



Doc. 12446

16 December 2010

Judicial corruption

Reply to Recommendation¹: Recommendation 1896 (2010)
Committee of Ministers

1. The Committee of Ministers has attentively examined Parliamentary Assembly [Recommendation 1896 \(2010\)](#) on “Judicial corruption” as well as its [Resolution 1703 \(2010\)](#). It has brought it to the attention of the member states and forwarded it to the various competent bodies for information and any comments².

2. The Committee of Ministers believes that judicial corruption undermines the rule of law, which is a pillar of any pluralist democracy, and engenders impunity. Consequently, combating judicial corruption is a priority for the Council of Europe's work. To be effective, this requires strong involvement on the part of the member states to guarantee the impartiality, integrity and reliability of the judicial system. The Committee notes that, on the basis of Committee of Ministers Resolution Res(97)24 on the twenty guiding principles against corruption, the Group of States against Corruption (GRECO) has recommended the development of objective, fair and transparent systems of judicial recruitment, promotion and dismissal; the improvement of material conditions pertaining to the judiciary (reasonable wages, adequate resources and staffing); the establishment of terms of office for judges and prosecutors which are sufficient in length and free from any undue interference; the strict limitation of immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.

3. Concerning the revision of Committee of Ministers Recommendation Rec(94)12 on the independence, efficiency and role of judges, in conformity with the terms of reference given in 2009 to the Group of specialists on the Judiciary (CJ-S-JUD), which is a subordinate body to the European Committee on Legal Co-operation (CDCJ), the Committee of Ministers wishes to inform the Assembly that Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities was adopted at the 1098th meeting of the Ministers' Deputies on 17 November 2010. It should be noted in this connection that the recommendation, like the recommendation of 1994, seeks to guarantee the independence of the judicial system and covers, *inter alia*, both internal and external independence, the status of judges (selection and career, irremovability, term of office, remuneration and assessment) and the rules setting out their responsibilities. In keeping with the Parliamentary Assembly's request, the Explanatory Memorandum to this new recommendation refers to the fight against corruption and states that “an adequate level of remuneration is a key element in the fight against corruption of judges and aims at shielding them from any such attempts”.

4. Concerning the Assembly's proposal to draw up a model code of conduct directed at judicial officials, the Committee of Ministers shares the opinion of the GRECO that a code of conduct must promote the highest levels of professionalism and integrity of judicial officials, thus helping to prevent misconduct or acts of corruption. The Committee of Ministers stresses, in this connection, that one section of the revised draft recommendation drawn up by the CJ-S-JUD focuses on judges' ethics, inviting the member states to lay down

1. adopted at the 1101st meeting of the Ministers' Deputies (8 December 2010)

2. The European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the Consultative Council of European Prosecutors (CCPE), the Consultative Council of European Judges (CCJE), the Group of States against Corruption (GRECO) and the European Commission for the Efficiency of Justice (CEPEJ).



ethical principles in codes of judicial ethics. This issue has furthermore been brought to the attention of the CDCJ during its recent plenary meeting (11-14 October 2010), which took note of the request relating to the expediency and feasibility of drawing up a model code of professional conduct (or judicial ethics).

5. The Committee of Ministers supports the Assembly's call for closer co-operation between the GRECO and the relevant institutions of the European Union in order to avoid duplication and promote synergies. It notes that the GRECO firmly reiterates its willingness to contribute to the development of a comprehensive anti-corruption policy and help foster the accession of the European Union to the GRECO in this connection.

6. Concerning the request made by the Assembly in paragraph 6 that the Committee gather figure-supported information on prosecutions and convictions of judicial officials in the Council of Europe member states, the Committee of Ministers refers the Assembly to the results of the upcoming fourth evaluation round of the GRECO, the theme of which is "corruption prevention in parliamentary assemblies, judiciary and among other actors of the pre-judicial and judicial process".

7. Finally, the Committee of Ministers will bear in mind the Assembly's request that Committee of Ministers' Recommendation CM/Rec(2000)19 on the role of public prosecution in the criminal justice system be updated and underlines that the CDCJ recently proposed that the role of prosecution services outside the criminal law field be the subject of a future recommendation of the Committee of Ministers. This proposal is linked to [Opinion No. 3](#) of the Consultative Council of European Prosecutors (CCPE) on "The role of prosecution services outside the criminal law field" and will also be on the agenda of a future meeting of the Ministers' Deputies.

Appendix 1 to the draft reply

Comments by the Group of States against Corruption (GRECO)

1. The GRECO notes with interest the call of the Parliamentary Assembly, in line with [Resolution 1703 \(2010\)](#) to regard the eradication of judicial corruption as a priority for the action of the Council of Europe, in that it threatens the rule of law – backbone of a pluralistic democracy – and favours impunity.
2. The GRECO has often observed, in the course of its monitoring work, that the impartiality, integrity and trustworthiness of the justice system are issues of great concern in a number of its member states. Inefficient and biased justice systems hamper the fight against crime, including corruption, and undermine public trust in the efforts undertaken by the authorities. Justice must not only be done, but must also be seen to be done.
3. Consequently, the GRECO has repeatedly urged member states to set in place comprehensive measures, of a legislative and/or institutional nature, with a view to firmly guaranteeing the independence and the accountability of the judiciary. In this connection, the GRECO wishes to draw attention to Committee of Ministers Resolution Res(97)24 on the twenty guiding principles against corruption, which have inspired GRECO's multifaceted recommendations in this field. More particularly, the GRECO has recommended the development of objective, fair and transparent systems of judicial recruitment, promotion and dismissal; the improvement of material conditions pertaining to the judiciary (reasonable wages, adequate staffing and resources); the establishment of terms of office for judges and prosecutors which are sufficient in length and free from any undue interference; the strict limitation of immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.
4. The GRECO welcomes paragraph 4 of the Parliamentary Assembly's recommendation which invites the Committee of Ministers to elaborate a model code of conduct directed at judicial officials, along the lines of the model code of conduct for public officials appended to Committee of Ministers Recommendation Rec(2000)10 on codes of conduct for public officials. In GRECO's longstanding experience, it is of pivotal importance to establish codes of conduct which promote the highest levels of professionalism and integrity of judicial officials. In particular, it must be stressed that a code of conduct is most useful in preventing misconduct or corruption when it is fair and well-known by those subject to it as well as by the public, when there are mechanisms for providing training and education on the code as well as individualised advice to those who need guidance and when there are appropriate and effective mechanisms for enforcing its provisions.
5. Lastly, regarding paragraph 5, the GRECO concurs with the Parliamentary Assembly in stressing the need for closer co-operation between the GRECO and the relevant institutions of the European Union in order to guard against duplications and to promote synergies. In the framework of the Stockholm Programme, the GRECO reiterates its willingness to contribute to the development of a comprehensive anti-corruption policy of the European Union, in line with the invitation addressed by the European Council to the Commission. The GRECO welcomes, in particular, the invitation by the European Council to the Commission to submit a report, in 2010, to the Council on the modalities for the Union to accede to the GRECO and, in this connection, expresses its willingness to discuss such modalities with the competent services of the European Union in light of GRECO's Statute, the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174), which already provide for the possibility of the European Union to participate in the GRECO.

Appendix 2 to the draft reply

Opinion of the Bureau of the European Committee on Legal Co-operation (CDCJ)

1. Following the adoption by the Parliamentary Assembly, at its session of 27 January 2010, of [Recommendation 1896 \(2010\)](#) on “Judicial corruption”, the Committee of Ministers³ decided to send this recommendation to the European Committee on Legal Co-operation (CDCJ) for information and possible comments.
2. The Bureau of the CDCJ welcomed the recommendation of the Parliamentary Assembly which is fully in line with the priorities of the CDCJ, which has been striving for many years for the promotion of the independence of judges, inherent element of the rule of law, which is indispensable to judges’ impartiality and to the functioning of the judicial system.
3. The Bureau of the CDCJ welcomes the reference to the work of the Group of Specialists on the Judiciary (CJ-S-JUD) which was entrusted in 2009⁴ with the task of drawing up a draft recommendation, updating Recommendation Rec(94)12 on the independence, efficiency and role of judges, integrating the developments which have taken place since the adoption of that recommendation and strengthening the scope of this instrument.
4. The draft recommendation and Explanatory Memorandum produced by the CJ-S-JUD are currently being examined by the Bureau of the CDCJ, which has called for comments of national delegations on the draft with a view to discussing and approving it at the 85th plenary meeting of the CDCJ (11-14 October 2010). The draft recommendation will subsequently be sent to the Committee of Ministers for adoption.
5. The current version of the draft states that judges’ remuneration should be sufficient to shield them from inducements aimed at influencing their decisions and a reference to the fight against corruption of judges could, as suggested by the Parliamentary Assembly, be made in the Explanatory Memorandum.
6. Concerning the invitation made to the CJ-S-JUD to take into account Parliamentary Assembly Resolutions 1703 (2010) and 1685 (2009) respectively concerning judicial corruption and allegations of politically motivated abuses of the criminal justice system in Council of Europe member states, the group indeed had the opportunity to take note of [Resolution 1685 \(2009\)](#), while [Resolution 1703 \(2010\)](#) on judicial corruption had not been adopted at the time the CJ-S-JUD held its meetings.
7. Concerning paragraph 4 of Parliamentary Assembly [Recommendation 1896 \(2010\)](#), the Bureau of the CDCJ underlines that a specific chapter of the draft recommendation deals with the ethics of judges, inviting member states to lay down ethical principles in codes of judicial ethics and that the opportunity to elaborate a model code of conduct (or of judicial ethics) could be considered by the CDCJ at its forthcoming plenary meeting.
8. Finally, in respect of paragraph 7, the Bureau of the CDCJ notes that the CJ-S-JUD has decided to underline the importance of the European Charter on the statute for judges prepared within the framework of multilateral meetings of the Council of Europe, which is to this end referred to in the preamble of the draft recommendation, together with the opinions of the Consultative Council of European Judges (CCJE) and the work of the European Commission for the Efficiency of Justice

3. 1077th meeting, 24 February 2010.

4. The terms of reference of the CJ-S-JUD expired on 31/12/2009.

Appendix 3 to the draft reply

Comments from the Bureau of the Consultative Council of European Judges (CCJE)

1. At their 1077th meeting (24 February 2010), the Ministers' Deputies agreed, *inter alia*, to communicate [Recommendation 1896 \(2010\)](#) on "Judicial corruption" to the Consultative Council of European Judges (CCJE) for information and possible comments.
2. In general, the CCJE wishes to express its great satisfaction at the existence of a recommendation on judicial corruption.
3. Regarding the paragraph in which the Parliamentary Assembly "invites the Committee of Ministers to draw up a model code of conduct directed at judicial officials [...]" while referring to [Opinion No. 3](#) of the CCJE, although, as a consultative committee, the CCJE has no standard-setting competence, it wishes to be involved in any work to draw up a code of conduct directed at all judicial officials. The CCJE also wishes to stress how important it is that such a code be prepared by the professionals themselves.

Appendix 4 to the draft reply

Comments from the Bureau of the Consultative Council of European Prosecutors (CCPE)

1. At their 1077th meeting (24 February 2010), the Ministers' Deputies agreed, *inter alia*, to communicate [Recommendation 1896 \(2010\)](#) on "Judicial corruption" to the Consultative Council of European Prosecutors (CCPE) for information and possible comments.
2. In general, the CCPE wishes to express its great satisfaction at the existence of a recommendation on judicial corruption.
3. Regarding the paragraph encouraging the CCPE to "persevere in its role as guardian of the due application of Committee of Ministers Recommendation CM/Rec(2000)19 on the role of public prosecution in the criminal justice system, bearing in mind particularly the independence of prosecutors and having regard to the reforms which have taken place in the member states since the recommendation was adopted", the CCPE stresses that this role of promoting the recommendation in question is included in the CCPE's terms of reference for 2009/2010 and that each CCPE member is constantly concerned to make the recommendation more widely known and explain it. The CCPE also points out that, to mark the 10th anniversary of Recommendation CM/Rec(2000)19, it will undertake an impact study in the member states to find out how well known the recommendation is and to what extent it is applied.
4. Regarding the paragraph encouraging the CCPE to "review this recommendation in a similar way to the current revision of Recommendation Rec(94)12", the CCPE points out that, although, as a consultative committee, it is not empowered to review a recommendation of the Committee of Ministers, it will, if appropriate, make concrete proposals for a possible revision, in the light of the results of the impact study. The CCPE also points out that Recommendation Rec(2000)19 already contained some of the measures recommended in Parliamentary Assembly [Resolution 1703 \(2010\)](#).
5. Regarding the paragraph in which the Parliamentary Assembly "invites the Committee of Ministers to draw up a model code of conduct directed at judicial officials [...]" while referring to [Opinion No. 3](#) of the CCJE, the CCPE is ready to be involved, alongside the CCJE, in any work to draw up a code of conduct directed at all judicial officials and stresses how important it is that such a code be prepared by the professionals themselves. In addition to [Opinion No. 3](#) of the CCJE, the CCPE notes in this connection, the existence of the European Guidelines on Ethics and Conduct for Public Prosecutors, known as the "Budapest Guidelines", adopted by the Conference of Prosecutors General of Europe on 31 May 2005.