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Strengthening Judicial Independence and Impartiality as a Pre-condition for the Rule of Law in Council of Europe Member States

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RECOMMENDATION CM/REC(2010)12 ON JUDGES: INDEPENDENCE, EFFICIENCY AND RESPONSIBILITIES

FOLLOW-UP ACTION BY MEMBER STATES

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For information

This report has been prepared on behalf of the European Committee on Legal Co-operation (CDCJ), at the request of the Secretary General of the Council of Europe, as a follow-up to his 2015 report entitled "State of Democracy, Human Rights and the Rule of Law in Europe – a shared responsibility for democratic security in Europe".

This report will be considered again by CDCJ at its next plenary meeting (16-18 November 2016).

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Introduction

1. An efficient, independent and impartial judiciary is one of the cornerstones for ensuring the rule of law and the democratic principles of a society. The Report of the Secretary General of the Council of Europe entitled "State of Democracy, Human Rights and the Rule of Law in Europe. A Shared Responsibility for Democratic Security in Europe" of 2015[1] takes stock of the situation of Human Rights in Europe and identifies priorities that have emerged for the Council of Europe. One of these priorities is the need to strengthen the independence and impartiality of the judges and enhance the public confidence in the judiciary. The report reflects the results on an assessment of six key criteria. Among those key areas, judicial independence and efficiency are analysed, finding that "the independence of the judiciary and judges is not being guaranteed in over a third of member States"[2]. In light of these findings, the Secretary General recommended to contact all 47 member States "in order to take stock of the action taken to improve independence, efficiency and responsibilities of judges"[3].

2. Following this assessment, the 47 member States were contacted (by written procedure), and requested to fill in a questionnaire on the follow-up given to Council of Europe Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 (hereinafter "CM/Rec(2010)12") in order to assess the actions taken towards ensuring an independent and impartial judiciary. This questionnaire is divided into eight overarching chapters, following the structure of CM/Rec(2010)12[4]. The member States were asked to give information and describe the measures they have adopted to follow up CM/Rec(2010)12.

3. At the moment of writing this report, answers from 42 member States have been received[5]. The replies provided by the member States are quite diverse in terms of their extent, quality and content. Some states describe thoroughly the measures adopted as well as giving information on remaining problems and pending reforms whilst other countries describe only the general legal framework related to the judiciary[6].

4. The present report aims to identify key challenges to judicial independence and impartiality by making an overall analysis of the follow-up to CM/Rec(2010)12 in the member States. Once these challenges have been identified, it will be possible to make proposals for action that might be taken by the Council of Europe to support not only the follow-up to CM/Rec(2010)12, but also to overcome the weaknesses of the judiciary.

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1 Report of the Secretary General Thorbjørn Jagland, presented in the 125th Session of the Committee of Ministers, Brussels 19 May 2015.

2 Ibid, p. 21.

3 Ibid, p. 9.

4 See the questionnaire in the Appendix.

5 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco Montenegro, the Netherlands, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom.

6 As an example of the diverse extent of these replies, there are reports that have more than 60 pages, whilst others only 5 pages.

5. It has to be clarified that this report is not the result of a comprehensive research of the functioning (practice and legal framework) of the judiciary in each member State and it does not aim to provide complete information on the actual situation in the different judicial systems. The scope of this report is limited to the evaluation of the information provided by the authorities of member States in their replies to the questionnaire. These authorities are mainly the Ministries of Justice or the Ministries of Foreign Affairs. Only exceptionally do the replies come from other institutions (e.g. Finland) or the information is provided directly by the judicial council (e.g. Andorra and the Netherlands). In short, the replies contain official information provided mainly by the public institutions, in the majority of cases, the Ministry of Justice.

6. Although the aims of this report are, firstly, to analyse the actions adopted by each member State for the follow-up to CM/Rec(2010)12 and, secondly, to identify what might be the key challenges to judicial independence and impartiality, these objectives have only been partially accomplished. This is due to several factors: 1) the incomplete information provided in many replies to the questionnaire; 2) the fact that the replies mainly reflect a static situation by describing the legal framework regarding the judiciary, but without explaining the evolution of such legislative processes, its consequences and in what way the follow-up to CM/Rec(2010)12 has been improved by this evolution; 3) most replies do not reflect any problematic issues regarding the independent functioning of the judiciary, nor do they mention any shortcomings in the effective implementation of the legal safeguards of judicial independence.

7. The aforementioned explanations seek to underline that this report has a very limited scope: consisting only of an evaluation of the replies provided by member States to the questionnaire regarding their follow-up to CM/Rec(2010)12. The conclusions of this evaluation, and thus the identification of the actions required for strengthening judicial independence and impartiality, are therefore only based on the information provided by the authorities of member States themselves. In order to make a full assessment of the actual situation of the judiciary, the level of judicial independence and impartiality, the quality of the safeguards foreseen against undue interferences, etc., it is absolutely necessary that the official information provided be completed and double-checked against information from other sources. To this end, the report drawn up jointly by the Bureaux of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE)[7] offers relevant information that should also be taken into account when drawing up a future Action Plan.

[7] *Challenges for judicial Independence and impartiality in the member States of the Council of Europe*, of 15 January 2016, report prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe as a follow-up to his 2015 report entitled "State of Democracy, Human Rights and the Rule of Law in Europe – a shared responsibility for democratic security in Europe".

8. In sum, this report reflects the self-evaluation as mainly carried out by the Ministries of Justice of member States on the follow-up to CM/Rec(2010)12. Although it depicts in general a very favourable and positive situation in all member States (only a few states refer to critical points or aspects in need of improvement), it is still possible to identify areas where relevant improvement is visible, and areas where further action can be proposed and supported by the Council of Europe.

9. This general assessment has been prepared by Professor Dr. Lorena Bachmaier on the basis of the replies on behalf of 42 member states of the Council of Europe to the questionnaire prepared by the European Committee on Legal Co-operation (CDCJ).

10. This general report was prepared following a careful analysis of each state's reply to the questionnaire. The report follows the same structure as CM/Rec(2010)12 and the questionnaire, thus dividing the analysis into eight chapters. Some proposals on the action that the Council of Europe could support are included at the end of this report.

Chapter I – General aspects

11. The replies to the questionnaire provide very little information regarding **Paras. 1 and 2** of CM/Rec(2010)12 (applicability of the recommendation to all persons exercising judicial functions, persons dealing with constitutional matters and non-professional judges). Although the scope of CM/Rec(2010)12 also covers courts exercising functions in constitutional matters and non-professional judges, very little information is provided in respect of the independence, impartiality and efficiency of the constitutional courts (where they exist) or on the measures taken to ensure the impartiality of non-professional judges.

12. The information provided on the general aspects of judicial independence mostly describes the constitutional provisions applicable to the judiciary. It can be affirmed that almost all member States have constitutional rules establishing the independence of judges and the fact that in exercising their judicial functions they are only subject to the law. Most states include, either in their Constitution or in the laws on the judiciary, the main safeguards for judicial independence: tenure, public nature of judicial acts, establishment of a Judicial Council or an equivalent independent self-governing body, system of remuneration laid down by law, safeguards against transfers without judges' consent and a system for recognising incompatibilities with the judicial function (save a few states).

13. It can be affirmed that most respondent states have an adequate constitutional framework for ensuring the right to an independent and impartial judge and the right to a public hearing. Even though many states still have constitutional provisions that prescribe that judges should be appointed by the head of state, those appointments are usually done on the basis of a proposal from the judicial council or another independent body (**Para. 47**). However, this does not seem to be the case with regard to the appointment of judges to the superior courts of Malta even though, in 2013, the Commission for the Administration of Justice recommended a number of measures for improving the selection and appointment of judges.

14. Some Constitutions also provide for the functional immunity of judges and set out the principle of separation of powers as well as the prohibition against interference in judicial functions.

15. Despite this general compliance, some Constitutions do not seem to address judicial independence with the importance it requires, or the constitutional provisions do not follow all the recommendations of CM/Rec(2010)12. This appears to be the case of the Maltese Constitution, being very vague as to the constitutional safeguards of judicial independence. The Constitution of Monaco does not explicitly recognize the independence of the judiciary, although it provides for the separation of powers (Article 88); even if (for historical reasons) the constitutional text states that the judicial power lies with the Prince, this power is delegated to the courts. Judicial independence is not mentioned explicitly in the Constitution of Cyprus as it is considered to be "evident" stemming from the principle of separation of powers enshrined in the Constitution. The Constitution of Luxembourg does not ensure the full separation of powers. Finland

affirms that a better constitutional framework would strengthen judicial independence, as the Constitution does not address the independence of lay judges and of temporarily appointed judges.

16. Constitutional reforms in the field of the judiciary are under way in Luxembourg, Bulgaria, Ukraine (although not mentioned in their response) and in Serbia.

17. On the basis of the replies to the questionnaire it can be affirmed that **Para. 7** of CM/Rec(2010)12 (judicial independence should be enshrined in the Constitution) is widely respected, and that the main problems regarding the independence and impartiality of the judiciary are not to be traced back to a lack of constitutional protection. Most constitutional texts, in particular in younger democracies, are fully compliant in that regard and regulate quite extensively the safeguards of judicial independence. Problems or issues might still be found in some small Western European states, still very much dominated by the head of state, be it a Prince, Grand-Duc or Co-Princes.

18. Regarding **Para. 8** of CM/Rec(2010)12 (ability to have recourse to a judicial council or a remedy in case judges consider their independence threatened), most member States express that such a possibility exists. Although Austria, Ireland, Liechtenstein, Luxembourg or the Slovak Republic do not provide information on this point, this does not exclude the possibility that it exists. Although all the respondent states seem to have provided for the possibility that the individual judge can seek protection against undue interferences in his/her duties through recourse to an independent authority, there is a lack of information on the effective protection provided by judicial councils in this respect. Member States' replies do not describe how much this recourse is used and how effective it is in practice, nor do they mention to what extent such a mechanism serves to protect the independence of individual judges from external or internal pressures. Moreover, it must be kept in mind that pressure or interference may also come through the independent authority precisely entrusted with the role of protecting judicial independence. In such cases, the possibility to have recourse to this authority does not constitute an effective remedy.

19. Regarding **Para. 9** (no withdrawal of cases from a particular judge without valid reasons), according to the replies, this prohibition is widely respected (no information is found on this in the replies of Andorra and Malta). The prohibition is generally established and the grounds for allowing a withdrawal of a case already allocated to a judge are usually: the incapacity of the judge to deal with it, due to illness or excessive workload, or lapse of (excessive) time without the judge having decided a case (without stating what were the precise reasons for the delays). In Monaco the possibility to withdraw a case from the investigating judge by the president of the court upon request of the General Public Prosecutor is possible in exceptional circumstances, where it is considered to be in the interests of the proper administration of justice. No reply to the questionnaire informs about problems with regard to **Para. 9** neither in the legal regulation nor in practice. France informs on the possibility for the Court of Cassation to withdraw a criminal case from an investigating judge or a criminal court, without explaining the legal grounds on which this possibility is based.

20. The replies in general do not refer to **Para. 10** of CM/Rec(2010)12 (only judges themselves should decide on their own competence in individual cases), although in this case it should be assumed that the procedural rules provide for judges to rule on their own competence.

21. It has to be stated that, as a rule, although this is not expressed in the replies, infringement of **Paras. 9 and 10** of CM/Rec(2010)12 are not frequent: it would be such a blatant and apparent violation of the independence of the judge, that other more subtle ways are more likely to be used to exercise pressure upon the judge.

Chapter II – External independence

22. The replies mention generally that the state ensures the independence of the judiciary (**Para. 13**) but hardly any state expressly refers to precise measures, except the legal provisions on the status of judges or the establishment of a judicial council (or independent body). One of the few states providing information on this point is Denmark, where measures exist for improving the organisational independence of the Danish Court Administration from the Ministry of Justice.

23. As to the sanctions against persons seeking to influence judges in an improper manner (**Para. 14**), many states, in their answers, refer to the rules in their criminal codes on bribery and corruption, but certain states mention specific provisions that sanction criminal interferences other than payment of bribes (e.g. France). Some states provide for sanctions against superior judges giving instructions to lower judges, but in general the only sanction foreseen is a criminal sanction. Some states provide for civil protection against defamation or attacks on the judge's honour.

24. As with other points, the crucial issue is not in how far such conduct is criminalized, but rather how often corruption within the judiciary is reported, investigated, prosecuted and effectively sanctioned with a criminal penalty. Corruption and bribery are offences where none of the parties involved are interested in reporting and therefore all measures are taken to keep all acts concealed. Among the measures taken to prevent corruption, and thus apply sanctions for undue influence upon judges, some states have put in place a specific office to prevent corruption. This is the case in Armenia, where an Ethics Commission for high ranking officials has been introduced to provide consulting on issues pertaining to asset declarations which are required from judges and high ranking officials. Whether such a measure is efficient or not is an issue that lies beyond the scope of this report.

25. **Paragraph 15** (judgments should be reasoned and pronounced publicly, and judges should not otherwise be obliged to justify their reasoning) seems to be respected in all countries: the general rule is that judgments shall be legally and factually grounded and that judges enjoy functional immunity, implying that they are, as a rule, not subject to liability for their legal reasoning. Most replies do not refer expressly to the requirement for judgments to be made public, although it is implicitly recognized within the right to a fair trial and a public hearing. It should be assumed that the exceptions to the requirement of a public hearing and a public pronouncement of the judgment are in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), although many replies only refer generally to the publicity of judicial proceedings. On the basis of the replies it does not appear that the independence of the judiciary and/or the impartiality of judges are threatened by way of secret proceedings or secret judgments. Another issue that might be studied further is how far the parties and the society in general really have access to judicial files, within the limits of data protection laws.

26. Based on the replies to the questionnaire **Paras. 16 and 17** seem to be respected: revision of judgments is only allowed via appellate review and the instances in which the executive and legislative branches can take decisions to invalidate judgments are limited to amnesty and pardon. Nevertheless, this is a sensitive issue, because obviously compliance with judicial independence will depend on the scope, number and type of cases where pardon and amnesty are granted. No state, except France, reports on this and no state mentions problematic practices in this respect. For a full assessment, further information should be gathered and analysed.

27. In their replies to the questionnaire, member States hardly address[8] the issue of criticism on behalf of the executive and/or legislative powers that is likely to undermine judicial independence or public confidence in the judiciary (**Para. 18**), although it is known that this is a current problem in several countries[9]. Serbia informs that a Code of Conduct for MPs regarding comments on judicial decisions, applicable from 2016, has been approved so as to protect judicial independence and public confidence in the judiciary. France has a special system where the criminal code sanctions the conduct of discrediting judicial decisions.

28. Relations with the media is one of the aspects that appears in need of further improvement in many states. Some states seem not to consider the information published in the media as susceptible to undermining judicial independence, and simply do not refer to it in their replies. Finland is one of the very few states that adequately points out that the media can exert an undue pressure upon judges and that this is a problem that needs to be dealt with. Many states address the issue of communication with the media by appointing a spokesperson and several states have prepared a communication strategy.

29. As very little action seems to have been taken to protect judges from undue influence of the media, further action is required in this regard. Although some attention has been given by many states to the issue of communication with the media (e.g. Bulgaria, Denmark, Finland, France, Hungary, Latvia, Republic of Moldova, Sweden, United Kingdom), this also needs further action. A strategy to improve the communication policy of the courts is relevant not only to make them more accountable and thus increase their independence, but also to ensure the freedom to receive and impart information as guaranteed in Article 10 of the ECHR. The publicity of court proceedings in the 21st century cannot only be based on the right to be present during a trial, which is the way it was ensured for centuries, when technology and communications were not so highly developed. In Denmark, a strategy has been approved to improve the communication with the media, many other states report that

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[8] Among other states no information is provided in the replies of Andorra, Armenia, Austria, Azerbaijan, Czech Republic, Malta, Monaco, the Netherlands, Portugal or Romania.

[9] See, *Challenges for judicial Independence and impartiality in the member States of the Council of Europe*, 2016, mentioning several incidents of undue criticisms undermining the independence of the judiciary and the public confidence in the judicial power (Para. 27, p. 15), and also imbalanced comments against judges that have encouraged attacks on judges in Ukraine (Paras. 275-276, p. 91). See also the European Network of Councils for the Judiciary (ENCJ) Report on Independence and Accountability of the Judiciary and of the Prosecution, Performance Indicators 2015, ENCJ Report 2014-2015, p. 7.

spokespersons (e.g. Croatia) or press departments have been established, but still many others only address the issue of relations with the media by way of a prohibition to inform or make statements about pending cases (*sub iudice)* (e.g. Malta). In Monaco the Director of the Court Services, in charge of the whole administration of justice (and under direct authority of the Prince), is the contact point for the press for information of general character – there is no spokesperson of the judiciary in Monaco – and the General Public Prosecutor can in certain circumstances, provide information on criminal proceedings. Contrary to the general trend and the literal phrasing of **Para. 19** of CM/Rec(2010)12 ("judges should exercise restraint in their relations with the media"), Sweden, in its Media Strategy, encourages judges to explain their judgments and communicate directly with the media regarding their decisions, although the communication takes place mainly through press releases. Such a strategy is aimed at raising awareness of the role of judges in society.

30. **Public confidence (Para. 20)** in the judiciary is the bedrock of its legitimacy. Public confidence is built upon the quality of judicial decisions. To that end, only if the judges render well-reasoned decisions in an impartial way will the judiciary be perceived by society as a respected institution. Public confidence is thus not only a necessary element for the democratic interplay of powers and for the legitimacy of the institution itself, but is also a decisive criterion for measuring the independence and impartiality, as well as the professionalism and efficiency of the judiciary. Being such a relevant element for taking stock of the "healthy" functioning of the judiciary, it is surprising that almost no country response to the questionnaire mentions anything regarding public confidence (**Para. 20)**, except for example Sweden, Denmark, France and Lithuania. Romania states that reports are elaborated periodically on how the judiciary and public confidence in it evolve.

31. Although not reflected in most of the replies to the questionnaire, it is known that studies on the public confidence in the judiciary have been carried out in many states. Either the results are not favourable for the judicial independence and therefore the authorities have avoided mentioning them, or these feedback studies are not carried out. A democratic society should be aware that only by recognizing its own failures and shortcomings is there a chance of improvement. Austria carries out periodical surveys on public confidence in the judiciary since 2011, and Denmark defines public confidence in the judiciary as one of the objectives in the strategy 2013-2018 to promote more confidence through a better communications policy. Sweden undertakes studies since 2010 to assess and increase public confidence in the judiciary. Lithuania has introduced feedback studies while France and Germany also carry out many research studies to gain feedback. Action regarding follow-up to **Para. 20** should definitely be taken and addressed in a rigorous manner.

32. **Paragraph 21** addresses the participation of judges in activities outside their official functions and the compatibility of such activities with their independence, as well as the judges' actual and perceived impartiality. Most replies make reference to the rules on professional incompatibilities. The majority of member States have opted for a strict system in this regard. In most states, judges can only engage in scientific and teaching activities, apart from administering their own properties. However, there are some exceptions to this, for example Iceland, Luxembourg and the Netherlands. In the

Netherlands, it is not prohibited to hold “ancillary” positions, and judges are even encouraged to keep close contact with the real problems of the society they serve. This generates, obviously, more situations where conflicts of interest may arise. To address this problematic issue, the Netherlands have taken different actions such as introducing obligations to inform about the ancillary job, adopting guidelines to assess conflicts of interests, requiring website publication of the ancillary jobs and introducing the possibility to dismiss a judge if he/she accepts a job which is incompatible with his/her judicial functions.

33. Problems related to conflicts of interest are also present in those states where non-professional judges or part-time judges are widely employed in courts. This is the case, for example, in Finland, the United Kingdom or, to a limited extent in Germany, where citizens form part of the mixed courts, or members of academia are appointed as part time judges. In general it can be stated that the issues of incompatibilities have been correctly addressed to comply with **Para. 21**, but there might still be room for improvement in certain states where the rules on incompatibilities are not so strict. Another issue that should be addressed is the regulation of the potential conflicts of interest when professional judges are recruited from law practice and vice-versa.

Chapter III – Internal independence

34. All the responding states recognise the principle of internal independence, either by way of stating that the judges are only subject to the law, or by establishing a ban on giving instructions to lower courts, as well as by stating that judicial decisions can only be reviewed by way of appeal. No member State reports problems on follow-up to **Para. 22** (independence of individual judges in the exercise of their adjudicating functions) **or Para. 23** (no interference by superior courts in judges' decision making), which contrasts with other sources of information. The possible pressures usually come through other more subtle means, but hardly anyone will recognize those indirect pressures or interferences. However, in so far as the presidents of courts may have a say in the promotion of the judges working in their court, and also in the assessment and initiation of disciplinary proceedings, there is clearly a risk that they exercise an indirect, even unspoken, influence on the decisions of the judges.

35. In most states, case allocation (**Para. 24)** is done randomly (e.g. Bulgaria or Iceland) and/or on the basis of objective criteria which, in some states, are clearly defined by the law; in others, case allocation results from automated case distribution (e.g. in Estonia; in the Netherlands where the case allocation system is being adapted to the digitalization; in Romania which uses the ECRIS IT system) or, yet in some other states (Germany, Luxembourg, Republic of Moldova,), it results from the rules approved by each court or the Superior Judicial Council. What is clear is that such rules exist – even if at a different level –, and are formally based on objective criteria, therefore **Para. 24** is formally respected. However, upon a closer examination of these criteria, as objective as they may be, there is always room for flexibility. This is sound and justified due to factors such as: the complexity of a case (Hungary), the presence of a foreign element or the need for very specialized knowledge (United Kingdom). These are factors that have to be taken into account for the purposes of efficiency, quality and equal distribution of workload (Croatia). Even the most objective case allocation system is susceptible to manipulation when adjusting to these factors. From the replies to the questionnaire it does not seem that more action is needed in order to improve the follow-up to **Para. 24**, as there are in most states already sufficient objective criteria for case allocation in order to theoretically prevent non-random distribution of cases.

36. The objective of **Para. 25** is to ensure that judges can form their own professional associations to defend their interests and their independence. None of the member States report any problems with regard to this possibility, and in fact in the majority of member States there are professional associations of judges albeit with different capacities to intervene in the self-administration of the judiciary or in the different incidences that can come up within the functioning of the judiciary. No action seems to be necessary to further safeguard the right to form and join professional associations.

Chapter IV – Councils for the Judiciary

37. Those member States that have chosen to establish councils for the judiciary as self-governing bodies of the judiciary in most cases follow the requirements set out in **Para. 27** (not less than half of the members should be judges chosen by their peers), except for example Ukraine, being at present in the middle of a constitutional reform process (although their reply does not refer to it). Many countries have introduced measures to ensure the transparency of the councils for the judiciary towards judges and society (**Para. 28**), for example video-recording of their meetings, online publication of their decisions, and the establishment of press offices for communicating with the media.

38. The presence of members of the executive in the Judicial Councils (e.g. in Azerbaijan and in Bulgaria where the Minister of Justice is an *ex officio* member, in Iceland one of the five members is appointed by the Ministry of Justice) may be justified in terms of democratic legitimacy; however it may jeopardize the independence of these bodies. Even if judges constitute a majority of the members of the Judicial Council, in reality they often hold a very tight majority, so if one judge is absent the non-judicial members form the majority of the Council.

39. There are some states, such as Andorra, which have a Superior Council of Justice that governs the whole judiciary, appoints judges and all the judicial staff, but its composition does not comply with **Paras. 27 and 28**[10].

40. Based on the information provided in the replies to the questionnaire, it can be stated that there is overall formal compliance with **Paras. 26-29**, however it is unclear how far judicial councils "seek to safeguard the independence" (**Para. 26**), and do not "interfere with the independence of individual judges" (**Para. 29**). These issues merit further study. Action should be taken in order to ensure that individual judges are satisfied with the protection provided by Judicial Councils and that the latter are really promoting the independence of the judiciary as a whole.

41. Not all member states consider Judicial Councils as necessary or appropriate. Still, two states who currently do not have such councils recognize the shortcomings and are taking steps to set them up: Finland and Ireland.

[10] This Council is made up of two members appointed by each of the two Co-Princes, one by the President of the Parliament, one by the President of the Government and one member appointed by the judges.

Chapter V – Independence, efficiency and resources

42. Quality, quantity and decisions made within a reasonable time are the three necessary elements for an efficient judiciary. Confidence in the judiciary, the protection of individual rights, and even the economic development and security of a society depend, to a significant extent, on the efficient functioning of the judiciary. Performance indicators have been introduced in many member States with the aim of ensuring that judges manage their cases within reasonable timeframes in an efficient way. The judges are responsible for ensuring the efficient management of their cases. However, in order to work efficiently the judges not only need adequate procedural rules, but also adequate material and human resources in their courts. Responsibility for providing this support lies with the public authorities (**Para. 32**) that are responsible for ensuring that judges enjoy proper conditions and facilities with which to fulfil their functions **(Para. 32)**. A new system with more direct involvement of judges in court management has been introduced in Belgium in 2014. In the future the judiciary will be involved in the distribution of the budget amongst the courts.

43. The replies to the questionnaire do not provide much information on this. Either they refer to the reports of the European Commission for the Efficiency of Justice (CEPEJ) on the evaluation of judicial systems, without making any further comments, or they simply state that they provide adequate means to ensure efficiency. Only some states mention problems with backlogs (Bosnia and Herzegovina and Serbia), insufficient funding (e.g. Bosnia and Herzegovina, Finland) and with budgetary cuts (Spain). In Bulgaria, the budgetary cuts were held to be unconstitutional by the Constitutional Court as infringing the principle of separation of powers and judicial independence. Almost all reports refer to actions that have been undertaken to improve case management by means of electronic systems and ICTs (e.g. Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, Greece, Hungary, Lithuania, Spain), as well as actions regarding procedural amendments to speed up proceedings (e.g. Belgium).

44. It appears that a significant economic effort has been made to provide more material support to the judiciary and courts (also through World Bank loans). In some states, these efforts have in particular resulted in the building of new courthouses and the introduction of electronic case management systems (e.g. Austria, Belgium and Spain).

Resources

45. The replies to the questionnaire do not explain to what extent member States have also assigned “non-judicial tasks to other suitably qualified persons” in order to reduce workloads (**Para. 36**). The fact that several states have shifted competences to public notaries and/or private bailiffs specifically for the enforcement of judgments is not specifically mentioned in the replies. It can be concluded that action is needed to reduce the workloads in the courts by the means set out in **Para. 36**.

46. The same can be observed with regard to the existence of "qualified support staff" allocated to the courts. Almost none of the replies include information on this.

47. Many member States have adopted quantitative criteria to ensure the resolution of judicial cases within a reasonable time. **Para. 31** specifically links the concept of efficiency with the "delivery of quality decisions" but none of the replies mention specific actions (apart from training) taken in order to increase the quality of decisions. Some states include among their performance indicators the quality of the judicial reasoning, but this is exceptional.

48. The court administration and court management, while seeking efficiency, should not interfere with the impartiality and independence of the judiciary. Some states have improved the responsibility and involvement of each court in the administration (Belgium) and provided budgetary autonomy to the bodies responsible for court administration (e.g. Denmark, Germany) but, in most states, it seems that the budgetary decisions are to a great extent in the hands of the Ministry of Justice. Estonia reports that the budget is being drawn up by the Ministry in close co-operation with the judiciary. Action in this field might be desirable, as in practice it cannot be ruled out that partial underfunding of some courts might undermine their independence.

49. Information is missing in respect of **Para. 38**. Several member States refer to measures introduced to provide more security for judges and protection in the courtrooms (e.g. Finland, France, Latvia, Lithuania, the Netherlands), but most of them do not describe actions taken, nor refer to instances of judges requesting better security. The reality, however, might be quite different, specifically when it comes to the safety of judges dealing with organised crime cases. It is absolutely necessary to take action to ensure that the member States have measures in place to protect judges and to provide them with an adequate sense of safety, in particular those dealing with high profile cases and terrorism.

Alternative Dispute Resolution

50. Information on the actions taken to promote alternative dispute resolution (ADR) solutions is noticeably lacking **(Para. 39)**. Greece has a new law on ADR, Latvia has enacted an arbitration law (2015) and a law on mediation (2014); Finland describes a significant improvement in consumer protection through ADR and also mediation in criminal cases; Lithuania states that ADR is being promoted; the Republic of Moldova has enacted a Law on Mediation in 2015, and signed a protocol for promoting the efficient settlement of disputes. In 2015, Armenia established an institute of mediation for civil, labour and matrimonial cases, as well as a new institute of arbitration. Turkey reports on great efforts in mediation in the criminal law field, and Croatia has even adopted mandatory ADR in several proceedings (e.g. labour proceedings). It appears that significant efforts are being made, at least at the legislative level.

51. In general it is not known to what extent respect of **Para. 64** (judges should seek amicable settlements) is encouraged or ensured. The success of ADR solutions depends greatly on the confidence in the fairness and quality of such a mechanism. The choice to make use of such a mechanism will also depend on the chances each party has of winning or losing the case if they opt for the judicial procedure. Enacting a law on arbitration or on mediation does not ensure that the public will use those mechanisms. In transnational commercial contracts, the parties do not need to be convinced about the benefits of the settlement by prestigious courts of arbitration. In ordinary civil claims, it may be difficult to convince the parties to choose ADR, as confidence in such systems might not yet exist. Action should be taken to provide incentives for the parties to choose such alternative dispute resolution mechanisms.

52. Family law and cases concerning petty criminal offences are fields where mediation can really provide some significant benefits and where restorative justice and mediation should be promoted.

Chapter VI – Status of the judge

Selection and career

53. The rules on selection, appointment and promotion of judges, and their application, are decisive for the quality of the justice system, the confidence in the judiciary and the level of judicial independence. Most replies to the questionnaire describe the legal framework for the selection and appointment, without mentioning any shortcomings to it. However, many states have amended their laws in order to better regulate the selection and appointment procedure (e.g. Poland in 2014 and most Eastern European countries in general undertook such reforms within the last decade).

54. An exception is Switzerland, whose reply to the questionnaire openly recognizes that the selection of judges, as they are all elected by the legislative, is widely influenced by the political parties, with affiliation to a party being "the main *de facto* criterion" for the appointment.

55. The selection and promotion of judges is usually the responsibility of the Judicial Councils but, in states where such councils have not been established, this responsibility lies with superior courts (e.g. Cyprus, Malta, and some *Länder* of Germany where they are involved in the decisions on the promotion) or the court administration body (Denmark). Promotion is generally based on seniority, on professional performance evaluation, or on a mixture of both. Assessment of the professional performance of judges is one of the weakest points regarding the protection against internal dependence (see "assessment" below). The assessment of the professional performance of judges is the area in which the safeguards for the internal independence of judges are the weakest (see "assessment" below). This may be why some states only apply seniority criteria in deciding on promotion of judges (e.g. Spain).

Tenure and irremovability

56. Tenure until the age of retirement is generally granted for professional judges apart from a few exceptions (e.g. Andorra, appointment for six years; Switzerland, elections every six years). In most legal systems, grounds for dismissal are very limited and set out in the law. In general, judges can only be dismissed in case of incapacity, illness, conviction for a crime or as a consequence of a disciplinary sanction. Cyprus has adopted new rules in 2015 on the dismissal and retirement of judges.

57. In general the grounds for dismissal are very similar and seem to be adequate. However, the rules on dismissal for committing a criminal offence should be better formulated so as to clarify that only serious and intentional offences can lead to a sanction or dismissal of a judge. Regulation should be improved in this regard.

58. Although the rules and safeguards against arbitrary dismissal seem to be adequate, more information on how these grounds of dismissal are invoked in practice would be needed. Some responses to the questionnaire offer information on how often dismissal has occurred on these grounds, but generally it would be necessary to have this

data in order to assess how far tenure is serving as a real safeguard for the independence of judges.

59. Regarding transfer of judges (**Para. 52**), most states either prohibit it unless the judge consents or permit it only in the exceptional cases set out in CM/Rec(2010)12. However this does not seem to be the case in Turkey, where a complex system of classification of geographical areas is in place and it appears that the transfer of judges from one area to another is, or can be, decided without his/her consent.

Remuneration

60. **Paragraph 53** recommends that the principal rules of the system of remuneration for professional judges should be laid down by law. This is generally the case in most states except, for example, in Denmark where the remuneration is fixed by agreement between the judges' association and the court administration; or Iceland where the remuneration is decided by the Senior Civil Servants Salary Board. Ireland introduced constitutional safeguards for the remuneration of judges by way of referendum in 2013, the Referendum on Judges' Pay, having the effect that now reductions to the salary of Judges may only be made by law. The legal certainty on the remuneration cannot be viewed as a general problem, and it is often linked to a category within the civil service. However, there have been incidents such as in Cyprus, where the salary of judges was reduced by a law which was subsequently declared unconstitutional by the Supreme Court. In sum, it does not seem that the independence of judges is threatened by arbitrary reductions of their salaries, although it may exceptionally have occurred.

61. A problematic issue, which is hardly addressed in the replies to the questionnaire, is the follow-up to **Para. 54** which states that "judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions". Apart from a few replies that specifically indicate the salary of a judge and whether such a salary makes the profession attractive enough for the best candidates, in general the replies do not compare the salary of a judge with the national average salary, nor do they describe if a person can make a decent living with such income. Although action should be taken in this regard in several states, it is difficult to defend an increase of the salaries of judges as a safeguard for their independence, due to the lack of respect for the judiciary and public confidence in it. There is a vicious circle: inadequate salaries and conditions do not render the profession attractive for talented candidates, and if only the less capable end up in the judiciary, society will see no need to pay them better. Breaking such a "vicious circle" is one of the challenges to overcome in order to tackle the lack of independence of the judiciary.

Training

62. Training for judges is provided, either on a mandatory or on a voluntary basis, in all member States, although following various different patterns. In Monaco the judges attend the French Judicial Academy. As there is no judicial training institute as such in Cyprus, Cypriot judges attend seminars organised by the Supreme Court and courses abroad (ERA[11], EJTN[12]). In Iceland the judges shall endeavour to update and enhance their legal knowledge, but there is no precise scheme on the functioning of the continuous training.

63. As a rule it seems that the right to be trained **(Para. 56)** and the recommendation that judges should regularly update and develop their proficiency **(Para. 65)** are implemented. Although no reply mentions any problematic issues regarding training, the educational autonomy (**Para. 57)** of training institutes does not seem to be ensured in several states (e.g. Azerbaijan and Slovak Republic, where the training institution is within the Ministry of Justice). Moreover, the quality of training may not always be satisfactory. Action needs to be taken (or to be continued) with the aim of ensuring that the training of judges is of good quality, that it does not merely rely on international support and that there are effective opportunities for judges to attend the trainings.

Assessment

64. **Paragraph 58** on the need to establish objective criteria for the assessment of the judicial performance is generally respected, although the qualitative criteria are quite difficult to measure and the assessment is mainly based on quantitative or formal indicators[13]. A judicial evaluation system was introduced in Armenia in 2014 (although initially only for quantitative criteria); Azerbaijan is preparing rules for the assessment of judicial performance; the Republic of Moldova has introduced such rules in 2012; Poland has approved them by order in February 2014; Romania introduced them in 2004 and Serbia is presently discussing criteria for the evaluation of judges.

11 Academy of European Law.

12 European Judicial Training Network.

13 On the objective criteria, see Consultative Council of European Judges (CCJE) Opinion N° 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, Para. 13.

Chapter VII – Duties and responsibilities

Duties

65. The provisions related to the essential duties of judges **(Paras. 59-65)** are regulated in all states, and no state reports problems on compliance with judicial duties (diligence, sound reasoning, preserving equality of arms, respect for the dignity of the parties, developing their knowledge and skills, etc.). Once again, regulation does not seem to be a problem in this area.

Liability and disciplinary proceedings

66. The corollary of judicial independence is judicial accountability, consisting in particular of disciplinary, civil and criminal liability **(Paras. 66-69).** In their replies, many states provide extensive information on the disciplinary liability of judges, the grounds, the proceedings and the sanctions. There is a description of the legal framework in many replies, although only a few replies include data on the practice and none mention any shortcomings or need for improvement. The correct implementation of the rules on disciplinary liability, and the confidence that the proceedings will be dealt with in an impartial way, are crucial for the sound, efficient and independent functioning of the judiciary. Reconciling disciplinary sanctions with the independence of the individual judge is never easy. The internal independence might for instance be affected if the power to initiate disciplinary proceedings, or even to impose disciplinary sanctions, lies with the president of the court or with a superior court.

67. The grounds for disciplinary liability should be clearly defined in the law, not only to provide legal certainty, but also to avoid any arbitrariness that might affect the judicial independence. In some states the disciplinary infringements would appear to require a more precise definition (e.g. Cyprus).

68. If workload is not adequately distributed among judges and among courts, there is an increased risk that judges will be unable to deal with all cases within a reasonable time, and thus may incur disciplinary liability for those delays, even if they are not strictly "undue". Excessive workload leads to greater pressure which, if not adequately dealt with, may have detrimental effects on judges' health, rendering them incapable of performing their duties. Action is to be taken to ensure that the bodies entrusted with disciplinary oversight are really independent and provide safeguards for the independence of individual judges. It must also be ensured that the procedures concerning disciplinary liability are transparent.

69. The replies to the questionnaire provide little information on the civil liability of judges. In many states the direct civil liability of judges for damages caused in the exercise of their functions has been removed and it is the State that is directly responsible for those damages (e.g. Romania). Spain reports that it has recently amended the Law on the Judiciary (2015) removing the possibility to sue a judge directly for damages caused by professional negligence. In general, it seems that **Para. 67** is respected.

70. The replies to the questionnaire reveal that many member States provide for criminal liability for judges' interpretation of the law, assessment of facts or weighing of evidence when malice can be established; however, data on practical implementation of this criminal offence is missing (**Para. 68**).

71. Functional immunity is generally recognised (**Para. 71**). As far as it exists, the immunity against criminal prosecution that judges enjoy in the exercise of their judicial functions should be reviewed in terms of whether it really acts as a safeguard against malicious use of criminal prosecution, or if it renders judges dependent on the authority that may authorize or refuse prosecution.

Chapter VIII – Ethics of judges

72. Generally all member States have adopted a code of ethics (e.g. Armenia in 2014, with subsequent revision in 2015, Azerbaijan in 2007, Republic of Moldova in 2015, Serbia in 2010, Spain in 2016 and Sweden in 2011; Turkey is presently developing a Judicial Code of Ethics, United Kingdom revised the Principles on Judicial Ethics in 2010 and the Slovak Republic in 2015) and those states that do not have a code as such affirm that the ethical principles and rules are enshrined in the laws relating to the judiciary and judicial proceedings (e.g. Germany). Romania reports that they have adopted a strategy for strengthening integrity within the judiciary for 2011-2016. Several states have established Ethics Commissions to provide advice on ethics (e.g. Armenia and Switzerland). The main issue does not seem to concern the existence of codes of judicial ethics (**Para. 73),** or lack of guidance related to ethical principles (**Para. 72),** or the absence of a body to seek advice *inter alia* on possible conflicts of interest (**Para. 74),** but the implementation of such ethical principles. Some states mention recent legal reforms or strategies to improve the integrity of judges and to fight against the corruption of judges (e.g. Monaco and the Slovak Republic) but none of the replies mention any issue related to corruption or lack of integrity of judges.

Main conclusions and proposals for action

Main conclusions

73. In general as regards the follow-up to CM/Rec(2010)12 and the safeguarding of judicial independence, the issue no longer appears to lie in the need to provide an adequate constitutional framework (apart from reforms that are needed in individual states and are being discussed, as in Bulgaria, Luxembourg, Republic of Moldova or Ukraine). Most constitutional texts contain rules on the independence of the judiciary and the individual judges, albeit to varying extents. The most recent Constitutions, mainly those of Eastern European countries, are more detailed than Constitutions found elsewhere in Europe.

74. The replies show the great efforts most states have made to adapt their legal systems in order to follow up CM/Rec(2010)12. The great bulk of legal reforms have already been carried out, although fine adjustments and improvement in specific areas are still needed. Regulation concerning the selection, career, promotion and accountability of judges has been significantly improved in most states. Many states have established a Judicial Council for ensuring the self-governance of the judiciary. In those countries where a Judicial Council has recently been set up, the process of ensuring its self-governance is still under way, and needs to be followed. Despite this, it may not be wrong to affirm that, from a formal and legal point of view, most replies demonstrate an overall compliance with CM/Rec(2010)12. Once the legal framework has been defined and the rules providing for adequate mechanisms for protecting judicial independence have been elaborated, the next step will be to ensure the appropriate implementation of those rules to achieve the aim for which they were passed. The actual challenge concerning legal regulations lies less in their adoption than in their effective implementation.

75. Many replies to the questionnaire suggest that greater political action might be needed to effectively ensure an independent judiciary. A lack of self-criticism is noticeable in many replies, with the exception of a few states (e.g. Austria, Finland, Germany, Sweden and Switzerland) where the authorities point out elements and areas that still present shortcomings and offer room for improvement.

76. The replies show that a very significant investment and progress in terms of e-justice, digitalization, networks and, in general, the use of ICTs has been made. The modernization process is not completed yet and efforts in this field have to continue.

77. The replies provide almost no information on: 1) safety (threats against judges, for example on social networks, etc.); 2) the functioning of ADR, where the replies contain hardly any information on practice; 3) budgetary issues and budgetary autonomy; 4) if remuneration of judges is really commensurate with their role, making it attractive and dignified to be a judge in a society.

78. Tenure and irremovability do not seem to represent a general problem, save some states which have non-permanent and non-professional judges (e.g. United Kingdom) or where judges are directly elected (e.g. Switzerland). A strict system of incompatibilities with the judicial function applies in most states, prohibiting the judges from exercising any other professional activities. Some exceptions can be found in the Netherlands where judges can have ancillary jobs or positions, and in a few other states that make use of non-professional judges (e.g. Sweden and United Kingdom).

79. With regard to the allocation of cases, it is impossible to establish an absolutely objective system, even in automated case distribution. The criteria are generally in place, but can be disregarded in exceptional circumstances that need to be addressed on a case-by-case basis. In assessing whether exceptions apply, there is always a risk of manipulation. Once objective criteria or a system for random distribution of cases are in place, the action should be focused not on the system of case allocation but on controlling how these criteria are applied or circumvented.

80. **Paragraph 63** is formally complied with, as a clear reasoning of judgments is required in all systems. However, the quality of the legal reasoning may vary greatly from one member State to another. Judgments should be drafted in a clear language, easily understood by the public. States should ensure that appropriate actions are taken to improve this aspect.

81. Finally, as the replies hardly address any shortcomings or problems with regard to judicial independence, it is impossible, on the basis of these replies, to pinpoint here in which states the Council of Europe could provide its support to follow up CM/Rec(2010)12 and thus help to strengthen judicial independence and impartiality. To that end, additional sources of information should be used. In general, in younger- but also more fragile - democracies, more action is needed because the judicial independence is not traditionally safeguarded and the principle of separation of powers is not completely respected. However, in certain small Western European countries, the constitutional framework reflects the principle of separation of powers in an unusual or particular way, although they implicitly or explicitly recognize the independence of judges (e.g. Andorra, Liechtenstein, Luxembourg and Monaco). This does not mean that judges of those countries do not act in an independent way; it only means that the constitutional framework does not provide for the same safeguards.

Proposals for action

82. Despite the formal overall compliance of most states with the provisions of CM/Rec(2010)12, several areas need further action to ensure effective follow-up of the rules and principles of the recommendation. It is crucial to check and analyse how the "small print" of these rules is applied. In this sense, the areas where action seems to be needed are:

a. The practice of disciplinary proceedings against judges and their impact on internal independence.
b. The relations with the media and communication policies.

c. The pressure exercised through the media on behalf of the executive and other branches of state power (Para. 18).
d. Problems with internal independence by way of influence or interference of presidents of courts in the decisions concerning promotion of individual judges should be minimized.
e. It should be further analysed what is the role of the judicial councils in safeguarding the independence of the judiciary. The essential is not only to establish a body to provide support when the judge's independence is threatened; but also to analyse to what extent it is used and how effective it is (Para. 8).
f. Action should also be taken to reduce the strong presence of the executive in judicial councils.
g. Initial and in-service training is generally provided for judges. However, there is a need to check the quality of the training activities and the level of satisfaction of the judges.

APPENDIX

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 10 July 2015

INDEPENDENCE AND IMPARTIALITY OF JUDGES

QUESTIONNAIRE

This questionnaire has been prepared as part of the follow-up to the 2nd report of the Secretary General on the State of Democracy, Human Rights and the Rule of Law in Europe (May 2015) and with a view to an analysis by the European Committee on Legal Co-operation (CDCJ) of the measures taken by member states to give effect to the provisions of the Appendix to Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges : independence, efficiency and responsibilities.

You are invited to submit your replies to the Secretariat of CDCJ no later than 15 December 2015 at
DGI-CDCJ@coe.int (with copy to simon.tonelli@coe.int).

RESPONDENT DETAILS:

MEMBER STATE:

CONTACT:
Name:
Job title:
Ministry:
E-mail:
Telephone:

- Please insert your replies in the column next to each question. If necessary, please refer to the explanatory memorandum to Recommendation CM/Rec(2010)12 for further information.

- In reply to each question please provide full citations of any relevant law, protocol or rule.

- Please indicate if any of the information requested has also been provided in relation to the 6th evaluation cycle (2012-2014) of the European Commission for the Efficiency of Justice (CEPEJ).

Chapter I – General aspects of judicial independence	
Describe the constitutional guarantee(s) of judicial independence that are in place as referred to in paragraph 7 of the Appendix to CM/Rec(2010)12.	
Chapter II – External independence	
Please describe the measures that have been adopted to respect, promote and protect the external independence of judges in relation to paragraphs 11-21 of the Appendix to CM/Rec (2010)12, in particular, with reference to: - maintaining public confidence in the judiciary; - relations between judges and other branches of state power, and non-interference in their decisions; - relations with the media.	
Chapter III – Internal Independence	
Please describe the measures that have been adopted to increase the independence of each individual judge in the exercise of adjudicating functions in relation to paragraphs 22-25 of the Appendix to CM/Rec(2010)12, as well as to paragraphs 5-6 and 8-10, in particular with reference to protection against undue influence within the judicial hierarchy, the allocation of cases within a court, the freedom to decide cases impartially and the criteria for withdrawing judges from cases.	

Chapter IV – Councils for the Judiciary	
Please confirm whether there is a council for the judicial and, if so, please describe, in relation to paragraphs 26-29 of the Appendix to CM/Rec(2010)12, its legal basis, composition, functions and powers, and rules of procedure.	
Chapter V – Independence, efficiency and resources	
Please provide any information that you consider might be appropriate in relation to paragraphs 30-43 of the Appendix to CM/Rec(2010)12 in order to supplement the replies of your national authorities to the 6th evaluation cycle (2012-2014) of the European Commission for the Efficiency of Justice (CEPEJ).	
Chapter VI – Status of the judge	
Selection and career Please describe the measures that have been adopted with respect to paragraphs 44-48 of the Appendix to CM/Rec(2010)12, and in particular with reference to the authorities with responsibility for the selection and career of judges and to the right of individuals to challenge their decisions.	

Tenure and irremovability Please describe the guarantees for tenure and irremovability of judges in relation to paragraphs 49-52 of the Appendix to CM/Rec(2010)12, in particular, with reference to the cases in which a permanent appointment of a judge can be terminated, how recruitments of judges for probationary or fixed terms can be renewed or confirmed and the necessary pre-conditions for appointing judges to new judicial offices.	
Remuneration Please provide information on the system of remuneration for professional judges in relation to paragraphs 53-55 of the Appendix to CM/Rec(2010)12, in particular with reference to safeguards against a reduction in remuneration and against making remuneration dependant on performance.	
Training Please provide information on training for judges in relation to paragraphs 56-57 of the Appendix to CM/Rec (2010)12, in particular on how training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.	
Assessment Please indicate whether your judicial authorities have established systems for the assessment of judges as described in paragraph 58 of the Appendix to CM/Rec(2010)12, and in particular provide information on the criteria on which assessments are based, the procedure and possibilities for judges to challenge assessments.	

Chapter VII – Duties and responsibilities	
Duties Please describe the duties of judges in relation to paragraphs 59-65 of the Appendix to CM/Rec(2010)12 , in particular, with reference to the principle of equality in the conduct of court proceedings and the avoidance of improper external influence.	
Liability and disciplinary proceedings Please describe the measures that have been adopted in relation to the liability of judges and the conduct of disciplinary proceedings with reference to paragraphs 66-71 of the Appendix to CM/Rec(2010)12.	
Chapter VIII – Ethics of judges	
Please describe the ethical principles that apply to judges in their professional conduct with reference to paragraphs 72-74 of the Appendix to CM/Rec(2010)12.	