Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

Funded by the European Union and the Council of Europe

EUROPEAN UNION

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CONSEIL DE L'EUROPE

Implemented by the Council of Europe

Theme II "Ensuring Justice" – Action 5: Regional dimension for 6 EaP

Project for Regional Dialogue on Judicial Reform in the EaP Countries

Working Group on Regional Dialogue on Judicial Reforms
in the Eastern Partnership Countries

Expert Report on the outcomes of the Working Group's meeting on:

JUDICIAL REFORM PROCESSES

With focus on Transparency, Public Participation and Communication

Strasbourg, 26 September 2016

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BACKGROUND

The meeting of the Working Group (WG), on which this report is based, has been organized in implementation of the project for regional dialogue on judicial reforms, within the framework of the joint Council of Europe and European Union Eastern Partnership (EaP) Programmatic Co-operation Framework (PCF). The project aims at fostering dialogue, professional networking and exchanges of experiences among legal professionals in view of addressing outstanding common challenges and consolidating national processes of judicial reform. In this framework, representatives from judiciaries, ministries of justice and bar associations of the EaP countries selected a number of areas of shared interest perceived as most challenging for the respective national reform processes and established three Working Groups that were tasked to examine, with the support of international experts, one of the selected issues in a dedicated meeting.

Topics selected by participants for further analysis included: judicial ethics and disciplinary liability of judges, with a focus on their distinctions and interrelations; e-justice, in particular aspects of electronic case management; legal aid schemes, with special attention to ways to ensure independence of legal aid financed lawyers; independence of judges; selection, evaluation and promotion of judges; the role of Courts of Cassation/Supreme Courts; ways to ensure inclusive and transparent judicial reforms; alternative dispute resolution mechanisms, with a focus on criminal restorative justice and mediation in civil cases; equality of arms between lawyers and prosecutors.

The third round of meetings of the three WGs was hosted in Strasbourg, France, in September 2016 and focused on the following topics: judges' independence (WG A), transparent and inclusive reform processes (WG B) alternative dispute resolution mechanisms (WG C). Discussions were facilitated by international experts, also tasked to produce a report on the outcomes of each meeting.

This paper provides an overview of the discussions held during the meeting of the WG b, focusing on judicial reform processes. It is based exclusively on the information provided by the participants by filling in a questionnaire prepared by the experts and the discussions held during the meeting, supplemented with the comments and inputs by the independent expert. It does not in any way aim at providing an exhaustive presentation or a thorough assessment of the situation in the countries considered, but rather at reporting about the issues presented and discussed by the participants with the purpose of exchanging experiences and possibly identifying areas of common interest for further examination or co-operation.

Table of Acronyms used

CCJE	Consultative Council of European Judges
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
JSA	Judicial System Act
NGO	Nongovernmental organisation
UN	United Nations

Scope of the report, materials used and shared

1. This report provides an overview of the international standards in relation to judicial reform processes with respect to transparency, consultation, public participation and communication as well as a discussion of the relevant regulations in the participating countries. The report focuses on the issues which emerged in the preparation of and in the discussions during the meeting in Strasbourg on the 26th of September 2016. Thus, the report does not provide a detailed country-by-country analysis.

2. In preparation of the meeting in Strasbourg, participants filled out questionnaires on their respective systems of judicial reform process with respect on the transparency, consultation, public participation and communication. The answers were compiled into a summary provided as annex 2 to this report. In addition, translations of the relevant laws were studied. Copies of international standards were shared in advance in order to allow the participants to familiarize themselves with them. A list of the international standards is provided in annex 1 of the report.

3. The meeting was subdivided into three parts: judicial reform process (part I), transparency, consultations and public participation (part II) and communication (part III). An additional part on the restraints of the judiciary and the executive in the context of the separation of powers was introduced. In the beginning, the European and other international standards on the relevant topic were presented. Later, experiences of the participating countries and of other member states of the Council of Europe were compared and discussed. In the course of the day, the practice of the ECtHR and a case study were presented to support the discussed topics. The participants were very active in the discussions and highly interested in whether the approaches and solutions developed in their countries would be in conformity with international standards. In this way, the participants shared their experiences actively and started a thinking and questioning process in relation to their own legal systems.

Part I. Judicial reform process

A **judicial reform process** is understood as a comprehensive set of measures undertaken by public authorities in a country with the aim to improve the quality of justice and the efficacy of the judiciary.

I. Overview of relevant European and other international standards

4. The European and International standards demand that the principle of independence of judiciary should not preclude the dialogue between the powers of the state and that the judiciary (and/or the Judicial Councils) should have a proactive role in each stage of the preparation of any legislation concerning their status and the functioning of the judicial system.

5. Since the first appearance of the theory of Montesquieu about the separation of the

functions in the state many changes occurred. The legislative and the executive powers have become more interdependent and the role of judiciary has evolved. The Judiciary has a check on the executive to examine and sometimes even restrain its actions and the Executive and the Legislative have the power to impact the judiciary through reform process and legislation. One of the leading principles in this respect is reflected in Opinion 18 of the CCJE and according to it a lack of legislation or (at the other extreme) rapidly changing legislation may be contrary to the principle of legal certainty and infringe the judiciary[1]. However the role of the judiciary in drafting relevant legislation and strategic documents has increased significantly.

6. The relationship between the executive and the judiciary should let them exercise their respective authority and to achieve and maintain **proper balance** so as to act in the interest of the society and to protect the independence of the judiciary. The reforms in the judiciary **should never aim to decrease its independence. They should be inclusive, transparent and based on clear rules**

1. Dialogue between the judiciary and the other powers in the context of judicial reform

7. The UN Sustainable Development Goals recommend the development of effective, accountable and transparent institutions at all levels in view of ensuring responsive, inclusive, participatory and representative decision-making at all levels.

8. Opinion 18 (2005) of the CCJE emphasises the fact that neither the principle of separation of powers neither the principle of judicial independence should preclude the dialogue between the powers in the state[2]. The discussion is crucial to improve the effectiveness of each power and its cooperation with the other two powers and will be beneficial to all. The judiciary should be consulted and play an active part in the preparation of any legislation concerning their status and the functioning of the judicial system[3].

2. Participation in the reform by the Judiciary

9. The objective of the judicial reform should be to improve the quality of justice and the efficacy of the judiciary, while strengthening and protecting the independence of the judiciary, accompanied by measures to make more effective its responsibility and accountability. The Judiciary should be involved at each stage of the development and implementation of reform plans. The goal of the reform should be the improvement of the overall excellence of justice[4]. According to the European Network of Councils for the Judiciary, judiciaries and judges should be involved in the necessary reforms[5]. The Judiciary and the Judicial Councils should have a proactive role and identify areas for and engage in

[1] Opinion 18 (2015), para. 9, Consultative Council of European Judges (CCJE), "The position of the judiciary and its relation with the other powers of state in a modern democracy", para. 2

[2] Opinion 18 (2015) Consultative Council of European Judges (CCJE) The position of the judiciary and its relation with the other powers of state in a modern democracy, para. 11

[3] Opinion 18 (2015) Consultative Council of European Judges (CCJE) The position of the judiciary and its relation with the other powers of state in a modern democracy, para. 31and para. 34.

[4] European Network of Councils for the Judiciary, Judicial reform in Europe Report 2011 – 2012, p. 3 p. 3 and p. 24 European Network of Councils for the Judiciary, Judicial reform in Europe Report 2011 – 2012, para. 17, para. 18 and para. 19.

[5] European Network of Councils for the Judiciary, Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate, para. 5

the process of reform and, where appropriate, initiate and propose such reforms. Their role in the reforms is vital[6].

II. An analysis of the situation in participating countries

10. The general situation of judicial reforms in most of the participating countries is roughly comparable. This is especially the case in relation to both the restructuring of the court system and the modernization of criminal, civil, (and administrative) justice

11. The participating countries show variations in the approaches applied towards the judicial reform process: four out of the six countries applied strategic approaches that enabled a variety of stakeholders to take part at different stages.

12. Participating countries show as well variations as regards the responsibility for the reform process: in countries with a strong leadership of the head of the state, the preparation of reform related measures/legislation was vested to a specialised body established by a presidential decree and under the auspices of the presidential administration (Belarus, Ukraine), while in other countries the Ministry of Justice is taking the responsibility for the overall judicial reform (Armenia, Georgia, Moldova).

13. Although in most of participating countries (except Belarus) a self-governing body of the judiciary has been established at an earlier stage, only in two countries it has been reported for being involved directly in the judicial reform process (The Judicial Legal Council in Azerbaijan, and the High Council of Justice in Georgia).

14. In all participating countries, the list of still pending issues within the judicial reform program is including a large scope of needed interventions such as: improving ease of access to justice, maintaining and improving high quality justice delivery, compliance with international standards (in all six countries), protecting judicial independence and simplifying judicial procedures (in all countries except Azerbaijan), improved administration and optimization of workload, case management and digitalization (in all countries except UKR), ensuring consistency of judgments and timeliness (in all countries except Azerbaijan and Ukraine). Only the issue of judiciary self-government seems to be still at stake in half of the participating countries, while it is not in the agenda in Azerbaijan, Georgia and Ukraine.

15. In **Armenia,** the 2012-2016 Strategic Program for Legal and Judicial Reforms is about to come to its end. The Ministry of Justice has been granted with a leading role in its implementation, and a coordination mechanism was established to integrate all bodies responsible for specific measures. A next strategic program 2017 – 2020 is currently being developed in order to address major amendments in the Constitution of the Republic of Armenia that have been adopted in a referendum held in December 2015 and are envisaged to take place in 2017 – 2018.

16. In **Azerbaijan,** major milestones in the judicial reform have been reported to include the establishment of new 3 pillar judicial system (1997), of a judicial self-governing body (2004), the adoption of Criminal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code

[6] European Network of Councils for the Judiciary, Judicial reform in Europe Report, part II, Guidelines for effective justice delivery, para. 6, para. 7, para. 19, para. 23 and para. 24

(2001) and the establishment of administrative justice and courts in Azerbaijan (2011). Strategic documents/programs related to the judicial reform include: the National Action Plan on Encouraging Open Government for 2012-2015; the State Programme on the Development of the Azerbaijani Justice for 2009-2013; and the Strategic Road Map on the Development of Financial Services in the Republic of Azerbaijan adopted by Presidential Decree on 6 December 2016 which contains a Chapter on the improvement of legal and judicial instruments. The Judicial Legal Council (the self-governance body of the judiciary) is responsible for the judicial reform process.

17. In **Belarus**, the Decree of the President of the Republic of Belarus adopted on 10.10.2011 № 454 (ed. Of 11.29.2013) "On measures to improve activity of the courts of general jurisdiction of the Republic of Belarus" approved a policy paper on the future development of the system of courts of general jurisdiction. The Presidential Administration is responsible for monitoring the implementation of the Decree at the legislative in accordance with the execution time and an action plan set in the Decree itself. In addition, the Presidential Decree of 11/29/2013 № 529 (ed. From 31.12.2015) "On some issues of activities of the courts of the Republic of Belarus" created a unified judicial system. A new Code on Judicial System and Status of Judges, which is currently approved by the Parliament, have been developed with the participation of the Supreme Court. The Supreme Court is the responsible body for judicial reform.

18. In **Georgia,** alongside with an on-going Criminal Justice Reform Strategy and Action Plan for the period 2016-2020, in 2016 the High Council of Justice established a Committee which started working on the draft Judicial Reform Strategy. Four Working Groups were established in the framework of the Committee which will work on the issues of transparent and accessible justice system, independence and impartiality, accountability, effectiveness and quality of justice. The Committee and the Working Groups are composed of representatives of the Government agencies, president administration, judiciary, NGOs and International Organizations. The Ministry of Justice of Georgia is responsible for preparing legislative reform of the judiciary, which is then approved by the Government of Georgia and adopted by the Parliament of Georgia. Responsibilities for the implementation of the reform are shared by relevant stakeholders such as High Council of Justice, Prosecutors Office, Courts, etc. Since there is no uniform strategy document which would establish main responsible bodies and clearly defined responsibilities, it is difficult to define concrete institution and public official who could be regarded as a main leading body responsible for the effectiveness of the reform process.

19. In **Republic of Moldova,** a Justice Sector Reform Strategy, JSRS (2011-2016), is being implemented. Developing a comprehensive reform strategy has become necessary for the creation of a common framework covering all justice sector reform efforts in the Republic of Moldova, to ensure the sustainable development of the sector through realistic and concrete actions. This Strategy is reported to come with an innovative approach and seeks to integrate all efforts and intentions of reform under a unified framework to ensure the coherent, consistent and sustainable reform of the justice sector as a whole. Simultaneously, the Strategy built an institutional framework to coordinate the reform actions and the assistance from the development partners in the justice sector.

20. In **Ukraine,** the Strategy of reforming the judicial system, the judiciary and related legal institutions for years 2015-2020 (approved by Presidential Decree Ukraine from May 20, 2015 № 276/2015) has been elaborated by a special body – the Council on Judicial Reform – established by a presidential decree in 2014. The Council on Judicial Reform included scientists, representatives of the judiciary, parliamentarians, judges, international experts and civil society representatives. At present, the task of working out agreed proposals for the development and implementation of the Strategy of reforming the judicial system, the judiciary and related legal institutions in Ukraine is assigned to the Judicial Reform Council as an advisory body to the President of Ukraine. In addition, The Council of Judges of Ukraine has also adopted a Strategy of the judicial system in Ukraine in 2015 – 2020.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

21. Since the judicial reform process should be inclusive and participatory and the judiciary must be involved at each stage, some of the most challenging issues identified were the proactive role of the Judicial Councils and how to involve them in a more sustainable way at each stage of the judicial reform.

1. Strategic approach to the judicial reform

22. In all 6 countries it was recognized that the scope of the reform involves similarly the same topics and it is as broad as possible. However some important issues such as the independence of judiciary (in Azerbaijan) and the judicial self-governing (in Georgia and Ukraine) were not mentioned as part of the on-going reform. Others have mentioned additional issues that are in the focus of the reform, such as the competitive principle of appointment of judges and the de-politicisation of the judicial system (Ukraine). One of the major challenges identified in the context of the judicial reform was the lack of strategic approach in some of the countries. This leads to an *ad hoc* character of the reforms which is most often driven by external factors. This approach runs the risk of having the reform made only halfway without internal links among its different aspects.

23. Questions on the nuts and bolts of the strategic approach allowed underlining the fact that not only laws but also all strategic documents (Strategies, Action Plans, and Road Maps) should be consulted at a very early stage with the judiciary and the Judicial Councils. They should be invited to participate to the drafting of the Strategy and be allowed to make proposals and comments. One of the main conclusions was that both the draft laws and the draft strategic documents should be subject of scrutiny by the judicial self-governing bodies.
Judicial Councils have advisory powers on legislation concerning the judiciary and procedural laws in almost all EU member states (Belgium, Bulgaria, Croatia (on the request of the Minister of Justice), Denmark, France (on the request of the President of the State), Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain)

2. Stakeholders involved in the judicial reform

24. The other important challenge in the context of the judicial reform is related to the differentiation between the authorities which are the driving force of the reform (usually the Ministry of Justice) and the authorities which are responsible for the implementation of the reform (judiciary, Judicial Councils, national institute for justice, professional organisations, Ministry of Justice etc.). The driving force of the judicial reform is most of the times the Ministry of justice, although the European strategic documents require the judiciary to also have proactive role and "develop sensible proposals for effective reform"[7].

25. However the final decision on the reform lies with the executive. On the other hand, the implementing bodies in the context of the judicial reform could be different stakeholders such as the Ministry of Justice but also the judiciary, the Judicial Council, the national institutes for justice (for the training) etc. They should be mentioned in the Action Plan as responsible for concrete measures, together with relevant deadlines for their implementation. In view of this, it is necessary to involve them at the stage of the drafting of the strategic documents and thus make them recognise and implement them in a responsible way.

26. A good practice on the implementing authorities was found in the Republic of Moldova, according to which a mechanism for monitoring the implementation, consisting of seven working groups for each area separately, was created. The seventh working group serves also as a steering group to coordinate the Strategy implementation. They are coordinated by the Ministry of Justice, within which a structure specialized in providing technical assistance to the working groups was created (the secretariat of the working groups). Similarly, the National Council for the reform of law enforcement bodies periodically evaluates the implementation of the strategy and the progress of the objectives based on the information collected and presented by the Ministry of Justice.

3. Judicial and Legal Councils

27. Another issue is to make a difference between the Judicial Councils as self-governing bodies of the judiciary and the Legal Councils (which sometimes bear similar names) and are part of the executive (or a Presidential institution) and are responsible for drafting documents for the judicial reform.

IV. Outstanding issues

28. International standards are quite clear as far as the role of the judiciary and the Judicial Councils is concerned – they have to be involved at a very early stage of the drafting of strategic documents and draft laws which concern their status and the judiciary as a whole. This approach is part of the process of upholding the independence of the judiciary and the improvement of the dialogue and the cooperation among the three powers. Therefore it is a responsibility of the executive and of the legislative power to invite the judiciary in the process of drafting documents and have their opinion heard. Moreover the process of

[7] European Network of Councils for the Judiciary, Judicial reform in Europe Report 2011 – 2012, p. 3 p. 3 and p. 24 European Network of Councils for the Judiciary, Judicial reform in Europe Report 2011 – 2012, para. 18.

reform of the judiciary is a long-standing process and it needs an in-depth strategic approach.

29. A next step forward could be a more detailed analysis of the role of the judicial councils and the role of the legal councils dealing with the judicial reform, in order to better differentiate their roles.

30. The discussion with the participants highlighted the importance of the strategic approach in the judicial reform. An issue which was not discussed at length but could be subject to further discussions was the process of evaluation of strategic documents as a necessary step to draft the next strategy to reform the judiciary.

Part II. Transparency, consultations and public participation

I. Overview of relevant European and other international standards

31. The European standards are clear about the need to draft laws referring to judicial reforms in a transparent way, to consult them with the judiciary and involve the public in order to safeguard the rule of law. This approach contributes to safeguarding the independence of the judiciary and to increasing its capacity to be efficient.

32. One of the most important European standards which generally define the need of transparency is emphasised by the Venice Commission related to the requirement that all the laws should be "publicly made"[8]. Legality as an element of the rule of law includes transparency as a very important principle.

33. On the level of consultation of legislation and strategic documents, the European standards grant significant powers to the self-governing bodies of the judiciary and especially to the Judicial Councils. Their role is twofold: first to be proactive and to suggest measures to be taken in order to improve the functioning of the justice system in the interest of the general public and second – to be consulted on all draft legislation likely to have impact on the judiciary (independence of the judiciary or diminishing citizen's guarantee of access to justice)[9].

34. As far as the consultations with judiciary are concerned, the CCJE states that the judges should be allowed to participate in debates that concern the national judicial policy. They should play an active part in the preparation of legislation concerning their statue and more generally, the functioning of the judicial system.

35. The need to consult the judiciary on issues related to the judicial reform is outlined in a very explicit manner in the Decision of the ECtHR "Baka v. Hungary" (0261/12), according to which the President of the National Council of Justice has a duty to express his opinion on

[8] Report on the Rule of Law, adopted by the Venice Commission at its 86th plenary session, Venice, 25-26 March 2011, para. 36

[9] Opinion no 7 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on "Justice and Society" adopted by the CCJE at its 6th meeting (Strasbourg, 23-25 November 2005), para. 87 and para. 96.

legislative reforms affecting the judiciary. Any interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on the part of the Court[10]. According to the opinion of the Court in a case where the judiciary is deprived of the possibility to consult reforms in the legislation referring to the judiciary there is an infringement of the freedom of expression (art. 10 from the ECHR). The issues related to the judicial reform are defined by the Court as "**questions of public interest**".

36. On the same line are the standards identified by the CCJE in its Opinion 7, according to which the consultative function of the judiciary should be recognized by all states[11]. The Council for the Judiciary should use its periodic reports of its activities as an opportunity to suggest measures to be taken in order to improve the functioning of the judicial system in the interest of the general public.

37. The CCJE states that the judges should be able to be consulted and play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system[12].

38. The CCJE endorses the view that public participation has an essential role in the process of drafting legislation in order to increase the quality of justice and to provide for better services to the public. Court user groups should include judiciary and all other relevant stakeholders. Such groups should meet regularly to examine relevant data and propose developments[13].

II. Analysis of the situation in participating countries

1. Transparency

39. **Transparency** should be understood as the unfettered access to timely and reliable information on decisions and performance. Regarding transparency:, the proposed decision/regulation (bill, government decision, strategic document, etc.) provides for a process by which affected parties would be notified of the proposal's content and justification.

1.1. Drafting of strategic documents

40. As mentioned earlier, one of the identified challenges in the participating countries was the lack of a strategic approach when judicial reform is undertaken. The picture is not different in the context of publication of strategic documents. Among the participating countries only the Republic of Moldova has pointed out the existence of a legal obligation to publicise draft strategic documents that is implemented through a special web-based

[10] Para. 165.

[11] Opinion no 7 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on "Justice and Society" adopted by the CCJE at its 6th meeting (Strasbourg, 23-25 November 2005) para. 87

[12] Opinion no 5 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on the law and practice of judicial appointments to the European court of human rights, para. 34

[13] European Network of Councils for the Judiciary, Second Report on Judicial Reform, 2012-201, para 45

platform[14] and the web page of the authority elaborating the document. However there are no good practices mentioned or identified by any of the other countries in this respect.

1.2. Publication of draft law

41. In the greater part of the participating countries there is an obligation for the authority to publicise the draft law prior to its adoption in order to receive feedback and comments from the relevant stakeholders. Such obligation exists in Armenia, Azerbaijan and in the Republic of Moldova as a general obligation of the relative authority and in Belarus, Georgia and Ukraine as obligation for the legislator. In view of the principle of transparency and realistic chances for consultation it is recommended that the publicising of the document as a draft should be made as early as possible, after its completion by the executive body in charge of its drafting.

1.3. Duration of the period in which the draft law is public

42. In most countries there is no strict period foreseen for the duration of the publicising of the draft for consultations and comments. In Armenia and Republic of Moldova the law prescribes for at least 15 working days before the completion of the draft decision. However there are good practices in countries like Azerbaijan (prior to consultation process), Belarus (upon submission in Parliament) Georgia (at least 10 days before adoption) and Ukraine (three days after selection of the parliamentary committee). It should be mentioned that the relevant good practice to make public a document takes place after the drafting by the executive but prior to submitting to Parliament. The Parliament, however, can make the draft document public prior to its hearing as well, but this is in its prerogatives. The draft law should be publicised right after the completion of the working group under the auspices of the executive body in order to provide room for discussions and to give a chance to the judiciary and the other stakeholders to express their opinion.

1.4. Obligation to make public the draft law justification

43. The only country where there is a legal obligation, provided by law, to publish the draft justification of the law is the Republic of Moldova. In Georgia the explanatory notes are reported to be made only formally. In Ukraine there is a good practice according to which such obligation exists for the legislature as part of the process of registering the law. It is essential to provide an obligation for the body drafting the law to draft a justification as well and to publicise both documents in order to make public the motives and the reasoning for the creation of the law in question. In the cases where an impact assessment has been made, it should be publicised as well.

44. The idea behind the obligation to make public the draft justification is to make it transparent, clear and to publicly announce the reasons for the adoption of a certain law. Such publication may act as a hindrance to making often and too many amendments to the law within a short period of time, because the public shall be informed and it is harder to justify such amendments.

[14] www.particip.gov.md

1.5. Documents on the internet

45. All the countries have in the national laws the obligation to put the draft law on the internet site of the relevant institution. A very good practice was identified in Belarus referring to a National legal Internet Portal for all the legal documents to be published.

2. Consultation

46. **Consultation** of legislation/strategic documents/executive decisions is a process whereby major stakeholders are invited to provide input in the initial phase of formulating the philosophy, desired goals and major components of a draft (legislation/strategic document/executive decision). It entails extensive input from a wide range of stakeholders, public authorities as well as civil society.

2.1 Involvement of stakeholders in the process of preparing a draft proposal

47. The only country in which an obligation provided in the law exists in this respect is the Republic of Moldova. In Georgia it was reported to have a piecemeal approach. The involvement of stakeholders in the process of preparing a proposal is left to the discretion of the body drafting the proposal. This approach contains a certain level of risk, because it depends on the person in charge, it is highly subjective and does not have sustainability. A practice changing with the persons in charge makes the process of drafting legislation unpredictable, unstable, selective and prone to subjective decisions. When existing in the law, the obligation to involve all relevant stakeholders in the process of preparing a proposal brings the practice in compliance with the European standards according to which not only the judiciary but all relevant stakeholders should be consulted[15].

2.2 Forms of consultation

48. The forms of consultation routinely used in practice when different aspects of the judicial reform are treated are not regulated in the law of any of the participating countries. The question refers to the formal or informal consultation and aims to identify the good practices applied in the situation of absence of regulation. The most commonly used format in all participating countries is the formal consultation upon strict mandate. Such an approach is complemented by more tailored forms like permanent advisory groups (except in Azerbaijan) or ad hoc expert groups, but the likely most inclusive approach that opens the floor for real input from judiciary and other interested groups such as the preparatory public committee is in use only in Georgia, Republic of Moldova and Ukraine. Informal consultations with selected groups have the potential to make the process less transparent.

49. As far as the legal obligation for balanced representation of all stakeholders is concerned it should be mentioned that where it exists (in Armenia, Azerbaijan and Belarus) it concerns only the state authorities. Although without legal regulation in practice the balance of different stakeholders is observed in Georgia, Republic of Moldova and in Ukraine.

[15] See European Network of Councils for the Judiciary, Second Report on Judicial Reform, 2012-201, para 45

2.3 Transparency of information in the advisory/working groups

50. The transparency of information in the advisory or working groups refers to the agenda, the minutes and the contributions (materials). In the countries where such approach exists there are two levels of access identified: the prevailing number of participating countries follow a passive approach where the information is available upon request (Armenia, Azerbaijan, Belarus and Georgia), while only two countries have adopted an active approach where information is publicly available online or in printed form (Republic of Moldova and Ukraine).

2.4 Stakeholders are invited to participate to the judicial reform consultation process

51. The process of inviting the stakeholders to participate in the judicial reform consultation process can be described as largely inclusive in the greater part of the countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine). Full transparency of opinion exchanged in consultation process can be found in the Republic of Moldova and a level of limited transparency is typical of Armenia, Azerbaijan, Belarus, Georgia and Ukraine.

3. Public participation

3.1. Legal framework and the input from citizens

52. On the level of public participation of citizens in the process of judicial reforms, the legal regulation of the countries is pretty different. Only in the Republic of Moldova exists an obligation regulated by the law to ensure input from citizens. In Ukraine such contribution is limited only to scientific examination and in Belarus it is limited only to business activity. The rest of the countries do not have explicit regulation. In addition, no good practices are identified by the participants.

3.2. Equal input by stakeholders and citizens before the Parliament

53. The Parliament is equally important in the context of public participation as is the executive because it adopts the legal norms and sometimes even initiates regulations. The legal basis in the countries is different and not all of them provide for equal input from the citizens at the stage where a law is drafted by the Parliament. In the Republic of Moldova there is a legal obligation to organise public consultations. In Belarus this process is under the discretion of the Head of the relevant Parliamentary committee. In addition some good practices are identified – in Georgia in practice there are reasonable timeframes applied to provide equal input. However, in the discussions it was identified that access to parliamentary committee sittings is limited, which in practice hindrances the possibility for stakeholders and citizens to provide relevant input and listen to the discussion of the draft law.

3.3. Justification of accepted and unaccepted proposals after public participation

54. The analysis of the questionnaires revealed the information that none of the countries have a legal obligation to justify why the drafting authority accepts or rejects some of the proposals coming form the public. On the level of good practices it should be mentioned that Azerbaijan declared the existing transparency of parliament committee sittings. It was a very positive example to identify the good practice existing in the Republic of Moldova - a table of divergences with arguments where the opinions of the interested parties are submitted with the mention of being or not being accepted. Such practice exists in Bulgaria as well and the

table is an indivisible part of the package of documents which should be introduced to the Council of Ministers prior to taking the decision to send the draft law to the Parliament for adoption.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

1. Transparency

55. The main issue discussed with participants was if and how transparency could be used to strengthen public trust in the judiciary. According to the Venice Commission the principle of legality involves as its main element transparency and promotes the idea of laws publicly made[16]. The main challenge identified in most of the countries was the need of pro-active publication of draft strategic documents. This means that such documents (if existing) should be made public upon the initiative of the drafting authority prior to its adoption. The best approach would be having a legal obligation for the executive to make public all strategic documents. Such regulation was identified only in the Republic of Moldova.

56. In relation to the need of transparency in the process of decision-making, it should be noted that the questionnaires identified another challenge related to the need to make public the drafts of the laws at an earlier stage. The idea is to gain comments and support from all relevant stakeholders before submitting the draft to the Parliament. This is part of the inclusive approach where all interested parties are consulted.

57. It was also discussed that transparency applies to all documents issued in the course of the drafting procedure. Only one country (Republic of Moldova) has regulated the obligation to publish all documents on the website of the drafting authority. Others have such practice but it comes at a much later stage – when the draft is already at the Parliament (Ukraine). The general recommendation is that the justification of the draft law should be made public together with the draft law as an integral part of the set of documents for public discussion and comments. The importance of observing the principle of transparency was highlighted.

58. Apart from that, the principle of transparency of all draft documents provides additional credibility to the drafts and raises the public confidence in the relevant authorities and the publications could have a beneficial effect.

2. Consultation

59. Consultation of draft documents (strategies and laws) is an important aspect in the public perception of the judicial reform and the involvement of the relevant stakeholders at an early stage of drafting the documents is essential. This could be done by inviting the stakeholders to the working group for drafting the law or the strategy, by making public

[16] Report on the Rule of Law, adopted by the Venice Commission at its 86th plenary session, Venice, 25-26 March 2011, para. 41

discussions and by providing time for them to share comments and proposals for improvement of the drafts.

60. One of the challenges identified is the need to make a difference between the process of consultation (stakeholders) and coordination (with other state authorities). The process of consultation requires not only seeking the opinion of other state authorities but also to provide feedback from the judiciary, judicial councils, NGOs, associations of judges etc. In addition it should be mentioned that the legislation should involve a formal obligation for the state authorities to consult the draft laws and strategic documents, because the existing practices of informal consultations with stakeholders selected by the authority leads to instability and undermines the reputation of the rule making body.

61. The process of consultation requires balanced representation of all the stakeholders. In the course of the discussion it became clear that some of the countries have a good balance in the representation of their legal councils, engaged in drafting the laws for judicial reform. Although this is a good practice, the consultation process requires also a diversity of opinions from bodies and organisations external to the rule-making authority such as judges, professional organizations and civil society organisations. Therefore, in principle the transparency of the consultation process is vital in terms of gaining support for a comprehensive judicial reform.

62. Last but not least, it was discussed with the participants that the consultation procedure is important but it is very difficult to administer and is time-consuming. However this should not discourage its application because the consultation is as important as the process of the law-making and needs to be given time, resources and attention.

63. A big number of best practices of other European countries were presented to the participants. Special attention was given to the role of the Judicial Councils in the procedure for consultation. 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') guarantee of access to justice, should require the opinion of the Council for the Judiciary before deliberation by he Parliament. This consultative function should be recognized by all States.

64. Judicial Councils have advisory powers on legislation concerning the judiciary and procedural laws in almost all EU member states: Belgium, Bulgaria, Croatia (on the request of the Minister of Justice), Denmark, France (on the request of the President of the State), Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain.

65. In Italy, for example, it is compulsory under the law to consult the Judicial Council in the law drafting process of all laws that may concern the administration of justice. In Spain, there is a list of issues when consultation with Judicial Council is compulsory (e.g. modifications to the Law on the Judiciary, determination and modification of judicial boundaries, procedural regulations or regulations that affect juridical and constitutional aspects of legal protection before the courts that relate to the exercising of fundamental rights). In Slovakia and in Poland, in addition to the advisory functions of the Council, the

President of the Judicial Council can institute proceedings before the Constitutional Court regarding the conformity of legislation, regarding the administration of justice and compliance with the Constitution.

66. During the presentation on the consultation special attention was granted to the practice of the ECtHR in this respect. In view of this the main conclusions from the case *Baka v. Hungary (0216/12*) were presented to the participants. This case is emblematic in terms of the importance that the ECtHR grants to the opinion of the judiciary and Judicial Councils in the course of drafting laws which affect the judiciary or citizen's rights. The complainant (president of the Supreme Court and President of the Judicial Council) has criticized publicly a significant number of laws, adopted in a short period of time and affecting in a negative way the statute of judges in Hungary. In result his mandate was cancelled 3.5 years before its end.

67. In its decision the Grand Chamber (2016) found that the early termination of the applicant mandate was … "consequence of the views and the criticism he had publicly expressed in his professional capacity" and after the applicant had publicly expressed his views on a number of legislative reforms, and had been adopted within an extremely short time. According to the court the applicant's impugned opinion concerned four legislative reforms affecting the judiciary. Issues concerning the functioning of the justice system constituted questions of public interest, the debate of which enjoyed the protection of Article 10 of the Convention. It had been not only the applicant's right but also his duty as President of the National Council of Justice to express his opinion on legislative reforms affecting the judiciary.

68. In addition the Court has also stressed that having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on the part of the Court (para. 165). Furthermore, questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10 (see *Kudeshkina, cited above, § 86, and Morice, cited above, § 128).*

69. The Court stated also that issues relating to the separation of powers can involve very important matters in a democratic society that the public has a legitimate interest in being informed about as they fall within the scope of political debate. The applicant expressed his views and criticisms on constitutional and legislative reforms affecting the judiciary, on issues related to the functioning and reform of the judicial system, the independence and irremovability of judges and the lowering of the retirement age for judges, all of which are questions of public interest (see, *mutatis mutandis, Kudeshkina, §§ 86 and 94). uja, cited above, § 88), (para. 165*). Accordingly, the Court considered that the applicant's position and statements, which clearly fell within the context of a debate on matters of great public interest, called for a high degree of protection for his freedom of expression and strict scrutiny of any interference, with a correspondingly narrow margin of appreciation being afforded to the authorities of the respondent State (para. 171).

70. As an illustration of the consultation procedure a case study was presented to the participants. It concerned the personal experience of one of the lecturers as Minister of Justice and was used to provide information on a complete cycle of consultation procedure. The presentation of the context involved information about Bulgaria, such as the fact that the judiciary includes both judges and prosecutors, that there is a Supreme Judicial Council (with two separate chambers – one for judges and one for prosecutors) and that the driving force of the judicial reform is within the Ministry of Justice. The participants were also informed that there was a strategic approach in making the judicial reform. The Strategy for the period 2011 – 2014 was drafted by civil society representatives while the Strategy for the period 2015 – 2020 was subject to public consultation and was adopted by the National Assembly. The statute of the judiciary and its functions are regulated by the Constitution of the Republic of Bulgaria, by the Judicial System Act and by a number of Regulations and Ordinances. The Case study is about the judicial reform made through amendments to the Judicial System Act (JSA) aiming to improve the statute of the judges and the prosecutors (appointments, appraisals, and caseload) and to introduce e-justice.

71. The case study was presented in the form of key steps undertaken in the context of the consultation procedure. The first step was related to the elaboration of the draft amendments to the Bulgarian Judicial System Act and the setup of the working group. In view of this, two separate working groups were set up (one for the status of the judges and the other one for the e-justice) each chaired by a Deputy- Minister. Large scale of specialists were invited to participate: ministry of justice experts, judges, prosecutors, supreme judicial council, experts on judiciary and on the relevant topic, NGOs, associations of judges and prosecutors, national institute for justice (all nominated by their institutions). All records of discussions, minutes and protocols were publicized on the website, together with the draft law and the motives.

72. The second step was dedicated to discussions and consultations on the draft law and the motives with the judiciary. Meetings in person were undertaken by the Minister of Justice with the judges and prosecutors from the 5 regions of appeal in Bulgaria with the aim to present the draft law and to have a Q&A session. In addition a discussion and consultation with the Supreme Judicial Council was made during one of its open (public) sessions and all questions were answered. A decision of the plenary in support of the draft was taken. Discussions and consultations with NGOs were made as well. Step three is related to the integration of the draft and proposals which actually led to the elaboration of a new version of the draft Law. The table with accepted and not accepted proposals and the justifications is elaborated and made public.

73. The next step was related to the launch of the formal consultation procedure which takes 14 days in Bulgaria. This is the period when all relevant stakeholders (although being part of the working group for drafting the law) are expected to provide in writing their opinion and proposals for improvement of the draft law and the motives. New proposals can be integrated to the draft at this stage. The sixth step was related to gaining support in the Parliament: meetings were held with parliamentary groups to present the draft and explain the motives for its adoption.

74. In addition to this procedure for consultations, the Law on the Normative Acts was recently amended to introduce an obligatory impact assessment and identify the ratio between the formulated goals and the expected (achieved) results of a law. This is an obligatory requirement for each law or amendment of a law prior to its introduction to the Council of Ministers. The impact assessment of every law (or its amendments) should be made by the relevant executive body who drafted the law (the amendments).

3. Public participation

75. Public participation means the solicitation of public and stakeholders' input prior to the final legislative decision/government action. Providing for public participation means that authorities would be required to allow comments on any issue related to the matters included in the proposal. Authorities would be required to respond to comments and provide a summary of actions taken or comments rejected. According to the second Report of the CCJE there should be court user groups to include Judiciary and all other relevant stakeholders. Such groups should meet regularly to examine relevant data and propose developments[17]. One of the challenges identified was in the role of the parliaments where equal input of opinions from the public should be provided for. The process should be open for contribution from citizens, should have reasonable timeframes, so that all stakeholders can provide their opinion and transparency of the parliamentary Committees work should be ensured. During the discussion with the participants the approach of the Republic of Moldova with regard to consultation and public participation was demonstrated to the countries and the different stages were debated.

76. The main reason behind the public participation is to overcome the low level of public trust in the judiciary and the national authorities. Public consultations for draft laws and strategic documents have the added value of gaining support because citizens feel engaged and much more informed. They not only obtain concise information on the judicial reform and can act in its support but can also be attracted to take part in the process of reform and recognize the reform process as theirs. The question about the need of public participation to the process of judicial reform through amendments in the legislation was discussed at large with the participants. They all admitted concerns about the low level of trust by citizens in the judiciary due to the general sense of lack of justice.

IV. Outstanding issues

77. With CCJE Opinion Nr. 7 (2005) and Nr. 5 (2005), The Rule of Law Checklist, developed by the Venice Commission and the Second Report on Judicial Reform of the European Network of Councils for the Judiciary, detailed international standards on transparency, consultation and public participation were developed. The questionnaires and the discussions in Strasbourg showed that there are still many problems and open questions in this area, especially in relation to the balance between the powers of the executive and the judiciary in the context of drafting legislation dealing with judicial reform. The different countries provide different level of transparency and differ in their approaches to organise consultation with the relevant stakeholders. By all means it is necessary to open more the

[17] European Network of Councils for the Judiciary Second Report on Judicial Reform, 2012-2013, para. 45

process to external views and opinions in order to provide legitimacy to the reforms of the judiciary.

78. Moreover, especially in relation to the public participation it is essential to provide time for consultations and public participation both at the stage of drafting the law by the executive and at the stage of its adoption by the Parliament. It is essential to provide transparency for the draft strategic documents because they are the sound basis for the judicial reform and the lack of public and stakeholder's support for a strategy undermines the road to the very reform.

79. The discussion with the participants highlighted how the issues of independence, transparency and consultation can be difficult to put into practice. A meeting on the subject might therefore be interesting.

80. Among the outstanding issues we could also mention an issue which was added by the consultant, although not preliminary in the agenda. This is the issue of the limits (the restraints) for the judiciary, the executive and the legislative power in the context of the separation of powers. According to Opinion 18 of the CCJE …"the judiciary must be aware that there are limits to judicial and legal intervention in relation to political decisions that have to be made by the legislative and executive powers". Therefore, all courts within the judicial power must take care not to step outside the legitimate area for the exercise of judicial power. The CCJE recognizes that both the legislative and the executive powers have legitimate concerns that the judicial power should not overstep its role. Judiciaries must also take care not to oppose all proposed changes in the judicial system by labeling it an attack on judicial independence. The judiciary must never encourage disobedience and disrespect towards the executive and the legislature".

81. As far as the restraints for the legislator and the executive are concerned, Opinion 18 states that the question of when and how often legislation should be changed falls within the responsibility of the legislature. However, too many changes within a short period of time should be avoided if possible, at the very least in the area of the administration of justice.

Part III. Communication

82. **Communication** consists of ensuring multidirectional informational flows that backs up a reform process with the aim to both raise public trust and strengthen reform support. It usually includes comprehensive social communications component to promote public access.

I. Overview of relevant European and other international standards

83. In its recent Opinion 18 the CCJE summarises briefly the need of communication in the context of the judicial reform. As the CCJE has noted before, dialogue with the public, directly or through the media, is of crucial importance in improving the knowledge of citizens about the law and increasing their confidence in the judiciary. It is essential that dialogue between the three powers of the state and between the judiciary and the general public, as

well as any inspections and investigations that are undertaken, are conducted in a climate of mutual respect[18].

84. In order to make the communication with the citizens easier, Opinion 17 of the CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective[19]. Courts should take part in general framework programmes arranged by other state institutions and take an active role in providing information to the public .

II. An analysis of the situation in participating countries

1. Type of information disseminated

85. In all participating countries, the types of information most commonly disseminated in the framework of the judicial reform are press releases and infographics. Printed citizens' guides and issue related brochures, which are a much more tailored tool to familiarise citizens with the aims and achievements of judicial reform are also in use.

2. Ways of disseminating information

86. In all participating countries the most frequently used ways of disseminating information on judicial reform are of sporadic character – occasional press-conferences and internet facilities are the preferred communication tools. Public reports and related public events are also in use in most of the countries except for Georgia.

87. More active communication tools such as monthly briefings and information offices are not in common use in participating countries and their potential should be re-examined in the future.

3. Accountability of the judicial reform responsible authority

87. Alongside with the communication tools in use, one very important question is related to the level of accountability of the authority that plays a central role in the judicial reform implementation. In only two of the participating countries (Belarus, Moldova and Ukraine) there is a legal obligation for those authorities to report about the advancement of the judicial reform before the other state authorities and relevant stakeholders.

88. Therefore, the limited practice of pro-active accountability that could provide for a higher level of public support to the judicial reform is a common trend in most of the participating countries.

4. Resources available to the Judiciary self-governing body to communicate reform

89. The Judiciary self-governing body has a central role to play in the process of communicating the reform that is why the question of its equipment with necessary resources is of vital importance. In only two of the participating countries the self-governing body is equipped with a communication strategy, trained communication officers and budget allocated for the purposes of communication (Azerbaijan and Republic of Moldova).

[18] Opinion 18 (2015), para. 32, Consultative Council of European Judges (CCJE), para 32 and para. 36.

[19] Opinion 17, Consultative Council European Judges, para. 49

90. Communication strategies are still to be developed in Armenia and Georgia, while the appointment of a trained communication officer is still a must in Armenia, Belarus, Georgia and Ukraine. In Ukraine special concerns as to who speaks on behalf of the judiciary has been expressed pointing thus to the need of well-developed communication capacity within judicial reform implementing authorities.

5. Capacity of Magistrates' associations to communicate reform

91. In all participating countries associations of judges and/or prosecutors have shown interest to participate in the communication of reform milestones.

III. Selected examples of best practices, lessons learned and most challenging issues, both within the region and in other Council of Europe member states, with particular focus on the areas identified as most challenging by participating countries

92. The discussion on the subject of how to promote judicial reform processes was interesting and vivid due to the existing European standards on communication and the best practices from some European countries. In addition the participants had questions about how the judiciary should communicate with the public. There are two possible ways of communication by the judiciary with the public – directly (through presidents of court, judges or spokespersons) and indirectly (through the media). The attitude implying a passive role of courts in the public arena, in conformity with a traditional conception of the duties of impartiality and discretion, and made the mass media the sole interlocutors for courts, is rapidly changing.

93. Some good practices in the European countries were identified and shared with participants. For example in Norway Judges are allowed - but by tradition reserved - to make statements to the press. Normally the President of the Court makes statements concerning the court's administration. As a general rule, because of the risk that comments may be interpreted as additional arguments for the ruling, judges do not comment on their own decisions. In Sweden, Swedish judges are now more than in the past accepting to answer general questions from the media, but also to present their court-decisions and explain them in the media for the public. Courts normally do not have spokesmen and a judge is free to make statements to the press as long as he/she doesn't jeopardize his function in the case where he is presiding. In the UK, internet plays a significant role when it comes to informing the public about the legal system. The websites are understandable, accessible and provide the user with the necessary contact details where further information can be sought. In Germany, judges' associations offer websites informing the public mainly on current legal issues. Internet facilities of courts may include texts written by individual judges about certain legal issues and about the history of the court in addition to practical information concerning the judicial system.

IV. Outstanding issues

94. The issue of communication deserves a separate session as it was obvious from the questions and the interest of participants that they needed more in-depth information on the issue. The topic was discussed in the context of the issue of public trust in the judiciary and the low confidence in the institutions as a whole. The topic deserves more time to be examined maybe in a future seminar with the countries.

Part IV. Conclusions

95. The analysis of the situation in the relevant countries as well as the discussion of the relevant regulations indicate that judicial reform is an important issue which is currently at stake in all the participating countries. The overview of the international standards to the judicial reform process emphasises the need to lead and implement the judicial reform in conformity with the principles of transparency, consultation, public participation and communication. There are several main conclusions which could be mentioned based on the analysis and the discussions.

96. Judicial reform processes should always be based on a strategic approach which should involve the judiciary at a very early stage. This approach is crucial for the successful conduct of the reform and the role of the judiciary is essential. In a best case scenario the judiciary shall be represented by a Judicial Council which will express its opinion and protect its independence. In the countries where both Judicial and Legal Councils exist their role should be differentiated with the utmost care.

97. The European standards are clear about the need to draft laws referring to judicial reforms in a transparent way, to consult them with the judiciary and involve the public in order to safeguard the rule of law. This approach contributes to safeguarding the independence of the judiciary and to increasing its capacity to be efficient. The transparency should cover the drafting of strategic documents, as well as the drafting of the laws referring to the judicial reform and their justification. Stricter rules about the period in which the draft law is made public and open for comments are needed as well. The use of internet in bringing more transparency is highly recommended.

98. Consultation is another important principle when adoption of laws concerning the judiciary is under way. It requires involvement of all stakeholders in the process of preparing the draft proposal, provide for a balanced participation and find a way to regulate all the forms of consultation in the laws of the respectful countries. In view of an efficient process of consultation transparency of information (applied to all minutes, drafts, agendas and other materials) is extremely important.

99. On the level of public participation of citizens in the process of judicial reforms, the legal regulation of the countries is pretty different. It seems to be a common practice to provide for greater transparency at the level of decision-taking by the parliament ess openness at the level of the executive, which is actually the driving force of the judicial reforms. Another issue is the need not only to listen to proposals from different stakeholders but also to justify the accepted and unaccepted proposals after public participation.

100. According to the CCJE, the dialogue with the public, directly or through the media, is of crucial importance in improving the knowledge of citizens about the law and increasing their confidence in the judiciary. The reform should be best communicated by the self-governing body of the judiciary directly to citizens or through the media. A communication strategy efficiently supports the process of communication with the public. This approach shall contribute to increasing the low level of confidence in the judiciary, which was indicated as a serious problem in all the countries.

101. In conclusion it could be said the topics discussed were of big interest to the participants and the discussions were extremely vivid. In the framework of the day all the issues were covered however they could be further developed as the participants indicated a high level of interest.

102. Possible topics for the future could be:

- the process of evaluation of strategic documents as a necessary step to draft the next strategy to reform the judiciary;
- to the role of the Judicial Councils in the procedure for consultation;
- relation to the balance between the powers of the executive and the judiciary in the context of drafting legislation dealing with judicial reform;
- the issue of public trust in the judiciary and the low confidence in the institutions as a whole;
- the issue of communication deserves a separate session.

A next step forward could be a more detailed analysis of the role of the judicial councils and the role of the legal councils dealing with the judicial reform, in order to better differentiate their roles.

Annex 1 - International Standards

1. International Standards with respect to judicial reform

UN's Sustainable Development Goals adopted by the UN General Assembly in September 2015

Opinion 18 (2015) Consultative Council of European Judges (CCJE) The position of the judiciary and its relation with the other powers of state in a modern democracy"[20]

European Network of Councils for the Judiciary, Judicial reform in Europe Report 2011 – 2012

European Network of Councils for the Judiciary, Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate

European Network of Councils for the Judiciary, Judicial reform in Europe Report, part II, Guidelines for effective justice delivery

Apart from that, the Case law of the ECtHR on Article 6 of the ECtHR is of great importance.

2. International standards with respect to transparency, consultations and public participation

Report on the Rule of Law, adopted by the Venice Commission at its 86th plenary session, Venice, 25-26 March 2011

Rule of Law Checklist, Venice Commission, CDL-AD(2016)007

Opinion no 7 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on "Justice and Society" adopted by the CCJE at its 6th meeting (Strasbourg, 23-25 November 2005)

Opinion no 5 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on the law and practice of judicial appointments to the European court of human rights

European Network of Councils for the Judiciary, Second Report on Judicial Reform, *2012-2013*

3. International standards with respect to communication

[20] See also CCJE Opinion No. 1(2001) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges , para 11

Opinion 18 (2015), para. 32, Consultative Council of European Judges (CCJE) "The position of the judiciary and its relation with the other powers of state in a modern democracy",

4. Independence of judiciary in the context of separation of powers: the limits

CCJE Opinion No. 18 (2015) Consultative Council of European Judges (CCJE) The position of the judiciary and its relation with the other powers of state in a modern democracy"

Annex 2 - Summary table of countries' replies to preparatory questionnaire

		Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
I. Questions related to the Judicial reform status							
1	**Strategic document**	Yes The 2012-2016 Strategic Program for Legal and Judicial Reforms in the Republic of Armenia	Yes	Yes Presidential Decree № 454 (ed. Of 11.29.2013) "On measures to improve activity of the courts of general jurisdiction of the Republic of Belarus" Presidential Decree № 529 (ed. Of 31.12.2015) "On some issues of activities of the courts of the Republic of Belarus "	Yes Ongoing process of drafting Judicial Reform Strategy in 2016	Yes Justice Sector Reform Strategy JSRS 2011-2016	Yes Strategy of the judicial system in Ukraine 2015 – 2020
2	**Responsible Authority** - Driving force	Ministry of Justice	Presidency	Presidency National centre of legislation and legal research	Ministry of Justice	Ministry of Justice	Presidency Council of Judicial Reform
	- Implementation level	shared	Judicial Legal Council and Ministry of justice	Supreme Court	shared	shared	shared
3	**Pending Issues of reform**						
A	protecting judicial independence	Yes	No	Yes	Yes	Yes	Yes
B	judiciary self-government	Yes	No	Yes	No	Yes	No
C	training of magistrates	Yes	Yes	Yes	No	Yes	Yes
D	improving ease of access to justice	Yes	Yes	Yes	Yes	Yes	Yes
E	maintaining and improving high quality justice delivery	Yes	Yes	Yes	Yes	Yes	Yes
F	improved administration and optimization of workload	Yes	Yes	Yes	Yes	Yes	No

G	case management and digitalization	Yes	Yes	Yes	Yes	Yes	No
H	ensuring consistency of judgements and timeliness	Yes	Yes	Yes	Yes	Yes	No
I	simplifying judicial procedures	Yes	Yes	Yes	Yes	Yes	Yes
J	compliance with international standards	Yes	Yes	Yes	Yes	Yes	Yes
K	Other			Yes[21]			Yes
		Armenia	**Azerbaijan**	**Belarus**	**Georgia**	**Republic of Moldova**	**Ukraine**
II. 1. Questions related to the issue of Transparency							
4	**Drafting of strategic documents**						
	- Mandatory publication	No	No	No	No	Yes	No
	- Practice	No info	No info	No info	No info	Yes[22]	No info
5	**Publication of Draft Law**						
	- Mandatory publication	Yes	Yes	Yes, for the legislature	Yes, for the legislature	Yes	Yes, for the legislature
	- Practice	Yes	Yes	Yes	Yes	Yes	Yes
6	**Duration of the period in which the draft law is public**						
	- In law	at least 15 days	no strict deadline	no strict deadline	no strict deadline	at least 15 working days before the completion of the draft decision	no strict deadline
	- in practice	at least 15 days	prior to consultation process	upon submission in parliament	at least 10 days before adoption	at least 15 working days before the completion of the draft decision	three days after selection of lead parliamentary committee
7	**Obligation to make public the draft law justification**						
	- In law	Yes	No	No	No	Yes	No
	- In practice	Yes	No	No	explanatory notes are made only formally	Yes	obligation for the legislature in the process of registering

[21] For more information see at the end of the document.

[22] www.particip.gov.md

							the draft bill
8	**Documents on the Internet**						
	- In law	Yes	Yes	Yes	Yes	Yes	Yes
	- In practice	Yes	Yes	Yes	Yes	Yes	Yes

		Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
II. 2. Questions related to the issue of Consultation							
9	**Involvement of stakeholders in preparing a draft proposal**						
	- In law	rule making body decides	rule making body decides	rule making body decides	rule making body decides	Mandatory involvement	rule making body decides
	- In practice	No info	No info	No info	piecemeal approach	Yes	No info
10	**Forms of consultations used** - Informal consultation with selected groups	Yes	No	No	Yes	Yes	Yes
	- Formal consultation upon strict mandate	Yes	Yes	Yes	Yes	Yes	Yes
	- Permanent Advisory Groups	Yes	No	Yes	Yes	Yes	Yes
	- Ad hoc Expert Groups	Yes	Yes	Yes	Yes	Yes	Yes
	- Preparatory Public Commission/committee	No	No	No	Yes	Yes	Yes
	- Other	No	No	No	No	No	Results ignored
11	**Balanced representation in formal consultations**						
	- In law	on discretion of rule making body	only referring to state authorities	only referring to state authorities	No	No	No
	- In practice	No info	No info	No info	Balance observed	Balance observed	Balance observed
12	**Transparency of information in the advisory/working groups**	**Passive approach**: Information available, but only on request	**Passive approach**: Information available, but only on request	**Passive approach**: Information available, but only on request	**Passive approach**: Information available, but only on request	**Active approach**: Information publicly available online or in printed form	**Active approach**: Information publicly available online or in printed form
13	**Stakeholders invited in practice to participate to consultation process**	Largely inclusive	Largely inclusive	Partially inclusive	Largely inclusive	Largely inclusive	Largely inclusive
14	**Transparency of opinions exchanged in consultation process**	Limited	Limited	Limited	Limited	Full	Limited

		Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
II. 3. Questions about the Public Participation							
15	**Legal framework ensures equal input from citizens**						
	- In law	rule making body decides	rule making body decides	rule making body decides	No specific rules	Yes	rule making body decides
	- In practice	limited	limited	public web based platform	limited	public web based platform	limited
16	**Equal input by stakeholders and citizens before the Parliament**						
	- In law	general provisions apply	general provisions apply	discretion of head parliamentary committee	No specific rules	legal obligation to organize public consultation	limited to drafts related to economic activity
	- In practice	limited	limited	limited	limited	inclusive	limited
16	**Forms of public participation routinely used in Judicial reform**						
	- Broad circulation of proposals for comment	No	Yes	Yes	No	No	No
	- Public notice and calling for comment	Yes	No	Yes	No	No	No
	- Public meeting/hearing	Yes	Yes	Yes	Yes	Yes	No
	- Posting proposals online	Yes	Yes	Yes	Yes	Yes	Yes
	- Advisory/Expert Groups	Yes	Yes	Yes	Yes	Yes	Yes
	- Preparatory Public Commission/committee	No	No	No	No	Yes	Yes
17	**Public participation open in practice to stakeholders**	sometimes but not always open	sometimes but not always open	sometimes but not always open	sometimes but not always open	generally open	sometimes but not always open
18	**Time limits for submission of comments**	No specific rules	No specific rules	No specific rules	No specific rules	15 working days	No specific rules
19	**Justification of accepted and unaccepted proposals after public participation**						
	- In law	No	No	No	No	No	No
	- In practice	No	No	No	No	a table of divergences with justification	No

		Armenia	Azerbaijan	Belarus	Georgia	Republic of Moldova	Ukraine
IV. Questions about Communication							
20	**Type of information disseminated**						
	- Press-releases	Yes	Yes	Yes	Yes	Yes	Yes
	- Printed citizen's guides	Yes	Yes	No	Yes	Yes	Yes
	- issue related brochures	Yes	Yes	No	Yes	Yes	Yes
	- infographics and statistics	Yes	Yes	Yes	Yes	Yes	Yes
	- other	Small grants to law students project	No	No	No	No	public reports
21	**Ways of disseminating information to citizens**						
	- Monthly briefings	No	Yes	No	No	Yes	No
	- Occasional press-conferences	Yes	Yes	Yes	Yes	Yes	Yes
	- Public reports	Yes	Yes	Yes	No	Yes	Yes
	- issue related public events	Yes	Yes	No	Yes	Yes	Yes
	- Internet facilities	Yes	Yes	Yes	Yes	Yes	Yes
	- Information offices	yes	yes	No	No	No	Yes
	- Other PR activities	No	No	No	No	No	Yes
22	**Accountability of the Judicial reform responsible authority**						
	- In law	No	No	No	No	Yes	Yes
	- In practice	limited	No	limited	limited	Yes	Yes
23	**Resources available to the Judiciary self-governing body to communicate reform**						Not clearly defined who speaks on behalf of judiciary
	- communication strategy developed	No	Yes	Yes	No	Yes	Yes
	- communication officer/office trained	No	Yes	No	No	Yes	No
	- Budget allocation available	Yes	yes	No	No	Yes	No
	- other	No	No	No	No	No	No
24	**Magistrates' associations communication activities**						
	In practice	Yes	Yes	Yes	yes	Yes	limited

3. Belarus: improving the material-technical and personnel support vessels.

3. Ukraine: depoliticization of the judicial system; increasing age and professional qualifications for judicial candidates; introduction of the competitive principle of appointment of judges; establishing a constitutional authority responsible for the selection, career development, liability of judges, mostly consisting of judges elected by judges; creation of adequate corps of judges: qualification evaluation, selection, assessment.

Annex 3 – Agenda and List of Participants

AGENDA
WORKING GROUP B

Judicial Reform Processes
with focus on Transparency, Public Participation and Communication

Strasbourg, 26 September 2016

09.30 – 10.00	Opening and Introduction Ms Hanne Juncher, Head of Justice and Legal Cooperation Department, Council of Europe Mr Jari Vilen, Ambassador, Head of the EU Delegation to the Council of Europe (**tbc**)
10.00 – 11.00	Presentation of relevant European and other international standards By the international consultant, Ms Diana Kovatcheva, followed by Q&A and discussions
11.00 – 11.15	Coffee Break
11.15 – 12.45	Overview and analysis of the most challenging issues faced by participating countries By the international consultant, with comments and inputs by participants
12.45 – 14.15	Lunch Break
14.15 – 15.30	Presentation of case-studies, best practices or lessons learned in relation to the identified challenges from experiences of countries both within the region and in other Council of Europe member states Introduced by the international consultant with comments and inputs by participants
15.30 – 15.45	Coffee Break
15.45 – 17.30	Proposals and discussions of possible regional approaches or cooperation initiatives that could be undertaken in response to the identified challenges Lead by the international consultant, with inputs from participants

LIST OF PARTICIPANTS
WORKING GROUP B

Judicial Reform Processes
with focus on Transparency, Public Participation and Communication

Strasbourg, 26 September 2016

International Experts

1.	Ms Diana Kovetcheva	Lecturer and Researcher at the Bulgarian Academy of Science
2.	Ms Katia Hristova	Senior Assistant Professor, Jean Monnet Lecturer in European Politics at New Bulgarian University

RSG Members

3.	Ms Tatevik Davtyan	Acting Director of the Judicial Projects Implementation Unit SA Ministry of Justice of Armenia
4.	Ms Anna Vardapetyan	First Deputy Head of the Judicial Department of Armenia
5.	Mr Farid Madatli	Head of Division of International Relations at Supreme Court of Azerbaijan
6.	Ms Ina Uhnivenka	Judge of the Judicial Division for Civil Cases of the Minsk City Cassation Court, Belarus
7.	Mr Ushangi Bakhtadze	Head of International Relations Section of the High Council of Justice of Georgia
8.	Ms Tatiana Moraru	Head of Department of Analysis, Monitoring and Evaluation of the Ministry of Justice of the Republic of Moldova
9.	Ms Mihaela Martinov	Consultant at the Cabinet of the Minister of Justice of the Republic of Moldova
10.	Mr Oleksandr Oliinyk	Head of the Department of Justice and National security of the Ministry of Justice of Ukraine

Institutional experts

11.	Mr Ilham Ahmadov	Member of Judicial Legal Council, Judge Baku Administrative - Economical Court #1, Azerbaijan
12.	Mr Samad Jafarov	Leading Adviser at the General Department of Organization and Supervision of the Ministry of Justice of Azerbaijan
13.	Ms Yauheniya Paramonava	Head of the Analytical Division of the General Prosecutor's Office of Belarus
14.	Ms Valentina Grigoris	Deputy Director of the Courts Administration Agency of the Republic of Moldova

15.	Mr Bohdan Monich	Judge of Zhytomyr Administrative Court of Appeal, Ukraine
16.	Mr Oleksandr Bilous	First Deputy Prosecutor of Mykolayiv Oblast, Ukriane
17.	Mr Oleksandr Lebed	Deputy Head of the Economic Court of Sumy region, Ukraine
18.	Mr Kostyantyn Krasovsky	Secretary of Judicial Reform Council, Ukraine

Civil Society Representatives

19.	Mr Artur Sakunts	Chairman of Helsinki Citizens' Assembly Vanadzor, Armenia
20.	Mr Ramil Iskandarli	Chairman of Legal Analysis and Research Public Union; Member Azerbaijan Lawyers Confederation
21.	Mr Ruslan Mustafayev	Lawyer at the project “Protection Freedom of Assembly”, Azerbaijan
22.	Ms Sevda Mustafayeva	Lawyer at Women Initiative NGO, Azerbaijan
23.	Mr Victor Kamenkov	Chairman of the Belarus Republican Union of Lawyers
24.	Ms Ekaterine Tsimakuridze	Project Coordinator at Georgian Young Lawyers Association
25.	Mr Ilie Chirtoaca	Legal Officer at LRCM NGO, Republic of Moldova
26.	Mr Roman Kuibida	Deputy Head of the Board of the Centre of Policy and Legal Reform, Ukraine
27.	Ms Zoia Iarosh	Vice-President of the NGO "Association of Advocates of Ukraine"

EU Delegation

28.	Mr Jose Mendes Bota	First Counsellor; High-Level Political and Parliamentary Adviser

CoE Secretariat

29.	Ms Hanne Juncher	Head of Justice and Legal Cooperation Department
30.	Mr Simon Tonelli	Head of Division for Legal Cooperation
31.	Ms Sophio Gelashvili	Head of Unit
32.	Ms Rita Marascalchi	Project Manager
33.	Ms Zaruhi Gasparyan	Project Assistant