

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



**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:

INDEPENDENCE OF JUDGES

with focus on: External and internal independence; How does a judge demonstrate he or she has acted independently; Material and social guarantees of independence

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The opinions expressed in this work are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

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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 A, focusing on judges' independence. It is based exclusively on the information provided by the participants by filling in a questionnaire prepared by the expert 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.

I) INTRODUCTION

1. This report provides an overview of the meeting of the Working Group A established under the Project for Regional Dialogue on Judicial Reform in the Eastern Partnership Countries, which took place in Strasbourg on September 19th, 2016. The meeting focused on Judges' independence. The project is part of the joint Council of Europe and European Union Eastern Partnership Programmatic Co-operation Framework (PCF) for 2015-2017, which aims among other goals at strengthening the independence and efficiency of the judiciary. Experts and stakeholders of six countries were in attendance: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine (Agenda of the meeting and list of participants are provided in the Annexes 3 and 4).

2. The meeting dealt with four aspects of judicial independence:

- External independence
- Internal independence
- How does a judge demonstrate he or she has acted independently
- Material and social guarantees of independence

The goal of the meeting was to foster the exchange of experiences and best practice between the participating countries and to raise awareness about relevant European standards to increase compliance of national legal systems.

3. In preparation of the meeting the participants had been provided with a compilation of the relevant applicable European standards (Annex 1) and with a questionnaire on their respective national systems, both prepared by the expert. The answers to the questionnaire were compiled in a summary, which is attached to this report (Annex 2). In the meeting itself discussions on each of the four topics started with an overview on the relevant European standards, which was provided by the expert, followed by presentations of the participants about the experiences in their respective countries and a debate on main challenges faced, best practices and lessons learned.

4. Independence is a corner stone in a democratic state, which is governed by the rule of law. This means foremost the independent and impartial exercise of their functions by the judges. But as Recommendation 2010/12 of the Committee of Ministers correctly states this independence of the individual judge has to be embedded in an independent judiciary as a whole¹. The topic of the Working Group was limited to the independence of judges.

5. The report does not present all aspects of the topic nor does it provide a complete overview on all existing legal standards or possible practices. It reflects the answers to the questionnaire which were provided by the participants and the debate and question raised in the Working Group's meeting in Strasbourg.

6. The necessity of an independent and impartial judiciary is expressed in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in several other European and international legal documents².

¹ Recommendation (2010)12 of the Committee of Ministers: para 4

² UN Basic Principles on the Independence of the Judiciary; Recommendation 2010/12 para 3; Venice Commission CDL-AD (2010)004 Report on Independence of the Judicial System: Part I Independence of Judges para 6 and 7; Opinions of the Consultative Council of European Judges (CCJE) esp. Opinion 1 and 18; Magna Carta of Judges (Fundamental Principles) para

7. On the request of the Secretary General of the Council of Europe the bureaus of the CCJE and CCPE delivered a common report on "Challenges for judicial independence and impartiality in the member states of the Council of Europe"³. In this reports several problems regarding the independence of judges with either the legal framework or the application of the rules were identified in different member states. In reaction to this the Committee of Ministers on 13.4.2016 adopted a "Plan of Action on Strengthening Judicial Independence and Impartiality".⁴ In this Action Plan the member states committed themselves among others to protect the independence of individual judges and ensure their impartiality.⁵

II) EXTERNAL INDEPENDENCE

A) European Standards:

8. The independence and impartiality of individual judges has to be protected against every external influence. There could be direct or indirect influence of the other powers of state, the legislative power and especially the executive power. But there are also attempts of groups of the society with or without connection to the parties of the case, there are the media and society at large which may have an interest in the outcome of a case and may try to influence it.

9. General safeguards for the independence and impartiality of judges, which are laid down in European legal standards, are the tenure of office, the irremovability, the personal security and financial security.

10. Judges should have security of tenure until a mandatory retirement age, where it exists. Early termination should only be possible on medical reasons and as consequence of a disciplinary procedure.⁶

11. Judges should not be transferred to another judicial office without their consent, except as the result of a disciplinary procedure or a reform of the organisation of the judicial system.⁷

12. Safeguards, which are needed to avoid undue impact, have to be put in place, when systems of inspection, of disciplinary procedure or of assessment⁸ are established. In any case these systems should not be invaded by the other powers of state. Transparency of criteria, fair procedure, motivated decisions and remedies are the key safeguards.

2 and 3; Kyiv Recommendation on Judicial Independence in Eastern Europe, South Caucasus and Central Asia ; Bangalore Principles of Judicial Conduct Value 1 Independence and European Charter of the Statute for Judges

³ CCJE and CCPE Report: Challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016,

⁴ Plan of Action on Strengthening Judicial Independence and Impartiality, 2016 (CM(2016) 36 final.

⁵ Plan of Action: Part D

⁶ CM Recommendation 2010/12 para 49 and 50

⁷ CM Recommendation 2010/12 para 52

⁸ The topic of assessment was already dealt with in a previous working group of this project

13. If there is an attempt to unduly influence judges this should be sanctioned.⁹ When judges consider that their independence is endangered they should have the possibility to address an independent body and to remedy it.¹⁰

14. Disciplinary proceedings may be foreseen, if judges fail to carry out their duties in a proper manner. But the interpretation of the law, the assessment of facts or weighing of evidence should not establish disciplinary liability except in cases of malice or gross negligence.¹¹

15. Disciplinary procedures should be conducted with all guarantees of a fair trial by an independent body, shall result in a reasoned decision and be open to a judicial control.¹²

16. Ethical guidelines, elaborated with a decisive influence of judges themselves are recommended. But not every breach of these guidelines should be a disciplinary offence.¹³

17. One source of external influence on judges may be the media. Sometimes they are used by politicians or other interest groups to form the opinion of the public. This has an important influence on the trust in the justice system and the judges.

18. Recommendation 2010/12 appeals that when commenting on judicial decisions the executive and the legislative power should avoid criticism that would undermine the independence of or public confidence in the judiciary.¹⁴ This applies for undue criticism only and for the way how criticism is expressed. There is and must be the possibility to address real grievances or maladministration.

19. Like the other powers of state and all public bodies and institutions the judiciary is accountable to society. Society has a right to know how judiciary fulfils its tasks. Therefore general information about the judiciary and the justice system are of interest and should be provided.

20. But there is also a legitimate interest of the public in concrete cases. Hearings and the passing of sentences are public¹⁵. At least the leading decisions of the courts should be available free of charge for everybody.¹⁶ The conflict with the fundamental rights of presumption of innocence, privacy and family life, data protection has to be balanced.

21. To optimize the task of providing correct and admissible information effectively the establishment of spokespersons or press and communications services by the courts or by the councils for the judiciary are recommended.¹⁷

B) Questions Raised, Best Practices Identified and Lessons Learned:

22. The debate in this part focused on:

- the possibility to address a body when the independence is endangered,

⁹ CM Recommendation 2010/12 para 14

¹⁰ CM Recommendation 2010/12 para 8

¹¹ CM Recommendation 2010/12 para 66

¹² CM Recommendation 2010/12 para 69

¹³ CM Recommendation 2010/12 para 73 and 72

¹⁴ CM Recommendation 2010/12 para 18

¹⁵ ECHR Article 6 para 1

¹⁶ CCJE Opinion 14 on Justice and Information Technology (IT) para 24

¹⁷ CM Recommendation 2010/12 para 19

- the effectiveness and transparency of disciplinary procedures,
- the role of Civil Society in disciplinary procedures,
- the role of and the influence by media.

23. In all participating countries there is a body which can be addressed by judges when they experience infringement of independence. In Armenia it is the Disciplinary Commission, in Belarus it is the Qualification Board of Judges and the internal affairs bodies, in the other countries it is the respective council for the judiciary. But it is interesting to see that in Ukraine only this body had often do deal with such claims, in Armenia, Georgia and Republic of Moldova it happened only a few times, in Armenia this even led to the imprisonment of 3 persons concerned, in the other countries such claims against interference were not reported at all. It may be interesting to analyse these differences, the concrete reasons of the claims and the results of them.

24. The debate regarding the disciplinary procedure concentrated on the transparency of the procedure and the publication. The problem was identified that on one hand it is necessary to hold up the public trust in the judiciary and make visible that there is an adequate reaction on disciplinary offences; on the other hand also the confidence that a judge, who had been sanctioned because of disciplinary offences, nevertheless is capable to exercise his/her office as an independent and impartial judge needs to be maintained. It is necessary to find an appropriate balance in the interest of the trust in the judiciary. In any case the result of cases, which already had raised awareness in the media or public at large should be made available to the public. The results of other cases should be published in a generalizing and anonymized way only. Some European Union member states publish yearly overall reports about disciplinary procedures without identifying the individual cases. On the level of the Council of Europe the report on European Judicial Systems¹⁸, which is published every second year, contains such figures on disciplinary procedures for the year 2012.

25. The question was raised if civil society could provide evidence for disciplinary procedures against judges. This question includes two aspects. Who can initiate a formal disciplinary procedure and how and by whom is the material collected and put forward in such a procedure? The most important point is to ensure the jurisdiction of an independent body composed with at least a majority of judges to proceed and decide the cases. The initiation of disciplinary procedures differs a lot from country to country. In some cases every claim can lead to open a procedure. But the experience shows that it is highly recommended to have a filter before starting a procedure. This may be a member of the body which is in charge for the disciplinary procedure, or a special prosecutor, or a body like an ombudsman etc. In such cases, claims from civil society organisations will have to go through this filter like every body else's claims. Regarding the collection of evidence by civil society organisations it is evident that such collection is possible and allowed. When such evidence will be put forward to the disciplinary tribunal, it will have to be considered and weighted like every other evidence which is put forward in the procedure.

26. During the meeting, significant attention was devoted to the role of the media. Two aspects received higher attention: (1) reporting on the performance of courts and the justice system at large and (2) reports on concrete cases. The different tasks and interests of judges and judiciary on the one hand and journalists and media on the other hand were compared. Almost all participants reported problems in the mutual understanding of this differences and almost everywhere exists pressure on the judiciary by media.

¹⁸ CEPEJ European Judicial System , Efficiency and Quality of Justice CEPEJ Studies No 20 2014 (data 2012) pages 352 ff

27. It is therefore of outmost importance to foster mutual understanding, which could be supported by establishing platforms for exchanges, involving judges in the training of journalists and involving journalists in media training of judges. Some proposals of possible means in this regard can be found in CCJE Opinion No 7 on Judges and Society¹⁹.

28. Judges are not used to deal with the media. They should not comment on their own cases and they have to respect legal limitations when information is provided. Therefore spokespersons or communication centres have been proved to be good tools. Another instrument is the use of handbooks, guidelines etc. In this regard good practices of the participating counties have been presented.

29. In the Republic of Moldova, guidelines on relations between media and the judiciary have been elaborated by the High Council together with GRECO. It was offered to make this document available to be translated for the use of other participating countries.

30. Ukraine reported that training for spokespersons had been organized and Universities have started to offer courses on judiciary and journalism. There is also a handbook on communications of the judiciary.

31. Belarus underlined the good experiences they have with their Press Service which publishes press releases about sensitive cases. In addition there is the possibility that media are accredited to get additional information.

32. There was a common understanding among the participants that the most sensitive aspect of the relations between media and courts was how to avoid that media try to influence decisions and especially if they violate the presumption of innocence, which is a fundamental right laid down in Article 6 /2 of the ECHR, or how to react should that happen. In several countries the law provides for a punishment of such behaviour.²⁰ In Belarus the High Council can order the respective media to correct the published information, if it was biased.

33. After a short exchange on the importance of publishing court decisions it was agreed that at least all leading decisions should be published and made available to all those interested, but that this does not mean that all personal data of the persons involved should be published in full.

III) INTERNAL INDEPENDENCE:

A) European Standards:

34. The principle of judicial independence, which means that in his/her decision making the judge is independent and impartial and able to act without restriction or pressure or direct or indirect interference, also has to be respected by the authorities within the judiciary²¹. This applies among others to the presidents of courts²², to the councils for the judiciary²³ and to superior courts except when dealing with remedies²⁴.

¹⁹ CCJE Opinion 7 part C

²⁰ e.g. Austrian Press code Para 23 et alt.

²¹ CM Recommendation 2010/12 para 22

²² CCJE Opinion 19

35. Also members of the judiciary, who are entrusted with inspection, evaluation or disciplinary matters, have to refrain from intervening in aspects which regard the merits of the independent decision of the judge concerned.

36. Influence can be exercised by discretionary allocation of cases. Therefore European standards require that the allocation of cases within a court follows objective pre-established criteria.²⁵ Such system also should be used when due to the exclusion of a judge from a case (e.g. stepping down of the judge from the case, long lasting absence of the judge etc) another judge has to take over the case²⁶.

B) Questions Raised, Best Practices Identified and Lessons Learned:

37. The debate in this part focused on

- the role of judges who are also involved in court administration
- systems for and approaches to the allocation and the re-allocation of cases

38. The importance that presidents of courts and others who exercise administrative functions should have the trust of their college judges and should have the necessary judicial experience but also have some managerial skills was underlined. This is similarly expressed in Opinion 19 of the CCJE on the Role of Court Presidents²⁷. They should respect and not interfere in the independence of the judges.²⁸

39. The answers to the questionnaire show that only in the Republic of Moldova presidents of courts can influence the decisions of a judge. But in all six countries the body which can be addressed when a judge experiences an infringement of independence is also available for infringements originating from inside the judiciary and in all six countries the sanctions which may follow are the same in cases of infringements from inside or outside the judiciary.

40. The allocation of cases is done in Armenia, Azerbaijan, Republic of Moldova and Ukraine randomly by a computer program, in Georgia alphabetically and approved by the president and in Belarus by the president. The same way to assign cases to a certain judge is applied if a case has to be re-allocated because the previous judge had recused himself/herself or had been appointed to another court, resigned etc. It must also be noted that, by virtue of recent legislative amendments, the principle of automatic allocation of cases (performed randomly by computer) has been introduced in Georgia and the system will entry into force by the end of 2017.

²³ CM Recommendation 2010/12, para 29

²⁴ CM Recommendation 2010/12, para 23

²⁵ CM Recommendation 2010/12, para 24

²⁶ CM Recommendation 2010/12 para 9

²⁷ CCJE Opinion 19 para 34-36

²⁸ CCJE Opinion 19 para 13

IV) HOW DOES A JUDGE DEMONSTRATE THAT HE OR SHE HAS ACTED INDEPENDENTLY?

A) European Standards:

41. Independent adjudicating has not only to be done but seen to be done.²⁹ This on the one hand needs transparency and reasoning and on the other hand forbids every activity of the judge which may be interpreted as indication of a bias.

42. Transparency of the procedure and reasoning of decisions are regulated in the different procedural codes. European Standards claim that in principle judicial decisions should be reasoned³⁰ and that the reasoning should be clear and comprehensive.³¹

43. Decisive influence on the appearance of independence and impartiality stems from the way in which judges act inside and outside the court. Ethical rules should guide them. These should be elaborated with a decisive influence of judges themselves. Such guidelines or codes like the Bangalore Principles of Judicial Conduct should include guidelines to guarantee the independence and impartiality of the judge.³²

44. More concretely, in accordance with European standards the laws of the participating states normally explicitly limits the professional activities that a judge is allowed to perform besides his judicial tasks³³ and forbid holding positions in political offices or even membership in political parties.³⁴

B) Questions Raised, Best Practices Identified and Lessons Learned:

45. The debate in this part focused on

- the extrajudicial activities of judges
- the recusal of the judge
- the problem of ex-parte communication
- the motivation of decisions
- the trust in the judiciary and how to increase it

46. Extra-judicial activity may harm the independence or impartiality of a judge. At least it may influence the appearance of independence and impartiality. In all six countries the possible extra-judicial activities of judges are limited to training, scientific work and cultural activities. In Georgia also “creative” activities. All six countries forbid to hold a political office or to be member of a political party.

47. As for consequences, a breach of the above prohibitions will be a matter of discussion in the Ethic Committee in Armenia, which may lead to a punishment; it will lead to a disciplinary procedure in

²⁹ CM Recommendation 2010/12, para 60

³⁰ CCJE Opinion 10 conclusions m)

³¹ CM Recommendation 2010/12 para 63; CCJE Opinion 10 conclusions k)

³² Bangalore Principles Value 2 (Impartiality) and Value 4 (Propriety)

³³ CM Recommendation 2010/12 para 21

³⁴ CCJE Opinion 3 para 30 and 31

Azerbaijan, which may lead to a proposal for dismissal. In Belarus, Georgia, Republic of Moldova and Ukraine the consequence will be a dismissal. In several other states similar restrictions exist, a breach would cause the initiation of a disciplinary procedure but the outcome would depend on the concrete case and only in very serious cases the sanction will be a dismissal unless the forbidden activity had been terminated by the judge.

48. An important way in which judges can demonstrate their impartiality and independence is when they recuse themselves from a case on the basis that they feel they can be biased or may objectively be seen as biased. Similarly, the judge's independence can be proved in cases when a possible request to step down from a case rejected by the judge is proved to be done correctly. The procedural codes in all six participating countries contain such provisions. In most cases the decision has to be approved by a panel of judges. (Ukraine, Republic of Moldova).

49. In order to avoid the impression that the impartiality is not maintained ex-parte communication should not take place or, if is absolutely necessary, it should be immediately communicated to the other party. Therefore all participating countries except Ukraine explicitly forbid ex-parte communication. In Ukraine there is no legal regulation on this topic.

50. The most important way to demonstrate the independent and impartial exercise of his/her duties by the judge is a transparent procedure and a motivated decision. The reasoning should be clear, understandable, it should deal with all motions of the parties, establish the facts on the basis of the evidence which was put forward and explain the legal provisions which are applied.³⁵

51. In all six countries criminal cases always have to be motivated. In civil cases this is the case in Armenia, Azerbaijan and Ukraine only. Ukraine regretted that this generates an immense workload.

52. In order to reduce the workload according to the civil procedural code of the Republic of Moldova, the motivation of decisions is necessary only if either one of the parties requests it or if there is an appeal or if the judgement should be enforced in a foreign state. Civil cases in Belarus need motivation for the categories of cases, which are enumerated in the law (e.g. adoption, on complaints against actions of election commissions etc.) or if a party requires it.

53. The success of the attempts of judges to demonstrate their independence is an essential source of the trust which people have in the judiciary. The answers to the questionnaire showed that only in Azerbaijan and Belarus the level of trust in the judiciary is perceived as high, whilst in Armenia, in the Republic of Moldova and in Ukraine it is perceived as low. Georgia did not declare a level of trust but provided a link to a study, which demonstrates that the trust in the judiciary has increased, without indicating a precise level of trust.

54. In Belarus regular satisfaction surveys of court users and of lay people are done. The trust is higher in civil cases. Such a survey was also conducted in the Republic of Moldova.

55. The considerations on the reasons for the low trust and how to increase trust in the judiciary in the answers to the questionnaire and in the debate were very interesting. The following reasons were mostly identified: arbitrary decisions, corruption, ineffective dealing with high profile cases. The following possibilities for improvement were proposed: intensive dialog between judiciary and public, publishing information in the internet, evaluation of judges, publishing of decisions, unification of decisions, dialog with mass media.

³⁵ CCJE Opinion 11 para 34 - 50

V) MATERIAL AND SOCIAL GUARANTEES OF INDEPENDENCE:

A) European Standards:

56. Four aspects were addressed in this part of the meeting: limitations to the possibility of transfers, remuneration, social security after retirement (system of pension) and safety.

All four elements ensure that judges can exercise their tasks independently and without pressure, which originates in unsecure living conditions.

57. Transfers, also within the same courts, should not be done arbitrarily. They should, if necessary to perform them, require the consent of the judges concerned and they should follow established rules. Insofar the standards for the transfers to other judicial positions (see point 11 above) apply.

58. Remuneration of judges should be commensurate with their profession and responsibilities.³⁶ It should be sufficient to shield them from inducements aimed at influencing them.³⁷ It should be safeguarded, the best way of which seems to be a regulation in a law.³⁸ Judge's core income should not depend on performance, because otherwise the independence may be endangered.³⁹

59. Financial security should also be guaranteed, when a judge is on sick-leave and after retirement. Therefore the retirement pension should be in a reasonable relation to the income, which the judge earned before.⁴⁰

60. In several member states the physical integrity of judges and their families and their property are endangered. Acts of violence and threats try to influence decision making. Therefore all necessary measures should be taken to ensure the safety of judges.⁴¹

B) Questions Raised, Best Practices Identified and Lessons Learned:

61. The debate in this part focused on

- the transfer of judges and when is it permitted
- different income depending on the position of the judge
- the pension system- sufficient safety for judges

62. There was great awareness by participants that transfer of judges is a sensitive tool which could be misused. The representative of Georgia reported that in the past, up to 2012, sometimes transfers were used by the then High Council to punish judges. Since 2012 transfers are not used any more for such purpose. Besides, within the scope of the third wave of the reform of judiciary in Georgia, completed in the beginning of 2017, the transfer of a judge is much more regulated on legislative level. The transfer of a judge to a different court without his/her consent shall be allowed only in

³⁶ CM Recommendation 2010/12 para 54

³⁷ idem

³⁸ CM Recommendation 2010/12 para 53

³⁹ CCJE Opinion 17 para 28; CM Recommendation 2010/12 para 55

⁴⁰ CM Recommendation 2010/12 para 54

⁴¹ CM Recommendation 2010/12 para 38

exceptional circumstances and from courts situated nearby. The High Council of Justice is obliged to make substantiated decision regarding the transfer.

63. Also in the other participating countries the respective councils are in charge of transfers. In Armenia and Ukraine transfer is possible when the court system has to be re-structured. In Azerbaijan and Ukraine transfer of a judge could also be used as a sanction in a disciplinary procedure.

64. In order to cope with an overload of work in a court transfers for a limited time are possible in Armenia for a maximum period of 6 months. In Ukraine with transfers are possible with the consent of the judge only and in the Republic of Moldova with the consent of the judge for a maximum period of 12 months. Similar possibilities of temporary assignment are foreseen in several other countries. Sometimes it happened that transfers were used to determine which judge should handle a certain case or should not deal with a certain case.⁴² Safeguards to avoid misuse have to be in place like reasoned decisions, transparency, criteria establishing the circumstances etc.

65. In Armenia and in the Republic of Moldova transfers within a court can be challenged by the judge concerned.

66. To secure the remuneration of judges the amount to be awarded to them are fixed in the law. This is the case in Azerbaijan, Georgia, The Republic of Moldova, Ukraine and Belarus. In Armenia the remuneration is fixed by a by-law. Belarus answered in the questionnaire that there is a possibility that the Chairperson of the court can lower the remuneration when there is a violation of labour laws.

67. In all six participating countries the level of the remuneration depends on the level of the court. In all countries except Georgia it also depends on the age in office.

68. The relation of the income of judges to other professions is a signal how important this position is seen when compared with others. This is especially the case when the remuneration is compared with the income of civil servants and even more, to ensure equality among the three branches of the state, with the remuneration of with officials of the legislative and executive powers, at least with regard to high ranking judges. The comparison with private lawyers is interesting under the aspect of recruiting the very best lawyers to apply for the position of a judge, although this comparison is very difficult because in all countries there is a wide range of income of private lawyers and there always will be some which will earn much more than judges even of the highest ranks. The proportion between the income of judges and others as reported in the answers to the questionnaire available in the annexes (replies to questions 34 and 35). Rough information on the situation in other Council of Europe's member states can be found in the CEPEJ evaluation report.⁴³

69. In Azerbaijan judges who are appointed in specialized courts receive higher remuneration⁴⁴. Such regulation creates differences between judges at the same court level and between judges of the same instance. CCJE dealt with it in its Opinion 15 on Specialisation of Judges⁴⁵. In this respect the

⁴² Common CCJE and CCPE Report: Challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016

⁴³ CEPEJ European Judicial System , Efficiency and Quality of Justice CEPEJ Studies No 23 2016 (data 2014) pages 108 ff

⁴⁴ All specialized courts in Azerbaijan are regional and jurisdiction of each specialized courts covers several cities and districts (minimum covering of specialized court is 5 districts in the Baku Administrative-Economical Court No 1) in comparison with the same level courts.

⁴⁵ CCJE Opinion 15 para 53 and 56

Italian system may be of interest: the remuneration does not even depend on the court level (1st, 2nd or 3rd instance) but on the time in office as a judge only. This fosters the possibility that each judge could work in the court level which fits best to his abilities without financial disadvantage.

70. In Belarus, incentives of up to 30% of the normal remuneration are possible for judges in consideration of a greater volume of cases, and (or) of an increased complexity of the case. This can be requested by the president of the court and approved by the higher instance.

71. In Georgia it is possible that the High Council grants increments of salaries and bonuses, not for individual judges but for all judges depending on the performance of the judiciary as such, especially regarding the reduction of backlogs.

72. In addition to their remuneration judges in Azerbaijan, Georgia and Ukraine get free housing. In Belarus they are supported regarding renting of houses or getting loans to construct their house. Free cars are provided to presidents of courts in Armenia and the Republic of Moldova, while they are provided to all judges in Azerbaijan.

73. The relation between the last income as a judge and the amount of the pension after retirement is a crucial element in the career of a judge who has to prepare for the gap which he/she will suffer after the retirement. This is also of interest in countries where additional income after retirement is not allowed like in the Republic of Moldova and in Ukraine. The percentage in relation to the last income differs in a wide range between the participating countries like it is the case between all member states of the Council of Europe at large.

74. The most direct pressure on the independence of judges exists when their personal safety and the safety of the members of their families or of their property is endangered. If there are no resources to allow for the provision of protection, when needed, by special units which are sufficiently staffed, safety can be secured by the judiciary itself. Otherwise judges will depend on other powers of state to guarantee their safety. This may open issues of independence. In one of the European Council's member states, which is not participating in the EaP project, provision of security officers to some judges was reduced as reaction of decisions of these judges. The participants from, Republic of Moldova and Ukraine regretted that due to lack of resources the safety of judges at the moment is not sufficiently secured.

VI) CONCLUSIONS:

75. The exchange of experiences and the comparison of the different models in the participating states and in some other Council of Europe's member states was very intense. In the final round everybody underlined that fruitfulness of such meetings.

76. A number of topics were identified by the participants as deserving further attention and examination. These included:

- how to ensure a positive relationship between the judiciary and media
- how to foster public trust in the judiciary
- administrative aspects of case flow management and quality management ensuring judicial independence
- how to reduce administrative pressure on the judiciary
- the relationship and balance between inspection systems and judicial independence
- how to employ e-justice to the benefit of judicial independence

ANNEXES

ANNEX I: Extracts of relevant international and European standards on judges' independence

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EXTERNAL AND INTERNAL INDEPENDENCE

A) GENERAL STATEMENTS REGARDING INDEPENDENCE AND IMPARTIALITY

1.) Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

Article 6 . Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice

2.) Basic Principles on the Independence of the Judiciary

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

3.) European Charter on the Statute for Judges

1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States.

4.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

Judicial independence and the level at which it should be safeguarded

3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.

5.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

6. The independence of the judiciary has both an objective component, as an indispensable quality of the Judiciary as such, and a subjective component as the right of an individual to have his/her rights and freedoms determined by an independent judge. Without independent judges there can be no correct and lawful implementation of rights and freedoms. Consequently, the independence of the judiciary is not an end in itself. It is not a personal privilege of the judges but justified by the need to enable judges to fulfil their role of guardians of the rights and freedoms of the people.

7. The independence of the judges and – as a consequence – the reputation of the judiciary in a given society depends on many factors. In addition to the institutional rules guaranteeing independence, the personal character and the professional quality of the individual judge deciding a case are of major importance. The legal culture as a whole is also important.

6.) Opinion No 1 (2001) of the CCJE On Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

The rationales of judicial independence

10. Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Judges are “charged with the ultimate decision over life, freedoms, rights, duties and property of citizens” (recital to UN basic principles, echoed in Beijing declaration; and Articles 5 and 6 of the European Convention on Human Rights). Their independence is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice.

11. *This independence must exist in relation to society generally and in relation to the particular parties to any dispute on which judges have to adjudicate. The judiciary is one of three basic and equal pillars in the modern democratic state. It has an important role and functions in relation to the other two pillars. It ensures that governments and the administration can be held to account for their actions, and, with regard to the legislature, it is involved in ensuring that duly enacted laws are enforced, and, to a greater or lesser extent, in ensuring that they comply with any relevant constitution or higher law (such as that of the European Union). To fulfil its role in these respects, the judiciary must be independent of these bodies, which involves freedom from inappropriate connections with and influence by these bodies. Independence thus serves as the guarantee of impartiality. This has implications, necessarily, for almost every aspect of a judge’s career: from training to appointment and promotion and to disciplining.*

7.) CCJE: Magna Carta of Judges (Fundamental Principles):

Judicial Independence

2. Judicial independence and impartiality are essential prerequisites for the operation of justice.

3. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.

8.) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia

Judicial independence is an indispensable element of the right to due process, the rule of law and democracy

9.) Bangalore Principles of Judicial Conduct (version 2002)

Value 1: Independence

Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

B STANDARDS REGARDING EXTERNAL INDEPENDENCE

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

11. The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.

12. Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of justice.

13. All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.

14. The law should provide for sanctions against persons seeking to influence judges in an improper manner.

16. Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law.

17. With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.

18. If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.

8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.

2.) European Charter on the Statute for Judges

1.4. The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

3.) Basic Principles on the Independence of the Judiciary

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

4.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

63. Freedom from undue external influence constitutes a well-recognised general principle: see UN basic principles, paragraph 2; Recommendation No. R (94) 12, Principle I(2)(d), which continues: "The law should provide for sanctions against persons seeking to influence judges in any such manner". As general principles, freedom from undue influence and the need in extreme cases for sanctions are incontrovertible. Further, the CCJE has no reason to think that they are not appropriately provided for as such in the laws of member States. On the other hand, their operation in practice requires care, scrutiny and in some contexts political restraint. Discussions with and the understanding and support of judges from different States could prove valuable in this

connection. The difficulty lies rather in deciding what constitutes undue influence, and in striking an appropriate balance between for example the need to protect the judicial process against distortion and pressure, whether from political, press or other sources, and the interests of open discussion of matters of public interest in public life and in a free press. Judges must accept that they are public figures and must not be too susceptible or of too fragile a constitution. The CCJE agreed that no alteration of the existing principle seems required, but that judges in different States could benefit from discussing together and exchanging information about particular situations.

5.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

60. The Venice Commission has argued in favour of a limited functional immunity of judges:

“Magistrates (...) should not benefit from a general immunity as set out in the Bulgarian Constitution. According to general standards they indeed needed protection from civil suits for actions done in good faith in the course of their functions. They should not, however, benefit from a general immunity which protected them against prosecution for criminal acts committed by them for which they should be answerable before the courts.” (CDL-AD(2003)12, para. 15.a).

61. It is indisputable that judges have to be protected against undue external influence. To this end they should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes).

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

6.) Bangalore Principles of Judicial Conduct (version 2002)

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

7.) Others:

The general relation between the powers of state, which is a central aspect of the external independence of the judiciary, is the topic of CCJE Opinion 18 on the position of the judiciary and its relation with the other powers of state in a modern democracy.

C) STANDARDS REGARDING INTERNAL INDEPENDENCE:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.

23. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.

2.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

Independence within the judiciary

64. The fundamental point is that a judge is in the performance of his functions no-one's employee; he or she is holder of a State office. He or she is thus servant of, and answerable only to, the law. It is axiomatic that a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary.

66. The CCJE noted the potential threat to judicial independence that might arise from an internal judicial hierarchy. It recognised that judicial independence depends not only on freedom from undue external influence, but also freedom from undue influence which might in some situations come from the attitude of other judges. "Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law" (Recommendation No. R (94) 12, Principle I (2)(d). This means judges individually. The terms in which it is couched do not exclude doctrines such as that of precedent in common law countries (i.e. the obligation of a lower judge to follow a previous decision of a higher court on a point of law directly arising in the later case).

67. Principle I (2)(d) continues: "Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary". This is, on any view, obscure. "Reporting" on the merits of cases, even to other members of the judiciary, appears on the face of it inconsistent with individual independence. If a decision were to be so incompetent as to amount to a disciplinary offence, that might be different, but, in that very remote case, the judge would not be "reporting" at all, but answering a charge.

68. The hierarchical power conferred in many legal systems on superior courts might in practice undermine individual judicial independence. One solution would be to transfer of all relevant powers to a Higher Judicial Council, which would then protect independence inside and outside of the judiciary. This brings one back to the recommendation of the European Charter on the statute for judges, to which attention has already been invited under the heading of The appointing body and Freedom from undue external influence.

3.) CCJE: Magna Carta of Judges (Fundamental Principles)

10. In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law.

4.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

56. Two aspects of judicial independence complement each other. External independence shields the judge from influence by other state powers and is an essential element of the rule of law. Internal independence (see below, chapter 10) ensures that a judge takes decisions only on the basis of the Constitution and laws and not on the basis of instructions given by higher ranking judges.

68. The issue of internal independence within the judiciary has received less attention in international texts than the issue of external independence. It seems, however, no less important. In several constitutions it is stated that "judges are subject only to the law". This principle protects judges first of all against undue external influence. It is, however, also applicable within the judiciary. A hierarchical organisation of the judiciary in the sense of a subordination of the judges to the court presidents or to higher instances in their judicial decision making activity would be a clear violation of this principle.

70. The practice of guidelines adopted by the Supreme Court or another highest court and binding on lower courts which exists in certain post-Soviet countries is problematic in this respect.

71. The Venice Commission has always upheld the principle of the independence of each individual judge: "Lastly, granting the Supreme Court the power to supervise the activities of the general courts (Article 51, paragraph 1) would seem to be contrary to the principle of the independence of such general courts. While the Supreme Court must have the authority to set aside, or to modify, the judgments of lower courts, it should not supervise them." (CDL-INF(1997)6 at 6). "Under a system of judicial independence the higher courts ensure the consistency of case law throughout the territory of the country through their decisions in the individual cases. Lower courts will, without being in the Civil Law as opposed to the Common Law tradition formally bound by judicial precedents, tend to follow the principles developed in the decisions of the higher courts in order to avoid that their decisions are quashed on appeal. In addition, special procedural rules may ensure consistency

between the various judicial branches. The present draft fundamentally departs from this principle. It gives to the Supreme Court (Art. 51.2.6 and 7) and, within narrower terms, to the Plenum of the Supreme Specialised Courts (art. 50.1) the possibility to address to the lower courts "recommendations/explanations" on matters of application of legislation. This system is not likely to foster the emergence of a truly independent judiciary in Ukraine but entails the risk that judges behave like civil servants who are subject to orders from their superiors. Another example of the hierarchical approach of the draft is the wide powers of the Chief Judge of the Supreme Court (Art. 59). He seems to exercise these extremely important powers individually, without any need to refer to the Plenum or the Presidium." (CDL-INF(2000)5 under the heading "Establishment of a strictly hierarchical system of courts") "Judicial independence is not only independence of the judiciary as a whole vis-à-vis the other powers of the State, but it has also an "internal" aspect. Every judge, whatever his place in the court system, is exercising the same authority to judge. In judicial adjudication he or she should therefore be independent also vis-à-vis other judges and also in relation to his/her court president or other (e.g. appellate or superior) courts. There is in fact more and more discussion on the "internal" independence of the judiciary. The best protection for judicial independence, both "internal" and "external", can be assured by a High Judicial Council, as it is recognised by the main international documents on the subject of judicial independence." (CDL(2007)003 at 61)

72. To sum up, the Venice Commission underlines that the principle of internal judicial independence means that the independence of each individual judge is incompatible with a relationship of subordination of judges in their judicial decision-making activity.

5.) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia

The Role of Court Chairpersons

11. The role of court chairpersons should be strictly limited in the following sense: they may only assume judicial functions which are equivalent to those exercised by other members of the court. Court chairpersons must not interfere with the adjudication by other judges and shall not be involved in judicial selection. Neither shall they have a say on remuneration (see para 13 for bonuses and privileges). They may have representative and administrative functions, including the control over non-judicial staff. Administrative functions require training in management capacities. Court chairpersons must not misuse their competence to distribute court facilities to exercise influence on the judges.

35. The issuing by high courts of directives, explanations, or resolutions shall be discouraged, but as long as they exist, they must not be binding on lower court judges. Otherwise, they represent infringements of the individual independence of judges. In addition, exemplary decisions of high courts and decisions specifically designated as precedents by these courts shall have the status of recommendations and not be binding on lower court judges in other cases. They must not be used in order to restrict the freedom of lower courts in their decision-making and responsibility. Uniformity of interpretation of the law shall be encouraged through studies of judicial practice that also have no binding force.

6.) Bangalore Principles of Judicial Conduct (version 2002)

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

D) STANDARDS REGARDING INSPECTION SYSTEM AND INDEPENDENCE:

1.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

69. Court inspection systems, in the countries where they exist, should not concern themselves with the merits or the correctness of decisions and should not lead judges, on grounds of efficiency, to favour

productivity over the proper performance of their role, which is to come to a carefully considered decision in keeping with the interests of those seeking justice.

E) STANDARDS REGARDING EVALUATION SYSTEM AND INDEPENDENCE:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

Assessment

42. With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities, in accordance with paragraph 58

2.) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia

Independent Evaluations

30. While a Judicial Council may play a role in specifying the criteria and the procedure, professional evaluations should be conducted at the local level. Evaluations shall be conducted mainly by other judges. Court chairpersons should not have the exclusive competence to evaluate judges, but their role should be complemented by a group of judges from the same and other courts. That group should consider also the opinions of outsiders who regularly deal with the judge (such as lawyers) and law professors, with respect to the diligence, respect for the parties and rules of procedure by a judge.

31. Evaluations should include review of the judge's written decisions and observation of how he or she conducts trials. Evaluations shall be transparent. Judges should be heard and informed about the outcome of the evaluation, with opportunities for review on appeal.

3.) Others:

A central document, which deals with the evaluation is CCJE Opinion 17 on the evaluation of judges' work, the quality of justice and respect for judicial independence.

F) STANDARDS REGARDING ALLOCATION OF CASES WITHIN THE COURT:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

24. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.

9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.

10. Only judges themselves should decide on their own competence in individual cases as defined by law.

2.) Basic Principles on the Independence of the Judiciary

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

3.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

The allocation of cases and the right to a lawful judge

73. As already noted, the issue of internal independence arises not only between judges of the lower and of the higher courts but also between the president or presidium of a court and the other judges of the same court as well as among its judges.

74. In many countries court presidents exercise a strong influence by allocating cases to individual judges. As regards the distribution of cases, Recommendation (94)12 contains principles (Principle I.2.e and f), which may be seen as essential to the notion of judicial independence: "The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order of some similar system." "A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interests. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges."

75. In similar vein, the Venice Commission has stated that "the procedure of distribution of cases between judges should follow objective criteria" (CDL-AD(2002)026 at 70.7).

76. The European Convention on Human Rights provides that "everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law" (Article 6 ECHR). According to the Court's case-law, the object of the term "established by law" in Article 6 is to ensure "that the judicial organisation in a democratic society [does] not depend on the discretion of the Executive, but that it [is] regulated by law emanating from Parliament".^[5] Nor, in countries where the law is codified, can the organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation.^[6]

77. The main point to be noted, however, is that according to the express words of Article 6, the medium through which access to justice under fair hearing should be ensured must not only be a tribunal established by law, but also one which is both "independent" and "impartial" in general and specific terms. And in its evaluation of these requirements for a fair hearing, the Strasbourg Court has applied the maxim that "justice must not only be done, but also be seen to be done." All of this implies that the judges or judicial panels entrusted with specific cases should not be selected ad hoc and/or ad personam, but according to objective and transparent criteria.

78. Many European constitutions contain a subjective right to a lawful judge (in doctrine often referred to as "natural judge pre-established by law"). Most frequently, the guarantee to this effect is worded in a negative way, such as in the Constitution of Belgium: "No one can be separated, unwillingly, from the judge that the law has assigned to him." (Article 13) or Italy "No one may be removed from the natural judge predetermined by law".^[7] Other constitutions state the "right to the lawful judge" in a positive way such as the Constitution of Slovenia: "Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. Only a judge duly appointed pursuant to rules previously established by law and by judicial regulations may judge such an individual."^[8]

79. The guarantee can be understood as having two aspects. One relates to the court as a whole. The other relates to the individual judge or judicial panel dealing with the case. In terms of principle, it is clear that both aspects of the "right to the lawful judge" should be promoted. It is not enough if only the court (or the judicial branch) competent for a certain case is determined in advance. That the order in which the individual judge (or panel of judges) within a court is determined in advance, meaning that it is based on general objective principles, is essential. It is desirable to indicate clearly where the ultimate responsibility for proper case allocation is being placed. In national legislation, it is sometimes provided that the court presidents should have the power to assign cases among the individual judges. However, this power involves an element of discretion, which could be misused as a means of putting pressure on judges by overburdening them with cases or by assigning them only low-profile cases. It is also possible to direct politically sensitive cases to certain judges and to avoid allocating them to others. This can be a very effective way of influencing the outcome of the process.

80. In order to enhance impartiality and independence of the judiciary it is highly recommended that the order in which judges deal with the cases be determined on the basis of general criteria. This can be done for example on the basis of alphabetical order, on the basis of a computerised system or on the basis of objective criteria such as categories of cases. The general rules (including exceptions) should be formulated by the law or by special regulations on the basis of the law, e.g. in court regulations laid down by the presidium or president. It may not always be possible to establish a fully comprehensive abstract system that operates for all cases, leaving no room to decisions regarding allocation in individual cases. There may be circumstances requiring a need to take into account the workload or the specialisation of judges. Especially complex legal issues may require the participation of judges who are expert in that area. Moreover, it may be prudent to place newly

appointed judges in a panel with more experienced members for a certain period of time. Furthermore, it may be prudent when a court has to give a principled ruling on a complex or landmark case, that senior judges will sit on that case. The criteria for taking such decisions by the court president or presidium should, however, be defined in advance. Ideally, this allocation should be subject to review.

81. To sum up, the Venice Commission strongly recommends that the allocation of cases to individual judges should be based to the maximum extent possible on objective and transparent criteria established in advance by the law or by special regulations on the basis of the law, e.g. in court regulations. Exceptions should be motivated.

4.) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia

Case Assignment

12. Administrative decisions which may affect substantive adjudication should not be within the exclusive competence of court chairpersons. One example is case assignment, which should be either random or on the basis of predetermined, clear and objective criteria determined by a board of judges of the court. Once adopted, a distribution mechanism may not be interfered with.

II. How JUDGES DEMONSTRATE THEIR INDEPENDENCE AND IMPARTIALITY:

G: STANDARDS REGARDING IMPARTIALITY:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

15. Judgments should be reasoned and pronounced publicly. Judges should not otherwise be obliged to justify the reasons for their judgments.

19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.

20. Judges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning. Permanent mechanisms to obtain such feedback set up by councils for the judiciary or other independent authorities would contribute to this.

21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.

2.) European Charter on the Statute for Judges

4.2. Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens. This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laid down by the statute.

4.3. Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence.

3.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

12. Judicial independence presupposes total impartiality on the part of judges. When adjudicating between any parties, judges must be impartial, that is free from any connection, inclination or bias, which affects - or may be seen as affecting - their ability to adjudicate independently. In this regard, judicial independence is an elaboration of the fundamental principle that "no man may be judge in his own cause". This principle also has significance well beyond that affecting the particular parties to any dispute. Not merely the parties to any particular dispute, but society as a whole must be able to trust the judiciary. A judge must thus not merely be free in fact from any inappropriate connection, bias or influence, he or she must also appear to a reasonable observer be free therefrom. Otherwise, confidence in the independence of the judiciary may be undermined.

4.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

62. Moreover, judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges.

63. Impartiality is also a requirement of Article 6 ECHR and has a similar but distinct connotation from independence. Judges have to recuse themselves when their participation in a case raises a reasonable perception of bias or conflict of interest, irrespective of whether the judge is in practice biased.

5.) Bangalore Principles of Judicial Conduct (version 2002)

Value 2: Impartiality

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;

Value 4: Propriety

Principle: Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

H: STANDARDS REGARDING A CODE OF ETHICS:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

Chapter VIII – Ethics of judges

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary

2.) CCJE: Magna Carta of Judges (Fundamental Principles):

18. Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

3.) Others:

A central document for ethics of judges is CCJE Opinion 2 on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.

MATERIAL AND SOCIAL GUARANTEES OF INDEPENDENCE:

I: STANDARDS REGARDING TRANSFER OF JUDGES:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

Tenure and irremovability

49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.

52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.

2.) European Charter on the Statute for Judges

3.4. A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof.

3.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

Tenure - irremovability and discipline

60. The CCJE considered

(a) that the irremovability of judges should be an express element of the independence enshrined at the highest internal level (see paragraph 16 above);

(b) that the intervention of an independent authority, with procedures guaranteeing full rights of defence, is of particular importance in matters of discipline; and

(c) that it would be useful to prepare standards defining not just the conduct which may lead to removal from office, but also all conduct which may lead to any disciplinary steps or change of status, including for example a move to a different court or area.

4.) CCJE: Magna Carta of Judges (Fundamental Principles):

4. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

5.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

43. The Venice Commission has consistently supported the principle of irremovability in constitutions. Transfers against the will of the judge may be permissible only in exceptional cases. As regards disciplinary proceedings, the Commission's Report on Judicial Appointments favours the power of judicial councils or disciplinary courts to carry out disciplinary proceedings. In addition, the Commission has consistently argued that there should be the possibility of an appeal to a court against decisions of disciplinary bodies.

J: STANDARDS REGARDING REMUNERATION; SOCIAL SECURITY AND SAFETY:

1.) Recommendation 2010/12 of the Committee of Ministers of the Council of Europe

Remuneration

53. The principal rules of the system of remuneration for professional judges should be laid down by law.

54. Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working.

Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

55. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.

2.) European Charter on the Statute for Judges

Remuneration and Social Welfare:

6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.

6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

3.) Basic Principles on the Independence of the Judiciary

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

4.) Opinion No 1 (2001) of the CCJE on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges

Remuneration

61. *Recommendation No. R (94) 12 provides that judges' "remuneration should be guaranteed by law" and "commensurate with the dignity of their profession and burden of responsibilities" (Principles I(2)(a)(ii) and III(1)(b)). The European Charter contains an important, hard-headed and realistic recognition of the role of adequate remuneration in shielding "from pressures aimed at influencing their decisions and more generally their behaviour", and of the importance of guaranteed sickness pay and adequate retirement pensions (paragraph 6). The CCJE fully approved the European Charter's statement.*

62. While some systems (e.g. in the Nordic countries) cater for the situation by traditional mechanisms without formal legal provisions, the CCJE considered that it was generally important (and especially judicial salaries against reduction and to ensure at least de facto provision for salary increases in line with the cost of living.

5.) CCJE: Magna Carta of Judges (Fundamental Principles):

4. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

6.) Venice Commission CDL-AD (2010)004: Report on Independence of the Judicial System

Part I: Independence of Judges

46. The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. The example of the Polish Constitution, which guarantees to judges remuneration consistent with the dignity of their office and the scope of their duties is a commendable approach. The level of remuneration should be determined in the light of the social conditions in the country and compared to the

level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses which include an element of discretion should be excluded.

47. In a number of mainly post-socialist countries judges receive also non-financial benefits such as apartments, cars, etc. Such non-monetary remuneration of judges has two main origins: the first lies in the previous socialist system of distribution of goods, which depended on central planning. Some groups, including judges, were privileged in obtaining specific goods, including dwellings. This was a considerable advantage of being a judge.

48. The second origin of this practice lies in the post-socialist period of transition to a market economy. The prices for real property increased exponentially and this made it impossible for State officials, including judges, to purchase adequate housing. Again, one of the advantages of being a judge was the attribution of apartments. Young judges in particular may not easily be able to purchase real estate and, consequently, the system of allocation of housing persists.

49. While the allocation of property is a source of concern, it is not easy to resolve the problem of providing the judiciary with an appropriate living standard, including housing. An argument advanced in favour of such non-financial allocations is that they can be attributed according to individual need whereas salaries are set at the same level for all judges in a given category without the possibility of supporting those in special need. However, this assessment of social need and the differentiation between judges could too easily permit abuse and the application of subjective criteria.

50. Even if such benefits are defined by law, there will always be scope for discretion when distributing them. They are therefore a potential threat to judicial independence. While it may be difficult immediately abolish such non-financial benefits in some countries since they correspond to a perceived need to achieve social justice, the Venice Commission recommends the phasing out of such benefits and replacing them by an adequate level of financial remuneration.

51. To sum up, the Venice Commission is of the opinion that for judges a level of remuneration should be guaranteed by law in conformity with the dignity of their office and the scope of their duties. Bonuses and non-financial benefits, the distribution of which involves a discretionary element, should be phased out.

7.) Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia

Individual Bonuses and Privileges

13. On a long term basis, bonuses and privileges should be abolished and salaries raised to an adequate level which satisfy the needs of judges for an appropriate standard of living and adequately reflect the responsibility of their profession. As long as bonuses and privileges exist, they should be awarded on the basis of predetermined criteria and a transparent procedure. Court chairs shall not have a say on bonuses or privileges.

ANNEX II: Summary of the answers to the Preparatory Questionnaire

Prepared by the international expert on the basis of inputs received from the participants' replies to the questionnaires submitted prior to the meeting.

I. Questions about the external and internal independence

External Independence

1. Is there the possibility of external influence on the decisions of judges:

1	External Influence by	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Head of state	No	No	No	No	No	No
	Executive power	No	No	No	No	No	No
	Legislative power	No	No	No	No	Yes via media	No
	Media	No	No	No	No	yes	No
	others	No	No	No	No	No	No

2. Are there sanctions foreseen for undue influence on judges?

3- How often such cases happen in the last years

4. Is there a body, which can be addressed by judges, when he/she experiences infringement of independence?

5. How often did this happen

6. Experiences to share?

2		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Criminal sanctions	yes	yes	yes	Yes	Yes	Yes
	Disciplinary sanctions	yes	no		Yes		---
	Others	No	----		----		---
3	How often	n.a.	none	2014-16 none	None	69	n.a.
4	Body which can be addressed	Ethics and Disciplinary Commission	Council for the Judiciary	High Council of Judges	Superior Council of Magistracy	Council of Judges	Qualification Board of Judges; + internal affairs bodies
5	How often	0		7 since 2007	6	2015 62 2016 113	---
6	Experiences to share	no	----	----	Yes	Follow the law Open to society Comments after case	Yes (media)

Interesting to note: under question 6 several times the relation between justice system and the media was addressed:

- Courts spokesperson and explaining decisions (Republic of Moldova)
- Press releases (Republic of Moldova)
- Being open to society and media (Ukraine)
- Reduced access to information in certain stages of the procedure (Belarus)

Internal independence:

7. Can others from inside the justice system influence the decisions of judges (except in the case of remedies):

7	Internal Influence by	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
---	-----------------------	---------	------------	---------	---------------------	---------	---------

	President of court	No	No	No	Yes	No	No
	Council for the Judiciary	No	No		No		No
	Superior courts outside the procedure	No	No		Yes		No

8. Are sanctions as in point 2 also applicable to undue internal influence?

9. Can the body under point 4 also be addressed against undue internal influence?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
8	Sanctions	Yes	Yes	Yes	Yes	Yes	Yes
9	Body available	Yes	Yes	Yes	Yes	Yes	Yes

10. How is independence safeguarded in the inspection system?

- Judge is not accountable to anyone and among other things is not required to give any explanation, save for cases provided by law (Armenia)
- When there is an infringement judge can apply to the Judicial Council. (Azerbaijan)
- Disciplinary procedures are confidential; there are all rights of defence, the decision can be appealed (Georgia)
- Criteria for disciplinary offences are not defined clearly enough (Georgia 2)
- Objective examination of complaints (Republic of Moldova)

11. How is independence safeguarded in the evaluation system?

- Reports of Presidents of Court and procedure drafted by the Council (Azerbaijan)
- Objective Criteria (Republic of Moldova)
- Clearly defined criteria, objective assessment, possibility to appeal (Belarus)

12. How are cases allocated within the court?

13. Are there exceptions from established ways of allocation?

14. Who decides then?

12	Allocation by	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Random based computer	Yes	Yes	No	Yes	Yes	No
	Pre-established criteria	--	----(codes)	No	---		No
	President of court	--	No	No (???)	---		Yes
	Other way	--	-----	Alphabetically, approved by the president	----		---
13	Exceptions	No	No	No	No	Yes	No
14	Who decides, when exceptions	--	-----	-----	----	?	----

15. Other experiences how to safeguard independence?

16. Problems or questions regarding external or internal independence?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
15	Other experiences	Yes		Now randomly by computer	No	No	----
16	Problems to be discussed	Yes		-----	Yes	Judges independence in EU-states	No

II. How does a judge demonstrate that he or she has acted independently

16. Are there restrictions on the activities that judges can perform besides their judicial tasks?

16	Allowed (all) / non allowed (n.all)	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Running enterprise	n.all	n.all	n.all	n.all	n.all	n.all
	Executive/ supervisory board	n.all	n.all	n.all	n.all	n.all	n.all
	Profit organisation	n.all	n.all	n.all	n.all	n.all	n.all
	Non-profit organisation	n.all	n.all	n.all	n.all	n.all	n.all
	Teaching	all.	all	all	all	all	all.
	Others	----	clutural, scientific, creative		----		Cultural, artistic,

17. Are there restrictions on political activities of judges?

17	Allowed (all) / non allowed (n.all)	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Political office	n.all	n.all	n.all	n.all	n.all	n.all
	Member of political party	n.all	n.all	n.all	n.all	n.all	n.all
	Engaging in political activities	n.all	----	n.all	n.all	n.all	n.all

18. What happens if a judge does not respect the restrictions under point 116 and 17 above?

- Will be a matter of discussion in Ethic Committee and may lead to respective punishment (Armenia)
- Start of a disciplinary procedure, which may lead to the a proposal of the Judicial Council to terminate the function of the judge (Azerbaijan)
- This is one of the grounds of dismissal (Georgia)
- Ground for dismissal (Republic of Moldova)
- Dismissal (Ukraine)
- authority of the judge should be terminated (Belarus)

19. Are there strict rules when a judge has to recuse himself/herself from a case?

20. Is ex-parte communication allowed?

21. Is there a code of ethics, which deals with questions of impartiality?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
19	Rules, when to recuse oneself	Yes	Yes	Yes	Yes	Yes	Yes
20	Ex-parte communication allowed	No	No	No	No	No legal regulation	No
21	Code of ethics with issue of impartiality	yes	yes	yes	yes	yes	yes

22. Do all decisions of a judge be motivated?

23. Is the aspect how to (un-biasedly) motivate subject to training?

24. Is the aspect of incompatibility subject to training?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
22	All decisions motivated	Yes	yes	No	No	Yes	no
23	Motivation subject to training	Yes	yes	Yes	Yes	Yes	Yes
24	incompatibility subject to training	Yes	yes	Yes	Yes	Yes	Yes

25. What level of trust people have in the judiciary?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
25	Level of trust in the judiciary	low	high	Increasing	Low	Low	High

25. Can you identify the reasons?

26. Can you give positive examples how to raise the trust in the judiciary?

27. Do you have any other experiences how to foster the perception that judges act independently and impartially

28. Are there additional problems or questions regarding the ways in which to foster perception that judges act independently and impartially, which you want to be discussed?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
25	Identify reasons for the level of trust	--		----	Corruption, arbitrary decisions	-----	----
26	Positive examples to raise trust	-Evaluation of judges -allocation of cases		----	Eliminate corruption, publish decisions, unification of decisions	Make courts open to society	Active informing public
27	Experience to foster perception of impartiality	Information of public		----	-----	Dialogue with mass media	--
28	Other questions	--		-----		Experience of other countries	----

III. Material and Social Guarantees of Independence:

III.1. Transfer of Judges:

29. Is it possible to transfer a judge without his/her consent to another court?
Who decides?

29	Transfer possible if	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Disciplinary sanction	No	yes		No		No
	Re-organisation of court system	Yes	yes		No		No
	Other cases	---	-----	Interest of justice + majority of members	Temporarily if necessary	No but in future yes	No
	Who decides	Justice Council	judicial Legal Council	High Council of Justice	Superior Council of Magistracy	Highest Council of Justice	----

30. Is it possible to transfer a judge without his/her consent within the court to another chamber or section?

30	Transfer possible if	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Disciplinary sanction	No	no	No	----	No	No
	Re-organisation of court system	Yes	no		-----	No	No
	Other cases	--	-----		-----	No	No
	Who decides				-----	----	----

	Challenge possible	yes	----	----	Yes	---	----
	Who decides	---	-----	-----	Supreme Court	----	-----

III.2. Remuneration:

31. The remuneration of judges is regulated by?

32. Can the remuneration be reduced?

31	Regulated by	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	law		Law	Law	Law	Law	Yes
	By-law	Yes	yes				--
	individually						---
	others						---
32	Can be reduced	Yes by EDC	no		Yes, Disciplinary Board	----	Yes, by president

33. Does the remuneration depend on:

33	Remuneration depends on	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Level of court	Yes	yes	Yes	Yes	Yes	Yes
	Type of court (e.g. special court)	No	yes	No	No	No	No
	Duration of time in office	Yes	yes	No	Yes	Yes	Yes
	Age	No	no	No	No	No	No
	Performance	No	yes	No	No	No	Yes
	Others	---	academic degrees	-----	---	Administrative position Scientific degree Access to states secrets	----

34. What is the relationship between the remuneration of a first instance judge at the beginning of the carrier ?

34	Relation of first (lowest) income of a judge	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Average in the country	4 x higher	Higher		Higher	Higher	----
	Top civil servants	Higher 10: 9,65	Depends		Higher	Higher	-----
	Politicians	Lower 10 : 12 then MP or minister	Depends		Lower	Lower	-----
	Private lawyers	Mostly higher	Depends		Lower	Depends	-----

35. What is the relationship/ratio between the remuneration of a first instance judge at the beginning of the career in comparison with the following professions?

35	Relation of Supreme Court judges	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Average in the country	4,4 x higher	Higher	Higher than average in the country	Higher	Higher	----
	Top civil servants	Higher 11,5: 9,65	Depends	almost equal	Higher	higher	-----
	Politicians	Higher MP 11,5 : 11 Lower	Depends	lower than the salary of politicians	Almost equal	Lower	-----

		Minister 11,5 : 12					
	Private lawyers	Mostly higher	Depends	Depends on the remuneration of the private lawyer	Lower	Depends	----
	First Instance Judge	Higher 11.5:10	1,79 x higher		Higher ?	1.3 To 1	----

36. Do judges get additional benefits?

36	Benefits as	Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Free cars	Presidents only	yes	No	Presidents only	No	
	Free housing	No	yes	Yes		Yes	
	others	--		----		Health and life insurance	Rental housing , soft loans for constructing houses

III.3 Social Security (Retirement):

37. What is the relationship between the income of judges and of the retired judges?

38. Are retired judges allowed to earn additional income?

		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
37	Relation income retired judges/ judges	75%	Yes	Yes	55-80 plus one times an allowance	Depends on remuneration before	Max. 50 % ???
38	Additional income not allowed	----			Yes	Yes	----
	Additional income allowed	Yes	yes	Yes			Yes
	Additional income with restrictions	-----	-----				

III.4. Safety:

39: Are judges, their families and their property sufficiently protected against attacks?

Who is responsible for security issues?

What are the challenges?

39		Armenia	Azerbaijan	Georgia	Republic of Moldova	Ukraine	Belarus
	Sufficient protection	Yes	yes	Yes	No	Yes	Yes
	Who is responsible	Police and national security	Government	Prime Minister	Ministry of Justice	Police	
	challenges	----	none	----	Police for courts	Low budget	nom

40. Do you have any other experiences regarding material and social guarantees of independence of judges, which you would like to share?

41. Are there additional problems or questions regarding material and social guarantees of independence of judges, which you want to be discussed?

		Armenia	Azerbaijan	Georgia	Republic of	Ukraine	Belarus
--	--	---------	------------	---------	-------------	---------	---------

					Moldova		
	Additional experiences	No	---	----		No	
	Additional questions	no	----	----		Social security in EU countries	

ANNEX III: Agenda and list of participants

AGENDA

Strasbourg, 19 September 2016
Council of Europe, Agora Building

WORKING GROUP A

Independence of judges

with focus on: External and internal independence; How does a judge demonstrate he or she has acted independently; Material and social guarantees of independence.

09.30 – 10.00	<u>Opening and Introduction</u> 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	<u>Presentation of European and other international standards with regard to independence of judges</u> By the international consultant, Dr Gerhard Reissner, followed by Q&A and discussions
11.00 – 11.15	Coffee Break
11.15 – 12.45	<u>External and internal independence: overview and analysis of the most challenging issues faced by participating countries, presentation of case-studies, best practices or lessons learned</u> By the international consultant, with comments and inputs by participants
12.45 – 14.15	Lunch Break
14.15 – 15.30	<u>Appearance of independence, material and social guarantees: overview and analysis of the most challenging issues faced by participating countries, presentation of case-studies, best practices or lessons learned</u> By the international consultant, with comments and inputs by participants
15.30 – 15.45	Coffee Break
15.45 – 17.30	<u>Proposals and discussions of possible regional approaches or cooperation initiatives that could be undertaken in response to the identified challenges</u> Lead by the international consultant, with inputs from participants

LIST OF PARTICIPANTS

Strasbourg, 19 September 2016
Council of Europe, Agora Building

WORKING GROUP A Independence of judges

with focus on: External and internal independence; How does a judge demonstrate he or she has acted independently; Material and social guarantees of independence.

International Experts

1. Mr Gerhard Reissner President of District Court of Floridsdorf

RSG Members

2. Mr Vugar Aghayev Senior Adviser for Organization and Supervision at General Department of the Ministry of Justice of Azerbaijan
3. Ms Sviatlana Liubetskaya Head of the Directorate General of the Support of the Judicial Activities of the Supreme Court of Belarus
4. Ms Irina Tsakadze Head of the Legal Drafting Department of the Ministry of Justice of Georgia
5. Ms Shorena Gigauri Deputy Head of Department of International Cooperation and Quality Management of the High Council of Justice of Georgia
6. Ms Tatiana Raducanu Member of the Superior Council of Magistracy of the Republic of Moldova
7. Mr Oleksandr Sasevych Judge of the District Administrative Court of Lvov, Ukraine
8. Ms Olena Ponomarenko Head of the Secretariat of the High Qualification Commission of Judges of Ukraine

Institutional experts

9. Ms Kristinne Grigoryan Head of the Department on International Legal Cooperation at the Ministry of Justice of Armenia
10. Mr Ilgar Garalov Judge, President of Khazar District Court, Azerbaijan
11. Mr Khagani Taghiyev Member of Judicial Legal Council, President of Salyan District Court, Azerbaijan
12. Ms Tamar Alania Judge of the Court of Appeals of Tbilisi, Georgia
13. Ms Ulyana Stefanyuk Deputy Head of Department of Justice, Head of Division on the Judiciary and Civil Justice at the Ministry of Justice of Ukraine
14. Ms Valentyna Simonenko Head of the Council of Judges of Ukraine
15. Mr Stanislav Kravchenko Deputy President and Judge at High Specialized Court of Ukraine for Civil and Criminal Cases, Ukraine

Civil Society Representatives

- | | |
|-------------------------------|--|
| 16. Mr Azer Kasumov | Senior Legal Adviser at Law and Development Public Association, Azerbaijan |
| 17. Ms Sima Yagubova | Member of the Azerbaijan Lawyers Confederation |
| 18. Mr Yauhen Dubrovin | Member of the Belarus Republican Union of Lawyers |
| 19. Mr Irakli Gvaramadze | Project Coordinator at Article 42 NGO, Georgia |
| 20. Ms Ketevani Kukava | Lawyer at EMC NGO, Georgia |
| 21. Mr Giorgi Beraia | Lawyer/Analyst at Transparency International Georgia |
| 22. Mr Pavel Grecu | Legal Officer at Legal Resources Centre NGO, Republic of Moldova |
| 23. Ms Nataliia Vereshchinska | Director of the Centre for Judicial Studies, Ukraine |
| 24. Mr Roman Sukhostavets | Project Manager at SONGO "European dimension" Public sector, Ukraine |

CoE Secretariat

- | | |
|--------------------------|--|
| 25. Mr Simon Tonelli | Head of Division for Legal Cooperation |
| 26. Ms Sophio Gelashvili | Head of Unit |
| 27. Ms Rita Marascalchi | Project Manager |
| 28. Ms Zaruhi Gasparyan | Project Assistant |