REVIEW OF THE IMPLEMENTATION OF THE COUNCIL OF EUROPE PLAN OF ACTION ON STRENGTHENING JUDICIAL INDEPENDENCE AND IMPARTIALITY

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REVIEW OF THE IMPLEMENTATION OF THE COUNCIL OF EUROPE PLAN OF ACTION ON STRENGTHENING JUDICIAL INDEPENDENCE AND IMPARTIALITY

Report by the European Committee on Legal Co-operation (CDCJ)
to the Secretary General of the Council of Europe

Council of Europe

French edition:
Examen de la mise en œuvre du plan d'action du Conseil de l'Europe pour renforcer l'Indépendance et l'impartialité du pouvoir judiciaire

This report was prepared by the European Committee on Legal Co-operation (CDCJ) that the Committee of Ministers tasked to review the implementation of the Plan of Action. It was adopted by the CDCJ at its 98th plenary meeting (1-3 June 2022) and communicated to the Secretary General of the Council of Europe. The Committee of Ministers has taken note of the report at its 1449th meeting (23 November 2022).

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I. BACKGROUND

1. The second report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe (2015) identified the lack of judicial independence in many countries of Europe as one of the biggest challenges to democratic society today. Standards of impartiality and independence were found not to be sufficiently guaranteed. Therefore, the Council of Europe developed a Plan of Action on "Strengthening judicial independence and impartiality" to support member States in implementing such measures adopted to this end. The Council of Europe Plan of Action was adopted by the Committee of Ministers in Sofia (Bulgaria) on 13 April 2016 with the intention to be implemented within a timeframe of five years.

2. The Plan of Action - also called "Sofia Action Plan" - was based, *inter alia*, on a report on the review of the follow-up action by Council of Europe member States to Recommendation CM/Rec (2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities of 17 November 2010 which was prepared by European Committee on Legal Co-operation (CDCJ). The Plan of Action foresaw that progress would be reviewed regularly and that good practices would be identified, compiled and made available to member States.

3. This report focuses on measures undertaken by member states to implement the Plan of Action since its adoption in 2016. It also takes stock of the contribution of the Council of Europe to support the implementation of relevant standards, and the adoption of related legal reforms and measures. As stated in its preamble, the Plan of Action represents a commitment on the part of the Secretary General and of the Council of Europe as a whole to accord the highest priority to working with member states to strengthen further the independence and impartiality of the judiciaries in Europe. As independent and impartial courts are an element of the rule of law and a key condition of effective access to justice for all, the strengthening of judicial independence and integrity contributes towards achieving the UN 2030 agenda for sustainable development goals (SDGs).

4. This report reflects the progress made and measures adopted by member states to respond to challenges to judicial independence observed during the five years of the implementation of the Action Plan. The latter have been addressed at length by several thematic reports of Council of Europe bodies, such as the reports of the Consultative Council of European Judges (CCJE) and of the Consultative Council of European Prosecutors (CCPE) on challenges to judicial independence, and more recently by the 2021 Secretary General's Report on the State of Democracy, Human Rights and the Rule of Law[1].

5. This report acknowledges existing issues and negative trends that have been identified, such as national courts and judicial professions facing an increasing number of challenges as a result of the actions of the executive power, the use of legislative intervention to facilitate political influence over judicial appointments and the composition and functioning of judicial self-governing bodies or the steps take to weaken the security of judges' tenure or empower the executive to discretionally replace court presidents in a number of member States. To some extent, this report integrates and complements the above-mentioned reports as it seeks to identify positive trends in legal developments and practices but also factors affecting their effective implementation.

6. The report is based on information provided by member States in their replies to the questionnaire developed by the European Committee on Legal Co-operation (CDCJ) of the Council of Europe for the preparation of the report on the implementation of the Sofia Action Plan, observations submitted by civil society to the Council of Europe bodies, GRECO's Evaluation and Compliance Reports adopted in the framework of the fourth evaluation round on "Prevention of corruption in respect of members of parliament, judges and prosecutors", the preliminary works and member States' replies to questionnaires for the adoption of opinions of the CCJE and CCPE, the action plans developed by member States to secure the execution of the judgments of the European Court of Human Rights and the corresponding Committee of Ministers' decisions and resolutions, the opinions of the European Commission for Democracy through Law (Venice Commission), the Parliamentary Assembly's resolutions, the reports of the Commissioner for Human Rights; the European Commission's first Rule of Law report and its Cooperation and Verification Mechanism progress reports. Additional information was obtained on the basis of the review of national legislation, judicial practice and official reports.

[1] *State of democracy, human rights and the rule of law. A democratic renewal for Europe.* Report by the Secretary General of the Council of Europe, 2021. See also the *Moving Forward*, Annual Report of the Secretary General of the Council of Europe, 2022.

7. The report follows the structure of the Sofia Action Plan which is organised into lines of action with separate sections for judges and prosecutors. However, in certain cases the sections for judges and prosecutors have been considered jointly, not only in consideration of the circumstance that in several member States judges and prosecutors enjoy identical status, but also because *"(t)aking into account the proximity and complementary nature of the missions of judges and prosecutors, as well as of requirements in terms of their status and conditions of service, prosecutors should have guarantees similar to those for judges"* as noted in Opinion No. 13(2018) of the CCPE on *«Independence, accountability and ethics of prosecutors».* This Opinion also concluded that there is a general tendency for more independence of prosecutors and prosecution services and towards a convergence in the regulations for judges and prosecutors. The review of the most recent measures adopted by member states in respect of prosecutors confirms this conclusion. The section for prosecutors thus focuses on measures that concern specific aspects of prosecutorial independence such as external instructions by the executive, hierarchical instructions, measures to address politically motivated prosecutions and the procedure for appointment and removal of the Prosecutor General.

8. It should also be mentioned that this report is not the result of a comprehensive research into the functioning - legal framework and practice - of the judiciary in each member State and not all member States of the Council of Europe are mentioned under each section of the report, and this should not be interpreted positively or negatively as regards the independence and impartiality of the judiciary in non-mentioned countries.

9. As the Sofia Action Plan was adopted in 2016, the scope of this report is limited to reviewing progress in securing and achieving judicial independence in the period 2016-2021. It contains limited mention of draft laws and other pending reforms, as although the existence of plans to strengthen judicial independence is per se a positive factor, one should not assess their relevance and compliance with Council of Europe standards until such reforms are completed and in force. This report also integrates the findings of the various Council of Europe bodies assessing the effectiveness of legislative and judicial reforms adopted by member States as well as their compliance with Council of Europe standards. These findings have been crucial for the selection of measures adopted by member states.

10. In many member states, the Council of Europe observes a strong commitment to creating the necessary conditions – legislatively, structurally and financially – to comply with the principles set out in the Sofia Action Plan. Some have guaranteed institutional and organisational independence of the judiciary at constitutional level while others are now considering whether certain additional guarantees of judicial independence, such as retirement age and number of judges of higher judicial instances, should be enshrined at constitutional level. A number of member states have adopted measures to strengthen the independence of court presidents and chiefs of office, several have introduced integrity requirement within recruitment, evaluation and appointment of judges and prosecutors. A few countries have worked towards the mainstreaming of a gender perspective into all reforms aimed at strengthening judicial independence and impartiality, including the promotion of gender balance in the composition of the judiciary.

11. The main challenges arise from the implementation of regulatory frameworks and the continuous need for an enabling environment and a legal culture of judicial independence. It is of primary importance that judicial independence and impartiality are secured by law and exist in fact. Existing scholarship has highlighted a stronger correlation between freedom of the press and *de facto* judicial independence. Besides this, the lack of financial and human resources and budgetary autonomy remain a major challenge to the effective implementation of reforms adopted to strengthen the independence of the judiciary in several member states. Finally, member States should also track progress by measuring the impact of specific reforms through data collection and surveys.

II. COUNCIL OF EUROPE'S ACTION: DELIVERING THE SOFIA ACTION PLAN (2016-2021)

12. The Action Plan is a comprehensive tool that contains specific recommendations and proposals to member States concerning measures to adopt to address specific issues and concerns. It also goes beyond that and lists a set of concrete proposals on how the different bodies of the Council of Europe can help the member States to address their specific needs.

13. During the five years of implementation of the Sofia Action Plan, the Council of Europe bodies and committees, such as the Group of States against Corruption (GRECO), the European Commission for Democracy through Law (Venice Commission), the Steering Committee for Human Rights (CDDH), the Consultative Council of European Prosecutors (CCPE), the Consultative Council of European Judges (CCJE), the European Commission for the Efficiency of Justice (CEPEJ), as well as the specific multilateral and bilateral co-operation projects, including the HELP programme, have provided substantial guidance as well as support to the member States on issues related to the independence and impartiality of judges and prosecutors.

14. GRECO's fourth evaluation round, which dealt with the prevention of corruption in respect of members of parliament, judges and prosecutors, specifically addressed shortcomings in member States' judicial and prosecutorial legal frameworks. A well-functioning justice system is crucial to addressing corruption effectively, and a strong independent judiciary is considered to be the safeguard for fighting corruption and its implications on the administration of justice. Therefore, the GRECO evaluations have also touched on a number of different aspects of judicial independence such as independence of self-governing bodies, recruitment, career and conditions of service, ethical principles and rules of conduct, conflict of interest and prohibition of certain activities, declaration of assets, income, liabilities and interests, training, advice and awareness. For member States GRECO's recommendations have served as a basis for addressing gaps identified in its evaluations. During these five years, GRECO has fully completed its initial evaluations and almost completed reviewing the compliance by each member State with the recommendations provided. Bilateral co-operation projects between the Council of Europe and a number of member States also benefited from GRECO's evaluations as in several cases the technical assistance has focused and targeted the issues raised therein, assisting member States through the specific capacity building or institutional development activities.

15. The Venice Commission has provided more than 150 legal opinions upon request of member States and has helped them to bring their legal and institutional structures on issues of judicial and prosecutorial independence, autonomy and accountability in line with Council of Europe standards. The Venice Commission has prepared opinions on constitutional amendments and draft laws on, *inter alia* but not limited to, the independence and immunity of judges, their appointment and discipline, the composition, mandate and independence of judicial councils, appointments to leading positions in the judiciary, powers of prosecutors and the legal framework for the organisation and operation of the public prosecutor's service, the organisation and powers of prosecutorial councils, as well as, more recently, of specialised anti-corruption prosecution bodies. Appraisal systems for judges and judicial ethics, have also been a recurrent topic. Specific problems of amnesty and miscarriages of justice as well as the general problem of corruption within in the judiciary have also been at the centre of the attention of the Commission.

16. The Venice Commission has consistently and regularly provided its opinions on on-going judicial and prosecutorial systems reforms, sometimes within the constitutional reform process, to name the few, in Armenia, Bosnia and Herzegovina, Georgia, Montenegro, Serbia, Poland, Republic of Moldova, Romania and Ukraine. The co-operation programme facilities, such as Horizontal Facility Programme (HF I and II, the III currently being negotiated) also provided opportunities for ad hoc opinions on judicial reforms implemented in the beneficiary member States. In addition to the country specific opinions, the Venice Commission issued the Rule of Law Checklist in 2016. The Checklist, targeting different state and non-state stakeholders, is a useful and comprehensive tool for evaluating the compliance with the Rule of Law standards of the Council of Europe, including independence and accountability of judges and prosecutors, and defining the relevant course of action and reform. Another useful source of information for member States intending to review their judicial system, or the specific legal framework is a detailed compilation of the Venice Commission opinions and reports concerning court and judges (published in 2019) and respectively concerning prosecutors (published in 2022).

17. Although the CDDH has not dealt with specific issues concerning the independence of judges at the national level, it has addressed the issue of independence of the judges of the European Court of Human Rights. In this regard, the CDDH contributed to the evaluation provided for by the Interlaken Declaration which makes proposals regarding the strengthening of the independence of the judges in the Strasbourg Court, in particular:

"13. In order to strengthen the authority of the Court by safeguarding its independence and by attracting persons of the highest calibre to serve as judge on its bench, the CDDH suggests that the Committee of Ministers adopt a Declaration underlining both the importance of preventing disguised reprisals against former judges at the end of their mandate and of former judges being able to find again an adequate post in their country, respecting, at the same time, the diversity of the constitutional systems in the member States. It is further of the utmost importance to ensure that the independence of the Court and the binding nature of its judgments are respected by all the actors of the Convention system."

18. In addition, the CDDH's Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) ensured that information concerning the implementation of the Convention and execution of the Court's judgements was exchanged regularly – in order to assist member States in developing their domestic capacities and facilitate their access to relevant information.

19. The efficiency of justice remained among the core priorities of the CEPEJ throughout 2016 – 2021 and it directly contributed to the implementation of the Sofia Action Plan. More specifically, CEPEJ contributed to the implementation of Plan of Action by:

- developing tools for analysing the functioning of justice and ensuring that public policies of justice are geared towards greater efficiency and quality,

- promoting quality of judicial systems and courts,

- developing targeted co-operation at the request of a member or partner State and promoting among the stakeholders in the member or partner States the implementation of the measures and the use of the tools designed by the CEPEJ,

- analysing and developing relevant tools on emerging issues such as the use of cyberjustice and artificial intelligence in judicial systems as regards the efficiency and quality of judicial systems,

- strengthening relations with users of the justice system, as well as national and international bodies.

20. The CEPEJ report "European judicial systems - Efficiency and quality of justice" has consecutively provided an overview of the member States' judicial systems and the developing trends in this regard. The report continues to be a useful resource for the member States to see the dynamics of the development of justice systems in general, and also of the different elements, that are necessary for building of strong independent judicial systems. The European judicial systems report provides unique set of data and information, showing the trends and developments over the years, which if used by the policy decision-makers appropriately, and in combination with the practical tools offered by the CEPEJ, would assist the member States to streamline the effectiveness and efficiency of the national courts.

21. The two consultative councils, the CCJE and the CCPE, have issued studies and opinion concerning independence, impartiality and competence of judges and prosecutors respectively, which have been useful for the purposes of inspiring legislation and national regulations of member States.

22. The CCJE and CCPE opinions have been used as tools for the functioning and/or administration of justice and for the organisation of the work of the legal professions and have been useful for national professionals and in particular for judges, prosecutors and judicial service commissions, in view of the fact their opinions contained concrete specifications concerning the implementation of general standards (independence of judges, training, ethics, quality of decisions, prosecution service, role of public prosecution in the criminal justice system, etc.). Both consultative councils have worked on further advancing and making the guidance available to the member States through drawing up new opinions on newly emerging issues that concern the independence and accountability of judges and prosecutors.

Within the timeframe of the implementation of the Plan of Action, the CCJE and CCPE have adopted a number of opinions.

23. The consultative councils also issued several reports (6 in total) concerning the independent and impartiality of judges and prosecutors in the member States in 2016, 2017and 2019. In addition to annual reports, upon request by member States, the councils have also examined specific problems concerning judges and prosecutors and have provided advice on existing legislative frameworks and suggesting practical solutions (see Annex for the list of opinions and statements issued by the CCJE and CCPE).

24. Regarding the issue of strengthening the professionalism and building the capacities of the national training institutions, within the Council of Europe, the European Programme for Human Rights Education for Legal Practitioners (HELP) has played a key role in supporting the member States to address the line of actions that concern the training. HELP Programme has provided support in the development of relevant training interventions for member States, via its some 35 online courses (and more than 240 national adaptations) and a framework for their dissemination, including training programmes aimed at the executive and legislature on the importance of judicial independence and impartiality as well as courses on reasoning on judgments and on Judicial Ethics which have been launched in 2021.

25. The Parliamentary Assembly has also dealt with the issue of independence of the judiciary through monitoring the development in different countries and reporting relevant concerns. For example, the 2019 report by Pieter Omtzigt on the murder of Daphne Caruana Galizia, in Malta, highlighted the consequences of the lack of independence of the judiciary in terms of impunity, and continued to influence the reform process triggered by his report, until now. In a 2021 report, Andrea Orlando raised concerns on the proximity of part of the judiciary to the political authorities in the Republic of Moldova, stating that several attempts to reform the judiciary "have not been successful" and called to continue the reform of the judiciary, in line with the recommendations of Council of Europe organs and bodies, and significantly step up their efforts to combat corruption among judges and prosecutors. As regards Poland, the Parliamentary Assembly condemned "the campaign of intimidation waged by the political authorities against certain critical judges and against the justice system in general".

26. With regards to politically motivated prosecutions, the Parliamentary Assembly has initiated an important process by inviting member States to duly probe all instances of misuse of Interpol, extraditions and other forms of interstate legal assistance by the requesting States for political or corrupt purposes. It has additionally called for the development of a collection of best practices between member States on how to act on Red Notices and diffusions, including practical steps to conduct risk assessments and to apply consistent human rights standards[2].

III. AN AGENDA FOR NATIONAL ACTION: GAPS, OPPORTUNITIES AND ACTIONS TO STRENGTHEN JUDICIAL INDEPENDENCE AND IMPARTIALITY

27. As mentioned above, the Plan of Action's main beneficiaries have been the member States and the policy and decision-makers. Therefore, this section focuses on a detailed overview of the specific measures implemented following the line of actions of the Plan of Action in order to strengthen the independence and accountability of judges and prosecutors. Good practices are also compiled and made available to member States to share the developments and experiences in this regard.

1. Judges

Measures against external pressure on the judiciary

Securing the independent and effective functioning of judicial councils

28. Judicial councils are intended to safeguard both the independence of the judicial system and the independence of individual judges. The balanced composition and membership of the judicial self-governing bodies is one of the safeguards for strong independence of these institutions from the executive and legislature. Opinion No. 10(2007) of the CCJE on the Council for the Judiciary at the

[2] Parliamentary Assembly Resolution 2315 (2019) - Interpol reform and extradition proceedings: building trust by fighting abuse, see also Resolution 2161 (2017) - Abusive recourse to the Interpol system: the need for more stringent legal safeguards.

service of society provided clear guidance on this point and underlines that "members of the Council for the Judiciary […] should not be active politicians", in particular members of the administration. At the same time judicial councils per se are not sufficient to secure the independence of the judiciary as a number of factors have an impact on the way in which councils perform their functions. This include mode of election, participation of lay members, involvement of the executive, balance of power with the Prosecutor General and whether performance evaluation, disciplinary proceedings and recruitment procedures are performed in line with Council of Europe and other international standards.

29. The Secretary General of the Council of Europe noted, in his 2018 report on the State of Democracy, Human Rights and the Rule of Law, that creeping populism and attempts to limit political freedoms among some member States have resulted in challenges to judicial independence both at national and international level. Draft legislation was being prepared allowing politically motivated changes to the composition of judicial self-governing bodies. In a statement of 3 September 2019, the Commissioner for Human Rights of the Council of Europe denounced increasing and worrying attempts by the executive and legislative to use their leverage to influence and instruct the judiciary and undermine judicial independence.

30. This prompted the CCJE to issue its landmark Opinion No. 24(2021) on the Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems. While reaffirming the principles set out in its Opinion No. 10(2007), the CCJE considered that it was necessary to take stock of developments both at international and domestic levels and provide further guidance to policymakers, legislators and judges, on essential aspects covering the key bodies of judicial self-governance called upon to safeguard judicial independence and impartiality.

31. The general conclusions of the International Roundtable (Rome, 21-22 March 2022)[3] on "Shaping Judicial Councils to meet contemporary challenges" included further useful recommendations regarding the composition and the mandate of judicial councils, notably that standards relating to judicial councils should be developed with a view to ensuring the ultimate foal of protecting and strengthening the independence of the judiciary, while providing specific solutions adapted to the prevailing context in each state.

32. A number of member States still need to strengthen the safeguards from undue political influence within the self-governing bodies, and to address the *ex officio* membership of the Minister of Justice in these bodies (**North Macedonia**, **Montenegro**, **Türkiye**[4]). In **Montenegro**, the CCJE noted that the overall composition of the Judicial Council was not in line with Council of Europe standards as only half of its members were judges and, moreover, the President of the Council could not be one of the judge members. Additionally, when the Councils consist of non-judicial members, there must be objective and measurable selection criteria for them to be able to assess their professional qualities in impartial manner.

33. Equally important is the appropriate representation of judges in such bodies, and particularly that they are elected by their peers in its membership (**Andorra**, **Portugal**, **Spain**). When there is one self-governing body for both judges and prosecutors, it is preferable to provide for separate judicial and prosecutorial sub-councils to avoid any possible or perceived undue influences (**Bosnia and Herzegovina**). In **Croatia**, the State Judicial Council has faced challenges following amendments which limited its mandate to elect, promote and dismiss judges from office, and its ability to take disciplinary proceedings against judges remained limited while the administration of the courts was mostly in the hands of the Ministry of Justice and presidents of courts. In the **Slovak Republic**, judges elected by peers to the Judicial Council do not have a substantial majority as recommended by the CCJE. The CCJE also expressed concerns that members of the Judicial Council, including its President and Vice-President, may be dismissed at any point by the authority which appointed them and that such dismissal is not required to be based on any legally prescribed criteria and may be instead motivated by lack of trust. This may have an adverse impact on the independence of the Judicial Council.

[3] CDL-PI(2022)005, General Conclusions, International RoundTable "Shaping Judicial Councils to meet contemporary challenges", organised by the Venice Commission in cooperation with University La Sapienza (Rome, Italy) and the University of Barcelona (Spain) in the framework of the Presidency of Italy of the Committee of Ministers.

[4] See GRECO's Second interim compliance report (IV Evaluation Round) published on 18 March 2021, including position of Türkiye, paras. 34-38. Available at: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1cac3

34. In **Poland**, unfortunately, the consecutive reforms and amendments to the laws on the judiciary made from 2017 to 2019 undermined judicial independence. The 2017 reform caused a "legal schism": "old" judicial institutions *de facto* refused to recognise the legitimacy of "new" ones, considering them not to be independent. The amendments introduced in 2019 further curtailed the freedoms of expression and association of judges. The reforms have increased the risk of political intervention and limiting the powers of the judiciary and the National Council of the Judiciary over the issues of appointment, promotion and dismissal of judges (candidate judges and court presidents), or the selection and election of candidates to the position of the First President of the Supreme Court. Overall, the participation of judges in the administration of justice have diminished, as bodies of judicial self-governance are replaced, in important matters, with the colleges of presidents of the courts appointed by the Minister of Justice.

35. To address existing challenges, other member States have adopted reforms to safeguard and strengthen the judiciary in its relations with the executive and legislature both by creating judicial councils, or similar self-governing bodies, and strengthening their independence, granting them a key role in appointment, career advancement, evaluation and discipline of judges and overall reducing the influence of the executive and legislature.

36. Judicial Councils have been introduced for the first time in **Ireland**[5], **Finland**[6] **and Switzerland**[7], while in **Luxembourg** a constitutional reform was initiated to further strengthen judicial independence, by anchoring it in the Constitution and by establishing a council for the judiciary.

37. In **Albania**[8], a comprehensive justice reform initiated in 2016 established a new Judicial Council, with broader responsibilities and competencies, including the appointment of judges and prosecutors which is now exclusively managed by the new self-governing institutions of the judiciary, subject to completion of compulsory initial training at the School of Magistrates, which is a significant additional guarantee of magistrates' independence.

38. In **Slovenia**, with the adoption of the Judicial Council Act in 2017, the Judicial Council has been granted the leading role in conducting disciplinary proceedings against judges and the right to submit requests for an assessment of the constitutionality of regulations that interfere with the constitutional position of the judiciary before the Constitutional Court.

39. In **Latvia**, in 2018, amendments to the Law on the Judicial Power entered into force[9], transferring a number of competences such as the power to appoint court presidents, to transfer judges and to determine the procedure for recruitment, from the executive and the legislature to the Council for the Judiciary.

40. In **Belgium**, Law of 23 March 2019 has strengthened the inspection powers of the Judicial Council's inquiry commission by requiring all judicial authorities to provide information and documents that the inquiry commission may need for the performance of its inquiries.

41. In **Ukraine**, with the introduction of judicial reform in 2016, the High Council of Justice acquired exclusive powers in the field of judicial governance and became a leading body in matters of judicial career and disciplinary responsibility of judges. A law establishing the rules for the election of the Councils' members provided for a one-off screening of the existing members [10] following an opinion of the Venice Commission[11]. It also provided for the establishment of a Disciplinary Inspectorate Service[12].

[5] Judicial Council Act 2019, http://www.irishstatutebook.ie/eli/2019/act/33/enacted/en/html?q=judicial+council+act
[6] Website of the Finnish National Court Administration (beginning operations in January 2020), available at https://tuomioistuinvirasto.fi/en/index/nbortgcbe/xmeyw9oq0.html
[7] A number of Cantons (Geneva, Fribourg, Neuchatel and Valais) introduced judicial councils independent from the executive.
[8] GRECO second compliance report on Albania, Paragraph 45, available at https://rm.coe.int/greco-rc4-2018-4-fourth-evaluation-round-corruption-prevention-in-resp/16808c3a35
[9] https://likumi.lv/ta/en/en/id/62847-on-judicial-power.
[10] https://zakon.rada.gov.ua/laws/show/1798-19#Text
[11] Ukraine - Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068).
[12] https://www.coe.int/en/web/portal/-/ukraine-venice-commission-recommendations-on-ethics-council-draft-legislation.

42. In **Sweden**, a Commission of Inquiry set up by the Government in 2020[13] and chaired by the president of the Supreme Court has been tasked with examining the legal framework for judicial independence and bringing forward proposals for legislative and constitutional amendments including whether the independence of the national Court Administration should be strengthened in line with Council of Europe recommendations and whether the number and retirement age of Supreme Court Judges and Supreme Administrative Court judges should be regulated in the Constitution.

Independence from the executive and legislature

43. The executive and legislature must recognise the legitimate constitutional function that is carried out by the judiciary. In a state governed by the principle of separation of powers, interferences between the action of one branch of the State and other branches must be maintained within the bounds of the law and internationally accepted standards. In all cases of conflict with the executive or legislature involving individual judges the latter should be able to have recourse to a Judicial Council or other independent authority, or they should have some other effective means of remedy[14].

44. Cases of harassment of judges remain a considerable challenge in a number of member States. The Commissioner for Human Rights of the Council of Europe for example criticised attacks and harassment of judges by members of the Government and Parliament in **Italy** and **Serbia**[15]. The European Commission declared it would take action against **Poland** if judges were harassed for consulting the European Court of Justice[16]. The CCJE pointed to attempts by law enforcement bodies, lawyers and activists of various public organisations to exert pressure on judges in **Ukraine**.

45. On 19 October 2021, the European Court of Human Rights adopted a judgment in the case ***Miroslava Todorova v. Bulgaria***[17] where it found that the main aim of disciplinary proceedings and of the sanctions imposed by the Supreme Judicial Council (SJC) on a judge and President of the Bulgarian Union of Judges had not been to ensure compliance with the time-limits for concluding cases, but to penalize and intimidate her on account of her criticism of the SJC and the executive. This was the first finding of a violation of Article 18 of the European Convention on Human Rights in conjunction with Article 10 by the Court.

46. While several national judicial and prosecutorial councils have taken measures to address attacks on the judiciary as a whole and on individual judges and prosecutors, a recurring challenge remains the absence of corresponding provisions requiring members of Parliament and public officials to respect judicial independence, or their lack of implementation. Similarly, it has proven problematic to introduce measures to prevent inappropriate use of the media by the executive and legislature aimed at discrediting the judiciary as well as to protect the reputation and rights of the judges and to maintain the authority and impartiality of the judiciary. Several member States, in their replies to the questionnaire on the implementation of the Sofia Action Plan, also stressed the importance to find a balance between the need to guarantee the principle of freedom of the press and the independence of the judiciary.

47. In **France**, in 2019 a Council for the deontology of journalists was created. This has been welcomed as a positive initiative aimed at addressing unfair attacks against magistrates by the press. However, this council cannot issue sanctions but can only issue opinions on matters pertaining to journalists' ethics.

48. In **Serbia**, pressures on the judiciary remains high both by members of the other branches of government and tabloid newspapers and other actors. Between 2016 and 2017 both the Prosecutorial Council and the High Judicial Council have set up mechanisms to raise awareness about the pressure exercised on judges and prosecutors in concrete cases and intervened in several cases of undue pressure and influence However, although codes of conduct for members of the government and parliament prohibit such behaviour, effective sanctions are not available or implemented efficiently. In July 2020 some initiatives have been proposed with the aim to establish an effective follow up of the breaches by members of parliament and government of their duty to refrain from inappropriate public comments. A working group composed by representatives of ethics committees of the High Judicial

[13] Data from the EU Rule of Law Report. The Commission is expected to publish its results in 2023.
[14] CCJE Opinion No. 18(2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, Paragraph 43.
[15] https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true
[16] https://www.voanews.com/a/eu-to-take-action-against-poland-if-judges-harassed-for-consulting-ecj/4795540.html
[17] *Miroslava Todorova v. Bulgaria*, no. 40072/13, 19 October 2021.

Council and State Prosecutorial Council and the representatives of the National Assembly and the Government has been set up for this purpose.

49. In **Romania**, the public debate on the judiciary has been marked for years by tensions, and the existence of public attacks on the judiciary from the politicians and the media. The overall activity of the Council of Magistrates in this area was limited to few flagrant cases and did not appear to be effective in counteracting the level and intensity of criticism faced by the judicial system as a whole and by individual magistrates. In July 2020 the plenary of Superior Council of Magistracy amended its rules on organisation and functioning to ensure the rapid resolution of requests/referrals for the defence of the independence of the magistrates. While the code of conduct for parliamentarians was amended in 2019 to include a specific mention of the respect of the independence of justice, so far it does not appear that the code has been enforced and led to sanctions targeting excessive criticism of the judiciary by members of Parliament.

50. In **Andorra**, 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.

51. In **Croatia**, in 2016, upon recommendation of GRECO, the Ministry of Justice commissioned research to sound out the reasons for public distrust in the Croatian judiciary. The research showed that the problem of negative perception of the judicial system was expressed and manifested in the negative general opinion on the functioning of the judicial system, a low absolute and relative level of confidence in the judicial institutions and low level of expectations in respect of a fair trial. Among the others, people's opinions regarding political influence on judges and prosecutors were divided: the same number (48 %) think that they were mostly or completely independent as those who perceive them to be mainly lacking independence from political pressure in their work. GRECO commended such initiative and the ongoing reforms of the judiciary could further assist in curbing negative perceptions and recasting public trust in the judiciary. However, in its 2019 report on judicial independence and impartiality in the Council of Europe member States, the CCJE noted that the climate of mistrust towards the judiciary had 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 did not hesitate to express what would be the desired outcome of the proceedings.

52. In **Malta**, 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.

53. In **France**, a 2018 decree regulated state funding for magistrates involved in civil or criminal litigation to protect their independence. A ruling of the Court of Appeal of Paris stated that compensation of lawyers funded by the state for these purposes are tax exempt. In the framework of the implementation of the European Court of Human Rights judgment of 23 April 2015 in the case ***Morice v. France***[18], concerning disproportionate sanctions applied against a lawyer for his harsh criticism of the independence of an investigation into the murder of a French magistrate, the Court of Cassation adopted a number of judgments integrating the jurisprudence of the European Court of Human Rights on freedom of expression distinguishing between statement of facts and statement of value and the criteria for discussion of topic of public interest.

54. In **Armenia**, pursuant to the new Judicial Code adopted in 2018, based on a complaint from a judge, the Supreme Judicial Council files a motion with the body competent to bring to account those who are responsible for undue interference. The competent body is required to inform the Council about the measures taken. The Supreme Judicial Council can make an official statement on the measures taken or the failure to take such measures in a reasonable time limit. Bodies of the public administration,

[18] *Morice v. France* [GC], no. 29369/10, ECHR 2015.

local self-government bodies and officials are also required by law to abstain from statements or actions which may harm or jeopardise the independence of the court or a judge.

55. In **Ukraine**, pursuant to Law No. 1798 adopted in 2016 the High Council of the Judiciary maintains and publishes on its official website a register of judges' reports on interference with the administration of justice, verification of such notifications, publication results and decision making. The register of judges reports on interference with the judges' activities in the administration of justice, published on the HCJ website, as of 1 January 2021 contains 1562 judges reports on interference in their independence.

Legal regulations and adequate measures against attacks on their physical or mental integrity, their personal freedom and safety

56. Efforts to strengthen the wellbeing and security for judges and their families took on new urgency. As mentioned above, judges are subject to threats far beyond the courtroom due to the wide availability of personal information online. The challenges are vast.

57. **Belgium**, following amendments to the Judicial Code adopted in July 2017, has introduced the possibility for court presidents, in case of security risks and upon request of the prosecutor, to order that criminal hearings be held in court buildings which dispose of increased security measures[19].

58. In **Lithuania**, new regulations[20] expressly prohibit bringing weapons, ammunition, explosive, poisonous or other substances and objects of obvious danger to human life or health into the premises of the court (unless these items are related to the performance of official duties or related to the substance of the proceedings before the court). The Court President can authorise judges and staff to bring weapons into the premises of the court for their personal self-protection.

59. In **Sweden**, the National Court Administration keeps detailed statistics on incidents in the court ranging from bomb and other threats such as to suicide, undue offers, damage to property, harassment, breach of order/disorderly conduct and violence. Similarly, the Prosecution Service's incident reporting system keeps a record of cases of undue influence categorised into undue influence, harassment, threats, violence and corruption.

60. Besides providing basic security training to new prosecutors the Swedish Prosecutions Authority also has a specially developed personal security program for those prosecutors who work with cases that involve a higher risk. In the event that a prosecutor is exposed to a serious incident, there is a security organization in place that handles the security aspects, usually in collaboration with the police and the courts. Ultimately, the responsibility for employee safety lies with the management. Managers at all levels have a responsibility to identify and evaluate the risks and take the necessary measures. As of January 2020, the punishment for serious violence or threats to public officials, including judges and prosecutors, has been increased to a minimum of one year and a maximum of six years of imprisonment.

61. In 2015 and 2016, Länder Ministries of Justice in **Germany** conducted an evaluation of security in courts and prosecution services. As a result of this evaluation a combination of computer - or telephone-based alarm systems for individual judges and prosecutors, and completely stand - alone systems for all staff have been installed by which an alarm can be given in case of an attack.

62. In **Norway**, the Ministry of Local Government and Modernisation is working on a new set of rules for all civil servants concerning liability for damages when a civil servant is subject to a work-related accident or other events. Norwegian Court Administration in co-operation with the Norwegian Association for Judges has also prepared a report suggesting amendments to the Courts Act for a separate set of rules concerning compensation to judges when work-related accidents or other events occur.

63. In **Ukraine**, the Judicial Protection Service, which has been operative since March 2019, has been tasked with the maintenance of public order in court, cessation of contempt of court as well as protection of court premises, bodies and institutions of the justice system, and performance of functions

[19] *Loi du 6 juillet 2017 portant simplification, harmonisation, informatisation et modernisation de dispositions de droit civil et de procédure civile ainsi que du notariat, et portant diverses mesures en matière de justice à l'article 76 du Code judiciaire.*
[20] Law of 16 July 2019 amending the Law on Courts of the Republic of Lithuania.

related to state personal security of judges and their families, court employees, security of participants in the trial. As of January 2021, 655 judges have been granted protection by the Judicial Protection Service, the National Police and National Guard units.

64. In the **United Kingdom**, as of 2017 minimum security standards have been introduced to determine whether hearing rooms are fit for purpose. Her Majesty's Court and Tribunal Service is also reviewing security procedures on entry to court buildings. Protocols have been put in place with the police regarding the provision of security where the judge is deemed to be at high risk of attack.

Measures to strengthen internal independence

Securing the effective administration of courts and limiting interference by the judicial hierarchy in decision making by individual judges in the judicial process

65. The general principles and standards of the Council of Europe place a duty on member states to make financial resources available that match the needs of different judicial systems[21]. The Council of Europe has recommended increasing the court's administrative and financial autonomy in order to protect judicial independence[22]. These measures are a precondition for the effective implementation of other reforms targeting the independence of the judicial system. While some member States have strengthened or are planning to strengthen the role of the judiciary in the formation of the state budget and have achieved budgetary autonomy, lack of financial resources and budgetary autonomy remain a major challenge to the effective implementation of reforms aimed at strengthening the independence of the judiciary.

66. In **Finland**, the recently created National Courts Administration[23], which is independent from the Ministry of Justice has been granted the power to make proposals for the allocation of the budget of courts to the Ministry of Justice and decide on its allocation to individual courts, managing court buildings and organising trainings for judges and other court personnel.

67. In **Lithuania**, the Law on Strategic Management, which took effect as of 1 January 2021, has officially established the role of the Judicial Council representing the courts in the process of strategic management and formation of the state budget.

68. In **Serbia**, as regards the budget for the judiciary and the prosecution, divided responsibilities between the Ministry of Justice and the Judicial and Prosecutorial Councils continue to adversely affect budgetary planning, resource allocation and execution. Draft constitutional reforms have foreseen a budgetary autonomy of the High Judicial Council.

69. In **North Macedonia**, while the Council has demonstrated an increasingly proactive attitude in delivering its mandate as guardian of the independence and impartiality, it still lacks the human and financial resources necessary to perform its tasks effectively.

70. In **Latvia**, the independence of the justice system has been strengthened by reinforcing the role of the judiciary in the selection of candidate judges and the Prosecutor General, as well as in the appointment of court presidents. However, despite gaining new powers, the Judicial Council for the Judiciary is experiencing a shortage of human resources, which could impede the exercise of its new powers.

71. In **Croatia**, the State Judicial Council and the State Attorney's Council are facing challenges to adequately fulfil their mandate due to a lack of sufficient resources. These Councils also lack an upgraded IT system that would allow them to effectively verify the asset declarations of judges and state attorneys.

72. In **Portugal**, reduced allocation of budgetary resources to the justice system and the lack of material and human resources is a concern often voiced by stakeholders. The management of human resources are particularly affected, which in its turn resulted in the dramatic shortage of court clerks and the inability to manage their placement/posting, the management of court buildings and the supervision

[21] Recommendation CM/Rec(2010)12, Paragraph 32, and CCJE Opinion No. 2(2001), Paragraph 4; Opinion No. 10(2007), Paragraph 37; Opinion No. 17(2014), Paragraph 35.
[22] CCJE Opinion No. 2(2001), Paragraph 14 and Opinion No. 10(2007), Paragraph 12.
[23] Started operations in January 2020.

of Information Technology (IT) that are all under the remit of agencies dependent on the Ministry of Justice.

73. In **Slovenia**, despite having been granted additional resources in recent years, the Judicial Council still operates with a comparatively low number of staff in light of the wide range of powers and non-professional members of the Council. The State Prosecutorial Council still lacks human and financial resources which means that it is unable to work on improving the general quality of the State Prosecution. Its role in improving the process of selecting prosecutors is also inhibited by a lack of staff.

74. In **Belgium**, the lack of sufficient resources also poses a challenge for the justice system, as highlighted in a joint memorandum of the three highest courts. Moreover, a recent judgment condemned the State for not providing to the judiciary the amount of human resources foreseen in the law. The foreseen transfer to the judiciary of competences such as the management of human resources, IT etc. has not been implemented yet. In July 2018 a framework agreement has been concluded between the Ministry of Justice and the judiciary to secure budget autonomy of courts.

75. In the **Slovak Republic**, the CCJE noted 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 which may jeopardise the speed and quality of the judiciary's performance. Additionally, the CCJE noted that 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.

76. The **allocation of cases** within a court should follow objective, pre-established criteria in order to safeguard the right to an independent and impartial judge. There are various systems to organise the distribution of cases. What is important is that the actual distribution is not subject to external or internal influence and is not designed to benefit any of the parties. Several member States have adopted measures in this direction and have secured that exceptions to the rule of random allocation of cases are admitted only in exceptional cases, are made in a transparent manner and duly motivated.

77. In **North Macedonia**, the 2020 Law on court case management introduced safeguards to ensure a smooth functioning of the automated court case management information system, including its mandatory use in assigning and managing the flow of cases, although deficiencies previously identified such as reliability of statistics, remain to be addressed.

78. In early 2020, in the **Netherlands**, the Council for the Judiciary adopted a new code of case allocation providing that cases will be in principle allocated randomly between judges, and any exception to this rule will be made public. Any transfer of the case to another judge will be notified to the parties together with the reasons for the transfer.

79. In **Sweden**, the rules for the allocation of cases have been codified through amendments to the Code of Judicial Procedure adopted in July 2018. The new regulations require that the allocation of cases is based on objective criteria established by the court in advance and must not be capable of affecting the outcome or progression of the case.

80. In **Georgia**, the practice according to which court chairpersons were entitled to allocate cases to individual judges was abolished and since December 2017 the electronic case allocation system was introduced in common courts.

81. In **Portugal**, since the adoption of regulations by the High Council of the Judiciary in July 2018, the reallocation of cases is subject to the competent judge's consent. Following allegations of specific breaches in the electronic case allocation system, the High Council of the Judiciary has applied disciplinary sanctions and is investigating possible irregularities in the allocation of cases.

Selection, appointment and dismissal

82. Adequate participation of the judiciary in the selection, appointment and promotion of judges whilst limiting excessive executive and legislative interference in this process is one of the ways to

diminish the risks of external influence over the judiciary. While methods of appointment of judges in the Council of Europe member states of vary, every decision relating to a judge's appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria[24]. These standards have been pursued through reforms that increased the overall transparency of procedures affecting the career of judges, reducing the role of other powers in appointment of court presidents and by streamlining integrity requirement throughout judges' career.

83. In July 2020, **Malta** reformed the system of appointments of judges and magistrates by increasing the number of judicial members of the Judicial Appointment Committee, eliminating the discretionary power of the Prime Minister in selecting the candidates to be appointed and by enshrining the evaluation criteria in the Constitution.

84. In **Cyprus**, in July 2019, the Supreme Court introduced new detailed criteria for the selection, appointment, evaluation and promotion of judges. The Supreme Court of Judicature also strengthened the transparency of the appointment process by ensuring that records of appointment and promotion procedures are kept and made available to interested parties[25].

85. Since 2013 the Committee of Ministers of the Council of Europe has secured the regular monitoring over the execution of the ***Namat Aliyev v. Azerbaijan***[26] group of cases, which concerned violations of the right to free elections of members of opposition parties or independent candidates and the arbitrary decisions of the Electoral Commission and ordinary courts to reject the applicants' complaints or to cancel their election or registration as candidates. The Committee of Ministers also adopted Action Plans for Azerbaijan which made electoral reform a priority, notably the registration of candidates, the composition of the electoral commissions, the rights of observers, and complaints and appeals procedures, as well as the transparency of party financing.

86. In **North Macedonia**, in December 2017 amendments to the Law on the Judicial Council introduced the obligation for each member with the right to vote to publicly explain his/her decision on the election of a judge or president of court. The decision concerning the election of a judge or president of court can be appealed before the Supreme Court.

87. **Armenia** in 2018 reformed the procedure for appointment of judges by strengthening the role of the Judicial Council that now is responsible for preparing the list of candidate judges and submitting the proposals to the President of the Republic[27]. Besides this, the President is required to motivate his/her refusal of appointments and the Judicial Council can overturn the President's disapproval. It is also possible to appeal the decisions of the Supreme Judicial Council before a court (administrative court)[28].

88. In the **Republic of Moldova**, following amendments introduced in 2018 to the Law on the Superior Council of Magistracy[29], the Council has reviewed its internal rules on recruitment and career, clarifying the rules on enhanced transparency, publication of vacancies, applications, Selection Board activities, criteria for selecting judges, judicial competitions, transfer of judges, promotion of judges etc. Proposed constitutional amendments would also remove the initial term of five years for the appointment of judges in office, that will ensure their tenure.

89. In 2016, constitutional reforms in **Ukraine** introduced a significant reform of the appointment of judges including abolishment of the five-year probationary period for junior judges and the introduction of lifetime appointment on the binding recommendation by the High Judicial Council.

90. There are few member States where irremovability of judges and appointing judges for an indefinite term of office have not been addressed yet (**Andorra**). The procedures for selection, appointment and promotion of judges need further streamlining in line with the European standards as

[24] CCJE Opinion No. 18(2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy; Paragraph 15.
[25] EU Rule of Law Report on Cyprus and European Commission (2019), Cyprus: Creation of Objective Criteria for the recruitment and promotion of Judges.
[26] *Namat Aliyev v. Azerbaijan*, no. 18705/06, 8 April 2010.
[27] Constitutional Law on Judicial Code of the Republic of Armenia, 7 February 2018.
[28] GRECO second compliance report on Armenia (fourth evaluation round), Paragraph 38.
[29] https://www.legislationline.org/download/id/8338/file/Moldova_law_superior_council_magistracy_1996_am2018.pdf

well, as the judicial self-governing bodies have to play stronger role in this process (**Hungary**), the criteria for the selection, appointment, and promotion of all instance judges to be more transparent and merit based (**Ireland, Slovenia, Türkiye**[30]). Transfer of a judge without his or her consent undermines the principles of the irremovability of judges and judicial independence (**Hungary, Türkiye**[31]**, Poland**), it should be allowed only in exceptional cases when there is a strong legitimate and transparent ground for such transfer. The CCJE Bureau 2017 and 2019 reports on judicial independence and impartiality noted that issues had been raised in relating to dismissing judges from office and transferring them to remote courts. In the ***Bilgen v. Turkey*** judgment[32] the European Court of Human Rights found a lack of access to a court, resulting in a judge's inability to have recourse to judicial review of an allegedly unjustified non-consensual transfer decision to a lower ranking judicial district. Following this judgment action plan/report on the measures planned/adopted was awaited, with particular emphasis on legislative measures, introducing procedural safeguards to protect the judicial autonomy of judges against undue external or internal influences and, thus, to enhance public trust in the functioning of the judiciary.

91. In a number of member States, the power to order the transfer of judges has been limited and subjected, as a rule, to the consent of the affected judge.

92. In **Albania**, following the adoption of justice reforms, judges and prosecutors cannot be transferred without their consent, except in the event of disciplinary measures, structurally justified changes or temporary needs.

93. In **Portugal**, the Statute of Judicial Magistrates as amended in 2019 explicitly provides that the transfer of a judge to another court or section of the same judicial district, as well as the reassignment of cases to another judge, depends on the judge's consent.

94. In **Armenia**, following amendments to the Constitution, the power to transfer judges has been attributed to the Supreme Judicial Council while the 2018 Constitutional Law on the Judicial Code further specified that secondments are possible only with consent of the judges concerned and only up to a year. The same judge cannot be transferred again within one year after the last transfer.

95. In **Georgia**, amendments to the Law on Common Courts introduced in February 2018 allowed the transfer of judges only if another district court or court of appeal lacks a judge or if there is a dramatic increase in the number of cases in a given court. The transfer is subject to the judge's consent, but if no judge accepts the transfer offer, the judicial council is authorised to randomly (by drawing lot) select a judge from the same court of the same instance. The judge can appeal the decision before the Judicial Council. The latter decision can be appealed before the common courts. Transfer without consent is only allowed once in a ten-year period and only for a period of up to one year. A judge's consent is always necessary for transfers to a lower court.

96. Judges' (and prosecutors') **remuneration** is being increasingly interpreted and regulated as a guarantee itself of judicial status and independence. In a number of member States remuneration of judges and prosecutors have been increased and guaranteed pursuant to the principle that salaries should correspond to their status and guarantee their material independence.

97. The Constitutional Court of **Latvia** in its judgment rendered in October 2017.[33] ruled that the legislator should establish a system of judges' remuneration that would ensure the compliance of the actual value of judges' remuneration with the requirements of financial security of judges and include a mechanism for its preservation.

98. **Germany** is implementing a "Pact for the Rule of Law," to strengthen the justice system and the rule of law, which includes additional resources, both at the federal level and the level of the Länder. Salaries in the judiciary are based on the principle of "alimentation" which is guaranteed in the Basic

[30] Türkiye's Strategic Plan 2022-2026 of the Council of Judges and Prosecutors, provides in objective 3.1. that the system for appointment, transfer and permanent authorization shall be bound by more objective criteria in a way to strengthen the geographical assurance and specialization. Available (in Turkish) at: https://www.hsk.gov.tr/Eklentiler/120120221617hsk-2022-2026-stratejik-planipdf.pdf.
[31] See GRECO's Second interim compliance report (IV Evaluation Round) including position of Türkiye, paras. 60-65. Available at: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1cac3.
[32] *Bilgen v. Turkey*, no. 1571/07, 9 March 2021.
[33] Constitutional Court of Latvia judgment rendered on 26 October 2017 in case No. 2016-31-01.

Law and dictates that salary payment is not to be understood as a remuneration for work performed, but rather as a guarantee of a level of subsistence commensurate with the position.

99. In **Lithuania**, after reductions in the remuneration due to the economic crisis, the salaries of judges of district courts and of prosecutors were increased following amendments to the Law on the Salary of Judges and the Law on the Prosecution Service adopted between 2017 and 2018 respectively.

100. In the **Republic of Moldova**, Law No. 270 adopted in November 2018[34] significantly increased the salaries of judges and prosecutors pursuant to the principle that salaries should correspond to their status and guarantee their material independence.

101. In **Portugal**, following the introduction of 2019 amendments to the Statute of Judicial Magistrates, new provisions now specify that the judicial magistrates' remuneration must reflect the dignity of their sovereign functions and the responsibility of those exercising them, in order to guarantee the conditions of independence of the judiciary. Remuneration components cannot be reduced except in exceptional and transitory situations.

102. In **Estonia**, following legislative amendment adopted in 2018, prosecutors' salaries have been bound to the salary system for higher state servants and are not linked to the budget of the Ministry of Justice anymore[35].

103. In **Ukraine**, measures were adopted to increase salaries and limits on the proportion of bonuses in the remuneration of prosecutors. However, by 2019 bonuses still constituted up to 30 % of remuneration. Thus, an important part of prosecutors' income might depend on their superiors' discretion. In its 2019 report on Judicial independence and impartiality in the Council of Europe member States, the CCJE noted that 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.

104. Similarly, the CCJE noted that the budget for the judicial system in **Greece** remained a very small percentage of the overall state budget, a situation which has not improved. While the chronic underfunding of the judiciary is likely not affecting severely the constitutional role of judges, it produces conditions which degrade justice. 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.

105. In the **Slovak Republic**, 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.

Appointment of court presidents and other high judicial offices

106. In **Portugal**, amendments to the Statute of Administrative and Tax courts were introduced between 2015 and 2019[36], redefining the regime for court presidents in first instance courts. The amendments introduced, among others, a requirement of a previous and specific training for the exercise of functions as president of the court and specified the required competences. Additionally, amendments introduced to the Statute of Judicial Magistrates in May 2019 following recommendations of GRECO, changed the composition of the jury responsible for the selection of appeal court judges, by establishing parity between members who are judges and those who are non-judges.

107. In **Croatia**, the power of the Minister of Justice to give opinions on candidates in the procedures for the appointment of presidents of courts and state attorneys as heads of judicial bodies was removed, as well as his/her role in the process of appointing judges to perform the duties of judicial administration (acting presidents of courts) when the term of their office expired. In line with GRECO recommendations,

[34] CEPEJ https://rm.coe.int/en-republic-of-moldova-2018/16809fe2f2.
[35] No further details available on the law. Reply of Estonia for the CCPE preliminary work of Opinion Implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors (2021). Reply available at: https://rm.coe.int/estonia-en-opinion-16-reply/1680a2d9a3.
[36] https://www.ministeriopublico.pt/iframe/etaf-1 (link to the law in Portuguese, with reference to 2015 and 2019 amendments).

with amendments to the Courts Act adopted in July 2018, Croatia has also regulated the appointment procedure for the president of the Supreme Court to strengthen its transparency and independence[37].

108. In **Georgia**, since 2019 the High Council of Justice has the power to nominate the Supreme Court judges, who are elected by the Parliament and reforms concerning procedure of selection of the Supreme Court judges by the Council were launched. The Venice Commission in its urgent opinion of April 2021, welcomed the amendments to the Organic Law of Georgia on Common Courts, praising the amendments for explicitly mentioning the principle of equal treatment of candidates, shortlisting only candidates who have achieved the best results, disclosing the identity of the voting members of the High Council of Justice and for opening the decisions of the High Council of Justice to further appeals before to the Qualifications Chamber of the Supreme Court[38].

109. Proposals for the amendments of procedures for the appointment of Supreme Court Judges which would limit the role of the executive and legislative branches have been announced in the **Netherlands**, the **Slovak Republic** (where the reform will also affect the appointment of members of the Judicial Council, the Constitutional Court and the Prosecutor General) and the **Republic of Moldova**. In **France**, a proposed reform would put an end to the right of former Presidents of the Republic to become members of the Constitutional Council after their service.

110. In **Spain**, legislative amendments adopted in 2018 have limited the possibility of renewal of the mandate of court presidents to a second period of 5 years (in addition to the 5 years of the initial mandate)[39]. **Monaco** adopted a law in July 2020 which extended the requirement of regular evaluation to the President of the First Instance Court and to the Adjoint Prosecutor General who will be now evaluated by the President of the Appeal Court and the Prosecutor General Respectively.

111. On the other hand, in the ***Reczowicz v. Poland*** judgment[40], the European Court found grave irregularities in the appointment of judges to the newly established Supreme Court's Disciplinary Chamber following legislative reforms, in violation of the right to a tribunal established by law. In particular, it found that a procedure for appointing judges where the polish President's decision on judicial appointments could not be subject to any type of review and where such decision was adopted upon recommendation of the National Council of the Judiciary which in itself did not provide sufficient guarantees of independence from the legislative and executive authorities, was per se incompatible with Article 6 Paragraph 1.

112. In its Opinion of October 2020[41], the Venice Commission reiterated the need for depoliticising the appointment of the Chief Justice of **Malta** as much as possible. The same opinion considered that the requirement of a two-thirds majority in Parliament for the appointment of the Chief Justice would lead to such a depoliticisation, but it regretted that no anti-deadlock mechanism has been provided in that respect. More generally, the appointment of the Chief Justice the President in accordance with a resolution of the Parliament supported by a two-thirds majority, and without the involvement of the judiciary, considered together with the possibility that a person from outside the judiciary could be appointed as Chief Justice, will require further attention.

Integrity requirements in appointment procedures

113. Besides the development of integrity plans and integrity risk assessments for the judiciary, individual judges' integrity has become the focus of targeted mechanisms such as the verification of asset declarations and conflict of interests, vetting and screening procedures, integrity checks or background checks that can take place at the recruitment stage and in the framework of evaluation and career advancement procedures. In certain cases procedures aimed at screening the integrity of members of the judiciary have been problematic as they have raised concerns for their potential selective application or undue influence by the executive. In certain cases, extensive vetting procedures have affected the functioning of the judiciary.

[37] GRECO second compliance report:"amendments to the Courts Act laying out, inter alia, procedures for the selection, appointment and mandate renewal of the President of the Supreme Court (Articles 44, 44a, 44b, 44c and 44d); the amendments were adopted on 25 July 2018 with a deferred entry into force on 1 January 2019.
[38] CDL-PI(2021)007 - Georgia - Urgent Opinion on the amendments to the organic law on common courts.
[39] Organic Law 4/2018 dated 28 December 2018 amending Organic Law 6/1985 dated 1 July 1985.
[40] *Reczowicz v. Poland,* Application No. 43447/19, Judgement of 22 July 2021.
[41] CDL-AD(2020)019 - Malta - Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006, adopted by the Venice Commission at its 124th online Plenary Session (8-9 October 2020).

114. In 2016, **Albania**[42] has initiated the temporary re-evaluation of all judges and prosecutors on the basis of three components: asset evaluation, background checks on possible contacts with persons involved in organized crime and professional competences assessment with an evaluation of ethical and professional conduct, including breaches of professional ethics and delaying the judicial process. Such wide-ranging measures were justified by the need to address widespread corruption in the judiciary. The procedure has resulted in 62 % dismissals, mostly for issues related to unjustified assets, including a number of high-ranking magistrates.

115. On 25 March 2020 the National Assembly of **Armenia** adopted amendments to the Law on the Corruption Prevention Commission and on the Judicial Code, thus introducing integrity checks for judicial nominees. An initial plan to introduce vetting for all sitting judges has been abandoned. Within the same laws, the Corruption Prevention Commission was tasked with conducting full audit of assets declarations of the acting members of the Supreme Judicial Council, the Constitutional Court and sitting judges.

116. In **Belgium**, with law of 23 March 2019, the appointments commission of the Judicial Council has been enabled to review, for its evaluation procedure of candidatures to judicial positions, also disciplinary complaints lodged against a candidate which are on file with the Inquiry commission of the Council, thus strengthening the communication between the various Commissions.

117. In **Sweden**, on 1 April 2021 new legislation entered into force which puts the Judges Proposals Board in charge of the procedure of security clearance of court presidents. The purpose is to create an order that protects the independence of the courts and judges. The Judges Proposals Board is an independent authority that administers the procedure of appointment and promotion of judges.

118. In the **Slovak Republic**, the Constitutional Court, in a landmark ruling on 30 January 2019, held that background checks on judges and candidate judges on the basis of information from the National Security Authority were in breach of the principle of judicial independence.

119. In **Bulgaria**, in 2017, the Judicial Council Plenum adopted the Regulation on the Indicators, the Methodology and the Procedure for Appraisal of a Judge, Chairperson and Deputy Chairperson of a Court in order to improve the evaluation of judges before they acquire life tenure, which includes indicators and standards concerning compliance of judges with the Code of Ethical Behaviour. The indicators include the additional check on asset declarations, conflicts of interest, and recusals in connection with the attestation for life tenure. Similarly, the 2017 Law on the Judiciary also introduced rules to strengthen integrity checks for candidates to the post of magistrate subject to initial appointment.

120. In **Azerbaijan**, in 2016, the Judicial Legal Council introduced a requirement that the Code of Ethical Conduct is now included in the scope of periodic evaluation of a judge's performance.

Disciplinary proceedings and judicial accountability

121. Like all other powers, the judiciary must also earn trust and confidence by being accountable to society and the other powers of the state. "Accountable" does not mean that the judiciary is responsible to or subordinate to another power of the state, because that would betray its constitutional role of being an independent body of people whose function is to decide cases impartially and according to law. Disciplinary mechanisms should be effective, objective and safeguarded from undue political influence. In accordance with CCJE's standards, any disciplinary proceedings initiated should be determined by an independent authority or tribunal, operating a procedure guaranteeing full rights of defence; The arrangements regarding disciplinary proceedings should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court. Moreover, the CCJE also recommended the statute or fundamental charter applicable to judges to define, as far as possible in specific terms, the failings that may give rise to disciplinary sanctions as well as the procedures to be followed and the sanctions should be proportionate.

122. Accordingly, several member States have revised the disciplinary liability system for judges by strengthening the independence of disciplinary bodies, securing fair trial guarantees and transparency

[42] 2016 Albanian Parliament amended the Constitution and passed the Transitional Re-evaluation of Judges and Prosecutors Act (otherwise referred to as the "Vetting Act").

in disciplinary proceedings, clarifying legal definitions of disciplinary misconduct and securing the implementation of the principle of proportionality in the application of sanctions.

123. In **Malta**, following amendments to the Constitution in 2020, disciplinary proceedings against judges have been entrusted to an independent authority, the Commission for the Administration of Justice, in majority composed of members of the judiciary and operating procedures encompassing full rights of defence and appeal mechanisms. Also, the range of disciplinary sanctions has been reviewed to ameliorate their previously limited efficiency and proportionality (the only sanctions available in the past being two polarised extremes, i.e. either warning or impeachment). Moreover, the reforms provide for appeal against dismissal to the Constitutional Court.

124. In **Portugal**, an in-depth consolidation of the duties of judges was undertaken, as well as a typification and classification of infractions and of corresponding sanctions was adopted following amendments to the Statute of Judicial Magistrates in 2019.

125. In **Andorra**, since November 2018, the disciplinary liability system for judges has been completely revised including increasing the limitation period for disciplinary offences and the time limits for investigations. The regulations also introduced a specific procedure for disciplinary hearing and the obligation to motivate decisions and define precisely the nature of the misconduct and the penalties incurred[43]. Transparency has been strengthened by appending copies of all the disciplinary decisions (duly anonymized) of the High Council of Justice to its annual report.

126. In **Denmark**, following 2019 amendments to the Administration of Justice Act, judges can appeal the warnings issued by court presidents for negligence or carelessness in performance before the Special Court of Indictment and Revision. This reform, which adds and additional safeguard to the system, was triggered *inter alia* by the Judges' Association based on concrete cases.

127. In **North Macedonia**, in May 2018, amendments to the Law on Judicial Council unified procedures for disciplinary and dismissal proceedings which had been so far separated while amendments to the Law on Courts reformed disciplinary mechanisms, by clarifying disciplinary infringements applicable to judges in line with the Venice Commission's recommendation[44]. Amendments to the Law on Judicial Council adopted in December 2017 also revised disciplinary proceedings to dissociate the respective functions of those involved in proceedings, i.e., Judicial Council members who initiate the procedure, as well as those participating in the investigation, are not allowed anymore to vote in the subsequent decision on a judge's disciplinary liability.

128. In **Bosnia and Herzegovina**, in September 2019, the High Judicial and Prosecutorial Council adopted a Manual on Disciplinary Procedures regulating composition and operations of disciplinary committees, types of disciplinary sanctions as well as complementary measures to secure that misconduct is effectively subject to proportionate and dissuasive sanctions.

129. In **Albania**, judges can be dismissed only for serious misconduct or if sentenced to a criminal offence. They can also lodge appeals against dismissal decisions at the Constitutional Court. The disciplinary legal framework has also been clarified by a law providing legal definitions for the list of misconduct for judges and prosecutors as a basis for disciplinary proceedings. Previous definitions were repealed by a Constitutional Court decision on the Law on the Status of Judges and Prosecutors. Constitutional amendments have transferred the responsibility for the inspection of courts from the Ministry of Justice to the High Justice Inspector, with the aim of protecting the judiciary and judges from arbitrary interventions from the executive.

130. In **Belgium**, 2019 amendments to the Judicial Code have introduced the obligation to include within yearly reports on the functioning of the judiciary, information on disciplinary sanctions and other initiatives undertaken to secure the respect of judicial ethics principles, thus increasing transparency of the accountability of the judiciary.

131. In **France**, GRECO recommendations concerning the possibility of aligning the disciplinary procedure for prosecutors with that applicable to judges with the High Judicial Council holding sole

[43] Disciplinary liability system for judges has been entirely revised, following the enactment of final provision 3 of Act 24/2018 of 18 October 2018 on the Code of Civil Procedure, amending the Justice Act of 2 September 1993. The new disciplinary liability system for judges came into force on 15 November 2018.
[44] Opinion No. 944/2018.

authority have been incorporated in a draft constitutional reform that is still pending before the parliament.

132. In **Monaco**, legal reforms adopted in July 2020 have extended the power to seek the initiation of disciplinary proceedings against judges and prosecutors to authorities other than the Minister of Justice (Directeur des Services Judiciaires) who so far had exclusive competence over the matter. This power of initiative can now be exercised by the first president of the Cour de Révision who chairs the panel of the High Judicial Council for disciplinary proceedings upon request of the majority of the Council members (excluded the Minister of Justice).

133. Following the 2017 ***Sturua v. Georgia*** and ***Gabaidze v. Georgia*** judgments[45], concerning the lack of impartiality of the Disciplinary Council, where the same judges had taken part in the first and appellate disciplinary proceedings, amendments were introduced to Organic Law of Georgia on Common Courts. According to the amendments, the same judge cannot be simultaneously the member at different level of disciplinary legal proceedings, as well as the chairperson of the court is no longer eligible to initiate the disciplinary proceedings against the judge. This right is entrusted to an Independent Inspector - a new institution in the disciplinary proceedings - who conducts a preliminary examination and inquiry. Thus, the investigative functions have been separated from those establishing misconduct and the Secretary of the High Council of Justice can no longer single-handedly end disciplinary proceedings. Following further amendments adopted in mid-2019, the Law on Common Courts sets out the grounds for disciplinary liability, distinguishing between standards of professional conduct and disciplinary rules. Pursuant to the new regulations, only intentional and negligent behaviour of a judge as listed in the law may constitute disciplinary misconduct. Additionally, the outcomes of disciplinary proceedings are shared with both the judiciary and the public in an anonymized way, while decisions to discontinue proceedings have to be reasoned and complainants have to be notified of such decisions.

134. In **Bulgaria**, in February 2020, the automatic suspension of magistrates in case of a criminal investigation against them has been withdrawn[46].

135. **Malta**, following opinion of the Venice Commission[47]**,** has reformed the dismissal procedure of judges and magistrates which was previously in the hands of Parliament while now is prerogative of the Commission for the Administration of Justice, in majority composed of members of the judiciary[48].

136. In other member States challenges connected to disciplinary and civil liability remained. For example, the CCJE noted that in **Croatia** the length of disciplinary proceedings, which can take several years to conclude, jeopardise the authority of the State Judicial Council in the public perception as well as among judges. Similar concerns were raised in respect of criminal proceedings against judges. In the **Slovak Republic** concerns were raised due to the executive power, represented by the Minister of Justice, initiated disciplinary proceedings for delays, even in cases of so-called objective delays caused by shortcomings in the working conditions of the judiciary such as insufficient staffing and material resources of the courts.

137. In the framework of supervision of the execution of the European Court of Human Rights judgment in the case of ***Baka v. Hungary***[49], the Committee of Ministers invited the Hungarian Government to introduce judicial or other independent review of the termination of a judicial mandate as well as safeguards against abusive removals. The Committee of Ministers also invited the national authorities to secure the reinstatement of any judge in case his/her removal is found to be contrary to the Convention or domestic law. The Committee of Ministers noted the national authorities' undertaking to evaluate the domestic legislation on the status of judges, in particular of existing guarantees and safeguards protecting judges from undue interferences, notably with their freedom of expression. The Committee however noted with regret that the information submitted by the Hungarian authorities that they are considering amending the legislation to ensure effective oversight by an independent judicial body of the decision of Parliament to impeach the president of the Kúria so far remained without any results; it also noted with concern the continuing absence of safeguards in connection with *ad hominem*

[45] *Sturua v. Georgia,* no. 45729/05, 28 March 2017; *Gabaidze v. Georgia*, Application No. 13723/06, judgment of 12 October 2017.
[46] On 23 January 2020, the National Assembly adopted amendments to the Judiciary System Act.
[47] Venice Commission opinion (CDL-AD(2018)028), paras. 52-53.
[48] Constitutional Amendment, article 101B, in force as of 7 August 2020.
[49] *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016.

constitutional-level measures terminating a judicial mandate, and Parliament's competence, established in 2012 following the facts of the Baka case, to impeach the President of the Kúria without judicial review.

138. GRECO also recommended that the **Czech Republic** finalise the legislative work concerning the introduction of appeal possibilities for judges against disciplinary decision, including for dismissal before a court. **Montenegro**, on the other hand, needs to further develop the disciplinary framework for judges with a view to strengthening its objectivity, proportionality and effectiveness, and make public information on complaints and disciplinary sanctions applied while respecting the anonymity of the persons concerned.

139. In **Poland**, the composition, internal structure, and mandates of the two newly created Chambers (the Disciplinary Chamber and the Chamber of Extraordinary Review and Public Affairs) under the Supreme Court have raised also concerns concerning the independence of these Chambers. New disciplinary offences, which could be subject to subjective interpretations, are also a subject of concern as they increase the risk of the influence of the Minister of Justice on disciplinary proceedings, and over the judiciary at large. The Polish judges have been put into the impossible situation, facing disciplinary proceedings for decisions which could be required by the European Convention on Human Rights, or under the law of the European Union, and other international instruments. The reforms have been denounced as illegal by the EU Court of Justice as on 8 April 2020, it ruled that Poland to immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges, confirming in full the position of the Commission. Furthermore, on 14 July 2021, the Court of Justice imposed interim measures on Poland, granting the request of the Commission asking for interim measures (C-204/21); while on 15 July 2021, the Court of Justice ruled in its judgment in case C-791/19 that the disciplinary regime for judges in Poland is not compatible with EU law. The Court upheld all the claims brought forward by the European Commission, concluding that Polish disciplinary regime undermines the independence of Polish judges, and it does not ensure the necessary guarantees to protect judges from political control. Finally, on 27 October 2021 it ordered Poland to pay the European Commission a daily penalty of 1 000 000 euros for not taking any actions and suspending the application of the provisions of the national legislation in relation to the Disciplinary Chamber of the Supreme Court.

140. Several member States have brought their laws and practices in line with Council of Europe recommendations that the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil, criminal or disciplinary liability, except in cases of malice and gross negligence. In accordance with the fundamental principle of judicial independence, the appeal system is in principle the only way by which a judicial decision can be reversed or modified after it has been handed down and the only way by which judges can be held accountable for their decisions, unless they were acting in bad faith.

141. In **Georgia**, Law on Disciplinary Liability of Judges of Common Courts and Disciplinary Proceedings states that judicial errors should not result in disciplinary liability of judges. Where an appellate court upholds an appeal against a decision of a district/city court, this is not a ground for imposing disciplinary sanctions on a judge.

142. In **Slovenia**, an investigation opened in the beginning of 2019 by a Parliamentary Inquiry Committee envisaged looking into actions of prosecutors and judges in concrete criminal cases. However, the Constitutional Court later suspended the application of the Parliamentary Inquiries Law due to a risk to the independence of judges and prosecutors from such a parliamentary inquiry into concrete cases[50].

143. In **Latvia**, the immunity of judges concerning administrative offences has been removed in line with GRECO recommendations. It is now provided that judges will incur disciplinary liability if they commit an administrative offence that grossly violates the norms of the Code of Judicial Ethics or is disrespectful to the status of a judge.

[50] Judicial Council (2019), Request for constitutional review and partial suspension of application of the Parliamentary Inquiries Act; Supreme State Prosecutor's Office and Prosecutor General (2019), Initiative for constitutional review of the parliamentary inquiries act; Constitutional Court (2019), Decision on temporary suspension of the Parliamentary Inquiries Act as far as it concerns judges; Constitutional Court (2019), Decision on temporary suspension of the Parliamentary Inquiries Act as far as it concerns State Prosecutors.

144. In **Lithuania**, on 9 March 2020, the Constitutional Court ruled that the constitutional provisions on immunities only guarantee protection from measures to restrict a person's freedom, and that procedural diligences, such as searches, do not amount to restrictions of freedom and that, consequently, an authorization from the Parliament or the President is not necessary.

145. In **Ukraine**, on 11 June 2020, the Constitutional Court declared provisions of the Criminal Code on Criminal responsibility of judges criminalising the delivery of a knowingly unfair judicial decision unconstitutional, finding that they did not meet the requirements of legal certainty, clarity, unambiguity and foreseeability and thus created risks of undue influence on the work of judges.

146. On the other hand, in **Romania**, major issues were identified with the creation of a Section for the Investigation of Offences in the Judiciary (SIIJ) and the system of civil liability of judges through amendments adopted in 2018 which are still in force.[51] The amendments 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 negligent become obligatory and moreover it was an executive body- the Ministry of Public Finance - which was entrusted to start the procedure. Under these amendments there was also the risk of instituting two parallel procedures for acting in bad faith or with gross negligence- action for recovery and disciplinary procedure- with different possible outcomes. The CCJE noted that the application of concepts such as gross or inexcusable negligence is often difficult, and the decisive role of the Ministry of Public Finance could not be the most appropriate body to assess the existence and causes of a judicial error.

2. Prosecutors

Relationship with the executive

147. Member States should guarantee a status for prosecutors that ensures their external and internal independence by provisions at the highest legal level and guaranteeing their application by an independent body such as a Prosecutorial Council. Although there is no unique model for the organisation of the Prosecution Service and in certain member States the Prosecution service is part of or subordinate to the Government, as noted in Opinion No. 13(2018) of the CCPE - "Independence, accountability and ethics of prosecutors" *"Taking into account the proximity and complementary nature of the missions of judges and prosecutors, as well as of requirements in terms of their status and conditions of service, prosecutors should have guarantees similar to those for judges".*

148. Taking into consideration the international courts' relevant case-law, primarily that of the European Court of Human Rights and other courts and treaty bodies in respect of the independence of the judiciary in general, and of prosecution services and prosecutors in particular, the CCPE issued Opinion No. 16(2021) on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. The Opinion can usefully guide judicial and prosecutorial reforms to support State in developing or improving the legislative framework for organisational autonomy of the prosecution services, the process of appointment, evaluation and dismissal of prosecutors, their term of office, the non-interference into their work and other important aspects relating to their career.

149. The European Conference of Prosecutors (Palermo, 5-6 May 2022) focused on the key issues arising with respect to prosecutorial independence, autonomy and accountability in the light of the various models and institutional arrangements of the prosecution service, and their differences and its conclusions pointed to the need to consider updating CM/Rec(2000)19 on the role of public prosecution in the criminal justice system, and to elaborate specific standards on prosecutorial independence.

150. As noted in these Opinions and confirmed during this high-level conference, there is a general tendency for more independence of prosecutors and prosecution services. The review of the most recent measures adopted by member States confirms this conclusion. In a number of member States, the prosecution service is being separated from the executive, while in several others the power of the executive to issue instructions in individual cases has been *de facto* abandoned (is not used in practice). Safeguards concerning remedies for allegedly illegal internal instructions have included, besides the

[51] 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, p. 5. Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM(2021)370 final.

requirement that they are put in writing, the possibility of appeal before an independent body, increased transparency and restrictions of the grounds and opportunities for issuing instructions. Risks of undue influence have also been reduced through increased reporting obligations.

151. In **North Macedonia**, amendments to the law on the Council of Public prosecutors adopted in February 2020 provided for strengthened competences, streamlined procedures for appointment and promotion, accountability of its members and procedures for their recusal, introduced competences with regard to disciplinary proceedings against public prosecutors, and provided for financial independence of the Council. The Council, in line with the amended law, needs to provide reasoning of its decisions on appointments.

152. In **Malta**, a prosecution service, under the authority of the Office of the Attorney General and fully separate from the State Advocate is being set up, responding to Venice Commission recommendations.

153. In **Georgia**, the constitutional amendments entered into legal force in December 2018, that included separation of the Prosecution Service from the Ministry of Justice, guaranteeing its independence by the Constitution, creation of the Conference of Prosecutors, improving the rules for appointment of the Prosecutor General and establishing the Prosecutorial Council and other collegial bodies in charge of selection of the Prosecutor General and appointment, promotion and discipline of prosecutors. The reforms introduced of the performance appraisal system of prosecutors and improvement of the rules for the career management, ethics and discipline of prosecutors.

154. In **France**, a proposed constitutional reform would make the opinion of the Superior Council of Magistrates on the nomination of candidate-prosecutors binding upon the executive, strengthening its role in the appointment process. *De facto*, since 2008 the Ministry of Justice has consistently followed the opinion of the High Council. The proposed reform would also make the Superior Council of Magistrates the competent body to decide on disciplinary measures regarding prosecutors, which is currently in the hands of the Minister of Justice.

155. In countries such as the **Netherlands, Belgium, Denmark** and **Luxembourg** the power of the Minister of Justice to issue instructions to the prosecution service in individual cases is accompanied by legal safeguards and is not used in practice. In **Germany**, with Decree of 13 December 2016, the Federal Ministry of Justice committed to make extremely restrictive use of its right to issue instructions to the Federal Prosecutor General and to issue such instructions only in writing. Similar voluntary commitments also exist at Lander level. Internal instructions issued by senior prosecutors are subject to similar constraints so that individual prosecutors can perform their duties free from any undue or unlawful influence.

156. In **Spain**, to increase transparency in the relationship between the executive and the Prosecutor General, the Government now puts all its communications with the Prosecutor General in writing and makes them available at the website of the Ministry of Justice.

157. On the other hand, in **Austria**, the reform of the prosecution service has been a long-standing demand from stakeholders, as the system of reporting obligations and the right of the Minister of Justice to give instructions in individual cases to prosecutors, including instructions not to prosecute cases, has been subject to criticism. Stakeholders have stressed the need to ensure that the envisaged reform introduces tangible structural guarantees to ensure the independence of the new Prosecutor General in practice from any political influence by the executive or legislative.

158. In its 2019 report on the Independence and impartiality of prosecution services in the Council of Europe member States, the CCPE noted that, in **Bosnia and Herzegovina**, even though the State Prosecutor's Office is formally independent, it was widely blamed for taking into account, in its cases, political interests, especially in those cases in which political officials are involved. Politically motivated attacks aimed at the prosecution service or prosecutors, mostly in an indirect way (in writing or orally), were increasing. Therefore, it was necessary to emphasise constantly the independence of the prosecutorial system and strongly reject any attempt of political influence.

159. CCPE also noted that, in **Estonia**, the Prosecutor's Office actually forms a part of the executive branch and is a challenge for the Office as a part of the executive power to maintain its organisational

independence which presupposes that all parties and levels accept the Prosecutor's Office as an independent governmental authority.

160. GRECO has also recommended that, in countries where there is one body representing both judges and prosecutors, it is important to ensure that there is appropriate and equal representation of both professions, elected by their peers (**Andorra**) or separate judicial and prosecutorial sub-councils are created in order to avoid an over-concentration of powers in the same hands (**Bosnia and Herzegovina**). In **Türkiye**, GRECO underlined the importance of taking measures to strengthen the independence of the High Council of Judges and Prosecutors (HCJP) against the risks of influence from the executive and legislature[52]. In respect of **Greece**, GRECO stated that having a number of various judicial bodies responsible for the career, professional supervision and discipline of judges and prosecutors could be confusing and inefficient, and consideration to be given to consolidating the various judicial bodies.

Appointment and removal of the Prosecutor General

161. The Consultative Council of European Prosecutors (CCPE), on numerous occasions, has emphasised that due to the complementary nature of the missions of judges and prosecutor, the latter must have similar requirements and guarantees in terms of their status and conditions of service, such as recruitment, training, career development, salaries, discipline and transfer or removal from office. When deciding on the rules for appointments, careers and discipline of prosecutors, including the Prosecutor General, should be regulated by clear processes and procedures.

162. The manner in which a Prosecutor General is appointed and removed plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office[53]. A number of countries adopted reforms to secure that, in line with Council of Europe standards, the appointment of the Prosecutor General follows adheres to the principle of cooperation among state organs to avoid unilateral political nomination and that professional, non-political, expertise is involved in the selection process. Additionally, reforms are pending to secure that also high-ranking prosecutors benefit from a fair hearing in dismissal proceedings.

163. In **Latvia**, in March 2020, amendments to the Laws on Judicial Power and the Office of the Prosecutor changed the procedure for selecting the candidate for Prosecutor General. The Prosecutor General is now appointed by the Parliament on the proposal of the Council for the Judiciary, which also determines the procedure and criteria for the evaluation of candidates who applied in an open competition.

164. In the **Republic of Moldova**, the 2019 amendments to the Law on the Prosecutor's Office introduced a new procedure for both the appointment and the dismissal of the Prosecutor General. Pursuant to the amendments, the president appoints the candidate proposed by the Superior Council of the Prosecutor's Office, but he or she must be chosen from a list of potential candidates proposed by a special independent commission from the Justice Ministry composed of legal specialists and civil society representatives. The law has also introduced changes to eligibility criteria and procedures for the removal of the prosecutor general. However, on 14 June 2019, the CCPE and the Venice Commission received a Statement signed by 612 prosecutors from a total number of reportedly 637 prosecutors employed in the Prosecutor's Service of the Republic of Moldova. The Statement concerned the amendment in a very speedy and non-transparent manner of the Law on Prosecutor's Service. The Statement expressed the concern of prosecutors in the Republic of Moldova, united in the Prosecutors' Association of the Republic of Moldova, about the independence of the Prosecutor's Service and its subordination to politics. The Statement referred to persistent attempts by some politicians to amend the Law on the Prosecution Service apparently in order to place the Prosecutor's Service under political control.

165. In the framework of execution of the European Court of Human Rights judgment ***Kövesi v. Romania***[54] concerning the inability of the chief prosecutor to effectively challenge the

[52] See GRECO's Second interim compliance report (IV Evaluation Round) published on 18 March 2021, including position of Türkiye. Available at: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1cac3 .
[53] Venice Commission, Report on European Standards as regards the independence of the judicial system, Part II. The Prosecution Service. Paragraph 34. See also the Compilation of Venice Commission Opinions and reports concerning prosecutors (2022).
[54] *Kövesi v. Romania*, no. 3594/19, 5 May 2020.

premature termination of the chief prosecutor's mandate following public criticism of legislative reforms, the Romanian authorities submitted an action plan envisaging the possibility of high-ranking prosecutors to challenge removal decree issued by the President before the competent administrative court, which will review both the legality and the merits of the removal proposal made by the Minister of Justice. Such requests for review shall be examined under an emergency procedure, in priority over other cases. Additionally, the relevant draft law abandons existing provisions which restrict the freedom of expression of judges. Further recommendations were made by the Venice Commission and GRECO supporting more generally a strengthening of the independence of the prosecution service vis-à-vis the executive including by limiting the authority of the Minister of Justice over this service and her/his powers in the appointment and removal of high-ranking prosecutors.

166. Following the ***Kolevi v. Bulgaria***[55] judgment in which the European Court of Human Rights highlighted lack of lack of guarantees in Bulgarian law for the independence of criminal investigations concerning the Chief Prosecutor and high officials close to him or her, the Bulgarian authorities engaged in a process of legal reform to regulate this type of investigation. In the framework of the monitoring over the execution of the judgment, in December 2021 the Committee of Ministers welcomed the authorities' readiness to work by the end of 2022, in consultation with the Council of Europe, on measures to improve the effectiveness of investigations in general and on measures to guarantee the independence of an investigation against a Chief Prosecutor. However, it noted that the Programme developed by the Bulgarian government did not contain measures for reducing the Chief Prosecutor's influence in the new Supreme Judicial Council, to be elected in 2022 and did not address adequately existing concerns regarding sufficient staffing, career and accountability risks of the ad hoc prosecutor in charge of investigating a Chief prosecutor.

167. GRECO underlined the importance of further developing the procedures and use objective criteria and periodic appraisal for the promotion of the various categories of judges and public prosecutors, including access to senior functions of president or vice-president of a court and Principal State Prosecutor in **Luxemburg**. Strengthening the involvement of prosecutors in the process of selecting and recruitment of candidate prosecutors is equally important as for the judiciary, in **Türkiye**. GRECO also recommended strengthening the security of tenure for judges and prosecutors to minimise the possibility of transfer to other courts or prosecution offices and the Ministry of Justice's role in this process and ensuring there are objective criteria for transfer procedures and a mechanism of appeal against the transfer decisions**.**

168. In respect of **Bosnia and Herzegovina**, GRECO noted that it had yet to introduce appeal in court for decisions of the High Judicial and Prosecutorial Council on the appointment, promotion and disciplinary liability of judges and prosecutors. The CCPE, in its 2019 report on the independence of the prosecution services in the Council of Europe member States noted that the appointment of prosecutors and especially of the Prosecutor General by the formally independent High Judicial and Prosecutorial Council in practice is more or less under pressure of political parties in a political system which is not uncomplicated. Such influence should be countered by introducing stronger criteria for the appointment.

169. In the **Czech Republic**, a reform of the Prosecution Service has long been a topic of political debates and subject to GRECO recommendations. The latest draft reform, published in June 2019, sought to amend the appointment and dismissal regime for the Prosecution Service and the term of office of senior public prosecutors. Among the others, according to the proposal, the removal of the chief public prosecutor, including the Prosecutor General, would be possible only if the chief public prosecutor commits a disciplinary offence. The changes set out in the proposal were praised by the CCPE as very important for the public prosecutors' independence as this proposal would considerably strengthen the functional and organizational independence of the Public Prosecutor's Office. However, the draft reform encountered opposition from stakeholders and the public, and it is not foreseen to be further pursued.

Rules applying to instructions, orders and directives

170. In **France**, where the power for the Minister of Justice to issue individual instructions has been abolished since 2013, the Superior Court of Justice, in September 2020, issued an opinion on the judicial independence recommending that further limitations are introduced to the transmission of information to the Ministry of Justice on pending investigations.

[55] *Kolevi v. Bulgaria*, no. 1108/02, 5 November 2009.

171. In **Italy**, in 2017 the Higher Judicial Council has issued instructions regulating hierarchical powers of chief prosecutors. Among the others the instructions regulated in detail the power of chief prosecutors to remove a case from a prosecutor, which is now considered as a choice of *extrema ratio* and requires compliance with pre-established conditions and extensive consultations with the relevant prosecutor.

172. In **Spain**, regulations adopted in 2019 introduced an appeal procedure against internal instructions before prosecutors' collegial bodies (*Juntas de la fiscalia*)[56].

173. In **Lithuania**, amendments to the Law on the Prosecution Service effective as of 1 July 2018. prosecutors having special status and being in charge of top-level corruption cases, other extraordinary criminal cases, as well as being in charge on defending public interest in some civil and administrative case are supervised only by the Prosecutor General and the Deputy Prosecutor may receive additional renumeration.

174. In **Switzerland**, in 2017 the Prosecutor General issued a directive requiring prosecutors to refrain from any private negotiation (négociation contractuelle privée) with parties to proceedings and requiring that they be accompanied by their hierarchical superior or by a third party designated by the latter.[57] Carrying out informal meetings and the absence of recordings of these meetings are procedural violation justifying recusal of the prosecutor in the case. Any informal contact with parties and individual connected to proceedings must be duly recorded in the register of activities indicating information such as the identity of the persons met, matters discussed, location etc. The directive also regulates the random allocation of cases which now requires that care should also be taken to avoid assigning to a prosecutor cases where a party to the proceedings lives close to the prosecutor's residence, knows the prosecutor or who is part of his or her social environment.

175. The directive has also introduced wide ranging reporting obligations for prosecutor who must inform in written form their chief of office and the prosecution office consultative commission of any threat to independence and integrity they know of. This includes any proceedings initiated against the prosecutor, any personal connection they may have with a party to pending proceedings, job offers, threats or any form of undue pressure. Finally, prosecutors have to demonstrate independence when assigning mandates to third parties, such as experts or in appointing a lawyer.

176. In **Spain**, to increase transparency of the Prosecution Service a database of "*Doctrine of the State Attorney General's Office*" allows universal and free access to Circulars, Consultations and Instructions issued by the State Attorney General's Office since 1979.

177. In the **Republic of Moldova**, following the *Guja*[58] judgment, a Law on Whistleblowers adopted in 2018 has regulated the disclosure of illegal practices and wrongdoings in public organisations and private entities, whistleblowers' rights and protection measures, the employers' obligations and the competent authorities' powers in the review procedures of such disclosures. Prior to these legislative measures, law enforcement authorities instituted internal security departments to which corruption and wrongdoings could be reported. Concerning more specifically the Prosecutor General's Office, which had undergone a comprehensive reform process directed at consolidating the independence and efficiency of prosecutors, a new Law on the Prosecution Service of 2016 set up a Prosecutorial Inspection and the Council for Discipline and Ethics to examine complaints on wrongdoings, investigate disciplinary cases and apply disciplinary sanctions.

178. In November 2020, **Portugal** adopted new regulations on instructions for prosecutors. According to the new regulations, besides the right of a prosecutor to ask that the instructions are put into writing, there is an automatic obligation to put into writing any instruction having effects on specific criminal proceedings. In adopting any decision, a prosecutor must also always specify whether he or she is acting on the basis of instruction of his or her hierarchical superior and specify the superior's name and position. The refusal to execute an instruction, which must be motivated and in written form, is transmitted simultaneously to the chief issuing the order and his hierarchical superior. As a general rule orders and instructions can be consulted by parties to proceedings when they have a legitimate

[56] *Juntas de la fiscalia*: 2019 Instructions, https://www.fiscal.es/documents/20142/109407/Instrucci%C3%B3n+1_2019%2C+sobre+las+Juntas+de+Fiscal%C3%ADa.pdf/9c45f5c8-3467-c061-c368-17fa0a45575b?version=1.1

[57] http://www.ab-ba.ch/downloads/TB_AB-BA_2019_fr.pdf

[58] *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008.

interest[59]. However, the lack of discussions on the draft directive with the High Council of Public Prosecutors and a number of provisions such as the duty for prosecutors to inform the Prosecutor General on pending investigations into sensitive cases (such as the ones involving politically exposed persons or which may have a mediatic impact) have raised concerns among stakeholders that they may open the doors to political interference. Following a judicial challenge of the Union of Public Prosecutors the directive is currently under judicial review.

179. In **Poland**, the double role of the Minister of Justice, who is also the Prosecutor General, continues to raise concerns.

180. In **Hungary**, a number of GRECO recommendations such as removing the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate, to introduce strict criteria and an obligation to motivate decisions of superior prosecutors to take over cases from subordinate prosecutors remain unimplemented.

Abuse of prosecutorial discretion and selective, politically motivated prosecutions

181. Following the *Merabishvili*[60] judgment, the Committee of Ministers , in the framework of the supervision of the execution of the European Court of Human Rights judgment, recommended that further reforms were adopted to facilitate the depoliticisation and autonomy of the prosecution service, including clarifying the possibilities for the investigative remit of the State Inspector's Service to encompass cases in which the European Court found a violation of Article 18, strengthening the external independence of the prosecutor's office and the individual independence of prosecutors to investigate alleged abuses of power including at a high level. It further invited the authorities to present proposals for the revision of the composition and powers of the Prosecutorial Council and provision of specific guarantees for the independence of individual prosecutors, as recommended by the Venice Commission[61].

182. In the **Republic of Moldova**, following the ***Oferta Plus S.R.L v. Moldova*** judgment[62] of the European Court of Human Rights, the prosecution of a knowingly innocent person has been designated a crime punishable under the Criminal Code. In the framework of execution of the ***Stepuleac v. Moldova*** judgment [63], the Government of the Republic of Moldova introduced the requirement of reasonable suspicion when requesting and deciding on the application of the detention on remand, in line with the European Court of Human Rights case law on Article 5 of the European Convention on Human Rights.

183. In **Lithuania** on 24 July 2019 the Prosecutor General approved a procedure for reporting possible cases of undue influence and interference in prosecutors' performance of duties and decision-making.

184. Following the ***Tymoshenko v. Ukraine***[64] and ***Lutsenko v. Ukraine***[65] judgments concerning the pre-trial detention of leading opposition politicians for purposes that, as the European Court of Human Rights established, were other than those indicated in the European Convention on Human Rights, the Ukrainian authorities engaged in major reforms of the Public Prosecution Service which were aimed at strengthening its independence and the prevention of the circumvention of legislation by prosecutors for undue purposes, as had taken place in the above-mentioned cases. As the reform process is on-going, the Committee of Ministers of the Council of Europe invited the authorities to provide clarifications as to the impact on overall prosecutorial independence of the reforms initiated and continues monitoring measures adopted to secure the independence of the Prosecution Service and strongly encouraged the authorities to further pursue, with the assistance of the specialised co-operation programmes offered by the Council of Europe, the finalisation of the reforms to ensure that they are in line with Convention requirements and other Council of Europe standards.

[59] Directive 4/2020 - Exercise of hierarchical powers in criminal proceedings, available at: https://dre.pt/home/-/dre/149595002/details/maximized
[60] *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017.
[61] See Committee of Ministers' notes, including position of Georgia, CM/Notes/1428/H46-11 (1428th meeting (DH) (8-9 March 2022) - H46-11 *Merabishvili v. Georgia* (Application No. 72508/13).
[62] *Oferta Plus S.R.L. v. Moldova*, no. 14385/04, 19 December 2006.
[63] *Stepuleac v. Moldova*, no. 8207/06, 6 November 2007.
[64] *Tymoshenko v. Ukraine*, no. 49872/11, 30 April 2013.
[65] *Lutsenko v. Ukraine*, no. 6492/11, 3 July 2012.

185. In the ***Baş v.Turkey*** judgment[66], the European Court of Human Rights found unlawful the pre-trial detention of a judge on the basis of an unreasonable extension of the concept of in flagrante delicto on mere suspicion of membership of an illegal organisation; it also found the lack of reasonable suspicion, at the time of the applicant's initial pre-trial detention, that he had committed an offence. In particular the Court found that extensive interpretation of the concept of in flagrante delicto, negated the procedural safeguards that members of the judiciary were afforded in order to protect them from interference by the executive. Judicial protection of this kind was granted to judges to safeguard the independent exercise of their functions without unlawful restrictions by bodies outside the judiciary, or even by judges performing a supervisory or review function. The execution of the judgment is currently under examination of the Committee of Ministers of the Council of Europe[67] following submission of an action plan by the Turkish government[68]. Efforts were undertaken by competent institutions under the Judicial Reform Strategy Document, the objective of which was "to improve the independence, impartiality and transparency of the judiciary". The Human Rights Action Plan's second objective was "judicial independence" and "strengthening the right to a fair trial", and under this purpose, "strengthening the independence and impartiality of the judiciary" was determined as a separate target, and a number of activities were included to contribute to its implementation.

186. Following the ***Kavala v. Turkey***[69] and the ***Mammadli v. Azerbaijan***[70] judgments, where the European Court of Human Rights found that the applicants' arrest and pretrial detention constituted a misuse of the criminal law intended to punish and silence them, the Committee of Ministers invited the authorities to take adequate legislative and other measures to protect the judiciary and ensure that it is robust enough to resist any undue influence, including from the executive branch in particular as regards the structural independence of the Council of Judges and Prosecutors. In March 2021, the Turkish authorities announced the adoption of a Human Rights Action Plan which covers numerous reforms aimed to strengthen the independence of the judiciary, including restructuring of the provisions governing the appointment, transfer and promotion of judges and disciplinary procedures and sanctions concerning judges and prosecutors. The Committee encouraged the Turkish authorities to proceed with the above-mentioned reforms and expressed the readiness of the Council of Europe to provide assistance.

3. Cross cutting issues and transversal actions

Promoting integrity within the judiciary

187. The Council of Europe has emphasized the importance of clearly established standards of judicial conduct to ensure integrity and independence. The integrity of judges and prosecutors has been the main focus of the evaluation and recommendation of the Council of Europe Group of States Against Corruption (GRECO). This process has resulted in wide ranging reforms across Council of Europe member States to introduce and strengthen judicial integrity through provisions on recusals, conflicts of interests, the introduction of a regime of asset declarations, the implementation of codes of conduct, the provision of confidential counselling, integrity training and streamlining reporting mechanisms and whistle-blower protection within judicial institutions.

188. The regime of **incompatibilities** has been expanded in **Portugal** where Law No. 67/2019 of 27 August 2019, has introduced a more exhaustive description of the impediments to which magistrates are subject, namely with regard to relationships of marriage, non-marital partnership, parentage or affinity in any degree of consanguinity or up to the 2nd degree of affinity.

189. In **Spain**, Organic Law 4/2018 expanded the obligation of abstention of those judges who have been appointed by political Authorities to trust positions. Once they leave this position and re-enter the judicial career, they are obligated to the abstention in 'any cases in which political parties or those of their members who hold or have held public office are procedural parties in the case.

[66] *Baş v. Turkey*, no. 66448/17, 3 March 2020.
[67] See Committee of Ministers' Decision CM/Del/Dec(2022)1428/H46-33 at its 1428th meeting, 8-9 March 2022 (DH) H46-33 *Alparslan Altan group v. Turkey* (Application No. 12778/17).
[68] See Committee of Ministers notes' CM/Notes/1428/H46-33 and CM/Notes/1428/H46, concerning *Alparslan Altan v. Turkey* (Application No. 12778/17) and *Baş v. Turkey* (Application No. 66448/17) 1428th meeting (March 2022) (DH) - Action plan (06/01/2022). Available at: https://hudoc.exec.coe.int/ENG?i=DH-DD(2022)37E
[69] *Kavala v. Turkey*, no. 28749/18, 10 December 2019.
[70] *Mammadli v. Azerbaijan*, no. 47145/14, 19 April 2018.

190. In **Monaco**, 2019 amendments to the functioning and organisation of the Supreme Court have integrated existing rules on incompatibilities for Supreme Court Judges with a general principle requiring them to refrain from any activity that could compromise their independence and dignity.

191. In the framework of the fourth evaluation round on "Prevention of corruption in respect of members of parliament, judges and prosecutors", GRECO supported the introduction of codes of conduct. In particular, GRECO has advised to complement the ethical code with explanatory commentary, providing guidance on conflicts of interest and related issues to **Czech Republic**, **Greece**, **Ireland**, **Portugal**, **Russian Federation**[71] and **Switzerland**. Codes of conduct and guidelines, which have been adopted on the basis of wide consultations within the judiciary, have included provisions on gifts, how to identify, avoid and report conflicts of interests, the use of social media.

192. When such codes have already been adopted, GRECO stressed the importance of their effective implementation and sought to determine how well codes of conduct were understood, whether judges and prosecutors had received any training or had access to advice, how conduct was monitored and what, if any, mechanisms to sanction were in place or indeed had been used[72]. This means that they must be part of a broader integrity framework with an institutional framework for implementation, awareness-raising and advice, as well as strong enforcement.

193. Following GRECO recommendations several member States introduced or revised codes of conduct while almost all of them have engaged in further initiatives to secure the enforcement of such codes, the development of ethics guidelines, the creation and strengthening of ethics advisory bodies and the provision of confidential counselling. For example, **Latvia** has conducted an evaluation of its ethics commission and introduced a remuneration for the attendance of its session by its members to strengthen its efficiency.

194. Targeted guidelines for the identification and reporting of cases of undue influence and interference have been adopted in **Serbia** both in respect of prosecutors and judges.

195. In the **United Kingdom**, in 2019 the Supreme Court in a landmark judgment has acknowledged that judges fall under the whistleblower protection legislation[73].

196. In **Sweden**, the National Courts Administration is currently reviewing its routines on reporting cases of misconduct, taking into account the requirements laid down in the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of union law.

Securing transparency and openness in the workings of the judiciary

197. GRECO's fourth evaluation round on the "Prevention of corruption in respect of members of parliament, judges and prosecutors" showed that most countries respect an open court system. However, the principle of open justice is broader and includes public access to courts and to legal decisions (to allow them to be understood and challenged) and, increasingly, to more information about the judicial function and individual judges. Open justice is therefore multi-purpose, it informs and educates the public, enhances judicial accountability, deters misconduct and offers important assurance that justice has been done.

198. In this vein, GRECO made a number of recommendations to help secure the progress most countries have made towards making court judgements fully accessible to the public and easily searchable, to streamline public complaint channels and to minimise unjustified delays in all court processes.

Strengthen training in effective competence and ethics

199. The Council of Europe bodies have emphasised the role of training, advice and counselling as prevention mechanisms aimed both at raising the awareness within the prosecution service as to the

[71] Participation in GRECO has been limited by Committee of Ministers' Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe, adopted on 23 March 2022.
[72] GRECO 2020 general activity report.
[73] https://www.theguardian.com/law/2019/oct/16/uk-judge-granted-whistleblower-protection-rights
The judgment is available at: https://www.supremecourt.uk/cases/uksc-2018-0014.html

importance of following ethical rules and at avoiding misconduct by encouraging proper conduct. Training on the codes of conduct should be part of induction as well as of career-long training. The need to bring training regulations and practices in line with Council of Europe standards was the object of a number of recommendations by GRECO in the framework if its fourth evaluation round on the "Prevention of corruption in respect of members of parliament, judges and prosecutors". Consistently with GRECO's recommendations several member States have introduced reforms specifically strengthening training for the judiciary.

200. Integrity training was introduced both as an ad hoc basis and as a part of mandatory training programmes for judicial candidates and sitting judges and prosecutors. Some member States (**Bulgaria, Denmark** and **Ukraine**) have also developed online training courses on judicial ethics and integrity. Online courses on judicial and prosecutorial ethics are supplemented by existing initiatives of the Council of Europe's programme on Human Rights Education for legal professionals (HELP).

201. In order to strengthen planning and implementation of training programmes, in **Cyprus**, from 1 January 2017, the Supreme Court has created the Office of Reform and Training. This Office is headed by a former Justice of the Supreme Court and divided into two distinct offices, one dealing with reform and the other with judicial training. In **Ireland**, a Judicial Studies Committee was set up on 10 February 2020 with the task of facilitating the continuing education and training of judges. A training needs analysis has been conducted and a training programme developed.

202. GRECO recommendations, in addition to introduction or strengthening the judicial ethics related trainings, also called for establishing more practical assistance to the newly appointed judges on issues related to ethical dilemmas, targeted guidance and counselling on corruption prevention issues, conflicts of interest (including their management, recusal and withdrawal), the rules on gifts and other advantages, relations with third parties and the various other measures for preventing corruption and preserving integrity generally. Integrating these aspects in the training programmes, as well as having stronger practical support available to judges in need to verify a variety of corruption or integrity related issues, needs to be further strengthened in **Andorra, Cyprus**, **Greece, Luxemburg, Malta, Poland** and **Türkiye**[74].

Guaranteeing a role for professional associations

203. The individual independence of judges also relies on the right of associations of judges which protect their professional interests and seek to uphold other principles of the justice system in the interest of individuals. The Council of Europe has supported the role of professional organisations of members of the judiciary, including their authority to take part in discussions with the competent institutions on matters related to their purpose. In line with the Council of Europe recommendations, certain member States have reversed regulations effectively penalising membership in professional organisation and, in certain cases, the contributions of professional organisation have been acknowledged and integrated in the functioning of judicial bodies.

204. In **France**, legislation passed in August 2016[75] which regulates declarations of assets and interests to be submitted by magistrates has expressly excluded that judges and prosecutors have to submit information on membership in professional associations (with the exception of cases where they hold public functions of responsibility or other mandate).

205. In **Bulgaria**, previous requirement for magistrates to declare their membership of professional associations to the Supreme Judicial Council, which had raised concerns over the freedom of association, has been removed following amendments to the Judiciary System Act passed in January 2020.

206. In **Italy**, in response to episodes of trading in influence by its members, in 2019 the National Association of Magistrates introduced the prohibition for magistrates who hold leading positions within the association, or at the School of Magistrates as well as for magistrates who are seconded to other

[74] See GRECO's Second interim compliance report (IV Evaluation Round), including position of Türkiye, published on 18 March 2021. Available at: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1cac3

[75] Loi organique n° 2016-1090 du 8 août 2016 relative aux garanties statutaires, aux obligations déontologiques et au recrutement des magistrats ainsi qu'au Conseil supérieur de la magistrature.

bodies of the executive (such as the Ministry of Justice) to run for a position in the Superior Judicial Council until after termination of such mandates[76].

207. The **Romanian** Magistrates' Association has been regularly invited by Parliament to take part in the discussion of justice reforms. In 2016 Bulgaria representatives of all judges' associations have been granted membership in the Council on the Implementation of the Updated Strategy for Continuing Judicial Reform-an advisory body to the Council of Ministers.

208. Following amendments to the Judiciary System Act in 2017, **Bulgaria** introduced a Partnership Council to the Supreme Judicial Council consisting, *inter alia*, of representatives of the Judicial Council and of associations of judges and prosecutors. The Partnership Council discusses matters regarding their professional interests, including their status, working conditions, remuneration and other such matters, and prepare non-binding recommendations on relevant legislative amendments[77].

209. In the **Slovak Republic**, a 2016 regulation on the functioning of the prosecutorial council has included the possibility for professional associations to participate in sessions of the council and provide advisory opinions.

De jure and de facto independence

210. On multiple occasions the Council of Europe and other organisations highlighted how the existence of legal provisions, while essential, may not reflect *de facto* judicial independence. As mentioned above, in several countries, the power of the Minister of Justice to issue instructions to the prosecution service in individual cases is not used in practice or is used in exceptional cases. On the other hand, the Council of Europe bodies highlighted how adopted reforms did not have a measurable impact on judicial independence and did not translate into positive practices, stressing the chiasm between *de facto* and *de jure* independence. These conclusions are supported by the findings of existing scholarship on judicial and prosecutorial independence showing a stronger correlation between *de facto* independence and the level of democratisation, public trust in the judiciary, freedom of the press and victims' rights[78]. The complexity of the interplay of these factors is also reflected in the need, expressed by several member States, to find a balance between the protection of freedom of the press and protecting the judiciary from unfair attacks undermining public trust in it.

Countering the negative influence of stereotyping in judicial decision making and promoting gender balance in the composition of the judiciary

211. Equal access to independent, impartial and non-discriminatory justice is a human right and also key to the realisation of all other human rights, including the rights to non-discrimination and gender equality. The judiciary will not be trusted if it is viewed as a bastion of entrenched elitism, exclusivity, and privilege, oblivious to changes in society and to the needs of the most vulnerable. Achieving gender equality, in terms of representation at all levels of the judiciary and on policy-making judicial councils is right for the achievement of a more just rule of law. Guaranteeing equal access of women to justice is one of the six objectives of the Council of Europe Strategy for Gender Equality 2018-2023. The Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality contains a number of references to gender equality issues and specific actions are required in this field. While the streamlining of a gender and non-discrimination dimension in the composition and functioning of the judiciary has yet to be undertaken by the majority of Council of Europe member States, some jurisdictions are leading the process of gender mainstreaming by implementing important measures that promote gender representation within the judiciary and securing that judges receive training on topics such as negative stereotyping, non-discrimination and equality.

[76] https://www.associazionemagistrati.it/doc/3272/sulla-modifica-del-codice-etico.htm
[77] Reply of the Bulgarian Government for the preliminary work of the CCJE 2020 Opinion on Professional Associations, https://rm.coe.int/bulgaria-en-ccje-questionnaire-2020-bulgaria/16809f92e5
[78] Voigt S. and Hayo B. (2007), *Explaining De Facto Judicial Independence*, International Review of Law and Economics, vol. 27, issue 3, pp. 269-290.
See also Van Aaken A., Feld L. and Voigt S. (2010) *Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation across 78 Countries*.12 American Law and Economics Review, Issue 1, pp. 204-244. Gutmann J. and Voigt S. (2020), *Judicial Independence in the EU: A Puzzle, European Journal of Law and Economics* 49, pp.83-100*;* Voigt, S. (2017). *What Makes Prosecutors Independent? - Analyzing the Determinants of the Independence of Prosecutors,* Journal of Institutional Economics, Cambridge University Press.

212. In **Spain**, 2018 amendments to the Organic Law for the Judiciary imposed the principle of balanced presence of men and women in the composition of the General Council of the Judiciary. Gender based training has become pre-requisite for appointments and career advancement. For example, to access selective or specialisation tests (for promotion) it will be necessary to prove having participated in continuous training activities with a gender perspective. The Equality Commission created within the General Council of the Judiciary now advises the Council about measures to be taken in order to actively mainstream the principle of gender equality in its work, prepares reports on gender impact of various regulations and has developed minimum standards to prevent discrimination against women.

213. In **Sweden**, the National Courts Administration has recently produced an e-learning module regarding gender equality in the court system and made it available to all court staff. During 2017, six courts were assigned to act as pilot courts for gender mainstreaming. They analysed various aspects of their work from a gender perspective. The results of the analysis were made available to all the courts in Sweden. In 2018, workshops on gender mainstreaming were organized by the National Courts Administration.

214. In **Austria**, a plan for promoting women within judiciary was enacted in 2017 by a decree of the Federal Minister of Justice. Training sessions have covered topics such as cultural diversity, foreign cultures, tolerance, youth cultures and marginal groups, victim protection and protection against violence. In **Georgia**, judges participated in training sessions on violence against women and domestic violence.

215. In the **United Kingdom** (**England and Wales**), in December 2021, the Judicial Diversity Forum, which brings together stakeholders from across the legal sector, including the Ministry of Justice, published its second annual Diversity Action Plan. In addition, the Ministry of Justice published an annual "Diversity in the judiciary" report, with detailed statistics on diversity, recruitment, headcount in the judiciary and the wider legal sector - they provide evidence on which actions could have the highest impact. The Lord Chief Justice is responsible for judicial training. These duties are exercised through the Judicial College. The College's governing principle is that diversity is embedded into all training; training uses examples of the social context of judging (this includes diversity, equality and social mobility). The Judicial College Strategy 2021-2025 sets the future direction for how it will do this. All judicial office holders also have access to the Equal Treatment Bench Book which provides guidance on a wide range of practical matters that may arise. The Guide to Judicial Conduct revised in 2018 provides guidance on how to maintain impartiality and avoid bias or perception of bias in decision-making.

216. Also, other member States (for example **Croatia, Germany, Republic of Moldova, Montenegro**) have introduced training on topics such as negative stereotyping, non-discrimination and equality.

IV. JUDICIAL INDEPENDENCE AND IMPARTIALITY IN COVID-19 TIMES

217. While it is too early to fully capture the impacts of the COVID-19 pandemic on judicial independence, preliminary findings provide some initial insights on how the justice systems responded to it. The pandemic has posed severe challenges to the functioning of judicial systems, increasing the risk that States will be left without a functioning, accessible and independent system of justice. As such the COVID-19 pandemic highlighted the need for member States to modernize their justice system.

218. While according to the replies provided to the Council of Europe by member States, the COVID-19 crisis has so far represented more of a challenge for the efficiency of justice than for judicial independence and impartiality, shielding judicial independence from the impact of the COVID-19 crisis will also determine the capacity of judiciaries to secure that governments are transparent, responsive and accountable in their COVID-19 response and ensure that any emergency measures are legal, proportionate, necessary and non-discriminatory. Additionally, while some of the effects of the pandemic on access to justice, the functioning of justice systems and judicial independence are temporary, others may engender lasting changes.

219. With regard to the involvement of judiciary in the implementation of emergency measures, judiciaries of **Albania**, **Georgia**, **Republic of Moldova**, **Romania** and the **United Kingdom** were consulted prior to the adoption of such measures. Complications arose when measures were taken to guarantee access to justice without prior consultation with judicial bodies. In **Spain**, the Government

closed the courts and only urgent cases were processed. The measures were adjusted after consultation and approved by law in September 2020[79]. In **Belgium**, the Judicial Council's advisory and inquiry commission addressed a number of legislative initiatives adopted by Parliament to regulate the response of the justice system to the COVID-19 crisis by stating the necessity to secure the respect of human rights and warning against initiatives that may be hurried and premature.

220. The perception of independence of the judiciary during the pandemic has decreased in certain member States. For example, in **Malta**, the perception of independence and the accountability of prosecutors has been questioned as prosecutors had not been able to effectively conduct all of their official duties and execute the necessary investigative activities in all cases. A certain impact of the epidemiological crisis on prosecutors' accountability was reported in **Bulgaria** where the annual report of the prosecution office for 2019 could not be discussed by all prosecutors at regional meetings.

221. The measures adopted to address the pandemic that appear to have mostly affected judicial independence concerned remuneration of judges and prosecutors. In August 2020 the Constitutional Court of **Ukraine**, relying *inter alia* on the principle of judicial independence, found unconstitutional the limitations on the remuneration of judges imposed due to the COVID-19 crisis. On the other hand, in **Slovenia**, the Constitutional Court rejected a complaint lodged by the Prosecutors' Society against a reduction by 30 % of prosecutors' remuneration during the pandemic as it did not directly affect their independence under the Constitution. Such reductions did not affect judges.

V. CONCLUDING REMARKS

222. This overview of the measures adopted by the member States to strengthen the guarantees for independence and impartiality of judges and prosecutors shows that there has been substantial work carried out to bring the national legal frameworks in accordance with the Council of Europe standards and with the lines of actions defined by the Sofia Plan of Action.

223. The examples set out in this report demonstrate that many member States made efforts to safeguard the protection of judges and prosecutors from external and internal influences, through strengthening the independence and role of the self-governing bodies, improving the legal frameworks that minimise the risk of external influence over selection, appointment, promotion, conditions of work, and clarifying the procedures concerning the adherence to ethical codes, disciplinary liability or evaluation hence minimising risk of arbitrary use for exerting the influence over the work of judges or prosecutors.

224. While there are examples of clear progress in further developing the national legal frameworks, on multiple occasions adopted reforms did not translate into positive practices, highlighting a possible schism between de jure and de facto independence.

225. In a number of member States, successive reforms have been carried out to address the core issues of independence and impartiality of judges, however progress in addressing one issue was undone by reversing some other aspects of judicial independence, or by having an 'a la carte' approach and selectively following the Council of Europe standards and its bodies' recommendations.

226. The Council of Europe, through its various institutions and bodies, provided ample support, guidance and advice in implementing the necessary reforms and specific legal reviews. This has been rigorously done through the application of the virtuous triangle of standard-setting/ monitoring/ co-operation activities, both on a bilateral and on a multilateral level. The number of cases dealt by the European Court of Human Rights that dealt with the specific situations and concerns of judges and prosecutors, also demonstrates that there are serious threats to judicial and prosecutorial independence in the member States.

227. The rising concerns over the independence of the judiciary in particular, undermining the pillars of democracy and the rule of law, and the core values of the Council of Europe to which member states

[79] Report of the Special Rapporteur on the independence of judges and lawyers: "The coronavirus disease (COVID-19) pandemic: impact and challenges for independent justice, UN Human Rights Council, paragraph 13, https://www.undocs.org/A/HRC/47/35. See also the following laws adopted by the Spanish authorities: Royal Decree-Law 16/2020, dated 28 April 2020, on procedural and organisational measures in response to the COVID-19 in the administration of justice field and Law 3/2020, dated 18 September 2020, on procedural and organisational measures in response to the COVID-19 in the administration of justice field.

should adhere to and implement, have already been pointed by the Secretary General, in her annual reports[80].

228. Although the responding member States clearly expressed a preference of not updating the Sofia Plan of Action, the COVID-19 pandemic and advancement of the use of new technologies in the judicial proceedings clearly pointed to the need of addressing the new challenges ahead and expanding the scope of the Plan of Action beyond the conventional issues and threats to independence of judges and prosecutors.

229. Furthermore, clear conclusions point to the need to consider updating existing non-binding standards, such as CM/Rec(2000)19 and to elaborate the standards on prosecutorial independence more in detail.

230. The findings of this report demonstrate that although the Sofia Action Plan had a timeframe of five-year implementation, its measures are very much still topical and relevant. There is a clear need to continue improving and providing stronger guarantees for the judicial and prosecutorial independence in the member States, as shown in the overview of implemented measures. The line of actions and specific measures contained in the Plan of Action are rather universal, and in a sense, timeless as they can be applied in cases where there is a need to address those specific issues and problems as targeted by the proposed measures. As such, they should continue to be an invaluable resource for policymakers to rely on and draw the inspiration from, and act as benchmarks for the CDCJ, and other competent bodies and committees, to follow up and advise the Secretary General and the Committee of Ministers on any future actions needed.

[80] *State of democracy, human rights and the rule of law. A democratic renewal for Europe.* Report by the Secretary General of the Council of Europe, 2021; *Moving forward*, Annual Report by the Secretary General of the Council of Europe, 2022.

VI. ANNEX

CCJE and CCPE opinions

CCJE Opinion No. 24(2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems
CCJE Opinion No. 23(2020) on the role of associations of judges in supporting judicial independence
CCJE Opinion No. 22(2019) on the role of judicial assistants
CCJE Opinion No. 21(2018) - Preventing corruption among judges
CCJE Opinion No. 20(2017) on the role of courts with respect to the uniform application of the law
CCJE Opinion No. 19(2016) on the role of court presidents
CCPE Opinion No. 16(2021) on the implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors
CCPE Opinion No. 15(2020) on the role of prosecutors in emergency situations, in particular when facing a pandemic
CCPE Opinion No. 13(2018) - Independence, accountability and ethics of prosecutors

CCJE and CCPE specific opinions and statements

Opinion of the CCJE Bureau following a request by the Association of European Administrative Judges (AEAJ) as regards the legal setting of the position of the president (vice-president) of the Administrative Court of Vienna (March 2019)
Opinion of the CCJE Bureau following the request of the Bulgarian Judges Association to provide an opinion with respect to the amendments of 11 August 2017 of the Bulgarian Judicial System Act (November 2017)
Opinion of the CCJE Bureau following a request by the Association of Judges of Montenegro as regards the Judicial Council of Montenegro (August 2018)
Statement from the CCJE as regards the situation on the independence of the judiciary in Poland (December 2019)
Statement from the CCJE Bureau as regards the situation on the independence of the judiciary in Poland (June 2018)
Statement from the CCJE Bureau on the attacks by some Polish media against a Judge of the Irish High Court (March 2018)
Statement from the CCJE as regards the situation on the independence of the judiciary in Poland (November 2017)
Opinion of the CCJE Bureau on the Draft Act of September 2017 presented by the President of Poland amending the Act on the Polish National Council of the Judiciary and certain other acts (October 2017)
Statement from the CCJE Bureau as regards the legislation on the Polish National Council of the Judiciary (July 2017) and Letter from the European Commission (August 2017)
Opinion of the CCJE Bureau on the Draft Act of 23 January 2017, latest amended on 3 March 2017, amending the Act of 12 May 2011 on the Polish National Council of the Judiciary and certain other acts (April 2017)
Comments by the CCJE Bureau on decision of the President of Poland not to appoint as judges ten candidates presented by the National Council of the Judiciary (October 2016)
Opinion of the CCJE Bureau as regards the situation on the independence of the judiciary in Romania (April 2019)
Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to make an assessment as to whether holding office as an elected member of the High Council of Justice (HCJ) is compatible with membership or holding office in a professional judges' association (May 2021)
Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power (December 2018)
Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power (May 2018)
Opinion of the CCJE Bureau about the new provisions relating to the Judicial Council of Slovakia (December 2020)
Statement from the CCJE concerning the situation in Turkey (November 2016)
Statement from the CCJE Bureau concerning the situation in Turkey (July 2016)
Document from the CCJE Bureau commenting on some aspects of the legislation regarding judges and prosecutors in Turkey (July 2016)

Opinion of the CCPE Bureau adopted following a request by the Superior Council of Prosecutors of the Republic of Moldova concerning the independence of prosecutors in the context of legislative changes as regards the prosecution service (February 2020)

Opinion of the CCPE Bureau following a request by the Romanian Movement for Defending the Status of Prosecutors as regards the situation on the independence of the prosecutors in Romania (May 2019)

Opinion of the CCPE Bureau following a request by the Prosecutors Association of Serbia to assess the compatibility with European standards of the proposed amendments to the Constitution of Serbia which will affect the composition of the High Prosecutorial Council and the way prosecutors work (March 2019)

Opinion of the CCPE Bureau on the compatibility with European standards of the proposed amendments to the Constitution of Serbia (June 2018)

Statement from the CCPE Bureau on the situation of prosecutors in Turkey (July 2016)

CEPEJ tools

Guide for implementing the SATURN management tools in courts
Guidelines of the CEPEJ SATURN Centre for judicial time management – comments and implementation examples
Revised SATURN Guidelines for judicial time management (4th revision)
Handbook on court dashboards
Case weighting in judicial systems - CEPEJ Studies No. 28
Appendices I and II of the guidelines: Indicators and examples of synopsis
Length of court proceedings in the member states of the Council of Europe – Analysis based on the case law of the European Court of Human Right, by Ms Françoise Calvez and Mr Nicolas Regis, Judges (France) 3rd edition by Nicolas Regis - CEPEJ Studies No. 27
Implementation guide "Towards European timeframes for judicial proceedings"
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