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OF THE CONSULTATIVE COUNCIL
OF EUROPEAN JUDGES
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**Report on judicial independence and impartiality
in the Council of Europe member States
(2019 edition)**

**Prepared by the Bureau of the CCJE
following the proposal of the Secretary General
of the Council of Europe**

TABLE OF CONTENTS

List of abbreviations	3
I. Introduction: scope, purpose and limitations of the report	4
II. Overview of relevant European standards	6
A. Functional independence: appointment and security of tenure of judges	6
B. Organisational independence: Councils for the Judiciary and the administration of courts	7
C. Impartiality of judges, codes of ethics and professional conduct and disciplinary measures	9
D. The economic basis for the smooth functioning of the judicial system	11
E. Judges and the media: public discussion and criticism of judges	12
III. General issues concerning judicial independence and impartiality	13
IV. Country specific issues concerning judicial independence and impartiality	15
A. Functional independence: appointment and security of tenure of judges	15
B. Organisational independence: Councils for the Judiciary and the administration of courts	25
C. Impartiality of judges, codes of ethics and professional conduct and disciplinary measures	38
D. The economic basis for the smooth functioning of the judicial system	54
E. Judges and media: public discussion and criticism of judges	58
V. Conclusions	66
Appendix: Comments by member States	68

List of abbreviations

AEAJ	Association of European Administrative Judges
CCBE	Council of Bars and Law Societies of Europe
CCJE	Consultative Council of European Judges of the Council of Europe
CCPE	Consultative Council of European Prosecutors of the Council of Europe
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EAJ	European Association of Judges
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ENCJ	European Network of Councils for the Judiciary
EU	European Union
GRECO	Council of Europe Group of States against Corruption
IAJ	International Association of Judges
IAP	International Association of Prosecutors
MEDEL	Association «Magistrats européens pour la démocratie et les libertés»
PACE	Parliamentary Assembly of the Council of Europe
Rec(2010)12	Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities
Rec(2000)19	Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system
Venice Commission	European Commission for Democracy through Law of the Council of Europe

I. Introduction: scope, purpose and limitations of the report

1. The report has been prepared by the CCJE Bureau following the proposal by the Secretary General of the CoE to "develop the methodology and establish a regular in-house evaluation mechanism on the independence and impartiality of the judiciaries of the CoE member States"¹.
2. Following this proposal of the Secretary General, the CCJE's 17th plenary meeting² decided to issue such a report on a regular basis. The first edition of the report was presented during the CCJE plenary meeting on 8-10 November 2017, then presented to the CoE Committee of Ministers and published on 7 February 2018³. It highlighted various challenges to judicial independence and impartiality in member States in 2017 and before. The present report therefore covers the period from November 2017 to November 2019⁴.
3. The report provides a summary of information submitted by CCJE members and observers, as well as by judicial bodies and associations, concerning alleged infringements in member States of standards governing judicial independence and impartiality. It includes the requests for legislative assistance submitted to the CCJE and the comments prepared in response. The report is also based on information contained in the judgments of the European Court of Human Rights⁵, opinions of the Venice Commission, reports of the Human Rights Commissioner and of the Parliamentary Assembly, and documents of other relevant bodies of the Council of Europe⁶. The report also takes into account United Nations documents, as well as those of international NGOs working on the subject of judicial independence and impartiality.
4. The CCJE Bureau wishes to signal certain limitations concerning the report. First of all, in accordance with the CCJE Terms of Reference for 2018-2019 and the corresponding decision of the CCJE plenary meeting in 2016⁷, the report does not contain ratings or rankings of member States' performance, and it does not constitute a monitoring process or mechanism.

¹ See the 2016 Report by the Secretary General of the CoE "State of Democracy, Human Rights and the Rule of Law: a Security Imperative for Europe", page 7 (under proposed actions and recommendations).

² Held in Strasbourg on 8-10 November 2016.

³ Document CCJE-BU(2017)11.

⁴ If a challenge is on-going, it may appear in consecutive reports. The present report was presented during the CCJE plenary meeting on 6-8 November 2019.

⁵ The facts dealt with in some ECtHR judgments may date back well beyond the reporting period. However, the conclusions reached in those judgments provide an up-to-date indication of the position of the ECtHR in respect of judicial independence and impartiality based on the facts examined in the cases concerned.

⁶ In some limited cases, expressly mentioned in the report, the sources of information also include media reports.

⁷ See the report of the 17th plenary meeting of the CCJE on 8-10 November 2016 (document CCJE(2016)5, para 5).

5. Secondly, the report does not claim to be a comprehensive and systematic research. For the preparation of the report, given the limited time and resources available, statistically representative surveys or similar exercises could not be conducted. Therefore, the reported concerns and challenges to judicial independence and impartiality are not based on thorough and exhaustive research.
6. Thirdly, the CCJE Bureau emphasises that it is not in a position to verify and confirm the factual basis of the events which are reported. The Bureau has, however, taken great care to mention only information it considered credible and important. The report, therefore, must not be understood as a compilation of facts established by full and complete evidence.
7. In addition, the CCJE Bureau wishes to specify that the purpose of the report is not to point to persons or institutions that may bear responsibility for the alleged infringements, and listing the reported challenges and information concerning specific member States is not meant to criticise them. Rather, the information is set out in order to illuminate the overall picture. The overriding aim of the report is to show, where possible, where concerns about, and challenges to, the independence and impartiality of judges may be found, in which ways they may occur and what their effects on the justice system may be. Public trust in judges may be undermined not only in cases of real, existing and convincingly established infringements, but also where there are sufficient reasons to cast doubt on judicial independence and impartiality.
8. In the report, the CCJE country specific opinions adopted during the reporting period are often quoted at length. This is done not in order to point fingers at a particular member State, but rather because those opinions are an occasion for the CCJE to recall some fundamental principles which are relevant for and applicable to all judicial systems and should be of interest to the readers of this report.
9. It should also be noted that if some countries, out of the 47 member States of the CoE, are not mentioned in the present report, this should not be interpreted in a positive or negative sense as regards judicial independence and impartiality in those countries; it only means that no relevant information has been provided to the CCJE as regards those countries for this reporting period.
10. In accordance with the proposal of the Secretary General to focus on judicial independence and impartiality, the categories of alleged infringements are those related to:
 - a) functional independence: appointment and security of tenure of judges;
 - b) organisational independence: Councils for the Judiciary and the administration of courts;
 - c) impartiality of judges, codes of ethics and professional conduct and disciplinary measures;
 - d) the economic basis for the smooth functioning of the judicial system;
 - e) judges and the media: public discussion and criticism of judges.
11. The CoE has established an extensive regulatory framework intended to guarantee judicial independence and impartiality as one of the pillars of the rule of law. Numerous

instruments have been adopted which set out the requirements for achieving these fundamental objectives.

12. The CCJE Bureau underlines the importance of examining any alleged infringements in the context of the ECHR and the case law of the ECtHR. In doing so, the CCJE Bureau emphasises that the right to a fair trial is secured through an independent and efficient judiciary and the proper exercise of judicial duties and responsibilities.
13. In examining the alleged infringements, the CCJE Bureau has taken into consideration the European Charter on the Statute for Judges (1998) and Recommendation Rec(2010)12 of the Committee of Ministers of the CoE to member States on judges: independence, efficiency and responsibilities. The CCJE Bureau has also relied on its Opinions and the Magna Carta for Judges embodying the fundamental principles of the judicial profession (2010). Further, the CCJE Bureau has taken into account the UN Basic Principles on the Independence of the Judiciary (1985) and the 2014-2015 Report of the ENJC entitled “Independence and Accountability of the Judiciary”.
14. The CCJE Bureau has taken particular note of the 2017 PACE Resolution on “New threats to the rule of law in Council of Europe member States: selected examples“ in which the Assembly recognises the CCJE’s role in developing legal documents in the field of independence and impartiality of the judiciary - one of the main components of the right to a fair trial as protected by the ECHR⁸.

II. Overview of relevant European standards

A. Functional independence: appointment and security of tenure of judges

15. The above-mentioned European and international documents underline that candidates for judicial office should be selected according to objective criteria based on merit, and that the selection should be undertaken by an independent body. If a person or body outside the judiciary, such as the head of state, has the authority to appoint judges, the proposal of the independent body should generally be followed by the appointing authority.
16. As Rec(2010)12 provides, “the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers”⁹. Therefore, it is not acceptable if the executive power is able to intervene in a direct manner in the functioning of competent institutions, particularly with regard to the selection of judges, their promotion or transfer, the imposition of disciplinary measures on judges or their dismissal. This may happen, for example, if the powers to deal with those matters are transferred from the Council for the Judiciary to the Ministry of Justice. Sometimes, legislation may directly endanger the status, independence or security of tenure of judges.

⁸ See PACE Resolution 2188 (2017) entitled “New threats to the rule of law in Council of Europe member States: selected examples”, para 4.

⁹ See Rec(2010)12, para 46.

17. The ECtHR and the CCJE have recognised the importance of institutions and procedures guaranteeing the independent appointment of judges¹⁰. The CCJE has recommended that every decision relating to a judge's appointment, career and disciplinary action be regulated by law, based on objective criteria and be either taken by an independent authority or subject to guarantees, for example judicial review, to ensure that it is not taken other than on the basis of such criteria¹¹. Political considerations should be inadmissible¹² irrespective of whether they are made within Councils for the Judiciary, the executive, or the legislature.
18. There are different appointment procedures of judges in member States. These include, for example appointment by a Council for the Judiciary or another independent body¹³, election by parliament¹⁴ and appointment by the executive¹⁵. Formal rules and Councils for the Judiciary have been introduced in member States to safeguard the independence of judges and prosecutors. However, as welcome as such developments may be, formal rules alone do not guarantee that appointment decisions are taken impartially, according to objective criteria, and free from political influence. The influence of the executive and legislative powers on the appointment decisions should be limited in order to prevent appointments for political reasons. Elections by parliament carry the risk of a politicisation of judges and prosecutors. Especially if such elections are not for life, due care must be taken that, during re-elections, judges are not punished (or rewarded) for their decisions.
19. The security of tenure of judges and their permanent appointment until the statutory age of retirement are a corollary of independence¹⁶. This implies that a judge's tenure cannot be terminated other than for health reasons or as a result of disciplinary proceedings. However, "the existence of exceptions to irremovability, particularly those deriving from disciplinary sanctions, leads immediately to a consideration of the body and method by which, and the basis upon which, judges may be disciplined"¹⁷ – see further on this below.

B. Organisational independence: Councils for the Judiciary and the administration of courts

20. Councils for the Judiciary are bodies the purpose of which is to safeguard the independence of the judiciary and of individual judges, and to promote thereby the efficient functioning of the judicial system. Their introduction has been recommended in Rec(2010)12, by the CCJE and by the Venice Commission¹⁸. Over recent years, many

¹⁰ See CCJE Opinion No. 1(2001) on standards concerning the independence of the judiciary and the irremovability of judges, paras 19-23; see also the Report of the Venice Commission on Judicial Appointments, 2007, paras 9-17.

¹¹ See CCJE Opinion No. 1(2001), para 37.

¹² *Ibid.*, para 17.

¹³ For example, in Albania, Croatia, France, Portugal.

¹⁴ For example, in Switzerland.

¹⁵ For example, in Austria, the Czech Republic, Latvia, Malta.

¹⁶ See CCJE Opinion No. 1(2001), paras 52 and 57.

¹⁷ *Ibid.*, para 59.

¹⁸ See Rec(2010)12, paras 26-29; CCJE Opinions No. 1(2001), para 45, and No. 10(2007); the Venice Commission's Report on the Independence of the Judicial System, Part I: the Independence of Judges

European legal systems have introduced Councils for the Judiciary. The present report highlights challenges ranging from external influence over such Councils to executive interferences with the administration of courts.

21. The independence of judges can be infringed by weakening the competences of the Council for the Judiciary, by reducing the financial or other means at its disposal or by changing its composition. Such Councils must have significant competences in order to constitute effective safeguards of the independence of judges. Mere advisory functions are not enough. Member states have introduced Councils for the Judiciary with a variety of competences and compositions. According to the CCJE standards, a substantial majority of the members of a Council for the Judiciary should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism¹⁹. Elections must be free from external influences. The executive must not influence the elections or the work of the Council in any way. The establishment of a Council for the Judiciary is only useful if its members can work independently from the executive and are not politicised. Only an independent Council for the Judiciary can secure the independence of judges by rendering decisions which fulfil the requirements of “an independent and impartial tribunal” according to Article 6 of the ECHR²⁰.
22. Court presidents can be important spokespersons for the judiciary in relation to the other powers of state and the public at large. They can act as managers of independent courts instead of managers under the influence of the executive. However, the CCJE notes the potential threat to judicial independence that might arise from an internal judicial hierarchy²¹. Court presidents must respect that a judge, in particular a judge working in the court he/she presides over, is no one’s employee in the performance of judicial functions. A judge is the holder of a State office and the 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 judiciary²², including the president of the court. A court president should not have the power to decide questions relating to a judge’s remuneration or housing and should never execute his/her duties in a way that puts pressure on a judge or influences him/her to decide a case in a certain way.
23. Member States use different models for the administration of the judiciary. The report identifies certain challenges and concerns in this field. While self-administration by the judiciary has been introduced, or its scope enlarged, in many member States, still, in some countries, Ministries of Justice have a certain degree of influence over the administration of courts²³. The CCJE has made recommendations on these issues, in particular in relation to the dangers to judicial independence arising from a direct or

(para 32), adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), recommend the establishment of such Councils.

¹⁹ See CCJE Opinion No. 10(2007), para 18. For the purpose and minimum requirements of councils, see Rec(2010)12, para 27.

²⁰ See, for example, ECtHR *Tsanova c. Bulgarie* (Requête no. 43800/12) 15.09.2015; *Mitrinovski v. “The former Yugoslav Republic of Macedonia”* (Application no.6899/12) 30.7.2015, *Oleksandr Volkov v. Ukraine* (Application no. 21722/11), 27.5.2013.

²¹ See the CCJE Opinion No. 1(2001), para 66.

²² *Ibid.*, para 64.

²³ The regulation of court management scored low in the survey on the independence of the judiciary undertaken in EU member States by the ENCJ in 2014/2015, ENCJ Report on Independence and Accountability of Judges and Prosecutors 2014-2015, p. 6.

indirect influence of the executive over the administration of the judiciary²⁴. The presence of officials of the executive within the organising bodies of courts and tribunals should be avoided. Such a presence can lead to interferences with the judicial function, thus endangering judicial independence²⁵. The CCJE considers that, while scrutiny by external investigators can help identify shortcomings in a particular institution, such as the judiciary, it is vital that the activities of any inspectors or similar should never interfere with the development of judicial investigations and trials²⁶. It is especially worrying if the executive gains insight into court files.

24. Legal and organisational reforms, including the closing of local courts, are not necessarily problematic in relation to the independence of judges. Rather, within constitutional limits, they fall under the responsibility of the legislature, which must take action to adapt the legal system to new challenges, especially social and demographic developments. However, as the CCJE has observed, too many changes within a short period of time should be avoided if possible, at the very least in the area of the administration of justice. Closing of courts must not be done for political reasons. Where changes to the system of justice are made, care must be taken to ensure that they are accompanied by adequate financial, technical²⁷ and procedural provisions and that there will be sufficient human resources²⁸. Otherwise there is a risk of instability in the proper administration of justice and the public might perceive (wrongly) that any failings in administering a new system were the fault of the judiciary²⁹.

C. Impartiality of judges, codes of ethics and professional conduct and disciplinary measures

25. Article 6 of the ECHR guarantees the right to have disputes decided not only by an independent but also an impartial tribunal. Therefore, it is essential that judges show their impartiality in the way in which they decide cases and hold the government accountable if necessary, in the interest of the public.
26. Judges, as long as they are dealing with a case or could be required to do so, should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute or which could influence the fairness of the proceedings. They should show the consideration due to all persons (parties, witnesses, counsel, for example) with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties³⁰.

²⁴ See CCJE Opinion No. 18(2015), paras 48-49.

²⁵ *Ibid.*, para 48.

²⁶ *Ibid.*, para 49.

²⁷ See CCPE Opinion No. 7(2012), paras 39-44.

²⁸ See CCJE Opinion No. 11(2008); the CCPE Opinion No. 7(2012), paras 36-38.

²⁹ See CCJE Opinion No. 18(2015), para 45.

³⁰ See CCJE Opinion No. 3(2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para 23.

27. Judges should also discharge their functions with due respect for the principle of equal treatment of the parties, by avoiding any bias and any discrimination, maintaining a balance between the parties, and ensuring that each receives a fair hearing³¹.
28. As regards codes of ethics and professional conduct, these have some important benefits: firstly, they help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence from other authorities. Secondly, they inform the public about the standards of conduct it is entitled to expect from judges. Thirdly, they contribute to providing reassurance to the public that justice is administered independently and impartially³².
29. The CCJE would like to stress that, in order to provide the necessary protection of judges' independence, any statement of standards of professional conduct should be based on the following two fundamental principles:
30. i) firstly, it should address basic principles of professional conduct. It should recognise the general impossibility of compiling complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities. Further, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not in itself constitute a disciplinary infringement or a civil or criminal offence;
31. ii) secondly, principles of professional conduct should be drawn up by the judges themselves. They should be self-regulatory instruments generated by the judiciary itself, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. Broad consultation should be organised, which could also involve explaining and interpreting the statement of standards of professional conduct³³.
32. The effectiveness of the judicial system also requires judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through basic and further training, providing them with the necessary qualifications³⁴.
33. The standards of conduct applying to judges are a precondition for confidence in the administration of justice³⁵. Public confidence in, and respect for, the judiciary are the guarantees of the effectiveness of the judicial system³⁶. Judges should therefore discharge their duties without any favouritism, display of prejudice or bias³⁷, and with due respect for the principle of equal treatment of the parties³⁸. Judges should not reach their decisions by taking into consideration anything which falls outside the application of the

³¹ Ibid., para 24.

³² Ibid., para 44.

³³ Ibid., para 48.

³⁴ Ibid., para 25.

³⁵ Ibid., para 8.

³⁶ Ibid., para 22.

³⁷ Ibid., para 23.

³⁸ Ibid., para 24.

rule of law³⁹. Judges should both be mindful of, and be able to carry out, their obligations under Article 6(1) of the ECHR to deliver judgment within a reasonable time⁴⁰. Judges should behave in such a way as to avoid conflicts of interest or abuses of power⁴¹. Judges should also conduct themselves in a respectable way in their private life⁴².

34. As regards the participation of judges in public debates of a political nature, there is a need to strike a balance between the judges' freedom of opinion and expression and the requirement of neutrality. It is therefore necessary for judges, even though their membership of a political party or their participation in the public debate on the major problems of society cannot be proscribed, to refrain at least from any political activity liable to compromise their independence or jeopardise the appearance of impartiality⁴³.

D. The economic basis for the smooth functioning of the judicial system

35. The efficiency of judges and of judicial systems is a necessary condition for the protection of every person's rights, compliance with the requirements of Article 6 of the ECHR, legal certainty and public confidence in the rule of law⁴⁴. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the ECHR, and to enable judges to work efficiently⁴⁵.
36. Underfunding of the judicial system may reduce the ability of courts to decide cases with the necessary quality and within a reasonable time. Cuts in legal aid may make access to justice more dependent on income. Insufficient funding and budget cuts might result in a judicial system overemphasising "productivity"⁴⁶. While courts should use their available resources in the most efficient manner possible, the quality of justice cannot be understood as if it were a synonym for mere "productivity" of the judicial system⁴⁷. The workload of judges must allow that work is not only done quickly but also with high quality. Moreover, member States must take the necessary steps to ensure the security of judges and appropriate working conditions reflecting the importance and dignity of the judiciary. Access to justice and the right to fair proceedings are not properly guaranteed if a case cannot be considered within a reasonable time by a court⁴⁸ or if access to justice is obstructed through excessive costs or is dependent on wealth⁴⁹.
37. The independence of judges also requires economic independence which should be stipulated by law. Undignified working conditions might reduce public respect for judges and increase the risk of corruption. Rec(2010)12 states that judges' remuneration should

³⁹ Ibid., para 23.

⁴⁰ Ibid., para 26.

⁴¹ Ibid., para 37.

⁴² Ibid., para 29.

⁴³ Ibid., paras 31-33.

⁴⁴ See Rec(2010)12, Article 30.

⁴⁵ Ibid., Article 33; see also CCJE Opinion No. 2(2001).

⁴⁶ See CCJE Opinion No. 17(2014), para 35.

⁴⁷ Ibid.; see also CCJE Opinion No. 6(2004), para 42.

⁴⁸ See CCJE Opinion No. 2(2001) on the funding and management of courts with reference to the efficiency of the judiciary and Article 6 of the ECHR, para 3.

⁴⁹ See CCJE Opinion No. 6(2004), paras 20-21.

be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions and from the risk of corruption. The payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration while working, should also be guaranteed. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges. The same proposal appears in the CCJE's Opinion No. 1(2001) and in the European Charter on the Statute for Judges.

38. Even in times of economic crisis or recession, the legislative and executive powers should understand that a significant reduction in judges' salaries constitutes a potential threat to judges' independence and to the proper administration of justice, and may jeopardise (objectively and subjectively) judges' work. Such measures, if necessary, should always be limited in time⁵⁰.

E. Judges and the media: public discussion and criticism of judges

39. As regards judges' relations with the media, "while the freedom of the press⁵¹ is a pre-eminent principle, the judicial process has to be protected from undue external influence... The right of the public to information is nevertheless a fundamental principle resulting from Article 10 of the European Convention on Human Rights. It implies that the judge answers the legitimate expectations of the citizens by clearly motivated decisions"⁵².
40. The CCJE has stated that there has been a general trend towards greater media attention focused on judicial matters, especially in the criminal law field. Bearing in mind the links which may be forged between judges and the media, there is a danger that the way judges conduct themselves could be influenced by journalists. Accordingly, judges have to show circumspection in their relations with the press and be able to maintain their independence and impartiality, refraining from any personal exploitation of any relations with journalists and any unjustified comments on the cases they are dealing with. Judges should also be free to prepare a summary or communiqué setting out the tenor or clarifying the significance of their judgments for the public. Besides, for the countries where the judges are involved in criminal investigations, it is advisable for them to reconcile the necessary restraint relating to the cases they are dealing with, with the right to information⁵³.
41. The CCJE is also vigilant with regard to situations in which the media could be used by other powers (whether these be the state or private institutions or persons) to exercise pressure or exert influence on judges. A powerful or sustained criticism exercised by the media against a particular judicial decision may constitute such pressure. In particular, it

⁵⁰ See CCJE Opinion No. 2(2001), para 12.

⁵¹ See ECtHR *The Sunday Times v. United Kingdom* (No. 1) (no. 6538/74, § 65, 26 April 1979), in which the ECtHR has established that "the general principles stemming from its Article 10 case-law "are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public".

⁵² See CCJE Opinion No. 3(2002), para 40.

⁵³ *Ibid.*

is not acceptable that the media be used by other state or private entities, in particular political institutions, to directly attack individual judges' decisions.

42. The CCJE has commented in depth on the sensitive relations between judges and the media⁵⁴. The executive and legislative powers should not comment on judges' decisions in a way which could undermine the independence of, or public confidence in, the judiciary⁵⁵.
43. Thus, there is a clear line between, on the one hand, freedom of expression and legitimate criticism which might even have positive effects, and, on the other hand, disrespect and undue pressure on judges⁵⁶. In some member States, politicians have made comments that showed little understanding of the role of independent judges and prosecutors⁵⁷. The ENCJ has concluded that many judges in EU member States do not feel that their independence is respected⁵⁸. Unbalanced comments are troublesome because they affect the public perception of judges and can affect the necessary public trust in them. In some cases, such comments have apparently played a role in encouraging violent attacks against judges⁵⁹. Such behaviour is an attack on the legitimacy of another state power and thus affects the separation of powers necessary in a democratic state⁶⁰. The executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by attacks or intimidations⁶¹.

III. General issues concerning judicial independence and impartiality

44. The CoE Secretary General emphasised in his 2018 Report on the State of Democracy, Human Rights and the Rule of Law entitled "Role of institutions. Threats to Institutions" that the judiciary is not immune to the environment in which it operates. In recent years, creeping populism and attempts to limit political freedoms among some member States have resulted in challenges to the judiciary's independence at home – and at the international level too. For example, draft legislation was prepared allowing political influence over appointments or disciplinary procedures, politically motivated changes to the composition of judicial self-governing bodies were made, and proposals to weaken the security of judges' tenure or empowering the executive to discretionally replace court presidents were put forward⁶².

⁵⁴ See CCJE Opinion No. 7(2005) on justice and society, paras 22 to 55.

⁵⁵ See Rec(2010)12, Article 18.

⁵⁶ See CCJE Opinion No. 18(2014), para 52.

⁵⁷ See the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the CoE, 2016, document SG/Inf(2016)3rev, para 27.

⁵⁸ See the ENCJ Report on Independence and Accountability of the Judiciary and of the Prosecution, Performance Indicators 2015, ENCJ Report 2014-2015, p. 7.

⁵⁹ See the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the CoE, 2016, document SG/Inf(2016)3rev, para 27.

⁶⁰ See CCJE Opinion No. 18(2015), para 52.

⁶¹ Ibid.

⁶² See 2018 Report of the Secretary General of the CoE on the State of Democracy, Human Rights and the Rule of Law entitled "Role of institutions. Threats to Institutions", Chapter 1, p. 11.

45. Attempts to challenge the primacy of the ECHR and to give national courts the power to overrule judgments of the ECtHR were also observed. Some member States refused to implement ECtHR judgments for political reasons. If not opposed, such practices would undermine the rule of law and, with it, the European human rights system⁶³.
46. In addition to this, long-standing challenges to judicial systems in Europe persist. Corruption is one of them. Where corruption takes root within the judiciary itself, it impedes access to justice and a fair trial. Furthermore, judges should be appointed and promoted transparently, and be subject to non-political disciplinary measures. Judicial systems must pursue corruption effectively throughout society and judges cannot credibly pursue others for corruption where their own profession is tainted⁶⁴.
47. The judiciary must be efficient. While the executive and legislature must not seek undue influence, they must provide adequate funding. The judiciary must have adequate powers to address disputes, including in areas relating to human rights. The judiciary's ultimate efficiency is contingent on the quality and authority of its jurisprudence⁶⁵.
48. The CoE Commissioner for Human Rights underlined in her Statement of 3 September 2019 that "we are now seeing increasing and worrying attempts by the executive and legislative to use their leverage to influence and instruct the judiciary and undermine judicial independence"⁶⁶.
49. The IAJ undertook a monitoring of its 85 members worldwide on the situation of the judiciary in these countries. One question to be answered was: "Has the situation regarding the judiciary in your country improved, worsened or remained the same during the last 5 years?" Associations of judges of five European countries answered "improved", 18 other European countries indicated "remained the same". Another 18 European countries replied "worsened". Budgetary constraints and excessive workloads followed by undue pressures from politicians were named as the main areas of concern. Lack of confidence and problems with internal judicial independence were identified as further problems⁶⁷.
50. The EAJ⁶⁸, one of four Regional Groups of the IAJ, underlined that trust in the judiciary was the most important element to guarantee the effective implementation of the rule of law. Judges are obliged to deliver a balanced and impartial justice of a high quality and within a reasonable time. Trust could very easily be hampered or even destroyed by undue critics. The EAJ saw, once again, that in several member States, Rec(2010)12

⁶³ See 2018 Report of the Secretary General of the CoE on the State of Democracy, Human Rights and the Rule of Law entitled "Role of institutions. Threats to Institutions", Chapter 1, p. 11.

⁶⁴ 2018 Report of the Secretary General of the CoE on the State of Democracy, Human Rights and the Rule of Law entitled "Role of institutions. Threats to Institutions", Chapter 1, p. 11.

⁶⁵ 2018 Report of the Secretary General of the CoE on the State of Democracy, Human Rights and the Rule of Law entitled "Role of institutions. Threats to Institutions", Chapter 1, p. 11.

⁶⁶ See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

⁶⁷ See the EAJ Report to the CCJE of 31 August 2017, Section A(1).

⁶⁸ Observer to the CCJE.

was not followed⁶⁹. The EAJ expressed its particular concern about corrosive comments by politicians or the media, seeking to influence the determination of cases.

51. To provide concrete examples, the EAJ pointed to the front-page headline in a British tabloid newspaper following the UK High Court's decision in the Brexit case, labelling the three Supreme Court Judges having decided the case "enemies of the people"; the allegation by a senior British parliamentarian that "unelected judges" on the UK Supreme Court were "meddling" with the work of a democratically elected parliament; the US President's reference to a "so-called judge"; the suggestion by an Irish government Minister on a TV programme that senior judges should not be involved in the judicial appointments process "because they will just appoint their friends", and the Turkish government's suggestion that the Greek Supreme Court has been "encouraging the impunity of criminals" and "providing shelter and protection to putschists". The comments of the Polish Prime Minister, some Polish ministers, and the chair of the governing party in Poland as regards judges went far beyond fair criticism, according to the EAJ.

IV. Country specific issues concerning judicial independence and impartiality⁷⁰

A. Functional independence: appointment and security of tenure of judges

52. The CCJE member in respect of **Andorra** states that judges are appointed by the High Council of Justice (CSJ) for a term of six years. However, the CSJ is obliged to automatically renew the mandate, except for reasons of discipline, retirement or incapacity. This amendment to the law, requiring automatic renewal, means that this aspect is no longer a concern for judges.

53. As regards **Austria**, the CCJE received a letter from the AEAJ on 19 January 2019 concerning the legal setting of the position of the president (and vice-president) of the Administrative Court of Vienna. The letter spoke of specific problems in this context and asked the CCJE to render its Opinion as to whether the legislation regarding the president (and vice-president) of the Administrative Court of Vienna was in line with European standards, including as regards the selection and appointment of the president (and vice-president).
54. According to the AEAJ, such selection and appointment remained within the power of the government of the province of Vienna, without the involvement of the committee of

⁶⁹ Which provides that "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", para 18.

⁷⁰ Please note that all information which is referred to in this Chapter was submitted to the CCJE in May-August of 2019.

judges of the Administrative Court of Vienna, as it is foreseen for the other judges of the court.

55. The questions related to electing or appointing judges, including court presidents, have been highlighted in-depth in various instruments of the CoE bodies, notably the CCJE itself, the Venice Commission and GRECO.
56. In its Opinion published on 29 March 2019, the CCJE Bureau noted that, while “the manner in which presidents of courts are selected, appointed or elected varies in the member States”⁷¹, these procedures “should follow the same path as that for the selection and appointment of judges. This will include a process of evaluation of the candidates and a body having the authority to select and/or appoint judges in accordance with the standards established in Recommendation CM/Rec(2010)12 and previous Opinions of the CCJE”⁷².
57. The CCJE emphasised that “it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary”⁷³.
58. The CCJE standards mirror in Rec(2010)12 which provides that “the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers”⁷⁴.
59. The CCJE Bureau concluded⁷⁵ that the difference in the process of selecting the president and vice-president of the Administrative Court of Vienna, compared to that of other judges, contravened these standards. The selection and appointment procedure of the president and vice-president of the Administrative Court of Vienna should be the same as for the other judges of that court.

60. The CCJE member in respect of **Bulgaria** states that the questions about the length of the Supreme Courts Presidents’ (President of the Supreme Administrative Court and President of the Supreme Court of Cassation) mandates and the adoption of special impeachment rules concerning these positions have been subject to public discussions for several years. There are suggestions that the mandates should be shorter and that special rules for their early termination should be adopted. However, there are still no amendments to the legal framework in that respect.
61. The final Report of the European Commission on Progress in Bulgaria under the Cooperation and Verification Mechanism (CVM), published on 22 October 2019, emphasised the progress made in respect of the benchmarks established earlier, in particular as regards the recommendation to establish a track record of transparent and

⁷¹ See CCJE Opinion No. 19 (2016) on the role of court presidents, para 37.

⁷² See CCJE Opinion No. 19 (2016) on the role of court presidents, para 38.

⁷³ See CCJE Opinion No. 10 (2007) on the Council for the Judiciary at the service of society, para 48.

⁷⁴ See Rec(2010)12, para 46.

⁷⁵ See the full text of the CCJE Bureau’s Opinion at <https://rm.coe.int/opinion-29-march-2019-austria-2019-final/168093c034>

merit-based appointments to high-level judicial posts, including the upcoming appointment of a new President of the Supreme Administrative Court. The CVM Report confirmed the provisional closure of this benchmark and mentioned that, “whilst there are inevitably relevant on-going issues which will need continued attention from the Bulgarian authorities, the recommendations made in January 2017 have been satisfactorily addressed”⁷⁶.

62. The CCJE member in respect of **Cyprus** states that, although the 2017 European Union Justice Scoreboard showed that judicial independence in Cyprus was perceived to be relatively high, the need for further reforms resulted in a more in-depth review of the court system. In this framework, the European Commission delivered, in March 2019, a report on the on-going reform process in Cyprus upon a request by Cyprus to the European Commission under Regulation (EU)2017/825 on the establishment of the Structural Reform Support Programme (SRSP Regulation).
63. The Supreme Court, on 21 February 2019, annulled the on-going procedure for the recruitment of judges, so as to readjust the procedure to meet the objective criteria for the recruitment in line with European standards.
64. In this framework, the government is in the process of preparing nine bills designed to overhaul the judicial system. The reforms include changes to the division of the Supreme Court into a Supreme Constitutional Court and a Court of Third Instance, and the creation of an Appellate Court with the necessary number of judges. There will also be changes to the Supreme Council of the Judicature to include District Court Judges, a lawyer and the attorney-general. The bills also introduce criteria for the recruitment of judges and the creation of a judicial school. There is an on-going discussion as to the measures and reforms required to address existing inefficiencies and delays in the system. The Supreme Court has set out its views on the bills and has voiced its deep concern over various provisions that it considers would tend to alter the constitutional order and politicise the judicial system.

65. As regards **Georgia**, the former member of the CCJE Bureau and President of the Supreme Administrative Court of Sweden, Mats Melin, took part in the Venice Commission’s mission to Georgia on 1-2 April 2019 and the preparation of the Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia.
66. The request for an Urgent Opinion was made as a result of the incomplete composition of the Supreme Court of Georgia, which had 10 judges (and would have only 8 judges by the beginning of July 2019). Under the new Constitution, it should be composed of 28 judges⁷⁷.

⁷⁶ Final Report of the European Commission on Progress in Bulgaria under the CVM, published on 22 October 2019, pp. 4-7.

⁷⁷ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 2.

67. The procedure for the appointment of Supreme Court judges had proved to be difficult, following the presentation of a list of 10 candidates to Parliament by the High Council of Justice in December 2018. This list was eventually withdrawn due to controversies and criticism from the public, civil society and members of the High Council of Justice claiming that the selection procedure lacked clear and objective criteria, as well as transparency. In this respect, NGOs had alleged that the appointment process was controlled by a political network of influential judges, who did not enjoy the best reputation due to past decisions and partial appointments. This resulted in the call for the drafting of legislative amendments to provide for clear and objective criteria and a transparent procedure⁷⁸.
68. Entry into force of the new Constitution on 16 December 2018 changed the procedure for the selection and appointment of Supreme Court judges. Before the constitutional reform, the Supreme Court was composed of no less than 16 judges and now, under the new Constitution, as already mentioned, it should consist of at least 28 judges. The fact that this Court should have 28 judges at the very least, according to the new provision in the Constitution, explained the urgency of the selection of candidates for the 20 vacancies at the Supreme Court⁷⁹.
69. Before the constitutional reform, Supreme Court judges were elected by a majority of all members of Parliament upon the proposal of the President of Georgia and their term of office was for a period of not less than 10 years. Under the new Constitution – although the Venice Commission had recommended that the Supreme Court judges be appointed directly by the High Council of Justice (HCJ) without involvement of Parliament, or be appointed by the President upon proposal by the HCJ, in order to better guarantee their independence – Supreme Court judges are now nominated by the HCJ and elected for life (until retirement) by a majority of all members of Parliament⁸⁰.
70. In this way, the Supreme Court of Georgia would effectively have an entirely new composition with the appointment of 18 to 20 new judges, who would be appointed for life. Since the new Constitution left the final decision of the appointment to Parliament, this implied that the present parliamentary majority would be entrusted with the appointment of a practically new Supreme Court, the composition of which would possibly remain the same for the next 20 to 30 years⁸¹.
71. The Venice Commission underlined that this was “an important and very unusual, if not extraordinary, situation [...] This renders the nomination and appointment procedure for

⁷⁸ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 3.

⁷⁹ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), paras 9-10.

⁸⁰ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 11.

⁸¹ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 12.

these judges in Georgia all the more important and should be considered with great care”⁸².

72. The Venice Commission accordingly recommended that “under these circumstances, consideration should be given to having the fixed term of office of the current Supreme Court judges transformed to lifetime appointments and Parliament should only presently appoint the number of Supreme Court judges that is absolutely necessary to render the work of the Supreme Court manageable”⁸³. “How many new judges will be needed to achieve this should be decided after consultations with the Supreme Court. Further appointments may then be made by Parliament elected at the next general elections. Such an arrangement may both alleviate the present burden on the Supreme Court and ensure that it enjoys the public trust and respect it deserves in the long run”⁸⁴.
73. The Venice Commission made further recommendations about specific changes needed in the legislation. The CCJE standards were taken into account in making these recommendations through, in particular, the participation of the former CCJE Bureau member in the drafting process.

74. The CCJE member in respect of **Malta** states that presently the debate focuses on the method of appointment of members of the judiciary. The appointment of the Chief Justice is the sole and absolute prerogative of the Prime Minister who may choose any jurist with 12 years’ experience to occupy such a post. The appointment of other judges is also the prerogative of the Prime Minister but in this case the members, before appointment, have first to be examined by a Commission composed of five persons: the Chief Justice, the Attorney General, the Ombudsman, the Auditor General and the President of the Chamber of Advocates. The decision of the Commission is not binding on the government which can, notwithstanding a negative opinion, proceed with the appointment of its chosen member by simply making a declaration in Parliament that it wishes to proceed. There has not yet been a case where such a declaration was made.
75. This procedure has been criticised by the Venice Commission as it leaves the appointment almost completely in the hands of the government of the day. The Venice Commission suggested that the appointment of judges be in the hands of sitting members of the judiciary after a call for applications. The government would indicate the needs, and the selection would be left completely in the hands of sitting judges. The government responded that it would change the system to abide by the suggestion of the Venice Commission but has not stipulated a time period for doing so. It is being reported that despite this promise, the government is to go ahead with some appointments of members of the judiciary.

⁸² Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 13.

⁸³ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 64.

⁸⁴ Urgent Opinion of the Venice Commission on the selection and appointment of the Supreme Court judges in Georgia, issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, 16 April 2019, (CDL-PI(2019)002), para 65.

76. As regards the **Republic of Moldova**, a new draft law on the reform of the Supreme Court of Justice and the prosecution bodies has been prepared and submitted to the Venice Commission for assessment. The Venice Commission fact-finding mission included CCJE Vice-President and Judge of the Supreme Court of Slovenia Nina Betetto. The Venice Commission was requested to assess in particular the provisions of the draft law on the evaluation of judges and the relevant commission in charge, as well as those on the composition and functioning of the Superior Council of Magistracy.
77. In particular, the draft law provides for an evaluation mechanism within the process of reorganisation of the Supreme Court of Justice (SCJ). The reorganisation of the SCJ implies changing the role of the SCJ to cassation related matters, by focusing it on ensuring uniform judicial practice and reducing the instances of examining the merits of the cases. The reorganisation also implies reducing the number of judges from 33 to 17. In order to establish which judges remain at the SCJ, a special ad-hoc extra-judicial Evaluation Commission (Commission) will be created to evaluate the judges based on three main criteria: integrity, professional activity and personal qualities for being a judge. Judges which fail the evaluation will be proposed to choose a position within the lower courts from the available vacancies. In case a judge refuses the transfer, he/she can opt for dismissal. If after the evaluation there are less than 17 judges left at the SCJ, the Commission will announce a public contest to supplement the vacancies opened for all candidates who have 10 years of experience as a judge (current constitutional requirement).
78. In the Republic of Moldova, a new draft Justice Sector Reform Strategy has also been prepared outlining the planned reforms to the judiciary, including in the field of judicial appointment/self-governance/disciplinary liability. It is envisaged in particular to amend the Constitution and to strengthen the judges' independence and the activity of the Superior Council of Magistracy, resulting in a better administration of the judiciary, as well as to ensure that courts dispose of an adequate number of judges and judicial staff. This is planned to be carried out along with the strengthening the integrity and accountability in the justice sector. The Government has requested an expert assessment by the CoE of the draft Strategy.

79. In **North Macedonia**, on 10 September 2019, the Judicial Council dismissed the President of the Supreme Court for the alleged violation of the requirements of professional conduct. The dismissal came as a result of lengthy disciplinary proceedings. In letters to the international community, including the CoE, the President argued that the grounds on which the procedure had been initiated were no longer included in the Law on Courts as amended recently (Official Gazette 96/19) regarding the general grounds for dismissal, and therefore the procedure against him should be terminated. The complaint also included statement that responsibility was found for voting in the panel which had to be secret, and violated the principle that a judge should not be held responsible for the vote or opinion expressed on the case.

80. MEDEL and the AEAJ state that in **Poland**, the situation is very difficult due to the broad and intense attack suffered by the judiciary. As the most striking events and threats

weakening the judicial independence, MEDEL points inter alia to the reforms of the Supreme Court, lowering the retirement age, which is the subject of an on-going infringement procedure by the European Commission⁸⁵, and the setting up of two new Supreme Court chambers: the Public Affairs Chamber and the Disciplinary Chamber, with judges appointed by the new politically dependent National Council for the Judiciary. These and other reforms of the Polish judicial system were subject to many statements by MEDEL⁸⁶.

81. MEDEL “urges the CCJE to clearly and expressly state it in its report that the Polish judiciary is currently under a major threat of being put under total control of the executive, thus leading to a total loss of independence”⁸⁷.
82. Additional challenges as regards the situation of judges in Poland are described below, in particular in the chapters on the organisational independence of the judiciary, disciplinary measures against judges, and public discussion and criticism of judges.

83. As regards **Serbia**, the Judges Association of Serbia, in its letter of 16 April 2018, requested that the CCJE assess the compatibility of the proposed amendments to the Constitution with European standards, including as regards the grounds for dismissal of judges. Three such grounds for dismissal were set out: 1) if a judge was convicted of a criminal offense that carried a sentence of at least six months of imprisonment, or of a criminal offence that rendered him/her unworthy for the judicial function; 2) if a judge performed the judicial functions incompetently; 3) if a judge committed a serious disciplinary offense.
84. The CCJE Bureau concluded that the reference to “incompetence” was too vague and potentially dangerous to judicial independence. As an example, in a case where a judge was dismissed for “breach of oath”, the ECtHR ruled that “the absence of any guidelines and practice establishing a consistent and restrictive interpretation of the offence of “breach of oath” and the lack of appropriate legal safeguards resulted in the relevant provisions of domestic law being unforeseeable as to their effects”⁸⁸.

⁸⁵ See at http://europa.eu/rapid/press-release_IP-18-4341_en.htm

⁸⁶ See at <https://www.medelnet.eu/index.php/news/europe/383-medel-communique-on-the-situation-of-the-constitutional-court-in-poland> ;
<https://www.medelnet.eu/index.php/news/europe/473-medel-sofia-statement> ;
<https://www.medelnet.eu/index.php/news/europe/467-medel-statement-on-the-eu-commission-s-decision-of-bringing-poland-to-the-ecj> ;
<https://www.medelnet.eu/index.php/news/europe/457-solidarity-with-the-judges-of-the-polish-supreme-court> ;
<https://www.medelnet.eu/index.php/news/europe/408-krakow-declaration> ;
<https://www.medelnet.eu/index.php/news/europe/397-medel-statement-on-the-reform-of-the-supreme-court-in-poland-keep-the-rule-of-law-in-poland> ;
<https://www.medelnet.eu/index.php/news/europe/367-medel-declaration-on-reforms-of-the-judiciary-in-poland>

⁸⁷ Contribution of MEDEL to the report on judicial independence and impartiality in the CoE member States (2019 edition), p. 3.

⁸⁸ See ECtHR *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, FINAL 27/05/2013, para 185.

85. “Incompetence” as a ground for dismissal may even be more negative than “breach of oath” because it may be more difficult to assess, to measure and to quantify, and it may become a tool for pressure, including political, exerted on judges. Consequently, the CCJE Bureau recommended deleting “incompetence” as a ground for dismissal of a judge.
86. As regards dismissing a judge for a serious disciplinary offense, the CCJE Bureau pointed out⁸⁹ that this provision, as well as that related to a criminal offense as a ground for dismissal, clearly required the adoption of strong and clear implementing primary legislation, both to set out the specific misconduct that may result in a dismissal, and the procedure to be followed in such cases. The essential elements of this procedure should be included in the Constitution.
87. The Venice Commission also issued an Opinion⁹⁰ on these draft amendments which stated in particular that “disciplinary responsibility for judges and for prosecutors was not covered by the draft Amendments yet they set out very vague reasons for the dismissal of judges and of deputy public prosecutors. It was important that more detail be provided in the draft Amendments regarding disciplinary responsibility and dismissal. The use of vague terminology such as “incompetence” without further specification should be avoided and therefore taken out”⁹¹.
88. Following the Opinion of the Venice Commission, the Serbian authorities introduced a number of positive changes to the amendments which were praised by a Secretariat Memorandum of the Venice Commission⁹². It stated in particular that the new text submitted to the Venice Commission “provides more detail and precision with regard to the disciplinary responsibility and dismissal of both judges and prosecutors. Notably, the wording now reads “A judge may also be dismissed due to incompetence if, in a significant number of cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by Law and evaluated by the High Judicial Council”⁹³.
89. The amendments have not yet been adopted; it is expected they will be put forward for voting in a Constitutional referendum in 2020.

⁸⁹ See the full text of the CCJE Bureau’s Opinion at <https://rm.coe.int/opinion-of-the-bureau-of-the-ccje-on-serbia-of-4-may-2018/16807d51ab>

⁹⁰ See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011).

⁹¹ See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011), para 92(4).

⁹² See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission’s Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023).

⁹³ See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission’s Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023), para 17.

90. The CCJE member in respect of the **Slovak Republic** states that, despite the change in the selection of new judges through a collective selection procedure launched in 2017, there is no continuous replenishment of the judiciary also due to the upcoming natural generation exchange (in three years, approximately 300 judges will reach the age of 65, the age when a judge can be recalled). This may jeopardise the speed and quality of the judiciary's performance, because the complicated selection process of new judges often takes a year from the moment of the departure of a judge.
91. When filling judicial vacancies, the institute of a trainee judge (traditional until 2011), whose preparation for judicial office (under the supervision of a judge – trainer) usually lasts at least 3 years, is insufficiently used. Since its reintroduction in 2015, only 16 trainee judges have been accepted throughout the Slovak Republic. Thus, there is practically no systematic long-term preparation for the post of judge, a fact which seems to be reflected in the quality of new judges.
92. The method of cessation of the judge's function upon reaching the age of 65, when according to the current legislation (taking into account the case law of the Constitutional Court), it is in fact the decisions of the Judicial Council whether and when it will file a motion for the removal of such a judge and then it is up to the President whether and when to recall the judge, results in an undesirable state of uncertainty in relation to judges who have reached the age of 65.

93. The CCJE member in respect of **Switzerland** states that it is understandable that the appointment procedure of judges in Switzerland – elected by parliaments (rarely by direct popular vote) and not appointed by an independent body or by the executive – may raise questions in member States that are not familiar with the Swiss system. Certainly, this procedure implies a higher influence of the legislative power on the appointment decisions than in other States. This implies the risks which are outlined in para 16 of the Report on judicial independence and impartiality in the CoE member States in 2017 (hereafter referred to as the 2017 Report). However, as it is explained in the 2017 Report, paras 85 to 87, this appointment procedure has a very long tradition in Switzerland, where it is perceived as an expression of democracy within the judiciary (2017 Report, paragraph 86). Furthermore, with this long tradition, the parliaments have developed a respectful way of exercising their right to elect judges, refraining from appointing (or refusing to appoint, see the 2017 Report, paragraph 84) for political reasons – although exceptions do occur, especially at the cantonal level. The practice, more than the formal rules, guarantees that appointment decisions are taken impartially (see on this point the 2017 Report, paragraph 16). Moreover, it is noteworthy that the election by parliament is often prepared by experts, who are either members of independent consulting panels or members of parliamentary commissions. The latter exists for the election of Federal Judges and Supreme Court Justices since 2003: a commission composed of members of the Parliament's two Houses, and representing the political parties sitting in Parliament, examines the curricula of the candidates, holds hearings and finally proposes one name for the election.

94. The AEAJ and MEDEL state that as regards **Turkey**, the problems reported by them in 2017 and reflected in the CCJE Bureau’s 2017 Report are still present. The AEAJ particularly refers to the reports and documents of the Platform for an independent judiciary in Turkey, of which the AEAJ is a member, raising issues related to dismissing judges from office and transferring them to remote courts, as well as investigations and arrests of judges within the framework of the state of emergency measures which were put in place following the attempted “coup d’état” in 2016⁹⁴ and have since been lifted.
95. Earlier, the ECtHR found, in a case concerning the dismissal of a judge pursuant to a legislative decree adopted during the state of emergency, that a new remedy was available, provided for in the Legislative Decree no. 6851, enabling the applicant to challenge her dismissal before the Supreme Administrative Court⁹⁵. The latter’s decision could then be challenged before the Constitutional Court. The ECtHR also stated that its conclusion did not in any way prejudice a possible re-examination of the question of the effectiveness of the remedy in question, and particularly the ability of the national courts to establish consistent case law compatible with the ECHR requirements⁹⁶.
96. The CCJE member in respect of Turkey reports, with reference to the information received from the Litigation Bureau of the Council of Judges and Prosecutors (CJP), that all dismissed judges filed a case before the Council of State (Supreme Administrative Court), with some submitting several files for the same issue. According to the CJP data as of 1 September 2019, the Council of State completed 9 hearings and decided on these cases. The CJP has not yet been officially notified of the judgments but they are expected very soon. As regards other cases, most of them have not yet come to the stage when the final decision is to be rendered.

97. As regards **Ukraine**, a new bench was appointed to the Supreme Court following the constitutional amendments and legislative changes introduced in 2016. New judges with varied profiles took office after successfully completing a procedure aimed at selecting candidates with the necessary level of professional competence and personal integrity. Another important consequence of the constitutional changes was the severing of the link between parliament and the judiciary and its self-governing structures, one of the issues at the origin of the finding of a violation by the ECtHR in the case of *Oleksandr Volkov v. Ukraine*⁹⁷. Following the change in government after the 2019 presidential and parliamentary elections, new legislative proposals have been put forward concerning the judiciary and its institutions, including as regards the number of Supreme Court judges, the structure, mandates and membership of the judicial self-government bodies, and the rules governing disciplinary proceedings against judges.
98. As it was reported by the media on 12 September 2019, “international experts of projects of the European Union, Canada and the United States criticised the bill on changes in

⁹⁴ See at <http://www.aeaj.org/blog> ; https://www.aeaj.org/media/files/2019-01-23-22-Platform_Universal%20Declaration%20of%20Human%20Rights%20and%20its%20recognition%20in%20Turkey.pdf ; <http://www.aeaj.org/media/files/2017-07-20-74-Situation%20of%20Turkish%20Judiciary%20-%20Platform%20Report.pdf>

⁹⁵ The highest administrative court in Turkey is the Turkish Council of State.

⁹⁶ See ECtHR *Çatal v. Turkey*, application 2873/17, 10 March 2017.

⁹⁷ ECtHR *Oleksandr Volkov v. Ukraine* (Application No. 21722/11), 9 January 2013.

the judicial administration bodies No. 1008 and urged the Verkhovna Rada not to accept the document without professional discussion⁹⁸. The amendments concern three laws: on the judiciary and status of judges, on the High Council of Justice (HCJ) and on the government purification.

99. The CCJE Bureau is of the opinion that it is important to build on the achievements resulting from the reforms introduced previously in Ukraine, which have been widely recognised within the international community. The CCJE Bureau hopes that Ukraine will make further progress and will ensure that the judicial system, and specifically the procedures for becoming a judge at any level, will comply with the CoE standards.
100. In this context, the CCJE Bureau further notes that several aspects of the above-mentioned draft Law No. 1008, especially as regards the proposal to reduce the number of judges of the Supreme Court and having the sitting judges undergo a new selection procedure with a view to their (re)appointment, transfer or dismissal, raise valid concerns vis-à-vis the principle of irremovability and should be reconsidered.
101. Overall, the CCJE Bureau considers that it would be important that all reforms be based on the CoE standards, in particular the case law of the ECtHR, the Opinions of the CCJE and the Venice Commission and the recommendations of GRECO.

B. Organisational independence: Councils for the Judiciary and the administration of courts

102. The CCJE member in respect of **Andorra** states that the High Council of Justice (CSJ) has no organisational functions. Such functions belong exclusively to the presidents of the courts, who are inevitably judges of the same jurisdiction. While this is not a major concern, for the appointment of presidents of courts the CSJ must consult the members of the court. The result of the consultation is not binding. Some judges would like to have a more decisive participation in this process.

103. As regards **Austria**, the CCJE received, as already mentioned above, a letter from the AEAJ of 19 January 2019. In addition to the issues highlighted above, the letter also concerned the powers and jurisdiction of the president of the Administrative Court of Vienna and relations between the president and the government of the province of Vienna in light of the applicable European standards. The AEAJ referred in particular to what it considered to be a broad range of powers and noted that they were not balanced by mechanisms to ensure transparency, participation and information.
104. As the AEAJ stated, the president of the Administrative Court of Vienna was subordinated to the orders of the government of the province of Vienna in matters of

⁹⁸ See at <https://ukranews.com/news/653333-izmeneniya-sistemy-pravosudiya-po-zakonoproektu-1008-ne-mogut-byt-prinyaty-bez-otkrytoj-diskussii> ; <https://www.unian.net/politics/10682274-predstavitelstvo-es-i-posolstvo-kanady-v-ukraine-negativno-ocenili-zakonoproekt-1008.html>

judicial administration (reportedly, section 20 of the Viennese Law on Public Service applied to the president, where it was explicitly regulated that employees must follow orders).

105. However, the information gathered through the comments of the CCJE member in respect of Austria showed that, as regards the issue of orders of the executive (government of the province or its administration) to the president of the court, there was no explicit legal provision which stated that such orders were possible and that the president had to follow them. The legal provision which was quoted in the request of the AEAJ (section 20 of the Viennese Law on Public Service) regulated the general duties of public servants in relation to their superiors. The question was whether this provision was applicable to the relations between the president of the court and the administration of the provincial government, and if so, then in which circumstances.
106. Therefore, the CCJE Bureau was concerned with the unclear legal regulations regarding the possibility of the provincial government to give orders to the president of the court given the sensitivity of the issue and the importance of protecting the independence of the court president and the confidence of the public in that independence. Taking into account the broad powers of the president of the Administrative Court of Vienna, it would be very problematic if the exercise of these powers could in any way be influenced by orders from the provincial government.
107. The CCJE Bureau accordingly concluded⁹⁹ that the situation as regards the possible subordination of the president of the Administrative Court of Vienna to the orders of the government of the province of Vienna in matters of judicial administration was unclear and should at least be clarified and, if it existed, be abolished through a change in legislation.

108. The CCJE member in respect of **Belgium** states that the purpose of the law adopted in 2014, establishing the autonomous management of the judicial organisation, was to transfer the justice management to newly created bodies within the judicial organisation: the College of Courts and Tribunals, the College of Public Prosecutors and the Executive Committee of the Court of Cassation. The legislator left it to the government to determine the scope, phasing and modalities of the transfer of management powers, which, to date, five years after the adoption of the law, has not been done. This delegation to the government raises questions with regard to the principle of the legality of the judicial organisation. The law creates a system of supervision by the Minister of Justice and the Minister of the Budget over the management acts of the above-mentioned Colleges. One of the instruments of this supervision is the management contract. The stated objective is to impose priorities, to direct the resources allocated according to them, and thus to enable the executive to play a significant role in the establishment of judicial policies. The law provides that two Government Commissioners attend meetings of the Colleges having a right of appeal against the decisions of the Colleges to the Minister. The system, in its current version, would appear to raise concerns about the respect for the independence of the judiciary at an organisational level.

⁹⁹ See the full text of the CCJE Bureau's Opinion at <https://rm.coe.int/opinion-29-march-2019-austria-2019-final/168093c034>

109. Since 2014, the Department of Justice lost its autonomy in the recruitment of staff. From this point of view, the judiciary is assimilated to a government administration: no magistrate, clerk or secretary may be appointed, hired or promoted without the agreement of the financial inspectorate. This agreement is only given if there is an available budgetary margin. The general basis for assessing this structural balance is provided by a complex mathematical model of expenditure projection, which does not take into account either the staff framework prescribed by law or the functionally justified nature of a job. In some jurisdictions, the staff is fully provided, while in others it is only about 80% or 90%, depending on the category concerned.
110. In the field, this policy of not filling the staff positions provided for by law and restricting the budgets leads to an unhealthy competition between the various judicial entities in order to obtain a vital share of available resources. This approach also undermines the functioning of the judiciary and, consequently, its ability to fulfil its constitutional mission. The shortage of judicial and non-judicial staff has the effect of lengthening the time required to process the cases, particularly as regards the level of appeal. Magistrates' associations have taken various actions to ensure that the staff frameworks provided for by law are met.

111. MEDEL states that in **Bulgaria**, the judges' chamber of the Supreme Judicial Council consists of 14 members and includes the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, six members elected directly by the judges, and six members elected by Parliament. Currently, the judges elected by their peers are only 6 of the 14 members of that body. MEDEL points out that this is contrary to European standards.
112. The CCJE Bureau recalls in this respect that indeed, according to the Magna Carta of Judges, "the Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers"¹⁰⁰. At the same time, Rec(2010)12 provides that "not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary"¹⁰¹. The composition of the Bulgarian Supreme Judicial Council does not correspond to either of these two provisions.
113. MEDEL also states that elections of members of the judges' chamber by Parliament in their view carry a risk of politicisation. They argue that the process of nominating members of the parliamentary quota is not transparent. These members, during the mandate, may continue maintaining ties with the political parties that nominated them. MEDEL states that the judges' chamber of the Supreme Judicial Council in general fails to meet the expectations of judges and society to safeguard the independence of the judiciary and of individual judges. The Supreme Judicial Council adopted on 23 October 2018 Standards for the independence of the judiciary. This is a positive development. The impact of this document is still to be evaluated.
114. The final Report of the European Commission on Progress in Bulgaria under the Cooperation and Verification Mechanism (CVM), published on 22 October 2019, emphasised the progress made in respect of the benchmarks established earlier, in

¹⁰⁰ CCJE Magna Charta of Judges of 2010 (fundamental principles), para 13.

¹⁰¹ Rec(2010)12, para 27.

particular as regards the following recommendations: 1) to ensure a transparent election for the future Supreme Judicial Council, with a public hearing in the National Assembly before the election of the members of the parliamentary quota, and giving civil society the possibility to make observations on the candidates; 2) to improve the practical functioning of the Judicial Inspection and the follow-up by the Supreme Judicial Council to the inspectorate's findings, in particular on integrity issues, consider soliciting external assistance, for example from the Structural Reform Support Service and/or the Council of Europe.

115. The CVM Report confirmed the provisional closure of these benchmarks and mentioned that, “whilst there are inevitably relevant on-going issues which will need continued attention from the Bulgarian authorities, the recommendations made in January 2017 have been satisfactorily addressed”¹⁰².

116. The CCJE member in respect of **Croatia** states that the State Judicial Council has a limited mandate to elect, promote and dismiss judges from office and to take disciplinary proceedings against judges. This body has no authority with regard to the administration of the courts which is mostly in the hands of the Ministry of Justice and presidents of courts.

117. The State Judicial Council is an independent body in the way in which it is elected, composed and performs its duties. However, it does not publicly take a stand when the independence of the judiciary or of particular judges is at stake, even though in the Constitution, it is defined as a body to protect the independence and impartiality of the judicial power.

118. The CCJE member in respect of **Malta** states that the administration of courts is in the hands of civil servants. The judiciary has no say in the appointment, dismissal or changing of staff, which come under the direct control of the Director General appointed by the government. Sometimes, as regards the change in staff, members of the judiciary are consulted, but the last word belongs to the Director General.

119. As regards **Montenegro**, the CCJE received a letter on 1 June 2018 from the Association of Judges concerning alleged problems with the setting up of the Judicial Council of Montenegro, as well as its composition. The problem appeared to be that four members of the Judicial Council from the rank of prominent lawyers were to be elected by Parliament by a two-thirds majority, and because of the boycott of parliamentary activities by the opposition, this majority could not be secured. If the new Judicial Council were not set up by 2 July 2018, there would be a risk that the judiciary would be blocked.

120. The Association also indicated that the Judicial Council included the President and nine members: the President of the Supreme Court, four judges, four prominent lawyers and the Minister in charge of judicial affairs. The President of the Judicial Council was elected

¹⁰² Final Report of the European Commission on Progress in Bulgaria under the CVM, published on 22 October 2019, pp. 4-7.

from among the members of the Judicial Council and had a “golden vote” in the case of an equal number of votes. However, after amendments to the Constitution of Montenegro, as well as to the Law on Judicial Council and Judges, the President could not be elected from among the judges. According to the Association of Judges, this greatly jeopardised the autonomy and independence of the judicial authority and opened the door for direct political pressure on the work of the judiciary, as demonstrated by the concrete situation of the inability of Parliament to elect the members of the Judicial Council from the ranks of prominent lawyers.

121. The CCJE Bureau referred to the CCJE Magna Carta of Judges (2010), as well as CCJE Opinion No. 10(2007) on the Council for the Judiciary at the service of society which stated that such Councils can be either composed solely of judges or have a mixed composition of judges and non-judges¹⁰³. When there is a mixed composition (judges and non-judges), in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers¹⁰⁴.
122. When membership is mixed, the functioning of the Council for the Judiciary should allow no concession to the interplay of parliamentary majorities and pressure from the executive, and be free from any subordination to political party consideration, so that it may safeguard the values and fundamental principles of justice¹⁰⁵.
123. The CCJE Bureau concluded in respect of Montenegro that, while the requirement of the two-thirds majority in Parliament for the election of four members of the Judicial Council from the rank of prominent lawyers was in itself acceptable, since it provided for a qualified majority necessitating significant opposition support, the overall composition of the Judicial Council was not in line with the CCJE standards, as only half of its the members were judges and, moreover, the President of the Council could not be one of the judge members.
124. As it was reported on 21 June 2019, the authorities did not follow the proposals of the CCJE, and Parliament failed to appoint four Judicial Council members among prominent lawyers, since the deputies representing the opposition did not attend the vote, and the required majority could not be reached¹⁰⁶.

125. The AEAJ has brought to the attention of the CCJE numerous reports and documents concerning the situation in **Poland**, including the AEAJ statement on the situation of the Polish judiciary of 28 June 2018¹⁰⁷, the position paper of the Executive Board of the ENCJ of 16 July 2018, followed by the decision of the ENCJ General Assembly of 17 September 2018 to suspend the membership of the Polish National Council of the

¹⁰³ See the CCJE Opinion No. 10(2007) on the Council for the Judiciary at the service of society, para 16.

¹⁰⁴ Ibid., para 18.

¹⁰⁵ Ibid., para 19.

¹⁰⁶ See at <https://www.mina.news/english/no-necessary-majority-for-election-of-judicial-council-members/>

¹⁰⁷ See at <https://www.aej.org/media/files/2018-06-28-17-Scan2Mail.pdf>

Judiciary¹⁰⁸, as well as many resolutions and declarations issued by the Polish judicial associations¹⁰⁹. It also refers to the documents adopted by the EAJ¹¹⁰ and MEDEL¹¹¹.

126. MEDEL also points to challenges to judicial independence in Poland, drawing attention notably to the reforms of the National Council of the Judiciary and the resulting dependence of this institution on the executive power¹¹².
127. The CCJE Bureau dealt with these issues in its 2017 Report, based on the situation at that time. It adopted Opinions and Statements on the situation in Poland on 7 April 2017, 17 July 2017, and 12 October 2017. The CCJE plenary meeting also adopted, on 10 November 2017, a Statement on the situation of the independence of the judiciary in Poland. These documents reflect the CCJE's assessment as to the seriousness of the situation with which judges in Poland are faced as a result of the Act on the Supreme Court adopted in December 2017; the Act on the National Council of the Judiciary adopted also in December 2017; and the Act on the Ordinary Courts Organisation adopted in July 2017.
128. The development of these draft laws and their adoption have also been strongly criticised by the CoE, the EU and a range of international organisations, i.e. the ENCJ¹¹³, the CCBE¹¹⁴, the EAJ, the AEAJ, as well as by the Italian High Council for the Judiciary¹¹⁵, actors.
129. The latest developments on the part of the CoE include the Statement of the CoE Commissioner for Human Rights on 3 September 2019 where she mentioned: "In Poland in March, I raised the country's judicial reform, accompanied by a publicly financed campaign to discredit judges and negative statements by officials, and concluded that it has had a major impact on the functioning and independence of the country's justice system, including its constitutional court and council for the judiciary. I also criticised the dismissal, replacement and demotion of hundreds of court presidents and prosecutors, the use of disciplinary proceedings against outspoken judges and prosecutors, and the

¹⁰⁸ See at <https://www.encj.eu/node/495>

¹⁰⁹ By way of example: <http://themis-sedziowie.eu/materials-in-english/resolution-of-assembly-of-representatives-of-judges-of-the-regional-court-in-lodz-11-june-2018/>

¹¹⁰ See at https://www.aej.org/media/files/2018-11-17-47-EAJ%20resolution%20on%20Poland_MArrakech%202018.pdf

¹¹¹ See at https://www.medelnet.eu/index.php?option=com_content&view=article&id=408:krakow-declaration&catid=57:europa&Itemid=179

¹¹² See at <https://www.medelnet.eu/index.php/news/europe/460-medel-statement-on-the-suspension-of-the-polish-judiciary-council-by-the-encj> ;
<https://www.medelnet.eu/index.php/activities/an-independent-judiciary/507-medel-statement-on-the-new-infringement-procedure-against-poland> ;
<https://www.medelnet.eu/index.php/news/europe/473-medel-sofia-statement> ;
<https://www.medelnet.eu/index.php/news/europe/467-medel-statement-on-the-eu-commission-s-decision-of-bringing-poland-to-the-ecj> ;
<https://www.medelnet.eu/index.php/news/europe/408-krakow-declaration> ;
<https://www.medelnet.eu/index.php/news/europe/367-medel-declaration-on-reforms-of-the-judiciary-in-poland>

¹¹³ See the statement of the Executive Board of the ENCJ, 17 July 2017.

¹¹⁴ The President of the CCBE wrote a letter on this subject to the President of Poland on 18 July 2017.

¹¹⁵ See the Resolution approved by the Italian High Council for the Judiciary (Consiglio Superiore della Magistratura), 20 July 2017.

combination of the powerful functions of Minister of Justice and of Prosecutor-General in the hands of an active politician”¹¹⁶.

130. Moreover, in her Report following her visit to Poland in March 2019, published on 28 June 2019, the CoE Commissioner for Human Rights referred to the CCJE Bureau’s documents concerning Poland, and noted that “the various aspects of Poland’s wide-ranging judicial reforms have met with serious concern, expressed by a host of domestic stakeholders, as well as by Poland’s international partners. The reforms, carried out in several stages since late 2015 and still on-going, have had a major impact on the functioning and independence of practically all key building blocks of Poland’s justice system”¹¹⁷.
131. On 24 May 2018, the CCJE received a letter from the Polish Judges Association “IUSTITIA” requesting the CCJE to express once again its position, particularly on the process of replacement of 149 Polish court presidents and vice-presidents, the formation of the new National Council of the Judiciary, the termination of the tenure of the First President and judges of the Supreme Court and the new model of disciplinary proceedings for judges.
132. The CCJE Bureau shared the strong concern of the “IUSTITIA” Association about the Act on the organisation of common courts giving the Minister of Justice – who is at the same time the Prosecutor General - the power to dismiss court presidents and to replace them, as well as other powers in the court administration and management. The process regarding the replacement of 149 Polish court presidents and vice-presidents clearly was not in line with the CoE’s standards on judicial independence and the CCJE considered it a major setback for the rule of law and judicial independence in Poland.
133. Concerning the formation of the new Polish National Council of the Judiciary, the CCJE Bureau agreed that, based on the revised new law already adopted, it represented a major setback and contravened the applicable CoE standards.
134. In response to the question of the termination of the tenure of the First President and judges of the Supreme Court, the CCJE Bureau noted that, according to the new Act on the Supreme Court, the latter was subordinated to the Minister of Justice/Prosecutor General regarding the Court’s organisation and its human resources. The Minister of Justice/Prosecutor General was also empowered with the exclusive competence of nominating candidates for judicial office holders in the Supreme Court. In this way, the Act undermined the separation of state powers, the rule of law and the independence of the judiciary in Poland.

¹¹⁶ See the Statement of the CoE Commissioner for Human Rights of 3 September 2019 entitled “The independence of judges and the judiciary under threat” at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat>

¹¹⁷ See the Report of the CoE Commissioner for Human Rights following visit to Poland from 11 to 15 March 2019, published on 28 June 2019 (CommDH(2019)17), para 59, at <https://rm.coe.int/report-on-the-visit-to-poland-from-11-to-15-march-2019-by-dunja-mijato/168094d848>

135. The Bureau of the CCJE¹¹⁸ reiterated that a new parliamentary majority and government must not question the appointment or tenure of judges who had already been appointed in a proper manner¹¹⁹. Any change to the judicial obligatory retirement age must not have retroactive effect¹²⁰. Furthermore, this provision interfered with the guarantees of Article 6 of the ECHR insofar as the current judges of the Supreme Court were seemingly not able to challenge the termination of their mandates before a judicial body¹²¹.
136. As regards the new model of disciplinary proceedings for judges, a significant role of the Minister of Justice/Prosecutor General who had the power to appoint the members of the disciplinary courts, as well as the disciplinary officers (accusers), contradicted Rec(2010)12, as well as numerous judgments of the ECtHR clearly stating that judges in disciplinary proceedings must enjoy the guarantees of Article 6 of the ECHR, including a hearing before an impartial tribunal¹²².
137. The EU has also expressed its serious concerns regarding these three Acts. In October 2018, the Vice-President of the CJEU ordered Poland to immediately suspend the provisions of the Act on the Supreme Court that lower the retirement age for Supreme Court judges to 65, which would have the effect of removing nearly one-third of the Court's judges. This followed action brought by the European Commission before the CJEU, arguing that Poland had infringed the EU law concerning judicial independence by applying the new law to judges appointed before the law was enacted and giving the President of Poland the discretion to extend the judges' terms. The Vice-President ordered that Poland halt enforcement of the law and reinstate any judges previously removed due to the law as an interim measure.
138. On 17 December 2018, the CJEU confirmed the interim measures. On the same day, the government formally reinstated a number of Supreme Court judges who had been forced into early retirement – about a third from the overall number of the Supreme Court Judges¹²³. The CCJE Bureau underlines that this measure, however important it may be, is still very far from being sufficient to address the numerous problems that the judiciary in Poland currently faces.
139. The CJEU issued its decision on 24 June 2019, finding a breach of EU law as a result of the retroactive lowering of the retirement age and the discretion of the President of Poland to extend the mandate of judges beyond the new retirement age. The CJEU argued that the lowering of the retirement age of serving judges “is not justified by a legitimate objective and undermines the principle of the irremovability of judges, that principle being essential to their independence”¹²⁴.

¹¹⁸ See the full text of the CCJE Bureau's Opinion at <https://rm.coe.int/ccje-bu-2018-6rev-en-statement-poland-en/16808b5014>

¹¹⁹ See CCJE Opinion No. 18(2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para 44.

¹²⁰ The Universal Charter of the Judge, Article 8, approved by the International Association of Judges on 17 November 1999.

¹²¹ In this respect, the Bureau of the CCJE referred to the Grand Chamber judgment of the European Court of Human Rights (ECtHR) of 23 June 2016 in the case *Baka v. Hungary*.

¹²² See i.e. ECtHR *Olujic v. Croatia* (application no. 61260/08), 20 May 2010; and *Harabin v. Slovakia* (application no. 58688/11), 20 November 2012.

¹²³ See at <https://www.bbc.com/news/world-europe-46600425>

¹²⁴ See at https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190081_en.pdf

140. An infringement procedure¹²⁵ relating to the amendment of 12 July 2017 to the Law on the Organisation of Ordinary Courts was initiated by the EC in March 2018. The amendment introduced a distinction in retirement age between men and women working as ordinary judges, Supreme Court judges and prosecutors, which the EC argued was contrary to the EU law as regards the equal opportunities and equal treatment for men and women. At the same time, the MoJ was granted the right to decide whether to extend the period of active service of judges, contrary to the EU law. A hearing in this case was held on 8 April 2019. The EC argued that the changes to the respective law (12 April 2018) had not solved all of the issues raised in the application and argued that the CJEU should still adjudicate on the infringement case. On 20 June 2019, the Advocate General of the CJEU concluded that by lowering the age of retirement of ordinary court judges and by vesting the MoJ with the discretion to extend the active period of such judges, Poland was in breach of EU law. The Advocate General argued that the different retirement age for men and women was in violation of the EU law¹²⁶. The verdict of the CJEU is awaited.
141. On 3 April 2019, the EC initiated another infringement procedure relating to the new model of disciplinary investigations, procedures and sanctions against judges (including against judges who had requested preliminary rulings of the CJEU). On 27 June 2019, the Advocate General issued his opinion, stating that the newly created Disciplinary Chamber of the Supreme Court did not satisfy the requirements of judicial independence under EU law in light of the role of the legislative authorities in electing the 15 judicial members of the National Council for the Judiciary and the role of that body in selecting judges eligible for appointment by the President of Poland to the Disciplinary Chamber¹²⁷.
142. The CCJE Bureau notes in particular that in this opinion of 27 June 2019, the Advocate General insisted that “judicial councils should in principle be composed of at least a majority of judges elected by their peers to prevent manipulation or undue pressure”¹²⁸. In doing so, the Advocate General fully echoed the position of the CCJE¹²⁹.
143. The Advocate General emphasised in this opinion that the appointment of judges, as well as the disciplinary regime, constitute part of the guarantees of judicial independence. Hence, they must be free from any influence from the legislative and executive authorities, and the “mandates of members of judicial councils should not be replaced at the same time or renewed following parliamentary elections”¹³⁰. He concluded that the “manner of appointment of the members of the NCJ discloses deficiencies that appear likely to compromise its independence from the legislative and executive authorities”¹³¹.

¹²⁵ Infringement procedure is a step envisaged in Article 7 of the Treaty of the European Union which says that the European Council may determine that there is a clear risk of a serious breach by a member State of the values referred to in Article 2, and decide on the following formal steps.

¹²⁶ See at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190078en.pdf>

¹²⁷ See at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190083en.pdf>

¹²⁸ See at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190083en.pdf>

¹²⁹ See the CCJE’s Magna Carta of Judges (Fundamental Principles) (2010), para 13.

¹³⁰ See at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190083en.pdf>

¹³¹ See at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/cp190083en.pdf>

144. As regards **Romania**, the Judges Forum Association, on 15 November 2018, requested that the CCJE express its position as regards the independence of the judiciary in Romania. The request referred to a battle going back to 2017 over the preservation of the independence of judges and prosecutors, as well as other issues. The request pointed to problems which had received widespread national and international attention, as regards the fight against corruption and, in particular, the dismissal, in July 2018, by the Minister of Justice of the Chief Prosecutor of the National Anticorruption Directorate¹³². MEDEL has also informed the CCJE that it has observed with much concern the revision of these three basic laws on the judiciary in Romania.
145. As to issues to be examined by the CCJE, the Romanian Judges Forum Association pointed to the Amendments to the following Laws: 1) on the Superior Council for Magistracy which entered into force in October 2018; 2) on the Statute of Judges and Prosecutors which entered into force in October 2018; 3) on Judicial Organization which entered into force in July 2018.
146. The request of the Romanian Judges Forum Association described how these amendments were developed and proposed, in their view without any meaningful dialogue and involvement of the judiciary and the prosecution. The request also referred to the Opinion of the Venice Commission on the above-mentioned Amendments which confirmed that “the legislative process took place in a context marked by a tense political climate, strongly impacted by the results of the country's efforts to fight corruption”¹³³ and that “this context makes any legislative initiative, which has the potential of increasing the risk of political interference in the work of judges and prosecutors, particularly sensitive”¹³⁴.
147. In its assessment, the CCJE Bureau took note of the Venice Commission’s above-mentioned Opinion, as well as of the Progress Report issued by the European Commission, on 13 November 2018, in the framework of the Cooperation and Verification Mechanism (CVM), which *inter alia* called on Romania to suspend immediately the implementation of the above-mentioned amendments, and to revise them taking fully into account the recommendations under the CVM and those issued by the Venice Commission¹³⁵.
148. The CCJE Bureau noted that, as regards the revocation of a SCM member, according to the Amendments to the Law on the Superior Council for Magistracy, this was possible at any time if he/she no longer met the legal requirements for being an elected SCM member; was the subject of one of the disciplinary sanctions provided for by law; and the majority of judges in the courts that he/she represented withdrew confidence in respect of him/her.

¹³² Technically the Chief Prosecutor of the National Anticorruption Directorate was dismissed by the President of Romania who initially objected to the dismissal and went ahead with it only after a decision by the Constitutional Court of Romania that upheld the Justice Minister's decision and required the President to sign the dismissal.

¹³³ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 13.

¹³⁴ *Ibid.*, para 17.

¹³⁵ See at http://europa.eu/rapid/press-release_IP-18-6365_en.htm .

149. Furthermore, a vote of no-confidence could be adopted by petition signed by the majority of judges in those courts. This would mean that the revocation could be decided without holding a meeting and without giving the possibility to the concerned SCM member to address the judges and defend his/her position¹³⁶.
150. Consequently, the CCJE Bureau agreed with the Venice Commission in that as concerned the first ground for revocation, it was not clear what exactly it meant¹³⁷, and that “the possibility to revoke an SCM member for having been the subject of one of the disciplinary sanctions provided by law for judges and prosecutors is also questionable, as it allows the dismissal of the person even for the lightest disciplinary sanctions”¹³⁸.
151. The CCJE Bureau also fully endorsed what the Venice Commission stressed regarding the third and most problematic ground, allowing the revocation of elected SCM members by a withdrawal of confidence, i.e. by vote of the general meetings of courts.
152. It was also important to note that the already mentioned European Commission's Progress Report on Romania under the CVM emphasised that the key problematic provisions included in particular the extended grounds for revoking SCM members¹³⁹.
153. Accordingly, the CCJE Bureau recommended to reconsider the grounds for the revocation of SCM members and in particular to remove the possibility to revoke elected members of the SCM through a no-confidence vote of the general meetings of courts, including by way of a petition¹⁴⁰.
154. The CCJE Bureau further noted that according to the Amendments to the Law on the SCM, the decision-making on issues of specific relevance for the two professions - judges and prosecutors - was transferred from the SCM Plenum to the two SCM Sections (for judges and for prosecutors, respectively). While this structural change, aiming at clearly separating the careers of judges and prosecutors, did not in itself contradict European standards, it had certain repercussions as regards some members of the SCM.
155. The CCJE Bureau therefore concluded¹⁴¹ that the exclusion of the SCM members, who were civil society representatives, from all meetings of the SCM Sections – bodies entrusted with decision-making under the amendments – ran contrary to the European

¹³⁶ See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 145.

¹³⁷ See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 141.

¹³⁸ Ibid., para 142.

¹³⁹ See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 3.

¹⁴⁰ See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 165.

¹⁴¹ See the full text of the CCJE Bureau's Opinion at <https://rm.coe.int/ccje-bu-2019-4-en-opinion-romania-2019-final-25-april-2019/168094556c>

standards. The CCJE Bureau consequently recommended that it was not appropriate to have such a limited role of civil society representatives in the work of the SCM and that it should be reconsidered.

156. The final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, pointed to the absence of progress in respect of the benchmarks established earlier, in particular as regards the following recommendations: 1) to suspend immediately the implementation of the justice laws (including the above-mentioned three laws) and subsequent Emergency Ordinances; 2) to revise the justice laws taking fully into account the recommendations under the CVM and issued by the Venice Commission and GRECO. The CVM Report pointed out that “these recommendations were not followed by the Romanian authorities, who also argued that the justice laws had legal effects which could not be halted”¹⁴².

157. As regards **Serbia**, as mentioned, the Judges Association of Serbia in its letter of 16 April 2018, requested that the CCJE assess the compatibility of the proposed amendments to the Constitution with European standards. The Association’s points of concern also included the procedure for the election of members of the High Judicial Council (HJC), as well as its composition and dissolution.
158. According to the draft amendments, a qualified majority (three-fifths) of Parliament would be needed to elect the HJC’s members. If all members were not elected in that manner, the remaining ones should be elected within the following ten days by a five-ninths majority. The CCJE Bureau responded by recommending to uphold the requirement of a qualified majority of three-fifths at the second possible stage of the election process as well.
159. The draft amendments also introduced the possibility of dismissal of the HJC members by a qualified majority of Parliament. The reasons for such dismissal were however not set out and it was simply stipulated that the term of office of a member of the HJC shall cease for reasons prescribed by the Constitution and law. The CCJE Bureau emphasised that not mentioning the reasons for dismissal and, moreover, opening a door for doing it through simple legislation, would leave room for arbitrariness and politically motivated initiatives to dismiss the HJC members.
160. The draft amendments also changed the composition of the HJC, as well as its working and decision-making procedures. They would result in a reduction of the number of judge-members to five. The HJC would then have ten instead of eleven members and be composed of two equal-sized groups – five judges, to be elected by their peers, and five “prominent lawyers”, to be elected by Parliament.
161. In the opinion of the CCJE Bureau, an even number of members would clearly be inappropriate for such a body, which would inevitably have difficulties adopting decisions in case of different opinions. The HJC President may not be chosen from among the judge members, and it seemed that he/she would not have the decisive vote when the opinions within the HJC would be split. This was commendable since it meant that the non-judges of the HJC would not have *de facto* majority.

¹⁴² See the final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, pp. 4-7.

162. On the other hand, a body of this nature would clearly have issues (including sensitive and important ones) when the opinions of its members would be equally split. The composition of the HJC should therefore be kept, in the opinion of the CCJE Bureau¹⁴³, at an odd number, for example six judges and five non-judges.
163. As mentioned, the Venice Commission issued an Opinion on these draft amendments¹⁴⁴. The Opinion criticised in particular the procedure for the election, composition and dissolution of the HJC¹⁴⁵.
164. Following the Opinion of the Venice Commission, the Serbian authorities introduced a number of positive changes to the amendments which were praised in a Secretariat Memorandum of the Venice Commission¹⁴⁶. It stated in particular that the new text submitted to the Venice Commission was in line with the earlier recommendations as regards the composition of the HJC and the role of Parliament, and also as regards the dissolution of the HJC¹⁴⁷.
165. The amendments have not yet been adopted; it is expected they will be put forward for voting in a Constitutional referendum in 2020.

166. The CCJE member in respect of the **Slovak Republic** states that the Judicial Council is composed of 18 members, of whom 9 judge members are elected by judges, and 9 non-judge members are elected or appointed by Parliament, the President and the Government. In this way, in the Judicial Council, judges elected by their peers do not have a substantial majority as recommended in the CCJE standards.

167. The AEAJ and MEDEL state, as they did in 2017 and as reflected in the CCJE Bureau's 2017 Report, that in **Turkey**, the Council of Judges and Prosecutors (CJP) remained

¹⁴³ See the full text of the CCJE Bureau's Opinion at <https://rm.coe.int/opinion-of-the-bureau-of-the-ccje-on-serbia-of-4-may-2018/16807d51ab>

¹⁴⁴ See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011).

¹⁴⁵ See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011), paras 92(1), 92(2), 92(3).

¹⁴⁶ See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission's Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023).

¹⁴⁷ See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission's Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023), paras 8-11 and 14-15.

politically influenced. MEDEL also refers to the report of the Office of the United Nations High Commissioner for Human Rights¹⁴⁸ on the impact of the state of emergency on human rights in Turkey, which referred to the CJP and stated that “because of the Council’s key role of overseeing the appointment, promotion and dismissal of judges and public prosecutors, the President’s control over it effectively extends to the whole judiciary branch. The United Nations Human Rights Committee has noted that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal”¹⁴⁹.

168. Similar concerns raised by the CoE Commissioner for Human Rights and the Venice Commission as regards the CJP were reflected in the CCJE Bureau’s 2017 Report¹⁵⁰. The Venice Commission stated in its Opinion on the draft Constitutional Amendments, since approved in a referendum and now in force, that it “finds that the proposed composition of the CJP is extremely problematic. Almost half of its members (4+2=6 out of 13) will be appointed by the President. It is important to stress once again in this respect that the President will no more be a *pouvoir neutre*, but will be engaged in party politics: his choice of the members of the CJP will not have to be politically neutral”¹⁵¹.

C. Impartiality of judges, codes of ethics and professional conduct and disciplinary measures

169. As regards **Armenia**, after the events in April-May 2018, known as “the Velvet Revolution”, a new government took office in January 2019 after an overwhelming electoral victory in extraordinary parliamentary elections.
170. The new government announced its intention to pursue a comprehensive reform of the judicial system, focused in particular on strengthening public trust in the judiciary and rooting out corruption and conflicts of interest.

¹⁴⁸ See at https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

¹⁴⁹ See para 34 of the report of the Office of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in Turkey, including an update on the South-East.

¹⁵⁰ See the statement of the CoE Commissioner for Human Rights on 7 June 2017 at http://www.coe.int/en/web/commissioner/country-monitoring/turkey/-/asset_publisher/IK6iqfNE1t0Z/content/turkey-new-council-of-judges-and-prosecutors-does-not-offer-adequate-safeguards-for-the-independence-of-the-judiciary?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-monitoring%2Fturkey%3Fp_p_id%3D101_INSTANCE_IK6iqfNE1t0Z%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2

¹⁵¹ See the Venice Commission Opinion on the Amendments to the Constitution of Turkey adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), para 119.

171. On 10 September 2019, the Ministry of Justice launched a series of public deliberations on a new draft Strategy for Judicial and Legal Reforms in which the government has outlined its priorities for the judiciary in 2019-2023¹⁵². Initiatives are foreseen in the Strategy inter alia on ensuring the judicial independence and impartiality, improving the public accountability of the judicial power, making the court system free of corruption, increasing the efficiency of the courts' activities and establishing an electronic justice platform¹⁵³.
172. On 27 September 2019, the official Facebook page of the Supreme Judicial Council¹⁵⁴, as well as the media¹⁵⁵ reported that a group of persons followed and harassed the judge of the court of general jurisdiction in Yerevan, exerting psychological pressure, insulting and humiliating her. The judge immediately informed the Supreme Judicial Council of what had happened and contacted the police. The Supreme Judicial Council condemned any harassment and pressure on the judge which could undermine her independence and professional activity.
173. The CCJE Bureau noted that it is indeed the role of the Supreme Judicial Council to ensure the effective protection of any judge who finds him/herself subject to external threats and intimidation.

174. The CCJE member in respect of **Belgium** states that a law promulgated in March 2019, which will enter into force on 1 January 2020, provides that the general principles relating to the ethics of serving, substitute and non-professional judges will be established by the High Council of Justice after consulting the Judicial Advisory Council. The duties of the office of judge should be interpreted, in particular, in the light of these general principles of ethics. This legislative development is a follow-up to the "Guide for judges, principles, values and qualities" (ethics guide) published in 2012.

175. By letter of 5 October 2017, the Judges Association of **Bulgaria** requested the opinion of the CCJE with respect to certain amendments of 11 August 2017 to the Bulgarian Judicial System Act, Art 230 (1) concerning:
- the provision requiring the judges and prosecutors to declare their membership in professional organisations;
 - the provision calling for the removal of judges and prosecutors from office following a public criminal charge against them concerning premeditated crime.

¹⁵² See at <http://moj.am/en/article/2510>

¹⁵³ See at https://www.e-draft.am/en/projects/1900/justification#_Toc17716617

¹⁵⁴ See at https://www.facebook.com/permalink.php?story_fbid=1273910179457288&id=439137872934527&__xts__%5B0%5D=68.ARDNFLq2-Ls3ee8_N708vQR8PCHCiZbFmXWT4o2KM265WSKcAZij4IbNkgNBFX-xfnmnmHluOVuFW4jYktaH_FCwDA_IRECFLsakhLSmAOrUuEY7IWgd0ZzINYY8iPAEhtiWuxGOTpW_LH1

¹⁵⁵ See at https://arminfo.info/full_news.php?id=45620&lang=3

176. The Bulgarian Judges Association considered that the amendments imposed restrictions on the freedom of association of judges and had a chilling effect on judicial independence. Furthermore, according to the Bulgarian Judges Association, the provision concerning removal of judges following a public criminal charge against them opened a wide avenue for arbitrary and unsanctionable interventions from the prosecution authorities in order to remove judges from the bench, including judges in pending criminal cases to which the same prosecution authority was a party. No judicial remedies would be available to judges who have been removed from office.
177. The Bulgarian Judges Association also indicated that the amendments were adopted in haste, without any public discussion, not even with the Bulgarian judiciary. The Bill was submitted to Parliament on 4 July 2017 and was adopted in the first reading on 27 July 2017.
178. The Bureau of the CCJE recalled that the CoE Committee of Ministers had recognised the essential role of judges' associations in ensuring judicial independence and the rule of law, as well as in protecting the interests of judges. In that respect, judges should be free to form and join professional organisations¹⁵⁶.
179. The CCJE emphasised the role of judges' associations in a democracy based on the rule of law and that judges have the right to be members of national or international associations of judges, entrusted with the defence of the mission of the judiciary in the society¹⁵⁷. The right of judges to freely form and join associations was also endorsed by the General Assembly of the United Nations as one of the fundamental principles¹⁵⁸.
180. The CCJE Bureau encouraged the Bulgarian authorities to initiate a process for repealing the provision requiring the Bulgarian magistrates to declare their membership in professional organisations.
181. As regards the provision calling for the removal of judges from office following a public criminal charge against them, the CCJE Bureau underlined that judges should be criminally liable in ordinary law for offences committed outside their judicial office. However, criminal liability should not be imposed on judges for unintentional failures in the exercise of their functions.
182. The CCJE Bureau, encouraging the Bulgarian authorities to initiate a process for repealing this provision, concluded¹⁵⁹ that the suspension or removal of judges from office should not automatically be a disciplinary reaction generally imposed on judges alleged to have committed criminal actions, even for alleged cases of intentional or premeditated crimes. Each case should be dealt with individually, by an independent body, respecting all fair trial requirements, including the right to appeal, the presumption of innocence and the requirement of proportionality of sanctions.

¹⁵⁶ See Rec(2010)12, para 25, and the Explanatory Memorandum to the Recommendation, para 33.

¹⁵⁷ See CCJE Magna Charta of Judges of 2010 (fundamental principles), para 12.

¹⁵⁸ See the Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, paras 8-9.

¹⁵⁹ See the full text of the CCJE Bureau's Opinion at <https://rm.coe.int/opinion-of-the-ccje-bureau-following-the-request-of-the-bulgarian-judg/16807630af>

183. The CCJE member in respect of Bulgaria provided an update of the situation in 2019. There were no further developments as regards the freedom of association of judges. As regards the suspension or removal of judges from office, by Constitutional Court decision of 21 February 2019, issued upon the request of the Supreme Court of Cassation, the provision prescribing automatic suspension and removal was declared contrary to the Constitution and it is no longer applicable. This is to be welcomed.
184. MEDEL also noted the above-mentioned issues, pointing out that the requirement to register membership even in associations of judges would have a chilling effect on judges, deterring the exercise of their right to freedom of association.
185. MEDEL refers to the principle, accepted by CCJE¹⁶⁰, that rules of ethical conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not in itself constitute a disciplinary infringement.
186. MEDEL also states that from 1 January 2018 to 8 April 2019, the Bulgarian Judicial Act was subject to six amendments, adopted in haste, without any public and professional discussion.
187. The above-mentioned final Report of the European Commission on Progress in Bulgaria under the CVM, published on 22 October 2019, noted “the commitment of the Bulgarian authorities to adopt legislation to repeal provisions in the Judicial System Act requiring automatic suspension of magistrates in case of a criminal investigation against them and reporting of membership in professional associations. The Bulgarian government has already submitted a legislative proposal to the National Assembly”¹⁶¹.

188. The CCJE member in respect of **Croatia** states that judges have a code of ethics and autonomous bodies of judges are applying it. Disciplinary offences and measures are prescribed in the law, and judges are in most cases enjoying all the guarantees of Article 6 of the ECHR. However, in certain particular cases, a problem arises in respect of the length of the disciplinary proceedings which take several years to be concluded. This jeopardises the authority of the State Judicial Council in the public perception, as well as among judges.
189. This same point is relevant as regards criminal proceedings against judges (of which fortunately there are few) where the length of proceedings exceeds all reasonable time limits. This creates an atmosphere of mistrust towards the judiciary and sends a wrong message of corporatism within the judiciary.

190. As regards **Hungary**, Human Rights Watch reported on 14 December 2018 that the ruling party had pushed through Parliament a law which posed a new threat to the

¹⁶⁰ See CCJE Opinion No. 3 (2002) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality, para 60.

¹⁶¹ Final Report of the European Commission on Progress in Bulgaria under the CVM, published on 22 October 2019, p. 14.

independence of the country's judiciary¹⁶². The law created a separate administrative court system that would handle cases directly affecting basic human rights, to be established by January 2020.

191. Human Rights Watch emphasised that, while administrative courts existed in various countries, the problem in Hungary was that they would be at risk of significant political interference by the executive. The Minister of Justice would have wide-ranging powers under the new law, including appointment, promotion and discipline of judges, including court presidents, and would decide on court budgets without any effective judicial oversight. "The fact that a politician, who is part of the executive branch, will select all judges in a court system responsible for holding the administration and the executive to account makes a mockery of the separation of powers and rule of law", insisted Human Rights Watch¹⁶³. It also noted that "the government rushed the law through parliament without waiting for the opinion of the Venice Commission"¹⁶⁴.
192. The Venice Commission's Opinion was published in March 2019, emphasising the broad powers reserved by the law for the Minister of Justice as regards the appointment and career of judges, promotion to positions of responsibility, salary increases, and so on¹⁶⁵.
193. Furthermore, the Minister of Justice was given a central role, with commensurate powers, in the setting up and shaping of the new system of administrative courts during the transitional period, the selection of future judges and the first heads of court. Those powers should be circumscribed by review procedures. The broad powers conferred by the Law on the President of the future Supreme Administrative Court, as well as on the future heads of court, also raised questions¹⁶⁶.
194. The Venice Commission invited the Hungarian authorities to re-examine the legislation and provided a series of recommendations, in particular, as regards the recruitment procedures, the powers of the Minister of Justice, the role of the National Administrative Judicial Council (NAJC), the availability of judicial remedies, the personnel council of the NAJC, the procedure for appointing heads of court, and the selection criteria for candidates for the post of President of the Supreme Administrative Court¹⁶⁷.

¹⁶² See at <https://www.hrw.org/news/2018/12/14/hungarys-latest-assault-judiciary> For all subsequent quotations, please also see this link.

¹⁶³ See at <https://www.hrw.org/news/2018/12/14/hungarys-latest-assault-judiciary> For all subsequent quotations, please also see this link.

¹⁶⁴ See at <https://www.hrw.org/news/2018/12/14/hungarys-latest-assault-judiciary> For all subsequent quotations, please also see this link.

¹⁶⁵ See the Venice Commission's Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules adopted by the Venice Commission at its 118th plenary session (Venice, 15-16 March 2019) CDL-AD(2019)004, para 114.

¹⁶⁶ See the Venice Commission's Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules adopted by the Venice Commission at its 118th plenary session (Venice, 15-16 March 2019) CDL-AD(2019)004, paras 115-116.

¹⁶⁷ See the Venice Commission's Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules adopted by the Venice Commission at its 118th plenary session (Venice, 15-16 March 2019) CDL-AD(2019)004, para 118.

195. On 30 May 2019, it was reported, with reference to the Prime Minister's chief of staff, that Hungary would indefinitely suspend the launch of a new administrative court system in order "to allow disputes about judicial independence to be settled"¹⁶⁸.
196. On 9 July 2019, Amnesty International and the Hungarian Helsinki Committee expressed concern about what it considered to be a deep crisis as regards the judicial independence and impartiality in Hungary¹⁶⁹. In addition to the above-mentioned problems regarding the creation of a system of administrative courts heavily controlled by the executive, Amnesty International and the Hungarian Helsinki Committee pointed to growing attempts by the Hungarian authorities to exert political control over independent institutions, including courts of general jurisdiction.
197. The CoE Commissioner for Human Rights underlined in her Statement of 3 September 2019 that in her report on Hungary, after a visit in February 2019, she highlighted concerns about the effects of a number of legislative measures on the powers and independence of the judiciary, and stressed the need to observe checks and balances in the administration of the judiciary, warning against the risk of its politicisation. Her key recommendation was to strengthen collective judicial self-governance¹⁷⁰.

198. The CCJE member in respect of **Malta** states that judges are bound by the Code of Ethics. Breaches of the Code can be reported to the Disciplinary Committee. This Committee is made up of two judges and two magistrates selected by their peers. Reports to the Committee can only be referred to it by the Minister of Justice or the Chief Justice. If the public has any complaints they must write to either of these two and they will then decide whether to refer the matter to the Committee. The Committee has various powers ranging from admonition to imposing a fine or brief suspension from duties. It cannot dismiss any member of the judiciary; if it considers that behaviour so warrants, it can pass on the matter to the Commission for the Administration of Justice, a much wider body chaired by the President of the Republic. Even this Commission cannot itself dismiss a member of the judiciary, but can only recommend such an action and pass on the matter to Parliament which can only dismiss a member of the judiciary by a two-thirds majority.

199. The AEAJ refers, as regards **Poland**, to the report of the Helsinki Committee on disciplinary proceedings against judges and prosecutors of February 2019¹⁷¹, as well as to the open letter of the Polish Judges Association "IUSTITIA" of 13 February 2019¹⁷² for more detailed information in relation to the cases of initiated disciplinary proceedings,

¹⁶⁸ See at <https://www.euronews.com/2019/05/30/hungary-to-suspend-launch-of-administrative-courts-pm-aide>

¹⁶⁹ Joint Report by Amnesty International and the Hungarian Helsinki Committee of 9 July 2019 entitled "A Constitutional Crisis in the Hungarian Judiciary".

¹⁷⁰ See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

¹⁷¹ See at <https://www.aeaj.org/media/files/2019-02-20-99-disciplinary%20proceedings%20against%20judges%20and%20prosecutors.pdf>

¹⁷² See at <https://www.aeaj.org/media/files/2019-02-20-32-Letter.pdf>

the reasons for which are not based on serious and flagrant misconduct. The AEAJ emphasises that due to the chilling effect on the other members of the judiciary, who are not involved in these specific disciplinary proceedings, this amounts to an undue pressure on the judiciary and violates Rec (2010)12¹⁷³.

200. MEDEL also notes what it considers to be a very difficult situation¹⁷⁴ and, as particularly striking events and threats weakening judicial independence, it points to the new law on the disciplinary procedure which is the subject of an on-going infringement procedure by the European Commission¹⁷⁵.

201. As mentioned, the CCJE was requested by the Judges Forum Association of **Romania** to express its position as regards the independence of the judiciary in Romania, including the Amendments to the Laws on the Statute of Judges and Prosecutors which entered into force in October 2018, and on Judicial Organization which entered into force in July 2018. The questions the CCJE was asked to examine concerned notably the material liability of judges and the establishment of a separate prosecutor office structure for the investigation of offences committed by judges.
202. In considering this issue, the CCJE Bureau took note of the Venice Commission Opinion which criticised the amendments¹⁷⁶, as well as of the Progress Report issued by the European Commission of 13 November 2018 in the framework of the Cooperation and Verification Mechanism (CVM), which *inter alia* called on Romania to suspend immediately the implementation of the above-mentioned amendments, and to revise them, taking fully into account the recommendations under the CVM and those issued by the Venice Commission¹⁷⁷.
203. The Amendments to the Law on the Statute of Judges and Prosecutors prescribed that action for recovery brought by the state against a judge having committed a judicial error in bad faith or as a result of gross negligence was no longer optional. Such action became obligatory, and moreover it was an executive body - the Ministry of Public Finance – which was entrusted to start the procedure by requesting the Judicial

¹⁷³ Particularly the para 22 of Rec (2010)12.

¹⁷⁴ See at <https://www.medelnet.eu/index.php/news/europe/496-medel-letter-to-frans-timmermans-about-the-disciplinary-proceedings-against-judges-in-poland> ;
<https://www.medelnet.eu/index.php/activities/an-independent-judiciary/507-medel-statement-on-the-new-infringement-procedure-against-poland> ;
<https://www.medelnet.eu/index.php/news/europe/473-medel-sofia-statement> ;
<https://www.medelnet.eu/index.php/news/europe/467-medel-statement-on-the-eu-commission-s-decision-of-bringing-poland-to-the-ecj> ;
<https://www.medelnet.eu/index.php/news/europe/408-krakow-declaration> ;
<https://www.medelnet.eu/index.php/news/europe/367-medel-declaration-on-reforms-of-the-judiciary-in-poland>

¹⁷⁵ See at http://europa.eu/rapid/press-release_IP-19-1957_en.htm

¹⁷⁶ See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017.

¹⁷⁷ See at http://europa.eu/rapid/press-release_IP-18-6365_en.htm .

Inspection¹⁷⁸ to provide a report. Such a report was of a consultative nature, and the Ministry may rely on it, but also on its own evaluation. The new procedure would apply both to serving judges and those who were no longer in office.

204. Under the amendments, there was also a risk of two parallel procedures for acting in bad faith or with gross negligence - action for recovery and disciplinary procedure - with different possible outcomes; there was the increased role of the Judicial Inspection in the recovery process and the large powers of the Chief Inspector.
205. The CCJE Bureau in its assessment underlined that a judge should not have to operate under the threat of a financial penalty, the presence of which may, however subconsciously, affect his/her judgment¹⁷⁹.
206. The CCJE has previously established that, “as a general principle, judges personally should enjoy absolute freedom from liability in respect of claims made directly against them relating to their exercise in good faith of their functions. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal”¹⁸⁰.
207. In this way, only bad faith should trigger the liability of judges for any judicial errors. As regards negligence, the CCJE has pointed out that “the application of concepts such as gross or inexcusable negligence is often difficult... it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default”¹⁸¹.
208. The CCJE Bureau noted that the European Commission's above-mentioned Progress Report on Romania under the CVM had emphasised that the key problematic provisions included in particular the new provisions on material liability of magistrates for their decisions¹⁸².
209. The CCJE Bureau therefore agreed with the Venice Commission that “the decisive role of the Ministry of Public Finance, which is an actor outside the judiciary and which cannot be the most appropriate body to assess the existence and causes of a judicial error, is

¹⁷⁸ Proposals had also been put forward in Romania to transfer the judicial inspection unit to the Ministry of Justice (see Reuters/International 19 October 2017). The judicial inspection unit was part of the SCM which was responsible for sanctioning professional misconduct and disciplinary offences by judges, while the investigation of such cases was carried out by the judicial inspection unit. The proposed changes therefore raised concern as regards their implications for the full independence of the judiciary in Romania and its effective self-governance.

¹⁷⁹ See CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paras 53 and 55.

¹⁸⁰ Ibid., para 55; see also CCJE Magna Carta for Judges (2010), para 21.

¹⁸¹ See CCJE Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para 57; see also CCJE Magna Carta for Judges (2010), para 22.

¹⁸² See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 3.

questionable”¹⁸³. The CCJE Bureau recommended that this be fully reconsidered. Such claims, if any, should be exclusively decided before an independent court providing all the guarantees of Article 6 of the ECHR.

210. The CCJE Bureau further pointed out that the new liability procedure was particularly worrying when seen in the context of other amendments establishing a new body for investigating criminal offences of judges and imposing limitations on their freedom of speech. In this context, there was a high risk of pressure on judges undermining their independence¹⁸⁴.
211. The Amendments to the Law on the Judicial Organization prescribed the establishment, within the Prosecutor’s Office attached to the High Court of Cassation and Justice, of a Section for the investigation of criminal offences in the judiciary. This Section would have exclusive competence for the prosecution of criminal offences committed by judges and prosecutors, including SCM members, even when other persons, in addition to judges and prosecutors, were under investigation.
212. In this regard, the CCJE Bureau underlined that it found it difficult to identify references to such practices in member States, and moreover to standards in this respect elaborated in international or regional instruments. The CCJE had *inter alia* pronounced itself clearly on issues of specialisation of judges which “can help judges, by repeatedly dealing with similar cases, to gain a better understanding of the realities concerning the cases submitted to them, whether at the technical, social or economic levels, and therefore to identify solutions better suited to those realities”¹⁸⁵.
213. The CCJE Bureau expressed doubt that specialisation would help in dealing not with certain serious types of criminality, but with persons of similar profession, i.e. judges, who, by every indication, did not seem destined to commit similar crimes.
214. The specialisation of prosecutors vis-à-vis representatives of specific profession, judges in the case of Romania, immediately raised several questions about the rationale for such a discriminatory approach, its effectiveness and added value. It also raised concerns as regards the public image of the judiciary because such a step might be interpreted by society as evidence of an inclination of the whole professional group to commit a specific type of crime, for example, corruption. In this way, it would not only be derogatory for this professional group but would also damage, possibly severely, the public confidence in the judiciary.
215. Moreover, in the context of the existence in Romania of the National Anticorruption Directorate (DNA), which was responsible for the specific crime of corruption, committed by anybody and not just by a specific professional group, such a step as the establishment of a separate Section for the investigation of criminal offences of judges seemed even more questionable.

¹⁸³ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 117.

¹⁸⁴ *Ibid.*, para 121.

¹⁸⁵ See CCJE Opinion No. 15 (2012) on the specialisation of judges, para 11.

216. The CCJE Bureau further noted the observation of the Venice Commission that “according to many interlocutors of the Venice Commission, there is no reasonable and objective justification for the necessity of creating a separate structure to investigate offences perpetrated within the judiciary since, despite isolated cases, there appears to be no widespread criminality among Romanian magistrates”¹⁸⁶. Consequently, the establishment of this new structure raised questions as regards its rationale, its impact on the independence of judges and prosecutors and on the public confidence in the criminal justice system, possible conflicts of competence with the DNA and other bodies, and the possible rerouting of high-profile cases of corruption pending with the DNA. The latter was pointed out as one of the most serious risks as, together with judges and prosecutors under investigation, other persons investigated for corruption would be removed from the specialised jurisdiction of the DNA¹⁸⁷.
217. The CCJE Bureau recommended¹⁸⁸ abandoning the establishment of a separate prosecutor’s office structure for the investigation of offences committed by judges and prosecutors.
218. The CoE Commissioner for Human Rights underlined in her Statement of 3 September 2019 that in her report on Romania, published in February 2019, in which she addressed, *inter alia*, the reform of the judiciary which was hastily conceived, she underlined the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. In particular, she drew attention, among several issues of concern, to the establishment of a new section, within the Office of the Prosecutor General of Romania, for the investigation of offences committed within the judiciary, and the restrictions on magistrates’ freedom of expression¹⁸⁹.
219. MEDEL also expressed concern about the amendments to the Law on the Statute of Judges and Prosecutors, noting *inter alia* that gross negligence should never be the ground for liability for judicial errors.
220. As already mentioned, the final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, emphasised that the recommendations to suspend immediately the implementation of the justice laws and to revise them in line with the recommendations under the CVM and issued by the Venice Commission and GRECO, “were not followed by the Romanian authorities”¹⁹⁰.

¹⁸⁶ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 84.

¹⁸⁷ Ibid., para 83; see also GRECO, Greco-AdHocRep(2018)2, para 34.

¹⁸⁸ See the full text of the CCJE Bureau’s Opinion at <https://rm.coe.int/ccje-bu-2019-4-en-opinion-romania-2019-final-25-april-2019/168094556c>

¹⁸⁹ See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

¹⁹⁰ Final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, pp. 4-7.

221. The ECtHR Grand Chamber adopted a judgment in respect of the **Russian Federation** in which it found that an opposition activist had been subjected to arrests, detentions and convictions for administrative offences for political reasons¹⁹¹. The ECtHR had come to that conclusion having examined, along with other aspects, whether the applicant's arrests, detentions and convictions for administrative offences pursued the legitimate aims of prevention of disorder or crime and the protection of the rights and freedoms of others, as it was argued by the government of the Russian Federation.
222. The ECtHR analysed, within the framework of this case, seven episodes of administrative arrests and detentions of the applicant, following participation in peaceful demonstrations. The ECtHR underlined that "all of these events were peaceful gatherings which caused hardly any disturbance"¹⁹² and that it "previously found that the Russian notification system involved an unusually long, as compared to other States, ten-day period [...] It also noted that when convicting the participants in a public event held without prior notification, the domestic courts had limited their assessment to establishing that they had taken part in a gathering which had not been notified within the statutory time-limit"¹⁹³.
223. The ECtHR observed that the role of domestic courts as established in the case in question was of concern¹⁹⁴. The CCJE Bureau also considers that this is the case.
224. As the CoE Commissioner for Human Rights stated on 25 February 2016, joined also by two former CoE Commissioners for Human Rights, "as long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain"¹⁹⁵. The Statement expressed "concerns about Russia's ability to complete the transition towards an accessible, effective, transparent and credible justice system" and identified as key challenges *inter alia* "insufficient judicial independence and excessive prosecutorial powers"¹⁹⁶.
225. The Statement emphasised that the "current procedures and criteria to appoint, dismiss and sanction judges still provide insufficient guarantees for objective and fair proceedings and judges remain exposed to pressure from powerful political and

¹⁹¹ See ECtHR *Navalnyy v. Russia*, applications nos. 29580/12 and 4 others, 15 November 2018.

¹⁹² See ECtHR *Navalnyy v. Russia*, applications nos. 29580/12 and 4 others, 15 November 2018, para 127.

¹⁹³ See ECtHR *Navalnyy v. Russia*, applications nos. 29580/12 and 4 others, 15 November 2018, para 140.

¹⁹⁴ The ECtHR noted that "equally relevant to the general context are its findings with regard to the sequence of events that unfolded in two sets of criminal proceedings which were being conducted against the applicant in parallel. In one case it found that the national courts had "omitted to address" and "had heightened ... concerns that the real reason for the applicant's prosecution and conviction had been a political one" (see *Navalnyy and Ofitserov*, cited above, §§ 116-19). In the other it held that the applicant's criminal sentence was "arbitrary and manifestly unreasonable", that the law was "extensively and unforeseeably construed" and applied in an arbitrary manner which flawed the proceedings "in such a fundamental way that it rendered other criminal procedure guarantees irrelevant" (see *Navalnyy v. Russia*, no. 101/15, §§ 83-84, 17 October 2017)", see ECtHR *Navalnyy v. Russia*, applications nos. 29580/12 and 4 others, 15 November 2018, para 171.

¹⁹⁵ See at <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain>

¹⁹⁶ See at <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain>

economic interests”¹⁹⁷. This statement remains relevant in light of the findings of the ECtHR in the above-mentioned case.

226. The Statement recommended to “amend laws and practice so as to ensure that judges become more impervious to pressure coming from within the judiciary or from external actors. Improving the procedures and criteria to appoint, sanction and dismiss judges, and reforming the system of appointment of court presidents and their powers will be important steps in this regard”¹⁹⁸.
227. Earlier, the Report of the UN Special Rapporteur on the independence of judges and lawyers on her last mission to the Russian Federation expressed concern “about the many reported attempts by State authorities and private actors alike to exercise control over the judicial system [...]. While she was occasionally told that “telephone justice” does not happen anymore, many interlocutors said that interference with the judiciary from the executive or other powerful stakeholders is still entrenched in the system”¹⁹⁹.
228. The CCJE Bureau hopes that the above-mentioned ECtHR Grand Chamber judgment will be fully implemented by the authorities of the Russian Federation, with individual and general measures taken to avoid any similar cases. Likewise, it hopes that the above-mentioned conclusions of the CoE Commissioner for Human Rights, as well as of the UN Special Rapporteur on the independence of judges and lawyers, will be carefully considered and their recommendations for how to improve judicial independence and impartiality taken up.

229. As regards **Serbia**, the Judges Association of Serbia in its above-mentioned letter of 16 April 2018 requested that the CCJE assess the compatibility of the proposed amendments to the Constitution with European standards. The Association’s points of concern also included the methodology of ensuring the uniform application of laws by courts, an issue which according to the draft amendments shall be regulated by law.
230. The CCJE Bureau noted that this would seem to imply that the provision contained a restriction of functional judicial independence in the interpretation of the law - free judicial opinion – which would be contrary to CCJE Opinion No. 20 (2017)²⁰⁰.

¹⁹⁷ See at <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain>

¹⁹⁸ See at <https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain>

¹⁹⁹ See Report of the UN Special Rapporteur on the independence of judges and lawyers on the mission to the Russian Federation, 30 April 2014 (A/HRC/26/32/Add.1), para 15, at <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/RUIndex.aspx>

²⁰⁰ See CCJE Opinion No. 20(2017) on the role of courts with respect to the uniform application of the law, Chapter VIII (Main conclusions and recommendations), point A : “Regardless of whether precedents are considered to be a source of law or not or whether they are binding or not, reasoning with previous decisions is a powerful instrument for judges both in common law as well as in civil law countries”, see also point D: “The need to ensure uniform application of the law should not lead to rigidity and unduly restrict the proper development of law and neither should it jeopardise the principle of judicial independence”.

231. The CCJE Bureau further noted that, while it was true that courts may deliver different decisions in seemingly identical factual and legal situations, this did not necessarily mean that the law was violated. The ECtHR has also had occasion to examine this matter, including in a case against Serbia, in which it observed that “the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary to the Convention... The criteria that guide the Court’s assessment consist in establishing whether “profound and long-standing differences” exist in the case-law of the domestic courts, whether the domestic law provides for machinery for overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect”²⁰¹.
232. The CCJE Bureau agreed that a lack of consistency in jurisprudence could negatively affect the legal system. However, at same time, it found that the requirements of legal certainty and the protection of public confidence did not imply that case law development was in itself contrary to the proper administration of justice. It should be borne in mind that a failure to maintain a dynamic and evaluative approach would risk hindering reform or improvement.
233. Rec(2010)12 states that “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”²⁰².
234. The CCJE has previously noted that while legal interpretations, views, opinions and binding interpretative statements may have a positive impact on the uniformity of case law and legal certainty, they raise concerns from the point of view of the proper role of the judiciary within the separation of powers²⁰³. In a civil law system, inferior courts may depart from settled case law of hierarchically superior courts provided they set out their arguments for doing so. The CCJE concluded²⁰⁴ that a judge acting in good faith, who consciously departs from the settled case law and provides reasons for doing so, should not be discouraged from triggering a change in the case law²⁰⁵, and it advised against including this paragraph in the Constitution.
235. As mentioned, the Venice Commission issued an Opinion on these draft amendments in which it also recommended deleting or at least substantially reformulating this particular paragraph²⁰⁶.

²⁰¹ See ECtHR *Vučkovic and others v. Serbia*, Chamber judgment from 28/08/2012, para 54; as well as the Grand Chamber judgment in the same case from 25/03/2014, which, in para 89, acknowledges the finality in terms of the inadmissible petition due to inconsistent case-law.

²⁰² See Rec2010(12), Chapter III - Internal Independence, paras 22-23.

²⁰³ See CCJE Opinion No. 20(2017) on the role of courts with respect to the uniform application of the law, para 28.

²⁰⁴ See the full text of the CCJE Bureau’s Opinion at <https://rm.coe.int/opinion-of-the-bureau-of-the-ccje-on-serbia-of-4-may-2018/16807d51ab>

²⁰⁵ See CCJE Opinion No. 20(2017) on the role of courts with respect to the uniform application of the law, para 39.

²⁰⁶ See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011), para 92(5).

236. Following the Opinion of the Venice Commission, the Serbian authorities introduced a number of positive changes in the amendments which were praised by the Secretariat Memorandum of the Venice Commission²⁰⁷. It stated in particular that the new text submitted to the Venice Commission was in line with the earlier recommendations as regards this paragraph since it mentioned that “a judge shall be independent and shall rule in accordance with the Constitution, ratified international treaties, laws and other general acts, taking into account the case law”; and, under the Amendment on the Supreme Court of Serbia, it stated that “the Supreme Court of Serbia shall ensure uniform application of the law by courts through its case law”²⁰⁸.

237. The amendments have not yet been adopted. They are expected to be put forward for voting in a Constitutional referendum in 2020.

238. The CCJE member in respect of the **Slovak Republic** states that some concern is raised due to the executive power, represented by the Minister of Justice, initiating disciplinary action for delays, even in cases of so-called objective delays caused by shortcomings in the working conditions of the judiciary (e.g. insufficient staffing and material resources of the courts), the resolution of which is the exclusive competence of the legislative and the executive power.

239. Another issue relates to the manner of setting up the disciplinary board which is apparently hampered by a database of members of the disciplinary boards elected by parliament which is not regularly updated, leading to some dysfunctions.

240. The CCJE member in respect of **Turkey** states that due to the high number of cases and great variety of files, the workload has negative effects on judges in the existing system. In order to find a solution, some measures have been taken: establishment of courts of appeal and enhancement of their functionality, recruitment of new judges, re-establishment of the Turkish Justice Academy to increase the training aimed at candidate judges and in-service training, improvement of alternative dispute resolution methods, especially mediation and reconciliation, extending the remit of the Human Rights Compensation Commission, the establishment of the Department of Human Rights within the Ministry of Justice, and the establishment of the Inquiry Commission on the State of Emergency Measures.

241. The CCJE member further reports that regulations have been introduced in order to prevent the late completion of cases, so as to ensure that judges are impartial and independent and appear to be so, to protect the presumption of innocence in legal

²⁰⁷ See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission’s Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023).

²⁰⁸ See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission’s Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023), para 19.

proceedings, to ensure trust in judiciary and to provide a fairer system for the promotion of judges. Within this framework, the term “impartiality” has been added to the “judicial independence” principle in the Constitution, the state of emergency was abolished by 18 July 2018.

242. In this regard, the CCJE Bureau notes the Venice Commission’s remark in relation to the constitutional amendments in Turkey that “in Article 9, impartiality would be added to independence as a basic characteristic of judiciary. Impartiality is already implied by independence; indeed, guaranteeing impartiality is a central ratio of independence. In constitutions impartiality is not usually explicitly mentioned alongside independence. Making a distinction between independence and impartiality should not lead to use the latter as a justification for curtailing independence”²⁰⁹.
243. The CCJE member in respect of Turkey also reports that new practice on target timeframes has been initiated for the judiciary. The practice of target timeframes is a case management system that envisages a time period for judicial proceedings, aiming to produce solutions with a view to accelerate the completion of the trials, thus effectively shortening them. Within this context, by decision of 20 February 2019, the Council of Judges and Prosecutors established that the target timeframe for trial would also be taken into consideration while evaluating the work of judges.
244. The Declaration of Judicial Ethics was adopted at the General Assembly meeting of the Council of Judges and Prosecutors on 6 March 2019, shared with the media, and communicated to all serving judges and prosecutors. It has essentially been founded upon the fundamental principles of respect for human rights, independence, impartiality and integrity. Adherence to ethical principles is one of the main criteria for the appointment and promotion of judges and prosecutors.

245. According to media reports in **Ukraine**, on 15 May 2019, the Administrative Court of Kyiv suspended the Chair of the High Qualifications Commission of Judges (HQCJ). The court prohibited the Chair from exercising his powers, including those related to the qualification assessment of all judges, and ordered another member of the HQCJ, acting as Chair, to introduce a new member. Earlier, 34 judges of the Administrative Court of Kyiv, including the Court President, had failed to appear for their mandatory qualification assessment²¹⁰.
246. The decision of the Administrative Court of Kyiv was in conflict with the earlier decision of the Administrative Cassation Court within the Supreme Court of 25 April 2019 in which the issue of the term of office of three members of the HQCJ, including the Chairman of

²⁰⁹ See the Venice Commission Opinion on the Amendments to the Constitution of Turkey adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), para 110.

²¹⁰ See at <https://interfax.com.ua/news/general/588282.html> ;
<https://gordonua.com/news/politics/v-vysshey-kvalifikacionnoy-komissii-sudey-ukrainy-segodnya-soobshchili-o-blokirovanii-raboty-neizvestnymi-976945.html> ;
<https://ru.tsn.ua/ukrayina/v-vysshey-komissii-sudey-zayavili-o-sryve-raboty-sportivnye-yunoshi-zablokirovali-vhod-v-zdanie-1348095.html> ;

the HQCJ, was interpreted as these members having valid terms of office as HQCJ members²¹¹.

247. It was further reported by the media that on 20-21 May 2019, individuals blocked the entrance of certain members of the HQCJ to the Commission's building²¹².
248. Following these events, the Chairman of the Council of Judges expressed concern about numerous lawsuits initiated against members of the HQCJ, as well as highly coordinated online attacks against members²¹³.
249. In June 2019, a Joint Statement of the Chairs of the HQCJ, the Supreme Court, the High Council of Justice, the Council of Judges, the State Judicial Administration and of the Rector of National School of Judges was published²¹⁴. The authors drew attention to problems as regards courts' ability to ensure impartial and fair proceedings within a reasonable time as a result of the dismissal of more than 2586 judges following the general qualification assessments being carried out of all Ukrainian judges. In June 2019, 14 courts did not administer justice because of the absence of judges; in 154 courts, the number of judges was less than 60 per cent of the necessary number. This affected negatively the effective enjoyment of the right of access to justice. A significant difference in the remuneration of judges who had not yet passed the qualification evaluation, in particular for reasons outside their control, was also an issue.
250. The CCJE member in respect of Ukraine also underlines the problem of the lack of judges due to the retirement of a significant number which affects negatively the judicial system.
251. The CCJE member in respect of Ukraine also points to attempts by law enforcement bodies, lawyers and activists of various public organisations to exert pressure on judges. Such attempts have resulted in judges addressing the High Council of Justice with reports of interference into their activities.

²¹¹ See at <https://vkksu.gov.ua/ua/news/zaiawa-pries-sluzbi-wishtchoi-kwalifikacijnoi-komisii-suddiw-ukraini-shtchodo-uchwal-okruznogo-administratiwnogo-sudu-mista-kiewa/>

²¹² See at <https://interfax.com.ua/news/general/588282.html> ;
<https://gordonua.com/news/politics/v-vysshey-kvalifikacionnoy-komissii-sudey-ukrainy-segodnya-soobshchili-o-blokirovanii-raboty-neizvestnymi-976945.html> ;
<https://ru.tsn.ua/ukrayina/v-vysshey-komissii-sudey-zayavili-o-sryve-raboty-sportivnye-yunoshi-zablokirovali-vhod-v-zdanie-1348095.html> ;

²¹³ See at <https://vkksu.gov.ua/en/news/the-sessions-of-the-high-qualification-commission-of-judges-of-ukraine-in-panels-are-carried-out-in-regular-mode/>

²¹⁴ See at <https://vkksu.gov.ua/en/news/joint-statement-of-chairmen-of-supreme-court-high-council-of-justice-high-qualification-commission-of-judges-of-ukraine-council-of-judges-of-ukraine-state-judicial-administration-of-ukraine-rector-of-national-school-of-judges-of-ukraine-on-situation-in-ju/> They noted that Amendments to the Constitution of Ukraine of 2 June 2016 concerning justice and the new Law of Ukraine «On the Judiciary and Status of Judges» also of 2 June 2016 provided a number of positive changes, in particular, strengthening the independence of the judiciary; elimination of political influence on qualification and disciplinary procedures concerning judges; strengthening the role of judicial governance and self-government – the High Council of Justice, the HQCJ, the Council of Judges; increasing the capability for lawyers outside the judicial system to participate in competitive procedures for appointment to the Supreme Court, setting up high specialised and appellate courts, and the establishment at the legislative level of financial guarantees for judges.

252. As regards the above-mentioned mentioned draft Law No. 1008 aiming to amend the laws on the judiciary and status of judges, on the High Council of Justice (HCJ), and on the government purification, the CCJE Bureau wishes to emphasise, once again, that it is important to build on the achievements resulting from the reforms introduced previously in Ukraine, which have been widely recognised within the international community.
253. The CCJE Bureau further notes that several aspects of this draft Law, especially as regards certain changes to the rules on disciplinary proceedings against judges, such as the shortening of deadlines and the acceptance of anonymous complaints about judges without an accompanying filtering system; and the application of lustration measures to individually identified public officials at the HQCJ and the State Judicial Administration of Ukraine raise valid concerns and should be reconsidered.

254. In the **United Kingdom**, the Supreme Court unanimously granted an appeal of a district judge against the Court of Appeal's decision that she did not qualify as a "worker" under the Employment Rights Act 1996 (the "1996 Act"), and therefore could not benefit from the whistleblowing protections it conferred. In reaching its judgment, the Supreme Court held that the failure to extend those whistleblowing protections to judges amounted to a violation of the appellant's right under Article 14 of the ECHR not to be discriminated in her enjoyment of the ECHR rights (in this case, her right to freedom of expression under Article 10 of the ECHR).
255. The appellant raised concerns relating to the major cost cutting reforms in the court including the lack of secure and appropriate court rooms, her severely increased workload and other administrative failures. Her initial complaints to senior court managers and judges developed into a formal grievance and these complaints, she argued, were "protected disclosures" under the 1996 Act and therefore she should not suffer any detriment in making them. The appellant claimed that she in fact suffered considerable detriment: that there was undue delay in investigating her grievance and that she had been ignored, seriously bullied and undermined as a result of making the complaints.
256. The Supreme Court found that the facts of this case had clearly engaged the appellant's Article 10 rights under the ECHR. The appellant had also clearly been denied protection from any detriment, as is the right enjoyed by other employees who make protected disclosures under the 1996 Act. The Supreme Court also found that no legitimate reason had been provided as to why the judiciary were treated differently to other employees in this context, and concluded that, therefore, the exclusion of judges from the whistleblowing protection was in breach of their rights under Article 14, read with Article 10 of the ECHR²¹⁵.

D. The economic basis for the smooth functioning of the judicial system

²¹⁵ See at <https://ukhumanrightsblog.com/2019/10/18/whistleblowing-judges-protected-by-human-rights/>

257. The CCJE member in respect of **Andorra** states that the salaries of judges are satisfactory, but a lack of staff and material resources are reported in all judicial meetings. Although the digitisation of files and trials is on-going, as well as the construction of a new building, currently the lack of material resources remains a concern in the administration of justice.

258. The CCJE member in respect of **Azerbaijan** states that over the past period, judicial reforms have been continued and the social security of judges has been improved. Their financial security has been significantly increased since 1 September 2019, in order to enhance the social protection of judges (with a minimum wage of 70% up to 250% according to the judicial instances). In order to improve specialisation of the courts, some changes had been made in judicial system. Separate administrative courts and commercial courts will operate in the country starting from 1 January 2020, and will replace administrative and economic courts which were handling both administrative and business (commercial) disputes. In order to ensure unified judicial practice in courts - stability of approach to the solution of legal issues and predictability of the legal position on application of normative legal acts - appropriate structural units (sectors) in the staff of the Supreme Court were established and draft laws were developed for regulating such issues. In order to humanise the criminal policy and decriminalise crimes, bills, which affect many legal norms, have been submitted to the legislature. It should be mentioned that consistent work on digitisation of the judicial system, electronisation of enforcement of court decisions, usage of automated electronic systems and various elements of artificial intelligence is continued.

259. The CCJE member in respect of **Belgium** states that in some places, judicial buildings are poorly maintained and pose threats to the health and safety of both those who work there and those who must appear there. In other places, efforts have been made or are planned to renovate or construct buildings. Progress has been made in improving some courthouses, such as the one in Brussels.

260. MEDEL states that in **Bulgaria**, Parliament adopted the independent budget of Bulgarian the judicial system for 2019 accepting the draft proposed by the Ministry of Finance. The budget proposed by the Supreme Judicial Council was subject to a reduction in financial means of about 13 %.

261. The CCJE member in respect of **Croatia** states that courts have no budgetary autonomy and all expenditures, such as for employment of staff, have to be approved through the Ministry of Justice. Traditionally courts do not receive sufficient funds for their operations especially as regards training and necessary literature, although the situation is much better than was the case in previous years.

262. Salaries of general first instance judges have been raised by 20%. However, the salaries of judges are still not well balanced among different court instances, as well as within the same instance. This leads to some dissatisfaction among judges.
263. A particular issue is the low salaries of court staff and judges' assistants (judges' advisers) who are very important for the proper functioning of courts. The judicial system is facing the problem that the most experienced assistants of judges are leaving to join better paid occupations and more promising careers in local government or the financial sector.

264. The CCJE member in respect of **Cyprus** states that according to the Constitution, the terms and conditions of service of judges should not be altered to their disadvantage. In a recent case, the full bench of the Supreme Court stressed the need to safeguard the independence of the judiciary. The case involved deductions from judges' salaries pursuant to an enacted law. The Supreme Court held that this law amounted to an impermissible adverse alteration of the judges' remuneration, in contravention of the provisions of the Constitution and therefore it was declared unconstitutional²¹⁶.

265. The AEAJ states that in **Greece**, the budget for the judicial system remains a very small percentage of the overall state budget, a situation which has not improved. People who work for the national judicial system are adjusting to conditions with insufficient resources (fewer public servants to support the role of the judiciary, lack of office supplies, computers and other equipment, restricted access to online law libraries). According to the AEAJ, the chronic underfunding of the judiciary is likely not affecting severely the constitutional role of judges, but it produces conditions which degrade justice. Many cases of poor and inadequate conditions in the buildings where the administrative courts operate are reported.
266. While the salaries are sufficient compared to the average salaries in Greece, the remuneration of retired judges is an issue following several reductions of their remuneration. As a result, their income will be reduced by more than half compared to their salary while in office.

267. The CCJE member in respect of **Hungary** states that the main problem, acknowledged by the government as well, is that while the adjudicative performance of Hungarian judges is ranked among the best in Europe, they belong to the bottom group in the region in respect of their salary, and their remuneration has not been substantially improved despite a three times 5 % pay rise during the past couple of years. There is consensus that a significant salary progression within the judiciary is now inevitable and extremely urgent, the implementation of which cannot be postponed for years. It also has to be mentioned that the salary of prosecutors was increased as of 1 September 2018, while the judges' remuneration was not raised at that time, which resulted in tensions between the representatives of the two professions.

²¹⁶ In Cyprus, the Supreme Court also acts as a constitutional court.

268. The emphasis was shifted in 2018 to a comprehensive reform of the judges' salary system in order to take into account length of tenure, the high responsibility of judicial work (even in the case of junior judges) and the proportionate differentiation of salaries linked to the various levels of the justice system.

269. In addition, the administration of justice is inconceivable today without reliance on IT equipment and applications. Their use, however, presents certain risks to operational safety and data security. In spite of important infrastructural investments in the past years, there is still a challenge of developing an optimal level of IT security level.

270. The AEAJ states that in **Lithuania**, after reductions in the remuneration of civil servants, including judges, due to the economic crisis, the remuneration of judges of first instance courts of general jurisdiction was increased as of 1 January 2019. However, as the situation for all other judges remains unchanged, it would appear that the remuneration of judges in Lithuania is not commensurate with their profession and responsibilities and that as a result they may not be sufficiently protected in terms of their independence and vulnerability to external pressure.

271. The CCJE member in respect of **Malta** states that the salary of the members of the judiciary is determined by the government and payment is made from the Consolidated Fund. The salary can only be reduced by a two-thirds majority in Parliament, but an increase depends on the good will of the government. The salary has recently been increased as a result of an agreement reached with the judiciary.

272. MEDEL states that in **Romania**, the budget of the first instance courts, the tribunals and the courts of appeal is managed by the Ministry of Justice. This is considered by MEDEL as a factor which can affect the independence of judges working in those courts.

273. The CCJE member in respect of the **Slovak Republic** states that despite the change in the constitutional regulations from 1 September 2014, and the fact that it is within the jurisdiction of the Judicial Council to comment on the draft budget of the courts when drawing up the state budget and submitting an opinion to Parliament which is based on actual deficiencies, neither the Government nor the Parliament take this opinion into account. It is the financial chapter on the Ministry of Justice within the state budget, on which the number of judges and administrative employees for district and regional courts is based. The judicial power does not actually deal with the financial security of personnel, material and technical conditions for the proper administration of justice and it is therefore difficult to speak of its financial independence.

274. A long-standing under-assessment of the importance of judicial staff leads to difficulties in obtaining and maintaining quality in the judicial system. Inadequate technical equipment and material provision, which do not comply with the level of e-justice introduced by law, slow down and complicate the practical delivery of justice.

275. The CCJE member in respect of **Ukraine** states that in general, as regards the financial security of the judiciary, the level of acceptance of budget requests by the State Judicial Administration of Ukraine is gradually increasing, but that the volume of financial resources for the judiciary is still not optimal.

E. Judges and media: public discussion and criticism of judges

276. The CCJE member in respect of **Andorra** states that this is the most worrying point for the judiciary as regards judicial independence. Attacks in the media, including personal ones, especially through digital newspapers or blogs, are constant and the judicial administration has no means to counter them. This situation has become unsustainable in major cases of economic crime, since media coverage of judicial proceedings is very common. The High Council of Justice does not yet have a press office or other mechanism that allows for participation in public discussions regarding the judiciary, even if it is a long-standing demand.

277. The CCJE member in respect of **Azerbaijan** states that there are still some problems arising from the lack of proper dialogue between the judiciary and the media. These problems ultimately lead to the loss of trust in the judiciary by society. Some issues of interest as regards the subject of court proceedings are brought to the public debate by the media in an unprofessional manner. Unfounded strong and persistent criticism against judges puts pressure on them, which in turn creates the risk that justice will be negatively affected. Sometimes, the parties try to influence the decision of the judges considering the case, starting a campaign in the media. There have been cases where unverified information about specific judges was published. It is also possible to find publications violating the right of presumption of innocence in cases where a dispute is on-going.

278. As mentioned, the CCJE member in respect of **Bulgaria** states that questions about the tenure of office of the Presidents of the Supreme Administrative Court and the Supreme Court of Cassation have been subject to public discussion for several years. The Ministry of Justice has established a working group with the task of elaborating amendments to the Judiciary System Act and the Penal Procedure Code. The aim is to strengthen the control and to introduce investigation mechanism with respect to these officials. The Minister of Justice announced draft amendments during a working group session in a live online broadcast. They concern the authority competent to initiate impeachment procedures, terms and conditions for deciding in such proceedings, temporary removal from office, the competent authority to carry out the investigation, judicial control over the suspension and termination of the proceedings, competent courts, etc. and are now subject to public debate.

279. MEDEL states that the President of the Bulgarian Supreme Court of Cassation raised in public speeches serious concerns about the independence of judges and about the rule of law in Bulgaria. As a result, he was declared an “enemy of the status quo” and has been subjected to recurrent pressure from the Supreme Judicial Council, as well as interrogations to justify his allegations and an investigation by the Anticorruption Commission. He has also been subjected to insults and slander in the media. These actions seem intended to lead the way for his pre-term removal from office. In the view of MEDEL, this campaign against the President of the Supreme Court of Cassation is conducted with a clear awareness of the preventive and intimidating effect it may have on other judges.

280. MEDEL also states that high representatives of the executive and legislative powers continue to comment publicly on judges’ decisions in a way that undermines the independence of, and public confidence, in the judiciary. There are cases of persecution of judges in their private lives by journalists and calls for physical assault. The Bulgarian Judges Association and individual judges who openly speak in favour of judicial independence and criticise deficiencies in the system have been targets of such campaigns. Being an active member of the Bulgarian Judges Association may in itself harm a judge’s career prospects.

281. The CCJE member in respect of **Croatia** states that the position of the judiciary in the media is the most serious problem at the moment. With very few exceptions, the media portrays the work of judges in dark colours, often taking sides in pending cases and suggesting what the outcome of the case should be. The media does not wish to publish information provided by courts and devotes attention only to one side in a case, while reactions from the other side in the proceedings are not taken into account, or information is hidden from the public. This creates a worryingly high level of mistrust on the part of the general public and court users vis-a-vis the judicial system. Such mistrust is very often supported and inspired by public opinion surveys including those carried out by Eurobarometer.

282. Recently, this climate of mistrust towards the judiciary has been growing and has been led by the media and politicians who are often using false and frivolous media comments on particular court decisions which have not yet become mandatory as a means to criticise the judiciary as a whole. Politicians also do not hesitate to express what would be the desired outcome of the proceedings. The criticism goes as far as advocating the lustration of all judges, early retirement of judges whose first appointment took place before Croatia became an independent state, even though all judges passed a reappointment process through procedures before the Judicial Councils twenty years ago. Public calls against decisions of the courts are also becoming more common in public life. Such actions result in rising violence and a hostile environment towards judges.

283. The CCJE member in respect of **Hungary** states that one of the courts’ priorities in terms of the communication tasks in 2018 was to inform court users about the legislative changes originating from the entry into force of the new Code of Civil Procedure, Code of Administrative Litigation and Code of Criminal Procedure.

284. The last few months show that the restructuring of the Hungarian justice system and the amendment of the Fundamental Law of Hungary for the purpose of preparing the separation in 2020 of the judiciary's ordinary and administrative branches and the adoption of a number of related legislative acts have not yet been completed. Due to the above-mentioned organisational changes, the judiciary needs to have a strategically organised communications policy.
285. The courts' preparation for, and handling of communication situations adversely affecting the judiciary as a whole, need to be improved, since unfounded media attacks pose a real risk to public trust in the justice system.

286. The CCJE member in respect of **Malta** states that relations with the media are often strained. The judiciary has adopted a position of not entering into controversies with the media and not replying to negative criticisms. It is the Minister concerned who is supposed to defend the judiciary, but more often than not, nothing is sent to the media as a reply, although statements in support of the judiciary are sometimes issued by the Minister concerned.
287. The current debate in the press focuses on the imminent appointment of new members of the judiciary, with some media reports suggesting that, until the government has a majority of "its" members as judges and magistrates, it will not follow the standards of the Venice Commission. Although members of the judiciary have always been chosen by the government of the day, largely, with some exceptions, from jurists who were deemed to have the same political opinion as the party in the government, once nominated such members have generally always distinguished themselves with integrity and acted with due impartiality and independence. Some sections of the media, however, hold that perception is also of importance, and the perception is that the government is appointing members of the judiciary whose political opinion is akin to its own. A local pressure group has filed an official protest in court against the planned appointments of the six new members.
288. The Venice Commission has issued an opinion indicating weaknesses in the Maltese judicial system, along with recommendations for how to deal with various aspects of the system, including as regards the manner of appointment of members of the judiciary²¹⁷. The government has said that it will, eventually, give due consideration to the suggestions, but has not set up a timetable for such action.

289. The AEAJ states that in **Poland**, not only the media, but also members of the executive power express public criticism of the judiciary in a way that undermines the independence of, and public confidence in, the judiciary. In an interview with the Prime Minister on 13 December 2017²¹⁸, he referred to the nomination procedure of new judges

²¹⁷ See the Venice Commission's Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement in Malta, adopted by the Venice Commission at its 117th plenary session (Venice, 14-15 December 2018) (CDL-AD(2018)028).

²¹⁸ See at <http://www.washingtonexaminer.com/prime-minister-mateusz-morawiecki-why-my-government-is-reforming-polands-judiciary/article/2643279>

by a judiciary council, dominated by judges, as a system which would lead to nepotism and corruption. He noted that a group of judges had sued the government in each other's courts, alleging breaches of their employment agreements. This was meant to be an example of this kind of "nepotism and corruption", caused by a judiciary council with a majority of judges in its membership.

290. The Prime Minister also presented reforms intended to discontinue the random assignment of cases as it allowed judges to engage in "case-shopping", a criticism firmly refuted by the Polish National Council of the Judiciary in its statement of 20 December 2017²¹⁹.
291. Moreover, the Prime Minister stated that "justice has too often not been available to those lacking political connections and large bank accounts", as well as that they "also intend to end perverse incentives that allow some judges to make significant incomes for little work".
292. The AEAJ has emphasised that these accusations are neither based on facts, nor properly reasoned, pointing to information presented by itself in its report of 21 August 2017 to the CCJE²²⁰, as well as to the statements of the National Council of the Judiciary of 20 December 2017 and of the Judges Association "IUSTITIA"²²¹.
293. In the course of the round-table discussion organised on the situation of the judiciary in Poland in Warsaw on 4 September 2019 by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the participants, including national judges and experts, as well as international experts, emphasised the current hate campaign carried out in Poland, frequently with the use of information on private life of judges distorted and presented to the public in the most negative way. All participants underlined that such atmosphere severely undermines the public trust in the administration of justice and hits at the very basics of the rule of law.
294. In this context, the CCJE Bureau also refers to its Statement on 27 March 2018 where it "noted with dismay that Ms Justice Aileen Donnelly of the Irish High Court has been the subject of sustained offensive attacks by sections of the Polish media in the aftermath of a decision taken by her in the context of a European Arrest Warrant case, to refer certain questions to the Court of Justice of European Union. The decision was taken against background of issues that were raised in the course of the hearing before her in relation to recent changes affecting the Polish judiciary"²²².
295. The CCJE Bureau reminds that there can be no justification for personalised attacks on the judges making the decision.

²¹⁹ See at <http://www.krs.pl/pl/aktualnosci/d,2017,12/5164,stanowisko-krajowej-rady-sadownictwa-z-20-grudnia-2017-r-w-zwiazku-z-wypowiedziami-prezesa-rady-ministrow-na-temat-sadownictwa>

²²⁰ See at <http://www.krs.pl/pl/aktualnosci/d,2017,12/5164,stanowisko-krajowej-rady-sadownictwa-z-20-grudnia-2017-r-w-zwiazku-z-wypowiedziami-prezesa-rady-ministrow-na-temat-sadownictwa>

²²¹ See at <http://www.iustitia.pl/1990-statmm>

²²² See at <https://rm.coe.int/statemenet-of-the-bureau-of-the-ccje-attacks-polish-media-against-judge/16807a5640>

296. MEDEL states that in **Romania**, judges are targeted by politicians and the media for their decisions. The Superior Council of Magistracy does not have an effective procedure in place to defend judges and the judicial system from these attacks. It is difficult for judges to appear in the media in order to defend their decisions, and the reaction of the Superior Council of Magistracy is usually delayed by legal procedures and therefore not effective.
297. As mentioned, the Romanian Judges Forum Association requested that the CCJE express its opinion as regards *inter alia* the freedom of expression of judges, repeated and unprecedented attacks against judges directed by political actors, and the right of judges to stand against any policies or actions affecting their independence.
298. In considering this issue, the CCJE Bureau took note of the Venice Commission Opinion which criticised the amendments²²³, as well as of the Progress Report issued by the European Commission, on 13 November 2018, in the framework of the Cooperation and Verification Mechanism (CVM), which *inter alia* called on Romania to suspend immediately the implementation of the above-mentioned amendments, and to revise them, taking fully into account the recommendations under the CVM and those issued by the Venice Commission²²⁴.
299. The Amendments to the Law on the Statute of Judges and Prosecutors obliged judges and prosecutors, in the exercise of their duties, to refrain from defamatory manifestation or expression, in any way, against the other powers of the state - legislative and executive.
300. It is notable that the notion of defamation was not clearly defined in Romania and the above-mentioned obligation related specifically to other state powers²²⁵. The rationale for the specific reservation “in the exercise of their duties” and how it would be applied was not clear. Furthermore, the law should protect all persons and legal entities from defamation, and not just the legislative and executive powers. The selective approach of the new provision in these two key aspects was very questionable.
301. The CCJE Bureau recalled that the ECtHR had recognised that it was of fundamental importance in a democratic society that the courts inspire confidence on the part of the public²²⁶, and therefore judges must be protected against destructive attacks lacking any factual basis. Moreover, since they have a duty of discretion, judges cannot respond in public to various attacks, as, for instance, politicians are able to do²²⁷. Judges should express themselves above all through their decisions; discretion and the choice of words are important when judges give statements to the media on cases pending or already decided in accordance with the law²²⁸.

²²³ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017.

²²⁴ See at http://europa.eu/rapid/press-release_IP-18-6365_en.htm

²²⁵ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 130.

²²⁶ ECtHR *Olujić v. Croatia*, 2009.

²²⁷ ECtHR *De Haes and Gijssels v. Belgium*, 1997.

²²⁸ ECtHR *Daktaras v. Lithuania*, 2000; *Olujić v. Croatia*, 2009.

302. In the view of the CCJE, “there is a clear line between freedom of expression and legitimate criticism on the one hand, and disrespect and undue pressure against the judiciary on the other. Politicians should not use simplistic or demagogic arguments to make criticisms of the judiciary during political campaigns just for the sake of argument or in order to divert attention from their own shortcomings. Neither should individual judges be personally attacked. Politicians must never encourage disobedience to judicial decisions let alone violence against judges, as this has occurred in some member States”²²⁹.
303. The judges, for their part, have the same right to freedom of expression under the ECHR as everybody else, and they, “like all other citizens, are entitled to take part in public debate, provided that it is consistent with maintaining their independence or impartiality. The judiciary must never encourage disobedience and disrespect towards the executive and the legislature”²³⁰.
304. The CCJE Bureau underlined that judges may be subject to a certain degree of restraint, however this should relate to their extra-judicial conduct. Putting limitations on judges in the exercise of their duties, as done by the Amendments to the Law on the Statute of Judges and Prosecutors, may result in arbitrary and abusive interpretations and it carried the risk of obstructing judges in the course of their work.
305. The Venice Commission had also mentioned that the rationale for such a new provision in the Romanian legislation was questionable since there was a risk that it may prevent judges from criticising other state powers when addressing cases involving the state and may be used as a tool for political pressure²³¹.
306. The CCJE Bureau also noted that the European Commission's above-mentioned Progress Report on Romania under the CVM had emphasised that key problematic provisions included in particular restrictions on the freedom of expression of magistrates²³².
307. The CCJE Bureau concluded that the new obligation imposed on Romanian judges, limiting their freedom of expression, was not necessary, raised many questions, may be subject to arbitrary and abusive interpretations endangering judicial independence, and it recommended that it be removed.
308. The Romanian Judges Forum Association also requested that the CCJE pronounce its position as regards the reported repeated and unprecedented attacks against judges directed by political actors in Romania.

²²⁹ See CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para 52.

²³⁰ *Ibid.*, para 42.

²³¹ See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 124.

²³² See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 3.

309. The Venice Commission had mentioned that “there are reports of pressure on and intimidation of judges and prosecutors, including by some high-ranking politicians and through media campaigns”²³³.
310. The CCJE Bureau noted that the European Commission's above-mentioned Progress Report on Romania under the CVM stated that “judges and prosecutors have continued to face personal attacks in the media, with mechanisms for redress falling short”²³⁴.
311. The CCJE Bureau underlined²³⁵ that the executive and legislative powers should not only strictly abstain from attacks, intimidations, disrespect, pressures, simplistic and demagogic arguments directed against judges but they “are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by attacks or intimidations directed at members of the judiciary”²³⁶.
312. As already mentioned, the final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, emphasised that the recommendations to suspend immediately the implementation of the justice laws and to revise them in line with the recommendations under the CVM and issued by the Venice Commission and GRECO, “were not followed by the Romanian authorities”²³⁷.

313. MEDEL stated, as regards **Serbia**, that “frequent filings of criminal and disciplinary charges, as well as numerous media attacks on judges and public prosecutors, have marked the last few months. These judges and public prosecutors have been either speaking freely on the daily issues and challenges regarding the judiciary and the prosecution, or expressing a critical and constructive view on the proposed amendments to the Constitution”²³⁸.

314. The CCJE member in respect of the **Slovak Republic** stated that it is worrying that politicians disseminate to the public through the media the opinion that the courts are solely responsible for the low enforcement of the law, without informing about the existence of specific difficult conditions for the judiciary (such as complicated procedural

²³³ See the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, paras 15 and 157.

²³⁴ See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 2 (General Situation), page 2.

²³⁵ See the full text of the CCJE Bureau’s Opinion at <https://rm.coe.int/ccje-bu-2019-4-en-opinion-romania-2019-final-25-april-2019/168094556c>

²³⁶ See CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para 52.

²³⁷ See the final Report of the European Commission on Progress in Romania under the CVM, published on 22 October 2019, pp. 4-7.

²³⁸ See “MEDEL statement on the recent developments in the judiciary of the Republic of Serbia” of 13 September 2019 at <https://medelnet.eu/index.php/news/europe/545-medel-statement-on-the-recent-developments-in-the-judiciary-of-the-republic-of-serbia>

codes, frequent changes in legislation, the lack of judges and qualified professional staff, the high number of cases before the courts, problems with technical equipment), which also undoubtedly have an impact on the proper administration of justice. The improvement of these conditions is in the hands of the legislative and the executive powers.

315. There are serious concerns about the repeated statements by some politicians in Parliament, or through the media, including social media, which go beyond justified and admissible criticism, without any evidence, and cast doubt on the competence of judges to perform their duties, thereby undermining the authority of the judicial power and the independence and impartiality of judges. This seriously undermines public confidence in the justice system.

316. The CCJE member in respect of **Switzerland** states that the quality of media reports has diminished in recent years. It seems that judicial cases have become increasingly interesting from the social point of view rather than from the legal one. This may lead to a kind of judicial reporting that gets increasingly close to entertainment and, at the same time, may exercise undue external influence on the judiciary.

317. The CCJE member in respect of **Ukraine** states that the issue of the impact of the media on the courts and on individual judges is of a critical nature. In particular, law enforcement agencies are not providing an adequate response.

318. Instances continue to be observed of activists or civil society organisations who advocate for the dismissal of individual judges or heads of jurisdictions, and who put forward unjustified and unfounded criticism in the media of lack of professionalism and tainted reputations on the part of judges. The mistrust of the society caused by such attacks affects the work of judges and constitutes a form of psychological pressure on judges

319. In the **United Kingdom**, the three High Court judges who ruled that Parliament must be given a vote before the country triggered Article 50 of the Lisbon Treaty to launch the Brexit process were subject to strong personal attacks in the press²³⁹. Moreover, a cabinet minister described the decision in the media as “unacceptable”²⁴⁰.

²³⁹ “Enemies of the people”, Daily Mail, 3 November 2016.

²⁴⁰ BBC Question Time, 3 November 2016.

V. Conclusions

320. It is clear from the reports and requests that have been received by the CCJE during the reporting period that, in a way similar to the previous report of the CCJE Bureau in 2017, there have been continuing concerns about the proper implementation of relevant standards of the CoE in a number of member States. The developments and situations observed have the potential to jeopardise the independence of the judiciary. In addition to affecting the actual, effective independence of the judiciary, these developments pose a risk as regards the appearance of independence, a fact which affects directly public trust in, and respect for, the judiciary and the administration of justice.
321. As shown in this report, in some cases and in some countries, the concerns are very serious and the developments observed pose a threat to the very foundation of the rule of law. The CCJE Bureau is deeply concerned for the individual judges affected by steps taken by the executive or legislative authorities. It is committed to continue following and examining closely the situation of judges and judiciaries in member States and to make available its advice and expertise where it is considered useful. The CCJE will continue to examine alleged infringements concerning the independence and impartiality of judges, in full respect of its mandate.
322. In doing so, the CCJE relies on the standards mentioned in paragraph 13 above, while taking account also of the CoE Plan of Action on strengthening judicial independence and impartiality²⁴¹, the preparation of which the CCJE supported, and which sets out the key principles and steps to be observed to guarantee and reinforce judicial independence and impartiality.
323. The CoE is at the origin of a very detailed and comprehensive set of standards on the organisation of judicial systems and the delivery of justice, including the fundamental principle of judicial independence and its implications in practice. Extensive guidance is therefore available for member States to rely on when developing policy and legislation and formulating their reform agendas. In this connection, the CCJE Bureau can only reiterate the statement, made earlier, that “what is critical is not the perfection of principles and, still less, the harmonisation of institutions; it is the putting into full effect of principles already developed”²⁴².
324. The CCJE Bureau would like to encourage the competent authorities of member States to take note of this report and to comply with the relevant standards of the CoE. The CCJE welcomes the opportunity to present this report and to draw the attention of the Committee of Ministers to these issues and the information provided by the CCJE members and other parties. It also draws attention to the Opinions and Statements of the CCJE Bureau made in the context of specific situations affecting member States’ judiciaries. These documents serve to emphasise once again the importance of the CoE’s work to improve adherence to the rule of law throughout Europe.

²⁴¹ Adopted by the CoE Committee of Ministers in 2016, document CM(2016)36 final.

²⁴² See CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, para 6.

325. The CCJE Bureau invites its members, observers, relevant national authorities, judicial bodies and associations of judges to submit information and comments on further developments related to the issues described in this report²⁴³.

²⁴³ Information and comments on further developments taking place after the reporting period of the present report are meant here.

Appendix:

Comments by member States

Armenia

Additional information regarding paragraph 172

The law-enforcement agencies of Armenia, guided by the instructions of the Government, undertook emergency measures to ensure security of the mentioned judge. The latter was assigned a security guard, and her apartment was taken under protection. A criminal case was initiated by the Investigative Committee on showing contemptuous treatment to the judge. A charge was pressed against two persons. The preliminary investigation is completed and the criminal case with the bill of indictment is sent to the court²⁴⁴.

The Government of Armenia is fully committed to ensure security and integrity of judges for them to exercise their professional duties and administer justice without interference.

Belgium

B. Organisational independence: Councils for the Judiciary and the court administration

Concerning paragraphs 108, 109, 110:

On the questions of independence of administration and the separation of powers between the judiciary and the executive

It should first be pointed out that, as has always been the case and in accordance with the law and the constitution, any act by a minister is subject to administrative and budgetary ex ante controls. Verifications by the Finance Inspectorate are a legal requirement which has always existed. Therefore, it cannot be stated, as in paragraph 109, that the Department of Justice has lost its autonomy since 2014 and that the judiciary is now treated in the same way as a government administration.

As regards autonomous management, the objective is to switch from allocation of resources by the minister, based on the legal provisions, to allocation of resources and autonomous, responsible management by the judiciary itself. The overall management framework will be jointly determined in a management contract concluded between the Colleges and the Minister of Justice. These Colleges, comprising members of the judiciary, will manage the judicature, and, as indicated by Parliament, act as a buffer between the executive and the courts, which develop case law. There will no longer be ex ante budgetary and administrative controls,

²⁴⁴ <http://investigative.am/en/news/view/anna-danibekyan.html> ;
<http://investigative.am/en/news/view/anna-danibekyan-erku-andzi-mexadranq.html> ;
<http://investigative.am/en/news/view/anna-danibekyan-naxaqnutyan-avart.html>

although it will still be possible to lodge a posteriori appeals against decisions of the Colleges in the event of an illegality or a breach of the management contract.

It can be noted that, in its Judgment No. 138/2015, the Constitutional Court validated the law of 18 February 2014 on the introduction of autonomous management of the judicial organisation and ruled that the challenged provisions did not violate the Belgian Constitution, together with the principles of the separation of powers and of the independence of the judiciary (resulting, in particular, from Articles 151, 152, 154 and 155 of the Constitution), with the principle of legality of the judicial organisation (resulting, in particular, from Articles 146, 152 paragraph 1, 154, 155 and 157 of the Constitution), with Article 6 of the European Convention on Human Rights, with Article 47 of the Charter of Fundamental Rights of the European Union and with Article 14 of the International Covenant on Civil and Political Rights.

In this connection, the following extracts can be cited:

"B.37. Under Article 185/4§2 (5) of the Judicial Code the management contract governs in particular 'the method for measuring and monitoring the execution of the management contract and the indicators used to that end.'

Contrary to what the applicant claims in case no. 6026, this provision does not allow the Minister of Justice to interfere in any way with judges' judicial powers. Moreover, the indicators used to assess the execution of the management contract are not determined solely by the minister, but in conjunction with the college concerned, which is made up of members of the judiciary. Since an assessment of the extent to which a management contract has been executed cannot affect the manner in which the judges exercise their judicial powers as such, the fact that they cannot challenge the methods for assessing the execution of this contract, as set out in the management contract, is not incompatible with the constitutional and treaty provisions and the principles mentioned in the first plea raised in case no. 6026."

"B.40.1. Contrary to the applicants' claim, the fact that Articles 146, 152, paragraph 1, 154, 155 and 157 of the Constitution require parliamentary intervention regarding the issues mentioned in these articles does not support a finding that there is a general legal principle whereby every aspect of judicial management should be regulated by legislation and any delegation to the Crown in this regard must be ruled out.

The principle of legality set out in the above-mentioned articles of the Constitution concerns the establishment of the courts, judges' retirement, judges' pensions, the salaries of members of the judiciary, incompatibilities with judicial functions and the organisation of the courts, the courts' powers and the way in which appointments are made, as well as the duration of judges' tenure. It follows that the Constitution requires the enactment of legislation on establishing courts, on their organisation from a jurisdictional standpoint (the number of courts, the breakdown into jurisdictions, the powers of the courts, their composition, etc.) and on judges' status.

A delegation to the Crown is always compatible with the principle of legality as long as it is defined in a sufficiently precise manner and concerns the implementation of measures whose essential elements have been pre-determined by Parliament."

" B.44.2. The preparatory discussions show that Parliament, relying on the fact that before the law of 18 February 2014 the executive managed judicial organisation, considered it necessary, in the context of transferring management powers to the judiciary, to continue to provide for a posteriori supervision by the executive, taking into account the substantial judicial organisation budget. It considered that this supervision could not be dissociated from the fact that granting management autonomy to the judicial organisation bodies must be viewed as a "gradual" process, during which these bodies could acquire the necessary management knowledge and

expertise. The objectives pursued by Parliament are not illegitimate as such, particularly when it is borne in mind that the relevant ministers are politically accountable before the Chamber of Representatives for the policies pursued in the field of justice and the related resources."

In 2018 the Minister of Justice concluded a framework agreement with the College of Courts and Tribunals on introducing autonomous management for the courts and tribunals, which will require some amendments to the Judicial Code. For instance, the agreement provides that Article 185/12 of the Judicial Code is to be adapted to ensure that the College is subject to a posteriori supervision solely by the Minister of Justice and no longer by the Minister of the Budget.

The full implementation of autonomous management has however been delayed pending the formation of a new government following the general elections held in May 2019 and in the absence of workload measurement. This is because, if resources are to be allocated in accordance with the judiciary's real needs, an objective tool for measuring the workload is required. To date, there is no such tool on account of the lack of consistent and validated statistical data, among other reasons.

In the meantime, human resources (including members of the judiciary) are allocated through consultation between the College of the Courts and Tribunals, the College of Public Prosecutors and the Minister, regard being had to the workload and the legal requirements.

Non-filling of posts

Like many European countries, Belgium currently has to contend with budget restrictions. The Minister of Justice can only spend the budget granted by Parliament. It should be noted, however, that, despite the austerity context, the human resources budget allocated to the judiciary (judicial and other staff) grew significantly between 2014 and 2019. The human resources budget stood at 634 million euros in 2015. By 2019 it amounted to 694 million euros. 1 399 vacant posts were advertised during this period out of a total headcount of 2 500 members of the judiciary (judges and prosecutors). Vacant positions are allocated in consultation with the College of Courts and Tribunals and the College of Public Prosecutors, who must take account of the workload of the various courts.

As to filling of the posts, the minister had to contend with a factor beyond his control, namely a lack of applicants, or a lack of successful candidates proposed by the High Judicial Council. Of the 1 399 vacancy notices advertised between 2014 and 2019, 383 were re-publications due to a lack of applicants.

To remedy this shortage, the Minister of Justice took various measures. In particular, the legal training system was reformed in 2017 to attract more candidates (the law of 6 July 2017 on the simplification, harmonisation, computerisation and modernisation of the provisions of civil law and civil procedure and of notary work, and on various measures relating to justice).

Also, since 2017 the competition for admission to legal training has been held at the request of the Minister of Justice or his/her representative, with the possibility of asking the High Judicial Council to organise a second competition in the same judicial year in line with actual needs. The Minister of Justice used this possibility in 2018 and 2019.

Lastly, it should be noted that given the lack of an objective tool for measuring the workload it is impossible to assess whether the current legal provisions correspond to the courts' real needs. This was moreover noted by the High Judicial Council in an audit of human resources

management within the courts of first instance, carried out in December 2017. Accordingly, the fact that positions are not being filled does not always mean that there is a shortage of judges.

C. Judicial impartiality, codes of professional conduct and ethics, and disciplinary measures

Concerning paragraph 174:

The law of 23 March 2019 amending the Judicial Code to improve the functioning of the judiciary and the High Judicial Council came into force on 1 January 2020, thereby giving a legal basis to the guide published in 2012 by the High Judicial Council (Article 27 of the law reinstating Article 305 of the Judicial Code).

Regarding all categories of judges (whether they are sitting, substitute or lay judges), Article 404 of the Judicial Code now provides that the duties of their office, the dignity thereof and their respective tasks shall be interpreted in the light of general ethical principles.

They are required to take an annual training course on ethics, and each court must indicate in its activity report the initiatives undertaken to ensure respect for ethical standards.

D. The economic basis for the proper functioning of the judicial system

Concerning paragraph 259:

The "New Infra" project was launched in 2018. "New Infra" is an alternative policy for buildings management, involving a holistic approach. The judiciary are housed in a very large number of court premises and must therefore aim to adopt centrally led management policies, based on efficiency and professionalism. This includes a comprehensive, enhanced security policy. For this reason a safety and security co-ordinator has been appointed in each region. These co-ordinators receive their instructions from a central department so as to ensure consistent action in security matters. Instead of a security policy based on incidents, we are moving towards policies guaranteeing a basic level of security, supplemented by flexible, additional measures adopted on the basis of an appropriate risk and threat assessment.

The new and recently renovated court buildings follow this logic. In older court buildings, where a threat is identified specific measures are taken on a case-by-case basis in co-operation with the relevant security services, and possibly the police.

The Judicial Code also contains a number of provisions aimed at dealing with specific situations. For instance, Article 72 provides for the possibility of temporarily moving the seat of a Justice of the Peace or a police court to another municipality of the judicial district in a case of force majeure (health and safety issues affecting a building may be a case of force majeure). The same transfer mechanism is provided for in Article 86bis of the Judicial Code concerning the relocation of the seat or a division of a court of first instance, a labour tribunal or a commercial court to another municipality of the district or jurisdiction, and in Article 113 for the seat of an assize or appeal court.

Article 76§6 of the Judicial Code provides that, in the event of a security risk, the President of the court of first instance may, following a written or oral request by the prosecution service, order that the police court hold one or several hearings concerning a specific case in the premises of a court of first instance within the jurisdiction of the court of appeal, and if necessary, that the case be judged there.

Several renovation projects will be launched in future, such as:

Mons: a new site for the services of the court of first instance, of the labour tribunal and the labour inspectorate;

Tournai: a new pilot project with a modern front office, a single contact point for court users and an e-justice portal, including flexible office spaces and multifunctional courtrooms, for the court of first instance, the commercial court, the labour tribunal and the police court;

Eupen: ongoing renovation of existing buildings housing the commercial court, the labour tribunal, Justices of the Peace and the bar association;

Verviers: a new purpose-built facility for the labour tribunal and labour inspectorate and the Justices of the Peace;

Namur: a new courthouse at the disposal of all the judicial services;

Brussels: work has begun on the renovation of the courthouse facades and a design office has been appointed for refurbishing the interior;

Asse: a new building for the prosecution service, the Justices of the Peace and the Federal Department of Finance;

Antwerp Britselei: finalisation of the renovation of the old courthouse;

Menchelen: a new pilot project with a modern front office, a single contact point for court users and an e-justice portal, including flexible office spaces and multifunctional courtrooms, for the court of first instance, the commercial court, the labour tribunal and the police court;

Bruges: renovation of the outer shell.

Bulgaria

Under § 60 and 61 of Chapter IV, “Country-specific issues concerning judicial independence and impartiality”, Section A, “Functional independence: appointment and security of tenure of judges”:

In order to guarantee the independence and impartiality of the judicial system and to introduce an effective and constitutional model guaranteeing an investigation against the Prosecutor General, the Council of Ministers, by Decision No. 736 of December 7, 2019, approved a draft law to supplement the Criminal Procedure Code (Law Amending and Supplementing the Criminal Code), which was submitted to the National Assembly with signature 902-01-66/09.12.2019.

The draft law is implemented in accordance with the recommendations of the European Union Cooperation and Verification Mechanism (CVM) and the Structural Reform Support Service of the European Commission in relation to the prosecutorial reform and its interaction with other institutions, including a mechanism for reporting progress made to the general public .

The draft law also complies with the recommendations given in the opinion of the European Commission for Democracy through Law (Venice Commission), published on 9 December 2019.

Also, in connection with different interpretations and fluctuations, both in the legal and political circles, in view of the draft of the Law Amending and Supplementing the Criminal Code submitted to the National Assembly, the Council of Ministers on 18.12.2019 approved a request to the Constitutional Court (CC) to give a mandatory interpretation of the provision of Art. 126, para. 2 of the Constitution of the Republic of Bulgaria.

The following specific question has been formulated: "In the supervision of legality and methodological guidance on the activity of all prosecutors, carried out by the Prosecutor General under Art. 126, para. 2 of the Constitution, are there cases included where a prosecutor carries out checks, investigations and other procedural actions on signals against the Prosecutor General in the light of the generally accepted principle of "no one can judge themselves" as an element of the rule of law? "

At the request of the Council of Ministers on 20.12.2019, the Constitutional Court instituted constitutional case No. 15/2019.

Under § 111 of Chapter IV „Country-specific issues concerning judicial independence and impartiality“, section B, “Organizational independence: Councils for the Judiciary and the administration of courts”:

Over the past two decades, the process of integrating the new democracies of Central and Eastern Europe into the structures of the Council of Europe and the European Union has been bound by the pursuit of common standards in strengthening the rule of law, democracy and human rights. Compliance with the standards and recommendations on building an independent judiciary that protects citizens' rights and guarantees against abuse of power is an essential prerequisite for inclusion in the integration process. The problems identified above, as well as the direction in which judicial reform should take place, have been analyzed in a number of reports and opinions: of the European Commission within the framework of the Cooperation and Verification Mechanism (CVM); the European Commission for Democracy through Law (Venice Commission) of the Council of Europe; Consultative Council of European Judges of the Council of Europe (CCJE); The Council of Europe Group of States against Corruption (GRECO).

Successive CVM reports have highlighted the need for meaningful judicial reform that includes structural, organizational, procedural, resource aspects.

In these reports it was explicitly recommended as follows:

- continue the reform of the Supreme Judicial Council (SJC) with the involvement of professional organizations and other stakeholders;
- the application of objective standards of merit, professional ethics and transparency in judicial appointments, including in senior positions, and the timely completion of such appointments;
- improving the security of the system for random allocation of cases and modernization of the system;
- increasing transparency and compliance with ethical rules in the selection process, including by applying the one-judge-one-vote principle to the judiciary quota by members of the Supreme Judicial Council;
- introducing clear sanctioning procedures and standards to ensure consistent decisions in disciplinary proceedings.

A substantial part of the necessary constitutional and legal changes to strengthen the independence of the judiciary are formulated in Opinion 444/2007 of the Venice Commission. The main recommendations regarding the structure and functioning of the SJC were reiterated in Opinion 515/2009 and Opinion No. 816/2015.

The main findings, criticisms and recommendations are in the following directions:

- In order to guarantee the independence of judges and to prevent interference, a new structure of the SJC should be adopted so as to set up separate chambers for judges, on the one hand, and for prosecutors and investigators, on the other. In order to guarantee the independence of judges, SJC members representing prosecutors and investigators should not be allowed to participate in resolving staff issues of judges;

- The election of 11 members of the Supreme Judicial Council by the Parliament with a simple majority allows the ruling party and the majority to dominate the election. This leads to weakened legitimacy and lack of support among sufficiently broad circles in society. A high degree of consensus should be sought when selecting members of the SJC from the parliamentary quota. Parliament must discuss the nominations in the relevant parliamentary committee before voting in plenary. This mechanism should enable the opposition to participate adequately in the electoral process, which cannot be achieved by a simple majority vote. The election of SJC members from the parliamentary quota should be made by a qualified majority of 2/3, in order to guarantee a degree of independence from political influence.

Concerning the structure, composition and functions of the SJC, similar recommendations have been repeatedly made by both the CCJE and GRECO.

The specific measures were envisaged in the Updated Strategy for continuing the reform in the Judiciary, adopted by the Council of Ministers in December 2014 and approved by the National Assembly in January 2015, with a horizon of 7 years for the implementation of the reforms, as the main starting point and purpose is to guarantee independence of the court.

On December 16, 2015, the National Assembly adopted constitutional changes to divide the Supreme Judicial Council (SJC) into Judicial and Prosecutors chambers to independently address staff development and disciplinary responsibility of magistrates. New powers of the SJC Inspectorate were also envisaged to carry out checks on the integrity and conflict of interests of magistrates, their property declarations, as well as the establishment of actions that undermine the prestige of the judiciary and the independence of magistrates.

The constitutional changes were followed by the adoption of two bundles of amendments to the Judiciary Act (JA), adopted on March 31 and July 27, respectively, 2016. They also provided additional guarantees for the independence and impartiality of the court, including by improving the process attestation, career development of magistrates and their disciplinary responsibility. Prior to their adoption, amendments and supplements to the JA were discussed in the Council for the Implementation of the Updated Judicial Reform Strategy, established by the Government in January 2016. Representatives of various institutions, magistrates, non-governmental organizations and the academic community participate in the Council.

The amendments and supplements to the JA, adopted respectively on March 31 (promulgated SG No. 28 of April 8, 2016) and on July 27, 2016 (amended SG No. 62 of August 9, 2016), provided for the division of the Supreme Judicial Council (SJC) into judicial and Prosecutors chambers to independently address staff development and disciplinary responsibility of magistrates. In view of its new structure, the Supreme Judicial Council exercises its powers through a Plenary, a Judicial Chamber and Prosecutors Chamber. Issues to be resolved and are common to the judiciary fall within the powers of the Plenary. The power of the Plenary is to determine the number, judicial districts and seats of regional, district, administrative and appellate courts and prosecutors' offices, to establish and close courts and prosecutor's offices, to change their seat and to determine the towns where territorial divisions are opened to the respective district court and district prosecutor's office, since the prosecutor's office follows the structure of the courts. The Plenary has the power to issue by-laws in the cases provided for by law. The powers are allocated to the chambers according to their

professional specialisation. The members of the SJC from the National Assembly quota are elected by a majority of two-thirds of the members of Parliament. The SJC members of the professional quota are elected directly by the respective General Assembly (of judges, prosecutors, investigators) by secret ballot.

The Supreme Judicial Council consists of 25 members. The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General are its members by right. The National Assembly elects eleven members of the Supreme Judicial Council, six of which - for the Judicial Chamber and five - for the Prosecutors Chamber. The election of chambers is held among judges, prosecutors, investigators, habilitated scholars of law, lawyers and other lawyers of high professional and moral qualities, in accordance with their professional qualification and specialisation.

The judges elect from among their number six members of the Supreme Judicial Council for the Judicial Chamber. Prosecutors elect from among their number four members of the Supreme Judicial Council for the Prosecutors Chamber. Investigators elect from among their number one member of the Supreme Judicial Council for the Prosecutors Chamber. In the composition of the SJC Plenary the representatives of the Judicial Chamber are 14 and of the Prosecutors chamber - 11. It should be borne in mind that the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, who are members of the SJC Judicial Chamber, are also acting magistrates.

The constitutional and legislative amendments cited have implemented the recommendations of the Venice Commission made before the legislative reform was undertaken.

Concerning Opinion 885/2016 of the Venice Commission (adopted at the 112th plenary session 6-7 October 2017)

Opinion No 885/2016 of the Venice Commission on the Judiciary Act, as amended by the two bundles of amendments adopted in March and July 2016, contains recommendations to overcome some of the shortcomings alleged by the Commission in order to strengthen the progress achieved by the amendments in 2016.

The Ministry of Justice analyzed the correlation with previous recommendations of the Venice Commission and found that the recommendations required changes at both constitutional and legal levels. The Republic of Bulgaria stated at the 112-th plenary session on 6-7 October 2017 that no further constitutional amendments are currently possible. The Republic of Bulgaria also considers that the amendments to the JA from 2016 are relatively new and the effect of their implementation should be evaluated before any subsequent changes are made.

Under § 175 -187 of Chapter IV „Country-specific issues concerning judicial independence and impartiality“, section C „Impartiality of judges, codes of ethics and professional conduct and disciplinary measures“:

The latest Act on amending and supplementing the Judiciary Act, adopted by the National Assembly on 23.01.2020, refined the 2016 regulation in the following more significant directions:

➤ **Changes in the regulation of suspension from office of judges, prosecutors and investigators:**

The aim is to bring the regulation of suspension from office of judges, prosecutors and investigators in line with the Constitutional Court's Decision No 2 of 2019, and with the

recommendations of the Venice Commission in this respect, set out in Opinion No 855/2016 of 9 October 2017.

According to the aforementioned decision of the Constitutional Court, "to deprive the respective SJC chambers of the opportunity to assess whether or not the magistrate to be suspended from office, by being obliged to comply with the law prescribed in Art. 230, para 1 of the JA, is incompatible with the principle of the independence of the judiciary", which is why this text as well as part of the provision of para. 2 were declared unconstitutional. According to the Constitutional Court, it is appropriate and constitutional to grant the SJC the opportunity to assess whether the specific protection of the prestige of the judiciary should be put into effect, or not in any particular case.

In Opinion No. 855/2016, the Venice Commission recommended that, in the suspension of a judge, the SJC should assess whether the evidence presented was sufficiently convincing (without necessarily being "beyond a reasonable doubt") and whether they required suspension... (§46). With regard to the suspension deadline, it is recommended that the SJC be able to fix short time limits for the investigation.

In view of the above, the new revision of Art. 230 provides, in all cases, that an assessment should be made by the respective chamber to allow suspension from office and must be given an opportunity to hear or deposit a written opinion from the respective magistrate, thereby introducing an element of competitiveness. It is envisaged that the term for suspension in the pre-trial phase of the criminal proceedings shall not be longer than that under Art. 234, para 8 of the Code of Criminal Procedure, and in the changed circumstances both during the pre-trial and the court proceedings, the suspended magistrate may request the reinstatement of the position. There is a special rule providing for automatic suspension only in cases where pre-trial detention or house arrest measures have been ordered. When such measures are amended, the continuation of the suspension is again subject to review by the respective chamber. Suspension from office is subject to judicial control in all cases and both the suspended magistrate and the prosecutor's office have the right to appeal.

- **The obligation of magistrates to declare membership in professional organizations is no longer required.**

Concerning the recommendations in PACE Resolution 2188 (2017) to the Bulgarian authorities:

1. Continue the reform of the SJC, the judiciary and the prosecution service in line with the Council of Europe recommendations:

(Please take into account the information with regard to §§ 60, 61 and 175 – 187 of the Report)

2. Strengthen efforts to combat corruption and in particular, establish an anti-corruption agency:

Bulgaria has undergone important institutional changes over the years, especially with the establishment in 2012 of a specialized criminal court and prosecutors' office for organized crime and an independent Commission for the withdrawal of illegally acquired property (KONPI) with a mandate to confiscate illegally acquired property and without a sentence. The Anti-corruption and Forfeiture of Assets Act (AFAA) (promulgated, SG No. 7/2018) on the basis of KONPI, a new single independent anti-corruption body was established - Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property (KPKONPI) as an independent specialized permanent acting state body for the implementation of anti-corruption policy and forfeiture of illegally acquired property.

The focus of the AFAA is the reform of the institutional framework in the field of prevention and combating corruption, aimed at greater efficiency and better coordination

between existing bodies and units in public administration. In the Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property fall the Commission for Prevention and Detection of Conflict of Interest, the Center for Prevention and Combating Corruption and Organized Crime at the Council of Ministers, the respective unit of the National Audit Office, related to the activity under the repealed Act on Public Disclosure of the Assets of Persons Holding Senior Government and Other positions, as well as the respective specialized Directorate of the State Agency for National Security (SANS) for combating corruption among high-ranking officials.

The Commission's leading role in the seizure of illegally acquired property is recognized. This aims to create the necessary link between the functions of preventing corruption, verifying property declarations, identifying conflicts of interest and forfeiture of illegally acquired property, enhancing anti-corruption activities by collecting, analyzing and verifying information on and on the occasion of information on acts of corruption of high-ranking officials.

This combination of functions is important as conflicts of interest and corruption are often at the root of inexplicable enrichment for the individuals concerned. This creates the opportunity to preserve and further develop the results achieved so far and the established good practices in the field of civil forfeiture.

The Commission is a collective body consisting of five members - a President, a Vice-President and three other members. Each of them must be a Bulgarian citizen and possess high moral and professional qualities. The President must have at least 10 years of legal experience, the Vice President must have at least 5 years of professional experience in the field, and the other members must have at least 5 years of professional experience. The President of the Commission is elected by the National Assembly (NA) at the suggestion of the Members of Parliament. The Vice President and the other members of the Commission are elected by the National Assembly at the suggestion of the President of the Commission. The independence of the Commission is ensured through the proposed principles and procedures for its structuring, while guaranteeing transparency, accountability and publicity in its activities. Parliamentary scrutiny and effective interaction with the institutions of other authorities provide legal guarantees for the independence of the newly created body.

The National Assembly exercises control over the activities of the Commission and its members are obliged, upon invitation, to appear in the NA and provide the requested information. The Commission will report annually to the NA on its activities. This guarantees public control on the Commission's activities. The law aims to protect the interests of the community by:

- effective counteraction to corruption;
- ensuring that public office holders perform their powers or duties with honesty and integrity, in compliance with the Constitution and laws of the country;
- preventing the possibility of unlawful acquisition of assets and disposition thereof;

The Anti-corruption and Forfeiture of Assets Act (AFAA) codifies and optimizes the anti-corruption regulations:

- The will to create a unified anti-corruption body integrating the efforts and expertise of the existing units is reflected;
- A unified approach, coordination and effective inter-institutional and international synergies are created in the fight against high-level corruption;
- A mechanism for optimal restructuring related to the closure and transformation of existing institutions is in place;
- A clear sequence of procedures is envisaged for taking measures to counteract corruption, to identify and seize illicitly acquired property;
- A new level of interconnection of the existing information databases is guaranteed as a basis for combating corruption;

• A significant step is being taken to identify and analyze the networks of dependency that link corruption to organized crime.

3. Findings from the recent EC reports on the Cooperation and Verification Mechanism (CVM).

- On 13 November 2018, the Commission published its annual report on Bulgaria's progress in meeting CVM indicators. The Commission has indicated that the progress made in meeting all the CVM indicators is significant. For the first time, it was found that Indicator 1 (Judicial Independence), Indicator 2 (Legal Framework) and Indicator 6 (Organized Crime) were found to be provisionally closed and Indicators 3 (Continuation of Judicial Reform), 4 (Corruption at high level) and 5 (Local and Border corruption) significant progress has been made, with recommendations very close to implementation.

The most significant individual achievement indicated was the elaboration and adoption of a comprehensive legal framework to counteract corruption at high levels of power. The high degree of continuity with regard to both the legislative framework and the smooth merging of the individual structures in the new commission were explicitly emphasized. A transparent procedure for selecting the management of the new body was indicated.

The EC's positive assessment is also based on the transparent elections for SJC members in 2017 and the professional work of the newly-elected SJC, the election of heads of the judiciary, the new powers of the SJC Inspectorate, the changes in the Criminal Procedure Code regarding the inclusion of high-level corruption cases in the jurisdiction of the Specialized Criminal Court and the adoption of the Anti-corruption and Forfeiture of Assets Act (AFAA). The report clearly defined the possibility of closing down CVM next year if the pace and irreversibility of the reforms under way were maintained.

- On 22 October 2019 the EC report was published on the progress achieved during the previous year in implementation of the last 17 recommendations made by the Commission in its January 2017 report. It is noted with pleasure Bulgaria's consistent work to implement these recommendations. For the first time since the establishing of this Mechanism for Bulgaria in 2007, there is a real chance for our country for it to drop out.

The Commission is of the opinion that Bulgaria's progress towards CVM is sufficient to fulfil the country's commitments made at the time of its accession to the EU. Bulgaria needs to continue to work consistently to translate the commitments reflected in the report into specific legislation and to ensure its lasting implementation. Bulgaria needs to monitor the ongoing implementation of the reforms through a newly created council, which will function after the Commission's monitoring is completed, and the conclusions reached will be used in future dialogue with the Commission within the comprehensive rule of law mechanism. Both internal monitoring and the EU-wide mechanism should support the sustainability and irreversibility of reforms, even after the end of CVM for Bulgaria.

Poland

a) The assertion about the political dependence of the National Council of the Judiciary (presented by the MEDEL and AEAJ associations in paras 80 and 81 of the Report) is an arbitrary thesis, not supported by any evidence or an attempt to substantiate the presented assumptions. The same applies to the claim about the influence of the executive, including the Minister of Justice, on the activities carried out by the National Council of the Judiciary (KRS), as well as on the jurisprudence of individual judges, as it is also devoid of rationale and unsupported by any evidence. In order to prove this thesis, a person making such a claim would have to present legal acts or internal ordinances, that could certify the influence of

representatives of the executive power on the actions taken by members of the National Council of the Judiciary, and with regard to individual judges - on their decisions.

The National Council of the Judiciary makes its decisions in the form of resolutions, entirely independently, which can be evidenced by the minutes documenting its meetings, as well as recordings of meetings (conducted online) done on a constant basis. The Minister of Justice, as one of Council's 25 members of the equal status, manifests his will through participation in the voting, which is tantamount to 1 vote out of 25 members.

b) Referring to the report of the Council of Europe Commissioner for Human Rights of 28 June 2019 (CommDH (2019) 17, para 59 et seq.) and the Commissioner's statement of 3 September 2019, cited in paras 129 and 130 of this report, it is imperative to note that in both cases the Commissioner did not present at least one specific example of the case that would confirm his suggestions of using politically motivated repression against judges for their public statements. It would be expedient to indicate at least one specific case reference number which would pertain to such a case. Afterwards, it would be possible to make a detailed comment based on the facts. Rumours appearing in the media cannot provide, in particular for lawyers, a reasonable basis for formulating far-reaching allegations of "use of disciplinary proceedings against outspoken judges".

c) Contrary to MEDEL's allegations set out in para 126 - the National Council of the Judiciary of Poland is not in any way dependent on the executive branch. This relationship was terminated over 10 years ago, when the National Council of the Judiciary gained organisational and budgetary separation from the Chancellery of the President of the Republic of Poland. Members of the National Council of the Judiciary do not report in any way to representatives of the executive or legislative branches.

d) One cannot agree with the thesis of para 133 in the following scope:

1) The Polish National Council of the Judiciary is not a "new" institution, as suggested by the thesis in para 133.

2) The election of the members of the National Council of the Judiciary from among judges for the term of office beginning in 2018 is not a setback, it is a form of implementation of the constitutional principles of cooperation and balance of branches of power. The judicial status of these members, and in particular their independence in judicial activity, cannot be called into question just because they do not submit to the pressure from their professional environment.

3) Furthermore, in para 133, there is no deeper specification of the theses put forward and justification of the view that the election of members of the National Council of the Judiciary is contrary to the standards of the Council of Europe.

When making a historical interpretation of the legal grounds justifying the establishment of the National Council of the Judiciary, it becomes obvious that it was not the Constitution, but - in accordance with the will of the legislator – it was the legal act of statutory rank which was supposed to decide and still determines the method of choosing members of this Council.²⁴⁵ Under this act, more than half of the National Council of the Judiciary are judges - currently chosen by other judges (para 27 of Rec(2010)12 - "*judges chosen by their peers*"), and only

²⁴⁵ Model which was adopted in Article 60 (3) of the Constitution of the Polish People's Republic in the wording introduced by the amendment of 8 April 1989 (Journal of Laws 1989.19.101): "The powers, composition and method of operation of the National Council of the Judiciary are set out in an act", maintained in the Constitution of the Republic of Poland after the amendment introduced by the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local government (Journal of Laws 1992.84.426), and which retained similar contents ("The structure, scope of activity and mode of work of the National Council of the Judiciary as well as the method of selecting its members are specified by the statutory act") in Art. 187(4) of the Polish Constitution of 2 April 1997, on the basis of which the National Council of the Judiciary Act of 12 May 2011 was adopted (Journal of Laws 2011 No. 126 item 714, as amended)

in addition, the guarantee of full democratisation of this body is submission of chosen candidates to election to the Sejm as a representative of society. There can be no objection to the election of a member of the National Council of the Judiciary by the representatives of society, because it means giving the person elected a respect and trust by the citizens, which is of great importance for the administration of justice and fully corresponds to the Montesquiesque assumptions of the separation of powers.

e) At the same time, in relation to the allegations expressed in general terms in para 126 and 133 and the documents cited therein, it should be noted that the National Council of the Judiciary in its previous composition, by abolishing the joint tenure of its members by its internal resolution of February 12, 2002²⁴⁶ (contrary to the provisions of Article 187 of the Polish Constitution) breached, in fact, the constitutionally established term of office pertaining to the National Council of the Judiciary, hence the allegation of premature termination of the term of office of current members of the National Council of the Judiciary in 2018 is completely unfounded. One cannot terminate something that does not exist anymore. The unification of – unconstitutionally set – 15 individual terms of office of members of the National Council of the Judiciary could not take place otherwise than by modifying the term of office on the date of the reform. Restoration of the legal status consistent with the Constitution is often associated with social and judicial controversy, as evidenced by, e.g. doubts related to the effects of judgments of the Constitutional Tribunal with regard to the court rulings made during the period of deferral of the date on which the provisions recognised by the Constitutional Tribunal as inconsistent with the legal control benchmark are to lose their binding force.

f) The problem of trust in justice system raised in para 289 of the Report is of a long-term nature in Poland and it was not solved after 1989. Since the early 1990s, in connection with the decision taken at the time about the lack of proper vetting of judges, the media has constantly touched upon the subject of judiciary in discussions. It is appropriate and this is just about time to cease this criticism of the judiciary. According to the legislator's claims, the reforms are supposed to be carried out just for this purpose. Previous attempts at reform were unsuccessful each time, faced with unanimous resistance from the associations of judges and supreme judicial authorities. An attempt to reform aimed at "purifying" justice system was made as early as 1997²⁴⁷. In February 1998, the then-President of the Republic of Poland addressed a question to the Constitutional Tribunal about the compliance of the adopted act with the Constitution. Both the National Council of the Judiciary (KRS) in its composition of that time, as well as the Polish Judges Association "Iustitia", the President of the Supreme Administrative Court and the Main Board of the Polish Lawyers' Association opposed the Act. The Constitutional Tribunal considered the wording of the challenged provision to be fully correct, i.e. exclusion from the profession of a judge who, in the previous constitutional formation, violated the obligation of impartiality by making the content of judgments dependent on political influence or used the court room for political repression. The Tribunal allowed the legislator to distinguish the situation of abuse of the principles of independence and impartiality, motivated by political considerations, and to establish extraordinary procedures for the judge's liability in

²⁴⁶ Available at: <http://www.krs.pl/pl/dzialalnosc/opinie-i-stanowiska/f,94,opinie-i-stanowiska-2002-r/211,od-stycznia-do-grudnia-2002-r/1863,stanowisko-krajowej-rady-sadownictwa-z-dnia-12-lutego-2002-r>

²⁴⁷ Content of Article 6 of the Act amending the Act - Law on the structure of common courts: "No limitation rules apply in disciplinary proceedings of a judge who in the period between 1944-1989, adjudicating in trials being a form of repression for the fight for independence, political activity, defending human rights or exercising basic human rights, misappropriated judicial independence or for other reasons, obviously issued unfair judgments, restricted the rights of parties or unreasonably excluded public disclosure of a hearing. For this act, the disciplinary court shall impose a penalty of expulsion from judicial service. "

his situation. However, the Tribunal recognised simultaneously, solely in connection with the position presented by the then-members of the National Council of the Judiciary, that the most important Article 6 should be removed from the Act.²⁴⁸ This issue has not been resolved to this day, with its consequences. This was also a result of the Supreme Court's Resolution of 20 December 2007²⁴⁹ (that had the *chilling effect* for future case law) attributed by the force of a legal rule binding on all panels of the Supreme Court, which does not allow criminal prosecution of judges adjudicating in criminal cases under the decree of the Council of State of 12 December 1981 on martial law.

As regards other theses not directly touching the National Council of the Judiciary, I consider that I am not fully competent to give detailed answers, and therefore, I would only like to indicate, in general terms, the following:

g) It must be denied that the issue of reducing the 'retirement age' should remain in dispute (para 135). This has long been a closed issue and should not be invoked as an argument about the threat to the judiciary as to its jurisprudence and alleged takeover of control by the executive power. Similarly, theses regarding the termination of the term of office of the First President of the Supreme Court (paragraphs 134 and 137-140) have long been out of date.

h) Simultaneously, it should be specified that there is no retirement age (in strict terms) as such, for judges in Poland. The judge actually goes into passive service (or "state of inactivity") – this is not a retirement, it is the continued holding of the judicial office, without performing judicial tasks. The retired judge's service relationship remains valid – unlike a retirement pension which is subject to termination of employment.

i) The Minister of Justice, from 2018 on, is not authorised anymore to decide on the continuation of holding the office of a judge who has attained *passive service* (retirement) age. This task was obtained by the National Council of the Judiciary, which was omitted in para 140 of the Report. In Poland, the rule is that the active judicial service shall be terminated upon attainment of a certain age. In particular cases, when it is justified by the needs of the court, the National Council of the Judiciary grants consent to extend the performance of judicial activity by the judge. The Minister of Justice has no greater influence on this decision than any of the other 24 members of the National Council of the Judiciary.

j) Minister of Justice's competence to appoint court presidents is of an organisational nature. Moreover, it was omitted in para 131 of the Report that from February 2018 on, the Minister of Justice no longer has the power to independently and arbitrarily dismiss court presidents.²⁵⁰

k) The formation of the Disciplinary Chamber of the Supreme Court (mentioned in paras 80, 136 and 141 of the CCJE Bureau Report) is in no small way a reference and repetition of certain solutions of the model included in the Polish legal framework already under the Polish Constitution of April 1935, which has not been questioned, so far. At the same time, it is one

²⁴⁸ Judgment of the Constitutional Tribunal of June 24, 1998 (case reference number K 3/98).

²⁴⁹ Resolution of the seven judges' panel of the Supreme Court of 20 December 2007, ref. no. I KZP 37/07 (OSNKW 2007, issue 12, item 86), according to which "due to non-inclusion in the Constitution of the Polish People's Republic of 1952 the prohibition of creating retroactive penal regulations (the *lex retro non agit* principle) and the lack of a legal mechanism to enable monitoring of compliance of statutory provisions with the Constitution or with international law, as well as due to the lack of regulations determining the place of international agreements in the national legal order, courts adjudicating in criminal matters on crimes pursuant to the Decree of the Council of State of 12 December 1981 on Martial law (Journal of Laws No. 29, item 154) were not released from the obligation to apply retroactive criminal provisions of a statutory rank."

²⁵⁰ In accordance with Articles 127 (2) and 127 (5a) Of the Act - the Law on common courts organisation, the Minister of Justice must consult the board of the competent court regarding the dismissal of its president or vice president, and if the opinion of the board is negative, the Minister of Justice shall present the intention to dismiss, together with a written justification, to the National Council of the Judiciary. A negative opinion of the National Council of the Judiciary is binding on the Minister of Justice if a resolution in this matter was adopted by a two-thirds majority.

of the chambers of the Supreme Court, the court which no one is questioning as an institution, the chamber which operates on the basis of the same regulations and similar procedural rules. The new model of disciplinary proceedings is an attempt to remedy the citizens' limited confidence in justice that has been going on for many years. Therefore, judges of the Disciplinary Chamber were granted special guarantees of their independence and independence not only from the executive and legislative authorities, but also from other judicial entities. Reliable performance of functions in disciplinary courts requires that judges adjudicating there should not be pushed systemically to conformist attitudes towards their own professional environment. Otherwise, their activities will not obtain due authority.

l) The content of para 290 suggests that in 2017, intentions to resign from random allocation of cases in Poland were presented. In fact, the situation is reversed - the IT Random Case Allocation System was first introduced in Polish courts on 2 January 2018.

m) To sum up, one should have in mind that the statements of politicians about the activities of the courts (paras 50, 129 and 293 of the Report) are not based on facts and may be essentially political slogans, not supported by the actual wording of legal acts whose provisions are questioned. An example of this is to proclaim a violation of the Constitution, without indicating any substantiation. The opposition always criticises the government's activities - that is its mission. In turn, each subsequent government diagnoses social problems and solves them on their own responsibility, which they are subject to, on the day of general elections. Indeed, many statements by politicians from all sides of the political scene show their ignorance of the reality of the functioning of the judiciary, in particular the realities of the process of appointing judges currently, as well as in previous years. However, politicians' statements on this subject, even unreliable ones, may have certain positive effects, contributing to an increased educational activity of legal and media environments.

n) The Report in para 293 completely omits the smear campaign against judges and lawyers who have not joined the group of open critics of the changes introduced in recent years in the judiciary. The judges who they submitted their candidacies to the National Council of the Judiciary were subjected to a particularly brutal criticism and defamation, with active participation of judicial associations (SSP "Iustitia", "Themis") and political organizations (such as the Committee for the Defense of Democracy, Citizens of Poland, Action-Democracy and politicians from various groups) in it. An example of this is e.g. the large-scale billboard campaign in February 2018, in the framework of which huge posters were placed in the centres of cities where court premises were located, with the names of specific judges and the words "The term of office will pass, the shame will remain". At the same time, TVN24 news channel graphics was shown presenting images of the above mentioned judges with strings attached symbolizing the hanging of traitors' effigies, which refers to the analogical events of the Kościuszko Uprising of 1794. Various manifestations of this campaign and pressure on the independence of specific judges have been ongoing to date, in particular in social media.

Judge Teresa Kurcyusz-Furmanik,
Polish member of the Consultative Council of European Judges (CCJE)

Romania

IV. Country specific issues concerning judicial independence and impartiality

A. Functional independence: appointment and security of tenure of judges

B. Organisational independence: Councils for the Judiciary and the administration of courts

On the point 149, regarding the revocation of the elected members of the Superior Council of Magistracy, we would like to mention that:

By Law no. 234/2018, point 61, the art. 55 of *Law no. 317/2004 regarding the Superior Council of Magistracy (SCM)* was modified being provided, among the cases of revocation, the situation in which the person concerned have its confidence withdrawn by the majority of judges or prosecutors, as the case, which actually works in the courts or prosecutor's offices that it represents (paragraph (1) letter c))

The text of the law was replaced by Article III point 4 of the Emergency Ordinance no. 92/2018, thus the currently art. 55 of *Law no. 317/2004* regulates the following cases of revocation from the position of elected member of the Superior Council of Magistracy:

- a) *the person concerned no longer fulfils the legal conditions to be elected member of the Superior Council of Magistracy;*
- b) *a disciplinary sanction from those provided by law for judges and prosecutors was applied to the person concerned and the measure remained final;*
- c) *the corresponding section of the Superior Council of Magistracy concluded, on the basis of the report prepared by the Judicial Inspection, that the person concerned did not fulfil the tasks provided by the law or has improperly, repeatedly, and unjustifiably fulfilled those duties.*

On the point 155 regarding the limited role played by civil society representatives within the SCM because of their exclusion from all the meetings of the Sections, we would like to mention that:

According to art. 19 of *Law no. 317/2004 regarding the Superior Council of Magistracy*, within the SCM are elected 2 representatives of civil society.

The representatives of the civil society do not attend to the sections meetings of the judges, respectively for prosecutors, but they participate, with the right to vote, to the plenary meetings of the Superior Council of Magistracy (*art. 28 paragraph 3 of Law no. 317/2004*).

Also, for the information purpose about the activity of the courts and prosecutor's offices, the members of the SCM carry out trips to the headquarters of the courts and prosecutor's offices and organize meetings with the judges, prosecutors and representatives of the civil society (*art. 31 paragraph 2 of Law no. 317/2004*).

Regarding the role of the representatives of the civil society within the SCM, we are mentioning the following specific duties:

- a) ensures constant information of civil society organizations on the work of the Superior Council of Magistracy;
- b) performs the consultation of the civil society organizations on their proposals and suggestions regarding the necessary steps at the Superior Council of Magistracy level, in order to improve the activity of the judicial institutions (*as a public service in the service of the society*), preparing in this regard a quarterly report (*analysis and synthesis of the proposals*) which is send to the plenary or the sections, as the case may be, for analysis and decision;
- c) monitors the compliance of the Superior Council of Magistracy obligations on transparency, ensuring public access to information and solving petitions, in relation to civil society and draws up an annual report that it publishes on the SCM's website.

C. Impartiality of judges, codes of ethics and professional conduct and disciplinary measures
On the point 203, regarding the mandatory action for recovery, by the Ministry of Public Finance, against the judge or the prosecutor in the case of the judicial errors, we would like to mention that:

According to art. 96 paragraph 8 of *Law 303/2004*, "*The State, through the Ministry of Public Finance, will exercise the action for recovery against the judge or the prosecutor if, following the advisory report of the Judicial Inspection provided in par. (7) and of his own*

assessment, considers that the judicial error was caused as a result of the exercise of judge or prosecutor's function in bad faith or as a result of gross negligence”.

Therefore, given the current form of the law, the exercise of the action in regress by the MPF is not mandatory, but optional.

On the point 210 and following regarding the abolition of the *Section for the Investigation of Crimes in Justice/SIIJ*, we would like to mention that, on 24 December 2019, the Romanian Government approved an Memorandum on “*Evaluation of the legal framework regarding the organization and operation of the Criminal Justice Investigation Section and proposals*”, initiated by the Ministry of Justice.

Thus, in the relations with the authorities and public institutions, respectively with the European Union or international institutions on this subject, the solution could be the abolition of the SIIJ or, as the case may be, the radical rethinking of its functioning and organization, according to GRECO recommendations, the Venice Commission and the European Commission.

Turkey

Regarding paragraphs 94 and 167 of the report, we would like to submit the following information to the attention of CCJE Bureau:

In pursuance of its founding purpose and mission, CCJE takes into consideration the opinions of diverse international organizations while carrying out evaluations regarding member States. At this point, it has been many times expressed to the senior management officials of AEAJ and MEDEL, whose opinions and criticisms are incorporated in this report, that it would be more accurate and lawful to include in their evaluations the legal information acquired as a result of mutual dialogue rather than coming to a conclusion through one sided and wrong information about what is happening in Turkish judiciary (in different platforms). It has even been reminded that if they come to Turkey, they could ask their questions to related institutions and individuals.

It has been said to the President of MEDEL that his evaluations would absolutely change upon meeting with founding members and executives of YARSAV (an ex-member of MEDEL) who are currently on active duty within Turkish judiciary. Then it has been expressed that concrete evidence could be presented about how YARSAV was seized by FETÖ/PDY terrorist organization and the fact that Murat Arslan was never independent and impartial (that he was neither judge nor prosecutor) and that he administered YARSAV in line with the orders of FETÖ/PDY terrorist organization.

There is no reasonable justification for the erroneous demeanour of this organization's executives who did not respond to all these invitations and to the possibility of accessing official information and who transferred money to those dismissed on the grounds of being connected and in contact with the abovementioned terrorist organization in order to help them flee from justice. This being the case, excepting the esteemed members of AEAJ and MEDEL mentioned in the report, it is necessary to indicate that the evaluations of senior management about Turkish judiciary go beyond prejudice and that they are intentional.

Regarding paragraph 96 of the report:

By 22.11.2019, 151 cases filed before the Council of State by those dismissed from profession on grounds of being connected and in contact with FETÖ/PDY terrorist organization were finalised. We would like to submit to your information that the following issues were touched on in these judgements of dismissal of cases.

The Council of State expressed the following on the allegation of violation of complainant's procedural guarantees;

Decree Law No. 667 was issued within the framework of State of Emergency and it is as proportional as the situation requires. As a matter of fact, it is regulated in Article 15 of European Convention of Human Rights that the obligations involving certain procedural guarantees may be suspended.

On the other hand, according to ECHR case law, procedural deficiencies occurred at lower stages of decision making and judgement process can be compensated at later stages.

Within this framework, fair trial is guaranteed through facilitating measures such as evaluation of term of litigation and requests for legal assistance, ensuring easy participation in trials, evaluation of all information and files presented by administration and granting a certain time period for sending and responding, extending responding period if requested.

On merits;

Having mentioned judicial independence and impartiality included in our Constitution and laws, the obligation of loyalty to Democratic Constitutional Order and the Bangalore Principles of Judicial Conduct that is acknowledged by the Plenary of Council of Judges and Prosecutors,

The Council of State decided that it is lawful that the complainant who is found to be a ByLock user and about whom there are witness statements and whose membership mode to YARSAV is determined as a supportive factor of being connected and in contact with the organisation, is dismissed from profession pursuant to Decree Law No. 667 on the grounds of being connected and in contact with FETÖ/PDY terrorist organisation.

The Council of State decided to dismiss the case on the grounds that this situation does not constitute a violation when evaluated from the perspective of fundamental rights in line with the principles of lawfulness, bearing a legitimate purpose, being necessary in a democratic society and proportionality.

Regarding paragraph 168 of the report;

Judicial councils of CCJE member states are not uniform as a course of their nature. What is important is that the officials of judicial councils have sufficient guarantees assuring that they make their decisions with their independent and impartial identity regardless of their election method. Within this framework, we present to your attention that all members of the Council of Judges and Prosecutors are provided with Constitutional guarantees that are sufficient for making independent and impartial decisions. In addition, we would like to emphasize that the change in the structure of our Council is the result of a constitutional referendum. Still 9 (out of 13) members of CJP are judges and prosecutors. The percentage of judges and prosecutors in the Council is greater than that of many European Countries.