



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ PROJECT TEAM

Councils for the Judiciary Report 2010-2011



With the support of the European Union
Avec le soutien de l'Union européenne

RECOMMENDATION ON COUNCILS FOR THE JUDICIARY, EUROPEAN NETWORK OF COUNCILS FOR THE JUDICIARY, ROME, 2011

1. Introduction

- 1.1 The separation of powers is a fundamental principle of any democracy, through which members of the European Network of Councils for the Judiciary (“E.N.C.J.”) can safeguard and promote the independence of both the judiciary and of individual judges operating within their respective jurisdictions. A fundamental principle as set out in the E.N.C.J. Working Group on Judicial Ethics,¹ is that of every citizen in a democratic society to have the benefit of a judiciary which is and is seen to be independent of the legislative and executive arms of government and which is there to safeguard the freedom and rights of the citizen under the rule of law.
- 1.2 This independence leads a judge to apply the law to the matters which are placed before him in a specific case “*without fearing to please or to displease all forms of power, executive, legislative, political, hierarchical, economic, media or public opinion*”². This status can only be achieved where the judicial organs of State operate independently from the executive and legislative powers. As key judicial bodies, Councils for the Judiciary³ must play a pivotal role in ensuring judicial independence, and operate autonomously within the judicial systems of their respective jurisdictions to guarantee, *inter alia*, the maintenance of the rule of law, the promotion of civil liberties, individual freedoms, basic human rights and the administration of justice.
- 1.3 Each Council for the Judiciary has its origin in the development of its own legal system which is deeply rooted in a historical, cultural and social context but nevertheless all Councils for the Judiciary share common experiences and challenges and are governed by the same general principles.

¹ As approved at the General Assembly of the E.N.C.J., London, 4th June, 2010.

² Judicial Ethics Report 2009-2010, E.N.C.J. Working Group, at p. 3.

³ “Councils for the Judiciary” can be defined as “Councils for the Judiciary or one or more independent and autonomous bodies” which are independent and autonomous from the legislative and executive powers of the State and responsible for the independent administration and delivery of justice, See para 1, Preamble, and para 2, Budapest Resolution of the European Network of Councils for the Judiciary “Self Governance for the Judiciary: Balancing Independence and Accountability”, 21-23 May, 2008.

- 1.4** In order to guarantee and defend judicial independence, it is necessary to examine, *inter alia*, matters such as the organisation of judges at all levels of the judiciary, entry and appointment to the judicial profession, promotion and career progression, disciplinary mechanisms, so as to define the status of judges and to ensure independence in performing their judicial functions. Councils for the Judiciary should have a constitutional status, to secure the independence of the judiciary "from every other power" and ensure effective self governance. Constitutional status will ensure the role of judges as monitors and guarantors of the basic rights of every citizen whilst counteracting any perception of self interest, self protection or self referencing. This project team conducted an extensive study and analysis of the key areas of importance in the definition and preservation of an independent and autonomous judicial order, with particular emphasis on the functioning and organisation of each judicial system.
- 1.5** Building upon the conclusions of the Budapest Resolution on "*Self Governance for the Judiciary: Balancing Independence and Accountability*", and noting the conclusions of the E.N.C.J. project team of 2009/10 on the "*Status of Judges*", further propositions were developed on the legal and organisational mechanisms necessary to ensure the independence of the judiciary.
- 1.6** There are many countries which provide for the establishment of self governing judicial bodies such as High Councils for the Judiciary and Councils of Justice – to defend and protect the values of the independence of judges and the autonomy of the judicial order. There are other jurisdictions where such a body is not generally provided for, but where other independent and autonomous bodies have competence for the administration and financial management of the courts, and in some cases, the appointment and career progression of judges.
- 1.7** By analysing the main models of Councils for the Judiciary provided for and adopted by the participating countries, the project team compared the "risks" and "advantages" associated with the principal and various structural and functional characteristics of each of these models, with the objective of outlining common principles that – despite their differences in structure and competence – would contribute to a definition of the term "Council for the Judiciary" as a body guaranteeing the independence of the judiciary and the effectiveness, transparency, and quality of the judicial system.

- 1.8** The topics of the project team, identified on the basis of their significance and their relevance to the definition of the role and essential features of Councils for the Judiciary as guardians of the judiciary, result in the conclusions as set out herein.
- 1.9** It must be reiterated that the conclusions reached by the project team are not aimed at identifying an “ideal model” of a Council for the Judiciary, but seek to define common principles for ensuring the independence of Councils for the Judiciary (or one or more independent and autonomous bodies⁴) as well as the effectiveness and efficiency of their activities.
- 1.10** These conclusions should assist in providing valuable guidance to support those countries that seek to introduce their own Council for the Judiciary within their respective jurisdictions, in accordance with differing historical and institutional processes, which must be taken into account in establishing the structures necessary to guarantee the independence of the judiciary.

2. Composition of the Council for the Judiciary

- 2.1** The actual composition of a Council for the Judiciary varies greatly from country to country and depends, *inter alia*, on the political reasons which motivated its creation. There is, however, an emerging international consensus that Councils for the Judiciary should have a broad based membership which includes a majority of judges, but not less than 50% of the membership should be judges.⁵⁶
- 2.2** The most successful models appear to be those with representation from a combination of members elected and/or appointed from the ranks of legal, academic or civil society, with broad powers sufficient to promote both judicial independence and accountability. These principles are seen as the most appropriate pathway to promoting and guaranteeing the real independence of the Judiciary by rendering the Council free from any political interference and serves to reinforce its autonomy.

⁴ As described at para 2 of the Budapest Resolution.

⁵ Para. 4 (b) of the Budapest Resolution.

⁶ The Conselho Superior da Magistratura of Portugal communicated its reservation to point 2.1, considering the constitutional laws in force in Portugal.

- 2.3** In these circumstances the mechanism for appointing judicial members of a Council must be a system which excludes any executive or legislative interference and the election of judges should be solely by their peers and be on the basis of a wide representation of the relevant sectors of the judiciary.
- 2.4** Where the Council for the Judiciary has representation from judges and a combination of the ranks of legal, academic and civil society clearly the inclusion of lay members is of merit in avoiding perceptions of self interest, self protection or self referencing within the judiciary as well as giving the judiciary greater legitimacy and reinforcing their role as guardians and defenders of the basic rights of each citizen.
- 2.5** Regarding lay membership, it is considered appropriate that such person should be appointed on the basis of their competence and standing in civil society. Legal experience gained from practising as a lawyer, or involvement in academia or other quasi-legal position, is considered desirable in order to guarantee that such lay persons have the requisite skills and experience in areas of Council competence, and have a sufficient understanding of judicial life to comprehend the functioning of the judicial system with a view to greater openness to civil society, thereby ensuring greater transparency for the activities of the Council for the Judiciary.
- 2.6** The project team highlights the advantages of including members of civil society who are held in high esteem by their peers and are in a position to represent the ordinary citizen in addition to the needs of society as a whole, thereby giving rise to a diverse representation of society. It is clear from the workings of the project team that members of a Council for the Judiciary can work full time or part time, depending on the particular circumstances pertaining.

3. Powers of the Council for the Judiciary

- 3.1** As regards the powers of a Council for the Judiciary, members of the E.N.C.J. reached consensus under the Budapest Resolution as to the tasks that should fall under the authority of a Council for the Judiciary or one or more independent or autonomous bodies.⁷ Mindful of the

⁷ Budapest Resolution of the European Network of Councils for the Judiciary “Self Governance for the Judiciary: Balancing Independence and Accountability”, 21-23 May, 2008. Para. 2 of the Budapest Resolution stated that all or part

work of E.N.C.J. project teams in the areas of national and transnational public confidence, minimum judicial standards and judicial ethics⁸, the project team on Councils for the Judiciary has focused, in order of priority, on the following topics:-

- (A) The appointment and promotion of judges
- (B) Judicial training
- (C) Discipline
- (D) Management of financial resources for the administration of justice
- (E) Processing complaints from litigants and general complaints relating to the justice system
- (F) Promotion and maintenance of the image of justice
- (G) Formulation of opinions and drafting or proposing legislation concerning the Judiciary

3.2 The fundamental role of the Council is to safeguard the independence of the judiciary and the Council has a distinctive position vis-à-vis other democratic institutions as it has the legitimacy to defend the judiciary, as well as individual judges, in a manner consistent with its role as guarantor, in the face of any measures which threaten to compromise core values of independence and autonomy. The project team, having considered these various powers, has come to the following conclusions:-

A. The Appointment and Promotion of Judges

3.3 The most widely recognised power of a Council for the Judiciary is its role in the appointment of Judges. The prevalent consensus now is that the judicial role should be controlled by an authority “*independent of the executive and legislative powers*” and “*at least half of the members of the authority should be judges chosen by their peers*”⁹ involved in the selection,

of the following tasks should fall under the authority of a Council for the Judiciary or of one or more independent and autonomous bodies:-

- Appointment and promotion of judges.
- Training, discipline and judicial ethics.
- Administration of the courts.
- Finance of the Council for the Judiciary.
- Performance and management of the Judiciary.
- Processing of complaints from litigants.
- Protection of the image of justice.
- Formulation of opinions on judicial policies of the State.
- Setting up systems for evaluating the judicial system.
- Drafting or proposing legislation concerning the judiciary and/or courts.

⁸ E.N.C.J. Working Group, Judicial Ethics Report 2009-2010.

⁹ Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence,

appointment and promotion process. The European Charter on the Statute of Judges asserts that “*in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge ... the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers*” is envisaged,¹⁰ whilst the CCJE calls for “*absolute transparency as to the criteria of selection of judges.*”¹¹ In the event of appointments by the government, the Council of Europe calls for “*an independent and competent authority drawn in substantial part from the judiciary... [to] be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.*”¹²

- 3.4** The considered view of the project team is that the Council for the Judiciary should be the decision-making body in matters affecting the status of each judge from the moment of the commencement of the application for entry to the judicial profession, until retirement, so as to avoid outside influence in decisions that may have the potential to prejudice the independent execution of the judicial function. The relevant decisions are to be taken according to objective, predetermined criteria that seek to prevent any form of political bias or influence from either within the ranks of the judiciary or from an external source.

B. Judicial Training¹³

- 3.5** One of the principal ways in which the independence of the judiciary can be guaranteed is through the judiciary’s control and maintenance of “high quality training for each and every judge within the respective system”. By ensuring that judges display serious and thorough professionalism, the free and unbiased execution of judicial functions and the proper and transparent exercise of independence can be guaranteed.

- 3.6** Accordingly, high quality judicial training both initial and continuing throughout the judges’

efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, at para. 46.

¹⁰ European Charter on the Statute of Judges, Strasbourg, 8 - 10 July 1998.

¹¹ Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, adopted in Strasbourg, 21-23 November 2007 concludes at part D.

¹² 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, at para. 47.

¹³ Para. 9, Budapest Resolution of the European Network of Councils for the Judiciary “Self Governance for the Judiciary: Balancing Independence and Accountability”, 21-23 May, 2008 identifies that the “Council for the Judiciary should promote the efficiency and quality of justice”.

professional career must be conducted in a manner that is appropriate to a high standard of quality, thus ensuring independence. Different training systems exist throughout the member states of the E.N.C.J. In general terms, the training process for members of the judiciary should encompass the participation of externally qualified professionals in order to enhance judicial training and to ensure a holistic approach.

- 3.7** In the same vein, the preparation of joint training courses, in collaboration with legal practitioners should be considered. The Council must play an active role with regard to judicial training and ensure that adequate funding is provided for such high quality training through regular and extensive negotiation with budget holders. While there is an emerging consensus that authority for judicial training should be entrusted by the Council for the Judiciary to an autonomous body with its own budget, this body should be bound by guidelines promoted by the Council for the Judiciary, with the Council retaining a supervisory role in the general conduct of judicial training but devolving operational responsibility to the autonomous body¹⁴.
- 3.8** Training should cover all aspects of domestic law; however emphasis should also be placed on European Union law, which forms an integral part of the national law of the member states of the E.N.C.J. Given that European Union law requires a uniform interpretation in all member States, there is no doubt that greater emphasis will have to be placed on common teaching standards for judges in the future.
- 3.9** Training should not be confined to academic or theoretical matters, but also should cover practical and skills-based training. It is important for entrants to the judiciary to receive training on “how to *be* a judge”, thus significant emphasis should be placed on judicial behaviour, social and economic issues and skill-based training such as listening and interpersonal skills. Training could also encompass elements such as foreign languages and cultural issues¹⁵.

¹⁴ This is in line with CCJE Opinion 10, para. 65., which states that “*the conception of training programmes and their implementation should be entrusted, under the authority of the judiciary or preferably the Council for the Judiciary, to a special autonomous body (e.g. a training academy) with its own budget and which should work in consultation with judges. A clear division of functions should be encouraged between the Council for the Judiciary and the training academy, when it exists.*”

Para. 72 further states that “*The Council for the Judiciary should be widely consulted in the process of selection of the topics which will be included in the yearly training programmes; the Council for the Judiciary should also monitor the way the programme is carried out and evaluate its effects on the quality of the performance of the judiciary.*” [Emphasis added]

¹⁵ CCJE Opinion no. 10(2007) para 68 states “... initial training, through which candidates will develop and deepen not

C. Discipline

- 3.10** The judicial disciplinary system, as a fundamental, must guarantee respect for the principles of the independence of the judicial order and transparency to maintain public confidence. The Council for the Judiciary maintains public confidence by sanctioning serious violations of the professional duties¹⁶ in an independent manner, without any motivations of self-interest, self protection or self referencing.
- 3.11** This role must be assigned to a body that is entirely free from political interference or influence. In order to maintain public confidence in the Council for the Judiciary, which is charged with the administration of the disciplinary procedure relating to judges, it is vital that the procedure in place not only works but is perceived by the citizen as an effective method of disciplining members of the judiciary who fail to adhere to the principles as promulgated with respect to the judiciary¹⁷.
- 3.12** It is preferable that disciplinary proceedings are conducted within the judicial system, rather than by ad hoc bodies, and the Council should ensure the efficient and transparent management and processing of complaints, which should be dealt with efficiently. Lengthy investigations, which could negatively impact upon the career of a judge, should be avoided. It is recommended that each Council should have its own guidelines or standards in relation to discipline, clearly outlining disciplinary procedures and penalties.
- 3.13** There are essentially two solutions that can be advanced in relation to the disciplinary process:

only their legal knowledge of the national and international substantive and procedural law and practice, but also develop complementary skills, e.g. knowledge of foreign languages, ethics, alternative dispute resolution, so that society may be served by judges capable of applying the law correctly, and of critical and independent thinking, social sensitivity and open-mindedness.”

¹⁶ 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 para. 45 states that:-

“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.”

¹⁷ Address on behalf of the E.N.C.J. to the the Working Group of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Sarajevo, 2nd November, 2010.

- The Council for the Judiciary or one or more independent and autonomous bodies, with a majority judicial representation, to include lay representation¹⁸
- A process entirely within the relevant judicial system.¹⁹

D. Management of Financial Resources for the Administration of Justice²⁰

3.14 Councils for the Judiciary must have adequate financial and administrative resources to properly carry out their function. The Council must have the power and capacity to negotiate and organise its own budget effectively and in this regard, to participate in consultation or representation procedures at local and national level²¹ as well as the right to engage in formal dialogue with the legislative and the executive in relation to the allocation of resources necessary for the administration of justice.²²

3.15 The CCJE suggest that “the arrangements for parliamentary adoption of the judicial budget should include a procedure that takes into account the opinions of the judiciary”.²³ In this manner, transparency is ensured and shortfalls in Council financing are avoided. Nevertheless, extending the Council’s powers in the area of financial management will imply “its

¹⁸ CCJE Opinion NO 3 (2002), para. 71, provides clear guidance as to the lay participants, endorsing “*the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of the legislature, government or administration.*”

¹⁹ Whilst in marked contrast, para. 64 of the CCJE Opinion no. 10(2007) provides:-
“In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court.” [Emphasis added]

²⁰ Para 5 of the Budapest Resolution provides that “the Council for the Judiciary must manage its budget independently of the executive power” while para. 8 states that “a necessary consequence of its independence is that the Council for the Judiciary or other autonomous body should be accountable for its activities

²¹ European Charter on the Statute of Judges, Strasbourg, 8 - 10 July 1998, states at para 1.8:-
“... judges should be associated in the determination of the overall judicial budget and the resources earmarked for individual courts, which implies establishing consultation or representation procedures at the national and local levels... The Charter does not stipulate that judges should be responsible for such administration, but it does require them not to be left out of administrative decisions.”

²² This reflects the conclusions of Report on the Independence of the Judicial System Part I: The Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March, 2010) CDL-AD(2010)004, which state at para. 82(9) that “*...decisions on the allocation of funds to courts should be taken with the strictest respect for the principle of judicial independence. The judiciary should have the opportunity to express its views about the proposed budget to Parliament, possibly through the judicial council.*”

²³ Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, adopted in Strasbourg, 21-23 November 2007 at para 73.

accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public.²⁴”

E. Processing Complaints from Litigants and General Complaints relating to Justice System

3.16 Processing of complaints²⁵ represents a means of defending the independence of the judicial order, the concrete implementation of which must avoid self-interest, self protection and self referencing in order to maintain public confidence in the judiciary and in the overall functioning of the administration of justice. The complaints process should incorporate a filtering mechanism, so as to ensure that manifestly unfounded, frivolous or vexatious complaints are disregarded at the earliest opportunity. These mechanisms can thereby reinforce the supervisory role for the Council for the Judiciary in the proper functioning of the judicial system.

F. Promotion and Maintenance of the Image of Justice

3.17 The Council has the responsibility to promote the reputation of the judiciary²⁶, to refute inaccurate perceptions of judges created by the media or other organs of government and to engage with the wider public as to the pivotal role of judges in the administration of justice, as independent guarantors of the rule of law, civil liberties and the public interest, thereby enhancing public confidence. To effectively deliver this aim, the Council should publish a communication strategy and policy for judicial engagement with the public and local communities to ensure confidence in the judiciary and its functions.²⁷

²⁴ Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, adopted in Strasbourg, 21-23 November 2007 at para 75.

²⁵ Para. 64 the CCJE Opinion No. 10 provides: -“*The Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court.*”

²⁶ Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, adopted in Strasbourg, 21-23 November 2007 suggests at para. 83 states that “*The Council for the Judiciary should have the power not only to disclose its views publicly but should also take all necessary steps before the public, the political authorities and, where appropriate, the courts to defend the reputation of the judicial institution and/or its members.*”

²⁷ This reflects the conclusions of Report on the Independence of the Judicial System Part I: The Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March, 2010) CDL-AD(2010)004, which

G. Formulation of Opinions and Drafting or Proposing Legislation concerning the Judiciary

3.18 The Council should have the power to put forward proposals or to render opinions on any judicial policies or legislative proposals which impact on the delivery of justice or the functions of the judiciary.

➤ **The submission of opinions by the Council**

The absolute right of the Council to express its views should be clearly and unambiguously set out in statute, so as to enable the Council to issue an independent view, on a unilateral basis, on matters of likely to have an impact on the judiciary, or which might diminish the citizen's guarantee of access to justice²⁸, even where these views run contrary to those expressed by other organs of government.

➤ **Early involvement at drafting and consultation phases**

It is proposed that the executive (Minister for Justice) or the legislative (Parliament) should request the view of the Council for the Judiciary prior to the commencement of legislative drafting, or at least prior to opening the public consultation process. This would ensure that the executive and legislative have access to expert advice in all matters pertaining of the judiciary.

4. Presidency of the Council for the Judiciary

4.1 It is considered that the Presidency being entrusted to an internal member of the Council contributes to guaranteeing the body's independence. In this regard the appointment of the

state at para. 82(14) that “*in order to shield the judicial process from undue pressure, one should consider the application of the principle of “sub judice”, which should be carefully defined, so that an appropriate balance is struck between the need to protect the judicial process on the one hand and the freedom of the press and open discussion of matters of public interest on the other.*”

²⁸ Wording taken from para. 87 of Opinion no. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, adopted in Strasbourg, 21-23 November 2007:-

“*All draft texts relating to the status of judges, the administration of justice, procedural law and more generally, all draft legislation likely to have an impact on the judiciary, e.g. the independence of the judiciary, or which might diminish citizens' (including judges' own) guarantee of access to justice, should require the opinion of the Council for the Judiciary before deliberation by Parliament. This consultative function should be recognised by all States and affirmed by the Council of Europe as a recommendation.*” [Emphasis added]

President or Chief Justice of the Highest Court can facilitate a strong link between the Council's activities and the relevant jurisdictional bodies. Where an external appointment is being considered, it is of importance that the relevant person has no executive function or powers and is neutral and possibly is a guarantor of the Constitution such as the President of Italy, in the context of the Consiglio Superiore della Magistratura.

5. Participation of the Minister for Justice in the Council for the Judiciary

- 5.1** The presence of the Minister for Justice as a member of the Council for the Judiciary is not considered appropriate, as it clearly entails the risk of the executive power affecting the debates and choices made by the judicial order and may effectively constrain the frankness of debate and discussions. This risk of having the Minister for Justice as a member of the Council outweighs the possible theoretical advantage of having the Minister present to carry out a joint evaluation of problems arising from the functioning of the judicial system, and matters of common interest.
- 5.2** However, in the absence of the Minister as a member of the Council, it is considered to be of significant importance to have in place a clear established line of communication to the Minister and ministry officials (functionaries) with periodic meetings, in order to guarantee implementation of agreed policies for resolving difficulties with the judicial system and thereby resulting in a better functioning Judicial Service emanating from institutional collaboration in the "right spirit".

6. Relations between the Council for the Judiciary, the Minister for Justice and Parliament

- 6.1** In order to create an efficient justice system, it is considered appropriate that there should be permanent institutional interaction and dialogue between the Council for the Judiciary and the Minister and the Parliament, with each reciprocally respecting their respective independent roles.

- It is to be anticipated that Parliament and the Minister would consult with the Council for the Judiciary on draft legislation affecting or touching in any way on the judicial function or organisation
- Further that the Council for the Judiciary would be asked to express a consultative opinion on draft legislation or orders affecting the judicial function or organisation. The temporal means must be such that they do not result in undue exercising of legislative power.

6.2 The Council for the Judiciary should draw up an Annual Report on the state of the judicial system and on its activities, to be presented before the appropriate organ of the parliamentary system in place.

7. Conclusion

7.1 Councils for the Judiciary play a key role in the administration of justice, interacting with society at all levels. Whilst some E.N.C.J. members Councils have attained constitutional status, the majority are provided for in statute within their respective jurisdictions. As guarantors of judicial independence, the widespread constitutionalisation of Councils is to be encouraged as the optimal means of ensuring the independent exercise of justice, as well as the independent expression of the opinions of the Council.

7.2 The willingness of the E.N.C.J., expressed herein, to incorporate lay members (legally qualified professionals or civilians) into the Council structure, both within the composition of the Council and its various committees and working groups²⁹, sends a clear signal to society as to the overwhelming desire of the judiciary to ensure the transparent and open administration of justice and to refute any misguided perceptions of self-interest, self protection or self referencing within the judiciary.

7.3 Furthermore, clarifications as to the Council's relations with other organs of State contained herein, remove any ambiguity as to the powers of the Council, in particular, in the areas of appointment and promotion, judicial training, discipline, the management of financial resources for the administration of justice, promotion and maintenance of the image of justice, the processing of complaints from litigants and general complaints on the justice system, and the formulation of opinions/drafting or proposing legislation concerning the judiciary and/or

²⁹ In particular, in discipline and training structures.

courts, as indicated above.

- 7.4** Acknowledging the terms of the Budapest Resolution and elaborating upon the principal powers of the Council outlined therein, this document aims to provide a reference point for countries seeking to establish a Council for the Judiciary in the future, laying down the fundamental requirements and principles necessary to safeguard the independent administration of justice, essential as a basic right for all citizens in a democratic society.