by a requirement to make the most efficient use of resources.

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly encouraged.

38. All necessary measures should be taken to ensure the safety of judges. These measures may involve protection of the courts and of judges who may become, or are victims of, threats or acts of violence.

Alternative dispute resolution

39. Alternative dispute resolution mechanisms should be promoted.

Courts' administration

40. Councils for the judiciary, where existing, or other independent authorities with responsibility for the administration of courts, the courts themselves and/or judges' professional organisations may be consulted when the judicial system's budget is being prepared.

41. Judges should be encouraged to be involved in courts' administration.

Assessment

42. With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities, in accordance with paragraph 58.

International dimension

43. States should provide courts with the appropriate means to enable judges to fulfil their functions efficiently in cases involving foreign or international elements and to support international co-operation and relations between judges.

Chapter VI - Status of the judge

Selection and career

44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.

Tenure and irremovability

49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.

51. Where recruitment is made for a probationary period or fixed term, the decision on whether to confirm or renew such an appointment should only be taken in accordance with paragraph 44 so as to ensure that the independence of the judiciary is fully respected.

52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.

Remuneration

53. The principal rules of the system of remuneration for professional judges should be laid down by law.

54. Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

55. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.

Training

56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.

57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.

Assessment

58. Where judicial authorities establish systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and

on the assessment of these activities, as well as to challenge assessments before an independent authority or a court.

Chapter VII − Duties and responsibilities

Duties

59. Judges should protect the rights and freedoms of all persons equally, respecting their dignity in the conduct of court proceedings.

60. Judges should act independently and impartially in all cases, ensuring that a fair hearing is given to all parties and, where necessary, explaining procedural matters. Judges should act and be seen to act without any improper external influence on the judicial proceedings.

61. Judges should adjudicate on cases which are referred to them. They should withdraw from a case or decline to act where there are valid reasons defined by law, and not otherwise.

62. Judges should manage each case with due diligence and within a reasonable time.

63. Judges should give clear reasons for their judgments in language which is clear and comprehensible.

64. Judges should, in appropriate cases, encourage parties to reach amicable settlements.

65. Judges should regularly update and develop their proficiency.

Liability and disciplinary proceedings

66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.

67. Only the state may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation.

68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.

70. Judges should not be personally accountable where their decision is overruled or modified on appeal.

71. When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.

Chapter VIII − Ethics of judges

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary.