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Palazzo di Giustizia - Piazza Cavour - 00193 Roma - Italia

SUMMARY REPORT OF THE MEETING HELD BY  
THE EUROPEAN ASSOCIATION OF JUDGES - REGIONAL GROUP OF THE IAJ  
Bordeaux (France) – 7<sup>th</sup> May 2010

The meeting was chaired by Mr. Bjørn Solbakken, Vice President of the IAJ and President of the European Association of Judges–Regional Group of the IAJ. In attendance were the IAJ President Mr José Maria Bento Company, the First Vice-President Mrs. Fatoumata Diakité, the Honorary Presidents Mrs. Maja Tratnik, Mr. Ernst Markel and Mr. Günter Woratsch, Vice Presidents Mr. Gerhard Reissner and Virgilijus Valancius, the Deputy Secretaries-Generals Mr. Giacomo Oberto, Mr. Leo D'Agostino, Mr. Raffaele Gargiulo and Mr. Lucio Aschettino, as well as the following delegates, representing their respective associations, which are members of the International Association of Judges and of the European Association of Judges:

Armenia	Mr. Avetisyan, Mr. Mertumyan, Ms. Silvanyan, Mr. Vardazaryan, Mr. Yengibaryan.
Austria	Mr. Reissner
Azerbaijan (ext. m.)	Mr. Jafarov
Belgium	Mr. Denecker and Mrs. Lèbe-Dessard
Bulgaria (ext. m.)	Mrs. Koutzkova
Croatia	Mr. Mrcela and Mr. Sessa
Cyprus	Mr. Georgiou and Mr. Stavrou
Czechia	Mr. Vyklicky
Denmark	Mr. Lougart and Mr. Siöberg
Estonia	Mr. Meelis
Finland	Mr. Katajamäki
France	Mr. Régnard
Georgia	Mr. Katamadze and Mr. Meishvili
Germany	Mr. Jünemann
Hungary	Mrs. Halasz
Iceland	Ms. Ejnarsdottir
Israel	Mrs. Alshech
Italy	Mr. Zuccarelli
Latvia	Mr. Silins
Liechtenstein	Mr. Hagen
Lithuania	Mr. Milinis
Luxembourg	Mr. Kessler
Malta	Mr. Caruana-Demajo
Moldova	Mr. Druta, Mr. Radu
Netherlands	Mr. Steenbeek
Norway	Ms. Maar
Poland	Mr. Piebiak
Portugal	Mr. Calheiros da Gama and Mr. Igreja Matos
Serbia (ext. m.)	Ms. Boljevic, Ms. Zaric
Slovakia	Ms. Bystrianska

Slovenia	Mrs. Roblek
Spain	Mr. Abasgal
Sweden	Mr. Adelswärd and Mr. Nyberg
Switzerland	Mr. Stadelmann and Mr. Gass
Turkey	Mr. Gültekin
Ukraine (ext. m.)	Mr. Boyko, Mr. Gorodvenko, Mr. Kormivk, Mr. Prysiazhniuk
United Kingdom	Mr. Aikens

After the official opening ceremony, held on the evening of Thursday, May 6<sup>th</sup>, in the premises of the Bordeaux Court of Appeal, with the attendance of the President and of the General Prosecutor of the said Court, the President of the EAJ, Mr. Bjørn Solbakken, opened the E.A.J. meeting on Friday, May 7<sup>th</sup>, at 9.30 a.m. by welcoming delegates from all member associations, thanking the French Association of Judges and its President Mr. Christophe Régnard, for the perfect organisation of the meeting and for the warm hospitality. He then thanked IAJ President José Maria Bento Company, First Vice-President Mrs. Fatoumata Diakité, Honorary Presidents Mrs. Maja Tratnik, Mr. Ernst Markel and Mr. Günter Woratsch, Vice Presidents Mr. Gerhard Reissner and Virgilijus Valancius, Deputy Secretaries-General Mr. Giacomo Oberto, Mr. Leo D'Agostino, Mr. Raffaele Gargiulo and Mr. Lucio Aschettino for attending the meeting.

#### 1. Approval of the minutes of the Marrakech Meeting.

President Solbakken pointed out that the minutes of the EAJ meeting in Marrakech had been sent by the Secretariat General to all Member Associations. In a month after delivery of the minutes, no remarks had been sent by the Associations. Mr. Solbakken therefore established, according to the general decision taken in Vienna, the minutes from the meeting in Marrakech as approved.

#### 2. Presidents' report.

President Solbakken took the floor summarizing his written report. He focused first of all on the difficult economical situation in Europe, affecting several countries of the continent. He evoked then the problem of current improper use, in some legal systems, of disciplinary proceedings, in order to limit judicial independence. In this framework he quoted some cases concerning the Latin American judiciary, which were brought to the attention of the Ibero American Group. He read the resolution approved by that Group on the case of a Venezuelan colleague who had been imprisoned simply for doing her duty as a judge. He anticipated that the assembly would be called later on to decide whether to express support to this initiative of the Ibero American Group. He informed as well the assembly that I.A.J. Vice President Cristina Crespo had been elected second Vice-President of FLAM (the federation of Latin American judiciaries) and congratulated her on this event.

President Solbakken then evoked the part of his written report referring to the situation in Slovakia and informed the assembly about his talks with Mr. Harabin, President of the Supreme Court of that country and President of the local Council for the Judiciary. During the visit paid to Bratislava he met as well some of the colleagues who had addressed a letter to the E.A.J., asking for intervention. He referred to the main complaints raised by those colleagues and particularly to those concerning an improper use of disciplinary procedures against judges. President Solbakken finally referred to the part of his written report dealing with some changes within some E.A.J. member associations.

No questions were raised by the assembly about the President's report, which was unanimously approved.

#### 3. Reports.

##### a. CCJE. The Bordeaux Declaration.

Vice President Mr. Gerhard Reissner took the floor, orally illustrating his written report, distributed to all participants. He focused first of all on the works of CCEJ, which started a new experience last year, consisting in the drafting of a common declaration with CCEP (Consultative Council of European Prosecutors), on relationships between judges and prosecutors in Europe. This work was finalised in a very good output: the “Bordeaux declaration;” this document is available on the Internet at the following website: [https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2009\)OP12&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2009)OP12&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864). The text of the declaration was as well sent to all national associations by e-mail.

Mr. Reissner informed then the assembly on the subject that will be dealt with this year by the CCEJ: “The Role of judges in enforcement of judicial decisions.” An opinion on this issue will be discussed and possibly approved in November. He added that some special cases had been discussed by the CCEJ, concerning Italy, Slovakia and Ukraine and a letter had been sent to various authorities in Slovakia. A particular attention had been devoted to the situation of the judiciary in Serbia and a declaration had been issued by the CCEJ. This document was distributed by Mr. Reissner to all participants in the Bordeaux meeting.

Vice President Reissner also evoked the works of the commission charged to revise Recommendation No. R (94) 12 of the Council of Europe on independence, efficiency and role of judges, pointing out that Honorary President Tratnik and Deputy Secretary General Oberto had been members of that panel. On behalf of the E.A.J. Mr. Reissner had also participated in the works of the expert commission as an observer. A final decision on the adoption of this document by the Committee of Ministers is expected in November this year. Mr. Reissner added that a new board of CCEJ had been elected and that he had been chosen as Vice President. This body would like to issue for its decennial a “Magna Charta” for the judiciary, gathering the most relevant points of opinions rendered by it during these years.

#### b. CEPEJ.

As far as CEPEJ was concerned, Mr. Reissner pointed out that this body was in the process of finalising its third evaluation of judicial systems. He informed the assembly about the sectors in which this organ and its working parties are active: mainly the study of European judicial systems, the control of timeframes of judicial procedures and of the quality of judicial activity. Vice President Reissner also mentioned some of the missions organised by CEPEJ in several countries. Upon request by Mr. Aikens, Vice President Reissner focused on the main aspects of the new draft Recommendation on the judiciary.

A long debate took subsequently place on whether it was expedient for the E.A.J. to issue a declaration or a statement in view of the possible adoption by the Council of Europe of the new Recommendation. During this debate Vice President Valancius, Honorary President Tratnik, the Swedish delegate Mr. Adelswärd, the British delegate Mr. Aikens, the Dutch delegate Mr. Steenbeeck and the Croatian delegate Mr. Sessa took the floor.

Summarizing the results of this debate, President Solbakken proposed that the Executive Committee of the E.A.J. deals with this issue, deciding whether it will be expedient to address the Committee of Ministers before their decision on the new draft Recommendation.

#### c. Justice Forum on European e-Justice.

Mrs. Lèbe-Dessard informed the assembly that the meeting of the Justice Forum, which had been announced for the 15 December 2009, had been cancelled without any explanation. No further meeting had been announced.

#### d. Mutual Recognition in Criminal Matters.

The Belgian delegate and former I.A.J. Vice President Mr. Denecker took the floor to summarize his written report. He explained the results of the meeting organised in Brussels by

the European Commission on 9 February 2010. He referred to the written report for the detailed illustration of proposed unification of different procedures currently in use. The meeting had as well seen the setting up of a special commission, whose task should be that of reaching a unification of mutual recognition systems in criminal matters. Mr. Denecker remarked that the aim appeared to be that of reducing the relevance of the role of public prosecution service, in favour of the powers of the police. Representatives of judges and prosecutors have very limited powers to influence the results of such work.

#### 4. Working Group on the Situation of the EAJ's Member Associations.

##### a. General report.

The Swiss delegate Mr. Gass, President of the Working Group on the Situation of the EAJ's Member Associations took the floor stressing that, during the meeting in Marrakech, the plenary had decided not to take any action, for the moment, as far as the situation of countries under observation was concerned. However, it had been decided to keep on monitoring the differing realities, staying ready to react, when requested by concerned associations.

Mr. Gass mentioned the request submitted on 2<sup>nd</sup> May 2010 by Iceland, on the problem of judicial remunerations. The Working Group had decided to draft a letter, to be sent by President Solbakken to the Prime Minister of Iceland. He asked for a mandate by the plenary to finalise the letter.

Mr. Gass then mentioned a request for help sent by Bulgaria: this letter was asking to form a special commission to be sent to that country in order to inquire into the problems currently affecting the judiciary, under strong attack by the Executive. He asked the plenary to give mandate to the Working Group to investigate into this case and to decide whether to send a mission to Bulgaria.

Mr. Gass finally mentioned the case of Slovakia and asked the plenary to replace the Irish member of the Working Group, who had resigned. He proposed the name of Mr. Aikens, who declared himself willing to join the Group.

President Solbakken proposed to vote on the three above mentioned proposals by the Working Group at the end of the debate on this point of the agenda.

##### b. Report on Slovakia.

Honorary President Woratsch took the floor to recapitulate the history of the question concerning Slovakia, evoking the letter sent by many judges of that country raising heavy doubts on the use of disciplinary proceedings against judges, as well as on the election of Mr. Harabin as President of the Judicial Council. He added he had participated in many meetings of the local Association, where he had been informed that, for instance, against one third of the judges of the Supreme Court a disciplinary procedure had been instigated. Also one member of the Constitutional Court had known the same fate. Mr. Woratsch underlined that many Slovakian colleagues had shown distrust in their Association and therefore were asking for an intervention by the E.A.J. He added that, after the meeting of the E.A.J. with Mr. Harabin, the latter had declared at the Slovak television that all problems had been overcome after the meeting with President Solbakken and with Honorary President Woratsch.

President Solbakken took the floor to explain how the E.A.J. had been contacted through the Slovak ambassador in Italy by Mr. Harabin and how Slovak judges had addressed the E.A.J., in order to request an official intervention. He added that during the visit of the E.A.J. commission to Slovakia, they had made clear that they had come to Slovakia just to gather information and not to issue assessments.

Ms. Bystrianska, President of the Slovak Association of Judges, took the floor to explain the main features of her Association. She explained that the number of disciplinary cases had not increased, if compared to the past, but the local Association had decided to give assistance to judges against whom such procedures had been initiated. She added that often

judges are held responsible for shortcomings which do not depend on them. According to her advice, recent alteration of the Slovak law had brought about an improvement of the situation, since the time during which judicial salary could be reduced while disciplinary proceeding was pending had been shortened to two years and salaries of judges undergoing disciplinary proceedings are now reduced and not entirely suspended, as it was the case before. She dwelled as well on powers and composition of the organism charged of carrying on disciplinary proceedings against judges. Ms. Bystrianska closed her intervention by stressing that the judges who had addressed a letter to the E.A.J. had not asked for the help of the Slovak Association. She also blamed a tendency of Slovak judges not to be willing to get involved in the life of the judiciary and of the Association.

President Solbakken thanked the President of the Slovak Association for her intervention and stressed that E.A.J. was ready to give assistance when requested.

A long discussion followed this intervention, during which Honorary President Markel, Vice President Reissner, the Swedish delegate Mr. Adelswärd, the Italian delegate Mr. Zuccarelli, Honorary President Woratsch and the British delegate Mr. Aikens took the floor. The Belgian delegate, former Vice President Mr. Denecker, stressed that E.A.J. should react to the information spread through Slovak media, according to which Mr. Harabin had declared that the meeting with the E.A.J. commission had brought about a solution of any problem, as this was not true.

Summarizing the debate, President Solbakken pointed out that, as a basic principle, E.A.J. does not intervene without a request by local Associations; this was not the case of Slovakia, but the E.A.J. had been invited there by the President of Slovak Judicial Council Mr. Harabin. He therefore proposed to charge Honorary President Woratsch to keep on monitoring the situation of the use of disciplinary actions against judicial independence. He added he could not accept what had been declared on Slovak television by Mr. Harabin; therefore he will write a letter manifesting his dissatisfaction with the way scope and results of the fact-finding mission to Bratislava has been misinterpreted.

The assembly unanimously approved the proposal.

#### c. Iceland.

The President of Icelandic Judges' Association took the floor explaining the content of a document prepared by that Association on the situation of judicial salaries and spread among all delegations. President Solbakken proposed that the Working Group on the situation of member associations investigate in the case, issuing proposals about a letter to be addressed to Icelandic authorities, if needed. The Working Party will report in Dakar.

The assembly unanimously approved the proposal.

#### d. Ukraine.

The President of the Ukrainian Association took the floor explaining that positive steps had been made in the last times; he illustrated as well the main features of local judicial reforms, aiming at enhancing judicial independence.

#### e. Turkey.

The delegate from Turkey took the floor orally explaining the contents of the document prepared by his Association and distributed to all delegates in Bordeaux. He added that his Association is attacked by politicians and that the Minister of justice had said that no judge member of YARSAV could be able to issue independent judgements. A debate followed this speech, during which the Swedish delegate Mr. Adelswärd, Vice President Reissner and Honorary President Tratnik remarked that such declarations by the Minister of justice were in breach of the fundamental principle which is enshrined in official documents of the Council of Europe, safeguarding the right of judges to form free associations.

#### f. Serbia.

The representative of the Serbian Association took the floor to present her organisation and the history of the judiciary after the political changes which had taken place in the year 2000. She reported about the political decision to have all Serbian judges undergo in 2009 a process of reappointment, during which about 30% of them had lost their tenure. The situation was described in details by documents of the Council of Europe, distributed to all participants in the meeting of Bordeaux. As already explained by Vice President Reissner, the CCEJ had issued a very strong declaration to deplore the reappointment process implemented in Serbia.

Vice President Reissner took the floor to explain how the CCEJ had come to the above mentioned declaration, underlying that the decisions not to reappoint about one third of the judges were practically very often not reasoned. A declaration by the E.A.J. was needed and urgent, as judges who had not been reappointed would lose their status by the end of June.

Vice President Valancius explained that he had been involved in an evaluation process about Serbia by the Council of Europe and added that a declaration by the E.A.J. was necessary.

Upon proposal by President Solbakken, the assembly decided to set up a working party, composed by Vice Presidents Reissner e Valancius, as well as by Mr. Aikens, Mr. Gass and the delegate of Serbia. This working party was charged to draft a recommendation on the problem of Serbia.

#### g. Hungary.

Ms. Halasz took the floor to inform the assembly about recent developments in Hungary. The current economical crisis will affect judicial salaries and pensions. The Hungarian Association will monitor the situation and report at the next meetings. For the moment no intervention by the E.A.J. was needed.

#### h. Bulgaria.

Ms. Kutzkova took the floor to explain the problems the Bulgarian judiciary is currently facing. She added she had already addressed the Working Group of the E.A.J. on the situation of member associations, asking for a mission by an ad hoc commission to Bulgaria, as the local Council for the Judiciary does not protect Bulgarian judges against the attack by the Executive power.

Upon proposal of President Solbakken, the assembly unanimously decided to charge the Working Group presided over by Mr. Gass to inquire into the situation of the judiciary in Bulgaria and to possibly send a commission there, if deemed necessary.

The assembly unanimously decided to appoint Mr. Aikens member of the Working Group on the situation of member associations, replacing the delegate from Ireland, who had resigned.

The assembly unanimously approved the above mentioned proposals by Mr. Gass on Ireland and on Bulgaria.

The assembly also decided to ask the First Study Commission of the I.A.J. to investigate into the problems of the internal independence of the judiciary. This issue could be combined with the study of disciplinary proceedings.

### 5. Report from the Working Group on Judicial Salaries.

Vice President Reissner explained he was still waiting for many reports. So far about one third was still missing. Upon proposal of the President, the assembly decided to ask Vice President Reissner to still wait four weeks from 7<sup>th</sup> May. After this deadline Mr. Reissner will draft and distribute his report.

### 6. Budget information.

See enclosure No. 1.

Deputy Secretary General Mr. Oberto took the floor to explain the contents of the document on budget, which is joined to this report as an enclosure.

## 7. Future meetings:

### a. Malta 2011.

Mr. Caruana-Demajo took the floor to inform the assembly about his proposal to organise the next springtime meeting of the E.A.J. in Malta, on 6 and 7 May 2011; he distributed a booklet on Malta.

The assembly unanimously approved this proposal and President Solbakken, on behalf of the E.A.J., thanked the Maltese Association.

### b. Invitation to Amsterdam, the Netherlands, for 2012.

Mr. Steenbeeck took the floor to inform the assembly about his proposal to organise the 2012 springtime meeting of the E.A.J. in Amsterdam, during the month of May.

The assembly unanimously approved this proposal and President Solbakken, on behalf of the E.A.J., thanked the Dutch Association.

### c. Invitation to St. Gallen, Switzerland, for 2013.

Mr. Stadelmann took the floor to inform the assembly about his proposal to organise the 2013 springtime meeting of the E.A.J. in St. Gallen (Switzerland). He distributed a booklet on St. Gallen.

The assembly unanimously approved this proposal and President Solbakken, on behalf of the E.A.J., thanked the Swiss Association.

## 8. Miscellaneous.

The delegate from Portugal, Mr. Igreja Matos, took the floor to illustrate the contents of the declaration approved by the Ibero American Group on the case of the Venezuelan judge Maria Lourdes Afiuni Mora. He asked for support to that declaration, which was distributed to all participants and which is annexed to the minutes of the meeting held by the Ibero American Group in Mar de Plata (Argentina). Upon proposal of President Solbakken the assembly unanimously expressed its approval and support to the "Declaration of the Ibero American Group of the International Association of Judges on the status of Judge Maria Lourdes Afiuni Mora in Venezuela," annexed to the minutes of the meeting held by the Ibero American Group in Mar de Plata (Argentina) (see enclosure No. 2).

Upon proposal of President Solbakken the assembly unanimously decided that, as far as the situations of the judiciary in member countries are concerned, written reports by concerned associations should be sent at least fifteen days prior to the E.A.J.'s meetings in which such cases will be brought to the attention of the plenary.

After this, Mr. Gass, on behalf of the ad hoc group formed on the situation of Serbia, took the floor to read the draft declaration. After a short debate the Assembly unanimously approved the resolution concerning Serbia, which is joined as an enclosure to this report (see enclosure No. 3).

During the meeting the Armenian Association spreaded a questionnaire among all other delegations relating to issues of national judges responsibility in terms of the decisions of the European Court of Human Rights.

Closing the meeting President Solbakken expressed again the warmest thanks to the French Association and to Mr. Régnard for the perfect organisation of the meeting, for the warm reception and the ideal working conditions. He thanked again the IAJ President, IAJ Honorary Presidents and Vice Presidents, as well as the Secretariat-General and all the participants in the meeting.

The meeting was closed at 5.30 p.m.

The President of the EAJ Bjørn Solbakken	The Deputy Secretary General of the IAJ Giacomo Oberto
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Enclosures:

1. Budget 2009-2010 and expenses from 6 October 2003 to 3 May 2010.
2. Declaration of the Ibero American Group of the International Association of Judges on the Status of the Judge Maria Lourdes Afiuni Mora in Venezuela.
3. Resolutions concerning the actions of the Government of the Republic of Serbia.
4. Consultative Council of European Judges (CCJE) Resolution on Serbia.



INTERNATIONAL ASSOCIATION OF JUDGES  
UNION INTERNATIONALE DES MAGISTRATS  
UNIÓN INTERNACIONAL DE MAGISTRADOS  
INTERNATIONALE VEREINIGUNG DER RICHTER  
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

EAJ budget per Bordeaux

## EUROPEAN ASSOCIATION OF JUDGES Regional Group of the I.A.J.

### **BUDGET 2009-2010** **and** **EXPENSES FROM 6 OCTOBER 2009 to 3 MAY 2010**

(in EURO)

		<b>total</b>
A) Reserves	+ 18,931.02	
B) Contribution from the IAJ for the year 2009-10	+ 3,000.00	
C) Total availability for the year 2009-10 [A+B]		+ 21,931.02
D) Reimbursement of expenses of the EAJ President for the participation in the meeting of the CCEJ	- 1,321.20	
E) Reimbursement of expenses of the EAJ President for the participation in the meeting of the IBA Group	- 1,468.20	
F) Total expenses		- 2,789.40
<b>Availability on 3 May 2010 [C-F]</b>		<b>+ 19,141.62</b>

**DECLARATION OF THE IBERO AMERICAN GROUP  
OF THE INTERNATIONAL ASSOCIATION OF JUDGES  
ON THE STATUS OF THE JUDGE MARIA LOURDES AFIUNI MORA  
IN VENEZUELA**

On December 10, 2009 Afiuni Judge Maria Lourdes Mora, was abruptly arrested in the exercise of her duties in her own official office, as a Judge in Caracas in the Bolivarian Republic of Venezuela, only because she has ruled a judicial decision.

This Judge is detained since then with common delinquents, having been victim of attempts on her life and physical integrity

Therefore:

- 1) We strongly condemn the imprisonment of Afiuni Judge Maria Lourdes Mora, and the systematic violation of hers fundamental rights and guarantees.
- 2) Also condemn the present situation of clear danger to her life and personal integrity in which Judge AFIUNI is involved in a obvious violation of fundamental norms of internationally recognized Human Rights.
- 3) We demand to the Venezuelan authorities the respect of the guarantees and fundamental rights of Judge AFIUNI Mora Maria Lourdes, and we demand for her immediate release and with the assurance of a due process of law.
- 4) We require to the same authorities the effective respect to the Independence of the Judiciary.
- 5) We also encourage the International Organizations and Associations of Judges, prosecutors and court officials, Bar Associations, Academics and all organizations defending human rights, to be incorporated into an international movement for the immediate release of Judge AFIUNI, and the defence of Judicial Independence in the Bolivarian Republic of Venezuela.
- 6) This regional Group inform this dramatic situation to the presidential committee of the International Association of Judges, and to each regional Group of this organization, so they can take urgently the necessary steps to demand the restoration of Rights due to the Judge AFIUNI with immediate release from jail.

Given in the city of Mar Del Plata, Argentina, fourteenth (14) day of April, two thousand and ten (2010).

Signed by the following delegations of Latin American Group:

Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, Porto Rico, Uruguay.

**European Association of Judges**  
**Resolutions concerning the actions of the Government of the Republic of Serbia**

At its annual meeting in Bordeaux on 7<sup>th</sup> May 2010, the European Association of Judges (“EAJ”) passed the following Resolutions unanimously.

(1) The principle of the irremovability of judges and of judges’ tenure of office until a mandatory retirement age or the expiry of a fixed term of office is a “fundamental tenet of judicial independence” which has been widely recognised and accepted. (See: (i) the Opinion No 1 (2001) of the Consultative Council of European Judges (“CJJE”), which refers to the UN basic principles on the independence of the judiciary (1985), paragraph 12; (ii) Recommendation No. (94)12 of the Committee of Ministers of the Council of Europe, in particular Principle 1(2)(a)(ii) and (3) and principle VI(1) and (2); (iii) the European Charter on the Statute of Judges (1998); and (iv) the case law of the European Court of Human Rights.

(2) The EAJ considers that this fundamental principle has been violated by the action of the Serbian governments by its process of the wholesale dismissal of all members of the Serbian judiciary who had been elected or appointed under previous laws of Serbia’s former constitution and then the selective re-election of members of the Serbian judiciary.

(3) The EAJ urges the Serbian authorities to do everything in their power to remedy as quickly as possible this violation of this fundamental tenet of judicial independence.

(4) The EAJ further urges the Serbian authorities to implement without delay the Consultative Council of European Judges (CCJE) Resolutions passed on 14<sup>th</sup> November 2008 (which is annexed hereto) and in particular all aspects of Resolution 5(a), (b) and (c) thereof.

## DECLARATION

of the Consultative Council of European Judges (CCJE), adopted by the Bureau, upon delegation of the Plenary at its meeting in Strasbourg on November 14, 2008, concerning a draft law pending before the Serbian legislature providing for the termination of duties and rights of judges elected or appointed under previous laws.

1. By a letter dated 24 December 2007 and a further, more detailed, letter dated 4 November 2008, the Judges' Association of Serbia informed the Consultative Council of European Judges (CCJE) that a proposal of Law on Judges is being examined by the Serbian legislature, upon the initiative of the Serbian executive, providing for :

- a) the termination, as of 31 December 2009, of duties and rights of judges elected or appointed under previous laws (art. 101);
- b) the competence of the High Judicial Council to define the size of a new judiciary, to be elected by the Serbian National Assembly by 31 December 2009;
- c) the payment of compensation for six months for those judges that should not obtain re-election, to be extended for six more months if in that period the judge concerned acquires the right to a pension.

2. The CCJE discussed the above matter in its Bureau meetings held in Lisbon on 23 April 2008 and in Tartu on 17 June 2008 and further in the 9th Plenary meeting in Strasbourg on November 12-14, 2008.

In view of the above, the CCJE :

- a) considered that already the European Commission for Democracy through Law (Venice Commission), in its Opinion n° 405/2006 on the Constitution of Serbia and 464/2007 on the Draft Law on Judges and the Organisation of Courts in the Republic of Serbia, "pointed out the need for a re-appointment process with respect to all judges (...) was not at all obvious", even within a context of reforms at the constitutional level and of the judiciary itself (see paragraph 9 of the latter Opinion);
- b) considered that the principle of irremovability of judges and tenure until a mandatory retirement age or the expiry of a fixed term of office is a "fundamental tenet of judicial independence".

On this principle, please refer to:

- CCJE's Opinion n° 1 (2001) which refers also to the UN basic principles on the independence of the judiciary (1985), paragraph 12;
- Recommendation n° (94) 12 of the Committee of Ministers of the Council of Europe, Principle I (2) (a) (ii) and (3) and principle VI (1) and (2);
- the European Charter on the Statute of Judges (1998);
- the case-law of the European Court of Human Rights.

Both the Charter and the Recommendation contemplate that termination of office may be ordered by way of disciplinary sanction, with the due process guarantees of the European Convention of Human Rights (see Recommendation n° R (12), Principle VI (2) and (3));

- c) considered that it does not appear, at this stage, that Serbia has undergone an interruption of continuity of its legal and political framework by the adoption of the

Constitution on 30 September 2006 and of the Constitutional law on Implementation of the Constitution on 10 November 2006, and further considered that art. 7 of the latter law, providing that the first election of judges shall take place not later than 90 days from the date of the establishment of the High Judicial Council, should be construed in conformity with the principle of irremovability of judges (guaranteed by the Serbian Constitution both before and after 2006);

- d) expressed concern that the proposal of Law on Judges under examination by the Serbian National Assembly, which clearly calls for termination of judges who have tenure, may infringe judicial independence.

In view of the above, the Plenary:

- a) requests the delegation of Serbia at the CCJE to inform the High Judicial Council of Serbia - as guarantor of independence of Judges in that country - as well as the Judges' Association of Serbia of the above declaration;
- b) requests the delegation of Serbia at the CCJE to take all necessary steps, in agreement with the Bureau of the CCJE and the Secretariat of the Council of Europe, to ensure that, upon request of the relevant Serbian Authorities, a meeting could be organised, during which the matter could be further discussed.