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27 June 2007

Judicial corruption

Motion for a recommendation
presented by Mr Bartumeu Cassany and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. In its 2007 report on judicial corruption, Transparency International observes that "*corruption is undermining justice in many parts of the world, denying victims and the accused the basic human right to a fair and impartial trial*".
2. A democratic society cannot operate when its judiciary is blighted by ingrained corruption, which often goes hand-in-hand with institutionalised corruption of the entire public service. Judicial corruption undermines the rule of law and the legitimacy of the authorities and is damaging to society as a whole.
3. In addition, in practice a corrupt judiciary thwarts all efforts to combat corruption in other areas, and therefore serves as a breeding ground for organised crime and even terrorism.
4. Article 6 of the European Convention on Human Rights guarantees the right to a fair trial "*by an independent and impartial tribunal*".
5. Article 2 of the Criminal Law Convention on Corruption (ETS No. 173) provides: "*Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions*", while Article 3 contains a similar provision concerning cases of passive bribery of domestic public officials. Article 11 of the United Nations Convention against Corruption reads: "*Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary (...)*".
6. In some of the member States of the Council of Europe, the Group of States against Corruption (GRECO) has come across low public trust in the judiciary combined with a perception that corruption of the judiciary is widespread. In this connection, the Group has made it clear, inter alia, that restoring public trust in judges and the whole legal process requires determined institutional reform and the strengthening of judicial independence from any improper influence.
7. The fact that legislation in the various countries generally provides for penalties for members of the judiciary who, in the course of their duties, ask for or receive money in return for taking specific action does not seem sufficient to stem the tide of corruption.
8. Being aware of the imminent threat a corrupt judiciary poses to the rule of law - and to the principle of equal treatment before the law, which is a founding principle of democracy - the Parliamentary Assembly has decided to investigate the issue and put forward appropriate recommendations, in particular as regards legislation.

Signed (see overleaf)

Signed¹:

BARTUMEU CASSANY Jaume, Andorra, SOC
ABURTO BASELGA Fátima, Spain, SOC
BARNETT Doris, Germany, SOC
BİLGEHAN Gülsün, Turkey, SOC
CHIARUZZI Mauro, San Marino, SOC
CIRCENE Ingrida, Latvia, EPP/CD
CLIVETI Minodora, Romania, SOC
DREYFUS-SCHMIDT Michel, France, SOC
DURRIEU Josette, France, SOC
GARDETTO Jean-Charles, Monaco, EPP/CD
HERKEL Andres, Estonia, EPP/CD
HOLOVATY Serhiy, Ukraine, ALDE
JURGENS Erik, Netherlands, SOC
LENGAGNE Guy, France, SOC
MARCENARO Pietro, Italy, SOC
MITREVA Ilinka, "the former Yugoslav Republic of Macedonia", SOC
PFLUG Johannes, Germany, SOC
SARIKAS Fidias, Cyprus, SOC
UNGUREANU Vasile Ioan Dănuț, Romania, SOC
WOHLWEND Renate, Liechtenstein, EPP/CD

¹ SOC: Socialist Group
EPP/CD: Group of the European People's Party
ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democratic Group
UEL: Group of the Unified European Left
NR: not registered in a group