



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 6 October 2008

CDL-JD-OJ(2008)001ann
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**MEETING OF THE SUB-COMMISSION
ON THE JUDICIARY**

(Venice, Scuola Grande di San Giovanni Evangelista)

Thursday, 16 October 2008 2.00 p.m. to 3.30 p.m.

DRAFT ANNOTATED AGENDA

1. ***Adoption of the Agenda***

2. ***Request from the Parliamentary Assembly of the Council of Europe for an opinion on European standards as regards the independence of the judicial system***

By letter of 11 July 2008, the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly requested the Venice Commission to give an opinion on “European standards as regards the independence of the judicial system”. The Committee is “interested both in a presentation of the existing *acquis* and in proposals for its further development, on the basis of a comparative analysis taking into account the major families of legal systems in Europe.” ([link to introductory memorandum by the rapporteur](#) - restricted).

Independence of judges

Major reference documents in this field are *inter alia*:

1. Recommendation R (94) 12 on the Independence, Efficiency and Role of Judges, adopted by the Committee of Ministers on 13 October 1994 ([link to R \(94\) 12](#))
2. Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges ([link to CCJE Opinion no. 1](#))
3. European Charter on the Statute for Judges, adopted at the multilateral meeting on the statute for judges in Europe, organised by the Council of Europe on 8-10 July 1998 ([link to the Charter and its Explanatory Memorandum](#))
4. The case law of the European Court of Human Rights on this issue is summarised in a memorandum by Mr S. Naismith from the Registry of the Court ([link to article](#)).

In a number of its opinions, the Venice Commission has already expressed itself on the issue of judicial independence, [see draft Vademecum on the Judiciary CDL-JD\(2008\)001](#).

- A Secretariat note ([CDL-JD\(2008\)002](#)) sets out issues which could be dealt with in the Commission’s study on judicial independence. The members of the Sub-Commission are invited to discuss these issues and others which they may feel are relevant to the topic.

Prosecutors and independence

The request by the Parliamentary Assembly concerns the judicial system as a whole and thus includes the prosecution service.

The most relevant standard-setting text in this field is Recommendation (2000)19 on “the Role of Public Prosecution in the Criminal Justice System”, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 ([link to Recommendation \(2000\) 19 and explanatory memorandum](#)). The constitutions of some countries provide for independence of the prosecutors or the prosecutor general ([see document CDL-JD\(2008\)003](#)).

- One of the issues which the members of the Sub-Commission could discuss is whether there is a need to establish the independence of public prosecutors as a standard, or whether it is sufficient to protect them from unjustified interference as in Paragraph 11 of Recommendation (2000) 19. In the latter case, what would be the necessary guarantees for such non-interference?

3. ***Other business***