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EUROPEAN COMMITTEE ON LEGAL CO-OPERATION /

COMITE EUROPEEN DE COOPERATION JURIDIQUE

(CDCJ)

REVIEW OF THE IMPLEMENTATION OF THE COUNCIL OF EUROPE PLAN OF ACTION ON STRENGTHENING JUDICIAL INDEPENDENCE AND IMPARTIALITY ("SOFIA ACTION PLAN")

Responses received from member States and members of the Conference of INGOs

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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 (« PLAN D'ACTION DE SOFIA »)

Réponses reçues des États membres et des membres de la Conférence des OING

Document prepared by the Secretariat
Directorate General Human Rights and Rule of Law – DGI

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Table of content / Table des matières

Background / *Contexte*

In line with its terms of reference for 2020-2021, the CDCJ is expected to review the implementation of the Sofia Action Plan (Secretary General final report in 2021) on judicial Independence and Impartiality.

A questionnaire has been issued to member States and to the Conference of INGOs to take stock of the measures taken and progress towards strengthening the independence of judges and prosecutors in line with the priorities for improvement identified at national level, and also as a result of the measures implemented on the range of aspects that affect the independence of the judiciary, as outlined in the detailed lines of actions of the Sofia Action Plan.

This document compiles the original responses received from member States and members of the Conference of INGOs as of 9 July 2021.

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Conformément à son mandat pour 2020-2021, le CDCJ devrait examiner la mise en œuvre du plan d'action de Sofia (rapport final de la Secrétaire Générale en 2021) sur l'Indépendance et l'impartialité du pouvoir judiciaire.

Un questionnaire a été envoyé aux membres et à la Conférence des OING en vue de faire le point sur les mesures prises et les progrès réalisés pour renforcer l'indépendance des juges et des procureurs conformément aux priorités d'amélioration identifiées au niveau national, et également à la suite des mesures mises en œuvre sur l'ensemble des aspects qui affectent l'indépendance du pouvoir judiciaire, comme indiqué dans la ligne d'actions du plan d'action de Sofia.

Le présent document compile les réponses originales reçues, au 9 juillet 2021, des Etats membres et des membres de la Conférence des OING.

I. Table of responses to the questionnaire / *Tableau des réponses au questionnaire*

Member States / Etats membres / Institutions	DATE
BELGIUM / *BELGIQUE* - Service Public Fédéral Justice	24/02/2021
BULGARIA / *BULGARIE* - Ministry of Justice	05/03/2021
CROATIA / *CROATIE* - Ministry of Justice and Public Administration	07/04/2021
CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE* - Ministry of Justice	05/03/2021
DENMARK / *DANEMARK* - Ministry of Justice	22/03/2021
FINLAND / *FINLANDE* - National Prosecution Authority, National Courts Administration, Ministry of Justice	12/04/2021
FRANCE - Ministère de la Justice	23/03/2021
GEORGIA / *GEORGIE* - Ministry of Justice	24/02/2021
GERMANY / *ALLEMAGNE* - Federal Ministry of Justice and Consumer Protection	02/03/2021
LATVIA / *LETTONIE* - Ministry of Justice	25/02/2021
LITHUANIA / *LITHUANIE* - Ministry of Justice	10/03/2021
REPUBLIC OF MOLDOVA / *REPUBLIQUE DE MOLDOVA* - Ministry of Justice	30/03/2021
MONACO - Direction des Services Judiciaires	10/03/2021
NETHERLANDS / *PAYS BAS* - Public Prosecution Service	24/02/2021
NETHERLANDS / *PAYS BAS* - Ministry of Justice and Security	24/02/2021
POLAND/ *POLOGNE* - Ministry of Justice	01/03/2021
PORTUGAL - Directorate-General for Justice Policy	01/03/2021
ROMANIA / *ROUMANIE* - Ministry of Justice	02/03/2021
SERBIA / *SERBIE* - Ministry of Justice	25/02/2021
SPAIN / *ESPAGNE* - Ministry of Justice	26/02/2021
SWEDEN / *SUÈDE* - Ministry of Justice	11/03/2021
TURKEY / *TURQUIE* - Council for Judges and Prosecutors	25/02/2021
TURKEY / *TURQUIE* - Ministry of Justice	07/07/2021
UKRAINE - Ministry of Justice	25/02/2021
UNITED KINGDOM / *ROYAUME UNI* - Ministry of Justice	25/02/2021
Observers / Observateurs	DATE
AMNESTY INTERNATIONAL - HUNGARIE / *HONGRIE*	25/02/2021
AMNESTY INTERNATIONAL - POLAND / *POLOGNE*	25/02/2021
AMNESTY INTERNATIONAL - TURKEY / *TURQUIE*	25/02/2021
MEDEL	25/02/2021
EUJC / *UEMC*	10/03/2021

II. Contribution received from member States / *Contributions reçues des Etats membres*

BELGIUM / *BELGIQUE*
Service Public Fédéral Justice
24/02/2021

1. Veuillez décrire toute mesure spécifique prise par vos autorités pendant la période de mise en œuvre du Plan d'action du Conseil de l'Europe sur le renforcement de l'indépendance et de l'impartialité du pouvoir judiciaire (2016-2021) qui a eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs ?

Veuillez fournir, en particulier, des exemples concrets de toute mesure institutionnelle, législative, réglementaire ou autre, ainsi que des nouvelles pratiques qui ont été adoptées ou mises en place au cours des cinq dernières années pour prévenir et/ou traiter (y compris les procédures, les recours et les sanctions en cas) l'influence ou ingérence indue (en ce qui concerne notamment: la sélection, la nomination et la promotion; les conditions de travail (y compris la sûreté et la sécurité); le financement des tribunaux; la responsabilité; la protection dans la prise de décision contre l'influence ou l'ingérence indue de pairs (y compris les juges des cours supérieures ou les parquets), d'autorités judiciaires ou de poursuites ou d'associations professionnelles, d'acteurs politiques ou du pouvoir législatif, de l'exécutif, des médias ou d'autres acteurs privés (y compris des acteurs financiers).

La réforme la plus marquante de ces dernières années en termes d'impact sur l'indépendance et l'impartialité des juges est celle mise en œuvre par la loi du 23 mars 2019 modifiant le Code judiciaire en vue d'améliorer le fonctionnement de l'ordre judiciaire et du Conseil supérieur de la Justice. Cette loi visait à mettre en œuvre certaines des recommandations du Greco émises dans le cadre de son 4ème cycle d'évaluation consacré à la corruption des parlementaires, des juges et des procureurs.

La loi du 23 mars 2019 a ainsi opéré les modifications suivantes :

Auparavant, les juges suppléants et les conseillers suppléants devaient, pour être nommés, remplir uniquement des conditions de diplôme, d'expérience professionnelle et dans certains cas, d'âge. Désormais, depuis l'entrée en vigueur de la loi du 23 mars 2019, les nouveaux juges suppléants et conseillers suppléants doivent également avoir réussi un examen donnant accès à la fonction de juge suppléant et de conseiller suppléant ou l'examen d'aptitude professionnelle ou l'examen oral d'évaluation ou être détenteur du certificat attestant qu'ils ont achevé avec fruit le stage judiciaire visé à l'article 259octies du Code judiciaire (articles 188, 192 et 207bis du Code judiciaire).

C'est la commission de nomination réunie du Conseil supérieur de la Justice qui prépare le programme de l'examen donnant accès à la fonction de juge suppléant et de conseiller suppléant, examen qui consiste en une épreuve orale, le cas échéant, précédée d'une épreuve écrite.

Le 15 décembre 2019, un arrêté royal déterminant les modalités et les conditions d'organisation de cet examen a été adopté et est entré en vigueur le 1er janvier 2020.

Depuis le 1er janvier 2020 également, les juges suppléants ne peuvent plus remplacer les magistrats du ministère public.

Ils ne peuvent plus non plus intervenir à une audience au cours de laquelle ils interviennent en qualité de conseil des parties en litige soit directement soit par personne interposée.

Auparavant, la commission d'avis et d'enquête réunie du Conseil supérieur de la Justice, chargée de surveiller et de promouvoir l'utilisation des mécanismes de contrôle interne au sein de l'ordre judiciaire, pouvait en outre demander aux autorités judiciaires toutes informations utiles. La loi du 23 mars 2019 est venue renforcer le pouvoir d'investigation de la commission en précisant que « La commission d'avis et d'enquête réunie peut, à tout moment, se procurer tous les documents et renseignements qu'elle estime nécessaires en vue d'exercer ses missions. Les autorités judiciaires sont tenues d'accéder à cette demande. » (art. 259bis-14 du Code judiciaire). La demande de la commission est ainsi rendue contraignante ;

Au sein du Conseil supérieur de la Justice figurent également des commissions de nomination et de désignation francophone et néerlandophone. Auparavant, ces commissions, appelées à opérer une sélection entre les candidats magistrats, n'avaient pas la possibilité de prendre connaissance des plaintes dirigées à leur encontre auprès d'une commission d'avis et d'enquête. Or, les informations que chaque type de commission recueille dans l'exercice de ses compétences peuvent présenter un intérêt pour l'autre type de commission.

Par conséquent, la loi du 23 mars 2019 a, sur la base d'un avis positif de l'autorité de protection des données, rendu possible un échange d'informations entre les commissions si l'une d'elle dispose d'informations utiles à l'exercice de la mission d'une autre, sur la base d'une décision du Bureau du CSJ (art. 259bis-6 du Code judiciaire) ;

L'assemblée générale de chaque entité judiciaire est tenue de rédiger un rapport de fonctionnement annuel sur un formulaire type établi par le Ministre de la Justice, après avis du Conseil supérieur de la Justice, du Collège du ministère public et du Collège des cours et tribunaux, chacun pour ce qui concerne son organisation (art. 340 du Code judiciaire). Désormais, l'article 340, §3, alinéa 3, du Code judiciaire prévoit que les rapports de fonctionnement doivent contenir deux rubriques supplémentaires, à savoir les éventuelles mesures prises en vue du maintien de la discipline, y compris les sanctions disciplinaires, et les initiatives prises en vue du respect des principes généraux relatifs à la déontologie.

Le Conseil supérieur de la Justice doit établir annuellement un rapport consolidé portant sur les mesures et initiatives susmentionnées, dans le respect de l'anonymat. Ce rapport est rendu public (art. 340, §3, alinéa 5, du Code judiciaire).

Pour que cette modification soit mise en œuvre, il convient d'adapter le formulaire type annexé à l'arrêté ministériel.

A cette fin, des propositions d'adaptation ont été approuvées par l'Assemblée générale du Conseil supérieur de la Justice du 28 octobre 2020 et transmises au Ministre de la Justice. Une concertation avec les Collèges doit toutefois encore avoir lieu.

La loi du 23 mars 2019 a ancré dans le Code judiciaire l'existence de principes généraux de déontologie auxquels doivent se soumettre toutes les catégories de magistrats. Il est précisé que ces principes sont établis par le Conseil supérieur de la Justice après avis du Conseil consultatif de la magistrature (art. 305 du Code judiciaire).

Le Code judiciaire prévoit aussi désormais que la formation obligatoire des magistrats nommés sur la base de l'examen d'aptitude professionnelle et de l'examen oral d'évaluation ainsi que celle des juges suppléants et des conseillers suppléants comprend une formation en matière de déontologie (art. 259bis-9, §4).

De même, les juges sociaux (juges non-professionnels siégeant au sein des tribunaux du travail), les conseillers sociaux (conseillers non-professionnels siégeant au sein des cours du travail) et les assesseurs au tribunal de l'application des peines effectifs et suppléants reçoivent au cours des deux années qui suivent leur nomination une formation théorique et pratique dont le contenu et la durée sont fixés par l'Institut de formation judiciaire. Cette formation obligatoire comprend une formation en matière de déontologie (art. 196ter et 202bis).

Quant aux juges consulaires (juges non-professionnels siégeant au sein des tribunaux de l'entreprise), ils ne peuvent siéger que s'ils ont préalablement suivi la formation initiale à l'Institut de formation judiciaire. Cette formation comprend une formation relative à la déontologie et une formation concernant la procédure (art. 204 du Code judiciaire).

Peut également être mentionnée la modification apportée par la 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 : le président du tribunal de première instance est autorisé, en cas de risque pour la sécurité, sur réquisition écrite ou orale du procureur du Roi, d'ordonner que le tribunal correctionnel tienne une ou plusieurs audiences dans une affaire déterminée au sein d'un bâtiment judiciaire à sécurité renforcée et, s'il échet, que cette affaire y soit jugée.

De plus, la loi du 31 juillet 2020 portant dispositions urgentes diverses en matière de justice a modifié l'article 115 du Code judiciaire afin de prévoir que si des circonstances exceptionnelles le justifient, la session d'une ou plusieurs cours d'assises peut se tenir dans un autre lieu d'audience que le siège fixé par le Code judiciaire ou que le siège d'un autre tribunal de première instance du ressort de la cour d'appel et ce même en dehors du ressort de la cour d'appel.

La loi du 6 juillet 2017 précitée a également réformé l'après mandat des chefs de corps. Auparavant, ces derniers réintégraient en général leurs fonctions ou le mandat adjoint qu'ils exerçaient avant le mandat de chef de corps. Dorénavant, la désignation en qualité de chef de corps fera l'objet d'une nomination ou désignation simultanée dans une fonction ou un mandat que l'intéressé n'exercera en principe qu'à l'expiration de son deuxième mandat et pour autant que la mention "bon" lui soit attribuée lors de son évaluation finale.

Cette nomination ou désignation simultanée a lieu dans une fonction au moins équivalente ou plus élevée que celle occupée par le chef de corps au moment de sa désignation comme tel. Ce système d'après mandat ne s'applique qu'aux chefs de corps du ministère public, ceux du siège ne faisant pas l'objet d'une évaluation. Par exemple, le procureur général près la cour d'appel pourra, à la fin de son mandat, exercer les fonctions de premier avocat général près la cour d'appel. De cette manière, la fonction de chef de corps est valorisée et on évite les effets potentiellement néfastes d'un retour à une ancienne fonction.

Cette réforme est entrée en vigueur le 1er janvier 2019.

2. Des cas spécifiques d'influence indue ou d'autres formes d'interférence ont-ils été signalés au cours de la période 2015-2020 ?

Dans l'affirmative, veuillez fournir un bref résumé des aspects signalés et des types d'influence ou d'interférence, y compris des informations sur toute action ou mesure adoptée pour remédier à ces situations, ainsi que toute information disponible sur l'impact de ces mesures et leur efficacité.
Si aucune action ou mesure n'a été prise, quels étaient les motifs de rejet ou de non-intervention dans les cas signalés d'influence ou d'ingérence injustifiées ?
Veuillez indiquer quels sont les facteurs les plus importants qui sous-tendent l'efficacité des mesures mises en place pour garantir le respect de l'indépendance et de l'impartialité du pouvoir judiciaire dans votre pays.

Au cours de la période 2015-2020, aucun cas spécifique d'influence indue ou autres formes d'interférence n'a été signalé.

En Belgique, c'est le Conseil supérieur de la Justice, organe indépendant du pouvoir exécutif et du pouvoir judiciaire, qui est chargé d'exercer un contrôle externe sur la magistrature et de tirer la sonnette d'alarme si un risque pour l'indépendance et l'impartialité de la magistrature devait exister.

Dans ce cadre, il est chargé :

- de réaliser des audits, des enquêtes particulières et de traiter des plaintes concernant le fonctionnement de l'ordre judiciaire. Au terme de ces audits, enquêtes ou plaintes, le CSJ formule le cas échéant des recommandations en vue d'améliorer le fonctionnement de la justice (art. 259bis-15 et 259bis-16 du Code judiciaire) ;

- de rendre des avis concernant des avant-projets ou des propositions de lois et sur le fonctionnement général de l'ordre judiciaire, soit d'office, soit à la demande de l'assemblée générale, du Ministre de la Justice ou de la majorité des membres de la Chambre des représentants ou du Sénat (art. 259bis-12 du Code judiciaire).

Au cours de la période concernée, peuvent être cités, à titre d'exemples, les rapports suivants du Conseil supérieur de la Justice :

en 2015 : https://csj.be/fr/publications/2015/le-privilege-de-juridiction-dans-le-cadre-du-dossier-jonathan-jacob.

Le CSJ a lancé une enquête particulière sur l'apparence de partialité, suggérée dans la presse, par l'application de la procédure actuelle de privilège de juridiction vis-à-vis du magistrat de parquet concerné. Le CSJ a conclu que si le système de privilège de juridiction n'était plus adapté à la société contemporaine, les procédures de poursuites et d'instruction à charge de magistrats devraient être raccrochées au système de droit commun actuel qui offre suffisamment de garanties d'administration de la justice impartiale et sereine.

Quant à l'application des règles en vigueur en matière de privilège de juridiction, le CSJ a conclu qu'elles avaient été respectées dans le cadre du dossier à charge du premier substitut du procureur du Roi concerné et que le choix d'une formation particulière à 3 juges avait justement eu pour but de garantir la sérénité de la procédure. La question de savoir si la procédure applicable en cas de poursuites à l'encontre des magistrats doit être adaptée est actuellement à l'étude ;

en 2018 : https://csj.be/fr/publications/2018/avis-doffice-avant-projet-de-loi-instaurant-la-brussels-international-business-court.

Le CSJ a émis de nombreuses critiques à l'égard du projet de création de la « Brussels international business court ». Le CSJ a estimé que l'avant-projet ne garantissait pas l'indépendance de la BIBC et qu'il réservait au pouvoir exécutif des compétences normalement dévolues au pouvoir législatif ou au CSJ. Les critiques portaient notamment sur le mode de désignation des membres magistrats et non-magistrats composant cette juridiction. Ce projet n'a finalement pas été adopté sous la précédente législature ;

en 2020 : https://csj.be/fr/actualites/2020/enquete-particuliere-jozef-chovanec-

Au terme de cette enquête, le CSJ a conclu que l'instruction avait été menée, à charge et à décharge, de manière transparente et avec la participation active des différentes parties. Aucune volonté de dissimulation n'a été observée. Le CSJ a néanmoins formulé des recommandations en vue de l'amélioration du traitement des dossiers d'intervention policière.

3. Veuillez décrire les défis qui restent à relever dans ce domaine et/ou les tendances observées en matière d'indépendance et d'impartialité du pouvoir judiciaire qui nécessiteraient une attention collective de la part des Etats membres et/ou du Conseil de l'Europe ?

L'autonomie de l'organisation judiciaire en terme de gestion de ses ressources reste un défi à relever. La loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire a instauré un cadre en créant les organes de gestion que sont le Collège des cours et tribunaux, le Collège du ministère public et les comités de gestion au sein de chaque entité judiciaire.

Le transfert des compétences de gestion en matière de ressources humaines, d'ICT, d'infrastructure, etc., de l'administration centrale vers l'ordre judiciaire doit toutefois encore être opéré.

Le 11 juillet 2018, une convention-cadre relative à l'introduction d'une gestion autonome pour les cours et tribunaux avait été conclue entre le ministre de la Justice et le Collège des cours et tribunaux.

Cette convention prévoyait, en premier lieu, l'adoption d'une législation ancrant entre autres les principes quant au modèle de gestion, au financement et aux compétences à transférer vers l'ordre judiciaire.

Devaient suivre plusieurs phases de transfert de compétences nécessitant, pour chacune de ces phases, la conclusion d'un contrat de transition et d'un contrat de gestion entre le ministre et le Collège.

Un projet de loi était en préparation quand le gouvernement a perdu sa majorité en décembre 2018. Ensuite, le contexte d'affaires courantes, ainsi que des raisons propres au Collège, ont empêché la poursuite de la mise en œuvre de cette convention-cadre.

Depuis lors, la composition du Collège des cours et tribunaux a été renouvelée lors d'élections et, depuis l'arrivée du nouveau ministre de la Justice, les discussions ont repris tant avec ce Collège qu'avec le Collège du ministère public.

Dans l'attente de la mise en place d'un modèle d'allocation, des pistes sont à l'examen pour introduire plus de flexibilité dans les cadres légaux.

Par ailleurs, même si nous ne disposons pas encore d'une mesure globale de la charge de travail, les Collèges sont déjà étroitement associés aux décisions relatives à la répartition des ressources entre les entités judiciaires. Plus d'autonomie sera donnée progressivement aux cours, aux tribunaux et au ministère public en leur accordant, par exemple, plus de pouvoir de décision par rapport à certains coûts d'investissement.

4. Y a-t-il des aspects spécifiques de l'enquête et du Plan d'action de Sofia qui, selon vous, manquent ou ne sont pas suffisamment détaillés dans le questionnaire et qui pourraient être utiles pour comprendre l'indépendance et l'impartialité du pouvoir judiciaire dans votre pays ? Dans l'affirmative, veuillez fournir toute information supplémentaire que vous jugez utile dans le cadre de cet exercice.

BULGARIA / *BULGARIE*
Ministry of Justice
05/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

Bulgaria has a long-term commitment to safeguarding judicial independence and accountability and protecting the Rule of Law. Irreversible reforms in the area of the judiciary to provide guarantees for judicial independency have been implemented within the context of the cooperation with the European Commission in the framework of the Cooperation and Verification Mechanism. The amendments to the Bulgaria legal framework have led to more transparency and accountability of the process related to the appointment and integrity of magistrates.

The milestones of the reforms have been the adoption of amendments to the Constitution of 16 December 2015, the National Assembly adopted amendments to the Constitution of the Republic of Bulgaria, promulgated in State Gazette No. 100 from 18 December 2015 and the subsequent amendments to the Judiciary Act of 2016.

On December 16, 2015, the National Assembly adopted constitutional changes to divide the Supreme Judicial Council (SJC) into judicial and prosecutorial colleges, which would independently decide on the issues of personnel development and disciplinary responsibility of magistrates. New powers were also provided for the Inspectorate to the SJC to conduct inspections of the integrity and conflict of interests of magistrates, their property declarations, as well as to establish actions that damage the prestige of the judiciary and the independence of magistrates.

These constitutional changes were followed by the adoption of two packages of amendments to the Judiciary Act (JA), adopted on 31 March and 27 July 2016, respectively. They also provided additional guarantees for the independence and impartiality of the judiciary, including by improving the process of attestation, career growth of magistrates and their disciplinary responsibility.

Prior to their adoption, the amendments to the Judiciary Act were discussed in the Council for Implementation of the Updated Strategy for Judicial Reform, established by the government in January 2016. The Council includes representatives of various institutions, magistrates, NGOs and academia.
The amendments and supplements to the Judiciary Act (following the constitutional changes adopted on 16 December 2015 up to nowadays) are in the following main directions:

Strengthening the independence (including composition and nomination of its members, and powers) of the body tasked with safeguarding the independence of the judiciary- Supreme Judicial Council /SJC/).

Structural reform in SJC. Division of the SJC into judicial and prosecutorial colleges/chambers, which independently decide the issues related to the personnel development and the disciplinary responsibility of the respective categories of magistrates.

The SJC is the key institution governing the Bulgarian judicial branch. As the primary authorising officer of the budget of the judiciary, the Supreme Judicial Council is responsible for the execution of financial management and control in all structures, programmes, activities and processes managed by them in compliance with the principles of legality, sound financial management and transparency. (According to Article 117 of the Constitution of the Republic of Bulgaria, the judiciary has an independent budget.

The budget of the judiciary is approved annually by the State Budget of the Republic of Bulgaria Act and is formed by its own revenues and subsidies through which it provides the expenditure part.)

Given its new structure, the Supreme Judicial Council exercises its powers through a plenum, a college/chamber of judges and prosecutors. General issues for the judiciary that are subject to resolution fall within the competence of the plenum. The power of the plenum is to determine the number, judicial districts and the seats of the regional, district, administrative and appellate courts and prosecutor's offices, to create and close courts and prosecutor's offices, to change their seat and determine the settlements in which territorial divisions of the respective district and the respective district prosecutor's office are opened and as the prosecutor's office follows the structure of the courts. The issuance of by-laws in the cases provided by law is regulated as a power of the plenum. The powers of the colleges/chambers are distributed according to the professional orientation.

The chamber of judges of the SJC, inter alia, appoints, promotes, demotes, transfers and discharges all judges from office, and respectively the chamber of prosecutors carries out similar functions in respect of prosecutors and investigating magistrates. Thus, the two chambers can take independent decisions on career development and appraisal for judges, on the one hand, and for prosecutors and investigating magistrates on the other. The two chambers also deal with other personnel related matters, as well as for other organisational aspects relevant to the respective part of the judicial system. The Judges' chamber includes 14 members (out of the 25 members of the SJC): the Chairpersons of the Supreme Cassation Court and of the Supreme Administrative Court, six members, directly elected by the judges and six members elected by the National Assembly.

The Prosecutor's chamber consists of 11 members (out of the 25 members of the SJC) and includes the Chief Prosecutor, four members elected directly by prosecutors, one member elected directly by the investigating magistrates, and five members elected by the National Assembly. In line with the recommendations of the European Commission for Democracy through Law (Venice Commission to the Council of Europe), the concept of a secret vote within the SJC has been removed and a requirement for a qualified majority of two-thirds of the Members of the Parliament to elect the Members of the SJC was introduced. The goal of these amendments is to ensure that the appointment procedures carried out by the Supreme Judicial Council are fully public and transparent and a significant track record of merit-based appointments is established.

The operation of the Judges' College and the Prosecutors' College is assisted, respectively, by a standing Commission on Professional Ethics. The Commission on Professional Ethics with each college conducts enquiries, collects the requisite information and draws up an opinion regarding the moral integrity possessed by candidates in the competitions for assuming a position in judicial authorities, as well as of candidates for administrative heads and of candidates for deputy administrative heads.

Procedure for election of members of the Supreme Judicial Council

Election of members from the quota of the National Assembly

Nominations of members of the Supreme Judicial Council are made by the National Representatives for each college. Nominations of candidates are examined by the specialised standing committee of the National Assembly. Each candidate submits to the committee preparing the election a written concept on his or her work as member of the Supreme Judicial Council. The candidates also submit a statement of property and the sources of the funds used to acquire the property, as well as a statement of private interests. The nominations together with detailed *curriculum vitae* of the candidates and their documents, the name and reasons of the member of Parliament who has nominated the respective candidate, all concepts and statements are published on the website of the National Assembly.

Non-profit legal entities registered for the pursuit of public benefit activities, higher educational establishments and scientific organisations may submit opinions about a candidate to the commission, including questions to be put to the candidate. Anonymous opinions and alerts are ignored. The opinions and questions as submitted are published on the website of the National Assembly.

The committee hears each candidate who presents their concept. The hearing is conducted at a public meeting of the committee. A full verbatim record of proceedings is drawn up for the hearing and is published on the website of the National Assembly. Considering the opinions received, the members of the committee may also require additional documents, which the candidates must submit.

The committee prepares a detailed and reasoned report on the professional standing and moral integrity of the candidates, thereby moving the nominations for a debate and taking a vote at the National Assembly. Said report includes an opinion on the performance of the candidate, prepared after his or her hearing by the committee, and a conclusion on:

1. the minimum legal requirements to occupy the position;

2. the existence of data that call into question the candidate's moral integrity, qualification, experience and professional standing; 3. the specific background, qualities and motivation for the position concerned; 4. the public reputation of the candidate and the public support for him or her. The report is published on the website of the National Assembly.

The National Assembly elects each member of the Supreme Judicial Council individually, by a majority of two-thirds of members of Parliament.

The members of Supreme Judicial Council of the 2016 Judiciary quota are elected directly by secret ballot by the judges, by the prosecutors and by the investigators, respectively.

The General Assembly of Judges for the election of members of the Supreme Judicial Council is convened jointly by the Chairperson of the Supreme Court of Cassation and by the Chairperson of the Supreme Administrative Court. The General Assembly of Prosecutors and the General Assembly of Investigators for the election of members of the Supreme Judicial Council are convened by the Prosecutor General. Candidates for elected members of the Supreme Judicial Council representing the judges, prosecutors and investigators may be nominated, respectively, by each judge, prosecutor or investigator. The nominations are put forward in writing and must be reasoned considering the personal accomplishments, professional standing and moral integrity of the candidate. The nominations with the reasons attached and the names of the nominators are made public on the website of the Supreme Judicial Council. Candidates submit in writing detailed *curriculum vitae*, their reasons and a concept on the activity of the Supreme Judicial Council, as well as documentary proof of conformity to the requirements of the law, a declaration related to incompatibility or on any circumstances that may lead to private interests, as well as on their property status. Documents are then published on the website of the Supreme Judicial Council. For each nomination received, the respective college of the Supreme Judicial Council requires detailed information on all inspections from the Inspectorate with the Supreme Judicial Council. The Judges' College of the Supreme Judicial Council pronounces on the admissibility of each nomination with regard to the required educational attainment, length of practising law and submission of the envisaged documents regarding the judges candidates for members of the Supreme Judicial Council, and the Prosecutors Chamber pronounces so regarding the prosecutors and investigators candidates. The decisions are made public immediately on the website of the Supreme Judicial Council. The decisions on the admissibility of nominations are subject to appeal through the respective chamber of the Supreme Judicial Council before a panel consisting of three judges of the Supreme Court of Cassation and two judges of the Supreme Administrative Court, designated on the basis of the random selection principle through electronic assignment.

The Supreme Judicial Council compiles lists of the sitting judges, prosecutors and investigators, which serve as rolls for voting.

The General Assembly meets on two consecutive Saturdays. On the first Saturday, the General Assembly elects an election committee and voting sections and hears candidates. Judges, prosecutors, investigators, non-profit legal entities designated for the pursuit of public benefit activities may address opinions on the candidates and questions to them to the respective college of the Supreme Judicial Council.

The opinions and questions are published on the website of the Supreme Judicial Council. The members of the General Assembly and of the committee may address questions to the candidates, including on the basis of the opinions received. The committee are obliged to ask all questions received.

After candidates are heard, the vote is held on the following Saturday. The vote is direct – one magistrate, one vote and by secret ballot. The election is considered valid if more than one-half of the judges or, respectively, prosecutors or investigators included in rolls have voted.

In case these prerequisites do not apply, a new election is conducted on the following day. The rules of conduct for the election and the vote are covered in detail by the Judicial System Act.

A tally sheet is drawn up on the results of the election in each of the sections. On the basis of the tally sheets, the election committee pronounces by a decision on the results of the election, and said decision includes the names of the members elected to the respective chamber and the number of votes by which they have been elected. The decision of the election commission by which the result of the election is declared is subject to appeal before a panel consisting of three judges of the Supreme Court of Cassation and two judges of the Supreme Administrative Court, designated on the basis of the random selection principle through electronic assignment.

New powers for the Inspectorate to the SJC

New powers were also provided for the Inspectorate to the SJC. The Judicial Inspectorate (the "Inspectorate") was established in 2007 and is administratively attached to the SJC. It consists of 11 members elected by the National Assembly. Its task is to supervise the activity of the judicial system bodies without interfering with the independence of judges. The Inspectorate's members carry out their functions independently.

In order to enhance the institutional capacity of the Inspectorate, and to ensure the accountability and integrity of the judiciary and the effective prevention of conflict of interest and undue influence, following the adoption of the constitutional amendments above, the Inspectorate is now tasked with carrying out inspections on the integrity and conflict of interests of judges, prosecutors and investigating magistrates, on their property declarations, as well as determining actions which undermine the integrity of the judiciary and actions related to violations of the independence of judges, prosecutors and investigating magistrates.

Standards of Judicial Independence. Mechanisms for action/reaction in case of undermined independence. Mechanisms for public reporting of the activities in the reform of the judiciary to ensure the rule of law

In accordance with the JSA a 2018 decision of the Judges' College of the Supreme Judicial Council adopted Standards of Judicial Independence.[1] A Mechanism for action of the Judges' College of the Supreme Judicial Council in cases of undermined independence and/or attempts to pressure judges and the Court was adopted by a 2020 decision.[2]

A Mechanism for public reaction to the Prosecutors' College in case of undermined independence and integrity of prosecutors and investigators was adopted by a 2019 decision of the Prosecutors' College.[3]

Pursuant to the JSA, the meetings of the Plenum and the Colleges of the SJC are public and are broadcasted live on the Internet, except in cases when proposals for imposing a disciplinary sanction or documents containing information classified under the Classified Information Protection Act are discussed. The sessions of the plenum and the colleges for hearing the candidates and for electing respectively the administrative heads and the chairmen of the two Supreme Courts and the Prosecutor General are also broadcasted online in real time via the SJC website and during the election of the Prosecutor General live on national television.

In the context of independence and transparency it's important to mention that The Supreme Judicial Council exercises its powers with the assistance of **Civic Council (CC)** and the Partnership Council. In 2012, a Civil Council (CC) was established at the SJC, whose main goal is the participation of civil and professional organizations to improve the work of the justice system in the Republic of Bulgaria, ensuring objective civic monitoring of its work and enforcement. The establishment and functioning of the CC of the SJC was positively assessed in several EC reports on Bulgaria's progress under the Cooperation and Verification Mechanism (Report of the European Commission dated 22.01.2014 and Technical Report of the European Commission dated 28.01.2015).

[1] http://www.vss.justice.bg/root/f/upload/20/Standarts-2018.pdf
[2] http://www.vss.justice.bg/root/f/upload/26/%20%D0%A1%D0%9A-0.pdf
[3] http://www.vss.justice.bg/root/f/upload/22/Mehanizam_publichna_reakcia_PK.pdf

Since its establishment in 2012 until 31.12.2019, the CC has adopted a total of 123 acts, and for the specified period 63 meetings were held.

In 2020, the activity of the Partnership Council of the SJC started. The Council holds regular meetings, and its decisions are public and are announced on the SJC's website. The Council is regulated in the JSA and is intended to conduct a dialogue on all issues related to the professional interests of judges, prosecutors and investigators. It consists of three elected members of the SJC, appointed by the Plenum, from representatives of each of the professional organizations, whose membership is not less than 5 percent of the respective number of judges, prosecutors and investigators, as well as from representatives of judges, prosecutors and investigators who are not members of such organizations. The organization and activity of the Partnership Council are determined by an Ordinance of the Plenum of the SJC (ORDINANCE № 8 of 8 November 2018 on the organization and activity of the Partnership Council at the Supreme Judicial Council).

More transparency and accountability of the process related to the appointment and selection of judges and prosecutors

Judges, prosecutors and investigators are appointed, promoted, transferred and dismissed by the Judges' College of the Supreme Judicial Council, respectively the Prosecutors' College, in accordance with the Constitution of the Republic of Bulgaria (CRB) and the Judicial System Act (JSA).

The post of junior judges, junior prosecutors and junior investigators and the initial appointment in a district, regional and administrative court and the respective prosecutor's offices takes place after a centralized competition.

The Commission on Appraisal and Competitions with the respective college of the Supreme Judicial Council conducts an eligibility check on the documents of the candidates. Candidates found ineligible may challenge the decision. The respective College of the Supreme Judicial Council appoints five-member competition committees to conduct the competitions - one habilitated legal scholar, as well as four members with the status of sitting judge, prosecutor or investigator, respectively. The competition includes an anonymous written examination – a case study and a test, followed by an oral examination. Grading is based on the six-point system, with an oral examination being allowed for candidates who have received a minimum score of 4.50 in both the case study and the test. Only candidates who have received a grade "Good 4.00" or higher in the oral examination take part in the final ranking.

The decision of the respective College of the Supreme Judicial Council adopting the final list of approved candidates for junior judges, junior prosecutors and junior investigators is forwarded to the National Institute of Justice for inclusion mandatory initial training. A person may be appointed if he or she has passed the relevant examinations after completing the course of mandatory initial training. After the expiry of a period of two years, the junior judge, junior prosecutor or junior investigator is appointed to the position of a regional court judge, a regional prosecution office prosecutor or, respectively, a district investigation department investigator, without another competition being held.

The respective College of the Supreme Judicial Council adopts a decision on the initial appointment of the candidates at a regional, district and administrative court and the respective prosecutor's offices in the order of the ranking until the vacancies for which the competition was announced are filled.

The decisions of the respective College of the Supreme Judicial Council adopting the final list of approved candidates for junior judges, junior prosecutors and junior investigators, and on the initial appointment of the candidates at a regional, district and administrative court and the respective prosecutor's offices, are subject to appeal within 7 days of their announcement. An appeal stays the enforcement of the decision, unless the court decrees otherwise. The Supreme Administrative Court, sitting in a public session, examines the appeal and pronounces by a judgment within one month from the receipt of the appeal at the Court together with the administrative case file, summoning the appellant, the administrative authority and the interested parties. The judgment is final.

The administrative heads in the bodies of the judiciary are appointed to a management position for a term of five years with the right of reappointment (art. 129, para. 6 of the CRB). The vacant positions for heads of the judicial bodies are occupied following an election.

In order to enter the election, candidates submit detailed curriculum vitae, their concept of work and other documents which, in the judgment of the candidates, are relevant to their professional standing or moral integrity.

The Commission on Appraisal and Competitions with the respective college of the Supreme Judicial Council checks the documents and admits the candidates who meet the legal requirements.

The names of candidates are announced on the website of the Supreme Judicial Council together with brief curriculum vitae and their concepts of work. The lists of candidates admitted to and denied entry into the election are announced on the website of the Supreme Judicial Council at least 14 days prior to the date of conduct of the election. The list of persons denied entry into the election also specifies the grounds for the denial of entry. Within three days after the announcement of the lists, the candidates who have been denied entry may lodge a written objection with the respective College of the Supreme Judicial Council. The decision denying a candidate entry into the election is subject to appeal before the Supreme Administrative Court.

Non-profit legal entities registered for the pursuit of public benefit activities, higher educational establishments and scientific organisations, as well as the professional organisations of judges, prosecutors and investigators, may submit opinions about a candidate to the respective College of the Supreme Judicial Council, including questions to be put to said candidate. Anonymous opinions and alerts are ignored. The opinions and questions as submitted are published on the website of the Supreme Judicial Council and no specific data constituting classified information, including facts related to candidates' private life, are published.

Candidates for administrative heads of a court are heard by the general assembly of the court concerned. The prosecutors and the investigators at the prosecution office concerned may express an opinion about the candidate for administrative head.

The procedure for the election of administrative heads is conducted by the respective college of the Supreme Judicial Council through an interview. The decisions of the respective college of the Supreme Judicial Council is subject to appeal before the Supreme Administrative Court.

The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General are appointed and dismissed by the President of the Republic, at the proposal of the Supreme Judicial Council Plenum for a period of seven years without the right to re-election. The President may not deny an appointment or release upon a repeated proposal (art. 129, para. 2 of the CRB).

Nominations for a chair of the respective court may be made by not fewer than three of the members of the respective college of the Supreme Judicial Council, the Minister of Justice, as well as the plenary of the Supreme Court of Cassation and the plenary of the Supreme Administrative Court. Nominations for a Prosecutor General may be made by not fewer than three of the members of the respective college of the Supreme Judicial Council, as well as by the Minister of Justice. Any such nominations are accompanied by detailed reasons in writing and a personnel record for the candidate in a standard form endorsed by the respective college of the Supreme Judicial Council. The candidates submit a written concept of work to the respective college. All documents submitted are published on the website of the Supreme Judicial Council not later than two months before the public hearing.

Candidates for chair of the Supreme Court of Cassation and for chair of the Supreme Administrative Court are heard, respectively, by the plenary of the judges of the Supreme Court of Cassation and of the Supreme Administrative Court. Hearings are public and are streamed live on the website of the Supreme Judicial Council.

Non-profit legal entities designated for the pursuit of public benefit activities, professional organisations of judges, prosecutors and investigators, higher educational establishments and scientific organisations may submit opinions about a candidate to the Supreme Judicial Council, including questions to be put to said candidate. Anonymous opinions and alerts are ignored. The opinions and questions as submitted are published on the website of the Supreme Judicial Council.

The Commission on Appraisal and Competitions and the Commission on Professional Ethics with the respective College draw up reports on the professional standing and moral integrity of the candidates, submitting with these the nominations to a discussion and vote by the respective college of the Supreme Judicial Council.

The reports contain a conclusion regarding of the commission regarding the legal requirements to occupy the position; the existence of data that call into question the moral integrity, qualification, experience and professional standing of the candidate; the specific background, qualities and motivation for the position concerned.

The report of each commission is published on the website of the Supreme Judicial Council at least 14days before the application of the relevant candidate is put to the vote.

The Plenary of the Supreme Judicial Council adopts a decision on the election of a candidate by a majority of not less than seventeen votes of the its members in a secret ballot and immediately sends said decision to the President of the Republic. Where none of the candidates has gained seventeen or more of the votes of the members of the Plenary of the Supreme Judicial Council in the first round of voting, the election proceeds in respect of the two candidates who have gained the most votes.

Strengthening the self-government of the courts through new functions of the general assemblies of judges: expanding the powers of the general assemblies of judges, providing opportunities to make proposals for the appointment of the chairman of the court, to hear all candidates and express an opinion on the candidacies, determine the number and composition of the divisions and their specialization in matters, to discuss and adopt the report of the Chairman on the activities of the court, to give opinions on requests for interpretative decisions and interpretative decrees concerning the activities of the respective courts, to give opinions to the Council of Ministers and of the National Assembly on bills related to the activity of the courts, to be able to express opinions on issues related to the organization of the activity of the court, which are within the competence of the chairman of the respective court.

Creating additional guarantees for the individual independence of prosecutors and investigators in the exercise of their powers. With regard to the prosecutor's office, compliance with its constitutionally defined structure and organization is achieved - the prosecutor's office is unified, but not centralized. Prosecutors and investigators are no longer subordinate to the Prosecutor General. Subordination remains only for the administrative heads, and only in their managerial activity. A distinction has been made between prosecutorial functions and managerial activity. The accountability of the Prosecutor General, as well as that of the administrative heads in the prosecution system is being strengthened.

Alongside the annual reports on the application of the law and on the activities of the Prosecutor's Office and investigative bodies, under the Judiciary Act, the Prosecutor General submits reports to the Supreme Judicial Council and the National Assembly, on a three-month basis. At the invitation of the Committee on Legal Affairs, the Prosecutor General is heard in connection with the exercise of the functions of the judiciary and the results of combating crime. Information on the operation of the Prosecutor's Office and investigative bodies is also provided under the Access to Public Information Act.

Improving the procedures for holding office in the judiciary, transfer and promotion, which ensures objective and predictable career growth and emphasizes the legal experience gained in the judiciary as a key criterion for administration of justice in the supreme courts and prosecutors' offices.

Changes in the disciplinary proceedings in order to meet international standards and ensure its real competitive nature - disciplinary proceedings against magistrates and their administrative heads are divided between the respective colleges of the SJC.

The right to an impartial and fair procedure is guaranteed by the random selection for distribution of cases among the members of the respective college upon formation of the disciplinary panel. The decisions of the disciplinary body are motivated and adopted by a qualified majority, which guarantees the objectivity and impartiality of the decisions. A restriction has been introduced in the possibility of initiating disciplinary proceedings, providing that not every superior administrative head may propose the imposition of a penalty, but only the relevant or immediately superior one. One of the main amendments is related to the clear distinction between disciplinary responsibility and the procedure for

its implementation of judges, prosecutors, investigators, their administrative heads and members of the SJC on the one hand and registry judges and state bailiffs on the other hand.

The possibility for referral to the President of the Republic with a proposal for disciplinary dismissal of a member of the SJC by right as a consequence of the disciplinary violation committed by him/her in his/her capacity as a member of the SJC, has been explicitly introduced at the legal level. In this way, a gap in the law was filled, which made it possible to underestimate the role of the SJC in the procedure for early release of these members of the body and created preconditions for the proceedings to have only a "desirable" formal character.

Clear and predictable rules for secondment of magistrates: the institute of secondment of magistrates aims to ensure balancing the workload between different courts or prosecutors' offices by temporarily transferring a judge or prosecutor from one judicial institution or prosecutor's office to another.

A judge, prosecutor or investigator may be seconded, if necessary, for a period not exceeding 12 months with his/her prior written consent. In exceptional cases, he/she may be seconded without his/her consent for up to three months. He/she may not be re-seconded to the same judicial authority.

In this way, the aim is to ensure that the posting institute is not used to circumvent the established career growth regime.

Removal from office of judges, prosecutors and investigators.

The aim was to bring the arrangements for the removal of judges, prosecutors and investigators in line with Decision No 2 of the Constitutional Court of 2019, as well as with the recommendations of the Venice Commission in this respect, set out in Opinion No. 855/2016 of 9 October 2017

According to the said decision of the Constitutional Court, “depriving the respective colleges of the SJC of the opportunity to assess whether the magistrate should be temporarily removed from office or not, by obliging them to fulfil the prescription of the legislator set out in Art. 230, para. 1 of Judiciary Act, is incompatible with the principle of independence of the judiciary, due to which this text, as well as part of the provision of para. 2 have been declared unconstitutional. According to the Constitutional Court, it is appropriate and constitutional to provide the SJC with the opportunity to assess whether or not the specific protection of the prestige of the judiciary should be put into effect in each specific case.

In its Opinion No. 855/2016, the Venice Commission recommended that when removing a judge of the SJC, it should assess whether the evidence presented was sufficiently convincing (without necessarily being "beyond reasonable doubt") and whether it required removal… (§46). With regard to the time limit for removal, it is recommended that the SJC be able to set a relatively short time limit for the investigation.

In view of the above, the new wording of Art. 230 provides in all cases for an assessment to be made by the relevant college to allow the removal from office and for it to be obligatory to provide an opportunity to hear or file a written opinion from the respective magistrate, thus introducing an element of adversarial proceedings. It is envisaged that the term for removal in the pre-trial phase of the criminal proceedings shall not be longer than that under Art. 234, para. 8 of the Code of Criminal Procedure, and in case of change of the circumstances both during the pre-trial and in the court proceedings the removed magistrate may request restoration of the occupied position. A special rule for automatic removal is provided only when measures for remand in custody or house arrest have been imposed on the magistrate, and in case of change of these measures the continuation of the removal shall again be subject to assessment by the respective college. Removal from office is subject to judicial review in all cases, and both the removed magistrate and the prosecutor's office have the right to appeal.

Elimination of the obligation of magistrates to declare membership in professional organizations.

Establishment of auxiliary attestation commissions at the courts, which will render valuable and significant assistance to the SJC in the attestation process with guaranteed speed in the implementation of the attestation procedures in the country.

The proposed change in the regulation for reducing the powers of the active magistrates in the composition of the commissions for attestation and competitions at the judicial and prosecutorial colleges of the SJC only until the attestation, assisted by auxiliary attestation commissions at the courts elected ad hoc, is in line with the international standard with regard to the current principle - magistrates to be attested by acting magistrates, and attestations to be adopted by a body, which includes acting magistrates (Opinion No. 751/2013 of the Venice Commission).

It is planned to reduce the types of attestations.

The meaning, reason and purpose of the attestation is to establish the actual qualifications, abilities and achievements of the judge, and not to be a constant load of inspections outside the instance control. The aim is not to put pressure on the magistrates through the system and frequency of the attestation. This is in line with Opinion No. 855/2016 of the Venice Commission on amendments to the Judiciary Act on attestation, which states that it is important with the frequency and number of attestations “not to jeopardize the independence of the individual magistrate and the judiciary as a whole.“

Improvements in the area of random allocation of cases in the courts.

The legal requirement that cases be randomly assigned was enshrined in the Judicial System Act before 2007, namely before Bulgaria's accession to the EU. With the subsequent amendment of the law of 07.02.2020, the scope of the distribution of cases and files was broadened, and besides the need to allocate them on the principle of random selection, the obligation of uniformity of this distribution was introduced. The principles of objectivity, impartiality and fairness to which the functioning of the judicial system is subject are reflected in the existing version of the Judicial System Act, namely:

"Art. 9. (1) The distribution of cases and files in the bodies of the judiciary shall be carried out on the principle of random selection through uniform electronic distribution in accordance with the order of their receipt in compliance with the requirements of Art. 360b.
(2) The principle of random selection in the allocation of cases in the courts apply within the colleges or departments, and within the prosecutor's office and the National Investigation Service within the departments. "

The principle of random selection is realized through electronic distribution of the files and cases submitted to the court and the prosecutor's office.

Over the past years, significant improvements have been made also in other areas such as e-justice, human resource management, establishing objective standards for workload and the analysis of the workload of the judiciary and magistrates, training of magistrates, new Concept of penal policy and more.

Human resource management is a key point in building an effective and judicial system. This is an ongoing process that combines issues relating to competitions and elections, appraisal, promotion of magistrates, disciplinary liability, and regulation of the unequal workload of magistrates.

The efforts of the Supreme Judicial Council over the years have been consistently focused on establishing objective standards for workload, as well as introducing organisational measures to address workload imbalances between judicial authorities and individual magistrates. The specific measures related to overcoming uneven workloads have different expressions, but the established approach is to use all possible legal means to overcome this major issue in the operation of the judicial system. Such measures taken in 2019 and 2020 are increasing and optimising the staffing of judges; monitoring continuously the workload measurement system; carrying out procedures for the re-appointment of judges; the process of optimising less loaded military courts, optimising the judicial administration through the even and justified distribution and redistribution of staff; proposals for legislative changes.

With a view of optimising the judicial map of the regional prosecutor’s offices, in 2017 the Prosecutors’ College deliberated and approved the optimisation of the regional prosecutor's offices, to be carried out based on a single model, and the creation of territorial divisions.

Following a detailed analysis of the workload of the respective regional prosecutor's offices proposed for merger, as the first stage of structural optimisation of the Prosecutor's Office of the Republic of Bulgaria, by a 2018 decision of the Plenary of the Supreme Judicial Council, it was decided to close 11 regional prosecutor's offices outside the district centres and to re-open them as territorial divisions of the regional prosecutor's offices in the respective regional centres as of 1 January 2019.

By decision of the Plenum of the Supreme Judicial Council, dated 29.07.2019 under Protocol No. 20, following a work meeting with the participation of the administrative heads of the appellate, district and regional Prosecutor's Offices and the members of the Prosecutors' College, as of 01.01.2020 another 29 regional Prosecutor's Offices were closed and there were territorial divisions of the regional Prosecutor's Offices in the regional cities opened.

This process will continue until the number of regional Prosecutor's Offices is optimized, in accordance with the changed demographic, economic and social conditions, so as to ensure effective distribution of human resources in places with a balanced workload and equal access of citizens to law enforcement agencies.

According to the Judicial System Act, every six months the Judges' College and the Prosecutors' College require and summarise information from the courts, the prosecuting magistracy and the National Investigation Service on their operation.

In 2015, the Supreme Judicial Council adopted Rules for Judicial Workload Assessment. Since the beginning of April 2016, the Rules for Judicial Workload Assessment have been in use in conjunction with the specially designed Judicial Workload Calculation System. This system offers a means of measuring the workload of judges in a way regulated by the Rules for Judicial Workload Assessment. The determination of the judicial workload is taken as an estimate of the time it takes to hear and decide a particular case, taking into account the factual and legal complexity, as well as the additional activities of the judge that he or she performs in connection with the administration of justice.

After the accession of Bulgaria to the European Union and the gradual integration of the country into the European political structures, the issues on improving the legislation on the European model, deepening the reform process and adopting higher standards for protection of human rights and principles of the rule of law, were put on the agenda.

By Decision No. 736 of 7 December 2019, the Council of Ministers approved a draft Law on Amendments to the Code of Criminal Procedure (LA to the CCP), providing for amendments to the Judiciary Act, which was submitted to the National Assembly with signature 902-0-66 / 09.12.2019.

The bill was drafted after receiving a preliminary opinion from the Venice Committee on a previous bill aimed at implementing the recommendations of the European Union Cooperation and Verification Mechanism through the introduction of an effective and compliant constitutional model guaranteeing investigations against the Prosecutor General.

The legal changes related to investigations against the Prosecutor General and his/her deputies are in line with the recommendation of the European Commission's Structural Reform Support Office regarding the reform of the prosecution and its interaction with other institutions, including a mechanism for reporting on progress to the general public.

The Report of the European Commission on the Rule of Law for 2020 in the chapter dedicated to the Republic of Bulgaria takes into account the elaboration of the above-mentioned bill, noting that it takes into account some of the recommendations of the Venice Commission. At the same time, it is noted that some concerns remain about the bill, noting that: "Further consultation with the Venice Commission on the bill would provide assurance on the effectiveness of the new reporting mechanism."

Also, in connection with various interpretations and hesitations, both in the legal and in the political circles in view of the draft of the Law on Amendments to the Code of Criminal Procedure submitted to the National Assembly, the Council of Ministers on 18 December 2019 adopted a decision to submit a request to the Constitutional Court for giving a mandatory interpretation of the provisions of Art. 126, para. 2 of the Constitution of the Republic of Bulgaria.

On 20 December 2019, a constitutional case No. 15/2019 was initiated in the Constitutional Court. The Constitutional Court ruled on the initiated constitutional case by Decision No. 11 of July 23, 2020, according to which the supervision of legality and methodological guidance on the activities of all prosecutors, carried out by the Prosecutor General within the meaning of Art. 126, para. 2 of the Constitution, do not include the cases when a prosecutor carries out inspections, investigations and other procedural actions on signals against the Prosecutor General. The bill is in line with the decision of the Constitutional Court.

In view of the decision of the Constitutional Court, on 3 December 2020, a bill was submitted to the National Assembly to amend the Code of Criminal Procedure, providing for the creation of the figure of a prosecutor in the investigation against the Prosecutor General or his/her deputy, engaged only in inspections and investigations against the Prosecutor General or his/her deputies.

It is proposed that the prosecutor in the investigation against the Prosecutor General or his/her deputy be elected by the plenum of the Supreme Judicial Council, thus the members of the SJC's panel of judges will also be involved in his/her election. The mandate of the prosecutor in the investigation against the Prosecutor General is envisaged to be 5 years, without the right to re-election. Upon expiration of the mandate or its early termination on the grounds of Art. 129, para. 3, item 2 of the Constitution of the Republic of Bulgaria, the prosecutor in the investigation against the Prosecutor General or his/her deputy shall be appointed to the position held before the election, to an equal position or to a position one degree higher than the one held in the judiciary before the election, which is a guarantee of his/her independence. The proposed amendments to the bill explicitly stipulate that the rules on official control by superior prosecutors and the Prosecutor General do not apply to the acts of the prosecutor in the investigation against the Prosecutor General or his/her deputy. In this way, the decision of the Constitutional Court considered above and the nemo judex in causa sua principle are taken into account.

The draft Law on Amendments to the Code of Criminal Procedure was considered in plenary session and adopted on 29 January 2021. The President of the Republic of Bulgaria has vetoed and returned for a new discussion in the National Assembly the Law on Amendments to the Code of Criminal Procedure, adopted by the 44th National Assembly on 29 January 2021. On 17 February 2021. The Parliament re-adopted the amendments to the Code of Criminal Procedure and they were promulgated in State Gazette No. 16 from 23 February 2021. At present, the Constitutional Court has instituted a constitutional case at the request of the President of the Republic of Bulgaria to establish the unconstitutionality of certain provisions of the adopted amendments to the Code.

All these reforms have been part of the implementation of the Updated Judicial Reform Strategy adopted by the Council of Ministers on 18 December 2014 and also in accordance with the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality/ Sofia Action Plan (2016-2021).

The overall objective of the strategy is to continue the modernisation of the judiciary and to complete its reform within seven years. The more detailed objectives are:
• to achieve effective guarantees of independence of the court and the judiciary;
• to ensure good governance of the judicial authorities and their highly effective functioning;
• to unlock the potential of human resources in the judiciary and guarantee the high motivation, competence and social responsibility of judges, prosecutors and investigating magistrates;
• to implement a modern and effective criminal policy through the necessary institutional and regulatory reforms; and
• to ensure a full-fledged right to a fair trial to each citizen and effective protection of human rights.

The objectives of the Updated Strategy to continue the reform in the judicial system, as approved by the National Assembly in January 2015, are pursued apace. Its strategic and specific objectives are met thanks to cooperation between a number of institutions of the executive and the judiciary, using the European Social Fund for this purpose.

The strategy provides for the creation of a council to monitor its implementation. On 13 January 2016, the Council of Ministers adopted a decree for the creation of such a council whose members are representatives of the judiciary and the executive authorities, representatives of professional organisations of judges, prosecutors, investigating magistrates court officials, representatives of non-governmental organisations and the academia. When discussing issues that would require amendments to the legislation or the adoption of a decision of the National Assembly, the Chairman of the Committee on Legal Affairs in the National Assembly and chairperson of the parliamentary groups or their representatives are invited to participate.

Since 2017, the government established a regular cycle of monitoring and reporting on progress in implementing the judicial reform strategy. Important part in this process plays the Council for Continuation of Judicial Reform, established in 2016 chaired by the Minister of Justice.

The sustainable and irreversible efforts of the government have been recognized both the European Commission and by the Group of States against Corruption (GRECO) of the Council of Europe. GRECO monitors the compliance with the organisation's anti-corruption standards. In December 2019 on the grounds of the progress achieved by Bulgaria it terminated the Fourth Round compliance procedure in respect to the country (prevention of corruption in respect of members of parliament, judges and prosecutors).

As a result, the CVM Progress Report for Bulgaria by the European Commission published on 19 October 2019 concluded as follows: "the progress made by Bulgaria under the CVM is sufficient to meet Bulgaria's commitments made at the time of its accession to the EU". In addition, the Bulgaria has undertaken steps to set up a national monitoring mechanism in the area of Rule of Law, judicial reform and counteracting organized crime and corruption that shall start functioning upon the repeal of the Decision for setting up the Cooperation and Verification Mechanism of 2006.

The Bulgarian institutions have actively contributed to the process of drafting the first horizontal rule of law report for all the Member States launched by the European Commission on 30 September 2020.

The government of Bulgaria continues its cooperation with the European Commission and other respected organizations in the area of the Rule of Law and in particular with the Council of Europe, including the Venice Commission and GRECO to guarantee that the focus of the future reform shall irreversibly aim towards the internationally approved standards.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.
If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?
Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

According to Art. 117, para. 2 of the Constitution of the Republic of Bulgaria, the judiciary is independent. According to Art. 16 of the JSA, the SJC represents the judiciary, ensures and upholds its independence. The Council responds to encroachments on the independence of the judiciary through its colleges, and in cases of systemicity and escalation of tensions through the Plenum of the SJC (SJC). According to the JSA, decisions are taken after a vote, by a majority of more than half of the members present. The legally defined structure and functions of the SJC, as a collective body, are the reason why in specific cases, after discussions and voting, no decisions have been adopted.

The possibility for institutional response of the SJC in response to attacks against the judiciary is not regulated by law and is implemented by a decision of the colleges or the Plenum to express an opinion, declaration or position, which are made public but have no legal consequences for the addressees. The Judges" College of the SJC (SC) reacts to any signal or refers itself in the presence of evidence of pressure on the independence of judges, damage to their honor and dignity, insulting qualifications and threats.

In an attempt to overcome this deficit in the period 2013-2020, a number of documents were prepared with decisions of the SJC and the colleges, prepared with the participation of Council members, magistrates and court officials, regulating standards, rules and procedures for responding to independence, in the prevention and occurrence of communication crises. Since 2016, the representative of the Supreme Judicial Council and the spokespersons of the colleges as a Crisis Response Team (Team) have been engaged in planning and taking action in case of encroachment on the independence of the judiciary and magistrates. The team monitors the media flow on a daily basis, assesses the necessity and the possible form of reaction, and if necessary refers to the respective board or the Plenum of the SJC.

In response to the expectations of the magistrates for an adequate response in cases of escalating public tension, the SC adopted Standards for the Independence of the Judiciary (2018) and a Mechanism for Action of the Judicial Board of the SJC in cases of independence and / or attempts to of pressure on judges and the court (2020)[4]. The Prosecutors' College (PC) has adopted a Public Response Mechanism (2019)[5].

The standards and mechanisms reflect the relevant case law of the European Court of Human Rights, the experience of the European Network of Judicial Councils, decisions of the Council of Europe, the Consultative Councils of European Judges and Prosecutors, the Venice Commission, the International Association of Judges and the UN.

The "Standards" outline the objective and subjective independence of the judiciary and the judge, the criteria by which the authority and independence of magistrates are considered to have been violated, as well as the specific forms of its impact by the legislature and the executive, by the media and the participants in the court proceedings, as well as by representatives of civil society. They contain specific recommendations, with special attention paid to freedom of speech and expression. The leading role in defending the independence of the magistrates is assigned to the administrative heads, and the Judges' College and the Plenary of the SJC should react in exceptional crisis situations - consistency; stress escalation; a negative campaign in which fundamental principles, powers and functions of the judiciary and the judge are violated and / or affected; political interference or pressure from another government or the media on the court. It is recommended that professional associations, professional organizations and the magistrate community express support for their colleagues in negative public statements by representatives of the executive and legislative branches, and in media publications affecting the independence of the judiciary.

Judges are usually "attacked" by litigants or public figures because of judicial acts subject to instance review that "create a feeling, incl. in society, for lack of justice. " Some of the negative reactions are related to "unpopular court decisions", and their non-adoption is due to ignorance of the law and case law, as well as a discrepancy between public expectations and penal policy. Public statements often have their purposes, especially in times of institutional and political crises or election campaigns.

The SJC, the judiciary and the magistrates in Bulgaria show tolerance and understanding in attacking and affecting the independence and authority of the judiciary, taking into account that magistrates are public figures and as such should show a higher level of tolerance. Expectations for a response only from the Judges' College or the Plenum od the SJC, which should take place in exceptional crisis situations, are still widespread, after a thorough examination of the relevant facts and circumstances in the particular case.

For each position of the SJC, a press release is published on the Council's website and on the Facebook page and is provided to the media. In most of the cases listed below, there have been reactions from the relevant judicial authorities or from the general meetings of judges.

In the period from 1 January to 15 October 2020[6], the JC has declared four times institutional support in cases of violation of the independence of the judiciary and the Bulgarian judges, including the violation of their personal rights.

[4] The e-mail address of the Judges' College, according to the Mechanism, is published on the SJC website in the "Contacts" section.
[5] These documents are published on the website of the SJC in the section "Regulations and internal acts", subsection "Methodologies, guidelines and others"
[6] The Judges' College responded to the following cases:

In 2019[7], the JC reacted seven times, when it came to the independence of magistrates and the judiciary, and in connection with escalating public tensions.

In 2018[8], the College adopted eight declarations, opinions and open letters in defense of the independence of judges.

As a result of the adopted strategic documents and positions of the Judges' College in defense of the independence of the judiciary and judges, the cases of encroachment against them have decreased over the years.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

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1. On February 6, 2020, an extraordinary meeting of the JC was held in connection with a statement by US Secretary of State Michael Pompeo that Andon Mitalov - a judge at the Specialized Criminal Court had participated in corrupt practices. With a decision of the JC of 18.02.2020, item 27, disciplinary proceedings were instituted.
2. On 25 February 2020, the JC took decisions in connection with signals for influencing the independence of judges, after hearing Vladislava Tsarigradska - a judge in the Regional Court - Lukovit, Antoaneta Simeonova – a judge in the Regional Court - Troyan and Raina Martinova - a judge in Sofia City Court and Tsvetko Lazarov - a judge at the Sofia Court of Appeal and took a position in their defense.
3. On March 10, 2020, the JC expressed institutional support to Alexei Trifonov - Chairman of the Sofia City Court, on the occasion of his signal for assault by a TV crew in front of his home.
4. On 26.06.2020 the JC adopted a position on the occasion of publications on electronic media of circulating attacks by lawyer Ilian Vassilev against a panel of the Appellate Specialized Criminal Court.

[7] The Judges' College had reacted, as follows:
1. On the occasion of a signal from judges of the District Court - Burgas, in which allegations of inadmissible pressure and encroachment by extrajudicial means on the court in pending cases of private interest, the Committee on Legal and Institutional Affairs of the SJC Plenum with a decision on protocol № 1 / 14.01.2019, item 19 took measures. The amendments to the Civil Procedure Code from July 2020 are expected to have a positive effect on attacks on judges.
2. On June 5, 2019, an opinion of the JC was published in connection with letters from the Union of Judges in Bulgaria and the Union of Legal Professionals in Bulgaria, regarding media publications concerning the independence of Svetoslav Slavov and Nikolay Gunchev - judges of the Supreme Administrative Court.
3. On July 2, 2019, the JC adopted a declaration in connection with an organized campaign by a lawyer. Nikolay Dimitrov - member of the Bar Association - Shumen, against the judges of the Court of Appeal - Sofia.
4. On 30.07.2019 the JC adopted a declaration condemning the violation of LPPD and Regulation (EU) 2016/679 of the European Parliament and the Council of Europe (GDPR) and the violation of the personal integrity of Miroslava Todorova - a judge in Sofia City Court.
5. On 24.09.2019 the JC adopted a position in defense of a panel of the Court of Appeal - Sofia on the occasion of the conditional early release of the Australian citizen Jock Polfreimann.
6. On September 27, 2019, the JC issued a call for respect for the independence of the judiciary due to escalating tensions in the Jock Polfreimann case.
7. On October 16, 2019, a third position was published in the Jock Polfreimann case.

[8] The following documents have been adopted:
1. On January 16, 2018, at an extraordinary session, the JC adopted a declaration in defense of Kalin Kunchev - a judge in the District Court - Burgas.
2. On 08.05.2018 the JC took decisions under protocol № 14, item 36, in defense of Silvia Hazarbasanova - a judge in the Sofia Regional Court, as well as Petya Koleva, Dimcho Georgiev and Daniela Vracheva - judges in the Appellate Specialized Criminal Court .
3. On 10.05.2018 an open letter was published by the spokesperson of the JC on the occasion of new publications related to Judge Hazarbasanova.
4. On 15.05.2018 the JC adopted a statement in defense of the independence of the judiciary, due to comments from politicians, media and public figures.
5. On 20.07.2018 the measures taken by the JC in connection with the independence of the judiciary on the occasion of the Address of the Bulgarian Judges Association and the Declaration of the judges of the Sofia Regional Court were announced.
6. On October 10, 2018, the JC adopted a declaration in defense of Nikolay Vassilev - a judge in the Sofia District Court in response to the attacks of the leader of the Political party "Ataka".
7. On November 21, 2018, a position was published in connection with escalating tensions caused by reactions of the media, professional organizations and lawyers.
8. On December 3, 2018, an open letter was published by members of the JC to the General Assembly of the Sofia City Court on the occasion of the election of an administrative head.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

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CROATIA / *CROATIE*
Ministry of Justice and Public Administration
07/04/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

In the mentioned period, amendments to the State Judicial Council Act and the Courts Act of 2018 and the adoption of the new State Attorney's Office Act and the State Attorney Council Act of 2018, as basic organizational acts, have made significant progress in further strengthening the autonomy and independence of judicial bodies.

In order to strengthen the autonomy and independence of judiciary, the power of the Minister of Justice, as a representative of the executive, to give opinions on candidates in the procedures for the appointment of presidents of courts and state attorneys as heads of judicial bodies was omitted, 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, except for those courts in the process of establishment. According to the new solution in force from 2019, in case of termination of office of a president of a court, the president of the immediately higher court appoints another judge as an acting president until the appointment of a new president of the court.

Pursuant to GRECO's[9] recommendations, and to eliminate the identified non-transparency and potential risks to jeopardizing the autonomy and independence of the judiciary, as well as corruption risks, the Courts' Act has been amended. The procedure for the appointment of the president of the Supreme Court has been elaborated in detail, beginning with a public announcement to interested candidates by the State Judicial Council in Official Gazette of the Republic of Croatia and on the web pages of the State Judicial Council. According to the Constitution, the received nominations are forwarded to the President of the Republic, who will request an opinion on the candidates from the General Session of the Supreme Court and the competent committee of the Croatian Parliament and then submit to the Croatian Parliament a proposal for a candidate for the position of the president of the Supreme Court. The mandate of the president of the Supreme Court can be prolonged only once (limited to a maximum of two mandates), and the grounds and procedures for termination of duties and dismissal of the president of the Supreme Court are prescribed by law. Within the normative framework of the Constitution and with the new State Attorney's Office Act of 2018, the procedure for appointment of the State Attorney General has been regulated in detail. In this procedure, a public announcement is issued by the State Attorney Council in Official Gazette of the Republic of Croatia and on the web pages of the State Attorney Council, after which the Government proposes a candidate for appointment to the Croatian Parliament, with a prior opinion of the competent committee of the Croatian Parliament. The term of office of the State Attorney General can be prolonged only once (a maximum of two mandates), and the grounds and procedures for his/her termination of duty and dismissal are prescribed.

Furthermore, to harmonize the practice of granting approval to judges, state attorneys and deputy state attorneys to perform other tasks and services in addition to judicial office, this authority was transferred from the heads of judicial bodies to the State Judicial Council for judges and the State Attorney Council for state attorneys and deputy state attorneys.

[9] Group of States Against Corruption.

As regards judicial officials, the obligation to submit asset declarations is prescribed by the *State Judicial Council Act* and the *State Attorney's Council Act* and it is within the competence of these bodies to collect them, process and verify.

In 2018 the system of submitting, conducting, controlling and publishing reports on property of judicial officials (asset declarations) was reformed in the manner stipulated by the *Prevention of Conflicts of Interest Act* for state officials, to ensure accessibility, strengthen public confidence and strengthen integrity, transparency and prevention of conflicts of interest and other undue influences in the performance of judicial duties. It is prescribed that asset declarations are submitted in electronic form and that data on the property of judicial officials are public and published on the websites of the State Judicial Council and the State Attorney Council, whereby the regulations on the protection of personal data apply to the processing and publication of contained personal data. After further harmonization of the legal framework with the rules for personal data protection, the asset declarations of judges, state attorneys and their deputies were published and are available on the websites of the State Judicial and State Attorney Council from January 2021.

Special attention is given to the training activities on judicial ethics and on ethics for state attorneys and deputy state attorneys.

The Croatian Judicial Academy regularly organises training activities on judicial ethics for judges, state attorneys, deputy state attorneys and judicial advisors. The following trainings have been organised since 2016:

2016
9 one-day workshops for judges and deputy state attorneys on the „Deontology of the professions of a judge/a prosecutor and the conflict of interest"; A total of 176 participants.

2017
6 one-day workshops for judges and deputy state attorneys on the „Deontology of the professions of a judge/a prosecutor and the conflict of interest"; A total of 87 participants.
A seminar on judicial ethics for 22 participants.

2018
A two-day seminar on ethics for judges in cooperation with the German Foundation Hanns-Seidel. The seminar was attended by 28 judges of municipal and county courts of Croatia, including 10 court presidents.

2019
6 one-day workshops on „The Application of the Code of Judicial Ethics" for a total of 108 judges and judicial advisors of municipal, commercial, administrative and county courts.
A two-day workshop on „Criminal Offences of Corruption" for deputy state attorneys in cooperation with the German Foundation Hanns-Seidel. It was attended by 21 participants.

2020
A one-day workshop on „The Application of the Code of Judicial Ethics „for 6 participants (judges and judicial advisors).
In cooperation with the *European Judicial Training Network* (EJTN) a two-day seminar on „Judicial Ethics „was organised for a total of 19 participants (13 Croatian judges and 6 participants from other EU Member States).

2021
Three webinars on „The Application of the Code of Judicial Ethics „have been planned for judges from all parts of Croatia.

In addition, in 2019 the Judicial Academy became a pilot site of the UNODC for the trainings on "Judicial Conduct and Ethics**"**. Within this framework of cooperation with the UNODC, a judge of the County Court of Split, who is also a trainer of the Judicial Academy, attended a special UNODC TOT and became a certified trainer/tutor for this topic.

An online course on “Judicial Conduct and Ethics” was attended by 26 participants (judges and judicial advisors). 19 of them successfully completed the course and then attended a one-day workshop on the same topic led by the certified trainer and another county court judge. This was the occasion for the participants to analyse with the trainers various practical examples of challenges that judges face in their everyday professional life as judicial officials. “

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

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4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

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CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*
Ministry of Justice
05/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

1. Appointment and selection of judges and prosecutors

Judicial power in the Czech Republic is exercised by independent courts (sec. 1 of the Act on Courts and Judges). This provision corresponds with art. 81 of the Constitution, which entrusts the exercise of the judicial power – as one of three independent powers - to independent courts. Independence and impartiality of court as main attribute of these bodies are based also on the guarantee in art. 36 of the Charter of Fundamental Rights and Freedoms (Act no. 2/1993 Coll.), which guarantees to anybody the possibility to pursue in a prescribed manner their rights at independent and impartial courts.

Judges are appointed to their office for indefinite period of time. Appointment for indefinite period of time is one of the principles supporting the independence of a judge in decision making guaranteed by the Constitutional order and by the Act on Courts and Judges (no. 6/2002 Coll.). Office of the judge may only be terminated due to reasons listed by the law. Judges are appointed by the President of the Czech Republic (art. 93 (1) of the Constitution, sec. 63 of the Act on Courts and Judges). For the decision of the President on appointment of judges to be valid, signature of the Prime Minister or authorized member of the Government is necessary (art. 63 (3) of the Constitution).

Currently, other details of the procedure on appointment of judges are not stipulated by law (selection of candidates for office of a judge is in competence of the Presidents of Regional Courts; they submit documents of individual candidates to the Ministry of Justice. The Ministry of Justice processes complete documentation and the Minister of Justice submits the candidates to the President of the Republic).

To become a candidate, the law requires a university education acquired by proper completion of studies in a master's study programme in the sphere of law at a public university in the Czech Republic and the passing of an expert judicial examination.

The latter is usually taken after a 36 month preparatory service, before an examination committee which is appointed by the Ministry of Justice and includes judges, employees of the Ministry and other legal experts. The bar examination, the final examination for prosecution trainees, the notarial examination and the expert executor's examination are also considered as expert judicial examination; furthermore, the exercise of the office of judge of the Constitutional Court for a period of at least two years has the same effect.

An amendment of the Act on Courts and Judges is currently being discussed by the Czech Parliament. The proposed amendment shall establish a transparent and uniform system of new judges´ recruitment and selection of court presidents based on precise, objective and uniform criteria, which must be fulfilled by any person who wants to become a judge, or a court president.

The proposed selection system of new judges consists of 5 phases: 1. a practice as an assistant of judge, 2. judicial exam, 3. selection procedure of a judicial candidate, 4. practice of a judicial candidate and 5. an open competition for the position of a judge. A possibility for applicants from other legal professions (such as lawyers, notaries, bailiffs or public prosecutors) to apply for the position of a judicial candidate and/or judge is also allowed.

For further information, please see GRECO Fourth Evaluation report on the Czech Republic and following compliance reports.

Prosecutors:
According to the Constitution of the Czech Republic the Public Prosecution is part of the executive branch. Public prosecutors are appointed into their office for an indefinite time by the Minister of Justice on the proposal of the Supreme Public Prosecutor.

Selection of candidates for public prosecutors belongs to the competence of Regional Public Prosecutors. Prerequisites for the office of a public prosecutor is stipulated by Act on Public Prosecutor´s Office (sec. 17). Currently, the selection of candidates for the post of prosecutors uses a selection process, which is announced by the Regional Public Prosecutors. Preconditions of their appointment are provided for in Section 17 of the PPO Act and include Czech citizenship, full legal capacity, no criminal conviction, reaching the age of 25 on the day of appointment, masters' degree from a study program in the field of law at a university in the Czech Republic, passing the final examination [after 3 years of training in a public prosecutor's office or partly in other relevant legal job as provided for in Section 33(2) of the PPO Act; an expert judicial examination or bar examination are also considered as such final examination according to Section 34(8) of the PPO Act] , moral qualities guaranteeing due performance of the office and consent with being appointed a public prosecutor and with assignment to a specific Public Prosecutor's Office.

Obligatory selection procedure for appointment of public prosecutors is provided for in the Agreement on Selection and Career Progress of Public Prosecutors, which was prepared by the Supreme Public Prosecutor´s Office and signed by the Minister of Justice in May 2018 and by the Supreme Public Prosecutor, High Public Prosecutors and Regional Public Prosecutors in June 2018.

For further information please consult GRECO Fourth Round Evaluation report on the Czech Republic and follow-up compliance reports.

2. Irremovability of judges, including transfers of judges and dismissal

Judges are appointed for an unlimited term and may only be dismissed in disciplinary proceedings by a disciplinary court for disciplinary violations specified by law.

As for the transfer of judges, in principle, a judge may be transferred to another court only with his/her consent or upon request. However, according to Section 72 of the Act on Courts and Judges, if a change occurs on the basis of a law in the organisation of courts, in the change of a district of a court or in the jurisdiction of courts and proper administration of justice cannot be ensured otherwise, a judge may be transferred to another court even without his/her consent. Moreover, the Minister of Justice may temporarily assign a District Court judge to another District Court, even without his/her consent, if proper administration of justice at this court cannot be ensured otherwise.

It is the Minister of Justice who makes the decision on a transfer of a judge after discussion with Presidents of all the relevant courts – President of court to which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction and President of court from which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction.

For further information please see GRECO Fourth Round Evaluation Report on the Czech Republic and its follow-up compliance reports.

3. Promotion of judges and prosecutors

Career advancement of judges is not stipulated by any law. The judge may be transferred on proposal and with his consent or based on his request. While transferring a judge to higher court, his expertise shall be considered and he must fulfil specific length of legal practise stipulated by law.

It is the Minister of Justice who makes the decision on a transfer of a judge after discussion with Presidents of all the relevant courts – President of court to which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction and President of court from which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction.

Judges who carried out legal practice for a period of at least 10 years may be transferred to Supreme Court, those who carried out legal practice for a period of at least 8 years may be transferred to Regional or High Court.

Decision of the Minister cannot be appealed at the moment.

Public prosecutors are assigned to a certain public prosecutor's office by the Minister of Justice subject to his or her prior consent. The Minister of Justice may transfer the public prosecutor to another public prosecutor's office. Generally, such transfer is possible to public prosecutor´s office of the same or higher level, upon a request of the public prosecutor or with his or her consent. Transfer to an office of a lower level is possible, in principle, only upon a request of the public prosecutor. Requests for transfer are submitted through the Prosecutor General who attaches his or her opinion on the request. The professional level of the public prosecutor concerned and results of broadening of his or her professional knowledge are considered within the transfer to an office of a higher level. Detailed rules on assignment and transfer of the public prosecutors are contained in Section 19 of the PPO Act, as well as in the aforementioned Agreement on Selection and Career Progress of Public Prosecutors.

The promotion of public prosecutors – just as with judges – is not stipulated in the Act on Public Prosecutor´s Office. When transferred to higher public prosecutor´s office, their level of expertise is taken into account.

Public prosecutor may only be recalled in disciplinary proceedings.

For further information please see GRECO Fourth Round Evaluation Report on the Czech Republic and its follow-up compliance reports.

4. Accountability of judges and public prosecutors

Accountability of judges:

A judge bears disciplinary liability for disciplinary violations (voluntary breach of duties of a judge, as well as voluntary behaviour or conduct impairing dignity of the office of judge or endangering confidence in independent, impartial, professionally competent and fair decision-making by the courts). Disciplinary liability of presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court are also liable for voluntary breach of duties connected to their function.

Disciplinary proceedings are dealt with by disciplinary court. The composition, procedure and decisions are stipulated by Act on proceedings relating to judges, public prosecutors and court executors (appended).

Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court are also liable for the voluntary breach of duties connected to their function. As for disciplinary measure, the disciplinary panel can at the end of the procedure regulated by the Act No. 7/2002 Coll., on proceedings relating to judges, public prosecutors and court executors impose these disciplinary measures: reprimand; reduction of salary of up to 30% for a period not exceeding one year, and in case of repeated disciplinary violations committed by a judge prior to erasure of the disciplinary violation, for a period not exceeding two years; recall from the office of president of a panel; recall from the office of judge.

Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court may be disciplined by a reprimand; temporary withdrawal of an increase in salary coefficient for their function; temporary salary reduction, as for other judges; recall from the office of president of court, presidents of panels of the Supreme Court or Supreme Administrative Court.

The Supreme Administrative Court is the Disciplinary Court, which (in cases regarding judges) acts and decides in chambers composed of a judge of the Supreme Administrative Court as the presiding judge, a judge of the Supreme Court as his/her deputy, a judge of a High, Regional or District Court and three lay judges. Among these, there must be at least one public prosecutor, one attorney and one person exercising another legal profession, if registered in the list of lay judges in proceedings relating to judges. The members of the chambers and their presidents are drawn by lots from lists of suitable candidates, for a five-year term.

The proceeding are initiated by the proposal of the President of the Republic and the Minister of Justice against any judge; the President of the Supreme Court (Supreme Administrative Court) against any judge of this court, and against a judge of a lower court deciding on matters belonging to the jurisdiction of courts, where the Supreme Court (Supreme Administrative Court) is the highest instance; the president of the High Court (or Regional Court) against any judge of that Court and against a judge of a lower court; the president of a District Court against a judge of any District Court.

The Czech Parliament is currently discussing the legislative proposal, which shall introduce a new system of appeal and allow the possibility to challenge decisions of the disciplinary court (chamber) before a second instance. This proposal should increase the efficiency of the disciplinary procedure as well.

Ethical rules set by the Law on Courts and Judges were further elaborated in a new Code of Ethics for Judges, which was approved by the vast majority of the Czech courts and their judges. The Code must be considered as a significant tool for ensuring compliance with the requirements communicated by the Group of States against Corruption (GRECO), as well as for strengthening the public trust in the judiciary.

Based on this recommendation and on requests by the Ministry of Justice, a working group at the Supreme Court has been established. A lot of work has been conducted during the process of drawing up of the Code as well as subsequent discussions with various stakeholders. The process has been partially affected by the pandemic situation as the results of the negotiations were communicated with the Supreme Court in writing.

Regarding the background of the process mentioned above it has to be noted that the Code of Ethics for judges in the Czech Republic had been already adopted by the Czech Union of Judges in 2005. However, the Union – as a voluntary association of judges, therefore uniting only about one-third of all judges – could not sufficiently represent the judiciary as a whole. Due to this, a working group at the Supreme Court of the Czech Republic was established, headed by then Judge of the Supreme Court, Petr Angyalossy, Ph. D., the current President of the Court. The group comprised of 22 judges from regional and high courts, some of them members of the Union of Judges, and its first meeting took place in October 2019, followed by two more meetings in the next months. During the last one in January 2020, the final text of the Code of Ethics with commentary and relevant case law was approved by the working group.

As to the process of its approval by Czech judges in general, the working group was considering several possibilities. The final choice was the approval of the Code by the judicial councils of each court.

The reason was the following: judicial councils are bodies of courts whose members are elected by judges of the respective courts, hence these are the only entities in the judiciary with democratic legitimacy. Therefore, the judicial councils established by each and every Czech court in effect represent the judges of the court themselves as they are the only democratically elected bodies of the courts.

The judicial councils were addressed via presidents of courts and they received the final text of the Code including the aforementioned commentary and some disciplinary decision-making practice. Their reaction was largely and predominantly positive and the vast majority of the judicial councils accepted the proposed Code without reservation. The Code of Ethics itself includes mainly chapters concerning independence, impartiality and equality, integrity and dignity, expertise and conscientiousness and is followed by the aforementioned commentary with practical examples.

Accountability of prosecutors:

Disciplinary liability of public prosecutors is regulated by Sections 27 – 30 of the PPO Act. The disciplinary procedure is conducted according to the Act No. 7/2002 Coll., in the same manner as in case of judges. However, the proceeding shall be initiated by the proposal of the Minister of Justice and the Supreme Public Prosecutor against any public prosecutor; a high public prosecutor against a public prosecutor of his or her office or of a Regional or District Public Prosecutor's Office in its jurisdiction; a regional public prosecutor against a public prosecutor of his or her office or of a District Public Prosecutor's Office in its jurisdiction; a district public prosecutor against public prosecutor of his/her office.

Disciplinary violation is a culpable violation of the public prosecutor's duties, the public prosecutor's culpable behaviour or conduct diminishing the trust in the Public Prosecutor´s Office activity or proficiency of its operation or degrading reputation and dignity of the public prosecutor's position. A reprimand, a salary decrease of up to 30% for a period of not more than 1 year and for repeated disciplinary violation committed by the public prosecutor in the period before erasure of the disciplinary punishment for a period of not more than 2 years or removal from the office may be imposed as a disciplinary punishment.

According to the aforementioned draft law of the PPO Act, disciplinary punishment shall be the only option to remove a chief public prosecutor from his or her office before the end of the term.

A new binding Code of Ethics for Public Prosecutors has been adopted as a joint measure of the Supreme Public Prosecutor, the High Public Prosecutors and the Regional Public Prosecutors with the aim to create a unified framework for assessment of the ethical dimension of work and behaviour of the public prosecutors. The Code entered into effect on 1st May 2019 and it contains sections on legality and independence, impartiality, professionalism, trustworthiness, dignity and behaviour and cooperation. An explanatory commentary with practical examples has been adopted together with this Code and training to public prosecutors is provided.

Accountability for damage caused by an illegal decision or maladministration of the Public Prosecutor's Office is regulated by Act No. 82/1998 Coll., on Accountability for Damage caused within Exercise of the Public Authority by a Decision or Maladministration.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

There were no instances of undue influence to independence of judges/prosecutors in the reported period. There were few cases of suspected corruption of individual judges, that were duly investigated (approx. 2-3 cases in reported period), but no interference with independence of judges from authorities.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

No such challenge observed.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

No.

DENMARK / *DANEMARK*
Ministry of Justice
22/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

1. Independence and impartiality of judges

Politicians and decision makers
A high-level conference was held in august 2016 on trust in the judiciary with the participation of 200 politicians, lawyers, professors and researchers, the media and representatives from different interest groups.

Covid-19
The Courts of Denmark activated in March 2020 their special common crisis management team consisting of the management from the Court Administration, an appeal court president and two district Court presidents. In first half of 2020 Denmark had its first shutdown. Questions were raised on the crisis response vs. the independence of the courts and judges. An internal evaluation of the crisis response concluded in December 2020 that the crisis management team only have competence to decide within the areas of competence of the Court Administration. In addition to this the crisis management team may give guidance, recommendations etc. to the courts. When the crisis management team was reactivated in November 2020 the mandate of the team was clarified. At the same time the president of the Judges Association became a new member of the crisis management team in order to strengthen the focus on judicial independence and in order to qualify questions of a judicial character or questions that especially concern the work of the judges. The Danish Parliament made an evaluation of the overall crisis response to the COVID-19 pandemic including most official authorities. This report was published on January 29th, 2021 and indicated that regarding the courts, coordination across the courts were needed. Questions were raised on whether some of the messages emanating from the crisis management team at the Courts of Denmark were in line with the principle of independence. At the same time, however, the report underlines that the crisis management team did stress several times and in various contexts that it was up to the individual court to organize the work taking into account local conditions.

2. Good conduct and impartiality of the prosecution service and the police

In the autumn of 2018, the Danish National Police and the Director of the Prosecution Service introduced a nationwide campaign targeting employees in the police and prosecution service that focused on the code of conduct within the prosecution service and the police, including guidelines on impartiality.

The purpose of the campaign was to ensure:

That all current employees in the prosecution service obtained knowledge of relevant issues of good conduct in the public sector and act in accordance with their obligations.

That there are procedures in place in all offices of the prosecution service to ensure that new prosecutors are properly educated in good conduct in the public sector when recruited.

That there is targeted training and information for employees in special functions, such as IT, purchasing, service, finance etc.

The campaign included an introduction of an e-learning course and a pamphlet. The e-learnings course includes topics like the illegality of receiving gifts. The course is compulsory for all employees in the Danish prosecution service

The purpose of the pamphlet was to train the employees in topics of particular importance within the police and the prosecutor's office such as duty of confidentiality, conflicts of interest, gifts and other benefits and the freedom of expression. It also states the consequences of not complying with the guidelines set out in the pamphlet, which can be disciplinary punishment in terms of employment or in severe cases criminal charges. The pamphlet has subsequently been used as handout for newly hired employees to ensure systematically introduction to the subject.

The Director of Public Prosecutions has the main responsibility to train and educate the Danish prosecution service. This includes a mandatory three years training programme for all prosecutor trainees as well as continued training for both experienced prosecutors, service clerks etc. The campaign mentioned above led to an adjustment of the mandatory training programme for newly hired prosecutors.

The programme includes training in law, legal process and legality regarding investigation of the Danish police force, as well as courses concerning the role of the prosecutor in police investigations, proportionality in the investigation, good governance and code of conduct in the public sector. Judicial independence and impartiality is also a fixed part of the compulsory training programme for all prosecutor trainees. In 2019, the Director of Public Prosecutions decided that all prosecutor trainees must complete an e-learning course called "Good conduct in the public sector" alongside cases relating to objectivity, correctness, decency, policy on gifts as part of the mandatory training programme.

The Director of Public Prosecutions provide almost 50 continuation training courses and international legislative obligations and human rights issues are an important part of the content in many of the courses.

In January 2019, the Danish National Police and the Director of the Prosecution Service introduced a one-off training initiative for managers and selected employees in the prosecution service on procurement, financial management and guidelines on receiving gifts, to make sure that the manager level were adequately trained on the matter.

In order to further support implementation of good conduct in the public sector, all new employees in the Danish Prosecution Service (regardless of title) must – as a mandatory part of their introduction to the workplace – complete a new standard introduction program. The introduction programme includes e-learning modules on "Good conduct in the public sector" and "Freedom of expression - When publicly employed" as well as a conversation between the manager and employee about good conduct, where the rules and principles are discussed based on the relevant position and area of responsibility.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

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3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe.

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4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

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FINLAND / *FINLANDE*
National Prosecution Authority
National Courts Administration
Ministry of Justice
12/04/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

A new independent body has been established to safeguard judicial independence. The National Courts Administration, which has taken office in January 2020, is an independent agency responsible for the administration of the courts, taking over functions previously exercised by the Ministry of Justice. It was established through amendments to the Courts Act adopted in February 2019 and it is independent from the Ministry of Justice. The aim of the reform, which was carried out in close consultation with the judiciary, is to strengthen the structural autonomy and independence of the courts, reinforce the quality of the administration of justice and allow courts to focus on their key functions instead of on administrative tasks.

The powers of the National Courts Administration include making proposals on the allocation of the budget of courts to the Ministry of Justice and deciding on its allocation to individual courts, monitoring courts' performance, managing court buildings and ICT systems and organising training for judges and other court personnel (in cooperation with the Judicial Training Board). It is also in charge of establishing positions at the courts, both for judges and for other personnel.

The decision-making body of the Courts Administration is the Board of Directors, which consists of eight members (six judges from all different instances of courts and two non-judge members), appointed by the Government on proposal by the judiciary (for the judges-members), meaning that a majority of its members are judges chosen by their peers from all levels of the judiciary, which is consistent with Council of Europe recommendations. The National Courts Administration has also been accepted as a full member by the European Network of Councils for the Judiciary in June 2020.

The National Prosecution Authority of Finland has issued 2016 Ethical Guidelines for all prosecutors to follow. The guidelines are attached as annex to this document. In general, independence and impartiality of prosecutors has not posed an issue in Finland. Therefore, there has not been a need for other actions than issuing the aforementioned guidelines (see however answer to question 2).

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

The National Courts Administration or the courts have no specific reporting system. Some judges or other court personnel have been threatened. These attempts of undue influence have been reported to the police. Targeted trolling against judges has increased in social media.

Cases of threats against prosecutors have been investigated / taken to court. Even though these have not as far as the National Prosecution Office is aware had an impact on prosecutors' decisions, they have a serious impact on prosecutors' well-being and the attractiveness of prosecutor's career. No incidents of bribery or similar have been noticed.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

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4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The Ministry of Justice has initiated a process (a government proposal) to change the Criminal Code so that the public prosecutors have the right to bring charges for menace based on the target's duties in employment or public commission of trust. In other words, it would not in future be up to the person´s willingness to bring the case forward. The change of the Criminal Code is due to come into force in autumn 2021. The government proposal is currently being considered by the Parliament (HE 226/2020 vp).

For more information, please also see the 2020 Rule of Law Report of the European Commission and the country chapter on Finland.

The Ethical Guidelines of the Finnish Prosecution Service

Ethics and good practice in the prosecution service
The ethical basis of the Finnish Prosecution Service's activities is laid down in its rules, values and principles. These norms set out the minimum requirements for ethical operations. The basic level defined by various provisions – laws, codes and regulations – constitutes the Finnish Prosecution Service's service pledge to society.

Not everything can be regulated by law, and regulations cannot be issued for every situation. Ethical principles and values are also required. These describe the ideals that guide operations and behaviour and go further than rules. Such ideals can be based on international recommendations or guidelines, and on the decisions taken by the supreme guardians of the law and the Prosecutor General.

A prosecutor adhering to good prosecutor practice is guided by not only statutory obligations, but also the ethics of the prosecutor's profession. The good practice of other professional groups within the prosecution service are also based on ethical principles. Supervisors set an important example with their own actions.

The values of the Finnish Prosecution Service are fairness, competence and well-being at work. Values and ethical principles act as a compass when difficult choices need to be made. They are the best way to promote good practice.

The prosecution service holds a special position and role in our democratic, constitutional state. People employed by the Finnish Prosecution Service operate on its behalf and in its name. Unethical conduct is always deeply inconsistent with the prosecution service's position in society and the trustworthiness that such a position requires.

Equality and fairness
Our activities are closely bound with the equality of everyone before the law, which is guaranteed by the Constitution of Finland. We treat everyone equally and seek the truth and the right outcomes in the criminal cases we handle. We do not discriminate against or favour anyone. No person related reasons could justify unequal treatment on our part, unless stipulated by law.

Independence, impartiality and conflicts of interests
We work and make decisions free of external and inappropriate influences. In our decisions and work processes, we strive to act in an objective and uniform manner.

Independence means freedom from conflicts of interests. Our independence is also assessed by external parties. It is a question of how external parties see things. Our free time and private lives involve various relationships with people and communities. These may also cause situations where our professional impartiality could be questioned.

If necessary, we know when to withdraw from handling a case and refer it to someone else, without further involvement in it.

We know that we must not engage in extra-judiciary activities that disqualify us from doing our work or hamper the performance of our duties.

Transparency
People's trust is essential to us. Transparent operations increase the trust people have in us. We share accurate and up-to-date information, on a fair and voluntary basis, about our activities and our operating environment.

We respond to queries about our decisions, operations and the matters we handle without delay
We adhere to statutory confidentiality requirements.

Trust and confidentiality
We are trusted and want to be worthy of such trust every day. We enhance this trust through ethical conduct and by making justifiable decisions that ensure the realisation of legal protection and criminal responsibility. We understand that the trust we enjoy will be eroded if any aspect of our operations provides grounds for criticism.

As part of our work, we process many issues that involve confidential information. We understand this and adhere to the related responsibilities both at work and in our free time.
We do not ask questions or access documents, registers or use any other means to acquire confidential information on matters that we are not personally handling.

We know that we must also adhere to confidentiality requirements after our service relationship has ended.

Responsibility
We remember that our operations are funded from tax revenue. We want to work cost-efficiently and serve our customers.

We use the feedback we receive and actively assess our activities. We develop them voluntarily in line with our goals and the expectations set for us.

We use our tools and time appropriately and effectively.

We focus on the essential and prioritise our tasks, if necessary. We strive to reach our goals and take responsibility for the outcomes of our work.

Competence
We know how to do our work. The work we do has various impacts on our customers, our stakeholders and our own work community. Our competence requirements are constantly changing, as our operating environment, statutes, instructions and working methods change. Competence also plays a key role when the nature and volume of our tasks change.

Competence includes an active approach to work and various work community skills. Competence is one of the values of the Finnish Prosecution Service.

Ultimately, everyone is personally responsible for learning new skills and information, acquiring sufficient competences and professional expertise, and keeping them up to date. If necessary, we shall ask for help and provide assistance. The superiors and employer support everyone's development of professional skills in various ways. Superiors take account of competences when distributing tasks.
Working as a community

We understand that we always work as part of a work community. We are different people and personalities, and our personal behaviour affects our work community and its atmosphere.

Well-being at work is one of the values we share. Our conduct towards everyone in our work community is businesslike and polite. We participate in collective events. We do not accept sexual harassment, racism or discrimination, or any other forms of inappropriate behaviour in our workplace. A cheerful appropriate brightens up other people's day.

We make ourselves available. If necessary, we can focus on our work in peace.

We can discuss the rules of our work community with our colleagues and superiors.

Language and communication
Our oral and written communication have an impact on the external image we project as individuals and as an organisation. Our communication is appropriate, calm and clear. The grounds of our decisions are understandable and transparent. We avoid being provoked.

Our social media conduct is in line with our social media etiquette.
We regularly follow our internal communications (intra) and public website. This enables us to stay up to date with many matters that affect our work and working environment, and to prevent rumours.

Gifts and benefits
We are aware of the threat corruption poses to the judicial system. Our position requires a clear emphasis on impartiality.

We have no obligation, and in some cases no right, to accept a gift or benefit offered to us in connection with our work, or to ask for one. Gifts or benefits may compromise people's trust on our impartiality.

We can accept one-off benefits of minor value, unless doing so we might run the risk of reducing public trust in our operations. In unclear cases, we refuse the benefit.

We do not offer gifts or other benefits which the recipient could not accept on similar grounds.

Conduct and appearance
In spite of our individual freedom, we remember that, in various social situations, people may draw conclusions about our work based on our behaviour and appearance. We do not want to give conflicting signals, or ones that might lead people to question their trust in us, with our clothing, accessories or jewellery.

We also remember the importance of gestures, facial expressions and other non-verbal communication and also court etiquette.

Conduct outside work
We understand that people have expectations towards our conduct outside work as well. In our private lives, we behave in a way that will not reduce trust in the Finnish Prosecution Service.

We do not invoke our professions or status outside our work, in order to gain advantages or personal benefit.

FRANCE
Ministry of Justice
23/03/2021

1. Veuillez décrire toute mesure spécifique prise par vos autorités pendant la période de mise en œuvre du Plan d'action du Conseil de l'Europe sur le renforcement de l'indépendance et de l'impartialité du pouvoir judiciaire (2016-2021) qui a eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs ?

*Veuillez fournir, en particulier, des **exemples concrets de toute mesure institutionnelle, législative, réglementaire ou autre, ainsi que des nouvelles pratiques** qui ont été adoptées ou mises en place au cours des cinq dernières années pour prévenir et/ou traiter (y compris les procédures, les recours et les sanctions en cas) l'influence ou ingérence indue (en ce qui concerne notamment: la sélection, la nomination et la promotion; les conditions de travail (y compris la sûreté et la sécurité); le financement des tribunaux; la responsabilité; la protection dans la prise de décision contre l'influence ou l'ingérence indue de pairs (y compris les juges des cours supérieures ou les parquets), d'autorités judiciaires ou de poursuites ou d'associations professionnelles, d'acteurs politiques ou du pouvoir législatif, de l'exécutif, des médias ou d'autres acteurs privés (y compris des acteurs financiers).*

Il sera rappelé à titre liminaire que l'indépendance de l'autorité judiciaire est en France un principe constitutionnel, énoncé à l'article 64 de la Constitution. Le Conseil constitutionnel a pu préciser que « l'autorité judiciaire » comprend à la fois les magistrats du siège du parquet (décision n°93-326 DC du 11 août 1993).

Dans ce cadre, « l'indépendance et l'impartialité du pouvoir judiciaire », au sens du plan de Sofia, font l'objet de solides garanties dans le système judiciaire français. Certaines mesures prises sur la période 2016-2021 ont ponctuellement permis de conforter ces principes.

La nomination des magistrats

S'agissant des magistrats du siège, aucune nomination ne peut intervenir sans que le Conseil Supérieur de la Magistrature ait rendu un avis conforme ou, dans certains cas, qu'il ait fait usage de son pouvoir de proposition. Cette règle a été strictement observée sur la période 2016-2021.

S'agissant des magistrats du parquet, que le Conseil supérieur de la magistrature donne sur les propositions de nominations un avis simple, "favorable" ou "défavorable" qui, en principe, ne lie pas le ministre de la justice. Toutefois, depuis 2008, les gardes des Sceaux successifs ont systématiquement respecté les avis du Conseil supérieur de la magistrature. Cette pratique a été maintenue sur la période 2016-2021 : le ministre de la justice n'a jamais passé outre un avis défavorable du Conseil supérieur de la magistrature concernant la nomination des membres du ministère public.

Des débats portent actuellement sur la nécessité d'inscrire dans la Constitution l'obligation pour le gouvernement de s'en tenir à un avis « conforme » s'agissant de la nomination des magistrats du parquet. Dans ce contexte, un projet de loi de réforme constitutionnelle pour un renouveau de la vie démocratique (n° 2203) a été déposé le 29 août 2019. Son processus d'adoption doit conduire à une réunion en Congrès des deux chambres du Parlement.

La protection contre l'influence ou l'ingérence indue

Lutte contre les conflits d'intérêts

La loi organique n°2016-1090 du 8 août 2016 impose désormais aux magistrats du parquet et du siège, à travers les articles 7-1 et suivants de l'ordonnance portant statut de la magistrature, de remettre une déclaration exhaustive exacte et sincère de leurs intérêts dans les deux mois qui suivent l'installation dans leurs fonctions. La remise de cette déclaration donne lieu à un entretien déontologique entre le magistrat concerné et l'autorité à laquelle la déclaration est remise.

L'article 28 de cette même loi a créé un collège de déontologie des magistrats de l'ordre judiciaire chargé de rendre des avis sur toute question déontologique concernant personnellement un magistrat, sur saisine de celui-ci ou de l'un de ses chefs hiérarchiques, mais aussi d'examiner les déclarations d'intérêts qui doivent lui être transmises.

Instructions de politique pénale

Aux termes de l'article 30 du code de procédure pénale, le ministre de la justice conduit la politique pénale déterminée par le Gouvernement et veille à la cohérence de son application sur le territoire de la République. A cette fin, il adresse au ministère public des instructions générales. Depuis la loi du 25 juillet 2013, ce même article fait explicitement interdiction au ministre de la justice d'adresser des instructions aux magistrats du ministère public des instructions dans les affaires individuelles. Ces règles ont été strictement appliquées sur la période 2016-2021.

Déontologie des magistrats

Le recueil des obligations déontologiques des magistrats, établi en 2010, a été refondu par le Conseil supérieur de la magistrature au cours de la mandature 2015-2019.

Cette refonte a été guidée par le souci de renforcer ce référentiel sur les valeurs du magistrat, articulées autour des principes cardinaux d'indépendance, d'impartialité, d'intégrité, de loyauté, de conscience professionnelle, de dignité, de respect et d'attention portés à autrui, de réserve et de discrétion.

L'évolution de la société et l'adoption de réformes intéressant la déontologie des magistrats ayant mis en évidence la nécessité d'une actualisation du Recueil, la formation plénière du Conseil supérieur de la magistrature a adopté la version révisée de ce Recueil et procédé à sa publication le 9 janvier 2019.

2. Des cas spécifiques d'influence indue ou d'autres formes d'interférence ont-ils été signalés au cours de la période 2015-2020 ?

Dans l'affirmative, veuillez fournir un bref résumé des aspects signalés et des types d'influence ou d'interférence, y compris des informations sur toute action ou mesure adoptée pour remédier à ces situations, ainsi que toute information disponible sur l'impact de ces mesures et leur efficacité.

Si aucune action ou mesure n'a été prise, quels étaient les motifs de rejet ou de non-intervention dans les cas signalés d'influence ou d'ingérence injustifiées ?

Veuillez indiquer quels sont les facteurs les plus importants qui sous-tendent l'efficacité des mesures mises en place pour garantir le respect de l'indépendance et de l'impartialité du pouvoir judiciaire dans votre pays.

Aucun cas d'« influence indue » n'a été relevé sur la période ou donné lieu à la mise en œuvre de mesures spécifiques. Les mesures prises afin de préserver l'indépendance et l'impartialité du pouvoir judiciaire sont efficaces, du fait notamment de l'application de règles relevant du statut de la magistrature, parmi lesquelles :

L'inamovibilité des magistrats du siège ;

De strictes règles d'incompatibilité avec l'exercice de mandats électifs ou d'activités professionnelles même antérieures ;

Les obligations statutaires de mobilité (par exemple, la limitation à 7 ans des fonctions de chef de juridiction) ;

L'obligation faite aux magistrats de « prévenir ou faire cesser immédiatement les situations de conflit d'intérêt » (art. 7-1), qui s'accompagne d'une obligation de se déporter dans ces situations et, s'ils s'en abstiennent, une faculté de récusation offerte au justiciable ;

L'interdiction pour les magistrats de toute « délibération politique » (art. 10).

Par ailleurs, la formation des magistrats à la déontologie, l'existence de dispositifs préventifs (recueil d'obligations déontologiques, service de veille déontologique à disposition des magistrats) ainsi que de procédures disciplinaires effectives favorisent le respect de l'impartialité et de l'indépendance du système judiciaire.

Enfin, l'interdiction faite au gouvernement d'adresser des instructions dans les affaires individuelles ainsi que le rôle prépondérant du Conseil supérieur de la magistrature dans la nomination des magistrats et le déroulement de leur carrière doivent également être tenus pour des facteurs importants.

3. Veuillez décrire les défis qui restent à relever dans ce domaine et/ou les tendances observées en matière d'indépendance et d'impartialité du pouvoir judiciaire qui nécessiteraient une attention collective de la part des Etats membres et/ou du Conseil de l'Europe ?

Pas d'observation sur ce point.

4. Y a-t-il des aspects spécifiques de l'enquête et du Plan d'action de Sofia qui, selon vous, manquent ou ne sont pas suffisamment détaillés dans le questionnaire et qui pourraient être utiles pour comprendre l'indépendance et l'impartialité du pouvoir judiciaire dans votre pays ? Dans l'affirmative, veuillez fournir toute information supplémentaire que vous jugez utile dans le cadre de cet exercice.

Pas d'observation sur ce point.

GEORGIA / *GÉORGIE*
Ministry of Justice
24/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

1.1 Measures taken to strengthen internal and external independence and impartiality of judges

During the last five years, tremendous positive developments have taken place in the Judiciary of Georgia that have greatly contributed to enhancement of independence, efficiency and accountability of the judiciary.

As a result of the four waves of the judicial reforms carried out in Georgia in the recent years (2013-2019), various legislative amendments had been adopted and became the basis for introducing the new institutions and innovative mechanisms to guarantee the independence, efficiency and accountability of the judiciary of Georgia and to ensure the protection of the judicial system from undue influence and interference. The constitutional reform of 2017 along with the four waves of the judicial reform has significantly enhanced both the individual independence of judges and the independence of the judiciary as a whole.

The introduction of the system of lifetime appointment of judges has been a crowning achievement of the past judicial reforms. Article 63 (6) of the Constitution of Georgia prescribes the rule for appointment of judges of common courts for life tenure. In particular, "judges of the common courts shall be appointed for life until they reach the age established by the organic law." In accordance with the legislation, appointment for 3-year period may be applied only in cases of initial appointment and until 31 December 2024.

In particular "before lifetime appointment of a judge, in case of the first appointment, the judge may be appointed for three-year term until 31 December 2024."[10]

Action C. of the Sofia Action Plan – Safeguarding and strengthening the judiciary in its relations with the executive and legislature

In order to ensure the independent and effective working of judicial councils (action C(i) of the Sofia Action Plan), the judicial reform in Georgia transformed High Council of Justice of Georgia (hereinafter the HCoJ) into a politically neutral body. The representatives of other branches of the government can no longer be members of the judicial council.

Furthermore, the constitutional reform of 2017 created stronger guarantees for the independence of the HCoJ by setting forth in the Constitution of Georgia the rule on the authority and the composition of the HCoJ.[11] Pursuant to Article 64(1) of the Constitution of Georgia, "the High Council of Justice of Georgia – a body of the common courts system – shall be established to ensure the independence and efficiency of the common courts, to appoint and dismiss judges and to perform other tasks."

[10] Art. 2. para. 3 of the Constitutional law of Georgia "On movement of the amendment to the Constitution of Georgia", (adopted on 13/10/2017). https://matsne.gov.ge/ka/document/view/3811818?publication=2
[11] Article 64 of the Constitution of Georgia.

According to the new wording of constitutional provision, "The High Council of Justice shall consist of 14 members appointed for a term of 4 years, and the Chairperson of the Supreme Court. More than half of the members of the High Council of Justice shall be members elected from among the judges by the self-governing body of judges of the common courts. In addition to the members elected by the self-governing body of judges of the common courts, and the Chairperson of the Supreme Court, the High Council of Justice shall have one member appointed by the President of Georgia and members elected by a majority of at least three fifths of the full composition of the Members of Parliament."[12] Furthermore, different procedure has been introduced for the election of the Chairperson of the HCoJ. In particular she/he will be elected by the HCoJ from the judge members of the HCoJ for the term of four years (The regulation was set forth in the law before 2016).[13]

In accordance with Article 47(2) of the Organic Law of Georgia "On Common Courts" (hereinafter the Organic Law) eight judge members of the HCoJ, of whom at least one member represents a court of every instance, shall be elected by a self-governing body of judges of the common courts of Georgia according to the procedure determined by Organic Law. As regards the election of non-judge members of the HCoJ "the Parliament of Georgia shall elect five members of the High Council of Justice of Georgia on a competition basis, by secret ballot, by a majority of less than three-fifths of full composition, under the procedure established by the Rules of Procedure of the Parliament of Georgia.

Candidates for membership of the High Council of Justice of Georgia shall be selected from among the professors and scholars working at higher education institutions of Georgia, members of the Bar Association of Georgia and/or the persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia, upon recommendation of a collegial management body of the organisation concerned. One of the fields of activity of the above non-entrepreneurial (non-commercial) legal entities shall be, for at least the last two years before the announcement of the competition, participation with representative authority in court proceedings. Each of the organisations mentioned above may present a maximum of three candidates for membership of the High Council of Justice of Georgia to the Parliament of Georgia. A member of the Parliament of Georgia, a judge or a prosecutor may not be nominated as candidates for membership of the High Council of Justice of Georgia."[14] The same requirements shall be met by the member of the HCoJ appointed by the President of Georgia".[15]

In 2017, it was set forth in the Constitution of Georgia that the HCoJ shall be accountable before the self-government body – the Conference of Judges – which consists of all judges of common courts.[16]

Noteworthy, as a consequence of the Fourth Wave of the Judicial Reform, in December 2019, the Parliament of Georgia adopted the new provisions regulating the activities of the HCoJ. Importantly, it became mandatory for the HCoJ to provide reasoning for its decisions.

In terms of financing, Common courts are financed from the State Budget of Georgia. To this end the HCoJ is authorized to submit the draft law on budget dealing with the financing of common courts (except for the Supreme Court). Before the Parliament of Georgia considers a revised version of the draft Law on the State Budget the HCoJ is entitled to submit opinions to the Parliament on the draft law on State Budget in the part of financing of Common Courts. Furthermore, the expenses allocated to the State Budget of Georgia for Common Courts may be reduced compared to the corresponding amount of the previous year only with a prior approval of the HCoJ.

In order to ensure an adequate participation of the judiciary in the selection, appointment and promotion of judges, whilst limiting excessive executive or parliamentary interference in the process (action C(ii) of the Sofia Action Plan), in Georgia, the HCoJ is the only responsible body for the selection and appointment of judges of the first and the second instance courts. The executive or parliamentary interference is wholly excluded in the process.

In 2017, within the framework of the so called "the Third Wave of judicial reform", significant legislative amendments were adopted regulating in details the criteria and the procedure on initial selection/appointment of judges of the first and the second instance courts.

[12] Article 64(2) of the Constitution of Georgia.
[13] Article 64(2) of the Constitution of Georgia.
[14] Article 47(5) of the Organic Law of Georgia "On Common Courts".
[15] Article 47(11)[1] of the Organic Law of Georgia "On Common Courts".
[16] Article 64.3 of the Constitution of Georgia.

Furthermore, in 2019, within the framework of so called "the Fourth Wave of judicial reform" additional guarantees have been set forth in the legislation such as the regulation of conflict of interest *inter alia* in relation to the selection procedure of judges. Furthermore, it became mandatory for the HCoJ to provide reasoning for its decisions, including those related to appointment of judges. The law provides now for the possibility to appeal the decisions of the HCoJ.[17]

Therefore, as a result of legislative amendments of 2017 to the Organic Law, judges shall be selected based on competitive procedures and the merit.

In order to ensure the merit-based, objective and transparent judicial appointments, Georgia has reformed the previous system and currently the law stipulates the detailed procedure for selection and appointment of judges.

In particular, once the vacancy is announced and interested candidates apply for the vacancy, the HCoJ reviews the applications of candidates participating in the competition. Evaluation of a candidate for a judge shall be conducted by the HCoJ based on two main criteria - integrity and competence. There are two different procedures for evaluation of a candidate for judge: evaluation of a candidate for judge with prior judicial experience[18] and a candidate without judicial experience.[19]

Candidates for judge without judicial experience shall be evaluated by the HCoJ according to the criteria of integrity and competence, based on interviews conducted with them, and the information obtained (background checks).

Current and former judges, who have at least 3 years of experience of working as judges, shall be evaluated on the basis of the criteria - integrity and competence, the examination of cases, the points-based assessment system and the forms filled out by members of the HCoJ independently after the interview.[20] While assessing a candidate with prior judicial experience, evaluators shall study/examine 5 cases on which the decisions had been taken by a judge concerned. These should be the cases on which summary/final decisions had entered into force, including, at least, two cases on which the summary/final decisions had been overturned/partially overturned (if any) by a higher instance court (if any). The 5 cases shall be selected randomly.[21]

Judicial candidates shall be evaluated on the basis of the information obtained about them and the interviews conducted with them. In the course of evaluation of a candidate, each member of the HCoJ is required to fill an assessment sheet. When evaluating a candidate to the office of a judge by the *integrity* criterion, consideration shall be given to the characteristics of the integrity.

On the basis of analysis and collating of these characteristics, the HCoJ shall make one of the following conclusions: a candidate fails to meet integrity criterion; a candidate meets integrity criterion; candidate fully meets integrity criterion. Evaluation of a candidate to the office of a judge by the *competence* criterion shall be performed by use of points, according to the characteristics of the competence criterion.

After the HCoJ votes for the assignment of a judge to an office, a reasoning for the decision shall be published on the webpage of the HCoJ.[22]

Another novelty introduced as a result of judicial reform is the regulation of the procedure for collection of information about a candidate to the office of a judge.[23] Pursuant to the amendments, after verifying that the applications and the enclosed documents submitted by the candidates comply with the requirements defined by the law, the relevant structural unit of the HCoJ commences the collection of reliable information about the candidate prior to their interviewing.

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[17] Articles 35^4 of the Organic Law of Georgia "On Common Courts".
[18] A candidate to the office of a judge with judicial experience shall be evaluated on the basis of Article 36^3 and paras 7 and 8 of Article 36^4 of the Organic Law "on Common Courts".
[19] A candidate to the office of a judge without judicial experience shall be evaluated on the basis of paras 3-16 of Article 35^1 of the Organic Law "on Common Courts".
[20] Article 35.9 of the Organic Law of Georgia "On Common Courts".
[21] Article $35^1.2$ of the Organic Law of Georgia "On Common Courts".
[22] Article 36.4^2 of the Organic Law of Georgia "On Common Courts", a member of the HCoJ shall be authorized to write a dissenting opinion, which shall be also published.
[23] Article 35^2 of the Organic Law of Georgia "On Common Courts".

The relevant unit is entitled to collect *inter alia* the information on a candidate's past criminal/disciplinary prosecution as well as the information about entrepreneurial and non-entrepreneurial activities, sources of income, assets declarations, tax obligations, debts, etc.[24] In the course of the process the unit thoroughly studies the professional reputation and activities of the candidates. A candidate has the right to have access, both before and after the interview, to the information obtained about him/her.[25]

On the basis of the amendments of 2017, a judicial candidate has been granted the right to appeal the decision of the HCoJ on the refusal to appoint him/her on the position of a judge either for a three-year term or life tenure to the Qualification Chamber of the Supreme Court of Georgia. The decision of the HCoJ may be appealed, if: a) the decision-maker was biased; b) the decision-maker demonstrated discriminatory approach; c) the decision-maker exceeded his/her authorities granted by the legislation of Georgia thereby causing a violation of the candidate's/judge's rights or jeopardizing judicial independence; d) information on which the impugned decision rests is essentially false and the candidate has adduced relevant evidence to that effect; e) the competition was held in breach of the established legal procedure to an extent as to be able to essentially affect the final outcome.[26]

In order to prevent the conflict of interest at the HCoJ during the recruitment procedure, Article 35^3 was added to the Organic Law. According to the new regulation, during competition for holding the office of a judge, a candidate for judge may, based on a substantiated motion, request the recusal of a member of the HCoJ if there is a conflict of interest. Moreover, in case of a conflict of interest, the member of the HCoJ is required to make a statement about his/her withdrawal in advance and refuse to participate in a decision-making process.[27]

Additionally, a member of the HCoJ shall not participate in the procedures of a competition for holding a post of a judge as a member of the HCoJ if he/she himself/herself participates in the competition for holding this vacancy of the office of a judge.[28]

Currently, there are 328 judges in all three instance courts: 176 female judges and 152 male judges. There are four female judge members out of the overall nine judge members at the High Council of Justice of Georgia.

Only the HCoJ is entitled to adopt a decision on promotion of a judge. In particular, a judge of a district (city) court may be appointed by the HCoJ in the Court of Appeals if he/she has exercised judicial powers in a district (city) court during at least five years.[29]

The necessity for the development of the system of promotion of judges has been set forth in the EU-Georgia Association Agreement and Association Agenda

The constitutional reform of 2017 created stronger guarantees for the judicial independence by setting forth the rule on appointment of judges of the Supreme Court. According to the constitutional amendments, now the HCoJ (instead of the President of Georgia, that was the previous practise) is entitled to select and nominate candidates of judges of the Supreme Court before the Parliament.[30] The Parliament makes the final decision on appointing the candidate to the position of a judge of the Supreme Court.

The HCoJ shall vote for those candidates who have obtained not less than 70% of the maximum number of points in competency criteria, and who are considered by at least 10 members of the judicial council to be complying with the integrity criteria. Upon the completion of the voting, the HCoJ adopts a Decree indicating those candidates who succeeded to the next stage and those who failed. A list of the

[24] Decision of the HCoJ N308 of 9 October 2009 "on approval of the rule on selection of judicial candidates".
[25] Article 35^2 of the Organic Law of Georgia "On Common Courts".
[26] Article 35^4 (1) of the Organic Law of Georgia "On Common Courts".
[27] Article 35^3.2 of the Organic Law of Georgia "On Common Courts".
[28] Article 35^3.3 of the Organic Law of Georgia "On Common Courts".
[29] Article 41 of the Organic Law of Georgia "On Common Courts".
[30] Article 61.2 of the Constitution of Georgia, upon nomination by the HCoJ, the judges of the Supreme Court shall be elected for life, until they reach the age established by the Organic Law, by a majority of the full composition of the Members of Parliament.

Candidates who succeeded to the next stage, the Decree of the HCoJ and the reasoning of the members of the HCoJ shall be published on the webpage of the HCoJ.[31]

Following the publication of the list of candidates who moved to the next stage, the HCoJ votes for the candidates for a judge of the Supreme Court to be nominated before the Parliament.[32] A candidate shall be considered nominated if at least two-thirds of the full composition of the HCoJ vote for him/her at an open session of the HCoJ.[33]

The relevant decision of the HCoJ on nomination of candidates together with the reasoning provided by the members of the HCoJ shall be published on the webpage of the HCoJ. [34]

A member of the HCoJ may render dissenting opinion in a written form which shall be submitted to the Parliament of Georgia and shall be also published on the webpage of the HCoJ.[35]

The HCoJ shall provide the Parliament of Georgia with all information and documentation published on website of the HCoJ with regard to the selection procedure concerned.[36]

One of the novelty of the new procedure is the requirement by the HCoJ to reason its decisions at all stages of the selection and the right to appeal a decision of the HCoJ at any stage of the selection of judicial candidates of the Supreme Court.[37] Furthermore, the legislative amendments concerned have provided for the rule on background checks (collecting reliable information) on all registered candidates.[38]

After nomination of the candidates, following interviews by the Parliamentary Committee, those nominees receiving a majority of votes of the Parliament (in full composition) are appointed to the Supreme Court.

In order to limit excessive executive and parliamentary in the disciplining and removal of judges (action C(iii) of the Sofia Action Plan), the constitutional amendments of 2017 created further guarantees for irremovability of judges and enhancement of the protection of independence of judiciary and particular judges from undue influence.

One of the pivotal outcomes of the reform was the introduction of the system of lifetime appointment of judges. Additionally, under the Constitution, the reorganization or liquidation of the court shall not be the basis for dismissing a judge appointed for life.[39] Similarly, a judge of the common courts may be removed from consideration of a case, dismissed or moved to another position only in cases defined by the Organic Law.[40]

Furthermore, only the HCoJ is entitled to dismiss the judges of first instance courts and appellate courts by a majority of two-thirds of the full composition.[41] As regards the Chairperson of the Supreme Court and a judge of the Supreme Court, they may be dismissed only by way of impeachment.[42] The detailed grounds for dismissal of common court judges are prescribed by Article 43 of the Organic Law.[43]

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[31] Article 34^1.12 of the Organic Law of Georgia “On Common Courts”.
[32] Article 34^1.13 of the Organic Law of Georgia “On Common Courts”.
[33] Article 34^1.13 of the Organic Law of Georgia “On Common Courts”.
[34] Article 34^1.13 of the Organic Law of Georgia “On Common Courts”.
[35] Article 34^1.14 of the Organic Law of Georgia “On Common Courts”.
[36] Article 34^1.14 of the Organic Law of Georgia “On Common Courts”.
[37] Articles 34^1.5 and 34^3 of the Organic Law of Georgia “On Common Courts”.
[38] Article 34^2 of the Organic Law of Georgia “On Common Courts”.
[39] Article 63.5 of the Constitution of Georgia.
[40] Article 63.5 of the Constitution of Georgia.
[41] Article 42.3 of the Organic Law of Georgia “On Common Courts”.
[42] Article 42.1 of the Organic Law of Georgia “On Common Courts”.
[43] a) a personal application; b) committing disciplinary misconduct; d) being recognised by court as having limited competence or as a beneficiary of support, unless otherwise determined under court decision; e) termination of Georgian citizenship; f) entry into force of a final judgment of conviction against him/her; g) reaching the age of 65; h) committing a corruption offence as determined in Article 20(6) of the Law of Georgia on Conflicts of Interest and Corruption at Public Institutions; i) death; j) liquidation of the court, redundancy of the judge’s office; k) appointment (election) to another court; l) appointment (election) to another agency; m) expiration of tenure.

It should be noted, that in case of committing disciplinary misconduct, the relevant submission of the Disciplinary Panel of judges of common courts shall be necessary for the HCoJ to dismiss a judge.[44] However, committing a disciplinary misconduct shall not be the ground for termination of the authority of the chairperson of the Supreme Court and a judge of the Supreme Court.[45]

The legislative amendments adopted in 2017-2019 within the framework of the so-called "Third and Fourth Waves" of the judiciary reforms have introduced a number of novelties guaranteeing the accountability of the judiciary and the due and independent disciplinary proceedings against judges. The law prescribes in detail the grounds for disciplinary liability of judges and the procedures for all stages of disciplinary proceedings.

Noteworthy, the legislative amendments of 2017 abolished the previous practice according to which the court chairpersons were entitled to initiate disciplinary proceedings against judges.

One of the significant outcomes of the reform was the introduction of the institute of Independent Inspector in 2017. The Independent Inspector operates independently from the HCoJ and ensures an objective and unbiased examination of alleged disciplinary misconducts of judges.

Pursuant to the current legislation, only the Independent Inspector is entitled to initiate the disciplinary proceedings and conduct the preliminary examination and investigation of an alleged disciplinary misconduct. The inspector has his own apparatus and his financial independence is ensured by the Organic Law.[46]

The court chairperson, like any judge of the common courts, is entitled only to address the Independent Inspector with an explanatory note indicating the disciplinary misconduct committed allegedly by a judge.[47] Thus, any influence of the court chairperson on judges has been entirely excluded in this regard.

One of the directions that the "Fourth Wave" of the judicial reforms targeted, was the regulation of the disciplinary proceedings in line with international standards and further enhancement of the guarantees of the Independent Inspector.

To this end, in December 2019 the Parliament of Georgia adopted the new regulations on disciplinary proceedings against judges.

Noteworthy, the precise grounds for disciplinary liability are now set forth in the Organic Law. The new grounds conform to the international standards and distinguish the standards of professional conduct from the disciplinary rules. Pursuant to the new regulations, only intentional or negligent behaviours of a judge that are listed in the law may constitute a disciplinary misconduct. According to the amendments, disciplinary liability for the misconduct of minor significance can no more be imposed. The breach of the rules of Judicial Ethics as a basis for imposing a disciplinary liability has been excluded from the law as well. Noteworthy, the Organic Law has specified the corruption offenses that may serve as a basis for disciplinary liability.[48]

Furthermore, in order to ensure that the rules relating to judicial accountability and the review of court decisions fully respect the principles of judicial independence and impartiality, the Organic Law sets forth the following provisions: "an incorrect interpretation of a law, which is based on judge's inner conviction, shall not constitute disciplinary misconduct, and disciplinary liability shall not be imposed on a judge for such conduct".[49] "During disciplinary proceedings, supervision over legality of the acts issued by a judge shall not be permitted".[50] Therefore, the court decisions may only be reviewed by the upper instance court.

Currently, four different bodies are involved in disciplinary proceedings against judges: Independent Inspector, the HCoJ, the Disciplinary Panel of Judges of the Common Courts, and the Disciplinary

[44] Article 43.2 of the Organic Law of Georgia "On Common Courts".
[45] Article 43 (2^1) of the Organic Law of Georgia "On Common Courts".
[46] Article 51^1 of the Organic Law of Georgia "on Common Courts".
[47] Article 75^5 .1(b) of the Organic Law of Georgia "on Common Courts".
[48] Article 75^1 of the Organic Law of Georgia "on Common Courts".
[49] Article 75^1.6 of the Organic Law of Georgia "on Common Courts".
[50] Article 75^{10}.5 of the Organic Law of Georgia "on Common Courts".

Chamber of the Supreme Court. Noteworthy is the fact that the separation of powers between the different bodies involved in the disciplinary proceedings and the composition of these bodies ensure the exclusion of any possibilities of undue influence or interference in the decision-making process.

The Organic Law correspondingly separates the disciplinary proceeding and disciplinary prosecution from each other: Independent Inspector is able to initiate disciplinary proceedings against a judge, whereas the HCoJ has an authority to initiate the disciplinary prosecution. More precisely, as a result of the examination of the conclusion submitted by the Independent Inspector, made after the preliminary examination of an alleged disciplinary misconduct of a judge, the HCoJ shall adopt a reasoned decision to terminate the disciplinary proceedings or to initiate disciplinary prosecution against the judge and to take explanations from the judge concerned.[51] Whereas, following the initiation of disciplinary prosecution against the judge and having taken an explanation from the judge concerned, the HCoJ shall adopt a reasoned decision to terminate disciplinary proceedings or to impose disciplinary liability on a judge.[52]

Thus, the HCoJ is only entitled to initiate the disciplinary prosecution, terminate the disciplinary proceedings or impose a disciplinary liability upon a judge. In case the HCoJ adopts a decision on imposing a disciplinary liability on a judge, the disciplinary case shall be forwarded to the Disciplinary Panel of Judges of Common Courts of Georgia. The Disciplinary Panel shall adopt a decision on acquittal or impose a disciplinary penalty/a disciplinary measure against a judge.[53] A decision of the Disciplinary Panel may be appealed to the Disciplinary Chamber of the Supreme Court[54].

As it was already noted, the rules for the election of the Independent Inspector and the compositions of the remaining three institutes involved in the different stages of the disciplinary proceedings, further eliminate any possibility of undue influence or interference in the process of making decisions on alleged disciplinary misconduct of judges.

In particular, the Independent Inspector is elected by the HCoJ on the basis of a competition, for a term of five years. According to the Organic Law, the Independent Inspector may not hold any other office in civil service or a municipal body.[55]

The Disciplinary Panel is composed of 5 (3 judge and 2 non-judge) members. The judge members are elected by the Conference of Judges, while the non-judge member are elected by the Parliament of Georgia from among the professors, academic researchers employed in the higher education institutions of Georgia, members of the Georgian Bar Association and/or persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia.[56] It should be underlined that the Organic Law explicitly prohibits the chairperson of a Supreme Court, his/her first deputy or a deputy, chairperson of a court, his/her first deputy or a deputy, as well as the chairperson of a judicial panel or a chamber from holding the position of a member of the Disciplinary Panel.[57] As for the Disciplinary Chamber, its members are elected by the Plenum of the Supreme Court from among the members of the Supreme Court (regulation set forth before 2016).[58]

Additionally, the new legislative amendments elaborated in the course of the judicial reforms introduced a number of novelties guaranteeing the due and independent process for a judge in disciplinary proceedings:[59]

The relevant judge shall be immediately notified of the complaint against him/her. More precisely, apart from notifying the relevant judge of receiving a complaint, application or any other information on committing disciplinary misconduct by a judge, shall be forwarded to the author of an appeal (application) and the judge concerned;

[51] Article 75^{8}.1 of the Organic Law of Georgia “on Common Courts”.
[52] Article 75^{13}.1 of the Organic Law of Georgia “on Common Courts”.
[53] Article 75^{41} of the Organic Law of Georgia “on Common Courts”.
[54] Article 75^{54} of the Organic Law of Georgia “on Common Courts”.
[55] Article 51^{1} of the Organic Law of Georgia “on Common Courts”.
[56] Article 75^{19} of the Organic Law of Georgia “on Common Courts”.
[57] Article 75^{19}.4 of the Organic Law of Georgia “on Common Courts”.
[58] Article 19 of the Organic Law of Georgia “on Common Courts”.
[59] The procedural guarantees of the due process for a judge in the disciplinary proceedings are set forth in Articles 75^{4} ,75^{5}, 75^{10}, 75^{15} 75^{16}, 75^{19}, 75^{28}, 75^{32}, 75^{33}, 75^{34}, 75^{35}, 75^{41}, 75^{47}, 75^{54} და 75^{60} of the Organic Law of Georgia “on Common Courts”.

Involvement of a judge in the disciplinary proceedings against him/her is ensured at every stage of the proceedings;

The judge has the right to file a motion for recusal of the Independent Inspector, as well as the members of the Disciplinary Panel and the Disciplinary Chamber;

The judge is entitled to request the public hearing of his/her case;

The decisions of the Independent Inspector and the HCoJ on termination of the disciplinary proceedings against a judge shall be communicated to the respective judge and shall be published on the webpage of the HCoJ without identifying information of the judge concerned and the parties to the disciplinary proceedings. In case the judge requests that the disciplinary proceedings be public, the decision of the HCoJ to terminate disciplinary proceedings against the judge concerned shall be published with identifying information of the judge;

The judge is able to benefit from the services of an advocate/lawyer;

The standards of proof have been introduced in disciplinary proceedings. In particular, when making a conclusion the Independent Inspector shall apply the reasonable supposition standard. And while making a decision on imposing a disciplinary liability the HCoJ shall apply the prima facie standard.

To ensure the independence of a judge, the Organic Law prohibits withdrawal of a judge from considering a case and exercising other official powers due to the initiation of disciplinary proceedings against him/her, imposition of disciplinary liability or imposition of disciplinary liability and penalty on him/her, except as provided for by law. [60]

Taking into account the dismissal of a judge is a measure of last resort, the Disciplinary Panel shall make a decision on dismissing a judge from the post if, based on the gravity and number of a specific disciplinary misconduct, and considering a previously committed disciplinary misconduct, it deems it inappropriate that this judge continue to exercise his/her judicial powers. [61]

Action D. Protecting the independence of individual judges and ensuring their impartiality

The third stage of the judicial reform was focused on the guarantees of independence of individual judges. Together with other issues it has introduced the random allocation principle of the cases. Consequently, the chairpersons do not have the discretion in the process of the case allocation anymore that excludes any suspicions about their inappropriate interfering in the activities carried out by the individual judge.

Additionally, the chairpersons are not authorized to initiate disciplinary proceedings against judges anymore. The function is transferred to the independent inspector and the High Council of Justice. The amendment was directed to strengthen the principle of equality between the judges. Besides, transfer of a judge to a different court is clearly regulated. Particularly, transfer of a judges without their consent is allowed only in the exceptional circumstances and from the closely situated courts for a one-year period only. Also, the administrative functions of the court chairs are distributed; specifically, the court staff are managed by the court manager, the chairpersons retain supervisory functions.

In order to limit interference by the judicial hierarchy in decision making by individual judges in the judicial process, one of the pivotal outcomes of the so-called “the Third Wave” of judicial reforms was the introduction of the electronic system of random assignment of cases to judges. Since 31 December 2017, the system has been fully applied within the entire judiciary (in all three instance courts).

Thus, since 31 December 2017 the cases are assigned to judges according to the principle of random distribution, on the basis of a number generating algorithm. The program distributes cases based on the specialization of judges and applies to courts having at least two judges of the respective specialization.

[60] Article 75^{16} of the Organic Law of Georgia “on Common Courts”.
[61] Article 75^{50}.1 of the Organic Law of Georgia “on Common Courts”.

Responding to the challenges identified by the domestic and international organizations, the random distribution of cases ensures protection of the process from any kind of interference as well as fair division of labour among judges.

In order to protect the decision-making against undue influence or interference *(The regulations below were set forth before 2016)* Article 63 of the Constitution of Georgia sets forth the stronger guarantees for judicial independence. In particular "a judge shall be independent in his/her activity and shall only comply with the Constitution and law and any pressure upon a judge or any interference in his/her activity in order to influence his/her decision-making shall be prohibited and punishable by law."[62] The office of a judge shall be incompatible with any other office and remunerative activities, except for academic and pedagogical activities, as well as a judge is not allowed to be a member of a political party or participate in a political activity.[63]

Independence of a judge is also guaranteed by the Organic Law, by stating that a judge shall be independent in his/her activity and he/she may not be requested to report, or instructed as to which decision to make on a particular case.[64] Furthermore, "a government or local self-government body, agency, public or political association, official, legal or natural person shall be prohibited from encroaching upon the independence of the judiciary and any pressure upon a judge or any interference in his/her activity to influence the decision shall be prohibited and punished by law."[65]

Interference in decision-making process of a judge or a member of the HCoJ may be subject to disciplinary or criminal liability. In particular, according to Article 75^1 of the Organic Law, interference in the work of a judge by another judge, with the aim to influence the outcome of the case shall constitute the ground for disciplinary misconduct. In addition, the Criminal Code of Georgia provides for the liability for Gross Interference with Judicial Activities in Any Manner in Order to Influence the Legal Proceedings.[66] Moreover, any threat or violence with regard to a judge (or his/her close relatives or property) in connection with the court hearing of a case or material shall be punished.[67] As well as, unlawful interference with the activities of the members of the HCoJ shall be also punishable.[68]

In 2020, the draft Rules on Judicial Ethics had been elaborated with the involvement of the judges as well as the international experts and the civil society organizations. The relevant working group aimed at drafting the new Rules in compliance with international standards and best practices.

On 31 January 2020, the HCoJ officially approved the draft Rules on Judicial Ethics and submitted it to the Conference of Judges (Conference of Judges consists of all judges of common courts) for final adoption.[69] However, the process of adoption of the rules has been postponed due to the Covid-19 pandemic.

[62] Article 63 of the Constitution of Georgia, no one shall have the right to demand an account concerning a particular case from a judge and all acts restricting the independence of a judge shall be null and void.
[63] Article 63(4) of the Constitution of Georgia.
[64] Article 7 of the Organic Law of Georgia "on Common Courts".
[65] Article 8 of the Organic Law of Georgia "on Common Courts".
[66] Article 364 of the Criminal Code of Georgia.
[67] Article 365 of the Criminal Code of Georgia.
[68] Article 365^1 of the Criminal Code of Georgia.
[69] The draft Rules on Judicial Ethics adopted by the HCoJ set forth the rules on judicial conduct according to seven principles (1. independence, 2. impartiality, 3. integrity (inviolability), 4. propriety, 5. equality, 6. competence, diligence and fairness and 7. non-judicial activity), covering *inter alia* such issues as recusal, personal relations and avoiding the appearance of partiality, confidentiality of information, non-acceptance of gifts in connection with judicial duties, ancillary activities etc.).

To ensure comprehensive and effective training of the judiciary in effective judicial competences and ethics (action D(vi) of the Sofia Action Plan), during the reporting period, the High School of Justice, in cooperation of different donor organizations, organized following trainings for judges related to judicial independence and impartiality:

Training Topic	Number of Trainings	Number of Participant Judges
Judicial Ethics	10	144
Effective Review of Corruption Related Cases	6	7
Right to Fair Trial	2	40
Judge craft	1	13

In order to ensure that judges are protected by legal regulations and adequate measures against attack on their physical/mental integrity, their personal freedom and safety (action D(vii) of the Sofia Action Plan), the Constitution of Georgia sets forth that the State shall ensure the security/safety of a judge and his/her family.[70]

The Organic Law further guarantees the personal freedom and safety of a judge and states that in order to ensure the independence of judges, the State shall create dignified living and working conditions, and protect the safety of judges and their families. If the life or health of a judge is at risk, on the decision of the Prime Minister of Georgia, and based on the application of the judge, the competent state authorities shall ensure the protection of the judge and his/her family members according to rules contained in the legislation of Georgia. [71]

In addition, Criminal Code and the Code on Administrative Offences prescribe liability for infringement of safety of a judge. In particular, Criminal Code provides for Contempt of Court Manifested in the Insult of a Judge or a Juror as a crime, which shall be punishable by a fine or corrective labor from one to two years, or with imprisonment for up to two years.[72]

Violating the rules for organizing or holding assemblies or demonstrations, in particular blocking a courthouse entrance, holding assemblies or demonstrations at the place of residence of a judge or in common courts of Georgia shall carry an administrative detention for up to 15 days.[73]

1.2 Measures taken to strengthen internal and external independence and impartiality of prosecutors

Action E. of the Sofia Action Plan – Reinforcing the independence of the prosecution service

After the amendment of the Constitution of Georgia in 2017, the Prosecution Service of Georgia (hereinafter “PSG”) is a separate branch of power and is no longer under the umbrella of the Ministry of Justice.[74] Additionally, clear prohibition of any interference in individual investigations and prosecutions is enshrined in the Organic Law of Georgia on the Prosecution Service (hereinafter “OLPS”).[75]

Since the Constitutional amendments of 2017, instead of the Minister of Justice, the head of the PSG is now the Prosecutor General, who acts independently from the ministers of the executive branch. According to the OLPS adopted in 2018, the activities of the PSG are governed by Councils, which are currently 4:

- Prosecutorial Council;
- Career Management, Ethics and Incentives Council;
- Strategic Development and Criminal Justice Policy Council;
- Ranking Council.

[70] Article 63.3 of the Constitution of Georgia.
[71] Article 68.2 of the Organic Law “on Common Courts”.
[72] Article 366 of the Criminal Code of Georgia.
[73] Article 174^1.3 of the Code of Georgia on Administrative Offences.
[74] Constitution of Georgia, article 65.
[75] OLPS, Article 6.

The Prosecutorial Council is competent to select a candidate for the Prosecutor General, conduct disciplinary proceedings against the First Deputy Prosecutor General and Deputies of the Prosecutor General, decide on the issue of applying a disciplinary sanction or prematurely revoking it in relation to a member of the Prosecutorial Council elected by the Conference of Prosecutors, hear a report of the Prosecutor General, First Deputy Prosecutor General or Deputy Prosecutor General on the activities of the Prosecution Service (*except for individual criminal cases)*, issue recommendations for the attention of the Prosecutor General and decide the matters of early termination of Council's membership.

The Prosecutorial Council is composed of 15 members, out of which 7 are non-prosecutors. The Prosecutorial Council is authorized to conduct meeting, if the half of its full composition is present. The Prosecutorial Council needs votes of not less than 2/3 of its full membership for electing the candidate for the Prosecutor General. Same number of votes is necessary for the Prosecutorial Council to impose disciplinary sanctions against the First Deputy Prosecutor General, Deputy Prosecutor General and elected prosecutor/investigator members of the Prosecutorial Council. For any other decision, the Prosecutorial Council needs the support of the half of its members present on the meeting *(Article 19 of the OLPS)*.

The Career Management, Ethics and Incentives Council (Statute was adopted in April 2019 by the Prosecutor General) - under Article 21 of the OLPS is advising the Prosecutor General on the matters of career management, incentives and discipline of employees. It does not have members from outside of the PSG;

The Strategic Development and Criminal Justice Policy Council (statute was adopted in March 2020 by the Prosecutor General) - under Article 21 of the OLPS is advising the Prosecutor General on the matters of strategic development of the Prosecutor's Office and the criminal justice policy;

The Ranking Council (statute was adopted in September 2020 by the Prosecutor General) is advising the Prosecutor General on the matters of awarding ranks to prosecutors and investigators of the Prosecution Service.

As to the appointment of the Prosecutor General, the Constitution of Georgia *(Article 65)*, Organic Law of Georgia on Prosecution Service *(OLPS, Article 16),* Decree of the Prosecutorial Council on conducting consultations for selection of candidates[76] and Decree of the Prosecutorial Council on selection of candidates[77] regulate the rules and procedures for selection and appointment of the Prosecutor General. The key actors in this process are the Prosecutorial Council and Parliament of Georgia.

To be eligible for an appointment as a Prosecutor General, a person must be a citizen of Georgia with higher legal education and no criminal records, who has at least 5 years' experience of working as a judge on criminal cases, as a prosecutor or as a criminal defence lawyer. Alternatively, a person complying with the citizenship, education and no criminal records requirements is also qualified for the appointment, if he/she is a recognized criminal law expert from an academy or a civil society organisation with at least 10 years' experience in the legal profession. In both instances, a good reputation of a candidate, due to his/her decency and professional qualities, is essential.

No later than 6 months before the expiration of the tenure of the Prosecutor General or immediately, in case of early termination of office, the Prosecutorial Council starts one month consultations with academy, civil society organizations and criminal law experts for the selection of a candidate for the General Prosecutor. Based on the consultations, the Prosecutorial Council selects not less than three candidates the 1/3 of which must be of a different gender.

Afterwards, the Prosecutorial Council votes, by a secret ballot, on each of the selected candidates individually. The candidate, who receives most votes, but not less than 2/3 of the total composition of the Prosecutorial Council, is elected.

[76] Decree of the Prosecutorial Council on the Adoption of the Rule for Conducting Consultations to Select Candidates for the Prosecutor General;
[77] Decree of the Prosecutorial Council on the Adoption of the Rule for Selecting the Candidates for the Prosecutor General.

When the Prosecutorial Council selects a candidate, it presents him/her to the Parliament of Georgia together with a substantiation. The Parliament of Georgia elects the candidate as a Prosecutor General by a majority of its full composition. If the candidate does not receive the required number of votes, the Prosecutorial Council restarts the selection process, namely, consulting the academy, civil society organizations and criminal law experts.

The term of office of the Prosecutor General is 6 years. No person may be re-elected for a consecutive term.

As to the dismissal of Prosecutor General, the Prosecutor General can be removed from office only through an impeachment procedure.[78]The Parliament and Constitutional Court of Georgia play a key role in this process.

If the Prosecutor General violates the Constitution of Georgia or there are signs of crime in his/her actions, not less than 1/3 of full composition of the Parliament has the authority to trigger the impeachment procedure. If the Parliament initiates this process, it sends the matter to the Constitutional Court for a review. The Constitutional Court submits its conclusion to the Parliament within a month.

If the Constitutional Court finds the violation of the Constitution of Georgia or the signs of crime, within 2 weeks from receiving the Constitutional Court conclusion, the Parliament conducts discussion and voting on the impeachment. The Parliament impeaches the Prosecutor General if it has the support of majority of its full composition.

Funding received by the PSG is sufficient to ensure its autonomy. According to Article 71 §1 and §2 of the OLPS, the PSG is financed with appropriations allocated from the State Budget. Expenditures of the PSG must be provided for in the State Budget using a separate organisational code. Reduction of sums allocated in the State Budget for the PSG, compared to the budgetary funds of the previous year, may take place only upon the consent of the Prosecutor General. The state provides the logistical support to the PSG, including land, buildings, premises and equipment.

In order to provide appropriate legal guarantees for the recruitment, career development and security of employment or tenure of prosecutors (action E(i) of the Sofia Action Plan), in the reporting period Georgia:

1) Improved the process of selecting/recruiting prosecutors – The most commonly used mechanism for selection of prosecutors is an internship program. Apart from that, prosecutors can be appointed through competition and in exceptional circumstances, based on the criteria set forth in the OLPS and justified decision of the Prosecutor General, without internship and competition.

Detailed rules and procedures on selection and appointment of prosecutors are provided for by OLPS *(Article 34),* Order #039 of the Prosecutor General of Georgia on the Adoption of the Rule on Recruitment, Vetting, Competition, Internal Competition, Promotion, Demotion and Rotation of Employees at the Prosecution Service of Georgia *(the Rule on Recruitment and Promotion of Prosecutors)* and Order #040 of the Prosecutor General of Georgia on the Adoption of the Rule on Internship at the Prosecution Service of Georgia *(the Rule on Internship at the Prosecution Service).*

The above-mentioned orders were adopted on 26 August 2020 and entered into force on 27 August 2020. Since then, they are published on the website of the Legislative Herald of Georgia (Order#39, Order#40). According to the Organic Law of Georgia on Normative Acts and OLPS, both rules are part of the legislation of Georgia.

The Rule on Recruitment and Promotion of Prosecutors and the Rule on Internship at the Prosecution Service of Georgia explicitly provide that all decisions regarding appointment of prosecutors should be reasoned *(Article 1 § 5 and Article 2 § 3 respectively)* and that information on any decision taken under these rules should be published online *(Article 1 §6 and Article 7 §1 respectively)*.

[78] Article 48 of the Constitution of Georgia and Article 17 of the OLPS.

2) Improved the process of promoting prosecutors - Detailed rules and procedures regarding the promotion of prosecutors are provided for by OLPS *(Article 36)*, Order #039 of the Prosecutor General of Georgia on the Adoption of the Rule on Recruitment, Vetting, Competition, Internal Competition, Promotion, Demotion and Rotation of Employees at the Prosecution Service of Georgia *(the Rule on* Recruitment and Promotion of Prosecutors) and Order #040 on the Adoption of the Rule on Internship at the Prosecution Service of Georgia (the Rule on Internship at the Prosecution Service).

A prosecutor may be promoted to a managerial position based on the experience and conditions stipulated by Article 36 of the OLPS. As a rule, upon the recommendation of the Career Management, Ethics and Incentives Council, the Prosecutor General is authorized to decide on the promotion of a prosecutor, based on the following criteria *(Article 36 of the OLPS and Article 27 of the Rule on Recruitment and Promotion of Prosecutors)*:

- Length of work and experience;
- Competence;
- Personal and professional skills;
- Results of the performance appraisals.

The Prosecutor General may disagree with the recommendation of the Career Management, Ethics and Incentives Council, however, in the latter case, he/she has an obligation to substantiate the disagreement.[79]

In exceptional cases (*for high level performance of duties and/or achieving best results)*, the Prosecutor General is authorized to decide on the promotion of a prosecutor without a recommendation of the Career Management, Ethics and Incentives Council, based on the personal application of a prosecutor or reasoned nomination by a head of the structural division of the Prosecution Service and/or the Department for Supervision over Prosecutorial Activities and Strategic Development.

The Rule on Recruitment and Promotion of Prosecutors and the Rule on Internship at the Prosecution Service of Georgia explicitly provide that all decisions regarding the promotion of prosecutors should be reasoned *(Article 1 § 5 and Article 2 § 3 respectively)* and that information on any decision taken under these rules should be published on online *(Article 1 §6 and Article 7 §1 respectively)*.

3) Introduced the ranking system of employees -The Prosecution Service of PSG introduced the ranking system of employees. By the Order #36 of the Prosecutor General of Georgia dated August 21, 2020, the Rule of Ranking PSG Employees was approved. The purpose of ranking is to correctly plan and advance the career of the PSG employees, increase motivation and improve professional skills and capacities.

With a relevant order, the Prosecutor General of Georgia is able to promote a prosecutor and a PSG investigator to a higher rank, change and/or leave their rank unchanged on the basis of a recommendation provided by a deliberative body – the Ranking Council. The Ranking Council is composed of First Deputy Prosecutor General and other Deputy General Prosecutors, 8 prosecutor members of the Prosecutorial Council, Heads of the General Inspection Department, Department for Supervision over Prosecutorial Activity and Strategic Development and Human Resources Management and Development Department of Office of the Prosecutor General.

Granting/changing the rank of a prosecutor or a PSG investigator is done after two years of granting the previous rank, by considering evaluation results. Moreover, the rank may be granted/changed upon each performance evaluation, based on its results. Additionally, rank may be granted/changed without observing the timeframes, based on the reasoned and substantiated recommendation by a superior and/or by the Department for Supervision over Prosecutorial Activity and Strategic Development, or when rank demotion is imposed as a disciplinary penalty. On September 1, 2020, every prosecutor and PSG investigator was given the initial third rank.

[79] Article 4 §6 of the Charter of the Career Management, Ethics and Incentives Council adopted by the Prosecutor General on 22 April 2019 with Order #2

While evaluating candidates for promotion, the Ranking Council considers:

- Results of performance evaluation of the prosecutor and PSG investigator;
- Length of service of the prosecutor and PSG investigator, which should not be less than 2 years serving as prosecutor/investigator in order to grant the second rank, and not less than 3 years serving as prosecutor/investigator in order to grant the first rank;
- Information about incentives and disciplinary penalty;
- Information about being charged with especially responsible task;
- A recommendation (letter of recommendation) of the superior of the prosecutor/PSG investigator, which also includes information about the activities of the prosecutor/PSG investigator;
- A recommendation submitted by Department of the Office of Prosecutor General for Supervision over Prosecutorial Activity and Strategic Development;
- A recommendation submitted by the Prosecutor General, First Deputy Prosecutor General, or other Deputy General Prosecutors.

On December 22, 2020, the first session of the Ranking Council was held. At the session, the matters of granting ranks to the candidates nominated to the Council were reviewed. The Secretariat of the Ranking Council submitted materials to the Council on granting the first or second rank to 137 prosecutors and investigators. After voting, the Council decided to grant the first rank to 36 prosecutors/investigators, and the second rank to 74 prosecutors/investigators.

By the decision of the Prosecutor General based on the recommendations of the Ranking Council, 110 prosecutors/PSG investigators were granted a rank and relevant bonuses. Prosecutors and PSG investigators with the first or second ranks will be given relevant bonuses on a monthly basis.

4) Provided guarantees for prosecutors during disciplinary proceedings – The OLPS adopted in 2018 provides, that the prosecutor in the disciplinary proceedings has a right to employ a defence and provide his/her account regarding the matter at issue to the General Inspectorate and Career Management, Ethics and Disciplinary Council (Article 77 §4 (a), (b) and §7 of the OLPS).

The deputies of the Prosecutor General and elected prosecutor members of the Prosecutorial Council enjoy similar due process guarantees in disciplinary proceedings before the Prosecutorial Council (OLPS Article 19 §18)

A prosecutor has a right to appeal the decision of the Prosecutor General or Prosecutorial Council on imposition of disciplinary sanction to the court *(Article 76 §20 of the OLPS).*

In order to ensure that individual prosecutors are not subject to undue or illegal pressure from outside or within prosecution service, and that more generally the prosecution service is governed by the rule of law (action E(ii) of the Sofia Action Plan), based on Article 36 of the OLPS adopted in 2018, interference with the employee of Prosecutor's Service by public officials, political unions, their representatives or other persons who are not authorized by law to interfere with the work of the Prosecution Service or to influence it in any form and impede the activity of the Prosecution Service shall be punishable by law.

According to the OLPS, lawful orders of superior prosecutors regarding the organisation and activities of the Prosecution Service are mandatory for subordinated prosecutors. However, the legislation prohibits giving unlawful instructions to prosecutors. If prosecutor believes that he/she was given an unlawful instruction by a superior prosecutor, he/she has a right to report it to the PSG General Inspectorate, Prosecutorial Council or Parliament, depending on the rank of an implicated superior prosecutor. In particular, if the report is about the Prosecutor General, it should be addressed to the Parliament, if it is about the deputies of the Prosecutor General – to the Prosecutorial Council and if it is about any other superior prosecutor – to the PSG General Inspectorate.

If the prosecutor believes that due to a non-compliance with an instruction of a superior, he/she was unjustifiably imposed a disciplinary sanction, he/she has a right to appeal the decision on imposing disciplinary sanction to the court *(Article 76 §20 of the OLPS)*.

In order to take active measures to prevent and combat corruption within the prosecution service and build public trust in how it works (action E(iii) of the Sofia Action Plan), the OLPS adopted in 2018 provides, that once in six months, or based on the decision of the majority of the Prosecutorial Council

members – immediately, chief prosecutor submits report to the Prosecutorial Council (*Article* 19 *§13 of the OLPS*).

The report concerns the activities of the Prosecution Service, criminal justice, statistics, protection of human rights and freedoms in the criminal proceedings, issues of high public interest, priorities of the Prosecution Service, professional training and development programs of prosecutors. The report does not include details of the investigation of specific criminal case. The reports of the Chief Prosecutor to the Prosecutorial Council are publicly accessible.

Pursuant to Article 45 of the OLPS, the position of an employee of the Prosecution Service is inconsistent with any position at other state or local self-government authority, also with entrepreneurial or other paid activities, except scientific, creative or educational activities. The PSG employee is not allowed to be a member of a political union or to carry out political activities.

The Prosecutor's Office publishes its annual activity reports on its webpage. The Prosecutor's Office publishes press-releases and holds press-conferences on the cases of high public interest.

The reporting on individual cases to the Parliament or to the Executive is prohibited by the legislation of Georgia. Additionally, the prosecutors do not enjoy the immunity, therefore they may be held accountable like any other citizen accountable under penal, administrative and civil laws for wrongdoings in carrying out of their work.

Recent important measure for upgrading the existing mechanism for prevention and combating of the conflict of interests and corruption within the Prosecution Service was the adoption of the Code of Ethics for prosecutors by Order#38 of the Prosecutor General on 26 August 2020. The aim of adopting the new Ethics Code was streamlining it with the provisions of the OLPS. Namely, certain provisions on disciplinary violations, which duplicated the OLPS provisions, had been removed from the Ethics Code. The Code defines in a thorough and precise manner the elements of disciplinary violations, disciplinary procedures and grounds for dismissal of prosecutors. Article 4 of the Code of Ethics mentions that the prosecutor should be guided by the principles of impartiality, fairness, objectivity, political neutrality, integrity, politeness, dignity and respect.

Based on Article 9 of the Code of Ethics the employee of the Prosecution Service shall strictly adhere to the principles of independence, impartiality and fairness from private interests while performing official duties. He should take effective steps to prevent even the impression of his bias. In respect of a particular criminal case, it shall not be subject to the influence of individuals (including officials and politicians), mass media or public opinion.

Prosecutor's work should meet standards of fairness, impartiality and effectiveness in any criminal case. The employee of the Prosecution Service shall respect the principles of innocence and equality before the law as the supreme legal values.

According to Article 22 of the Code of Ethics of the Prosecutors the employee of the Prosecution Service shall observe the requirements of the Law of Georgia on Conflict of Interest and Corruption in Public Service. The employee of the Prosecution Service shall not have private interests which are incompatible with the fulfilment of official duties.

An employee of the Prosecution Service having property or other personal interest towards the issue assigned to the competence of the Prosecution Service shall be obliged to declare a recusal and not participate in the review and settlement of such an issue. It is unacceptable for a prosecutor to carry out activities incompatible with the interests of the Prosecution Service.

Violation of PSG Ethics Code entails disciplinary responsibility. The PSG Ethics Code is publicly accessible on the official herald of Georgia as well as the webpage of the Prosecutor's Office of Georgia.

On 22 September 2020 the Office of the Prosecutor General of Georgia issued the Commentary to the Ethics Code and the Disciplinary Proceedings for the Employees of the Prosecution Service of Georgia, which was circulated to all PSG staff through email on the same day.

Notably, since January 2019 until 10 September 2020, the PSG trained 114 prosecutors and investigators around the draft Commentary, where its drafters discussed with the attendees the details of the rules of conduct and disciplinary violations contained in the draft document.

What concerns the renumeration of prosecutors, Article 81 of the OLPS adopted in 2018, provides for the rules for remuneration of prosecutors. According to this Article *(§2)*, the remuneration of a prosecutor consists of a salary, salary increment and monetary reward, which may include the salary for a rank and salary increment for years of service.

The criteria for salary increments are set forth in Article 81 (§3) of the OLPS, which stipulate that in view of the overtime work and/or additional functions, as well as particularly important responsibilities, the Prosecutor General determines the salary increments for prosecutors from the allocated funds for salaries. Notably, after the implementation of the grading system reform, since December 2020 the portion of salary increments is allocated based on the grades of prosecutors.

It is inadmissible to reduce the salary of a prosecutor while he/she is in office, except deducting 30% of salary for no more than 6 months as a sanction for a disciplinary violation *(Article 81 §6 of the OLPS)*.

The PSG has one of the most competitive salaries in the country. The PSG provides its employees with medical insurance and retirement packages. It covers the housing costs for the employees having no leaving conditions near their working place.

Daily allowances, including accommodation, meals and travel expenses are provided to prosecutors when they are on a business trip domestically or abroad.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

The Organic Law prohibits *ex parte* communication with judges of common courts.[80] In particular, at the stage of criminal investigation or from the moment a case is submitted to a court until the court judgment enters into force, any communication with a judge on the part of the party to the proceedings, an interested person, a public servant, a state servant, a state political official and a political official, if such communication is related to the consideration of a case and/or to a presumable result of a case, and which fails to comply with the principles of independence and impartiality of the court/judge, and of the adversarial nature of legal proceedings, are prohibited.[81]

In the reporting period, there have been three cases of *ex parte* communication with judges. More precisely, in 2016, 2019 and 2020 an interested person, an advocate and a party to the proceeding, respectively, communicated with the judges with regard to the specific cases and their outcomes. In all the three cases the judges notified in writing the chairpersons of respective courts (the relevant persons prescribed by law) and penalties (fine) have been imposed on the infringers. Furthermore, the case of *ex parte* communication with the judge by the advocate concerned was referred to the Georgian Bar Association by the Secretary of the HCoJ and the disciplinary proceeding has been initiated against the advocate on the basis of violation of the Code of Professional Ethics for Lawyers.

Furthermore, in order to ensure the effective communication with the society and provide the public with explanations on specific legal proceedings, the HCoJ adopted regulations concerning the speaker

[80] Chapter XII[1] of Organic Law of Georgia “on Common Courts “.
[81] Article 72[1] of Organic Law of Georgia “on Common Courts “.

judges of common courts. In 2018, the HCoJ assigned particular judges to the position of speaker judges. The speaker judges are required to ensure informing the society about the decisions of common courts and in case of neccessity interpret them without bias. In order to enhance the capacities of the speaker judges, they have been trained in the field of effective communication.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

N/A

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

N/A

GERMANY / *ALLEMAGNE*
Federal Ministry of Justice and Consumer Protection
02/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

As is well known, Germany has a federal structure of government whereby the individual federal *Länder* are in principle responsible for the court system. In order to sustainably and permanently strengthen the justice system and the rule of law, the Federation and the *Länder* agreed a "Pact for the Rule of Law" on 31 January 2019. With this pact, the Federal Government is providing the *Länder* with one-time funding in the amount of 220 million euros to create many new posts for judges and public prosecutors as well as the requisite non-legal staff. Within its own area of responsibility, the Federal Government is additionally creating 24 new posts at the Federal Court of Justice and 71 new posts at the Office of the Federal Prosecutor General with the aim of strengthening the justice system. This improved staffing situation also has a positive impact on judicial independence and impartiality.

As part of this rule of law offensive, the Federal Ministry of Justice and Consumer Protection launched a nationwide campaign in September 2019 to draw wider public attention to the importance of the rule of law. The campaign vividly illustrates the advantages and achievements of the rule of law, thereby making it more visible and easier to understand. The campaign focuses on fundamental rights such as freedom of expression, freedom of assembly and freedom of religion which are governed by the rule of law and guaranteed for all citizens. In addition, key rule of law principles such as the presumption of innocence and judicial independence are also addressed.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

. / .

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

The rule of law is one of the core values of the Council of Europe. Anti-democratic and authoritarian challenges and attacks on judicial independence – both internal and external – are currently on the rise. For this reason, all member states of the Council of Europe are called upon to stand resolutely in support of the rule of law and democracy.

Germany therefore welcomes the wide-ranging measures initiated by the Council of Europe in this Action Plan with the aim of addressing threats to the rule of law and judicial independence in particular. The same also applies to the comprehensive Rule of Law Report published by the European Commission. As an EU member state, Germany sees this report as a very important stocktaking exercise in the context of strengthening rule of law structures in Europe. In this context, it is important to join forces wherever joint action can have a greater impact and lead to more decisive advocacy for the rule of law and judicial independence. In order to maximise efficiency, possibilities could therefore be explored as to how to better pool and optimally utilise the synergies between the Council of Europe and the EU in order to avoid duplication of efforts and to derive a mutual benefit.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

a) Germany would like to take this opportunity to address the topic of judicial self-government, which is often viewed critically in Germany in the context of discussions on judicial independence. Although Germany does not provide for judicial councils, judicial independence is fully guaranteed. Indeed, it is important not to conflate the question of institutional self-organisation of the judiciary (in the form of judicial councils) with the concept of judicial independence. The latter is unconditionally guaranteed in Germany.

Article 92 of the Basic Law of Germany [*Grundgesetz* – GG] stipulates that judicial power shall be vested in judges. Under Article 97 (1) GG, judges are independent and subject only to the law; this provision guarantees all judges professional independence from instructions (including instructions from the judicial apparatus) and also protects them from any other indirect or direct influence on their decisions. Article 97 (2) GG furthermore guarantees personal independence to judges who exercise their office as their primary occupation and have been permanently assigned to a post by ensuring that they cannot, as a rule, be transferred or removed from office against their will. Moreover, judges are generally appointed for life.

The guarantee of judicial independence enshrined in the constitution is fundamental to the German legal system. It ensures that judges can take their decisions free from any political or other influence. If a judge or a party involved in the proceedings believes that judicial independence has been breached, a complaint may be lodged before the Federal Constitutional Court.

Furthermore, despite the absence of judicial councils, the German justice system nevertheless provides for numerous bodies of judicial self-governance contributing to organisational independence. A presidium is established at every German court, elected by the judges of the respective court. It is responsible for the allocation of business and the composition of the court's various adjudicating bodies. The presidium and its members reach decisions with complete judicial independence. In addition, there are councils of judges and councils for judicial appointments, which are composed of members elected by the judiciary. These enable the judges to contribute their views to decision-making processes and to represent the jurisdiction’s interests in negotiations with the competent administrative authority, as well as in the selection and promotion of judges.

b) In the case of public prosecutors, Germany also ensures that they are not subject to any unlawful or improper external pressure and that their work is fully governed by the principles of the rule of law.

The appointment of public prosecutors is based on the criteria laid down in the constitution, namely aptitude, qualifications and professional achievements (Article 33 (2) GG). Accordingly, public functions are to be occupied in accordance with the principle of selection of the best candidate. The same also applies to decisions regarding promotions. Decisions on appointments and promotions may also be subject to judicial review in accordance with the aforementioned criteria.

As a rule, public prosecutors are appointed for life following a probationary period. This is another factor that contributes towards their personal independence. Their salary is based on the principle of alimentation which also promotes the exercise of duties without influence. This principle is guaranteed by Article 33 (5) GG and dictates that salary payment is not to be understood as remuneration for work performed, but rather as a guarantee of a level of subsistence commensurate with the position.

It is intended to ensure that prosecutors can dedicate themselves fully to the profession and that they are financially independent.

Public prosecutors in Germany conduct proceedings on their own authority, being bound in their actions by law and justice due to the principle of the rule of law (Article 20 (3) GG). They must in particular observe the principle of mandatory prosecution which is enshrined in German law (section 152 (2) of the Code of Criminal Procedure [*Strafprozessordnung* – StPO]) and which means that they are obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.

One particular issue that frequently features in this context is whether public prosecution offices can be subject to instructions. For the Council of Europe, the model public prosecution office is one which acts free of unlawful influence. Germany supports this without reservation. In this context, reference is frequently made to the current discussion in Germany about the right of justice ministers to issue instructions to public prosecutors in specific cases. Structurally, the public prosecution offices in Germany – unlike judges – are part of the executive branch of the state. Taking this into account, the right to issue instructions is justified by the fact that the performance of state tasks must be guaranteed by a chain of legitimacy between the people and state organs, not least because the government and administration are accountable to parliament. Ultimately, therefore, this right provides for parliamentary control and democratic oversight of the executive.

The right to issue instructions is subject to strict, legally defined limits which specifically ensure that no undue political influence is exerted on the activities of the public prosecution office. The principle of mandatory prosecution (see above) must always be observed in criminal prosecution and may not be circumvented by instructions. Rather, an instruction is only permissible in cases where there is scope for discretionary leeway. This is particularly the case if the law permits multiple possible decisions or measures to be taken by the public prosecution office. However, the justice minister must not overstep discretionary powers. It is therefore not permissible to order a decision or measure by the public prosecution office that is arbitrary or for other reasons goes beyond the legally prescribed framework.

Instructions are furthermore subject to the prohibition of non-judicial considerations. A decision that has been appropriately taken by a public prosecutor may not be replaced by a decision taken by the justice minister based on considerations of purely political expediency that are irrelevant to the proceedings.

Evidently unlawful instructions may even be punishable as a criminal offence for the person issuing such instructions (sections 344, 345, 258a of the Criminal Code [*Strafgesetzbuch* – StGB]). The person receiving the instruction is not permitted to follow it if the instructed conduct is evidently punishable as a criminal or regulatory offence.

As a further safeguard, the Federal Ministry of Justice and Consumer Protection made a voluntary commitment in the decree of 13 December 2016, 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 the *Land* level.

Those precautionary rules and measures described above ensure that the right of justice ministers in Germany to issue instructions to public prosecutors in specific cases does not lead to undue political influence but, rather on the contrary, contributes towards a public prosecution service that acts free of unlawful influence.

Furthermore, public prosecutors must also follow the instructions of their superiors within the public prosecution office. However, this “internal” right to issue instructions is also subject to the same narrow legal limits outlined above which also apply to the ministerial right to issue instructions. In this respect too, it is therefore ensured that public prosecution offices in Germany are able to carry out their work free from any undue or unlawful influence.

LATVIA / *LETTONIE*
Ministry of Justice
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

In February and November 2018, amendments to the Law on the Judicial Power entered into force, transferring a number of competences from the executive and the legislature to the Judicial Council. Example, the powers to appoint court presidents (previously by the Minister for Justice), to transfer a judge (previously by the Parliament), to approve judicial training (previously by the Court Administration, a body under the Ministry for Justice), and to determine the procedure for selecting candidate judges (previously by the Cabinet of Ministers).

In 2018, amendments to the Law on the Judicial Power entered into force, which provides appeal of a Decision of the Judicial Council. A judge to whom the decision of the Judicial Council on the establishment, amendment, or termination of legal relations is addressed may appeal it to the Disciplinary Court.

In April 2020, the Judicial Council developed and approved a new procedure for the selection of candidate-judges of district (city) and regional courts. Candidate judges are selected through an open competition organised by a commission established by the Judicial Council for three years, which is composed of three senators (Supreme Court judges), three judges of regional courts, and three judges of district (city) courts. The selection of candidate judges takes place in five rounds. According to the new procedure, an applicant who successfully passes the selection is included by the Judicial Council on a ranked list of candidates for the position of a judge for three years. In case of a vacancy, the position of a judge is offered to the candidate with the highest number of points.

In June 2020, amendments to the Law on the Judicial Power and to the Judicial Disciplinary Liability Law entered into force, the immunity of judges concerning administrative offences has been removed, in line with a GRECO recommendation.

The Judicial Council supported the removal of this type of immunity for judges provided that the amendments to the Law on Administrative Liability exclude administrative arrest as a form of punishment. Simultaneously to the amendments to the Judicial Disciplinary Liability Law, it is provided that judges may 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.

The amendments to the Prosecution Office Law which entered into force on 11 March 2020 provide for the new procedures for the selection and appointment of Prosecutor General. The Law provides for that selection of applicants to position of Prosecutor General is conducted through the open competition announced by the Council for the Judiciary. Person, who satisfies the criteria provided for by the Prosecution Office Law, shall apply to position of Prosecutor General himself/herself. One and the same person may be appointed as Prosecutor General for no longer than two consecutive terms.

The Council for the Judiciary shall lay down the procedures and criteria for evaluation of applicants to position of Prosecutor General.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

The Constitutional Court of Latvia in its judgment rendered on October 26 2017 in case No 2016-31-01 declared the first sentence of Article 4, paragraph nine and the Article 6^1, paragraph one of the Law on Remuneration of Officials and Employees of State and Local Government Authorities as incompatible with Articles 83 and 107 of the Constitution of the Republic of Latvia and thus, null and void as of 1 January 2019. The Constitutional Court of Latvia also 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.

Working Group was established on 23 May 2018 by the Order No 139 of Prime Minister on 23.05.2018, which included representatives of the State Chancellery, the Ministry of Finance, the Ministry of Justice, the Prosecutor General's Office, the Constitutional Court and the Legal Bureau of the Parliament. Association of Latvian Administrative Court Judges was also involved in the development of the reform of the remuneration system and proposals were discussed with Latvian Judges' Association.

The purpose of drafting the amendments to the Law on Remuneration of Officials and Employees of State and Local Government Authorities was to establish as of 1 January 2019 such system of judges' remuneration that would preserve the actual value of judges' remuneration and would ensure judges' financial security in accordance with the principle of judicial independence.

The Prosecution Office shall be an independent institution of judicial power, led by Prosecutor General, who shall be appointed for five years term by the Parliament upon proposal of the Council for the Judiciary. Within the time period between 2015 and 2020 the Prosecution Office as independent authority has not experienced any pression. The status of the Prosecution Office in the state power branches system of Latvia and the safeguards laid down by the law in general guarantee the protection of the Prosecution Office (and individual Prosecutors) from political, public or other influence.

According to the *Prosecution Office Law* Prosecutor in his/her actions shall be independent from the influence of other institutions or officials implementing the state power and governance and shall abide only to the law. The Parliament, the Cabinet of Ministers, state and municipal institutions, all companies and organizations, as well as any person is prohibited to interfere with the work of the Prosecution Office during the investigation of cases or performing of other functions of the Prosecution Office.

In 2019 some representatives of the political elite expressed open sharp critics and unsatisfaction with the work of Prosecutor General and of the operation of the Prosecution Office in general. While analysing this situation the leading experts of the Organization for Economic Co-operation and Development (OECD) in their report on Latvia of 10 October 2019 concluded that aggressive comments about Prosecutor General openly uttered by the Government cause the risk of factual or demonstrative political interference into the operation of the independent authority – the Prosecution Office, and are in contradiction with the Article 5 of the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions. Despite the identified risk of the political interference no grounds exist to allege that these actions would have had any impact on independent operation and impartiality of decisions taken by Prosecutor General and by the Prosecution Office in general.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

At the moment, there is nothing we want to say.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

Not identified.

LITHUANIA / *LITHUANIE*
Ministry of Justice
10/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

On 16 July 2019 the Law on Courts of the Republic of Lithuania was amended, with the majority of its provisions taking effect as of 1 January 2020. First of all these amendments have strengthened the role of one of the main bodies of self-governance of courts, i. e. the Judicial Council, in appointing judges. According to the new provisions the Judicial Council shall appoint three judge members of the Selection Commission of Candidates to Judicial Offices (hereinafter in the text – the Selection Commission), and the remaining four members of the public shall be appointed by the President of the Republic (it should be noted, that until this change all members of the Selection Commission were appointed by the President of the Republic). The Judicial Council has been assigned an important function of approval of the selection criteria of candidates to judicial offices. Furthermore, before establishing or amending the rules of procedure of the Selection Commission, the President of the Republic shall first of all coordinate them with the Judicial Council. This has strengthened the autonomy and independence of the judicial system, as well as has increased the responsibility of the courts' community participating in the formation of the judiciary.

According to the new provisions (which will take effect as of 1 January 2022) the Judicial Council will establish procedure to assess the cognitive characteristics and personal competencies of the candidates to judicial offices. The Selection Commission will assess these qualities with the assistance of the experts, revealing the person's readiness to be a judge.

The new regulation provides for the possibility to appeal the opinion of the Selection Commission. The candidates to judicial offices have the right to file an appeal to the Supreme Court of Lithuania on the basis of substantial procedural violations, where such violations could affect the objective assessment of the respective candidates.

The composition of the Judicial Council has been amended. The Judicial Council now consists of 17 members (before – of 23 members). The aim of this change is to make the activity of the Judicial Council more flexible and more effective.

The new regulation provides for a number of terms in office and the good reputation requirements applicable to the members of various commissions and Judicial Court of Honour which are operating within the judiciary. These members shall be appointed from individuals of good reputation, as defined in the Law on Civil Service of the Republic of Lithuania, and the number of successive terms of office of those members shall not exceed two.

The law now enshrines actual right of the Judicial Ethics and Discipline Commission to advise judges on ethical issues, and not merely to deal with disciplinary proceedings instituted against them.

In the interests of improved protection of the judiciary, the new regulation expressly prohibits 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). Under the permission of the chairmanm of the court, judges and staff of this court may bring weapons into the premises of the court for their personal self-protection.

In order to further increase the openness and transparency of the selection procedure of the candidates to judicial offices in the Supreme Court of Lithuania, the Law on Courts was amended on 14 January 2020. These amendments took effect as of 1 April 2020. According to these amendments the Selection Commission will advise the President of the Republic on the candidates that are most suitable to be appointed as judges of the Supreme Court of Lithuania. This new provision replaced the old regulation according to which the President of the Supreme Court of Lithuania had the right to propose the candidates to judicial offices in this court to the President of the Republic.

On 23 June 2016 the Law on Courts was amended, establishing yet another body of judicial self-governance – general meeting of judges of the court. These amendments took effect as of 1 January 2018. General meeting of judges of the court involves judges of that court and advises the president of the court on matters relating to the administration of the court.

The Constitutional Court of the Republic of Lithuania has clarified the scope of the functional immunity of judges. On 9 March 2020 it ruled that the constitutional provisions on immunity of judges 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 authorisation from the Parliament or the President of the Republic is not necessary.

The Law on Strategic Management of the Republic of Lithuania was adopted on 25 June 2020 and took effect as of 1 January 2021. This law has officially established the role of the Judicial Council representing the courts in the process of strategic management and formation of the state budget. The adoption of this law will strengthen the authority of the judiciary in relations with its constitutional partners. It should be noted that in order to increase the financial independence of the judiciary a dialogue with representatives of other state authorities is constantly maintained.

On 4 December 2018 an amendment to the Law on the Salaries of Judges of the Republic of Lithuania was adopted and the salaries of judges of district courts were increased. This amendment took effect as of 1 January 2019.

On 4 June 2020 the Law on the Prosecution Service of the Republic of Lithuania was amended in order to establish the possibility to appeal the opinion of the Selection Commission of Prosecutors. These amendments took effect as of 20 June 2020. The candidates to the prosecution service now have the right to file an appeal to the Vilnius Regional Administrative Court on the basis of substantial procedural violations, where such violations could affect the objective assessment of the respective candidates.

The amendments to the Law on the Prosecution Service were adopted on 19 December 2017 and became effective as of 1 July 2018. First of all, the aim of these amendments was to strengthen prosecutor's independence. Hereby we would like to mention the introduction of the legal provisions on 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. These prosecutors have the same rights as other prosecutors, however they are supervised only by the Prosecutor General, Deputy Prosecutor General or (deputy) chief prosecutor of the department (division) of the Prosecutor General' office, they may receive additional renumeration for their work and they are exempt from the application of some of the provisions of the law (e. g. provisions on disciplinary liability).

Secondly, the salaries of prosecutors were increased by the afore-mentioned amendments.

On 24 July 2019 the Prosecutor General approved the Procedure of Protection of the Employees of the Prosecution Service and Information from the Illegal Impact. This order stipulates the procedure of providing the information about possible illegal impact made on prosecutors or employees of prosecution service with the purpose to affect the conscientious and impartial performing of duties and to make an influence on the decision making.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

In 2020, in the framework of the procedure to appoint a new President of the Supreme Court of Lithuania, the President of the Republic proposed to the Parliament the Chairperson of the Civil Division of the Supreme Court of Lithuania, who had also been exercising functions as acting President. The proposal of the President of the Republic was submitted to two different votes of the Parliament: one on the dismissal as the Chairperson of the Civil Division, and a separate one on the appointment as the President of the Supreme Court of Lithuania. The first proposal was approved in the vote, while the second one was rejected. The judge was thus dismissed from the position as the Chairperson of the Civil Division, and subsequently lost the position of acting President. The case was brought before the Constitutional Court of the Republic of Lithuania by a group of members of the Parliament, who questioned if the decision of the Parliament to dismiss the judge from the position as the Chairperson of the Civil Division can be reconciled with any of the grounds for dismissal provided for in the Law on Courts. On 2 September 2020 the Constitutional Court of the Republic of Lithuania ruled that the concrete decision of the Parliament to dismiss the judge from the position of the Chairperson of the Civil Division was unconstitutional and contradicted specific provisions of the Law on Courts. The Constitutional Court of the Republic of Lithuania also ruled that from the day of the official publication of the ruling the judge who was dismissed should hold the position of the Chairperson of the Civil Division.

In 2019 eight judges were detained under suspicions of corruption, bribery, trading in influence and abuse of power. The judges were suspected of receiving bribes to influence verdicts in a range of administrative, civil and criminal cases. The criminal cases are currently pending. The President of the Republic sought the opinion of the Judicial Council as regards the possible dismissal of the judges involved in the corruption case and the Judicial Council gave its positive opinion to the dismissal of five of the judges.

In 2020 two prosecutors of the Prosecutor General's Office and one prosecutor of regional prosecutor's office were detained suspecting in committing bribery. It is suspected that these prosecutors, acting separately, constantly communicated with the lawyer providing him pre-trial investigation data, information and consultations regarding ongoing criminal investigations. These prosecutors were dismissed from the office by the order of the Prosecutor General, the pre-trial investigation regarding them is not finalised yet.

In 2017 the prosecutor of district prosecutor's office was detained suspecting in committing bribery. He, acting in accomplice with the lawyer, attempted to bribe the judge for the favourable decision in the administrative case on the matter of deprivation of driving right. The prosecutor was dismissed from the office by the order of the Prosecutor General and sentenced by court's penal order imposing the fine.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

In 2019 the Lithuanian court passed a judgment in a criminal case of particular importance to the State of Lithuania – in the January 13th (of the year 1991) case. By the judgment former Soviet Union officials who are now citizens of the Russian Federation, the Republic of Belarus or Ukraine were sentenced. Individuals were found guilty of war crimes and crimes against humanity and of aggression against the Lithuanian state.

In the pre-trial investigation of the above-mentioned case, judicial cooperation with the Russian Federation was actively pursued, but only 5 out of 289 legal assistance requests were partially executed, the last of which was in 2008. All (10 requests concerning 65 accused persons) legal assistance requests in the judicial stage of the proceedings were denied by the Russian Federation.

During the years of 2018 and 2019 the Investigation Committee of the Russian Federation instituted multiple criminal proceedings against the Lithuanian judges and prosecutors involved in investigating and hearing the January 13th case. Articles 299 and 305 of the Criminal Code of the Russian Federation, which foresee criminal liability for "bringing an knowingly innocent person to criminal responsibility" and for "imposition of obviously illegal sentence", were used as a legal basis for these proceedings. In the end of 2020 the Lithuanian authorities received information that the Investigation Committee of the Russian Federation had put an official accusation on and had launched an international search against three Lithuanian judges who comprised a college during the court proceedings.

These actions taken by the Russian Federation are considered totally inconsistent with the fundamental principle of the rule of law and show disrespect for the sovereignty, territorial integrity and independence of the state. They create preconditions for the prosecution of judges and prosecutors of the independent state for their constitutional duties, which cannot be tolerated or justified.

The universally acknowledged guarantees of the independence of the judge prohibit in any way interference with the justice executed by the court. Such actions of the Russian Federation are to be considered as unlawful attempts to exert direct pressure on Lithuanian courts fulfilling their constitutional duty to administer justice in the case of particular importance to the Lithuanian nation.

These actions might also result in the improper use of the Interpol system and other multilateral or bilateral cooperation agreements to arrest, apprehend and request the extradition of persons who are subject to politically motivated persecution. The right to free movement of these persons might be restricted and their freedom might be at danger.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

No.

REPUBLIC OF MOLDOVA / *RÉPUBLIQUE DE MOLDOVA*
Ministry of Justice
30/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

To ensure an independent and impartial justice, as well as develop the institutions that are directed towards accomplishing the tasks of ensuring a fair, efficient and qualitative justice remains a major priority for the Republic of Moldova and constitutes an essential condition for developing a genuine democratic society.

The actions set out in the Council of Europe Action Plan on Judicial Strengthening Independence and Impartiality have also set objectives for reforming the justice sector at the national level. Thus, the main areas of intervention of the Justice Sector Reform Strategy for 2011–2016 were (1) strengthening the independence of the judiciary and the prosecution office, as well as its governing bodies (Superior Council of Magistracy and Superior Council of Prosecutors) and (2) eradicating corruption and strengthening accountability mechanisms and ensuring the integrity of stakeholders in the judiciary. These objectives are also set forth in the new Strategy on ensuring the independence and integrity of the justice sector for the years 2021–2024.

During the reporting period, several legislative and institutional reforms were carried out, targeting the judiciary and the prosecution office. The following are the most important aspects and progress registered.

Measures taken at national level relevant to actions 1.1, 1.2, 1.3, 2.1 of the Sofia Plan:

In order to increase the independence of judges, ensure the stability of term in office and exclude the political factors that interfere with the career of judges, the process of amending the Constitution of the Republic of Moldova was initiated at the end of 2019. This draft law proposes (1) to exclude the initial term of 5 years for the appointment of judges in office, which will ensure the stability of term in office until attaining the age limit (65 years); (2) the appointment of judges of the Supreme Court of Justice by the President of the Republic of Moldova, at the proposal of the Superior Council of Magistracy, and not by the Parliament, as it currently stands, which will diminish the influence of political factors on the appointment of judges, as well as standardize the procedure for appointing judges in all courts throughout the country.

Also, the draft constitutional law proposes Changes of the structural composition of the Superior Council of Magistracy, excluding ex officio members (the Minister of Justice, the Prosecutor General and the President of the Supreme Court of Justice), establishment of guarantees regarding the quota of representation of judges, extension of the possibility to elect in the composition of the Council representatives of other legal professions by defining a transparent and inclusive selection mechanism, as well as the right of members to hold a single term.

The need to amend the Constitution in relation to the judiciary derives from international standards and the recommendations of international fora (Venice Commission, Group of States against Corruption within the Council of Europe (GRECO)). Currently the draft law is in the Parliament.

Also, until the constitutional amendments will be adopted and the ex officio members will be excluded from the composition of the Superior Council of Magistracy, by Law no 137/2018 the voting right within the Superior Council of Magistracy was limited for the General Prosecutor. the President of the Supreme Court of Justice and the Minister of Justice in matters relating to the career of judges (appointment, promotion, disciplinary sanctions and dismissal of judges). By the same law, an effective system of appeal against the decisions of the Superior Council of Magistracy (full jurisdiction) was established.

In addition, a new legislative framework has been adopted regarding the process of selection, appointment and promotion of judges, as well as disciplinary liability. The newly developed mechanisms aimed at establishing clear and transparent criteria and procedures for the selection, evaluation and promotion of judges, as well as for ensuring a balance between the independence and responsibility of judges. Both in the composition of the Board for Selection and Promotion of judges, and in the Disciplinary Board, the majority of members are judges from different level courts, elected by the General Assembly of Judges. Members from the civil society are selected based on public contest.

To ensure independence of judges, the law established powers and competences for court presidents not to interfere in the activity of the actual examination of cases by judges. Similarly, court proceedings take place by complying with the principle of random case distribution via the Integrated Case Management System.

All these measures that have been undertaken have as final objective the assurance of the internal and external independence of the judges and strengthening the role of the Superior Council of Magistracy as the safeguard of the independence of the judiciary.

Measures taken at the national level relevant to actions 2.3 and 3.3. from the Sofia Plan:

Identification of efficient leverages directed at strengthening the independence of judges and prosecutors is to be linked with an increase in their accountability and integrity. Responsibility, integrity and the lack of corruption factors are one of the main elements of ensuring citizens' trust in the justice system and the guarantee of conducting fair proceedings.

In order to establish effective measures to prevent and counter illegal enrichment, conflicts of interest, incompatibilities in the public sector, including in the judiciary and the prosecution office, a new Law on the statement/declaration of assets and personal interests has been adopted. (Law no 133 dated 17.06.2016).

Prohibitions, incompatibilities and responsibilities imposed on the position of judge and prosecutor require, also, the establishment of a remuneration corresponding to the status, or it is a guarantee of material independence. During the referenced period, a reform of the salaries of judges and prosecutors was carried out by significantly increasing their salaries.

At the same time, despite certain efforts, corruption factors and lack of integrity seriously affect the level of trust in the justice sector. The eradication of these systemic factors and the assurance of judges and prosecutors with integrity is currently a priority at the national level. This need was also mentioned by GRECO in the Fourth Round Evaluation Report on the Republic of Moldova.

Measures taken at national level relevant to actions 3.1 and 3.2. from the Sofia Plan:

In 2016, the reform of the Prosecutor's Office was carried out, by regulating at constitutional level the activity of the Superior Council of Prosecutors and adopting a new law on the Prosecutor's Office.

As a result of this reform: the role of the Superior Council of Prosecutors in the system of Prosecutor's Office was established; the procedure for appointing the Prosecutor General by the Parliament was depoliticized, and a new mechanism was established, whereby the Prosecutor General is appointed by the President of the country at the proposal of the Superior Council of Prosecutors; new mechanisms for the selection, evaluation and career of prosecutors have been created; the hierarchy of prosecutors was regulated more clearly, in order to differentiate the administrative hierarchy from the procedural hierarchy.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

According to the national legislative framework, any public official has the obligation to report inappropriate influences.

The decision of the Superior Council of Magistracy no. 964/31 of 02.12.2014 established the procedure for communication and evidence of inappropriate influences exerted on the employees within the Superior Council of Magistracy and courts, the method for filling out and manage the registry on reporting inappropriate influences.

In the reference period, cases of inappropriate influences were reported by judges to the Superior Council of Magistracy, the National Anticorruption Center but also to the Intelligence and Security Service. The relevant bodies have taken the necessary verification actions in line with the law.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The Sofia Action Plan is a comprehensive document that sets out the most important measures to be taken by states in their policy-making and implementation processes to ensure an independent and integrity of the justice sector. The actions set out in the Plan derive from good international standards and principles but also from the needs identified for this sector.

MONACO
Direction des Services Judiciaires
10/03/2021

1. Veuillez décrire toute mesure spécifique prise par vos autorités pendant la période de mise en œuvre du Plan d'action du Conseil de l'Europe sur le renforcement de l'indépendance et de l'impartialité du pouvoir judiciaire (2016-2021) qui a eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs.

Au titre des mesures législatives ayant eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs, les autorités monégasques portent à la connaissance du Comité européen pour la coopération juridique (C.D.C.J.) l'adoption de deux lois au cours de l'année 2020 consécutivement à deux recommandations formulées par le Groupe d'Etats contre la Corruption du Conseil de l'Europe (G.R.E.C.O.) au titre du 4ème cycle d'évaluation de la Principauté, relatif à la prévention de la corruption des parlementaires, des juges et des procureurs.

La loi n° 1.495 du 8 juillet 2020 modifiant la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature, tout d'abord, est venue modifier quatre articles du statut de la magistrature monégasque (cf. Annexe n° 1).

En premier lieu, la loi a amendé l'article 1er dudit statut, dont le second alinéa dispose, désormais :

« Le directeur des services judiciaires veille à l'application du présent statut avec le concours du haut conseil de la magistrature. Ils s'assurent, dans l'exercice des attributions qui leur sont légalement conférées, du respect du principe de l'indépendance des juges garanti par l'article 88 de la Constitution. » (mots soulignés pour les éléments nouveaux).

Explicitant cette modification, l'exposé des motifs de la loi n° 1.495 précitée précise :

« Cet ajout entend tout d'abord, conformément au principe de la hiérarchie des normes (reconnu par la Principauté comme garantie essentielle de l'Etat de droit à l'occasion de la ratification de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales), consacrer ce qui constituait déjà, dans les faits - et de toute évidence - une réalité avant même l'érection du statut de la magistrature en 2009, savoir le fait que le Directeur des Services Judiciaires a, parmi ses attributions, celle de protéger le principe constitutionnel de l'indépendance des juges et d'en garantir l'effectivité.

Il entreprend, ensuite, d'affirmer le fait que le haut conseil de la magistrature participe directement, lui aussi, au respect dudit principe.

Par cette modification de l'article 1er de la loi n° 1.364, le Gouvernement Princier estime aller dans le sens de la recommandation vii formulée par le G.R.E.C.O. qui, sans expressément préconiser - du reste à juste titre, comme le relève une partie de la doctrine - que l'existence du haut conseil soit inscrite dans la Constitution, a néanmoins considéré qu'il convenait de lui conférer un rôle central comme garant de l'indépendance et du bon fonctionnement de la justice.

La loi n°1.364 permet pourtant de comprendre que le haut conseil exerce, effectivement, un tel rôle. Le rapport de la délégation monégasque conforte cette analyse.

Néanmoins, il est apparu opportun d'inscrire formellement dans la loi que cet organe s'assure, aux côtés du Directeur des services Judiciaires, du respect du principe de l'indépendance des juges garanti par l'article 88 de la Constitution. ».

En deuxième lieu, la loi n° 1.495 précitée a étendu le dispositif d'évaluation périodique des magistrats institué par l'article 36 de la loi n° 1.364 susvisée, au président du Tribunal de première instance et au Procureur général adjoint. Le premier sera ainsi évalué par le Premier président de la Cour d'appel, et le second par le Procureur général.

Il peut être précisé, s'agissant de l'évaluation des magistrats, qu'ont pu être complétés les formulaires d'évaluation périodique des magistrats tant du siège que du parquet en y intégrant une appréciation des valeurs déontologiques et des règles de conduite liées à l'éthique et à l'intégrité des magistrats.

En troisième lieu, la loi n° 1.495 précitée est venue prévoir un nouveau mode de saisine du Haut Conseil de la Magistrature en matière disciplinaire lequel peut être saisi désormais non plus seulement par le Directeur des Services Judiciaires, mais également par le Premier président de la Cour de révision, en sa qualité de président de la formation du haut conseil de la magistrature siégeant en matière disciplinaire ce, à la demande de la majorité des membres du haut conseil de la magistrature, hors le directeur des services judiciaires.

Les règles procédurales ont, en conséquence, été adaptées pour tenir compte de l'hypothèse d'une auto-saisine du H.C.M. en matière disciplinaire. Ainsi, l'article 49 de la loi n° 1.364 précité a été modifié comme suit :

« En matière disciplinaire, lorsqu'il est saisi par le directeur des services judiciaires, le haut conseil de la magistrature délibère hors la présence de ce dernier. Il est présidé par le premier président de la cour de révision et complété du premier président de la cour d'appel ou, le cas échéant, de son vice-président.

Lorsqu'il est saisi par le premier président de la cour de révision, le haut conseil de la magistrature délibère hors la présence de celui-ci ainsi que des membres s'étant prononcés sur sa saisine, chacun étant remplacé par son suppléant désigné en application de l'article 22. Dans ce cas, le premier président de la cour de révision désigne le membre du haut conseil qui présidera la formation disciplinaire, complété du premier président de la cour d'appel ou, le cas échéant, par son vice-président.

Le président de la formation disciplinaire du haut conseil de la magistrature désigne l'un de ses membres pour faire rapport.

Le directeur des services judiciaires établit un mémoire au soutien de ses demandes, le cas échéant après avoir été informé par le président de la formation disciplinaire du haut conseil de la magistrature qui lui communique les pièces du dossier. »

Par souci d'exhaustivité il peut être relevé que s'agissant des deux derniers alinéas de l'article 49 précité, l'exposé des motifs de la loi n° 1.495 susvisée précise qu' « *Il a été estimé opportun, par ailleurs, d'indiquer nettement que dès qu'elle est saisie des poursuites, la formation disciplinaire du haut conseil procède seule en son sein à l'instruction du dossier, et que son président - qu'il s'agisse selon le cas du premier président de la cour de révision ou du membre le suppléant - désigne un de ses membres pour faire rapport.* »

Il convient de signaler, ensuite, la promulgation de la loi n° 1.496 du 8 juillet 2020 modifiant l'article 27 de la loi n° 1.398 du 24 juin 2013 relative à l'administration et à l'organisation judiciaires et l'article 34 du Code de procédure pénale (cf. Annexe n° 3).

Avant d'évoquer les modifications entreprises par la loi n° 1.496 précitée, il apparaît utile de rappeler que les magistrats du Parquet général sont hiérarchiquement et structurellement « placés sous la direction et le contrôle du Procureur général, lequel est placé sous l'autorité du Directeur des services judiciaires »[82].

Selon un principe fondamental de la procédure pénale monégasque, le Directeur des Services Judiciaires dirige l'action publique, sans pouvoir ni l'exercer lui-même, ni en arrêter ou en suspendre le cours et donne, quand il y a lieu, ses instructions aux magistrats du Ministère public. Celles-ci étaient déjà, avant l'adoption de la loi n° 1.496 susvisée, écrites et versées au dossier de la procédure[83].

Les magistrats du Ministère public sont tenus d'y conformer leurs actes d'information écrite, l'indépendance de la parole demeurant réservée aux droits de la conscience : « A l'audience, leur parole est libre[84]». Telle est la tradition de Monaco, comme de nombreux autres pays, où les ministres de la justice, sous leurs diverses dénominations, sont les premiers acteurs de la politique pénale.

[82] Article 8 de la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature, modifiée.
[83] Articles 26 et 27 de la loi n° 1.398 du 24 juin 2013 relative à l'administration et à l'organisation judiciaires.
[84] Article 8 de la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature.

Dans la Principauté, cette mission incombe au Directeur des Services Judiciaires qui, de ce fait, s'avère donc être une autorité chargée non seulement de l'administration de la justice mais également de la politique pénale. C'est pourquoi il peut être amené à donner des instructions aux magistrats du ministère public.

A cet égard, l'exposé des motifs de la loi n° 1.398 relative à l'administration et à l'organisation judiciaires indiquait :

« L'existence de cette prérogative directoriale pourrait amener à s'interroger sur la plénitude des fonctions de magistrats des membres du parquet général. Force est toutefois de constater que tel est le cas. Il en est ainsi d'une part parce que le pouvoir du directeur, étant uniquement un pouvoir d'impulsion, est par là même limité. En effet, l'article 26 prévoit expressément que s'il la dirige, il n'exerce pas lui-même l'action publique, pas plus qu'il ne peut l'arrêter ou en suspendre le cours. D'autre part, la confirmation, à l'article 27, du principe selon lequel "la plume est serve, la parole est libre", tel qu'actuellement énoncé à l'article 21 de l'Ordonnance du 9 mars 1918, renforce la position des magistrats du parquet au sein des juridictions alors même, de surcroît, qu'a été supprimé le lien de dépendance entre le parquet et le pouvoir gouvernemental, fondé sur l'article 22 de l'ordonnance de 1918. »

Préalablement à l'adoption du rapport de conformité par le G.R.E.C.O. au titre du 4ème cycle d'évaluation de la Principauté, et après avoir exposé la possibilité pour le Directeur des Services Judiciaires de donner des instructions de poursuite aux magistrats du Ministère Public, les autorités monégasques n'ont pas manqué de rappeler la teneur de l'Avis N° 13(2018) : « Indépendance, responsabilité et éthique des procureurs » selon lequel le Conseil consultatif de procureurs européens affirme que « les instructions de non poursuite doivent être prohibées et les instructions de poursuites doivent être strictement encadrées conformément à la Recommandation Rec(2000)19 ».

Aux termes de cette dernière Recommandation Rec(2000)19 adoptée par le Comité des Ministres du Conseil de l'Europe le 6 octobre 2000 concernant le rôle du Ministère public dans le système de justice pénale, et notamment de son paragraphe 13. d. :

« Dans les pays où le ministère public dépend du gouvernement ou se trouve subordonné à celui-ci, l'Etat prend toutes mesures afin de garantir que : (…) d) lorsque le gouvernement est habilité à donner *des instructions de poursuite dans une affaire spécifique, celles-ci s'accompagnent de garanties suffisantes de transparence et d'équité, dans les conditions prévues par la loi nationale, le gouvernement étant, par exemple, astreint :*

- à solliciter au préalable l'avis écrit du ministère public compétent ou de l'organe représentatif du corps ;
- à dûment motiver ses instructions écrites, tout particulièrement lorsqu'elles ne concordent pas avec cet avis et à les acheminer par la voie hiérarchique ;
- avant l'audience, à verser au dossier de la procédure pénale les instructions et avis, et à les soumettre au débat contradictoire ; »

Si l'analyse des dispositions du corpus juris monégasque permettait de comprendre que l'état du droit existant avant le vote et la promulgation de la loi n° 1.496 du 8 juillet 2020 était conforme à ladite Recommandation du Conseil consultatif de procureurs européens, le G.R.E.C.O. invitait néanmoins les autorités monégasques à aligner la législation avec ces principes et avec une pratique réputée constante. C'est ce à quoi procède ladite loi n° 1.496.

L'article 27 de la loi n° 1.398 du 24 juin 2013 précitée dispose désormais :

« Le Directeur des Services Judiciaires donne, quand il y a lieu, ses instructions de poursuite aux magistrats du Ministère public. Celles-ci sont écrites, motivées et versées au dossier de la procédure. » (mots soulignés pour les éléments nouveaux).

Quant au dernier alinéa de l'article 34 du Code de procédure pénale, qui concerne le recours contre une décision de classement sans suite, celui-ci dispose, désormais :

« Toute personne ayant dénoncé des faits au procureur général peut former un recours, dans le délai de deux mois à compter de la notification de la décision de classement sans suite prise à la suite de cette dénonciation, auprès du directeur des services judiciaires. *

Le directeur des services judiciaires peut enjoindre au procureur général d'engager des poursuites, par instructions écrites, motivées et versées au dossier de la procédure. S'il estime le recours infondé, il en informe l'intéressé en y indiquant les motifs de fait ou de droit qui le justifient. » (mots soulignés pour les éléments nouveaux).

Les autorités monégasques entendent, de plus, porter à la connaissance du C.D.C.J., la publication d'une Ordonnance Souveraine et de deux Arrêtés du Directeur des Services Judiciaires ayant eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs.

L'Arrêté n° 2019-15 du 26 novembre 2019, tout d'abord, est venu adopter le Recueil de principes éthiques et déontologiques des magistrats (cf. Annexe n° 3).

Ledit Recueil entreprend, sans se substituer à la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature, modifiée, à une présentation des principaux principes éthiques et déontologiques applicables aux magistrats.

Selon ses termes, ce Recueil vise « à répondre à certaines interrogations auxquelles les magistrats peuvent être confrontés dans leurs pratiques professionnelles comme dans leurs activités hors fonctions, y compris « la sphère privée ». La démarche est ici préventive, pour inviter à la réflexion, au questionnement, et pour aider, en cas de difficulté, à trouver la réponse juste, autant que possible méditée. »

Sans prétendre à l'exhaustivité, le Recueil comprend une introduction et deux parties.

La première est dédiée au comportement du magistrat dans son exercice professionnel. Y sont analysés l'indépendance, l'impartialité, la légalité et la compétence, la délicatesse, la discrétion et la réserve, ainsi que l'intégrité.

La seconde partie, qui a trait au comportement du magistrat en dehors du cadre professionnel, est elle-même divisée en deux sous-parties lesquelles concernent, pour la première, les convictions politiques ainsi que les libertés religieuse, syndicale et d'association, pour la seconde, la vie privée et à la liberté de communication.

Doit être signalée, ensuite, l'Ordonnance Souveraine n° 7.818 du 27 novembre 2019 modifiant l'Ordonnance Souveraine n° 2.984 du 16 avril 1963 sur l'organisation et le fonctionnement du Tribunal Suprême, modifiée (cf. Annexe n°4).

Sans prétendre à l'exhaustivité, l'Ordonnance Souveraine n° 2.984 susvisée a été modifiée pour non seulement compléter les cas d'incompatibilité avec les fonctions de membre du Tribunal Suprême, mais également instituer une règle générale comportementale selon laquelle les membres s'abstiennent de tout ce qui pourrait compromettre l'indépendance et la dignité de leurs fonctions.

Ont également été insérées au sein de l'Ordonnance Souveraine n° 2.984 précitée des dispositions dédiées au conflit d'intérêts et à son traitement (récusation).

Enfin, les autorités monégasques entendent signaler qu'en application du troisième alinéa de l'article 4 de l'Ordonnance Souveraine n° 2.984 précitée, dans sa version telle que modifiée par l'Ordonnance Souveraine n° 7.818 susvisée, une Charte de déontologie des membres du Tribunal Suprême élaborée par lesdits membres a été approuvée par Arrêté Directorial n° 2019-17 du 28 novembre 2019 (cf. Annexe n° 5).

Ladite Charte précise la portée des principes énoncés dans le serment prêté par les membres du Tribunal Suprême et dont découle pour eux un certain nombre de devoirs.

Ceux-ci, précisément, font l'objet du Titre I[er], lequel contient 7 articles, auxquels il est fait renvoi, définissant les principes d'indépendance, d'impartialité, d'objectivité, de dignité et de probité auxquels sont tenus les membres dans l'exercice de leurs fonctions, ces derniers devant se comporter de manière à prévenir tout doute légitime à cet égard.

Le Titre II de ladite Charte, relatif aux dispositions finales, indique la procédure d'édiction de la Charte, savoir son approbation par arrêté Directorial. Elle précise, en outre, qu'elle sera publiée sur le site internet du Tribunal Suprême et qu'elle entrera en vigueur le lendemain de sa publication au Journal de Monaco.

Les autorités monégasques entendent, par ailleurs, porter à la connaissance du C.D.C.J., au titre des mesures institutionnelles ayant eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs, la publication d'une Ordonnance Souveraine n° 8.155 du 14 juillet 2020, aux termes de laquelle le Directeur des Services Judiciaires porte désormais le titre de Secrétaire d'Etat à la justice (cf. Annexe n° 6).

Il convient ici de relever que ladite Ordonnance comprend plusieurs considérants constitutifs d'une véritable motivation explicitant ce changement de titre, aux termes desquels :

« Considérant que la Principauté, sous Notre impulsion, s'inscrit sans cesse davantage dans un cadre international ; qu'à cet égard, il est apparu opportun qu'une meilleure visibilité devait être assurée aux Autorités exécutives et à la Justice qui œuvrent à Monaco, et sur le plan international, pour la réussite et le rayonnement de la Principauté ;

Considérant que, dans ce cadre, les membres de Mon Gouvernement ont, en 2016, reçu le titre de Conseiller de Gouvernement-Ministre, suivi de leurs attributions ;

Considérant que la nécessité d'une meilleure visibilité au sein des institutions de la Principauté et à l'extérieur de Celle-ci, notamment auprès des organisations internationales, se pose dans les mêmes termes s'agissant des fonctions de Directeur des Services Judiciaires, Président du Conseil d'État ; qu'au surplus, les spécificités du rôle et du statut du Directeur des Services Judiciaires, organe indépendant de Mon Gouvernement, chargé, dans l'exercice des missions qui lui sont légalement confiées, de s'assurer, avec le Haut conseil de la magistrature, du respect du principe de l'indépendance des juges garanti par l'article 88 de la Constitution, et de garantir l'impartialité de la conduite de l'action publique, justifient que lui soit donnée une appellation différente de celle d'un directeur d'administration centrale ».

Ainsi, par ladite Ordonnance, S.A.S. le Prince Souverain a souhaité d'une part, apporter une meilleure visibilité des fonctions exercées par le Directeur des Services Judiciaires tant au sein des institutions de la Principauté qu'à l'extérieur de Celle-ci, et dont le Conseil de l'Europe fait partie, d'autre part, exprimer très clairement l'indépendance dont jouit le Secrétaire d'Etat à la justice dans l'exercice de ses fonctions.

Les autorités monégasques rappellent, en effet, que l'article 46 de la Constitution exclut expressément de la compétence du Ministre d'Etat et du Gouvernement les affaires relevant de la Direction des Services Judiciaires, ce qui garantit dès lors une totale indépendance du Secrétaire d'Etat à la justice à l'égard du Gouvernement, dont en vertu de la Constitution il n'est pas membre.

Les autorités monégasques entendent, enfin, informer le C.D.C.J., au titre d'autres exemples concrets constitutifs de bonnes pratiques ayant eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs, que s'est tenue sur une journée, le 16 novembre 2020, un séminaire de formation sur le thème « Principes éthiques et déontologiques applicables aux magistrats ». Ledit séminaire comprenait deux volets.

Le premier, pour lequel le Professeur agrégé des facultés de droit Yves STRICKLER est intervenu, a procédé à une définition générale des principes déontologiques applicables aux magistrats, à travers une présentation universitaire des sources textuelles nationales et internationales, ainsi qu'à l'analyse du Recueil de principes éthiques et déontologiques des magistrats (cf. Annexe n° 3).

Le Professeur STRICKLER a également pu analyser, au titre de ce premier volet, les modifications apportées à l'Ordonnance Souveraine n° 2.984 du 16 avril 1963 sur l'organisation et le fonctionnement du Tribunal Suprême ainsi que la Charte de déontologie des membres dudit Tribunal approuvée par Arrêté directorial n° 2019-17 du 28 novembre 2019 (cf. Annexes n° 4 et 5).

Le second volet de la session, a, quant à lui, eu une portée pratique grâce à l'intervention d'Inspecteurs membres de l'Inspection Générale de la Justice française, aux premiers rangs desquels le Chef de l'Inspection de la Justice française, Monsieur Jean-François BEYNEL.

Ces intervenants ont pu, outre l'évocation du dispositif français et du rôle de l'Inspection Générale de la Justice en matière de déontologie, traiter plusieurs cas concrets nécessitant le maniement de principes déontologiques.

Les magistrats ont travaillé en groupe sur la résolution desdits cas avant que les membres de l'Inspection ne présentent les suites qui ont pu être réservées en France et qui ont donné lieu à des décisions du Conseil Supérieur de la Magistrature français.

L'ensemble des magistrats a été convié à participer à cette session de formation. Des attestations de participation ont été versées aux dossiers individuels des magistrats y ayant pris part.

Le Secrétaire d'Etat à la Justice a d'ores et déjà pu annoncer aux magistrats qu'il entendait organiser à intervalles réguliers ce type de séminaire sur les principes éthiques et déontologiques des magistrats.

A cet égard, et à l'initiative du Secrétaire d'Etat à la Justice, des réflexions, désormais particulièrement avancées, ont été engagées pour créer un Institut Monégasque de Formation aux Professionnels du Droit par voie d'Ordonnance Souveraine.

Parmi ses missions, l'Institut, qui sera placé sous l'autorité du Secrétaire d'Etat à la Justice et dont la gestion administrative sera assurée par la Direction des Services Judiciaires, aura vocation à assurer des séminaires de formation à destination des magistrats, des avocats ainsi que des autres professionnels du droit.

Enfin, et dans un souci constant d'amélioration des dispositifs existants, les autorités monégasques portent à la connaissance du C.D.C.J. l'adoption par le Tribunal du travail d'un document intitulé « Principes directeurs d'une déontologie de la justice » constitutif d'un guide destiné à l'ensemble des membres dudit Tribunal afin de les accompagner au quotidien dans leurs fonctions de juge (cf. Annexe n° 7).

2. Des cas spécifiques d'influence indue ou d'autres formes d'interférence ont-ils été signalés au cours de la période 2015-2020 ?

Aucun cas d'ingérence de la hiérarchie judiciaire à l'égard de la prise de décision individuelle par les juges dans une procédure judiciaire, ni aucun cas d'intervention des pouvoirs exécutif ou législatif dans des dossiers en cours n'a été signalé aux autorités monégasques, spécialement au Secrétaire d'Etat à la Justice, au cours de la période d'évaluation.

Il convient de rappeler ici que le directeur des services judiciaires, est tenu, aux termes de l'article 18 de la loi n°1.364 du 16 novembre 2009 portant statut de la magistrature « de protéger les magistrats contre les menaces, outrages, injures, diffamations ou attaques de toute nature dont ils seraient l'objet dans l'exercice ou à l'occasion de l'exercice de leurs fonctions et de réparer, le cas échéant, le préjudice ». Au cours de la période visée, le bénéfice de la protection fonctionnelle a été accordé à plusieurs reprises à des magistrats par le Directeur des services judiciaires.

3. Veuillez décrire les défis qui restent à relever dans ce domaine et/ou les tendances observées en matière d'indépendance et d'impartialité du pouvoir judiciaire qui nécessiteraient une attention collective de la part des Etats membres et/ou du Conseil de l'Europe.

De manière fréquente, les décisions juridictionnelles sont critiquées, contestées notamment dans les medias, et les magistrats, les ayant rendues, personnellement mis en cause.

Une réflexion collective sur cette question pourrait être engagée afin de trouver le meilleur équilibre entre d'une part la nécessaire protection des magistrats et de l'indépendance de la justice et d'autre part la critique légitime d'une décision de justice ainsi que le strict respect du droit à l'information et des droits de la défense.

Par ailleurs, dans le cadre des travaux ayant abouti à la loi n° 1.495 du 8 juillet 2020 modifiant la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature, en particulier des dispositions concernant l'évaluation des magistrats, des difficultés ont été rencontrées pour organiser l'évaluation des plus hauts magistrats et, en particulier, du Procureur Général, du Premier président de la Cour d'appel ainsi que du Premier Président de la Cour de révision qui, à ce jour, ne font pas l'objet d'évaluation.

Des premières réflexions ont été engagées, elles sont toujours en cours, quant à la pertinence d'opérer une évaluation dite « à 360 degrés » faisant intervenir des personnels travaillant auprès des hauts magistrats. Il pourrait être utile d'avoir une approche collective de cette question.

4. Y a-t-il des aspects spécifiques de l'enquête et du Plan d'action de Sofia qui, selon vous, manquent ou ne sont pas suffisamment détaillés dans le questionnaire et qui pourraient être utiles pour comprendre l'indépendance et l'impartialité du pouvoir judiciaire dans votre pays ? Dans l'affirmative, veuillez fournir toute information supplémentaire que vous jugez utile dans le cadre de cet exercice.

Le Plan d'action de Sofia est particulièrement exhaustif pour comprendre l'indépendance et l'impartialité du pouvoir judiciaire à Monaco.

ANNEXES

Annexe n° 1 : Loi n° 1.495 du 8 juillet 2020 modifiant la loi n° 1.364 du 16 novembre 2009 portant statut de la magistrature ;
https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8495/Loi-n-1.495-du-8-juillet-2020-modifiant-la-loi-n-1.364-du-16-novembre-2009-portant-statut-de-la-magistrature

Annexe n° 2 : Loi n° 1.496 du 8 juillet 2020 modifiant l'article 27 de la loi n° 1.398 du 24 juin 2013 relative à l'administration et à l'organisation judiciaires et l'article 34 du Code de procédure pénale.
https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8495/Loi-n-1.496-du-8-juillet-2020-modifiant-l-article-27-de-la-loi-n-1.398-du-24-juin-2013-relative-a-l-administration-et-a-l-organisation-judiciaires-et-l-article-34-du-Code-de-procedure-penale

Annexe n° 3 : Arrêté du Directeur des Services Judiciaires n° 2019-15 du 26 novembre 2019 adoptant le recueil de principes éthiques et déontologiques des magistrats ;
https://journaldemonaco.gouv.mc/Journaux/2019/Journal-8462/Arrete-du-Directeur-des-Services-Judiciaires-n-2019-15-du-26-novembre-2019-adoptant-le-recueil-de-principes-ethiques-et-deontologiques-des-magistrats
file:///D:/Documents/Downloads/JO%208.462_Recueil%20de%20principes%20e%CC%81thiques%20(7).pdf

Annexe n° 4 : Ordonnance Souveraine n° 7.818 du 27 novembre 2019 modifiant l'Ordonnance Souveraine n° 2.984 du 16 avril 1963 sur l'organisation et le fonctionnement du Tribunal Suprême, modifiée ;
https://journaldemonaco.gouv.mc/Journaux/2019/Journal-8462/Ordonnance-Souveraine-n-7.818-du-27-novembre-2019-modifiant-l-Ordonnance-Souveraine-n-2.984-du-16-avril-1963-sur-l-organisation-et-le-fonctionnement-du-Tribunal-Supreme-modifiee

Annexe n° 5 : Arrêté du Directeur des Services Judiciaires n° 2019-17 du 28 novembre 2019 portant approbation de la Charte de déontologie des membres du Tribunal Suprême ;
https://journaldemonaco.gouv.mc/Journaux/2019/Journal-8462/Arrete-du-Directeur-des-Services-Judiciaires-n-2019-17-du-28-novembre-2019-portant-approbation-de-la-Charte-de-deontologie-des-membres-du-Tribunal-Supreme

Annexe n° 6 : Ordonnance Souveraine n° 8.155 du 14 juillet 2020 relative au titre de Secrétaire d'État à la Justice ;
https://journaldemonaco.gouv.mc/Journaux/2020/Journal-8496/Ordonnance-Souveraine-n-8.155-du-14-juillet-2020-relative-au-titre-de-Secretaire-d-Etat-a-la-Justice

Annexe n° 7 : Document établi par le Tribunal du travail intitulé « Les Principes directeurs d'une déontologie de la justice » ;

NETHERLANDS / *PAYS BAS*
Public Prosecution Service
24/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

The Netherlands Public Prosecution Service would like to make the following points with regard to internal and external independence and impartiality of prosecutors during the timeframe of 2016-2021:

The prosecutors can only be held accountable through and by court;

Prosecutors have legal functional criminal immunity only for the actions performed in good faith while on duty, but they are always liable to disciplinary responsibility;

All prosecutors are bound by the guidelines issued by the Board of Prosecutors General. They are mainly the Guidelines on deferred prosecution agreements and the Guidelines for ensuring homogeneity in the application of the penal code. The Board of Prosecutors General has established guidelines (Instructions or Aanwijzingen) for prosecutors to waive prosecution for reasons of public interest (article 167-2 of the Penal Procedural Code);

Higher ranked prosecutors are not entitled to issue instructions to lower-ranked ones, or modify the decisions of the latter, as each prosecutor shall decide autonomously on the merits of the case. A prosecutor is obliged to withdraw from dealing with a case if he/she believes that his/her impartiality can be put into question;

The Board of Prosecutors General, the highest authority in the Public Prosecution Service, sets the parameters for investigation and prosecution policy. Individual public prosecutors make choices in a specific case. They need to comply with national policy, but they must also take local circumstances into account;

In the Netherlands, training is given strategic importance. Training for prosecutors is mandatory, first as an induction training at the beginning of the career and then the regular in-service training is provided, and participation is mandatory in training activities. Training needs analysis is carried out by each prosecutorial unit. Since its establishment in 1960, the *Studiecentrum Rechtspleging* (SSR) has been the joint training institute of the Dutch judicial system and the Public Prosecution Service, operating independently from the Ministry of Justice. In partnership with the Dutch courts of law and public prosecutor's offices, the SSR trains law graduates as judges and public prosecutors;

The Integrity Bureau of the Netherlands Public Prosecution Service (BI-OM), established in 2012, works as nationwide centre of expertise concerning consultation, promotion and management of integrity issues within the prosecution service.

The creation of the Bureau and the broader integrity policy of the Netherlands Public Prosecution Service came from the acknowledgment of integrity as an essential hallmark of the quality of the Netherlands Public Prosecutor Service and of the importance of making integrity visible and recognizable both internally and externally.

As part of its integrity strategy, and in view of mitigating the operational and reputational risks of integrity breaches by public prosecutors. The Prosecution Office of the Netherlands has adopted "Communication Guidelines in the event of Violations of Integrity" in 2012. Taking privacy concerns into account, the guidelines define how to deal with communication throughout the disciplinary proceedings.

In this way, the document aims at making the violations of integrity transparent, thereby showing the reactiveness of the prosecution service in case of internal misconducts both to other prosecutors and the public. In February 2021 BI-OM has redrafted a deontology conduct (*Gedragscode*) containing general principles for the behavior of the employees of the Netherlands Public Prosecution Service.

The recruitment criteria for prosecutors are public announcement of vacancies, theoretical and practical tests, thorough scrutiny of the curriculum vitae and recommendations from active prosecutors. The recruitment is entrusted to a permanent selection committee. Promotions are carried out through an internal announcement of vacancies and a decision by the selection committee. The remuneration of prosecutors is detailed in legislation.

In the period 2015-2020 the nomination policy for the highest positions within the Netherlands Public Prosecution Service has been improved and updated. The nomination policy is more transparent with open and clear vacancies and staff input plays a significant role in the appointment procedures. There is a stricter guideline regarding love relationships at work (this is exclusively about romantic relationships between colleagues or with a third party), which is made in response to the results of an internal inquiry into an incidental matter.

The main internal supervision mechanisms to monitor the performance and professional behavior of individual prosecutors is the supervision by the hierarchical superior and a complaints procedure, which can be activated by any person. Every individual will be appraised once a year by his/her superior as part of the normal working relation. In special cases, e.g. a misstep by a prosecutor in his private life that compromises his work, there is a separate appraisal when necessary. The results of the performance appraisal can be challenged before the Prosecutor General and before the courts. The consequences of an appraisal can be a reprimand, a suspension of duty and remuneration or dismissal. A financial bonus is awarded if the prosecutor had performed outside his/her normal role on a more than normal professional level/ has done more than could be asked for.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

Apart from the abovementioned incident there haven't been any noteworthy instances of reported undue or other forms of interference in the period of 2015-2020.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The Netherlands Public Prosecution Service would suggest that it is important to pay attention to the culture of a county and its relation to rule of law, judicial independence and impartiality to understand the judicial independence and impartiality of that country.

NETHERLANDS / *PAYS BAS*
Ministry of Justice and Security
24/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

The Dutch justice system is characterised by a high level of perceived judicial independence, and a particular attention for fostering the quality of justice. Furthermore, the justice system is characterised by a consistently high level of efficiency.

Several initiatives to further strengthen judicial independence are underway or are being discussed, inter alia concerning the method of allocation for court cases and the appointment procedures of members of the Council for the Judiciary and of the Supreme Court.

Reflection on procedure of appointment of members of the Council of the Judiciary and other court management boards

A reflection is ongoing on the procedures for the appointment of members of the Council for the Judiciary and of court management boards. The Council for the Judiciary plays a key role for safeguarding judicial independence. Discussions are ongoing on whether judges should have greater influence on the appointment process of the members of the judiciary, court management boards and members of the Council for the Judiciary. This issue has also been raised by members of parliament in a resolution, which called on the Government to request a Council of State opinion on potential weaknesses in the legal framework regarding the appointment of members of the Council for the Judiciary and of members of court boards, and to report on this to the Chamber. In February 2020, The Minister for Justice and Security has informed the parliament by letter that the Council for the Judiciary is in dialogue with its constituency on the selection of board members of the courts and members of the Council for the Judiciary. The Minister has asked the Council of State to advice on the matter. The objective of this reflection is to further limit the influence of the executive or legislative powers on the appointment of the members of the Council for the Judiciary, which is consistent with Council of Europe recommendations.

Plans to amend appointment procedure for Supreme Court judges

The Government has announced plans to amend the appointment procedure for Supreme Court judges. Following recommendations of an independent State Commission in 2018, the Government has announced the preparation of a Constitutional revision to change the appointment procedure for Supreme Court judges. Currently, a Committee of Supreme Court judges draws up a list of six candidates and submits it to the House of Representatives, which selects and ranks three candidates and invites the first-ranked person for an interview. The selected candidate is then nominated by the Minister of Justice for appointment by the executive. The State Commission recommended establishing a committee, composed of a member of Parliament assigned by the House of Representatives, a member of the Supreme Court assigned by its President, and an expert appointed jointly by the House of Representatives and the Supreme Court. This committee would be in charge of nominating new Supreme Court judges, which is currently the prerogative of the House of Representatives. The nomination would be submitted for appointment by the executive, which would be bound by the nomination.

The Government has drafted a concept proposal for a revision of the Constitution to implement this recommendation. The proposal was published for an online stakeholder consultation from December 2019 to March 2020. The Advisory Division of the Council of State is currently assessing the proposal. The objective pursued by the envisaged reform is to further limit the role of the executive and legislative branch in the appointment of Supreme Court judges, which is consistent with Council of Europe recommendations.

Adoption of new code for the allocation of cases

The board of the courts is responsible for the work of its judges as laid down in Article 41 Law on legal position of judges. The allocation of cases is organized in an objective manner that ensures independence and impartiality in a professional and timely manner. A code for the allocation of cases was adopted in January 2020. The new case allocation code has been adopted by the Council for the Judiciary, in consultation with the judiciary, the prosecution service and the bar association, and aims to foster transparency in allocation of cases within courts. While the division of jurisdictional competence between courts is set out in law, the allocation of cases is not. The code provides that cases will in principle be allocated randomly between judges, and any exception to this rule will be made public in the administrative regulations drafted by the court administrations. The code also states that any transfer of the case to another judge is notified to the parties together with the reasons for the transfer.

The court administrations will elaborate more detailed rules per jurisdiction, based on the new case allocation code. The promotion of objective rules for the allocations of cases was an aim of the new rules.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

The government is not aware of any specific instances of reported undue influence or other forms of interference in the period 2015-2020.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

European constitutional, legal and political systems generally reflect high rule of law standards. However, all over Europe, there are cases where the resilience of rule of law safeguards is being tested. Shortcomings concerning the key principle of the independence of justice become more evident every day. A strong commitment to execute judgments of independent and impartial courts is needed, at the national and international level.

When it comes to cooperation between countries, we need an effective and rules-based European system. Without this, judicial cooperation is impossible.

The European Court of Human Rights is also of vital importance to the rule of law. The failure to execute judgments in a timely manner can undermine the credibility of the Convention system. Non-implementation of Court judgments also erodes the basis for pan-European cooperation in important areas. As expressed in the Copenhagen Declaration in 2018: Such failures to implement the Court's judgments must be confronted in an open and determined manner. It is crucial that the

Committee of Ministers can perform the important task of supervising the execution of judgments with sufficient capacity and speed.

See inter alia the Conclusions by the Greek Chairmanship of the Committee of Ministers of the Council of Europe at the Conference of Ministers of Justice on "Independence of Justice and the Rule of Law".

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

POLAND / *POLOGNE*
Ministry of Justice
01/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia:

- selection, appointment, and promotion;
- working conditions (including safety and security);
- court financing;
- accountability;
- protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

Pursuant to Article 179 of the Constitution of the Republic of Poland, judges are appointed by the President of the Republic of Poland, at the request of the National Council of the Judiciary, for an indefinite period.

According to Art. 144 of the Polish Constitution, the appointment of judges is one of the prerogatives of the President of the Republic of Poland - this act is exempt from the countersignature of the Prime Minister.

Pursuant to Article 180 of the Polish Constitution, judges are not removable.

The Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3) introduced a change in the model of selecting members of the National Council of the Judiciary (i.e. the body responsible in particular for candidates for judges and the presentation to the President of the Republic of Poland of selected persons with a recommendation to be appointed judges) who are judges.

Apart from judges, citizens were also granted the right to select candidates for members of the Council.

The entities authorized to propose a candidate for a member of the Council-judge were a group of at least 2,000 citizens of the Republic of Poland and a group of at least 25 active judges, which served to increase the democratic legitimacy of members of the National Council of the Judiciary appointed from among judges and to enhance the transparency of the selection procedure, allowing for including a public debate on the candidates.

At the same time, a solution was introduced consisting in selecting the candidates from among the candidates proposed in the above-mentioned manner by a qualified majority of 3/5 votes, so that the members of the body guarding the independence of courts and judges were appointed not only by the parliamentary majority, but also by grouping, which make their election the result of an agreement between the various groups represented in Parliament.

It should be pointed out that the election of members of the Council who are judges by the Sejm does not limit the independence of this body or hinder its performance of constitutional duties.

None of the provisions of law introduces the principle of subordinating the members of the National Council of the Judiciary to any external authority, as it is necessary to distinguish between the act of appointment by the competent entity itself and the subsequent functioning of the Council.

By the Act of December 8, 2017 on the Supreme Court (Journal of Laws of 2021, item 154) incl. A Disciplinary Chamber was separated in the structure of the Supreme Court in order to increase the quality of disciplinary jurisprudence and to ensure that disciplinary cases are resolved by judges specialized in this field.

A judge, prosecutor or attorney-in-fact - falling within the jurisdiction of the Disciplinary Chamber - must enjoy adequate trust and credibility so that the process of applying the applicable law is supported by society, is understood and accepted.

Without appropriate regulations aimed at efficient and transparent judicial control of ethical standards by persons performing legal professions of public trust, it is impossible to maintain public trust in the justice system at an appropriate, high level.

The Act of 23 March 2017 amending the Act - Law on the System of Common Courts (Journal of Laws, item 803) separated the administration of the court in the scope related to adjudication (performed by the president of the court) from the remaining, purely organizational and technical administration (implemented by the director of the court).

Submitting court directors to the sovereignty of the Minister of Justice has relieved presidents from the tasks related to supervising the correct performance of tasks by directors. The more flexible rules for appointing and dismissing directors allowed for more efficient management of the activities of courts in the sphere not related to adjudication.

The Act of 12 July 2017 amending the Act - Law on the System of Common Courts and Certain Other Acts (Journal of Laws, item 1452) introduced a number of solutions aimed at improving the functioning of the judiciary.

The random allocation of cases was introduced as a systemic principle (implemented by the ICT system), which has not been present in the Polish legal system so far.

It is worth pointing out that the issue related to the allocation of cases should be perceived not only as a matter of judicial administration, but as a guarantee of proper examination of the case due to the thus introduced element of impartiality and equality of parties in court proceedings.

This system works on the basis of a random number generator ensuring random allocation of a given case at each stage, while taking into account the equal allocation of cases in a given category, i.e. an equal allocation of cases of a similar level of complexity.

The principle of randomness is linked to the principle of equal allocation, which guarantees that judges are equally burdened with duties in court.

The random allocation of cases guarantees that the case has not been assigned to a judge other than randomly appointed for a given case.

The introduction of the system of random allocation of cases increased the transparency of the mechanism of assigning court cases to judges by replacing the archaic methods of assigning cases, both to judges and to individual court departments within a given division, consisting in the use of various combinations of alphabetical order or other rules of allocation in this respect. cases giving the possibility of unjustified interference in the allocation of particular cases to specific persons.

The above principle strengthens the independence of the judge, who gains certainty that the judicial administration bodies subordinate to the Minister of Justice will not be able to overburden him / her in any way or manner. Equality of allocation means that each judge in a given category will draw an almost identical number of cases.

The principle of random allocation of cases therefore has a positive effect on the internal and external independence and impartiality of judges.

Moreover, the principle of consistency of the composition was introduced, which is closely related to the principles of randomness and equal allocation of cases. Once drawn, the composition of the court, regardless of whether it is single or multi-person, should not change until the end of the case.

Until now, this issue (except for criminal cases) had not been regulated and was left to the decision of the president of the court or the head of the division, and as a consequence, in many courts, a new judge in a division was assigned cases already started by other judges - to the detriment of the efficiency of the proceedings and could raise suspicions of what to the basis for the referral of specific cases to another clerk.

The Act of 20 December 2019 amending the Act - Law on the System of Common Courts, the Act on the Supreme Court and some other acts (Journal of Laws of 2020, item 190, as amended) introduced changes covering, inter alia, . introducing a statutory definition of a judge (each type of court) referring to the status of a judge regulated by the Constitution of the Republic of Poland, clarifying disciplinary torts of judges by introducing into the act defined as a service misconduct: actions or omissions that may prevent or significantly impede the functioning of a judicial authority, actions questioning the existence of a service relationship judge, the effectiveness of the appointment of a judge or the power of a constitutional body of the Republic of Poland, public activity incompatible with the principles of the independence of the courts and judges, the obligation for judges to submit statements regarding membership of various forms of associations (including political parties, before taking up the office of judge).

The provisions introduced by the aforementioned Act, in particular, explicitly prohibit questioning the judicial status of a person appointed to hold office by the President of the Republic of Poland.

The above guarantees strengthening the sense of judicial independence insofar as it excludes the potential fear of attempts to put pressure on a judge by questioning his status due to the circumstances regarding the procedure or procedure of his appointment.

The legislative change in this respect was a response to the emerging - or in fact non-existent - actions of some courts (judges) destabilizing the functioning of the judiciary, in particular through attempts to independently decide on the status of other judges based on an assessment of the method of selecting or functioning of the body recommending candidates for positions to the President of the Republic of Poland. judges - the National Council of the Judiciary. The existence of such a state seems highly unfavorable, as it may constitute the basis for influencing a judge in order to obtain a specific decision.

Meanwhile, the most important element of the legal status of judges is the public-law relationship of participation in the exercise of judicial power. The appointment of a judge by the President of the Republic of Poland - as the highest state body - is a solemn act emphasizing the importance of the office of judge and does not affect the independent and impartial performance of his duties.

The possibility of revoking or annulment of the act of appointment of a judge in any procedure, including a judicial one, even with the effect limited to a specific case examined with the participation of a given judge, would be a clear contradiction to the principle of irremovability, which is one of the fundamental guarantees of independence. Adopting a different view would lead to accepting the thesis that in each case, each judge could evaluate not only the entire procedure preceding the appointment of another judge to the position of a judge, but also examine, in principle, all the circumstances that led to the acquisition of the status of a judge by a given person, and on the basis of his own assessment of possible shortcomings, to question the status of a judge of that person, and therefore to question all judgments issued by that person.

It should be clearly emphasized that none of the provisions of the amending act constitutes a norm that would preclude a court from making assessments regarding the independence or impartiality of another judge or court. The concept of impartiality should be perceived *ad casum*, through the prism of the judge's (court's) attitude towards the parties to the proceedings, taking into account possible relationships that may have an impact on a different perception of one of the parties, derived from out-of-trial circumstances.

Independence should be understood as the judge's lack of subordination or obscurity from third parties that could effectively influence the judge with the use of instruments allowing to influence his situation.

The intention to introduce a legal solution consisting in the obligation to inform judges of all types of courts regarding membership in an association, function in the body of a foundation that does not conduct economic activity and membership in a political party before being appointed to the position of a judge (also during the term of office before 29 December 1989) was to deepen the principle of impartiality by increasing the transparency of the extra-judicial activity of judges.

Enabling the parties and participants of the proceedings to learn about the political (before their appointment to the office of a judge, because in the Polish legal system membership of a judge to a political party is prohibited, which is not a rule in other Member States) or the social activity of judges, it gives a wider possibility possible threat to the impartiality of a judge, even in the external dimension, expressed by the impression that the decision may be issued by a court composed of a judge who may favor the interests of one of the parties due to personal preferences manifested in non-judicial activity.

The essence of the introduced obligation to provide information is to make it possible to verify ad casum whether a judge, having to hear a given case, is not engaged in any activity that may give rise to a suspicion that when examining it, he will not be fully objective (without having to violate the principles of independence of courts and judges).

It should also be emphasized that the act clarifies the content of the disciplinary tort in relation to the previous legal status (providing for liability for official misconduct, including obvious and gross offense against the provisions of law and violation of the dignity of the office), specifying exemplary behaviors exhausting the concept of tort.

The current content of the norm defining a disciplinary tort is subject to examination by the Court of Justice of the European Union in the proceedings brought by the European Commission (case C-791/19) to the extent to which it is to allow for the application of disciplinary liability of judges for the content of issued judgments. The proposed solutions meet the expectations of clarifying the disciplinary tort, expressing some of its forms directly.

Disciplinary liability is related to conduct contrary to the principles of professional deontology, including the dignity and good of the profession, and must allow for the assessment of behaviors that are harmful to these interests.

Increasing the clarity of the scope of disciplinary responsibility of judges should also have a positive effect on the sense of independence and stability of the professional situation of judges.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

There was no.

(If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe.

No unresolved challenges to the independence and impartiality of the judiciary that would require collective attention from Member States and / or the Council of Europe.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

There is no need to indicate other or more detailed aspects that may be significant for understanding the independence and impartiality of courts in Poland.

PORTUGAL
Directorate-General for Justice Policy
01/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

A. Legislative measures

Amendment to the Statute of Administrative and Tax Courts (ETAF[85]) by Decree Law No. 214-G/2015, 2 October[86], and Decree Law No. 114/2019, 12 September, redefined the regime on the presidency of first instance courts, namely:

a) The requirement of a previous and specific training for the exercise of functions as president of the court (Art. 43 (5)), with a view to a better and more efficient court management performance;
b) The listing of the competences of the president of the court, with the addition of Art. 43-A;
c) The mandatory review, within a 30-day deadline, of the administrative actions and regulations issued by the president court to the High Council for the Administrative and Tax Courts (CSTAF87).

Ordinance No. 46/2017, 31 January, which approves the specific training course regulation for the exercise of functions as president of the court, prosecutor coordinator and judicial administrator (in accordance with Arts. 9 (5), 43 (4) (5), 43-A and 48 of the ETAF).

Notice No. 11263/2019, 10 July on the 1st specific training course for the exercise of administrative and tax courts' president;

The provision of a board of inspectors for the CSTAF, established by a special regulation88, ensuring an effective and exempt inspection system that safeguards the integrity of justice (Art. 82 of Law No. 114/2019, 2 September);

Amendment to the Statute of Judicial Magistrates (EMJ)89 (Law No. 67/2019, 27 August), alternatively applicable to the administrative and tax jurisdiction, aimed at "strengthening the structural principles of independence and impartiality of the judicial magistrates", highlighting the safeguards of judges freedom before any instructions from other entities and reaffirming their exclusive bond to the Constitution and the law. With respect to evaluation, "a more vigilant and pedagogic model was adopted from the start of the career of judges, with the establishment of the requirement of an inspection by the end of the first year in the exercise of functions, (…) which could culminate with either a positive or negative assessment. In the case of the latter, corrective measures are then adopted and assessed after one year".

With regard to disciplinary matters, an in-depth consolidation of the duties of judges was undertaken, as well as a typification and classification of infractions and of its corresponding sanctions.

[85] ETAF in the Portuguese acronym. This Statute was approved by Law No. 13/2002, 19 February.
[86] Despite having entered into force 60 days after its publication, some of its provisions were immediately applicable.
[87] In the Portuguese acronym.
[88] Ordinance No. 289/17, 28 September.
[89] EMJ is the acronym in the Portuguese language.

Adoption of Law No. 52/2019, 31 July, which sets out the declarative obligations of high State officials and the sanctions regime in case of non-compliance, including the loss of office. The declarative obligations concern income, assets, interests, incompatibilities and impediments, including in the three-year period after the end of public duties. In accordance with Article 5, judges and prosecutors are also subject to those declarative obligations, which are under scrutiny by the respective High Councils according to their Statutes.

B. Regulatory measures

In order to ensure the independence and integrity of the judicial activity, the CSTAF approved several documents, namely:

Deliberation on the "compatibility of the exercise of management functions (without any remuneration) in non-profit associations with the exercise of the judiciary", under the terms and for the purposes of Article 8-A (2) of EMJ, September 2020;

Deliberation on the «authorization for the exercise of functions as President of the Judicial Council of the Portuguese Professional Football League», June, 2020;

Deliberation on the «authorization for the exercise of functions as member of the CAAD and as member of the Council of Justice of the Portuguese Football Federation», June, 2020;

Deliberation on the «request for the exercise of functions as President of the Council of Justice of the Portuguese Football Federation», May, 2020;

Deliberation on the «clarification regarding the application of the impediment provided for in Article 7 (1) (e) of EMJ», April, 2020;

Deliberation on «participation of judges of the administrative and tax jurisdiction (first instance judges, appeal judges and councillor judges) in conferences, seminars, congresses, lectures and other similar events – standardization of procedures for obtaining authorization and exemption from service under Art.10-A (1) of EMJ», March, 2020.

Documents currently under discussion:

Project for a regulation on declarative obligations of judges seating at the administrative and tax jurisdiction on income, assets, interests, incompatibilities and impediments, as well as procedures and inspections, approved in the CSTAF session of February 2 (Art.19 (3) Law No. 52/2019, 31 July and Arts. 7-E and 149 (1) (x) EMJ, applicable *ex vi* Art.7 ETAF);

Document *«Strengthening Integrity in Justice 2020»,* approved by the Portuguese Judges Union (*Associação Sindical dos Juízes Portugueses (ASJP)*), November 2020, containing a set of proposals addressed to the CSTAF;

Deliberation on the authorization to arbitrate amateur and training football matches by a judge;
Elaboration of a code of conduct of judges at administrative and tax jurisdiction, seeking to define a framework of ethical standards, principles and duties regarding the exercise of the judiciary function, such as the principles of independence, impartiality, integrity, as well as the duties of professional secrecy and diligence, densifying the provisions of EMJ.

With regard to the measures presented in the Sofia Action Plan, here are some of the solutions established in the Portuguese system:

A) Regarding the safeguarding and strengthening the judiciary in its relations with the executive and legislature

Portuguese legislation ensures the independent and effective work of judicial councils. The CSTAF is the collegiate body responsible for management and disciplinary action of judges of the administrative and tax jurisdiction. It is independent from the executive power and it is constitutionally responsible for the nomination, placement, transference and promotion of judges (Art. 217 (2) Portuguese Constitution (CRP[90]) and Arts.74 and 75 ETAF). The CSTAF comprises two members designated by the President of the Republic, four members elected by the Parliament and four judges elected by their peers. The fact that the CSTAF has not a majority of judges does not mean that the independence of the judiciary power is not guaranteed. The pluralist and heterogeneous composition ensures the independence of the judges in the administrative and tax jurisdiction and allows the exemption and impartiality that is required to exercise their functions.

The CSTAF acts in accordance with the constitutional parameters of justice, impartiality, proportionality and equality and within judicial legal boundaries in the terms of the administrative litigious section of the Supreme Administrative Court (STA) (Art. 24 (1) (vii) of ETAF).

B) Concerning an adequate participation of the judiciary in the selection, appointment and promotion of judges whilst limiting excessive executive or parliamentary interference in this process, it is important to note that the recruitment of magistrates is based on merit, whether it pertains to the access to the career or to a promotion. They follow the requirements and rules clearly determined in the ETAF, without any political interference, and can be summarized as follows:

As for the admission process, it entails a competition (Arts. 5 and 6), a training course at the Center for Judicial Studies (CEJ) and an traineeship (Art. 30 (2) (3)). In accordance with Art. 14 of Law No. 2/2008, 14 January, selection methods include an exam of theoretical knowledge, a curricular assessment and a selective psychological examination. The jury of the written stage of examinations includes, at least, three members that are subject to the following rule of proportion: one judge of the administrative and tax jurisdiction; a magistrate from the public prosecutor´s office, and a jurist of recognized standing or a person of recognized merit from another scientific or cultural area. The jury of the oral stage of examinations and of the curricular assessment is composed by five members, in the following proportion: two magistrates (one from the administrative and tax jurisdiction and one from the Public Prosecutor´s office) and three members, namely lawyers, people of recognized merit in the legal, scientific or cultural areas, or recognized representatives from other areas of the civil society.

Any vacancies at the Central Administrative Courts (TCA's) are either filled by transfer (from judges working in other section of the same court or another TCA) or by promotion (determined by a competitive curricular selection process between judges of the first instance courts (Arts. 61, 68 and 69 (1) of ETAF). Applicants must present their curriculums before a jury comprised by 2 magistrate members, whose category is not inferior to that of an appeal judge, two non-magistrate members and a law professor whose category is not inferior to that of an associate professor (Art. 69 (3) of ETAF).

Access to the Supreme Administrative Court also requires either a transfer of judges from a different section of the court or a competitive curricular selection process that is open to judges from the TCA's, to public prosecutors and to other meritorious jurists (Arts. 61, 65, 66 (1) and 67 of ETAF). The selection process is made by a jury comprised of two magistrate members, whose category is that of a councillor judge, a non-magistrate member, a member of the High Council of the Public Prosecution Service and a law professor whose category is that of university lecturer (Art. 66 (3) of ETAF).

C) On the limit excessive executive and legislative interference in the disciplining and removal of judges, the supervision of the conduct of judges on the administrative and tax jurisdiction is under the remit of the CSTAF (Art. 74 (2) (a) of ETAF). The CSTAF is responsible for the "(...) nomination, placement, transfer, promotion, exoneration and assessment of the professional merit of judges, as well as the exercise of disciplinary action". The composition of the CSTAF reflects the diversity of the legal community, encompassing judges, prosecutors, lawyers and law professors, and therefore reinforcing the legitimacy and quality of the nominees.

[90] In the Portuguese acronym.

Any disciplinary infractions, as well as their respective sanctions and disciplinary procedure, are clearly set up in EMJ (Arts. 81 to 135). CSTAF has the responsibility to initiate disciplinary proceedings when is aware of facts that may constitute a disciplinary offense. Disciplinary proceedings may be preceded by an inquiry in order to determine if certain facts are true.

In the context of an evaluation process, which takes place after the first year and from then on every four years, the judicial inspectors alert the CSTAF of any judicial misconduct.

Furthermore, the presiding judge of each administrative and tax court holds the responsibility of monitoring the activity of the court, even though he or she holds no disciplinary power over the judges. In carrying out this responsibility, the presiding judge has the duty to communicate to the CSTAF any facts that can be characterised as a judicial misconduct.

D) Ensure that public criticism of the judiciary by the executive and legislature respects the authority of the judiciary

The principle of the separation of powers is itself a guarantee of judicial independence (Arts. 2 and 111 of the CRP). The judiciary is independent in the execution of its constitutional role in relation to other powers of the State. These powers are complementary, with no one power being “supreme” or dominating the others.

E) Ensure that day-to-day administration of courts is executed in an effective and reasonable manner based on legal regulations and without undue interference from the executive or the legislature

The principle of independence is an essential guarantee of the Portuguese democracy and rule of law and is enshrined in the CRP (Art. 203). This principle is also established in Art. 2 of the ETAF.

The main guarantee of independence of the system is its concretization in the subprinciples of (ir)removability of the judges and of their (ir)responsibility (under specific terms) as they ensure that judges are only subjected to the application of the CRP and the law and are not therefore constrained by orders or instructions (aside from certain legally established exceptions). These subprinciples, together with the rules on exemptions and impartiality in the allocation and distribution of cases, ensure that competent bodies, in this case the CSTAF, guarantee the effective implementation of the principle of independence (Art. 217 (2) of CRP and Arts. 74 and 75 of ETAF).

It is up to president judges (from STA, TCA’s to first instance courts) to promote the conditions of excellence required by the inherent dignity of the judicial activity. In this sense, notwithstanding the fact that the powers established in Arts. 23, 36 and 43-A of the ETAF, do not have a judicial nature, president judges are still bound to the statutory rules included in the ETAF and the EMJ. Competences of representation and direction of procedural management, and those of an administrative and functional nature (inherent to the role of the president judge), reveal an ethical dimension that is reflected in the high standards, quality and rigor associated with the post and which are assessed by the CSTAF, not interfering in the sphere of autonomy and decision-making independence of the magistrates.

F) Concerning the protection of the independence of individual judges and the assurance of their impartiality and to limit interference by the judicial hierarchy in decision making by individual judges in the judicial process, judges are exclusively subjected to the CRP and to the law.

They are not subject to any orders or instructions, except for the duty of lower courts to abide by decisions rendered on appeal by higher courts (Art.2 of ETAF, Art. 4 of EMJ and Art. 4 of the Law on the Organization of the Judiciary System [Law No. 62/2013, 26 August]).

The CRP enshrines in Art. 32 (9) the principle of natural justice, which hinders the specific nomination (or the arbitrary removal) of a judge or a court to decide a case. More specifically, regarding the allocation cases criteria, Art. 26 of the Code of the Administrative Courts Procedure (CPTA[91]) defines the requirements that should be met for the equitable allocation of cases to judges, as well as their frequency. It is the role of the CSTAF to establish the criteria that must be met regarding the allocation of cases in light of the principle of natural justice (Art. 74 (2) (o) of ETAF).

[91] Acronym in the Portuguese language.

Allocation takes place by lot within each type of judicial proceedings. Suspension or reduction of allocation of cases to judges who are entrusted with other tasks of recognized interest to the administrative and tax jurisdiction or in other situations that justify the adoption of such measures, depend on a previous authorization from the CSTAF (Art. 74 (2) (g) of ETAF).

Reallocation of cases can occur in cases of extended impediment of a judge or modification of the number of magistrates assigned to the court; that task rests on the president court (Art.23 (1) (e), Art.36 (1) (e) and Art.43-A (4) (c) of ETAF).

G) On the matter of judicial accountability and the review of court decisions with the full respect of the principles of judicial independence and impartiality:

Portuguese magistrates may be subject to civil, criminal and disciplinary liability by actions and omissions committed in the exercise of their functions resulting in a violation of rights, freedoms and guarantees or in damages (Art. 22 of the CRP). In the context of the principle of, independence, under Art. 216 (2) of the CRP, judges cannot be held accountable for their decisions, with the exception of the cases established by law.

Among such exceptions, judges may subject to criminal liability if they commit a crime during the exercise of his/her functions, such as a serious violation of the duty of professional secrecy (Art. 371, Criminal Code). Disciplinary liability may be established where there is a violation of the rules of conduct, as established under Art. 82 of EMJ and may include the violation of the duty of professional secrecy. Concerning civil liability, as it regards liability during the exercise of the judicial function and the principle of (ir)responsibility of the judges, the State is responsible for any damages stemming from manifestly unconstitutional, illegal or unjustified judicial decisions delivered by judges in accordance with Art. 13 of the Regime on Non-Contractual Liability of the State approved by Law No. 67/2007, 31 December.

H) On the prevention and fight against corruption and the promotion of integrity within the judiciary:

Courts are independent and are only subjected to the law (Art. 2 of ETAF). Moreover, judges may not be removed nor held liable for their decisions, except in cases defined by law (Art. 216 (1) of CRP).

Judges in office may not hold any other position, aside from non-remunerated teaching or researching. Another exception is the appointment of functions or the exercise of functions outside the scope of courts activity whose compatibility with the judiciary is especially established in the law (Art. 216 (3) of CRP, Art. 3(3) of ETAF and Art.8-A of EMJ). Both exceptions depend on the authorisation of the CSTAF and, in the first case, as long as they do not entail detriment to the service. Authorisation of the CSTAF is granted if there is no detriment to the service nor hindrance to the independence, dignity and prestige of the judicial function in the following situations:

a) the exercise of non-professional functions in any statutory bodies of public or private entities whose specific aim is to exercise disciplinary activity or to settle disputes;
b) the exercise of non-professional functions in any statutory bodies of entities involved in professional sporting competitions, including the respective corporations (in line with CSTAF deliberations referred in “regulatory measures”).

Furthermore, the appointment, assignment, transfer and promotion of judges falls under the realm of the CSTAF.

Impartiality of proceedings is ensured by the provisions concerning cases of impediment, namely no judge may rule on a case to which he/she or a member of his/her family is party or in which he/she has taken part in another capacity, as well as cases of suspicion. Concerning the latter one, it is the case of a serious enmity or a close connection between the judge and one of the parties (Arts.115 – 129 of the Civil Procedure Code (CPC) applicable *ex vi* Art.1 of CPTA and Art.7. of EMJ).

For instance, according to Art. 120 (1) (f) of the CPC, if a judge has received a gift/donation before or after proceedings have been lodged, and because of it, or where has provided the means to pay the costs, a party has the right to question the judge’s impartiality and to demand his/her removal from the case.

I) On countering the negative influence of stereotyping in judicial decision-making and ensuring a comprehensive and effective training of the judiciary in the matter of competences and ethics, pursuant to Art. 2 of Law 2/2008, 14 January[92], training of magistrates includes initial and continuous training activities. The initial training consists of a theoretical and practical training course, organized in two stages, followed by a traineeship. The first stage takes place at CEJ headquarters and may include short training periods in courts. The second one takes place in courts with a judge or public prosecutor, as chosen by the candidates (Art. 30).

The aim of ongoing training is to enhance the expertise and skills required by judges and prosecutors regarding their professional performance and personal development. The goal is to promote, among other skills, technical and legal knowledge (updated and specialized) and a better understanding of the realities of modern life, from a multidisciplinary perspective, in line with the study of topics and matters concerning professional ethics and deontology.

The Department of Training of CEJ drafts an annual plan on continuous training covering a broad range of topics.

In this regard, it is worth mention the “Ethics and Deontology-Disciplinary Law” course that occurred on the 25th January 2021, whose aim was to provide a reflection on ethics, public life and the media, particularly on the intervention of magistrates in social networks.

J) On ensuring that judges are protected by legal regulations and adequate measures against attacks on their physical or mental integrity, their personal freedom and safety, the response of judges to personal attacks by the press, representatives of other powers or anyone else is not specifically regulated. However, according to Art. 84-A (c) and (e) of EMJ, the disciplinary responsibility of a judge is set aside in cases of self-defence and of a right or a duty exercise (such as the defence of honour). In addition, Art. 85 (c) of EMJ also establishes a special remission of sanctions where circumstances such as an unjust provocation, acting under serious threat or committing the offense was determined by honourable motive, exist and that led to an unlawful response for the defence of honour. Moreover, according to Art 7-B (2) of EMJ on circumspection, judges cannot make declarations or commentaries about the proceedings unless authorized by the CSTAF and to defend their honour or any other legitimate interest.

It also worth mention that the Statute of Judicial Magistrates (SMJ), as amended by Law No. 67/2019 of 27 August, has undergone substantial changes that had a positive impact on the promotion of independence and impartiality of the judges. The following should be highlighted:
Impediments

Article 7 of SJM provides 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.
Salary and its components

Article 22 of SMJ specifies 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.

Moreover, the remuneration level of judicial magistrates placed as permanent staff cannot be reduced as a result of changes to the judicial organization judicial organization that entail compulsory transfers. Article 188-A establishes a remuneration limit by determining that gross remuneration exceeding the limit provided for in article 3 of Law No. 102/88, of 25 August[93] may be received, provided that it does not exceed 90% of the amount equivalent to the sum of the salary and monthly allowance for representation expenses of the President of the Republic.

[92] This law establishes the recruitment procedure for judges, its training and the CEJ functioning
[93] Which regulates the remuneration system for holders of political offices.

Re-allocation of cases and re-assignment of judges

Article 45-A of SMJ now 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.

This provision resolved the inconsistency between the Law on the Organisation of the Judicial System (LOJS) - Law No. 62/2013 of 26 August - and the SMJ.

Article 94 of LOJS provides the adoption by the High Council for the Judiciary of a regulation defining criteria to that end, which came to be adopted on the 6 July 2018. Article 3 thereof stipulates that the transfer of a judge to another section in the same district requires his/her consent. With this new regulation the inconsistency that existed in the previous one was removed. The previous one established that the judge's consent could be waived for reasons of excessive workload in the section of transfer. According to Article 5 of the same regulation, the reallocation of cases to another judge is also subject to the judge's consent.

These amendments aimed to comply with recommendation ix issued in the Fourth Round Evaluation Report on Portugal which was adopted at GRECO's 70th Plenary Meeting (4 December 2015) and made public on 10 February 2016.

Thus, the legal framework governing the re-allocation of cases and the re-assignment of judges is now consistent and underpinned by objective and transparent criteria aimed at safeguarding judges' independence, as required by the recommendation.

Appointment of appeal court judges

Article 47-A of SMJ changed the composition of the jury responsible for the selection of appeal court judges, by establishing parity between members who are judges (three) and those who are non-judges (three).

This amendment aimed to comply with recommendation vii issued in the Fourth Round Evaluation Report on Portugal which was adopted at GRECO's 70th Plenary Meeting (4 December 2015) and made public on 10 February 2016 and as safeguard against judicial nominations for improper motives. The report stressed that selection and appointment procedures in which judges have only a minority jeopardise the principle of the separation of powers and of judicial independence[94].

Declaration of assets, income, liabilities and interests

Article 149(1)(x) of SJM provides that it is the duty of the High Council for the Judiciary to ensure compliance with the legal rules on the issue and control of declarations of income and assets of judicial magistrates and to approve, in accordance with the law, the necessary instruments of application. On 12 January 2021, the Plenary of the High Council deliberated to approve the Regulation on Declaratory Obligations, implementing the rules applicable to judicial magistrates arising from Law No. 52/2019, of 31 July, already mentioned.

According this new Regulation, judicial magistrates must submit electronically (on the IUDEX platform) within 60 days of taking up their post or position to which they have been appointed, the single declaration provided for in Article 13 of Law No. 52/2019. For this purpose, they must use the form set out in the annex to that Law, which includes data related with income, assets and interests.

Judicial magistrates already in office at the time of the publication in the Official Gazette (*Diário da República*) of the Deliberation of the Plenary of the High Council approving this regulation shall submit the aforementioned declaration within 60 days from such publication.

In case of non-submission or incomplete or incorrect submission of the declaration and its updates, the High Council shall notify the judicial magistrate to remedy the omission, complete or correct the declaration within 30 days from the deadline for submitting it.

[94] On the other hand, decisions on the selection of Supreme Court Judges continue to be taken by a panel composed of two Supreme Court judges and four non-judges, which has led GRECO to consider, through subsequent compliance reports, the recommendation as partially implemented.

The High Council is the competent body to apply, under the SJM, the system of sanctions regarding non-compliance with the duty to submit declarations.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

Both High Councils answered no. Nevertheless, the High Council for the Judiciary noted that concerning Action 1.5 of the Plan, notably with "*regard to the administration and allocation of resources to the courts, inter alia, to enhancing its efficiency and contributing to the proper functioning of the courts"*, there are still some difficulties to overcome, related with:

a) The management of human resources, which is reflected in the dramatic shortage of court clerks and the inability to manage their placement/posting, since this is a matter which is not within the competence of the judiciary or the High Council, but rather of a Directorate-General under the remit of the Ministry of Justice;
b) The same happens with the management of court buildings and facilities, with repercussions on their preservation and their suitability for the performance of procedural acts. This factor is particularly visible in the current framework of a pandemic. Their management lies within the competence of an administrative entity also under the remit of the Ministry of Justice.
c) The supervision of the information technology, totally external to the judiciary or the High Council.

Therefore, courts are reliant on the management of IT tools by a third party, which is also dependent on the Ministry of Justice; the High Council has no participation. This is a sensitive matter, given that legal proceedings in Portugal are dematerialised and dealt electronically.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

The High Council for the Judiciary, as a member of the European Network of Councils of the Judiciary, endorses the positions expressed by the Network regarding violations of the independence of the judiciary and the principle of the rule of law, in particular as regards Turkey, Poland and Hungary.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

No

ROMANIA / *ROUMANIE*
Ministry of Justice
02/03/2021

1. Veuillez décrire toute mesure spécifique prise par vos autorités pendant la période de mise en œuvre du Plan d'action du Conseil de l'Europe sur le renforcement de l'indépendance et de l'impartialité du pouvoir judiciaire (2016-2021) qui a eu un impact sur l'indépendance et l'impartialité internes et externes des juges et des procureurs ?

Veuillez fournir, en particulier, des exemples concrets de toute mesure institutionnelle, législative, réglementaire ou autre, ainsi que des nouvelles pratiques qui ont été adoptées ou mises en place au cours des cinq dernières années pour prévenir et/ou traiter (y compris les procédures, les recours et les sanctions en cas) l'influence ou ingérence indue (en ce qui concerne notamment: la sélection, la nomination et la promotion; les conditions de travail (y compris la sûreté et la sécurité); le financement des tribunaux; la responsabilité; la protection dans la prise de décision contre l'influence ou l'ingérence indue de pairs (y compris les juges des cours supérieures ou les parquets), d'autorités judiciaires ou de poursuites ou d'associations professionnelles, d'acteurs politiques ou du pouvoir législatif, de l'exécutif, des médias ou d'autres acteurs privés (y compris des acteurs financiers).

Dans le cadre des procédures relatives à l'adoption des lois de la justice, le Conseil Supérieur de la Magistrature a formulé de nombreuses propositions visant à améliorer les réglementations légales en matière, dont plusieurs sont introduites dans le processus législatif.

Ainsi, dans le cadre de l'analyse effectuée sur les propositions de modification et de complément de la Loi no. 317/2004 sur le Conseil Supérieur de la Magistrature dans le cadre du projet de Loi pour la modification et le complément de la Loi no. 303/2004 sur le statut des juges et des procureurs, de la Loi no. 304/2004 sur l'organisation judiciaire et de la Loi no. 317/2004 sur le Conseil Supérieur de la Magistrature, communiqué par le Ministère de la Justice par la note no. 88929/12.01.2017, la Commission no. 1 – « Législation et coopération interinstitutionnelle » a apprécié que la règlementation des mécanismes proactifs et efficaces s'impose, lesquelles peuvent permettre au Conseil de prendre les mesures nécessaires pour la défense de l'indépendance, de l'image, de la crédibilité et du prestige des magistrats et du système judiciaire roumain.

En ce sens, la Commission a formulé une proposition de modification de **l'art. 30** de la Loi no. 317/2004 laquelle a été communiquée pour consultation aux juridictions et aux Parquets près les tribunaux et ultérieurement elle a été envoyée au ministre de la justice dans le cadre des observations formulées sur le projet de Loi pour la modification et le complément de la Loi no. 303/2004 sur le statut des juges et des procureurs, de la Loi no. 304/2004 sur l'organisation judiciaire et de la Loi no. 317/2004 sur le Conseil Supérieur de la Magistrature (note no. 2465/2017 du 24 avril 2017).

La proposition a été presqu'entièrement introduite dans le processus législatif, par la Loi no. 234/2018 de modification de la Loi no. 317/2004, dont l'art. 30 a été modifié comme il suit :

« Art.30 – (1) Les sections compétentes du Conseil Supérieur de la Magistrature ont le droit et respectivement l'obligation corrélative de se saisir d'office pour défendre les juges et les procureurs contre toute action d'immixtion dans l'activité professionnelle ou liée à cette-ci, qui pourrait porter atteinte à l'indépendance ou à l'impartialité des juges respectivement à l'impartialité ou à l'indépendance des procureurs dans la prise des solutions, en conformité avec la Loi no. 304/2004 sur l'organisation judiciaire, republiée, avec les modifications et les compléments ultérieurs, ainsi que contre toute action qui pourrait créer des soupçons sur elles. En même temps, les sections du Conseil Supérieur de la Magistrature défendent la réputation professionnelle des juges et des procureurs. Les saisines concernant la défense de l'indépendance de l'autorité judiciaire dans son ensemble sont résolues sur demande ou d'office par l'assemblée plénière du Conseil Supérieur de la Magistrature.

(2) L'assemblée plénière du Conseil Supérieur de la Magistrature, les sections, le président et le vice-président Conseil Supérieur de la Magistrature, d'office ou à la saisine du juge ou du procureur, saisit l'Inspection Judiciaire pour l'effectuation des vérifications, dans le but de défendre l'indépendance, l'impartialité et la réputation professionnelle des juges et des procureurs.

(3) Lorsque l'indépendance, l'impartialité ou la réputation professionnelle d'un juge ou d'un procureur est atteinte, la section compétente du Conseil Supérieur de la Magistrature prend les mesures nécessaires et assure leur publication sur le site du Conseil Supérieur de la Magistrature, elle peut saisir l'organe compétent à décider sur les mesures nécessaires ou elle peut disposer une autre mesure adéquate, en conformité avec la loi.

(4) Le juge ou le procureur qui considère que son indépendance, impartialité ou réputation professionnelle a été atteinte n'importe comment peut s'adresser au Conseil Supérieur de la Magistrature, les dispositions de l'alinéa (2) étant appliquées mutatis mutandis.

(5) À la demande du juge ou du procureur concerné, le communiqué publié sur le site du Conseil Supérieur de la Magistrature sera affiché à l'institution où celui-ci déroule son activité et/ou publié sur le site de cette institution.

(6) Le Conseil Supérieur de la Magistrature assure le respect de la loi et des critères de compétence et d'éthique professionnelle dans le déroulement de la carrière professionnelle des juges et des procureurs.

(7) Les attribution de l'assemblée plénière du Conseil Supérieur de la Magistrature et de ses sections, relatives à la carrière des juges et des procureurs, sont exercées avec le respect des dispositions de la Loi no. 303/2004 sur le statut des juges et des procureurs et de la Loi no. 304/2004, republiée, avec les modifications et les compléments ultérieurs. »

Les dispositions de l'art. 30 de la Loi no. 317/2004 sur le Conseil Supérieur de la Magistrature se reflètent de façon adéquate au niveau de la législation secondaire adoptée par le Conseil Supérieur de la Magistrature.

Par la décision de l'assemblée plénière du Conseil Supérieur de la Magistrature no. 1073 du 3 décembre 2018, publiée dans le Journal Officiel no. 1044 du 10 Décembre 2018, le Règlement d'organisation et de fonctionnement du Conseil Supérieur de la Magistrature a été approuvé. La procédure d'effectuation des vérifications prévues par l'art. 30 de la Loi no. 317/2004 est régie en détail dans le contenu de l'art. 40 du Règlement.

Ultérieurement, au niveau du Conseil Supérieur de la Magistrature la modification et le complément de la législation secondaire ont été considérés nécessaires, en ce qui regarde les demandes visant la défense de l'indépendance de l'autorité judiciaire dans son ensemble, ainsi que les demandes de défense de l'indépendance, de l'impartialité ou de la réputation professionnelle des juges et des procureurs.

En ce sens, par la décision de l'assemblée plénière du Conseil Supérieur de la Magistrature no. 155 du 23 juillet 2020, le Règlement d'organisation et de fonctionnement du Conseil Supérieur de la Magistrature, approuvé par la décision de l'assemblée plénière du Conseil Supérieur de la Magistrature no. 1073/2018 a été modifié et complété.

Par cette démarche l'intention a été d'introduire une procédure filtre pour assurer la résolution avec célérité des demandes/saisines sur la défense de l'indépendance de l'autorité judiciaire dans son ensemble, des demandes de défense de l'indépendance, de l'impartialité ou de la réputation professionnelle formulée par le juge/le procureur concerné lorsqu'il est évident que les aspects allégués ne regardent pas son activité professionnelle, ainsi que des demandes de défense de l'indépendance, de l'impartialité ou de la réputation professionnelle d'un juge/procureur formulées par une autre personne que le juge/le procureur concerné.

Du point de vue des aspects en discussion les dispositions de l'art. 75 de la Loi no. 303/2004 sur le statut des juges et des procureurs, telles qu'elles ont été modifiées par la Loi no. 242/2018 sont aussi importantes, dispositions qui transposent dans la matière analysée le principe de la séparation de la décision sur la carrière des juges et des procureurs.

« Art. 75 – (1) La section pour les juges du Conseil Supérieur de la Magistrature a le droit, respectivement l'obligation, sur demande ou d'office, de :

a) Défendre les juges contre toute action d'immixtion dans l'activité professionnelle ou liée à cette-ci, qui pourrait porter atteinte à l'indépendance ou à l'impartialité, ainsi que contre toute action qui pourrait créer des soupçons à l'égard d'elles ;
b) Défendre la réputation professionnelle des juges ;
c) Défendre l'indépendance du pouvoir judiciaire.

(2) La section pour les procureurs du Conseil Supérieur de la Magistrature a le droit, respectivement l'obligation, sur demande ou d'office, de :

a) Défendre les procureurs contre toute action d'immixtion dans l'activité professionnelle ou liée à cette-ci, qui pourrait porter atteinte à l'impartialité ou à l'indépendance dans la prise des solutions, en conformité avec la Loi no. 304/2004, republiée, avec les modifications et les compléments ultérieurs, ainsi que contre toute action qui pourrait créer des soupçons à l'égard d'elles ;
b) Défendre la réputation professionnelle des procureurs.

(3) Les saisines concernant la défense de l'indépendance de l'autorité judiciaire dans son ensemble sont résolues, sur demande ou d'office, par l'assemblée plénière du Conseil Supérieur de la Magistrature, avec l'avis de chaque section.

(4) Les juges ou les procureurs qui se trouvent dans une des situations visées aux alinéas (1) ou (2) peuvent d'adresser aux sections compétentes du Conseil Supérieur de la Magistrature, pour disposer les mesures nécessaires, en conformité avec la loi. »

C'est toujours dans le but de l'identification des solutions adéquates pour l'amélioration des règlements relatifs à la défense de l'indépendance de la justice que la Commission no. 1 – « Législation et coopération interinstitutionnelle », dans la séance du 4 avril 2017, a formulé une série de propositions de modification et de complément de la décision du Conseil National de l'Audiovisuel no. 220/2011 sur le Code de réglementation du contenu de l'audiovisuel.

Une proposition importante est celle concernant le complément de l'art. 43 alinéa (1) du Code de réglementation du contenu de l'audiovisuel, au sens que les radiodiffuseurs doivent éviter l'exercice des formes de pression sur la justice par les commentaires, les prises de position et les déclarations non réelles relatives à l'activité des magistrats impliqués, qu'il s'agit des propres déclarations ou de celles des invités, y compris celles des avocats des parties.

L'introduction à l'art. 43 d'un nouvel alinéa, l'alinéa (4) a été également proposée, par lequel régir l'obligation des radiodiffuseurs d'assurer, dans le cadre des émissions dans lesquelles les dossiers définitivement résolus par les juridictions ou les décisions de la Cour européenne des droits de l'homme sont débattus, la diffusion en entier et d'une manière visible/lisible des aspects retenus dans la motivation des décisions judiciaires concernées pendant toute la durées du débat, quelle que soit la qualité et/ou la spécialisation des participants au débat.

Une autre proposition formulée par la Commission, visant à renforcer le cadre légal relatif aux mesures qui peuvent être prises lorsque l'indépendance du système judiciaire ou l'indépendance, l'impartialité ou la réputation professionnelle d'un juge ou d'un procureur a été touchée, est le complément de l'art. 57 avec un nouvel alinéa, l'alinéa (5), pour l'institution des dispositions dérogatoires dans le contenu de la Décision no. 220/2011 sur le Code de réglementation du contenu de l'audiovisuel, relatives à la possibilité du Conseil Supérieur de la Magistrature de demander la diffusion des communiqués donnés par l'assemblée plénière sur l'atteinte portée à l'indépendance, à l'impartialité ou à la réputation professionnelle des magistrats dans le cadre d'un programme audiovisuel, ainsi qu'aux délais dans lesquels cette demande peut être faite.

Les propositions ont été communiquées au Conseil National de l'Audiovisuel avec la note no. 4802/2017 du 10.12.2018, mais elles n'ont pas été assimilées jusqu'à présent.

2. Des cas spécifiques d'influence indue ou d'autres formes d'interférence ont-ils été signalés au cours de la période 2015-2020 ?

Dans l'affirmative, veuillez fournir un bref résumé des aspects signalés et des types d'influence ou d'interférence, y compris des informations sur toute action ou mesure adoptée pour remédier à ces situations, ainsi que toute information disponible sur l'impact de ces mesures et leur efficacité.

Si aucune action ou mesure n'a été prise, quels étaient les motifs de rejet ou de non-intervention dans les cas signalés d'influence ou d'ingérence injustifiées ?

Veuillez indiquer quels sont les facteurs les plus importants qui sous-tendent l'efficacité des mesures mises en place pour garantir le respect de l'indépendance et de l'impartialité du pouvoir judiciaire dans votre pays.

La situation centralisée des décisions sur la **défense de l'indépendance et de l'impartialité des magistrats et du système judiciaire** dans son ensemble, adoptées pendant la période avril 2016 – 16 février 2021 contient les données suivantes :

La période avril 2016 – 16 février 2021	Nombre de décisions concernant la défense de l'indépendance du système judiciaire	Nombre de décisions concernant la défense de l'indépendance et de l'impartialité des juges	Nombre de décisions concernant la défense de l'indépendance et de l'impartialité des procureurs
Total 2016	20	6 + 2 (demandes retirées)	2
Total 2017	6 + 1 (demande retirée)	0	2
Total 2018	14	1	4
Total 2019	5	10	6
Total 2020	17	11	7
Total 2021	-	1	1

Décisions en matière disciplinaire concernant l'immixtion dans l'activité d'un autre juge ou procureur

Pendant la période avril 2016 – avril 2021 au rôle de la Section pour les juges en matière disciplinaire 4 actions disciplinaires ayant pour objet l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004 (l'immixtion dans l'activité d'un autre juge ou procureur) ont été enregistrées et trois sanctions disciplinaires ont été infligées.

Dans les quatre actions disciplinaires, la Section pour les juges en matière disciplinaire du Conseil Supérieur de la Magistrature a rendu les décisions suivantes :

Par la décision no. 22J du 31.10.2016, rendue dans le dossier no. I/J/2016, la Section a constaté la nullité de l'action disciplinaire formulée par l'Inspection Judiciaire pour la commission des écarts de discipline prévus par l'art. 99 points a) et l) de la Loi no. 303/2004 sur le statut des juges et des procureurs, republiée, avec les modifications et les compléments ultérieurs.

Quant à l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004, l'Inspection judiciaire a constaté que le juge s'est ingéré dans l'activité d'un autre juge en déposant au dossier une note par laquelle il demandait à celui-ci de s'abstenir de la résolution de l'affaire.

La décision est devenue définitive par la décision civile no. 312/4.12.2017 rendue par la Haute Cour de Cassation et Justice, par laquelle le rejet comme dénué de fondement du recours principal interjeté par l'Inspection Judiciaire a été disposé.

Par la décision no. 28J du 3.10.2017, rendue dans le dossier no. 16/J/2016, la Section a admis l'action disciplinaire formulée par l'Inspection Judiciaire et en conformité avec l'art. 100 point e) de la Loi no. 303/2004 sur le statut des juges et des procureurs, republiée, avec les modifications et les compléments ultérieurs et elle a infligé à la défenderesse juge la sanction disciplinaire qui consiste dans « l'exclusion de la magistrature », pour la commission des écarts de discipline prévus par l'art. 99 point a) et l'art. 99 point l) du même texte législatif. Elle a infligé aussi à une autre défenderesse juge la sanction disciplinaire qui consiste dans « le sursis de la fonction de juge pour une période de 2 mois » pour la commission de l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004.

La Section a constaté que l'élément constitutif de l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004 retenu à la charge des défenderesses juge consiste dans en leur immixtion dans l'activité d'un autre juge qui devait statuer sur une demande d'abstention.

Par la décision no. 173 du 3.10.2018 rendue par une formation de jugement de 5 juges de la Haute Cour de Cassation et Justice les recours interjetés par les défenderesses ont été admis, la décision a été en partie infirmée et la sanction qui consiste dans *le déplacement disciplinaire pour une période d'une année* a été infligée à la défenderesse X et la sanction disciplinaire qui consiste dans *l'avertissement* a été infligée à la défenderesse Y.

Par la décision no. 17J du 14.03.2018, rendue dans le dossier no. 6/J/2017, la Section a constaté la nullité de l'action disciplinaire formulée par l'Inspection Judiciaire pour la commission des écarts de discipline prévus par l'art. 99 points a) et l) de la Loi no. 303/2004 sur le statut des juges et des procureurs, republiée, avec les modifications et les compléments ultérieurs.

Quant à l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004, l'Inspection judiciaire a constaté que le fait du juge X de formuler un « avertissement » contre un collègue juge par lequel il lui demandait de s'abstenir de la résolution de la constatation en annulation fait partie de la catégorie de l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004.

Par la décision civile no. 50/25.02.2019 rendue par la Haute Cour de Cassation et Justice dans le dossier no. 2255/1/2018, le rejet comme dénué de fondement du recours interjeté par l'Inspection Judiciaire a été disposé.

Par la décision no. 6J du 14.03.2018, rendue dans le dossier no. 17/J/2017 la Section a admis l'action disciplinaire formulée par la demanderesse l'Inspection Judiciaire et elle a infligé la sanction disciplinaire qui consiste dans « le sursis de la fonction pour une période de 6 mois » pour la commission des écarts de discipline prévus par l'art. 99 point l) de la Loi no. 303/2004 sur le statut des juges et des procureurs.

La Section a constaté que la défenderesse juge a eu plusieurs discussions avec la mère d'une partie d'un dossier, qu'elle a accédé dans l'application ECRIS le dossier en discussion et qu'elle a discuté avec les membres de la formation de jugement qui devait connaître de l'affaire. Elle a fait état que sous prétexte d'un problème à caractère professionnel, cette-ci a initié des discussions avec les deux membres et elle leur a raconté la situation de fait du dossier et elle s'est fermée de relater sur demande expresse de ceux-ci.

Par la décision no. 37 du 18.02.2019, rendue par une formation de jugement de 5 juges de la Haute Cour de Cassation et Justice le recours interjeté par la défenderesse juge a été admis, la décision a été en partie infirmée et la sanction disciplinaire qui consiste dans le sursis de la fonction pour une période de 3 mois a été infligée.

En même temps, au rôle de la Section pour les procureurs en matière disciplinaire, une action disciplinaire ayant pour objet l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004 (l'immixtion dans l'activité d'un autre juge ou procureur) a été enregistrée.

Dans l'action disciplinaire la Section pour les procureurs en matière disciplinaire du Conseil Supérieur de la Magistrature a rendu la décision suivante :

Par la décision no. 2P du 30.01.2018, rendue dans le dossier no. 3/P/2017 la Section a admis en partie les actions disciplinaires et elle a infligé la sanction disciplinaire qui consiste dans « l'exclusion de la magistrature », pour la commission des écarts de discipline prévus par l'art. 99 points a) (2 écarts de discipline), b), l) et i) et thèse 1 et elle a débouté les actions disciplinaires connexes formulées contre monsieur X, pour la commission des écarts de discipline prévus par l'art. 99 points j) et l) de la Loi no. 303/2004.

Quant à l'écart de discipline prévu par l'art. 99 point l), la Section a constaté que le fait du procureur de demander à son collègue procureur de ne pas introduire dans l'affaire une partie en tant que personne lésée et de procéder à l'investigation d'un officier de police rentre dans les limites de la notion d'immixtion et il réalise l'élément matériel de l'écart de discipline prévu par l'art. 99 point l) de la Loi no. 303/2004.

La décision est devenue définitive par la décision civile no. 90/08.04.2019 rendue par la Haute Cour de Cassation et Justice dans le dossier no. 859/1/2018, par laquelle, parmi autres, le rejet du recours interjeté par l'Inspection Judiciaire a été disposé comme dénué de fondement.

3. Veuillez décrire les défis qui restent à relever dans ce domaine et/ou les tendances observées en matière d'indépendance et d'impartialité du pouvoir judiciaire qui nécessiteraient une attention collective de la part des Etats membres et/ou du Conseil de l'Europe ?

Des efforts sont actuellement fournis, dans un certain nombre d'États membres, pour renforcer l'indépendance de la justice et réduire l'influence du pouvoir exécutif ou du pouvoir législatif sur le pouvoir judiciaire. Il s'agit notamment de mettre en place ou de renforcer un Conseil national de la magistrature indépendant. La méthode de nomination des juges est l'un des éléments susceptibles d'avoir une incidence sur l'indépendance de la justice et la perception de l'indépendance par le public.

Un certain nombre d'États membres ont envisagé ou adopté des réformes visant à renforcer la participation du pouvoir judiciaire à la procédure ou à définir des critères clairs ou des mécanismes de contrôle juridictionnel. Les réformes des procédures disciplinaires pour les juges et les procureurs témoignent également d'une attention accrue accordée à la nécessité d'un équilibre offrant des garanties essentielles tout en préservant l'obligation de rendre des comptes.

Des débats, des réflexions et des plans de réforme sur le renforcement des garanties juridiques et constitutionnelles en matière d'indépendance de la justice ont également lieu dans les États membres où l'indépendance de la justice est traditionnellement considérée comme élevée, voire très élevée. Les États membres dans lesquels la séparation des pouvoirs et le respect de l'indépendance de la justice reposent davantage sur la tradition politique que sur des garanties juridiques détaillées ont indiqué que l'évolution de la situation dans d'autres États membres avait été l'une des raisons pour lesquelles des mesures visant à appliquer des systèmes plus formels ont été prises.

4. Y a-t-il des aspects spécifiques de l'enquête et du Plan d'action de Sofia qui, selon vous, manquent ou ne sont pas suffisamment détaillés dans le questionnaire et qui pourraient être utiles pour comprendre l'indépendance et l'impartialité du pouvoir judiciaire dans votre pays ? Dans l'affirmative, veuillez fournir toute information supplémentaire que vous jugez utile dans le cadre de cet exercice.

SERBIA / *SERBIE*
Ministry of Justice
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

For the purpose of the establishment of an effective mechanism allowing the Councils to react against political interferences, The High Judicial Council, at the session held on 25 October 2016, adopted amendments to the Rules of Procedure of the High Judicial Council that stipulates the procedures of public reactions of the High Judicial Council in cases of political interference in the judiciary. Since then the High Judicial Council publicly reacts through the press releases not only in cases of political interferences but also in cases of interference from media and other actors.

Also, the State Prosecutorial Council adopted the Regulation on work of the State Prosecutorial Council in March 2017, which established the institute of the Commissioner for autonomy, stipulated that this function will be performed by the Deputy President of State Prosecutorial Council and prescribed the procedure of the State Prosecutorial Council public reactions in cases of political influence to work of public prosecution office, regularly (once in a year) and extraordinary (if needed). The Deputy of the President of State Prosecutorial Council started to perform duties of the Commissioner for autonomy in April 2017 and is being very active since then. The Commissioner for autonomy proceeded in several cases, he has been filing reports to the State Prosecutorial Council and has been informing the public on cases of forbidden influence to work of the public prosecution office, where, in opinion of certain prosecutorial office holders, were endangered independence of the public prosecution office and professional integrity of prosecutorial position holders.

The National Assembly has adopted the Code of conduct for members of Parliament (MPs) relating to restrictions on commenting on judicial decisions and proceedings in July 2017.

Under the Article named "The principle of prohibition of influence on the court" is prescribed: "The Member of Parliament is obliged to respect the authority and impartiality of the court. A Member of Parliament may not, in public statements and public appearances during the course of criminal proceedings, present ideas, information or opinions which predict the course or outcome of such proceedings or which assess the procedural value of evidence presented or to be presented in such proceedings, in a way that is possible to influence the outcome of criminal proceedings. The prohibition referred to in paragraph 2 of this Article prevents the intentional or unintentional pressure on the court from denying the defendant the right to a fair and impartial trial. The prohibition referred to in paragraph 2 of Article does not encroach on the right of the Member of the Parliament to present ideas, information or opinions on the work of courts and other judicial bodies in public statements and public appearances."

In the Revised Action for Chapter 23:„Judiciary and fundamental rights", within negotiation of the Republic of Serbia with European Union, adopted by the Government in July 2020 some new activities have been proposed with the aim to improve the existing mechanism for the Councils to react in the event of eventual pressure on the judiciary, but also 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.

Holding regular quarterly meetings between representatives of ethics committees of the High Judicial Council and State Prosecutorial Council and the representatives of the National Assembly and the Government of the Republic of Serbia is a good way and proper mechanism to promote and raise awareness of public officials and politicians for full respect of court proceedings, judicial decisions and work of courts and PPOs. The joint group composed of the same members will also prepare quarterly reports on the conclusions and recommendations for future improvements in the area of full respect for judicial independence and autonomy.

Seminars covering topics of ethics and integrity of the members of the judiciary have been delivered on a regular basis in the work of the Judicial Academy of the Republic of Serbia as part of the continuous as well as of the initial training.

It has to be noted that the Judicial Academy and the High Judicial Council with the support from the IPA 2016 Project „EU for Serbia – support to the High Judicial Council" organized 50 training courses in the area of disciplinary liability of judges. The training courses, which were provided from September 2019 to July 2020, have covered 1,500 judges of the courts of the regular and special jurisdictions in Serbia. The lecturers were the judges – the members of the first-instance and the second-instance disciplinary bodies of the High Judicial Council.

The following topics were covered at the training courses:

- Harmonization of the local legal framework with the international standards
- The rights of the judge against whom the disciplinary proceedings are conducted
- Disciplinary accountability (the goal and the legal nature)
- The position of the judge/president of a court in disciplinary proceedings
- Disciplinary misdemeanours (there will be misdemeanours), disciplinary sanctions and relieve of duty.

The purpose of the training courses was raising awareness of the judicial office holders of the objective, nature and importance of disciplinary liability for their professional attitude towards the work, as well as a more detailed familiarization with the behaviours that may constitute the basis for disciplinary liability. This training is particularly important in view of the fact that the topic of disciplinary liability of judges has multiple significance both for the independence of the judiciary, the integrity of judges, the trust of the citizens and the reputation of the judiciary.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

In 2020 the High Judicial Council published two press releases- announcements. In the press release published on 23rd December, for example, the High Judicial Council issued a statement condemning the database composed of various information about judges of Special Department for organized crime of Higher and Appellate Court in Belgrade and the judicial processes in which they acted, which was made by one non-governmental organization and published on its internet portal. In 2019's press release the High Judicial Council condemned the statements of certain deputies of the Parliament that aimed to disqualify the expertise and professional work of some judges.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

One of the most tangible challenges is to find an appropriate balance between the need to protect the judicial process and judicial independence on the one hand and freedom of the open discussion of matters of public interest on the other, as already noted in the Venice Commission's Report on the Independence of the Judicial System. No less important is the balance that must exist between judicial independence and accountability as well.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

SPAIN / *ESPAGNE*
Ministry of Justice
26/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

General Council for the Judiciary.
In accordance with Article 122.3 of the Spanish Constitution, the General Council of the Judiciary (CGPJ) is headed by the President of the Supreme Court and formed by other twenty members. Of these, twelve are Judges of all judicial categories, and eight are lawyers and other jurists, of recognized competence and with more than fifteen years of practice in their profession. The rules for the election of members from the Judicial Career are in Chapter II, Title II, of Book VIII of the Organic Law for the Judiciary (LOPJ), Articles 572-578.

Organic Law 4/2018, of December 28, amended Article 567.1 LOPJ, imposing the principle of balanced presence of men and women in the composition of the CGPJ.

Another relevant change that the aforementioned Law brought by modifying Article 579 was the reestablishment of the full-time dedication of the members of the CGPJ. Previously, Organic Law 4/2013, of June 28, adopted within the framework of certain measures to contain public spending due to the economic crisis, had established that only the six members of the permanent commission would have permanent dedication, while the other 15 would simultaneously remain in active service as Judges, Lawyers or other professions.

According to the third Transitory Provision of Organic Law 4/2018, the reform of these articles will not be applied until the constitution of the first CGPJ after the entry into force of this Law.

Appointment and promotion of judges.
The CGPJ is the national governing body in charge of Judges, and is therefore responsible for their selection, appointment, transferring and promotion. All matters pertaining to the professional career of Judges are the sole responsibility of the CGPJ.

Regarding the appointment and promotion of judges, the reform operated by Organic Law 4/2018, of December 28, brought two relevant improvements:

First, the reform of the Article 326.2 LOPJ to ensure a more transparent process in the appointment of Presidents of Provincial Audiences, High Courts of Justice and National Audience, Presidents of the Chamber and Magistrates of the Supreme Court.

The appointment will be based on an open call that will be published in the 'Official Journal'. The basis shall clearly and separately establish each of the merits to be taken into consideration, differentiating the jurisdictional excellence aptitudes from the governmental ones, and the common merits from the specific ones for a given position. The call will indicate in detail the weighting of each of the merits in the overall assessment of the candidate. The interview of the applicants for the explanation and defence of their proposal will be made in terms that guarantee equality and will take place in a public hearing.
Any proposal that has to be raised to the Plenary of the CGPJ must be motivated and individually record the weighting of each of the merits of the call. In any case, an overall evaluation of the candidate's merits, ability and suitability will be made.

Second, the proposal will also contain an assessment of its suitability to the provisions of Organic Law 3/2007, of March 22, for the effective equality of women and men (balanced presence of women and men, among others).

No measures to limit any interference by the Executive or the Legislative in the disciplining and removal of Judges have been adopted because there is no such since disciplinary functions are assigned to the CGPJ (Article 122.2 Spanish Constitution). The Council exercise these through its Disciplinary Commission (Articles 603-608 LOPJ). Organic Law 4/2018 of December 28 reformed Article 425, extending from six months to one year the limitation period for disciplinary procedures against judges.

Organic Law 4/2018 also limited the possibility of renewal of the mandate of Presidents of Provincial Audience, High Court of Autonomous Region, and any of their Courtrooms, to a second period of 5 years (in addition to the 5 years of the initial mandate).

In order to ensure the broadest statute of rights of Judges, Organic Law 4/2018 incorporated a general provision in Article 373.7. According to that, Judges, without prejudice to the particularities of their statute, will have, at less, all rights established for the members of the General Public Administration of the State and that suppose an improvement in the matter of conciliation, permits, licenses and any other right recognized. The CGPJ will adapt, by agreement of the Plenary, any modification that, meeting those requirements, occurs in said regime.

Communication and media.
The CGPJ has established Communication Offices that are the institutional channel of information. The President of the CGPJ presented to the Plenary on May 28, 2020 a new Communication Protocol adapted to the legal reforms and the new forms of communication. It takes into consideration the prevention measures due to the COVID19 pandemic.
The first and previous Protocol had been adopted in 2015. The document proposes formulas so that the information reaches the citizens in an effective, clear, truthful, objective and responsible way, with absolute respect for the rights and observance of the duties of all those involved in judicial proceedings. The Protocol also aims to establish a firm, simple and safe way of communication for Judges.

Professional Associations of Judges also have (and exercise) an important role in relation to the defence of Judges as highlighted in Opinion No. 23 (6 November 2020) of the Consultative Council of European Judges (CCJE). According to the data published in the CGPJ website (01/09/2020) in Spain there are six Professional Associations of Judges, and 2994 Judges are associated (56,1%).

Integrity and Ethics.
In order to promote the integrity within the judiciary (Action 2.3), 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 party in the case’.

Another important point introduced by Organic Law 4/2018 is the legal provision of the Judicial Ethics Commission within the CGPJ. The body had already been established by the Council in December 2016. Article 560.24 LOPJ set, among the powers of the Council, the compilation and updating of the Principles of Judicial Ethics and their dissemination and promotion and the provision of specialized advice to Judges in matters of conflicts of interest, as well as in other matters related to integrity. In addition, the Law requires that the CGPJ shall ensure that the Judicial Ethics Commission is endowed with the adequate resources and means for the fulfilment of its objectives.

The Ethics Commission of the Prosecutors Council issued a report on the Ethical and Deontological commitment of the Spanish prosecutors, which was unanimously adopted by agreement of the Prosecution Council meeting of December 12, 2018.

On 9 January 2019, the Prosecutor General sent to all prosecutors a formal presentation letter of the text, underlying the participatory nature of the preparation of the Code of Ethics, and announcing the forthcoming start of operation of the transparency portal hosted in their website (www.fiscal.es).

On October 22, 2020, the Prosecution Council approved the **Prosecution Code of Ethics.** The Code of Ethics encompasses principles and commitments in various areas: Intervention in media and networks, training, intervention in criminal proceedings, conflicts of interest, participation and management of the administration's assets, and internal relations.

Actions against the negative influence of stereotyping.
Some actions have been taken in recent years also against the negative influence of stereotyping in judicial decision-making (Action 2.4).

On the one hand, Organic Law 4/2018 incorporated urgent measures in application of the State Pact on gender violence. For example, to access selective or specialization tests (for promotion) it will be necessary to prove having participated in continuous training activities with a gender perspective (Art. 310 LOPJ). The Continuous Training Plan for the Judicial Career will contain specific courses on the principle of equality between women and men, non-discrimination based on sex, and gender perspective in the interpretation and application of the Law (Art. 443). Courses for Prosecutors on the principle of equality between women and men and its application on a transversal basis are also legally guaranteed by Article 2 of the Statute of the Centre for Legal Studies (Royal Decree 312/2019, of 26 of April).

On the other, the General Council of the Judiciary and the State Prosecution Office are very active on their own Equality plans. In this sense, the second Equality Plan for the Judiciary was adopted by the Plenary of the CGPJ on January 30, 2020 at the initiative of the Equality Commission. While the State Attorney General's Office adopted on June 13, 2019 an Action Plan to diagnose the situation and to ensure the execution of the Equality Plan that the Prosecution Career implemented in December 2015, also at the initiative of its Equality Commission. Both plans express awareness on the importance of mainstream training to overcome gender prejudices and stereotypes in specific subjects.

Openness and transparency of the Public Prosecution.
A database of "*Doctrine of the State Attorney General's Office*" (BOE Fiscalía) allows universal and free access to Circulars, Consultations and Instructions issued by the State Attorney General's Office since 1979. The database has been created by joint initiative of the State Attorney General's Office and the Agency State of the Official Journal (BOE). From the Official Journal website, you can access a search form that offers different criteria to find information (type of document, date, year, number, search by words, etc.). The database offers all existing documents since 1979 and is updated with new ones.

Autonomy.
From October 2018, the General State Prosecutor's Office has for the first time its own header in the Official Journal, entitled "Public Prosecution". So far, the publications appeared under the general heading "Administration of Justice". This intends to improve the perception of autonomy of the Public Prosecutor's Office.

By Royal Decree 312/2019, of April 26 a new Statute of the Centre for Legal Studies was adopted. It strengthens the functional autonomy and the decisive participation of the State Attorney General's Office in the training of prosecutors. In this sense, it creates the figure of the Training Director of the Prosecution Career. The Director is be appointed and dismissed by the Ministry of Justice at the proposal of the State Attorney General's Office.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

As mentioned above, in accordance with Article 14 LOPJ, Judges who consider themselves concerned or disturbed in their independence will inform the CGPJ.

Regulation 2/2011 of the Judicial Career regulates the 'amparo' (protection) proceeding in articles 318 to 325. The decision to admit the report for processing corresponds to the Permanent Commission. If admitted, a proceeding takes place and concludes in a resolution that grants or denies the 'amparo' (protection).

Based on the Annual Reports published by the CGPJ, the following table shows the number of complaints under article 14 presented by Judges, the number of those that were admitted and the number that were estimated.

	Number of instances ex Art. 14	**Number of those admitted**	**Number of cases in which protection was granted**
2015	6	2	NA
2016	11	4	0
2017	3	1	NA
2018	8	4	4
2019	7	0	0

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

Renewal of the General Council of the Judiciary.
Though not affecting the independence of judges on the bench, an additional element worth mentioning in this context is the renewal of the CGPJ. On August 3, 2018, the President of the Supreme Court and of the General Council of the Judiciary issued an agreement establishing the start of the procedure for the renewal of the CGPJ, which mandate expired on December 4, 2018. Parliamentary talks began then with a view to facilitating the timely renewal. In the meantime, two general elections took place in Spain in 2019 (in April 28 and in November 10), the health crisis caused by COVID-19 emerged in 2020 and on March 14, the '*state of alarm*' was declared.

Parliamentary talks on the renewal of the CGPJ are ongoing, with a view to reaching an agreement for the appointment of the members of the CGPJ in the manner established in the Constitution and the LOPJ. In an attempt to address the impasse, in December 2019 two parliamentary groups tabled a legal reform that if passed would provide an *ad interim* regime for the Council '*in office*' when its five-year term has expired.

Independent survey on judicial independence.
The CGPJ commissioned the independent company Metroscopia to conduct a **survey among Judges** in order to examine their vision of their task, their ***independence*** and of the Justice. The survey was conducted between September 8 and 22, 2020, through telephone interviews with 1,000 judges (19% of the judicial career) randomly selected according to the current distribution by sex, age and jurisdictional bodies. The technical file of the survey indicates a margin of error of ± 2.9 points.

- The results were published in October 2020 (CGPJ Survey among Judges).
- 99% of the members of the Spanish judiciary say they feel totally independent to make the decisions that, in the exercise of their jurisdiction, they believe appropriate.
- 94% say they perceive the same total independence as they do in the professional behaviour of the other Judges.
- Up to 9% respond that they "frequently" feel pressured by the media.
- 84% think that the media do not adequately reflect judicial work.

SWEDEN / *SUÈDE*
Ministry of Justice
11/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

The courts and judges

As for the general structure and laws that govern the courts and judges, reference is made to the answers provided in previous questionnaires to the CDCJ (see questionnaires on plan of action on strengthening judicial independence and impartiality of 10 July 2015 and 25 April 2018).

As for recent developments the following is notable.

On 1 July 2018 amendments entered into force in the Code of Judicial Procedure (CJP) on the rules for the allocation of cases. The amendment to the CJP now stipulates that the allocation of cases must be based on objective criteria established by the court in advance and must not be capable of affecting the outcome or progression of the case. This codified already existing practices and ensures that the standards for allocation of cases are set out in law, which is consistent with Council of Europe Recommendation (CM/Rec(2010)12) 'Judges: independence, efficiency and responsibilities'. The concrete details for the allocation of cases are to be specified in rules of procedure or similar standards of the courts. The rules on how to decide the chair of the court if several judges are involved in adjudicating a case were also codified in the CJP on 1 July 2018.

To strengthen order and security at the courts, amendments entered into force on 1 July 2019 in the CJP. The amendments provide the presiding judge extended mandate on expelling persons from a hearing, on the use of video link and telephone equipment, on prohibiting the use of external electronic equipment and to decide on closed hearings. The rules on security checks in court buildings were also strengthened.

To strengthen the criminal law protection for the exercise of public authority, an amendment entered into force on 1 January 2020 in the Swedish Criminal Code. Through the amendment the punishment for serious violence or threats to public officials, including judges and prosecutors, was increased to a minimum of 1 year and a maximum of six years of imprisonment.

On 1 April 2021 new legislation entered into force which puts the Judges Proposal 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 central government authority that administer the procedure of appointment and promotion of judges.

In February 2020 an all-party committee of inquiry was set up by the Swedish government. The committee, which is chaired by the President of the Supreme Court, will examine the need to strengthen the independence of the courts and judges. One question that the committee will examine is whether the number of Supreme court justices and their age of retirement should be regulated in the Constitution. The committee will also examine whether the organisation and the role of the Swedish National Courts Administration, an independent government authority tasked with providing administrative support and services to the courts, should be altered in order to strengthen the independence of the courts and judges. The committee will present its final report in February 2023.

On February 2019 The National Courts Administration adopted new internal guidelines on dealing with risks related to misconduct. Further, the National Courts Administration is currently reviewing its routines on reporting cases of misconduct, taking into account the requirements laid down in 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 (the Whistleblower Protection Directive). The National Courts Administration continuously address issues related to safety and security at the courts and include issues of undue influence in its' internal training programs.

The Courts of Sweden Judicial Training Academy, responsible for offering training for judges and other court staff, regularly offers training activities under the heading "The Role of the Judges", which includes topics such as ethical conduct, conflicts of interest and related matters.

The prosecution

Recruitment
Prosecutors are appointed by the Prosecutor-General, and the appointments follow a transparent recruitment procedure.

Career

The prosecutors in Sweden have different career choices. Either they can apply for posts such as chief prosecutor or deputy chief prosecutor, or they can apply for a position as senior public prosecutor specialised in certain areas of crime, such as terrorism, organized crime, or gender-based violence.
A certain board makes recommendations regarding positions as senior public prosecutor and chief prosecutor. The recruitment procedure is based on meritocratic principles. The evaluation includes a combination of interview and test.

To ensure that those principles are followed, an applicant who is denied a position has the right to appeal the Prosecutor General's decision to a State Committee which is supervising all appointments of civil servants.

Security of tenure

The security of tenure for prosecutors, as well as other Swedish officials, is a fundament in the Swedish system.

Organisational independence

Impartiality of prosecutors is prescribed in the constitution and is considered a fundament in the Swedish system.

The Swedish Prosecution Authority and other authorities within the Swedish Justice Sector are independent of the executive and legislative powers. A minister of the Government has therefore no right to instruct any part of the administration how to act in individual cases.

Common values for civil servants

The Swedish government has published common values for all civil servants, which give guidance in developing good governance based on democracy, human rights, legal certainty, efficiency and accessibility/transparency.

Codes of ethics

The Swedish Prosecution Authority has published its own codes of ethics.

In June 2014 a set of ethical rules were imposed by the Prosecutor-General regarding all prosecutors and other employees of the Swedish Prosecution Authority and the Swedish Economic Crime Authority. The ethical guidelines are updated regularly.

The ethical rules are printed and distributed to all employees. A presentation and discussions of the ethical rules is also included in the education and training program for prosecutors.

In addition, each year a set of ethical dilemmas is distributed to all workplaces in the Swedish Prosecution Authority to facilitate local and regional ethical seminars.

Among other things, the overall objectives of the ethical rules are to ensure that prosecutors have an approach to:
- promote everyone's equality before the law as well as impartiality and objectivity,
- counteract risks of prosecutors acting in cases where their personal interests or their relations with the persons involved in the case could influence their impartiality,
- support a proper treatment and respect of persons that come into contact with the prosecution authorities,
- promote openness and transparency,
- counteract discrimination and bullying,
- promote equality, equal treatment and an inclusive approach and
- promote the public trust and confidence in the prosecution authorities.

Violations of the ethical rules are overseen by the Supervision Department, which is responsible for the Prosecutor-General's legal supervision and control.

Sometimes the external supervision authorities, the Parliamentary Ombudsmen (JO) and the Chancellor of Justice (JK), raise issues concerning the ethics of prosecutors. Furthermore, the Government Disciplinary Board for Higher Officials can examine matters concerning disciplinary responsibility and dismissal regarding prosecutors and other government employees in senior positions. Sometimes such matters concerns the behaviour of prosecutors in an ethical sense.

Corruption

We consider that the following principles are important points of departure to prevent and combat corruption within the prosecution service;
- Supervision
- Transparency
- Efficient systems.
- The free press.
- Independence of the institutions.

Supervision and transparency

Trust is built upon the fact that the Prosecution Authority is under a lot of supervision, both internal and external.

The Prosecutor-General has a Supervision department which can review any decision made by a prosecutor within the Prosecution Authority. The Supervision Department, operating directly under the Prosecutor-General, supervises individual cases from a legal perspective. Cases can be initiated by a party but can also be initiated ex officio.

The Prosecution Development Centers supervises cases, with the aim to identify areas in need of development and then take measures to raise awareness regarding certain issues, by manuals, trainings etc.

The Prosecutor's activities are also under supervision of national independent review bodies, such as the Parliamentary Ombudsmen (JO) and the Chancellor of Justice (JK). The supervision can lead to a prosecutor being charged for misconduct.

Transparency
Decisions and activities by the Prosecution Authority are public and open to everyone.
Transparency and parties´ access to the file makes corruption easier detected.

The control through an efficient Case Management System, in which all decisions are registered and can be back-tracked and changes are visible. It is of utmost important that the system cannot be manipulated.

Free press

The importance of free media and transparency cannot be underestimated. It increases the public's trust in the system but also the awareness and understanding of the judicial process.

One of the most important tasks of the media is to examine authorities. In an international perspective, the Swedish prosecutor is powerful. Therefore, it is very important that the decisions of prosecutors can be scrutinized and, if necessary, criticized.

The general access to public documents enables examination by the media, as well as by the public. All decisions regarding complaints against prosecutors work from the Parliamentary Ombudsmen (JO), Chancellor of Justice (JK) and the Prosecutor General, are made public. All Swedish prosecutors are trained in how to handle media and always strive to provide media with as much information as possible within the limits of the secrecy of the investigation.

Criminal law protection

The same rules apply as for judges, please see above.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

The courts and judges

The National Courts Administration keeps statistics on incidents in the courts. An incident is defined as any deviation from the normal situation in the court and may include both intentional and unintentional incidents. Further, the statistics concerned is general and does not specify whether the incident is linked to issues of undue influence or whether an act has been directed towards court staff or other persons visiting the court such as police officers, prosecutors, prison guards and other visitors. If relevant, reported incidents have been forwarded to the police authority for further investigation.

So far as relevant in this context, statistics for 2015-2020 indicate the following:

Incident	2015	2016	2017	2018	2019	2020	Total
Bomb threats	9	22	3	4	11	8	57
Other threats	71	101	102	94	115	87	570
Suicide threats	14	20	38	33	41	44	190
Undue offers		2	1	1		1	5
Damage on property	31	34	15	32	28	29	169
Harassment	12	25	17	20	28	20	122
Disturbance of order	78	89	109	142	179	110	707
Violence	7	4	6	7	2	5	31

The Prosecution

Undue influence or other forms of interference is a term defined by the Swedish Crime Prevention Council and applied within the Swedish Prosecution Authority. It does not have to be a crime in the legal sense, it is primarily the prosecutor's opinion that determines what is impermissible and inappropriate. An event is described as an undue influence if the prosecutor perceives that the purpose was to influence the performance of duties.

There are five forms of undue influence; harassment, threats, violence, vandalism and corruption. The Swedish prosecution authority has an incident reporting system where undue influence is reported. During 2015-2020 the numbers were as follows.

	2015	2016	2017	2018	2019	2020
(Undue influence)	1	2		3	1	
Harassment	67	59	73	69	47	46
Threats	28	35	35	31	29	17
Violence	1		6	1	1	
Corruption				1		

All prosecutors receive at the beginning of their careers a basic security training under the auspices of the authority. The training contains information on how the security work at the authority is conducted, dimensioning threat picture, and protective measures.

The Swedish Prosecutions Authority also has a specially developed personal security program for those prosecutors who work with cases that involve a higher risk. The program aims to prevent various forms of impact from having any effect on our operations and to minimize the harmful effects for those who are exposed.

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.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

The courts and judges
See previous question.

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

The courts and judges

Legislative protection is important in ensuring independence and impartiality. The independence of the judiciary and judges is therefore enshrined in the Swedish constitution and protected by several other laws.

Along with legislative protection, strong institutional safeguards play a key role in ensuring the effectiveness of such protection.

In Sweden, questions relating to the independence of the judiciary and judges are spread among different independent government authorities such as the Disciplinary Board for Higher Officials, the Judges Proposals Board and the Swedish National Courts Administration.

Moreover, the Parliamentary Ombudsmen, on behalf of the Parliament, and the Chancellor of Justice, on behalf of the Government, are the only two institutions vested with power to oversee that courts and judges comply with laws and statutes and fulfil their obligations in all other respects. Both institutions have the right to initiate disciplinary procedures against judges for misdemeanours and may also issue non-binding recommendations. By contrast, they cannot review or modify the decisions of a court.

The prosecution

Important factors to ensure the respect of judicial independence and impartiality are among other things that each prosecutor is independent and has a statutory duty of objectivity. Another important factor, besides what is described above, is education on the code of ethics.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

On EU-level, the Swedish government has expressed its commitment towards giving priority to upholding democratic values and the rule of law. An independent judiciary constitutes a core element of the rule of law and a precondition for a fair trial and an unimpeded access to justice. It is therefore essential that there are guarantees to ensure the independence and impartiality of the judiciary. The position of the Swedish government is that our fundamental rights are not negotiable and that all EU-members must live up to their commitments whether based on EU, Council of Europe or UN frameworks.

With reference to the European Commission's first annual Rule of Law Report produced in 2020, the Swedish government has expressed that the Report provides examples not only of positive trends in the area of the rule of law within the EU, but also of serious challenges.

The Swedish government has welcomed the 2020 Rule of Law Report as an important tool to increase respect for the rule of law in the EU. The Swedish Government has also welcomed the adoption of EU Regulation on a general regime of conditionality for the protection of the Union budget (Regulation 2020/2092). The Regulation establishes a new legal instrument aimed at protecting the financial interests of the EU against violations of the rule of law.

Issues related to rule of law and the independence of the judiciary are of course equally relevant and important in the context of the Council of Europe. Similar to the measures taken on EU-level, it is important that these issues are addressed through collective attention. In this regard the efforts by the Council of Europe and the CDCJ through initiatives such as the Sofia Action Plan play an important role in supporting the Member States to fulfil their commitments under the Council of Europe framework and other relevant frameworks. It is also essential that the caselaw produced by the European Court of Human Rights is respected and uphold by the Member States.

It is important that issues relating to rule of law are considered continuously and that Member States, with due respect to differences in our legal systems, can exchange experiences on such issues.
As indicated in question 1, Sweden has recently taken steps to strengthen judicial independence and impartiality on a national level, including an examination of constitutional amendments.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The survey and the Sofia Action Plan are comprehensive and well-balanced. As indicated in the foregoing, it is important that continued attention is given to issues related to rule of law, including judicial independence and impartiality.

TURKEY / *TURQUIE*
Council for Judges and Prosecutors
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address(including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

In General

The independency of the judiciary is governed under article 138 of the Constitution titled "the independence of the courts", and the guarantees for ensuring this independence is set out under the following articles. Also, article 9 of the Constitution titled "the jurisdiction" provides for that the jurisdiction shall be exercised by the independent and impartial courts on behalf of the Turkish Nation. The phrase of "impartiality" added to the text upon the Constitutional amendment in 2017 underlines that the independence also covers the impartiality.

The structure of the Council of Judges and Prosecutors is based on the principles of "independence" and "impartiality" by the Constitutional amendment in 2017. It has been ensured that the Parliament chooses member to the Council, and thus the democratic legitimacy has been strengthened.

In this regard, it should be emphasized that our Council attaches great importance to ensure that the judiciary is independent and impartial, and this is indicated by defining a separate objective for this title in the ongoing Strategical Plan Draft 2022 – 2026 works of the Council of Judges and Prosecutors.

The mentioned draft is as follows:

OBJECTIVE 1.1 – The action plan for strengthening the independence and impartiality of the judiciary will be prepared.
STRATEGY: 1 – The situation analysis will be conducted to detect the issues threatening the independence and impartiality of the judiciary.
STRATEGY: 2 – The examples of best practices in the comparative law and the international standards concerning threatening the independence and impartiality of the judiciary will be examined and reported.
OBJECTIVE 1.2 – A preventive/protective mechanism in relation to the independency will be formed against the factors and interventions which the judges and prosecutors might face.
STRATEGY: 1 – The mechanisms in the international standards protecting the independence of the judiciary will be examined and reported.
STRATEGY: 2 – In light with the obtained information, a working group will be established under the body of the Council and it will carry out a legislation work.

Candidacy

Under the Law No. 2802 on the Judges and Prosecutors, it is required to pass the written competitive examination and the oral exam to be assigned as a judge and prosecutor. While all members of the oral exam board consisted the representatives of the Ministry of Justice, now the General Secretary of our Board has become a permanent member of the oral exam board upon the amendment on article 9/A paragraph 6 of the mentioned law in 2019.

Therefore, our Council, which was established based on the independence of the courts and the tenure of the judges under our Constitution, has undertaken an active role in the phase of acceptance to the candidacy.

Besides, in the ongoing Strategical Plan Draft 2022 – 2026 works of the Council of Judges and Prosecutors, it has been accepted as a strategy to conduct works for having more representatives from the Council in the oral exam board of the judge and prosecutor candidacy.

Acceptance to the profession

The issue of acceptance to the profession has been addressed in the ongoing Strategical Plan Draft 2022 – 2026 works of the Council of Judges and Prosecutors, and the objective and strategies in relation to this subject have been defined as follows:

OBJECTIVE 3.4 – The works will be carried out for re-definition of the conditions for acceptance to the profession and the examination procedure.
STRATEGY: 1 – Situation analysis will be conducted concerning the acceptance system to the profession.
STRATEGY: 2 – The examples of best practices in the comparative law concerning the acceptance to the profession will be examined and reported.
STRATEGY: 3 – Legislation works will be carried out to re-define the principles for acceptance to the profession.
STRATEGY: 4 – Works for having more representatives from the Council in the oral exam board of the judge and prosecutor candidacy will be carried out.

As seen, it is aimed in the forthcoming period to reach an optimum level by examining the examples of best practices concerning the acceptance to the profession and conducting a status analysis.

Transfer/Appointment

Geographical guarantee is important not only for judges and prosecutors to be able to maintain their judicial activities without being worried, but also, in terms of increasing judicial productivity. Because, duty place changes of judges and prosecutors bring along a significant productivity problem as well.

Within this scope, the matter was tackled in CJP 2022-2026 Strategic Plan Draft, the studies of which have been ongoing, and in the objective 3.1; it was ensured that appointment, transfer and permanent authorization system shall be bound to a more objective criterion in a manner that will strengthen geographical guarantee and specialization.

Promotion

Promotions of judges and prosecutors were tackled within the framework of Aim 1 titled ‘‘Protection and Improvement of Rights and Freedoms’’ in the Judicial Reform Strategy (JRS) and it was emphasized that considering the compliance with the Constitutional Court and ECHR decisions, in promotion monitoring and auditing of the judges and prosecutors, will be an important innovation.

In this context, in order to fulfil the Objective 1.3 ‘‘Raise awareness and sensitivity for human rights in the judiciary’’ in JRS, a concrete activity field was determined by means of mentioning ‘‘To monitor and inspect the compliance of the decisions and promotion of judges and prosecutors with the decisions of the Constitutional Court and the ECHR’’.

By our council, the matter was tackled within the scope of this activity mentioned in JRS, and ‘‘Judges’ and prosecutors’... , on the basis of judiciary independence and judgeship guarantee principles; whether they have caused a violation decision at the examinations carried out by the European Court of Human Rights and the Constitutional Court or not, quality and heaviness of the breach they have caused, endeavours of the concerned people about the protection of the rights guaranteed by the European Convention on Human Rights and the Constitution...’’ was regulated explicitly as a promotion criterion by amending in both the ‘‘Resolution on Promotion Principles of Judges and Prosecutors’’ and the ‘‘Resolution on Principles of Evaluation of the Works of Judges and Prosecutors who are First Category and Appointed to First Category’’ (it was entered into force by being published in the Official Gazette dated 15/01/2020 and numbered 31009.).

Moreover, in CJP 2022-2026 Strategic Plan Draft, the studies of which have been ongoing, it was recorded that legislation works and arrangements, which will enable consideration of compliance with judicial ethics principles in personnel transactions such as appointment, transfer, permanent authorization, promotion and discipline, shall be carried out.

Discipline

Discipline procedures are also important in terms of ensuring independence and impartiality of judiciary and within this scope, the matter was tackled as follows in CJP 2022-2026 Strategic Plan Draft, the studies of which have been ongoing,

OBJECTIVE 3.3. Complaint and discipline system shall be restructured.
STRATEGY:1 Status analysis shall be conducted by the complaint and discipline study groups and a preliminary report shall be prepared.
STRATEGY:2 Complaint application and review process shall be bound to new form conditions with regard to a more qualitative and quick conduct of the procedures and in a manner, which will ensure filtering as well.
STRATEGY:3 Good practice examples regarding discipline system in comparative law shall be reported by being examined in a manner that will include the acts and the foreseen penalties as well.
STRATEGY:4 Functioning of discipline process and standards for its finalization in a reasonable time shall be determined.
STRATEGY:5 Discipline penalties set out in Judges and Prosecutors Law shall be re-determined with a more objective criterion.
STRATEGY:6 Activities (meeting, seminar etc.) for increasing awareness on discipline law shall be organized.

Accountability

Declaration of Ethics for Turkish Judiciary

As is known, judges and prosecutors should be guided by professional code of conduct in the activities they perform. This code of conduct should guide judges in the way they act, thereby enabling them to overcome the challenges they come across in terms of independence and impartiality.

Within this scope, the “Declaration of Ethics for Turkish Judiciary”, adopted by the Plenary Session of our Council, came into effect following its publication in the Official Gazette dated March 2019, numbered 30714.

Article 2 of the aforementioned document is titled “independence” and Article 3 thereof is titled “impartiality”. Each title includes guiding regulations for the members of the judiciary in ensuring independence and impartiality.

Internal independence (protection against inappropriate influence or interference by colleagues).

It is important that a certain amount of guarantee be provided for public prosecutors in order to ensure judicial independence. In this regard, the matter is discussed in the Draft for the Council of Judges and Prosecutors 2022-2026 Strategic Plan, which aims to conduct works for ensuring that the public prosecutors with certain seniority continue their profession by specializing as well as for the establishment of expert offices by the Council of Judges and Prosecutors in public prosecutor’s offices having a certain amount of workload.

In this way, it is planned to strengthen, to some extent, the independence of public prosecutors from chief public prosecutors supervising and auditing them.

External Independence (judicial authority or professional organizations, political actors, legislature, executive, media or other actors).

In line with the 8th paragraph of the Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Responsibilities of Judges, which reads as: “Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy”, the Draft for the Council of Judges and Prosecutors 2022-2026 Strategic Plan, the works for which are continuing, sets as its Objective 1.2 the establishment of a preventive/protective mechanism against the influence and interference that judges and prosecutors may come across in terms of independence.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

Judges and Prosecutors Complaints Bureau” of our General Secretariat is in charge as regards to examine the denunciations and complaints against Judges and Prosecutors and whether they shall be processed or whether permission for investigation shall be granted for them; while the “Disciplinary Bureau” is in charge with respect to the files proceeded to the investigation phase.

Upon the examination of records of the Judges and Prosecutors Complaints Bureau of our General Secretariat, it has been understood that there are two interrelated files which were submitted within the scope of “internal independence”, i.e. due to the interventions by members of the judiciary in a form that would constitute an offence against judicial independence, and a permission was given to launch an examination about the relevant members of the judiciary in the aforementioned files.

The list of disciplinary sanctions regarding two paragraphs of the sanction of change of location, set forth in Article 68 of Law No. 2802 on Judges and Prosecutors (which we emphasized in our answers that we gave related to this theme in 2016 and 2018) is provided below, upon the examination of records of the Disciplinary Bureau of our General Secretariat.

“b) Causing a perception that he cannot perform his duty properly and impartially by his performance and conducts,
c) Causing a perception that he performs his duties according to his individual emotions or in one’s favours

SANCTION	ARTICLE	SUBJECT	2015	2016	2017	2018	2019	2020	2015-2020 TOTAL
SUSPENSION OF DEGREE PROMOTION	Articles 68/b and 70/2	Causing a perception that he cannot perform his duty properly and impartially by his performance and conducts,	-	-	-	-	1	-	**1**
	Articles 68/c and 70/2	Causing a perception that he performs his duties according to his individual emotions or in one's favours,	-	-	-	1	-	-	**1**
CHANGE OF LOCATION	Article 68/b	Causing a perception that he cannot perform his duty properly and impartially by his performance and conducts,	-	1	-	6	6	3	**16**
	Article 68/c	Causing a perception that he performs his duties according to his individual emotions or in one's favours,	-	-	1	2	1	1	**5**
TOTAL			**0**	**1**	**1**	**9**	**8**	**4**	**23**

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

As we emphasized in our answers which we gave related to this theme in 2016 and 2018, the matter of judicial intervention is designated as an offence in our criminal code, and it is considered as an effective factor for ensuring respect towards independence and impartiality of the judiciary.

Attempting to influence a person charged with a judicial duty, expert or witness
Article 277 - (Amended on 02/07/2012 by Law No. 6352 Art. 90)

(1) In order to prevent the reveal of any truth or to take advantage of any unfairness during a case being held (…), any person who unlawfully attempts to influence a person charged with a judicial duty, expert or witness to cause these persons to render a decision or conduct an action or make a statement in favour of or against one or more of the parties in a trial, (…) defendants, intervening parties or victims shall be sentenced to a penalty of imprisonment for a term of two to four years. (Sentence added on 18/06/2014 by Law No. 6545 Art. 69) If the attempt does not go beyond an attempt to engender favouritism, the penalty of imprisonment to be imposed shall be for a term of six months to two years.
(2) Where the act, referred to in paragraph one constitutes any other offence, then the sentence to be imposed shall be increased by one-half according to the provisions of conceptual aggregation."

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

As you may know, the use of social media has been on the rise recently. Large sections of the society have started expressing themselves on social media.

Within this scope, people can express their opinions and criticisms about the judiciary in general or proceedings about them on social media without any restriction. Similarly, likeminded people can share their opinion and criticism with the public in the same media and at the same time, which can take up the main agenda of the society.

In this respect, social media has increasingly been used as a pressure element on judicial independence. Since judges and prosecutors are part of the societies in which they live, they get affected from the comments made on the social media.

Besides, the way in which the members of the judiciary are using social media accounts may time to time pose a problem in terms of impartiality.

To this end, it would be beneficial to evaluate the impacts of social media use on the judicial independence and impartiality by the Council of Europe.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The concepts of judicial independence and impartiality are of vital importance in terms of establishment of the principle of “rule of law”, which is one of the three pillars of the Council of Europe. From the perspective of taking of measures to ensure judicial independence and creation of motivation to enable judges and prosecutors to act independently, the society needs to be sensitive and make this issue a priority.

The main method and way to prioritize these concepts by the society is to raise awareness of students throughout formal education.

Within this scope, incorporating basic law lessons into the curriculum taught to certain age groups and teaching the subject of judicial independence and impartiality to students are considered to be important in terms of raising generations, who respect the rule of law.

To this end, taking into account this issue in the future efforts is considered as beneficial.

Ministry of Justice
07/07/2021

Responses received from the member states and international NGOs regarding the report that will be drawn up by the CDCJ on the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan) are published in the document dated 14 April 2021 and numbered CDCJ-BU(2021)10.

Turkey's evaluation in relation to the implementation of the Sofia Action Plan was submitted to the CDCJ with a letter dated 25th February 2021.

In addition, within the scope of the responses to the questionnaire, it has been necessary to make the following comments regarding the criticism and accusations against Turkey as put forward by one of the NGOs:

1- Regarding the allegations concerning the Council of Judges and Prosecutors:

Personnel affairs of members of the judiciary, such as acceptance to the profession, assignment and transfer, disciplinary actions, etc., are handled by the Council of Judges and Prosecutors (CJP) pursuant to Article 159 of the Constitution.

In the said Article, it is clearly stated that the CJP will be formed and function in line with the independence of the courts and guarantee for judges. This is also underlined in Paragraphs 6 and 7 of Article 3 of Law No. 6087 on the Council of Judges and Prosecutors, which read as follows:

(6) The Council is independent in carrying out its duties and using its powers. No institution, authority, office or person shall give order and instruction to the Council.

(7) The Council carries out its duties within the framework of the principles of justice, impartiality, honesty and integrity, consistency, equality, competency and quality, and by paying regard to the independence of courts and guarantee for judges and prosecutors."

The CJP works with its two chambers consisting of six members. Each chamber convenes and decides with absolute majority.

Personnel affairs of members of the judiciary are carried out with the decisions of the chambers.

Relevant members of the judiciary may request the review of these decisions. In the event that their requests are declined, the members concerned have the right to apply to the CJP General Assembly.

The Minister of Justice does not take part in the works carried out in the chambers, and the Deputy Minister of Justice is one of the six members of the First Chamber and has one vote.

When the structures of high councils of judiciary in the member states of the Council of Europe are analysed, it is known that there are various formations and it is observed that the high councils of judiciary are structured based on the legal structure of each country, their judicial customs and needs. The structure of the CJP is accepted by a referendum on 16 April 2017 in Turkey with constitutional amendments based on the experiences and needs regarding the structures of the previous high councils of judiciary.

The said constitutional amendments adopted in the referendum did not affect the CJP's independence. On the contrary, the structure of the Council of Judges and Prosecutors is strengthened on the basis of the principles of "independence" and "impartiality". The amendments actually involve reduction of the number of the CJP members and chambers as well as changes in the work of the CJP and the election method of its members. It is ensured that the Parliament may also select members to the CJP, which strengthened the democratic legitimacy of the CJP. As for the duties of the Council, they remain unchanged.

Moreover, independence of the judiciary is enshrined under Article 138 entitled "independence of the courts" of the Constitution, and there are guarantees to ensure this in the following articles.

Similarly, in Article 9 entitled “judicial power” of the Constitution, it is stipulated that judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.

With the constitutional amendment in 2017, it is underlined that independence also covers impartiality with the addition of the word “impartiality”.

In conclusion, it is not possible for the CJP to be subject to political influence owing to its independent and impartial structure.

In addition, as is underlined above, personnel affairs of judges and prosecutors, such as assignment, disciplinary actions and promotion, are conducted in line with the procedures laid down in the relevant legislation. Therefore, the allegation that the members of the judiciary are reassigned and subjected to disciplinary and/or criminal investigations should they take decisions considered to be undesirable by the government is baseless, ill-founded and biased.

It should especially be emphasised that judges and prosecutors are reassigned in the event that there are complaints against them in the cases they deal with and not because of the decisions they take. In this context, a disciplinary investigation can take place upon the authorization by the CJP to carry out an inquiry or investigation in order to determine whether these complaints are accurate. As a result of the disciplinary investigations carried out, the disciplinary penalty laid down in the legislation is imposed only if there is intention or gross fault by the relevant member of the judiciary.

The Turkish legal system embraces the universal values of human rights and the rule of law. Accordingly, the CJP published the Declaration of Judicial Ethics in Turkey on 6 March 2019. Emphasizing the importance of respect for human dignity, the Declaration defines the code of conduct for judges and prosecutors.

The Declaration draws attention to the importance of being independent and impartial as well as the importance of appearing as such. The CJP monitors and ensures that judges and prosecutors respect the code of conduct. The CJP is the guarantor that judges and prosecutors are able to deliver judgments impartially and independently according to their conscience. To this end, safeguarding the judicial independence and impartiality is incorporated as a separate objective under the Draft of 2022-2026 Strategic Plan of the CJP, on which the works are ongoing.

Turkey aims to further strengthen the independence, impartiality and transparency of the judiciary. In this respect, the Judicial Reform Strategy has set out geographical guarantee for judges and prosecutors that prohibits their reassignment without their will in certain conditions, and introduced new remedies that extend the rights of judges and prosecutors regarding disciplinary procedures against them.

2- Regarding the allegations on some ongoing judicial proceedings:

As it is emphasised above, judges and prosecutors might be subject to a disciplinary investigation due to the existence of a complaint against them in a case they deal with and based on the permission granted by the Council for inquiry and investigation in order to determine if these complaints are correct or not, and not because of the decisions they take.

In relation to the criminal prosecution case known as the Osman Kavala Case, which is addressed in the document, an inquiry and investigation permission was granted upon the receipt of complaints/denunciations by our Council regarding the judges of the said case, and based on the said decision, the inquiry and investigation phase is ongoing which is carried out by the Inspection Board.

Within this scope, detailed information in relation to the independence and impartiality of the Turkish Judiciary and the legal situation of Mehmet Osman KAVALA was submitted to the Council of Europe within the action plan dated 19 January 2021 by the Department of Human Rights. The action plan in question can be accessed from:

https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2021)81E%22]}

In addition, documents submitted to the Council of Europe within the scope of the decision on Kavala can be accessed from:

https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22kavala%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-55162%22]}

Besides, the communication prepared by the Department of Human Rights within the scope of decision on Demirtaş was published on 2 February 2021. The notification in question can be accessed from:

https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DHDD(2021)121E%22]} .

Furthermore, communications made to the Council of Europe by our Department within the scope of the decision on Demirtaş can be accessed from:

https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22demirta%C5%9F%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-56539%22]}

3- Regarding the measures taken in the context of the fight against the Fethullahist Terrorist Organisation (FETÖ) following the heinous coup attempt of 15 July and allegations on the Judicial Reform Strategy:

FETÖ is a clandestine criminal terrorist organisation, which infiltrated critical government posts, tried to capture the Turkish State, attempted to suspend the Constitution and take over the democratically elected Government through a brutal coup attempt staged on 15 July 2016.

Fethullah Gülen is the leader of this terrorist organisation. Terrorist acts perpetrated by FETÖ on that night cost the lives of 251 Turkish citizens and injured over 2 000. Several key institutions representing the will of the Turkish people, first and foremost, the Parliament, were heavily assaulted.

After the coup attempt, the CJP decided to suspend several judges and public prosecutors who are affiliated and connected to the said terrorist organisation when the Chief Public Prosecutor's Office of Ankara launched investigations against them.

A dismissal decision was rendered, against which an objection could be made before the General Assembly of the CJP, in accordance with the provisions of Decree Law No. 667 for members of judiciary who were suspended and against whom there was a disciplinary investigation after the coup attempt.

In addition, an inquiry research commission was established under the CJP to ensure that the relevant people who were suspended or dismissed could use their right to petition and right to defence, and defences and allegations of these people were meticulously evaluated by the members of the commission. Within this scope, those who made a request of review against their suspension and/or dismissal and whose objections were found appropriate remitted back to their positions by the CJP General Assembly.

A significant majority of the people in question admitted their ties with the FETÖ terrorist organisation in the proceedings carried out against them and they expressed their regret and stated that they did not have ties any more. Considering that the said people lost their impartiality due to their ties with the terrorist organisation established by Fethullah Gülen, which infiltrated into the State structure, and they, thus, cannot fulfil their duties as required by their profession, simplifying the dismissal of the said people from the judiciary and describing these people as innocent and being subjected to injustice is a highly prejudiced point of view by one of the NGOs.

On the other hand, in accordance with the Constitution and relevant legal regulations, it is possible to file a case before the Council of State, which is a supreme court in the Turkish judicial system, in order to reverse the decisions of dismissal. Proceedings relating to the cases filed by the said people are ongoing before the Council of State.In addition to FETÖ, Turkey pursues a simultaneous fight against multiple terrorist organisations, including PKK, PYD/YPG and DAESH and the profound challenges and threats caused by these terrorist organisations continue to exist. Despite the difficulties inherent in the fight against such terrorist organisations, Turkey is fully aware of its human rights obligations and takes every measure to ensure that respective actions are in line with these obligations.

It is under the guidance of Turkey's resolute commitment to further protect and promote human rights and the rule of law that its deals with these challenges. Judicial safeguards are also important components of this approach.

As regards the allegations on the Judicial Reform Strategy with reference to the report of the Commissioner for Human Rights of the Council of Europe, it should be stated that Turkey addressed these allegations by providing detailed information on developments and practices regarding the administration of justice and the protection of human rights in the justice system in reply to the Commissioner.

Turkey's report can be reached via:

https://rm.coe.int/observations-by-the-turkish-authoritieson-the-report-by-dunja-mijatov/16809c8c7e

UKRAINE
Ministry of Justice
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Regarding the Action 1.1 «Ensure the independent and effective working of judicial councils or other appropriate bodies of judicial governance»

1. On December 21, 2016, the Law of Ukraine № 1798 “On the High Council of Justice” (hereinafter - the Law № 1798) was adopted: the High Council of Justice (hereinafter - HCJ) is a collegial, independent constitutional body of state power and judicial governance; it acts on a permanent basis to ensure the independence of the judiciary, its functioning on the basis of responsibility, accountability to society, the formation of a virtuous and highly professional corps of judges, compliance with the Constitution and laws of Ukraine, professional ethics in the activities of judges and prosecutors.

The powers of the HCJ include: 1) submission of an application for the appointment of a judge; 2) making decisions regarding the violation of incompatibility requirements by a judge or prosecutor; 3) consideration of complaints against the decision of the relevant body on bringing a judge or prosecutor to disciplinary responsibility; 4) making decisions on dismissal of a judge; 5) giving consent to the arrest or detention of a judge; 6) adoption of a decision on temporary suspension of a judge from the administration of justice; 7) taking measures to ensure the independence of judges; 8) making decisions on the transfer of a judge from one court to another; 9) exercise of other powers defined by Constitution and laws of Ukraine.

Members of the HCJ must comply with the ethical standards established for a judge and the criterion of political neutrality.

2. On June 2, 2016, the Law of Ukraine № 1402 “On the Judicial System and the Status of Judges” (hereinafter - the Law № 1402) was adopted. The High Qualifications Commission of Judges of Ukraine (hereinafter - HQCJ) is a state body of judicial governance that operates on a permanent basis in the justice system of Ukraine.

3. On October 16, 2019, the Law of Ukraine No. 193 "On Amendments to the Law of Ukraine "On the Judicial System and the Status of Judges" and some laws of Ukraine on the activities of judicial authorities" was adopted. It introduced a new procedure for the formation of the HQCJ: the appointment of members of the HQCJ is carried out by the HCJ based on the results of the competition; a citizen of Ukraine who meets the criterion of political neutrality, does not belong to political parties, trade unions, does not participate in any political activity can be appointed to the position of a member of the HQCJ. Deputies, members of the Government, court management, members of the Council of Judges of Ukraine and the HCJ, the Ombudsman and persons prosecuted for committing corruption offenses may not be appointed to the HQCJ.

4. Draft laws are under consideration by the Verkhovna Rada of Ukraine:

- "On Amendments to the Law of Ukraine" On the Judicial System and the Status of Judges "and some laws of Ukraine on the activities of the Supreme Court and judicial authorities" (Reg. № 3711 of 22.06.2020), which aims to resolve urgent issues of the formation of the HQCJ;

- "On Amendments to the Law of Ukraine" On the Judicial System and the Status of Judges "and some laws of Ukraine regarding the resumption of the work of the High Qualification Commission of Judges of Ukraine" (reg. No. 3711-d of 01.29.2021), which aims to resume the work of the HQCJ, improve the procedure for its formation and activities.

Regarding the Action 1.2 «Ensure an adequate participation of the judiciary in the selection, appointment and promotion of judges whilst limiting excessive executive or parliamentary interference in this process»

1. On June 2, 2016, Law of Ukraine No. 1401 “On Amendments to the Constitution of Ukraine (Regarding Justice)” was adopted, which brought the powers of the Verkhovna Rada and the President of Ukraine in the field of justice in line with international standards, abolished the institution of “appointing of a judge for the first time”; determined the foundations of the legal status, composition and powers of the HCJ as a body independent of political influence, which is responsible for the judicial career and takes measures to ensure the independence of judges.

The law amended Article 128 of the Constitution of Ukraine, according to which the appointment of a judge is carried out by the President of Ukraine on the proposal of the HCJ in the manner prescribed by law.

Appointment of a judge is carried out on a competitive basis, except in cases determined by law. The Head of the Supreme Court is elected and dismissed by secret ballot by the Plenum of the Supreme Court in accordance with the procedure established by law.

2. Law No. 1402 "On the Judicial System and the Status of Judges" dated 02.06.2016 specified new principles for the organization of the judiciary, taking into account the need to update the judiciary and transition to a three-tier judicial system in accordance with the recommendations of the Venice Commission.

The Venice Commission in its opinion № 969/2019 CDL (2019) 027 noted that the process of selecting judges for the new Supreme Court was in line with European standards, which was a positive result of previous reforms.

Regarding the Action 1.3 «Limit excessive executive and legislative interference in the disciplining and removal of judges»

1. The Law of 02.06.2016 No. 1402 "On the Judicial System and the Status of Judges" stipulates the following:

- the independence of a judge is ensured by a special procedure for his appointment, prosecution, dismissal and termination of powers (Article 48).;
- disciplinary proceeding against a judge is carried out by the disciplinary chambers of the HCJ in the manner prescribed by the Law of Ukraine “On the High Council of Justice”, taking into account the requirements of this Law (Article 108);
- a disciplinary case against a judge may not be initiated on a complaint that does not contain information about the presence of signs of a disciplinary offence by a judge, as well as on anonymous statements and messages (Article 107).

2. According to the Law of 21.12.2016 No. 1798 "On the High Council of Justice": to consider cases on disciplinary responsibility of judges, the HCJ forms Disciplinary Chambers from among the members of the HCJ. Each Disciplinary Chamber consists of at least 4 members of the HCJ; in forming the Disciplinary Chambers, the HCJ must ensure that at least half, and if this is not possible, at least a significant proportion of the members of each Disciplinary Chamber are judges or retired judges (Article 26).

The law also defines the procedure for conducting a preliminary examination of a disciplinary complaint; the grounds on which the disciplinary complaint remains without consideration and is returned to the complainant.

The consideration of a disciplinary case takes place in an open meeting of the Disciplinary Chamber, which is attended by a judge, the complainant, and their representatives. Consideration of a disciplinary case in a closed meeting of the Disciplinary Chamber takes place: 1) if the holding of a public hearing may lead to the disclosure of a secret protected by law; 2) to prevent the disclosure of information about intimate or other personal aspects of the lives of persons involved in disciplinary proceedings.

Participants in a disciplinary case have the right to submit evidence, provide explanations, request motions to call witnesses, ask questions to participants in a disciplinary case, express objections, state other motions or objections, and review the case materials. Materials directly related to the complaint may be provided for review, in compliance with the requirements of the legislation on personal data protection regarding the depersonalization of personal data (Article 49).

By the decision of the HCJ of 02.02.2017 № 184/0 / 15-17 three Disciplinary Chambers were established in the HCJ. Currently, each of the Disciplinary Chambers of the HCJ consists of 5 members of the HCJ, most of whom are judges elected by the Congress of Judges.

Regarding the Action 1.4 «Ensure that public criticism of the judiciary by the executive and legislature respects the authority of the judiciary»

1. Constitution of Ukraine stipulates:
- guarantees of the independence of judges are conditioned by the constitutionally defined exclusive function of courts to administer justice (Article 124);
- the independence and inviolability of a judge are guaranteed by the Constitution and laws of Ukraine. Influence on a judge in any way is prohibited (Article 126).

2. According to Art. 6 of Law № 1402 in the administration of justice, the courts are independent of any unlawful influence. Courts administer justice based on the Constitution and laws of Ukraine and based on the rule of law. Interfering with the administration of justice, influencing the court or judges in any way, disrespecting the court or judges, collecting, storing, using and disseminating information orally, in writing or in any other way in order to discredit the court or influence the impartiality of the court, calls for non-compliance with court decisions are prohibited and entail liability established by law.

Public authorities and local governments, their officials must refrain from statements and actions that could undermine the independence of the judiciary.

3. Article 73 of the Law № 1798 defines the measures taken by the HCJ to ensure the independence of judges and the authority of the judiciary, such as maintaining and publishing 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.

HCJ prepares in cooperation with judicial self-government bodies, other bodies and institutions of the justice system, public associations and publishes an annual report on the state of ensuring the independence of judges in Ukraine (prepared reports for 2017, 2018, 2019).

4. According to Article 48 of the Law № 1402 on any fact of pressure, influence or interference in the administration of justice, the judge is obliged to inform the HCJ.

Regarding the Action 1.5 «Ensure that day-to-day administration of courts is executed in an effective and reasonable manner based on legal regulations and without undue interference from the executive or the legislature»

1. According to Article 147 of Law № 1402 in Ukraine there is a single system to ensure the functioning of the judiciary - courts, judicial authorities, other state bodies and institutions of the justice system. HCJ, HQCJ, the State Judicial Administration and the National School of Judges of Ukraine, other public authorities and local governments participate in the organizational support of the courts in the cases and in the manner prescribed by this and other laws. State Judicial Administration ensures the implementation of decisions on the formation or termination (liquidation) of courts.

Article 148 of the Law № 1402 stipulates that all courts in Ukraine are financed from the State Budget of Ukraine. Expenses for the maintenance of courts in the State Budget of Ukraine are determined by a separate line for the Supreme Court, HCJ, the Appellate Chamber of the High Specialized Court, as well as in general for appellate, local courts. Expenses for local and appellate court of all types and specializations, HQCJ, bodies of judicial self-government are defined in the State budget of Ukraine in the separate annex.

2. According to the Article 3 of Law № 1798, the HCJ provides binding advisory opinions on draft laws on the establishment, reorganization or liquidation of courts, the judiciary and the status of judges.

Regarding the Action 2.3 «Prevent and combat corruption and promote integrity within the judiciary».

1. Law No. 1402 establishes:
A judge is obliged to comply with the requirements and restrictions established by the legislation in the field of prevention of corruption and to submit a declaration of integrity of a judge and a declaration of family ties of a judge, as well as to confirm the legality of the source of the property in connection with the qualification assessment or disciplinary proceedings against the judge, if the circumstances that may result in disciplinary action against the judge raise doubts about the legality of the source of property or the integrity of the judge's conduct. (Article 56);

In case of receiving information that may indicate the inaccuracy (including incompleteness) of the information provided by the judge in the declaration of family ties, the HQCJ verifies the said declaration (Article 61);

The existence of a reasonable doubt about the candidate's compliance with the criterion of integrity or professional ethics or other circumstances which could negatively affect public confidence in the judiciary in connection with such an appointment is one of the grounds for the HCJ's refusal to submit a proposal to the President of Ukraine for the appointment of a judge (Article 79);

In order to assist the HQCJ in establishing the compliance of a judge (candidate of a judge) with the criteria of professional ethics and integrity, a Public Integrity Council is formed for the purposes of qualification assessment. Its members can be representatives of human rights NGOs, legal scholars, lawyers, journalists who are recognized experts in their field, have a high professional reputation and meet the criteria of political neutrality and integrity. Members of this council may not be persons who have been subject to an administrative penalty for an offense related to corruption during the last year (Article 87);

If, during the qualification assessment of a judge, the VKKS becomes aware of circumstances that may indicate a violation by a judge of legislation in the field of preventing corruption, the Commission shall immediately notify the specially authorized entities in the field of combating corruption (Article 84);

Dishonest behavior of a judge, including the incurrence by a judge or members of his family of expenses in excess of the income of such a judge and the income of members of his family whose legality has been confirmed may be established as a substantial disciplinary misconduct or gross disregard for the duties of a judge, which is incompatible with the status of a judge or reveals his incompatibility with the position of a judge; establishing the inconsistency of the standard of living of a judge with the property and income declared by him and his family members; use of the status of a judge for the purpose of illegal receipt by him or third parties of material benefits or other benefits (Article 109).

2. Amendments to this Law by the Law of Ukraine of 12.07.2018 № 2509 stipulate that a full verification of the declaration is carried out for each judge at least once every 5 years (unless otherwise provided by law), as well as at the request of the HQCJ or HCJ.

Regarding the Action 2.4 "Counter the negative influence of stereotyping in judicial decision making"

1. In cooperation with the joint project of the EU and the Council of Europe "Strengthening the implementation of European human rights standards in Ukraine", in 2017 a training course for judges "Prevention of discrimination and racism" was developed and judges-trainers were prepared; in 2018 was developed a training course for candidates for the position of a judge "Prevention and Combating Discrimination" and a comprehensive publication, which contains recommendations for preventing and combating discrimination, taking into account the specifics of its manifestations in various spheres of public life. Training courses have been introduced into the educational process of the National School of Judges of Ukraine (hereinafter –NSJU).

2. In cooperation with the joint EU-Council of Europe project "Internal Relocation in Ukraine: Developing Long-Term Solutions" and the Danish Refugee Council in Ukraine, a training course for judges entitled "Protection of the Rights of Internally Displaced Persons" was developed in 2017, in 2019, a remote HELP course for judges "Protection of the Rights of Internally Displaced Persons" was tested, which was successfully passed by 58 judges, the vast majority of whom work in areas with the highest concentration of IDPs, and some of them have IDP status. This course has been introduced into the educational process of NSJU.

3. In cooperation with the project "Istanbul Convention: a tool to strengthen the fight against violence regarding women and domestic violence in Ukraine" the HELP distance course for judges "Women's access to justice" was adapted. On June 19, 2020 a constituent seminar was held for 32 participating judges.

4. Within the framework of cooperation with the project "Women's Access to Justice" since 2019, NSJU is an active participant in the Mentoring Program "Partnership for Good Governance", which aims to strengthen the knowledge of judges on the provisions of the Istanbul Convention and gender equality standards.

Regarding the Action 2.5 "Ensure comprehensive and effective training of the judiciary in effective judicial competences and ethics"

The formation of training programs for judges of different levels and jurisdictions is carried out in accordance with the needs of the judicial system based on standardized programs developed by the NSJU for all categories of trainee judges. These programs are based on the principles of comprehensive training, which meets the requirements of providing knowledge and skills of competence, openness and impartiality in decision-making.

In 2016-2020, 1274 judges took the training course "Rule of Law"; 4724 judges took the training course "Judicial ethics. Virtue ".

Regarding the Action 2.6 "Ensure that judges are protected by legal regulations and adequate measures against attacks on their physical or mental integrity, their personal freedom and safety"

Article 160 of the Law № 1402 stipulates that 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, performance of functions related to state personal security of judges and their families, court employees, court security of participants in the trial is carried out by the Judicial Protection Service (hereinafter – JPS).

The work of the JPS began in March 2019. As of 01.01.2021, 655 judges (97% of the need) in Ukraine are guarded by JPS, National Police and National Guard units.

In 2016-2021, the SJA provided an increase in the percentage of technical means to ensure the safety of courts. Purchased and installed video surveillance systems - 530 (79% of demand); stationary metal detectors - 452 (67% of demand); hand-held metal detectors - 574 (87% of demand); turnstiles - 270 (40% of the need); storage rooms - 412 (62% of demand).

JPS take measures to ensure the personal security of judges, members of their families and the protection of their property. In 2020, such events were held for 8 judges.

Regarding the Action 3.1 "Provide appropriate legal guarantees and measures for the recruitment, career development and security of employment or tenure of prosecutors"

1. Guarantees of the prosecutor's independence in accordance with the Law of Ukraine of 14.10.2014 № 1697 "On the Prosecutor's Office" (hereinafter - the Law № 1697) are provided by a special procedure for their appointment, dismissal, as well as a special procedure for bringing them to disciplinary responsibility through disciplinary proceedings.

2. Amendments to the Constitution of Ukraine by the Law of Ukraine of 02.06.2016 № 1401 deleted a separate section relating to the prosecutor's office and supplemented section VIII "Justice", defining the place of the prosecutor's office, based on its functions and role in the implementation of justice.

3. Since 2017, a collegial, competitive solution to the issues of determining the level of professional training of persons who have expressed their intention to take the position of prosecutor, resolving the issue of dismissal of prosecutors and application of disciplinary sanctions by the Qualification and Disciplinary Commission of Prosecutors has been launched.

4. The Law of Ukraine of 19.09.2019 № 113 “On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures for the Reform of the Prosecutor's Office” (hereinafter - the Law № 113) initiated a systematic reform of the prosecutor's office of Ukraine and introduced measures to re-staff the prosecutor's office by certifying working prosecutors and the opportunity on a competitive basis to take the position of prosecutor to all honest candidates who have the appropriate theoretical knowledge and practical skills.

5. The Order of the Prosecutor General of 16.10.2020 № 489 approved the Strategy for the Development of the Prosecutor's Office for 2021 - 2023, which provides for the resumption and adjustment of the work of the body conducting disciplinary proceedings, in accordance with the European standards and best practices, improvement of the disciplinary procedure, which provides for transparency and objectivity of consideration of applications for disciplinary misconduct of prosecutors, the inevitability and proportionality of responsibility for them, the consistency and uniformity of the qualification of misdemeanors, as well as the impossibility of encroaching on the independence of prosecutors through disciplinary proceedings.

6. From September, 2021, an updated independent, collegial body should start working, which will determine the level of professional training of persons who have expressed their intention to take the position of prosecutor, and will decide on the transfer and dismissal of prosecutors.

7. The Order of the Prosecutor General of 21.10.2020 № 491 established a working group to study the procedure of the body that will carry out disciplinary proceedings against prosecutors, as well as the development of regulations on this body, which includes experts from non-governmental expert institutions, organizations and international partners.

The working group prepared a draft of the new Procedure for consideration by the personnel commission of complaints about the prosecutor's disciplinary misconduct, disciplinary proceedings and decision-making on the results of disciplinary proceedings, which was submitted for discussion and processing with all stakeholders.

Regarding the Action 3.2 "Ensure that individual prosecutors are not subject to undue or illegal pressure from outside or within the prosecution service, and that more generally the prosecution service is governed by the rule of law ".

1. The Law № 1697 stipulates, in particular, that:

The activity of the prosecutor's office is based on the principles of independence of prosecutors, which provides for the existence of guarantees against illegal political, material or other influence on the prosecutor in making decisions in the performance of official duties (Art. 3);

Prosecutors exercise their powers within the limits set by law and are subordinated to the heads exclusively in the execution of written orders of an administrative nature related to organizational issues of prosecutors and prosecutor bodies. Administrative subordination of prosecutors may not be grounds for restricting or violating the independence of prosecutors in the exercise of their powers. High-level prosecutors are entitled to give instructions to the lower-level prosecutor, to coordinate the adoption of certain decisions and to perform other actions directly related to the implementation of the prosecutor's office functions, only in the manner prescribed by law (Art. 17).

2. On April 27, 2017 the All-Ukrainian Conference of Prosecutors approved the Code of Professional Ethics and Conduct of Prosecutors, which contains the basic principles, moral norms and rules of prosecutorial ethics in the performance of their duties and off-duty.

Regarding the Action 3.3 "Prevent and combat corruption within the prosecution service and build public trust in its working"

The Law of Ukraine of 19.09.2019 № 113 “On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures to Reform the Prosecutor's Office” revised approaches to the remuneration of prosecutors in order to prevent corruption in the prosecutor's office: the remuneration of the prosecutor of the district prosecutor's office is increased to 15 subsistence minimums for able-bodied persons with its further increase to 20 and 25 in 2021-2022. Remunerations of other prosecutors are set in proportion to the remuneration of the prosecutor of the district prosecutor's office with the appropriate coefficients.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

The register of judges reports on interference with the judges activities in the administration of justice, published on the HCJ website, as of 01.01.2021 contains 1562 judges reports on interference, of which 23 were received in 2016, 312 in 2017, and in 2018 - 436, in 2019 - 450, in 2020 - 341. HCJ in 2017 considered 140 reports, in 2018 - 317, in 2019 - 618, in 2020 - 350.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe.

According to the Prosecutor General's Office of Ukraine, additional regulation is needed to guarantee the independence of the prosecutor at the highest institutional level. In 2010, the Venice Commission concluded that "the term of office of the Prosecutor General should not coincide with the election of the President and Parliament". The GRECO recommendations state that "the appointment and dismissal of the Prosecutor General should be more focused on objective criteria of professional capacity." At present, the termination of the prosecutor's powers in Ukraine is done by expressing of non-confidence to him by politicians and does not require legal justification. Taking into account the conclusions and recommendations, the Prosecutor General should have the right to a fair trial of his dismissal within the relevant procedures and on the basis of the opinion of an expert body, as these standards are basic in all Western democracies. The Prosecutor General must also be appointed for a long and fixed period with a legislative settlement of the exhaustive list of grounds for his dismissal. The solution to these problems lies in the legislative sphere, and the relevant changes will be able to qualitatively strengthen the independence of the entire vertical of prosecutors.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

Additional propositions are absent.

UNITED KINGDOM / *ROYAUME UNI*
Ministry of Justice
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Over the last five years, the United Kingdom (UK) has continued to strengthen and defend judicial independence and impartiality. The Sofia Plan's recommendations are fulfilled by principles enshrined in primary legislation by the Constitutional Reform Act 2005, the Justice (Northern Ireland) Act 2002, and the Judiciary and Courts (Scotland) Act 2008, for England and Wales, Northern Ireland, and Scotland respectively. Detailed explanation of the application of these Acts was given in the follow-up questionnaire of 25 April 2018. A copy of the United Kingdom's response is attached for reference. The United Kingdom has since continued to apply these principles, with sustained commitment to the rule of law and the independence of the judiciary.

The Lord Chancellor (LC) / Justice Minister takes an oath to 'respect the rule of law and defend the independence of the judiciary'. Since 2018, LCs have used their public statements in parliament and other speaking events to promote the independence of the judiciary and the importance of the rule of law. For example, reiterating the importance of parliamentarians respecting judicial independence by confirming in Parliament that it is wholly inappropriate for anyone to intervene, or to be perceived to seek to intervene, in proceedings in court relating to specific cases.

Due to time restrictions, this response focuses on three areas of action in England and Wales since the UK's last report on commitments in the Sofia Action Plan: increased action to broaden the diversity of the judiciary of England and Wales; supporting the judiciary in fulfilling their duty to be impartial through training about social bias; and the judiciary's proactive approach to outreach activities and the media, with a view to increasing public understanding of and confidence in the judiciary, and avoiding or dispelling misunderstandings about the legal process.

Regarding the impartiality and independence of prosecutors, the Crown Prosecution Service published their 2025 strategy last year which reemphasises the importance of, and commitment to independent and fair prosecutions. At the heart of this strategy is a commitment to prosecuting without bias and delivering justice in every case. Indeed, only last year the Director of Public Prosecutions spoke at the Birmingham Centre for the Rule of Law to further outline the fundamental importance of maintaining independence whilst continuing to work collaboratively.

Judicial Diversity

The Ministry of Justice is a member organisation of the Judicial Diversity Forum (JDF). The JDF brings together stakeholders from across the legal sector to identify ways and actions to support increased judicial diversity.

In September 2020, the JDF published a judicial diversity report, which was the first of its kind in bringing together statistics on diversity, recruitment, headcount in the judiciary and the wider legal sector to inform which actions could have the highest impact. The report included a summary of these actions to demonstrate collective commitment to increasing diversity in the judiciary. It is publicly available at:
https://judicialappointments.gov.uk/wp-content/uploads/2020/11/20200916_jdf_common_narrative.pdf

Actions include: funding the Judicial Appointment Commission's 'Targeted Outreach and Research Team' to support potential under-represented candidates, including Black and Minority Ethnic and women lawyers for specific senior court and tribunal roles; supporting the expansion of the Pre-Application Judicial Education programme (PAJE); publishing a revised Salaried Part-Time Working policy to support a more flexible working environment for the judiciary (which was published in October 2020); and reviewing the statutory and non-statutory eligibility criteria for appointments to remove unnecessary barriers.

Judicial Training on Social Bias

The last five years have seen a continued commitment to strengthening the training of judges, enabling them to perform their judicial duties.

The Lord Chief Justice (LCJ), the Senior President of the Tribunals, and the Chief Coroner have statutory responsibility for training, under the Constitutional Reform Act 2005, Tribunals, Courts and Enforcement Act 2007, and Coroners and Justice Act 2009 respectively. Training responsibilities are exercised through the Judicial College. The Judicial College works closely with the judiciary and HMCTS to design and deliver appropriate training across the full range of judicial competencies and responsibilities.

On countering the negative influence of stereotyping in judicial decision making, the Judicial College has a governing principle which requires diversity to be embedded into all training using examples of the social context in which judging occurs. Social context includes diversity, equality and social mobility. It is also the College's goal to integrate the topic of bias in all induction and continuation training. Judicial trainers are provided with guidance on how to integrate fair treatment and diversity into jurisdiction specific induction and continuation training programmes which are delivered to all judicial office-holders. Induction courses also cover vulnerability of parties and witnesses as a central part of the training undertaken by all delegates.

Social context and diversity are embedded in the competence frameworks for judges and magistrates. This all reflects the judicial oath, to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.'

All judicial office holders have access to the Equal Treatment Bench Book (ETBB) which is a comprehensive guide on equal treatment issues and is publicly available at: https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/. A new iteration has been published this month, providing guidance on how to make the court experience more accessible for parties and witnesses who might feel uncertain, fearful or unable to participate for various reasons.

Judicial Outreach and Media Approach

The Judiciary of England and Wales have a dedicated communications and media team. They respond to press enquires and proactively publish judgments and sentencing remarks on the judiciary website www.judiciary.uk as well as on social media channels. The press team also proactively and reactively arrange media interview with judges as well as other opportunities to explain the work of judges. In 2020 the Judicial Office launched an online course in partnership with King's College London to explain and promote the work of the modern judiciary. The course was developed on the FutureLearn platform (https://www.futurelearn.com/courses/the-modern-judiciary) and to date has had nearly 10,000 participants enrol on it.

The Judiciary of England and Wales also have a cohort of Diversity and Community Relations Judges. These judges undertake community engagement in a voluntary capacity which includes visits and talks to local schools and other community organisations. They also seek to encourage legal professionals from under-represented groups to consider a judicial career. They actively seek to dispel myths surrounding the judiciary and to act as a link between the courts and all local communities.

The Supreme Court of the United Kingdom (SC) runs a proactive schedule of public engagement to increase public confidence in, and understanding of, the justice system. In 2019-20 SC justices attended 160+ engagements in the UK and internationally. This included delivering talks, lectures and speeches, and included delivery of 'Ask a justice' sessions to help engage school and college groups from inaccessible and disadvantaged areas of the UK, and hosting a series of lectures as part of the court's ten-year anniversary programme of events.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

We are unable to discuss specific instances that are subject to ongoing independent investigation. Two routes for raising / investigating concerns are:

Undue influence from the executive and Members of Parliament (MP)

Through the Ministerial Code, all Ministers of the Crown are required to consider their obligations against the overarching duty to comply with the law and to protect the integrity of public life. The Code of Conduct sets out the standards of behaviour expected of MPs as they carry out their work. These requirements and expectations include upholding the independence of the judiciary, and judges' freedom to make their judicial decisions without being subject to interference by Parliament or the executive. Instances of undue influence and other forms of interference from MPs are reported to, and investigated by, the independent Parliamentary Commissioner for Standards. Where a complaint is upheld, sanctions are dealt with by the Parliamentary Select Committee on Standards.

To ensure transparency, the Commissioner's full report is always published, along with the evidence, unless it relates to an investigation under the Independent Complaints and Grievance Scheme. All published reports are available publicly on the Committee on Standards' website:
https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/complaints-and-investigations/

The only reported example in the last five years that relates to a potential interference in the justice system by an MP was in March 2020. An MP used House of Commons letter headed paper to submit to the court a character reference for her son, before his sentencing hearing. The Commissioner concluded that this was a breach of the Code of Conduct for MPs, because it wrongly gave the impression that her correspondence carried the authority of the House. The Committee recommended that the MP make a formal written apology to the House.

Undue influence and other forms of interference within the judiciary

Complaints can be made about the misconduct of a judge, magistrate, tribunal member or coroner. "Misconduct" has no statutory definition for this purpose, but the types of behaviour it incorporates can include behaviour that risks undermining the impartiality and/or independence of judicial office holders, including misuse of judicial status for personal gain or advantage.

The Judicial Conduct Investigations Office (JCIO) is the independent body which supports the Lord Chancellor and LCJ, in relation to disciplinary proceedings against courts judiciary and coroners. The JCIO does not have disciplinary powers of its own but makes recommendations to the Lord Chancellor and the LCJ (or his judicial delegate) who can, by joint agreement, sanction a judicial office holder for misconduct. The sanctions available in cases of judicial misconduct are set down in primary legislation – the Constitutional Reform Act 2005, Section 108. They are, in order of seriousness, formal advice, formal warning, reprimand and removal from office.

The JCIO publishes annual reports which give data about the types of misconduct complaints received. Where sanctions are issued, disciplinary statements which detail the specific instances are published on the JCIO website. See: https://www.complaints.judicialconduct.gov.uk/reportsandpublications/ and

https://www.complaints.judicialconduct.gov.uk/disciplinarystatements/ respectively.

Examples of behaviour from the last five years, which, after independent investigation, has been found to have fallen below the expected standard of a judicial officer holder and led to sanctions have included: accessing information in cases without authorisation and seeking to influence court proceedings; and writing a letter to another judicial office holder in way could have been construed as an attempt to influence a sentencing decision.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

The Covid-19 pandemic has accelerated plans for reform, including digitisation of courts and tribunals in the UK. This has presented new challenges to judges in the performance of their role, and the situation is likely similar in other member states. Particular attention must be paid by member states to ensuring the necessary administrative and technological support is in place to allow judges to undertake their role properly, without any undermining of their independence and integrity.

In the UK, a large-scale recruitment exercise is well underway to recruit approximately 1,800 additional court and tribunal staff, which will support judicial office holders perform their role. This includes staff for Cloud Video Platform support, marshalling in court and tribunal buildings, ushers and court clerks.

The judiciary in England and Wales have access, through the independent Judicial College, to training that supports them in online court proceedings. To date, a mix of training and guidance materials have been issued to support the use of video technology and online hearings, including both practical use of technology, behaviours and communication styles.

Additionally, where there are concerns about rule of law and the independence of prosecutors and judiciary in other countries this greatly impacts the UK's ability to cooperate on criminal matters, particularly in regards to satisfying domestic courts that extradited individuals will not be subject to human rights breaches if prosecuted in another State.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

The UK government is confident in the robust structures in place to safeguard the independence and impartiality of the judiciary. There is clearly defined separation of powers, as articulated in our Sofia Action Plan 2018 questionnaire response, and strong mechanisms to address any instances of constitutionally inappropriate conduct.

These transparent and rigorous processes promote continued public confidence in the judiciary, as evidenced by the results of the 2020 edition of the Ipsos MORI Veracity Index, the longest-running poll on trust in professions in Great Britain. 84% of respondents indicated trust in judges, with the judiciary placing as the fifth most trusted profession. This is an increase of 4% from the end of 2015. Information about the survey can be accessed here: https://www.ipsos.com/ipsos-mori/en-uk/ipsos-mori-veracity-index-2020-trust-in-professions.

III. Contributions received from the members of the Conference of INGOs / *Contributions reçues des membres de la Conférence des OING*

AMNESTY INTERNATIONAL
Hungary / *Hongrie*
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

Increasing the salary of judges

In 2019 the salary scales of prosecutors and judges were different. Consequently, in some categories, judges' salaries were lower than those of prosecutors. As a result of a salary raise by the so-called omnibus Act of 2019 ("2019 Omnibus Act"),[1] the judges' and prosecutors' salaries have been levelled and, in three stages from 1 January 2020, judges' salaries are being raised by 32% percentage point on average,[2] while prosecutors' salaries are being raised by 21% percentage point on average.

Before the raise, the 2019 survey off the European Network of Councils for the Judiciary showed that 40% of judges agreed that in the category of their payment, "*during the last two years changes occurred in my working conditions that negatively influenced my independence*."[3] The base salary of both judges and prosecutors has been raised from gross HUF 453,330 (ca. EUR 1,266) [in years 2019-2020][4] to HUF 507,730 (ca. EUR 1,418) [in the year of 2021][5]. The base salary is multiplied by a multiplier that is corresponding with the judges' tenure times in a way that after each 3 years of tenure time, the judges reach a new payment grade.[6] From 1 January 2020, the multipliers for both judges and prosecutors were raised to the same extent, for example from 1.00 to 1.25 in the 1st pay grade, 1.40 to 1.75 in the 7th pay grade or 1.75 to 2.10 in the 14th pay grade.[7] From 1 January 2020, the so-called supplementary salary for judges has also been raised by 100% in the case of district court judges, county court judges and Kúria judges, while by 75% for regional court of appeal judges.[8] In case of prosecutors, the supplementary salary was only raised for prosecutors at higher levels.[9] Moreover, based on the decision of their superiors, the judges may receive performance bonus, amounting from 5% to 30% of their base salary and qualification bonus if they possess an additional qualification they can apply in performing their duties, amounting from 10% to 30% of their base salary.[10]

[1] Act CXXVII of 2019, Article 132.
[2] The outstanding performance of Hungarian courts is rewarded – judicial salaries increase by over 60%, 22 November 2019, https://birosag.hu/en/news/category/about-courts/outstanding-performance-hungarian-courts-rewarded-judicial-salaries.
[3] European Network of Councils for the Judiciary, Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges, 2019, p. 72.
[4] Act L of 2018 on the Central Budget of Hungary for 2019, Article 64 (1)–(2); Act LXXI of 2019 on the Central Budget of Hungary for 2020, Article 62 (1)–(2).
[5] Act XC of 2020, Article 65.
[6] Act CLXII of 2011 on the Legal Status and Remuneration of Judges ("ALSRJ"), Article 169.
[7] ALSRJ, Appendix 2; Act CLXIV of 2011 on Prosecutors, Appendix 1.
[8] Article 173 (2) of the ALSRJ.
[9] Article 64 (1) of Act CLXIV of 2011 on Prosecutors.
[10] Articles 181–182 of the ALSRJ.

The judges' salary raise is a step towards strengthening judiciary independence. Nevertheless, in a 2020 research by Amnesty International,[11] 6 out of the 14 judges interviewed expressly mentioned and criticized that primarily the salaries of court leaders were raised by the 2019 Omnibus Act, while the raise for judges not holding such positions was less significant, and one judge said that the 2019 Omnibus Act has been used as a Trojan horse: for higher salary the judges get less independence. As officials claimed in public that critical judges may endanger the salary increase for the judiciary, some judges had been discouraged to support the National Judicial Council's ("NJC") activities because they were worried that as a retaliation, they may not receive their prospective salary increase. This was felt to be a serious threat for many respondents. Amnesty International's research revealed that bonuses can be a tool of retaliation against activist judges: there was a case mentioned where a "renitent" judicial council president (who was also a college leader) received zero year-end bonus, while the other college leader received a good year-end bonus. A judge told Amnesty International that it was possible for a court president to withdraw a judge's language or other bonus as a tool of retribution.[12]

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

NJO President's Integrity Policy threatening judges' freedom of expression.

In 2016, the National Judiciary Office ("NJO") President issued a so-called "Integrity Policy"[13] that prescribes how a judge may conduct any activities outside of their adjudication job. In 2017, some parts of the Integrity Policy were deemed unconstitutional by the Hungarian Constitutional Court ("HCC")[14] partly because of a provision stating that "integrity" shall also mean complying with the values and principles contained in the recommendation of the NJO President.

Amnesty International understands that the Integrity Policy is used as a tool to silence judges who would want to speak up in defence of their judicial independence, by saying that this topic is political and/or an activity that infringes their integrity.[15] The Integrity Policy, for example, contains a catch-all provision saying that "*other activities* […] *endangering the judicial independence or impartiality of a judge*"[16] may also infringe integrity, which provision is open to interpretation of the NJO President. Moreover, the judge must report to the court president any fact or event that may affect his/her tenure or integrity. A few judges mentioned that they considered the Integrity Policy when deciding whether to accept an interview with Amnesty International. In the end, none of them thought it was a violation of the Integrity Policy.

A judge told Amnesty International that he/she knows a high-profile court leader who thinks that even talking about judicial independence in public is an infringement of the Integrity Policy. Many judges felt that these norms lacked any legitimate ground and were dangerously uncertain.[17]

[11] Hungarian judges were interviewed for Amnesty International's research conducted amongst Hungarian judges between November 2019 and January 2020. Findings of this research were published in Amnesty International's "Fearing the Unknown" report on 6 April 2020, available at https://www.amnesty.org/en/documents/eur27/2051/2020/en/ ("Fearing the Unknown").
[12] Section 3.3.4 of the Fearing the Unknown report.
[13] https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-0
[14] http://public.mkab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/$FILE/33_2017%20AB%20hat%C3%A1rozat.pdf.
[15] See Section 3.2. of the Fearing the Unknown report.
[16] Article 7 (2) of the Integrity Policy.
[17] Budapest Beacon, 'Handó's Integrity Code used to bust judge for allowing cousin to bring lunch to the office', 5 September 2017.

Ministry of Justice amendment of rules to favour applicants from public administration

In 2017, a decree by the Minister of Justice[18] changed the rules on the evaluation system of applications to become an administrative judge and consequently increased the number of points an applicant may get for earlier practice acquired in public administration.[19] Prior to these changes, experience gained as an active judge were evaluated favourably, but the scoring system allowed for gaining points for experience in the public administration too. The new scoring system grants equal points for work experience within the public administration and the judiciary. This allows for the influx of new judges who were not trained and socialized in courts, but in the hierarchical executive system of state administration.[20]

The previous NJO President' violations of the law and misuse of power

The main actors in the Hungarian judicial system are the following. The NJO and its President have wide powers over court administration, including the recruitment and promotion of judges, management of the judiciary's budget and infrastructure.[21] The NJO President is elected by the Parliament for a nine-year term. The National Judicial Council ("NJC") serves as an oversight body over the NJO and the NJO President. The NJC is composed of the President of the Kúria and fourteen judges, who are elected by their peers by secret ballot for a six-year term, with 14 additional substitute members who would become full members in case of a vacancy. The NJC has the power to scrutinize the actions of the NJO President and, in certain cases, exercise a veto (e.g. in some cases of judicial appointments).[22] Ultimately, if the NJO President breached her duties for more than 90 days or becomes "unworthy" of the office, the NJC can request Parliament to vote on removing the NJO President from office.

In 2018–2019 the conflict between the NJO and the NJC resulted in a constitutional crisis[23] in the Hungarian judiciary.

In early 2018, new NJC members were elected by the judges. On 19 April 2018, five members and 12 substitute members of the NJC resigned, reportedly citing "existing executive duties" and "family matters". It was reported[24] that several members were allegedly pressured into resigning either by the NJO President (then Mrs. Tünde Handó) or by court leaders who had been appointed by her.

In May 2018, the NJC's reports[25] on the NJO President's decisions in previous years revealed unlawful practices of the NJO President. The NJC[26] and the European Association of Judges, which carried out a fact-finding mission to Hungary on 17-19 April 2019,[27] both found that the NJO President violated laws on judicial appointments. There were clear signs that the previous NJO President abused and misused these powers and there could not have been legal remedies against such misuse other than

[18] Decree 14/2017. (X. 31.) IM.
[19] Annex 1, 1.2of the Decree 7/2011. (III.4.) KIM: applicants are given points based on – among others – experience.
[20] See Hungarian Helsinki Committee's report Blurring the Boundaries https://www.helsinki.hu/wp-content/uploads/Blurring-the-Boundaries-Admin-Courts-HHC-20181208-final.pdf.
[21] Venice Commission, CDL-AD(2012)020, Opinion no. 683/2012, available: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e, paras. 88, 93/6,7,8.
[22] Article 103 of the Act CLXI of 2011 on the Organization and Administration of Courts ("AOAC ").
[23] See Amnesty International's and the Hungarian Helsinki Committee's joint report about this constitutional crisis at https://www.amnesty.hu/data/file/4586-a-constitutional-crisis-in-the-hungarian-judiciary-09072019.pdf?version=1415642342.
[24] https://www.nytimes.com/2018/05/01/world/europe/hungary-viktor-orban-judges.html.
[25] The reports amongst others concluded that the NJO President followed some unlawful practices in 2017-2018 according to the NJC: i) the NJO President seconded judges to courts to fulfill leadership tasks that is not allowed by the law; ii) did not give any reasoning or did not give well-grounded reasoning prescribed by the law in personnel matters (e.g. reasoning for the invalidation of leadership applications).https://orszagosbiroitanacs.hu/2018-05-02/.
[26] Report by the Committee established by NJC Decision 101/2018 (X.03.), English translation available: https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0.
[27] Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: https://www.iaj-uim.org/iuw/wpcontent/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf pp. 7-8, 10-11.

the motion for her removal at the Parliament. Significant examples of abuse or misuse of powers include:[28]

a) In several cases, applications for court leadership positions by candidates supported by the judges' plenary meeting got invalidated by the NJO President without a clear justification. Since the inception of the NJO and NJC in 2012, the proportion of leadership applications that have been invalidated has increased (33.33% in 2016, 50% in 2017 and 55.31% in 2018).[29][30]

b) Moreover, usually after such invalidation, the leadership position was filled not by regular application procedures, but through a temporarily assigned interim leader[31] already known by the NJO President and known to be loyal to her. Some judges Amnesty International interviewed also gave examples of the NJO President's practise of seconding judges for leadership roles, which is not possible under the laws.[32] For example, a regional court of appeal judge was seconded to be a college leader at the Metropolitan Regional Court.

c) For the appointment of an interim leader, sometimes the "NJO-trampoline" [33] has been used. One judge explained to Amnesty International: "*on Friday a leader was still leading a meeting at a smaller regional court, then on Saturday he/she was assigned to the NJO, then Sunday he/she worked at the NJO, then on Monday he/she was assigned to another big regional court in the morning, and later that morning he/she became the president of that regional court*". There was a widespread perception among the judges interviewed and their colleagues that if somebody worked at the NJO "even for 5 minutes", his/her career could be accelerated.

d) There was a serious problem with the NJO's non-transparent practice of invalidating judges' applications without any justification given. One judge noted, however, that the NJO President is not able to interfere with ordinary judges' applications as much as he/she would have been able to in the pre-2012 system. Also, according to a NJC report,[34] there was positive improvement on this issue in the second half of 2018 as compared to the previous period.

The NJC's reports established also that the previous NJO President (i.e. Mrs. Handó) declared the NJC illegitimate and stopped cooperating with the very institution vested with controlling the NJO. In particular, the NJO President:[35]

a) refused to cooperate with the NJC in ensuring access to documents and thus undermined effective control over court administration;
b) prevented the NJC from appointing service court judges who have jurisdiction over judges' disciplinary and other internal cases;
c) prevented judges from electing members to the NJC to fill the missing seats;
d) circumvented the NJC's right to comment on the proposal for the courts' budget and failed to submit a report on the execution of the budget;
e) refused to sign the NJC's budget thus blocking its effective financial functioning;
f) did not submit internal regulations (orders) to the NJC for consultation prior to their publication;
g) failed to inform the NJC about the NJO President's activities on a 6-monthly basis, which is mandatory under the law.[36]

[28] See Section 1.1.1. of the Fearing the Unknown report.
[29] Kovács Ágnes: Ki védi meg a magyar bíróságok függetlenségét? https://jog.tk.mta.hu/uploads/files/2019_10_Kovacs.pdf.
[30] For example, at one regional court, there have been four invalidations in this period where candidates were supported by the NJO but not supported by the judges' plenary meeting.
[31] Article 133 (2) of the AOAC.
[32] Judges can be seconded to another court only for two reasons: for their professional advancement and to manage the workload at the courts. Article 31 (2) of the ALSRJ.
[33] The NJO President may relocate any judge to the NJO and any judge working at the NJO to any court. Articles 27 (2) and 58 (4) of the ALSRJ.
[34] NJC Resolution 14/2019. (III.6.) March 2019 https://www.dropbox.com/s/dbiq6nipgmp5b3d/14.2019%20%28III.6.%29%20OBT%20hat%C3%A1rozat%2011.2019.%20%28II.6.%29%20OBT%20hat%C3%A1rozat%20kieg%C3%A9sz%C3%ADt%C3%A9se.pdf?dl=0.
[35] See Fearing the Unknown report, para. 1.1.1.
[36] https://www.amnesty.hu/data/file/4742-hungary_judicary_timeline_ai-hhc_2012-2019.pdf?version=1415642342.

The NJO President claimed that the NJC was illegitimate because it did not represent all types of court and refused to cooperate with the NJC. The NJC rejected[37] the NJO President's claim.

In May 2019, the NJC presented a motion[38] with detailed reasoning to the Hungarian Parliament, requesting the removal of the NJO President on the grounds that she had breached her duties and had become unworthy of the office. The Parliament voted down the NJC's motion. It was called "constitutional crisis"[39] because the institution designated by the Fundamental Law of Hungary to supervise the operation of the NJO, the NJC, was prevented from doing so by the NJO President. At the end of 2019, the then NJO President, Mrs. Handó was elected HCC justice by the Hungarian Parliament and consequently she resigned from her position as NJO President, and a new NJO President was elected by the Parliament in December 2019.

In July 2020, new NJC members were elected and the new NJO President – whom the Parliament had elected in December 2019 – has accepted the legitimacy of the NJC and has been cooperative with the NJC. Even though the present NJO President does not question the legitimacy of the NJC, without solving the systemic issues, the conflict between the two organs may escalate again.

The laws that allowed the above violations of the law and misuse of power by the NJO President are still in force.[40] This effectively means that NJO President may potentially commit same or similar violations of the law and face no consequences except for their removal from office by the Hungarian Parliament, which elected them.

Listing of judges

In February 2019, media reported[41] that members of the Hungarian Association of Judges (MABIE, which has also raised a critical voice with regard to the previous NJO President) have been listed at one of the regional courts, and the regional court's president disseminated this list at a meeting for district court presidents and implicitly pressured district court presidents to press judges to terminate their membership in MABIE.

Later, the Hungarian Data Protection Authority fined the court to HUF 3 million for breaching data protection rules.[42] Amnesty International does not know about any negative consequences against the regional court president himself.

Disciplinary proceeding against a judge filing a preliminary ruling request to the CJEU

On 11 July 2019, Judge Vasvári, a criminal judge at the Central District Court of Pest and a member of the NJC referred a set of questions to the CJEU, including questions concerning his court's judicial independence.

Upon the extraordinary appeal of the Prosecutor General Péter Polt, the Kúria ruled on 10 September 2019 that the preliminary questions violate Hungarian law. The Kúria ruled that the questions are irrelevant for the case at hand. Although the ruling does not stop the EU procedure, it might have a significant chilling effect on Hungarian judges.

Moreover, the competent court president started a disciplinary proceeding against Mr. Vasvári,[43] arguing that by asking irrelevant and unsubstantiated questions, Judge Vasvári violated the law, which prescribed that judges should conduct themselves with dignity and should refrain from doing anything which would undermine the "dignity of the judiciary". Later, the motion of disciplinary proceeding was revoked, still, the combined chilling effect of the Kúria's decision rendering a CJEU reference illegal

[37] https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0.
[38] https://orszagosbiroitanacs.hu/2019-05-08/.
[39] A term used by the European Association of Judges https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf
[40] Among others, Article 76 of the AOAC.
[41] https://444.hu/2019/02/26/egy-neveket-es-adoszamokat-tartalmazo-listaval-probalhatnak-nyomast-gyakorolni-a-birakra.
[42] https://www.mabie.hu/index.php/1464-harommillio-forint-birsag-a-mabie-tagok-listazasaert.
[43] https://www.icj.org/hungary-disciplinary-action-against-judge-for-recourse-to-eu-court-must-cease/.

under Hungarian law and the threat of disciplinary proceedings might deter other judges from referring questions on sensitive topics such as judicial independence to the CJEU.[44]

A new Act in 2019 to further curb judicial independence

Although the Commissioner for Human Rights of the Council of Europe urged the Hungarian Parliament to modify the draft bill,[45] on 12 December 2019 the Parliament adopted the 2019 Omnibus Act, amending various legal provisions pertaining to the court system and the status of judges. Amnesty International's analysis[46] showed that the 2019 Omnibus Act was designed to guarantee judicial decisions favourable to the government in politically sensitive cases. Amnesty International also criticized the new law as a possible threat to judicial independence in its "Fearing the Unknown" report,[47] backed by testimonies of Hungarian judges. The main points raising concerns regarding judiciary independence are the following.

First, by opening up new paths for constitutional complaints, the 2019 Omnibus Act allows the HCC to exercise tightened control over the ordinary judiciary. It established new rules which entitle public authorities to file a constitutional complaint with the HCC on the ground that their competences have been unconstitutionally constrained. The Act reflects a shift towards an approach in which it is not only the individual who is entitled to human rights protection vis-à-vis the state, but under certain circumstances, public authorities may also claim fundamental rights protection from the HCC. According to the explanatory memorandum of the Act, not only persons but state organs can have a right to a fair trial, which means that their rights and obligations in any litigation must be adjudicated by an independent and impartial court established by law, in a fair and public trial, within a reasonable time.

According to international standards (for example, the European Convention on Human Rights, Article 1), states must secure the rights of "everyone" within domestic jurisdiction, meaning the rights of people. "Everyone" includes private and public individuals, and not 'state organs'.

This absurd new approach of the Act provides a possibility for an administrative authority to file a constitutional complaint with the HCC, based, for instance, on the right to a fair trial, in case its decision had been challenged before courts and the ordinary court decided against the authority.
Second, the 2019 Omnibus Act made it possible for newly elected HCC justices, and for those already on the bench, to become judges simply on their request. The President of Hungary appoints HCC justices to judicial positions "without checking the qualifications required for appointment and without an application process". Moreover, these judges may be appointed to the Kúria (Supreme Court) as chamber presidents, right after their mandate in the HCC expires. This rule raises concerns, as the law normally requires different competences to qualify as an ordinary judge than to become an HCC justice. Legal scholars with high-level professional knowledge (university professors or doctors of the Hungarian Academy of Sciences) may become HCC justices, while, for a judicial appointment, a candidate needs practical experience as a judge, a court secretary, or as a legal professional in other fields. HCC Justices will not be required to prove this kind of experience or to compete with other experienced candidates for the prestigious posts of chamber presidents at the Kúria. This is because, effective from 2020, HCC justices may also request not just to be ordinary judges but to immediately become chamber presidents at the Kúria. In practice a person may be appointed HCC justice, then may resign after 6 months, and may become a Kúria chamber president for decades.

Third, judicial discretion of judges was further limited by the 2019 Omnibus Act, by the following provisions:

The Act introduces a new procedure, called "uniformity complaint",[48] which can be submitted against a decision of one chamber of the Kúria. The uniformity complaint may be submitted if, regarding questions of law, a chamber of the Kúria deviates from the published jurisprudence of the Kúria. Consequently, for instance, the newly introduced "uniformity complaint" makes it possible to challenge decisions in

[44] https://www.helsinki.hu/en/disciplinary-action-threatens-judge-for-turning-to-cjeu/.
[45] https://www.coe.int/en/web/commissioner/-/the-commissioner-urges-the-hungarian-parliament-to-modify-a-bill-affecting-the-independence-of-the-judiciary.
[46] https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342/
[47] Section 2.2.1 of the Fearing the Unknown report.
[48] Articles 41/A–41D of the AOAC.

which a chamber of the Kúria applies rule of law standards and arrives at a different conclusion which is unfavourable to authorities. The legislator thus tied the hands of the judges with regard to departing from the previous case-law and thus send a chilling message to discourage judicial reasoning that diverts from the present case law. This may result in curbing judicial independence, and progressive development of the law, particularly in matters where judges aim to use rule of law principles or principles of constitutionality.

The 2019 Omnibus Act also modified the Code of Civil Procedure and the Code of Criminal Procedure and imposed an obligation on the individual judge to provide reasons for a decision in case of departing from the non-binding jurisprudence published by the Kúria. This can lead to an even more serious interference with the independence of individual judges. According to the Bill, "legal reasoning shall contain the reasons which justifies the judges' departure from the edited cases of the Kúria published in the Collection of Judicial Decisions (Bírósági Határozatok Gyűjteménye) in questions of law, or the reasons for rejecting the request for the departure." If a judge fails to give reasons for departing from the previous decisions, it can affect their professional evaluation and career (promotion).[49] Furthermore, in criminal cases, the 2019 Omnibus Act introduced a new reason for extraordinary appeal, so if the court's reasoning has diverted from the non-binding jurisprudence published by the Kúria, the parties may challenge the decision at the Kúria. The rules above therefore have the potential to constrain the autonomy and independence of the judge in judicial reasoning, which may have a chilling effect on judges and negative consequences for legal reasoning. Furthermore, if the Kúria's jurisprudence will be shifting, this may further constrain individual judge's discretion at lower lever courts in the future.

Fourth, the 2019 Omnibus Act expanded the number of judges that are subject to national security screening. For instance, the vice-presidents of the Kúria, presidents and vice-presidents of regional courts and regional courts of appeal, certain head of departments in the NJO, and judges in charge of specific tasks (e. g. in the fields of defence, civil protection, system security, system administration) will also be subjected to national security vetting.
The explanatory memorandum attached to the 2019 Omnibus Act lacked any justification for the necessity of national security vetting in some judicial positions and limiting the fundamental rights of the affected judges thereof.

Despite concerns expressed by the CoE Commissioner for Human Rights in November 2019[50] and by the European Commission in its first Rule of Law Report,[51] the Hungarian Parliament has not taken their concerns into consideration and the above provisions curbing Hungarian judiciary independence are still in force.

Electing new Kúria president as a result of ad hominem legislation

The Hungarian Parliament elected[52] a new president to the Hungarian Kúria (i.e. the highest ordinary curt in the country) on 19 October 2020. Zsolt András Varga was elected exclusively with the votes of MPs of the governing parties. Mr. Varga's 9-year tenure as Kúria president started on 1 January 2021. Varga would not have been eligible as candidate for the Kúria if it was not for two recent legal amendments that paved the way for his election by widening the pool of eligible candidates. These two legal amendments were the following:

First, there is a rule which requires 5 years of legal practice as an ordinary judge from a candidate who applies to the Kúria's presidency. A new amendment passed in April 2019[53] made it possible that a

[49] According to the law (Articles 65-85 of the ALSRJ), there is regular evaluation of every judge, first after 3 years, then each 8 years. During this evaluation, it is examined if the judge followed procedural and substantive laws, they examine the appeals against their judgements (amongst others). At the end of the evaluation, the judge can get an evaluation "excellent, appropriate to higher position", "excellent", "good" and "unfit". If the evaluation's result is "unfit", the judge is dismissed from the judiciary (there is a right to appeal the evaluation). The evaluation is important for the judge's salary, their promotion and their dismissal. Moreover, there is a possibility for the court president to start an extraordinary evaluation procedure against a judge if the judge "cannot perform their judicial profession due to professional reasons". Deviating from the Kúria's jurisprudence may mean in the future that the judge's evaluation will be bad.
[50] https://www.coe.int/en/web/commissioner/-/the-commissioner-urges-the-hungarian-parliament-to-modify-a-bill-affecting-the-independence-of-the-judiciary.
[51] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020SC0316&from=EN
[52] https://hungarytoday.hu/hungary-supreme-court-president-zsolt-andras-varga/.
[53] Act XXIV of 2019.

candidate could also count their legal practise as an HCC justice into this 5-year requirement. Before this new amendment, only experience as an ordinary judge (and not as an HCC justice) could have been counted as legal practise.[54] Mr. Varga used to be an HCC justice and could not have been elected Kúria president without this amendment, because he had not had 5 years of legal practise as an ordinary judge.

Second, according to the main rule, a candidate who applies to the Kúria's presidency must be a judge.[55] In December 2019, as described above, the 2019 Omnibus Act made it possible for HCC justices to become judges simply on their request, without an application process.[56] Mr. Varga, being a HCC justice himself, used this legal opportunity and consequently was appointed judge in July 2020 by the President of Hungary.[57] Mr. Varga could not have been elected Kúria president without this amendment either, because he had not been a judge before July 2020.

The NJC is required by law to give its consultative, non-binding opinion on the candidate for the Kúria President. Prior to the parliamentary vote, the NJC gave its opinion on the candidate and its members overwhelmingly voted down[58] Mr. Varga's candidature (13 votes against and only one for). The NJC's reasoning was that Mr. Varga had never been practising as a judge and has no experience in judicial administration. Mr. Varga said that being an HCC justice, he had indeed adjudicated cases, since clients regularly file so-called constitutional complaints to the HCC in their individual cases. However, the NJC vote was not taken into consideration.

Appointment of political appointee HCC justices to ordinary court positions

In 2020 Amnesty International observed the appointment of several HCC justices as ordinary judges, which, given that all justices were elected to the HCC by the votes of the governing parties in Parliament, was widely seen as the political appointment of HCC justices to ordinary court positions. In July 2020, apart from Mr. Zsolt András Varga, HCC justices Mrs. Ágnes Czine, Mr. Imre Juhász, Mrs. Ildikó Hörcherné Marosi, Mr. Tibor Balázs Schanda, Mr. Tamás Sulyok, Mr. Marcel Szabó and Mr. Péter Szalay were also appointed judges – among them, only Mrs. Czine and Mrs. Hörcherné Marosi had been a judge before. As these justices may operate as chamber presidents at the Kúria in the future, and consequently hear and decide cases in which the state is a party, it is questionable whether these judges will be able to satisfy the criteria of being impartial. Therefore, this step significantly impacts the perceived impartiality of the courts as well as may impact decision making in any future cases where the state will be a party.

In September 2020, the NJC in its resolution[59] called upon the NJO President to initiate a change of this law. The NJC said that HCC justices who have not served as judges before should apply for a judicial position in an ordinary procedure applicable for other candidate judges.

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

Systemic problems with organizational independence

Amnesty International's analysis[60] found that the concentration of power in the hands of one single NJO President causes systemic problems. The institutions of judicial self-governance (including the NJC, local judiciary councils or judges' plenary meetings) remain weak. As a consequence of the institutional set-up established in 2012, Mrs. Tünde Handó NJO President from 2012 to November 2019, has formed a system in which all court presidents are obliged to the NJO President and any incumbent NJO President has the power to do the same. Through this mechanism, the NJO President can basically exert administrative influence on almost all levels of court presidents. Court presidents have influence on the selection and career of judges and their evaluation. They also have significant powers in case

[54] Article 114 (1) of the AOAC.
[55] Article 114 (1) of the AOAC.
[56] https://index.hu/english/2019/12/10/changes_to_court_system_omnibus_bill_judicial_independence/
[57] http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20160.pdf.
[58] orszagosbiroitanacs.hu/az-obt-velemenyezte-a-kuriai-elnokenek-javasolt-szemelyt/.
[59] NJC Resolution No. 107/2020.
[60] See Section 1 of the Fearing the Unknown report.

allocation, allowing them to impact how the right to a fair trial is upheld. The newly elected NJO President, the Hungarian Government or the Hungarian Parliament has not yet made any alterations to this system. This means, as Amnesty International concluded in the Fearing the Unknown report, that the organizational independence of the Hungarian judiciary is severely limited.

Media and political attacks on the judiciary continue in 2020

Media attacks and attacks from politicians (government officials, governing-party and opposition-party politicians) on the judiciary and against judges were present between 2015-2020, undermining public trust in the judiciary as the third branch of power. According to the 14 judges interviewed by Amnesty International,[61] public statements from the political sphere and media attacks can indirectly harm judicial independence. Judges feel that these attacks are getting worse.

During 2020, Amnesty International has observed several external media or political statements criticizing, and in some cases personally attacking, judges and judgements.

For example, there was a case about Roma children being segregated in a public school in Gyöngyöspata between 2004-2017, where Hungarian Prime Minister Viktor Orbán and the ruling party together with government-aligned media attacked the court's judgement of awarding HUF 99 million in damages to the affected students to be paid by the state.[62]

Another example was that the Hungarian government has suspended the pay-outs for prisoners that were ordered by Hungarian courts as compensation for the poor conditions in which they were detained.[63] This was done as part of a smear campaign started by Government officials including the Prime Minister and governing-party politicians attacking judges and lawyers, implying that the judges adjudicating in these cases and lawyers representing their clients defend criminals.

In the trial of Mr. Gábor Kaleta, former Hungarian ambassador to Peru, Mr. Máté Kocsis, a FIDESZ politician and parliamentary group leader said that the "*judgement is outrageous and unacceptable*".[64]

In September 2020, in a pending case against a Hungarian politician, Mr. Tamás Deutsch MEP posted on his Facebook page that "*let's be clear: the non-final verdict of the court in the case is net treason*."[65]

In December 2019 Mr. Péter Márky-Zay (opposition mayor of Hódmezővásárhely) publicly said that "*today, in this court system, what judgment you get largely depends on which court the case is heard*". He also said that "*then we will start the vérbíró.hu [„blood judges" website] and sooner or later they will be ashamed of themselves*".[66]

On 1 December 2020 Mr. Márky-Zay also said[67] after his first-instance judgement that the judgement was passed after a "*show trial*".

In the Fearing the Unknown report, judges told Amnesty International that public attacks on the judiciary and special media attention can put tremendous pressure on a judge, and judges mostly agreed that the organization did not provide enough support for judges in these cases.[68] Throughout 2020 political attacks and attacks from the media against the Hungarian judiciary have continued, which has negatively affected judicial independence. Except for the case of Mr. Deutsch EP, the NJO President and other court leaders have not defended the judiciary against the attacks of Hungarian government officials and governing party leaders. The NJO President and other court leaders (e.g. the Kúria's president), with some notable exceptions, have not defended the judiciary against these attacks.

[61] Section 1.2.4. of the Fearing the Unknown report.
[62] https://insighthungary.444.hu/2020/01/09/orban-says-fidesz-must-take-a-new-direction-if-epp-is-unable-to-change.
[63] https://hungarytoday.hu/govt-prison-business-suspend-compensation-poor-conditions/.
[64] https://infostart.hu/belfold/2020/07/08/kocsis-mate-kaleta-gabor-tette-undorito-a-birosag-itelete-felhaborito-es-elfogadhatatlan.
[65] https://www.facebook.com/permalink.php?story_fbid=3621973201169122&id=100000694338124.
[66] https://index.hu/belfold/2019/12/09/transparency_international_evzaro_korrpcio_ezaminimum/.
[67] https://magyarnarancs.hu/belpol/marki-zay-peter-ez-az-itelet-koncepcios-fellebbezni-fogok-234041.
[68] Fearing the Unknown, p. 30.

Chilling effect at courts[69]

Over recent years, judges have experienced an increase in the number and severity of attacks from political figures and the media against individual judges and judgements. Due to the chilling effect of the institutional changes in the judiciary, judges are scared away from speaking up in defence of their opinion, which results in only weak signs of solidarity within the judiciary and between judges and other legal professions. Judges reported a very bad atmosphere at various courts, where most judges do not dare to speak openly and freely; cliques have formed and there is mistrust among judges. The interviewees mentioned to Amnesty International that the chilling effect materializes in a fear amongst judges that prevents them from speaking up or protesting administrative decisions and pieces of legislation affecting the judiciary. The judges that Amnesty International interviewed said that judges are afraid of potential threats of disciplinary proceedings, disadvantageous case allocation, bad evaluation results, financial consequences, consequences related to family members, and repercussions on professional training and development. A good illustration of the chilling effect is that sometimes judges do not even know what they are afraid of: they are fearing an abstract potential future consequence, or they are fearing the unknown. Yet, this indirect and subtle consequence of the chilling effect may influence their thinking and decision making.

With regards to recent developments in 2020, Amnesty International has observed different opinions relating to the chilling effect and restrictions pertaining to the right to freedom of expression, although there is a clear pattern that judges' freedom of expression continues to be restricted and that the NJO President thinks that judges should only express their opinion through their judgements.

Amnesty International can conclude that developments in 2020 had mixed effects regarding the chilling effect at courts, and it seems that passivity of judges is still present in the Hungarian judiciary, thus hindering judicial independence and the rule of law.

In July 2020, in their joint communication[70] submitted to the Council of Europe Committee of Ministers in the case of Baka v. Hungary[71], Amnesty International Hungary and the Hungarian Helsinki Committee warned that the Hungarian Government had failed to ensure that judges can freely express their professional opinion on the independence of the judiciary, without having to fear detrimental consequences. This "chilling effect" on the freedom of expression of judges is encoded in the Hungarian court system, most judges are afraid to express their opinion even in relation to professional matters, and the Government has done nothing to counter this.

Perceived impartiality of the courts

Public perceptions of impartiality of courts are important for maintaining judicial independence, and the NJO President as the main player in the field of court administration plays a great role in this regard. According to the law,[72] the NJO President may initiate investigations – potentially ending in disciplinary proceedings – into the operation of court leaders appointed by the NJO President, to make sure that rules on court administration, on legal deadlines or internal court rules are upheld at the court in question. It is a powerful legal measure and the abusive or inconsistent use thereof by the NJO President may hinder the perceived impartiality and independence of the judicial administration.

That is why it has been concerning that there have been inconsistencies in initiating investigations against court presidents by the NJO President in 2020: a case at the Szeged Regional Court (where investigation was commenced) and one at the Metropolitan Regional Court (where investigation was not commenced). Moreover, a personnel choice of the NJO President appointing[73] the mother-in-law of the Minister of Justice to be his vice-president in 2020 also harmed the perceived independence of the court administration.

[69] See Section 3 of the Fearing the Unknown report.
[70] https://www.amnesty.hu/chilling-effect-on-the-freedom-of-expression-on-hungarian-judges-remains/
[71] https://hudoc.echr.coe.int/eng?i=001-163113.
[72] Article 76 (6) b)-c) of the AOAC.
[73] https://index.hu/belfold/2020/04/06/orszagos_birosagi_hivatal_elnokhelyettes_ader_janos_eross_monika_varga_judit/.

Concerns regarding case allocation

According to the concept of the Hungarian law,[74] a case should be allocated based on predetermined rules included in a so-called case-allocation scheme that is approved for each court. Usually, the cases are allocated by a court leader (e.g. a court president or their deputy, a group leader at major courts). Different criteria and any combination thereof may be used in the case allocation scheme devised for each court to determine which judge will get a case: for example, alphabetical order of a defendant's name, time of arrival, even and odd numbers, etc.

An individual's case should be allocated to a judge impartially, without any predilection, however recent research found that this is not always the case in practice. The allocation system operates in a way that a client or even a judge does not always know why a case has been allocated or re-allocated to a specific judge.[75] Such a system allows the case allocator wide discretion to decide who to allocate a case to, and this allows court leaders to manipulate allocations and to pick a judge based on political or other inappropriate motivation, and also not to allocate a case to certain judges. Adding that the case allocator may be under the informal influence of a court president and/or the NJO President, the case allocation system seriously threatens the right to a fair trial in Hungary. Even so because the client does not get notified about the re-allocation of his/her case, and they cannot challenge such re-allocation.

The problem with case allocation is especially felt in courts where more important or potentially politically sensitive cases are dealt with. Judges at lower court levels or at courts where cases are not relevant from a political perspective, however, did not feel that there are major problems with the case allocation scheme. Most of the interviewees, though, told that deviations from the case allocation scheme (that are allowed by the law) happen regularly, which results in a system where the case allocator may manually decide case-by-case about the allocation and re-allocation of the case. This is possible because the law permits the use of any combination of different case allocation criteria simultaneously.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

[74] Articles 8–11 of the AOAC.
[75] See Section 1.1.3. of the Fearing the Unknown report.

AMNESTY INTERNATIONAL
Poland / *Pologne*
25/02/2021

1. Describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

2. Specific instances of reported undue influence or other forms of interference in the period 2015-2020?

Questions 1 and 2

The executive power slowly took control over the judicial power by reforming the justice system. It started in 2015 with replacing judges in the Constitutional Tribunal (CT), National Council of Judiciary (NCJ) and the Supreme Court (SC).

Decreased role for the Constitutional Tribunal and its consequences for women rights in Poland

The role of the CT has been progressively marginalised. As a result, the Polish Ombudsman has stopped referring requests for the examination of laws in relation to the constitution to the CT.[1]

In October 2020, the CT delivered a judgment which deprived women of human rights. Under international human rights law, Poland is obliged to ensure women's legal access to abortion care at a minimum when their life or health is at risk, when the pregnancy involves a severe or fatal fetal impairment or results from sexual assault.[2] It has been repeatedly established that a failure to do so will give rise to multiple human rights violations under international human rights treaties that Poland has ratified, including the right to freedom from torture and other ill-treatment. By removing a long-established legal ground for access to abortion from Polish law, in October 2020, the Tribunal's decision is inconsistent with these international human rights obligations and may pave the way for further violations of women's human rights.[3]

Further, because of the serious questions over the legitimacy of the current Constitutional Tribunal, questions remain as to whether its decision should be considered a decision of a "tribunal previously established by law" - in line with Article 47(2) of the Charter of Fundamental Rights of the European Union. Between July 2016 and December 2017, the European Commission adopted four Rule of Law Recommendations concerning Poland under its Rule of Law Framework and concluded that, in light of legislation impacting the functioning and independence of the Constitutional Tribunal, there was a clear risk of a breach of the rule of law as outlined in Article 2 TEU.

The European Commission expressed serious concerns regarding the independence and legitimacy of the Constitutional Tribunal, noting that, "the constitutionality of Polish laws can no longer be effectively guaranteed. The judgments rendered by the Tribunal under these circumstances can no longer be considered as providing an effective constitutional review.
The European Commission reiterated these unresolved concerns in its Reasoned Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.[4]

[1] Polish Ombudsman has this right according to art. 191.1.1 of the Polish Constitution.
[2] See e.g. Human Rights Committee (HRC) (2019), General Comment No. 36, para. 8; Mellet v. Ireland, CCPR/C/116/D/2324/2013 (2016); Whelan v. Ireland, CCPR/C/119/D/2425/2014 (2017); K.L. v. Peru, CCPR/C/85/D/1153/2003 (2005); Concluding Observations: Ireland, para. 9, CCPR/C/IRL/CO/4 (2014); Committee on the Elimination of Discrimination Against Women (CEDAW), L.C. v. Peru; CEDAW/C/50/D/22/2009 (2011); Committee on Economic, Social and Cultural Rights (CESCR) (2016), General Comment No. 22; Joint Statement of UN Special Procedures, International Safe Abortion Day, 28 September 2016.
[3] See e.g. CESCR: General Comment No. 22, para. 38; General Comment No. 3, para. 9; General Comment No. 14, paras. 32, 48, 50. See also "Maastricht guidelines on violations of economic, social and cultural rights", 1997, Guideline 14(e); "Limburg principles on the implementation of the ICCPR", 1987, Principle 72.
[4] Reasoned Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM/2017/0835 final - 2017/0360 (NLE)), paras. 92-113 and 175(1).

Three reforms of the judiciary

Three significant judicial reforms were adopted. The first reform in 2017 provided the Justice Minister the power to appoint and dismiss Presidents and Deputy Presidents of courts. Within the first six months of the law entering into force, the Minister had the power to replace the presidents or vice-presidents without any justification. Using this power, the Minister dismissed a number of presidents and vice-presidents, and subsequently appointed 66 new presidents and 63 new vice-presidents of common courts between August 2017 and early February 2018. There are 377 courts in Poland and the government itself has acknowledged that the Minister has replaced about 18% of presidents and vice-presidents of the courts[5].

The second reform, which came into force in 2018, mandated that 15 of the 25 members of the National Council of the Judiciary (KRS), which is responsible for nominating judges, be appointed by the Parliament instead of elected by the judiciary.[6] Before this reform, politicians had elected only 32% of the members of the National Council of Judiciary, and the judiciary was more isolated from other authorities. Since the changes introduced by Law and Justice, 92% of the members of this body have been chosen by politicians.[7]

On 16 August 2018, in response to these changes, the Board of the European Network of Councils for the Judiciary (ENCJ) stated that the Polish NCJ does not comply with the statutory rule of the ENCJ that a member should be independent from the executive. The Board concluded that the NCJ no longer "guarantees the final responsibility for the support of the judiciary in the independent delivery of justice" and suspended its membership.[8]

The third reform came into force in July 2018 and concerned a lower retirement age for the Supreme Court, meaning that 27 out of 73 judges had to step down unless they were given the president's approval to remain. The European Commission launched infringement proceedings against Poland over the Supreme Court law, and the ECJ agreed to its request that Poland be ordered to suspend the new retirement age until a final ruling on the case[9]. Consequently, the Polish parliament passed legislation reinstating the retired judges, which was signed into law by President in December 2018.

Further erosion of the independence of the judiciary

On 21 September 2018, the President of Poland appointed ten judges to the newly established Disciplinary Chamber of the SC. The role of the Chamber is twofold: review of the disciplinary cases against Supreme Court judges; and serving as the second instance for disciplinary cases against other court judges and prosecutors. The Chamber thus retains the power to decide on the future of any judge facing disciplinary proceedings, including the power to remove a judge from the bench. Under the Chamber's rules, it is possible to conduct disciplinary proceedings in the justified absence of a judge or his/her counsel, which raises serious concerns over the right to fair hearing.[10]

In April 2019, the European Commission (EC) started an infringement procedure against Poland over the legislation on disciplinary proceedings against judges.[11]
In October, the EC concluded that the government's response to its concerns that the new disciplinary regime undermines the independence of judges, was unsatisfactory. It referred the case to the European Court of Justice (ECJ).

In June 2019, the ECJ ruled that the Law on the Supreme Court, which attempted to oust one third of the court's judges, was in breach of EU law. An interim decision from the ECJ from December 2018 had already ordered the Polish authorities to restore the Supreme Court to its composition before the law came into force.

[5] https://www.amnesty.org/en/documents/eur37/9051/2018/en/ and https://www.amnesty.org/en/documents/eur37/8059/2018/en/.
[6] https://www.amnesty.org/en/documents/eur37/9051/2018/en/.
[7] https://ruleoflaw.pl/report-rule-of-law-in-poland-in-2020/,p. 18.
[8] https://www.encj.eu/node/495.
[9] https://www.amnesty.org/en/documents/eur37/9051/2018/en/.
[10] https://amnesty.org.pl/wp-content/uploads/2019/02/Poland-briefing-GAC-Oct-2018.pdf.
[11] https://www.amnesty.org/en/countries/europe-and-central-asia/poland/report-poland/.

In a case on 19 November 2019[12], the ECJ ruled that the new Disciplinary Chamber of the Supreme Court, whose members were elected by the new judicial council, must meet the requirement of independence and impartiality. The ECJ clarified that it is up to the Supreme Court to make an assessment whether this requirement has been met. On 5 December 2019, the Supreme Court ruled that the new National Council of the Judiciary was appointed in a manner that does not guarantee its independence. On 20 December 2019, the lower chamber of the Parliament adopted another amendment further undermining judicial independence.

There are also several ongoing proceedings before the European Court of Human Rights which relate to the independence of the judiciary from 2015 onwards.

1. The case of Xero Flor v Poland (no. 4907/18) - concerning the defectiveness of the appointment of the Constitutional Tribunal's judges, the so-called 'double judges'.
2. Case of Grzęda v Poland (no. 43572/18) - concerning the shortening of the term of office of judges-members of the NCJ.
3. Case of Żurek v Poland (no. 39650/18) - concerning the shortening of the term of office of judges-members of the NCJ.
4. Case of Tuleya v Poland (no. 21181/19) - concerning the system of disciplinary responsibility of judges.
5. The case of Broda and Bojara v. Poland (nos. 26691/18 and 27367/18) - concerning the Minister of Justice's dismissal of vice-presidents of courts without justifying those decisions and without the possibility to appeal the decision.
6. The case of Advance Pharma v Poland (1469/2074) - concerning the appointment of judges to the Civil Chamber of the Supreme Court by the NCJ in its current form.
7. The case of Reczkowicz and Others v. Poland (nos. 43447/19, 49868/19 and 57511/19) - concerning the appointment of judges to two new chambers of the Supreme Court: Disciplinary Chamber of the Supreme Court and the Extraordinary Control and Public Affairs Chamber.
8. The case of Sobczynska and Others v Poland (nos. 62765/14, 62769/14, 62772/14 and 11708/18) - concerning the admissibility of judicial review of the appointment of a judge by the President.

Judges and prosecutors who spoke out in defence of an independent judiciary continued to face politicized disciplinary proceedings. Retaliatory disciplinary and criminal proceedings were initiated against judges and prosecutors who oppose the subordination of the judiciary and prosecution services to the executive. The following cases of judges and prosecutors illustrate these practises:

The case of judge Igor Tuleya

In November 2020 the Disciplinary Chamber of the Supreme Court resolved to waive the immunity of Judge Igor Tuleya of the Warsaw Regional Court in connection with his decision to examine, in the presence of the media, a complaint concerning the discontinuance of the voting proceedings in the Sejm's Column Hall. It concerned the judge's reversal of the prosecution's decision to discontinue the investigation into irregularities in the 2016 Sejm session. Judge Tuleya is known for his criticism of the changes introduced in the Polish judiciary since 2015.[13] In January and February 2021, the judge was summoned twice to the National Prosecutor's Office as a suspect to face criminal charges. The judge does not recognise the decision to waive his immunity and does not appear for questioning.

The case of judge Beata Morawiec

In October 2020, the Disciplinary Chamber issued a resolution waiving the immunity of Judge Beata Morawiec, former president of the Krakow Regional Court and president of the THEMIS Judges' Association, in connection with criminal proceedings concerning corruption offences. The prosecutor's office conducted the criminal proceedings against Judge Morawiec while a parallel trial for infringement of personal rights was pending against the Minister of Justice in connection with a communication that the Ministry published after Judge Morawiec was dismissed from her position as president of the court. In January 2021, the Court of Appeal in Warsaw ordered the Minister of Justice to apologise to Judge Morawiec for the communication defaming her.[14]

[12] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-11/cp190145en.pdf.
[13] https://amnesty.org.pl/wp-content/uploads/2018/07/Poland-Moc-Ulicy-raport.pdf, p. 35.
[14] https://www.prawo.pl/prawnicy-sady/ziobro-ma-przeprosic-sedzie-beate-morawiec-wyrok-sadu,505924.html.

The case of judge Paweł Juszczyszyn

On 4 April 2020, disciplinary proceedings were initiated against Judge Paweł Juszczyszyn after he requested from the Chancellery of the Sejm, while hearing an appeal, letters of support for members of the new National Judicial Council. This was because the judge whose appointment had been requested by the NCJ in its new composition had ruled on the case. In this way, Judge Juszczyszyn applied the CJEU judgment of 19.11.2019[15], according to which every court in Poland should examine the application of the rules as to whether judges nominated by the NCJ can hear court cases. Judge Juszczyszyn was suspended from his duties and his salary was reduced by 40 per cent.[16]

Cases of 7 seconded prosecutors

On 18 January 2021, seven prosecutors learned that in 48 hours they were to report to their new workplaces several hundred kilometres away from their place of residence. They were sent on six-month secondments to district prosecutors' offices in small towns. Polish law allows prosecutors to be seconded to another prosecution service, but it is questionable whether these decisions were taken suddenly, without giving prosecutors the opportunity to prepare for these secondments. This requires a reorganisation of their professional and family life.[17] The secondment of a prosecutor to another unit of the prosecutor's office is also questionable. Delegations were extended to prosecutors who criticise the prosecution service. The authorities explain their decision by the necessity to fill vacancies in smaller localities due to the pandemic, but according to the information received from superiors of these units, they did not report staff shortages. An additional problem for the seconded prosecutors is that in small towns, when hotels are not open, it is difficult to rent a flat overnight and the burden of finding a place to live falls on the seconded prosecutor. According to the prosecutors, this action is a form of intimidation of the prosecutors acting within the 'Lex Super Omnia' association. This association often criticises the leadership of the prosecution service and defends the independence of the prosecution profession.

An intensive smear campaign continued throughout the year 2019 against judges defending the rule of law by state media and on social media. In August, media revealed links between the campaign that involved personal attacks on judges, and high-ranking officials at the Ministry of Justice. Following these revelations, the deputy Minister of Justice Łukasz Piebiak resigned in August 2019. Now he is candidate as a new member to National Council of Judiciary.[18]

Regarding the Supreme Court, in 2020 the executive power appointed a new First President known for her connection with the Ministry of Justice and Prosecutor General.[19]

At the beginning of 2020 a new bill was introduced - so called muzzle law - which unbales judges to criticize the new organisation of the justice system, to question the legality of the newly elected judges of CT, NCJ and SC or even to apply UE law by submitting questions for a preliminary ruling to the CJUE. A special chamber within the Supreme Court - the Disciplinary Chamber continued to deal with independent judges and prosecutors.

Extending control over the prosecution service

The Prosecutor’s Office in Poland is divided into national, provincial, regional and district prosecutions. The head of the Prosecutor’s Office is the Prosecutor General, who as of 2016 is also the Minister of Justice. The aim of the Public Prosecutor’s Office is to conduct and oversee preparatory proceedings regarding criminal law, to act as the public accuser in criminal cases, to put forward complaints in criminal and civil cases, and to oversee decisions concerning pre-trial detention.[20]

[15] https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/c-585-18-niezawislosc-i-bezstronnosc-izby-522834825.
[16]https://tvn24.pl/polska/sedzia-pawel-juszczyszyn-zawieszony-i-z-obnizonym-wynagrodzeniem-decyzja-izby-dyscyplinarnej-3768970.
[17] https://www.rpo.gov.pl/pl/content/rpo-prokuratorzy-lex-super-omnia-delegacje-zbigniew-ziobro.
[18] https://oko.press/sedzia-piebiak-kadrowy-ziobry-kandyduje-do-neo-krs/.
[19] The First President of the Supreme Court was the Deputy Minister of Justice for several months in 2007. Since January 2016, she has been the director of the National School of Judiciary and Public Prosecution https://tvn24.pl/polska/malgorzata-manowska-kim-jest-sylwetka-pierwszej-prezes-sadu-najwyzszego-4593373.
[20] https://ruleoflaw.pl/report-rule-of-law-in-poland-in-2020/, p. 11

The executive also extended their control to the prosecution service by transferring essential powers from the prosecution services to the Minister of Justice and the Prosecutor General.

For example, the Ministry of Justice may order prosecutors to carry out instructions from the Minister of Justice (acting as Prosecutor General) on specific procedural steps in individual proceedings. The Minister of Justice also has the power to change or overrule a prosecutor's decision or to take over cases conducted by prosecutors. Moreover, the Minister of Justice is allowed to make information from a particular case available to persons who are not public officials or to provide the media with information from an ongoing pre-trial investigation without requiring the consent of the prosecutor conducting the proceedings.[21] The Prosecutor is obliged to carry out the orders, directives and instructions of the Superior Prosecutor who can change its decision, take over the case and carry out the prosecution activities in such case himself. Previously, the Prosecutor was also obliged to carry out the instructions of his superior if those do not relate to the content of the procedural act.

Overall assessment

The reforms of the justice system in Poland between 2015-2020 failed to address the existing issues in courts and prosecution services. Instead, they have worsened the situation of the justice system in Poland. The UN Special Rapporteur on the Independence of Judges and Lawyers stressed that the main effect — if not the main goal — of the measures adopted by the ruling majority has been to hamper the constitutionally protected principle of judicial independence and to enable the legislative and executive branches to interfere with the administration of justice.[22]

Since 2015, Amnesty International concluded that the government of Poland has systematically chipped away judicial independence. The changes in legislation have concentrated the control of the judicial system in the hands of the executive through the Minister of Justice. The mechanism for disciplinary proceedings has been used against those judges who are critical of the government's reform of the judiciary. The assault on the independent judiciary in Poland puts the right to fair trial and other human rights at risk. Threats and negative media campaign targeting the members of the judiciary in Poland contribute to a toxic climate in which individual judges might be at risk. The government of Poland must reset the course of judicial reform and ensure that any such project ensures respect for the rule of law, the promotion and protection of human rights, and the right of individual judges to fair treatment and due process of law.[23]

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

Questions 3 and 4

Amnesty International is concerned that the Polish government breached its international obligations to uphold the rule of law and human rights.

Article 10 of the Universal Declaration of Human Rights guarantees judicial independence. The UN Basic Principles on the Independence of the Judiciary[24] deal with the following subjects: (a) independence of the judiciary; (b) freedom of expression and association; (c) qualifications, selection and training; (d) conditions of service and tenure; (e) professional secrecy and immunity; and

[21] https://www.rpo.gov.pl/pl/content/rzecznik-skarzy-ustawa-o-prokuraturze-do-trybunalu-konstytucyjnego.
[22] https://digitallibrary.un.org/record/1629765.
[23] https://www.amnesty.org/download/Documents/EUR3798002019ENGLISH.PDF, page nr 12.
[24] https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-independence-of-the-judiciary/.

(f) discipline, suspension and removal. There are also the Bangalore Principles of Judicial Conduct of 2002.[25]

Rule of law, separation of powers and the independence of justice are stipulated in the International Covenant on Civil and Political Rights, the Basic Principles on the Role of Lawyers[26] and the Guidelines on the Role of Prosecutors.[27]

At European level the right to an independent and impartial tribunal is first of all guaranteed by Art. 6 ECHR, the case law of the Court as well as Recommendation (94)12 of the Committee of Ministers on the independence, efficiency and role of judges[28], Opinion No. 1 of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the non-removability of judges[29], European Charter on the Statute of Judges.[30]

Thus, consideration should be given to:

Amendment of the Law on the Common Courts and the National Council of the Judiciary.

Appointment of judges to the National Council of the Judiciary should be done by the judiciary itself, not by legislative/executive power.[31] There is a need to amend the Law on the National Council of the Judiciary to ensure that members who are judges are elected by their peers and not by the executive and/or the parliament.

Taking concrete steps to restore and guarantee the independence of the Supreme Court, which has been undermined by the amendment of the Law on the Supreme Court that entered into force in April 2018[32] and reviewing the compliance with the principle of the rule of law and operation of the two new Supreme Court chambers: Extraordinary and Disciplinary.[33]

These chambers are composed of new judges elected by the National Council of the Judiciary, the independence of which has been undermined by the retrogressive “reform” of the judiciary. While both chambers technically are part of the Supreme Court, they have special powers and are effectively above all other chambers, creating a risk that the whole judicial system may be dominated by them.

The Supreme Court's Disciplinary Chamber should be abolished or substantially restructured and brought in line with international standards. Similar doubts apply to the Extraordinary Control and Public Affairs Chamber of the Supreme Court. They concern both the issue of the proper empowerment of judges to adjudicate in the context of the standard of judicial independence and the scope of the Chambers' competences.

Reviewing the new system of disciplinary proceedings that concentrates power over the system in the hands of the Minister of Justice. Ensuring that judges can exercise their judicial functions free from retaliatory action or other forms of pressure, including politically motivated disciplinary proceedings, harassment and intimidation.

The current mechanism of disciplinary responsibility violates the principle of judicial independence through the risk of exercising political control over the content of judicial decisions. The Law of 20 December 2019 introduced numerous changes regarding the disciplinary responsibility of judges.

In fact, the legislator intends to put full power in the hands of the disciplinary bodies, which will be able to determine, unchecked by law, independently and without statutory restrictions, what behaviour is or is not a disciplinary tort. The lack of adequate procedural guarantees for judges in relation to their right of defence is also questionable, particularly in relation to doubts about the legitimacy and compatibility

[25] https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.
[26] https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx.
[27] https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx.
[28] https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d.
[29] https://rm.coe.int/1680747b59.
[30] https://www.legal-tools.org/doc/ca5224/pdf/.
[31] https://www.amnesty.org/download/Documents/EUR3780592018ENGLISH.PDF, page nr 10.
[32] https://www.amnesty.org/download/Documents/EUR3798002019ENGLISH.PDF, page nr 4.
[33] https://www.amnesty.org/download/Documents/EUR3798002019ENGLISH.PDF, page nr 4.

of the current form of the Supreme Court Disciplinary Chamber with the principle of independence of the judiciary.

Amnesty International also calls on the Polish authorities to stop any action, including politically motivated disciplinary proceedings, aimed at the harassment and intimidation of judges who adjudicate in compliance with the Polish Constitution and international human rights standards.[34]

Removing the provisions that undermine the full independence of the judiciary and put the right to fair trial at risk. Limiting the powers of the Minister of Justice regarding supervision over the organisation of the judiciary and prosecutors' service[35]

It should be possible to allow appeals against decisions by the Minister of Justice removing judges from their secondment to another court. The law should clearly specify the grounds when the Ministry of Justice can remove a judge from his secondment.

The Law on the Common Court System does not impose an obligation on the Minister of Justice to give reasons for his decision to dismiss a judge from his secondment to another court. There are also no grounds which should be followed by the Minister when removing a judge from his/her secondment. This mechanism - in cases of secondment of judges to higher courts - may be used as a form of punishment or pressure on the seconded judge. It should also be possible for a judge to lodge an appeal with a court against the decision of the Minister.

The need to investigate the Random Case Allocation System of the common courts

The Random Case Allocation System of the common courts raises a number of doubts about the true impartiality of the system. The algorithm created for the lottery is not known. The lack of source code makes it impossible to determine how judges are selected for specific cases. The result of the lottery raises many concerns among people. It is worth to note that neither the Constitutional Tribunal nor the Supreme Court were included in the system of drawing lots for judges[36].

[34] https://www.amnesty.org/download/Documents/EUR3780592018ENGLISH.PDF, page nr 10.
[35] https://www.rpo.gov.pl/pl/content/diagnoza-sadownictwa-material-rpo-dla-sejmowego-zespolu-ekspertow.
[36] https://epf.org.pl/pl/2020/12/22/jawnosc-przydzielania-sedziow-do-postepowan-wazne-zwyciestwo-ale-droga-do-jawnosci-jeszcze-daleka/.

AMNESTY INTERNATIONAL
Turkey / *Turquie*
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1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

In recent years, executive control and political influence over the judiciary in Turkey have been widespread, leading courts to systematically accept bogus indictments and to detain and convict individuals and groups that the government regards as political opponents, in the absence of compelling – or any – evidence of criminal activity. This was evident in the trials of Selahattin Demirtaş as well as of several other members of the opposition, Osman Kavala and other human rights defenders, lawyers, journalists and academics.

The composition of the Council of Judges and Prosecutors, the self-governing body in charge of the appointment, promotion, transfer, discipline and dismissal of judges and prosecutors, is in conflict with the principles of the independence and impartiality of the judiciary as it allows the executive power to control the Council and directly interfere with the criminal proceedings.[1] Judges and prosecutors face undue pressure as they risk being transferred, dismissed or subjected to disciplinary and criminal investigations if they make decisions considered to be undesirable by the government.[2]

Since the 2016 attempted coup, there has been a significant decrease in the effectiveness of domestic remedies in Turkey, including high court rulings differing from ECtHR and domestic jurisprudence. This is particularly apparent in Turkey's Constitutional Court's selective adherence to the ECtHR case-law illustrated among others in the recent ruling of the court on Osman Kavala's individual application.

In numerous criminal proceedings concerning human rights defenders in Turkey, Amnesty International has observed that the evidence presented often consists of human rights work protected under the scope of the rights to freedom of expression, association and peaceful assembly, further protected by several legal instruments on human rights defenders.[3] In most examined cases, human rights defenders are accused of "being members of" or "aiding a terrorist organization", "making propaganda for a terrorist organization", "espionage" or other crimes against the state. The large time lapse between the commission of the alleged crimes and the subsequent criminal investigations is also a feature of many other abusive prosecutions against human rights defenders and perceived government critics. These cases against perceived critics of the government and human rights defenders confirm serious concerns about the lack of independence and impartiality of the judiciary in Turkey: arbitrary arrests, punitive pre-trial detentions, charges based on spurious evidence often supported by smear campaigns in pro-government media and public statements from government officials signal the executive's pressure on and control over the judiciary. Judges and prosecutors face undue pressure as they risk being transferred, dismissed or subjected to disciplinary and criminal investigations if they make decisions considered to be undesirable by the government.[4]

[1] CoE Commissioner for Human Rights' statement, 7 June 2017: Turkey: new Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary.
[2] Rule 9.2 Submission by Amnesty International to the Committee of Ministers in the case of Kavala v Turkey, 19 May 2020, p.4.
[3] "Strengthening the protection and role of human rights defenders in Council of Europe member States" – Parliamentary Assembly Recommendation 2085 (2016); https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168070746f; Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808fd8b9; UN Declaration on Human Rights Defenders https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx.
[4] Examples include the 2014 transfer of judge Mustafa Bağarkası to a lower court following a decision to release four defendants in a prominent prosecution of lawyers, of Aydın Başar (the case of the judge who was transferred in 2019 from Zonguldak to Balıkesir and then to Erzurum as a disciplinary punishment for acquitting a defendant in a case brought for insulting the president), and in 2015, the removal of Aytaç Ballı, the judge removed before the judgment was issued in the prominent case of persons accused following the deaths of 301 people in a mine disaster in Soma.

Lawyers also face the risk of being detained for exercising their professional duties. An instance of this practice occurred in September 2020 when numerous lawyers were detained in the course of dawn raids. The detention of lawyers for exercising their professional activities undermines the right to a fair trial and has a chilling effect on other lawyers[5].

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

The case of Osman Kavala[6]

The case of Osman Kavala, who has been held in pre-trial detention since November 2017, is an emblematic example of the clear pattern of arbitrary, lengthy and punitive pre-trial detentions pursued for ulterior political ends, alongside abusive prosecutions based on broad and vague anti-terrorism legislation and other broadly applied criminal law provisions against human rights defenders and perceived government opponents and critics in Turkey, facilitated by a judiciary under political influence and pressure.

In its judgment on *Kavala v. Turkey*, the European Court found a violation of Article 18 of the Convention, in conjunction with Article 5.1 with regards to both investigations under Article 309 and Article 312 of the Penal Code.[7] The Court considered that it had been established beyond reasonable doubt that the measures complained of "pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considered that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders". [8]

To support its finding of a violation of Article 18, the Court relied on the following elements:

- the lapse of time between the 2013 Gezi events and Osman Kavala's arrest on 1 November 2017: dubbed "Gezi Park trial", Osman Kavala and 15 civil society figures have been prosecuted under nine trumped up charges for their alleged organization of the mass, overwhelmingly peaceful protests that swept across Turkey in the summer of 2013[9]
- the lack of credible or relevant evidence;
- an indictment citing as criminal evidence activities which are ordinary and legitimate activities of a human rights defender and chair of an NGO, as well as speeches given by the President of Turkey– the country's highest-ranking official.

The violation of Article 18 and the Court's findings of "evidence of an ulterior purpose" have been further reinforced and aggravated by the subsequent chain of events aft:

On 19 February 2020, Osman Kavala was re-remanded in prison and on the same day, President Erdoğan made a televised statement at the ruling Justice and Development Party (AK Party) weekly group meeting including remarks which openly criticized the court's decision to acquit nine of the 16 defendants including Osman Kavala.

Also on 19 February, the Council of Judges and Prosecutors granted permission for an investigation into the three judges of the court which issued the acquittal decision in the case.

[5] https://www.amnesty.org/download/Documents/EUR4432212020ENGLISH.PDF.
[6] For more detailed information, please see Amnesty International Rule 9.2 submission to the Committee of Ministers in the case of Kavala v Turkey, 19 May 2020, Index: EUR 44/2372/2020. https://www.amnesty.org/download/Documents/EUR4423722020ENGLISH.PDF.
[7] Case of Kavala v. Turkey, (Application no. 28749/18), Para 215-232.
[8] Case of Kavala v. Turkey, (Application no. 28749/18), Para 232.
[9] Charges were "attempting to overthrow the government", carrying a sentence of life imprisonment without parole; Damage to property (TCC 151/1), Qualified Damage to Property (TCC 152/1-a, 152/1-f, 152/2-a), Possession or Exchange of Hazardous Substances Without Permission (TCC Article 174), Damaging Places of Worship and Cemeteries (TCC 153), Violating the Law No. 6 136 for The Firearms and Knives and Other Tools, Qualified Robbery (TCC 149/1-a-c-d), Qualified Injury (TCC Article 86/1, 86/3-c, 87/3), Violating the Law on the Conservation of Cultural and Natural Property.

This was followed by reports in media outlets close to the government intended to damage the reputation of the head of the court by asserting he had suspicious connections with individuals convicted of or dismissed for links with a group the government considers a terrorist organization.

In March 2020, the court decided to remand Osman Kavala on suspicion of 'espionage' in relation to the 2016 coup attempt (under Turkish Penal Code Article 328) after a considerable time lapse - of 42 months from the coup attempt itself and after Kavala had already been in prison for 28 months.

No new evidence was presented to justify the new charge and the re-detention. Clearly, this chain of events amounts to repetitive maneuvers to keep Osman Kavala in prison in pursuance of the ulterior purpose which the European Court has identified in its judgment: to silence him as an NGO activist and human rights defender, to dissuade other persons from engaging in such activities and to paralyze civil society in the country.

On 29 December 2020, the General Assembly of the Constitutional Court ruled on a majority of eight to seven, that Osman Kavala's current pre-trial detention under the latest charge of 'espionage' did not violate his rights to liberty and security, illustrating the lack of effectiveness of domestic remedies in Turkey. In May 2019, the Court rejected a previous individual application by Osman Kavala.[10]

The case of Selahattin Demirtas

In its Demirtaş v Turkey Grand Chamber judgment of 22 December 2020, the ECtHR ruled that "the continuation of his pre-trial detention [under new criminal investigations] in relation to the same factual context entailed a prolongation of the violation of his rights" and called on Turkey to take all necessary measures to secure the immediate release of Selahattin Demirtaş. The ECtHR also found that Turkey had violated the right to freedom of expression (Art 10).[11]

A 3,530 page new indictment was accepted by the Ankara court on 8 January 2021, accusing 108 people including Selahattin Demirtaş and former and present members of the People's Democratic Party (HDP), of 29 different crimes including 'intentional killing' and 'disrupting the unity and territorial integrity of the state'. They are accused of mobilizing large masses to commit violent acts during the protests of 6-8 October 2014 under instructions of the PKK. The protests had erupted mostly across south-eastern Turkey in response to the Islamic State (IS) siege of Kobani, a predominantly Kurdish town on Syria's border with Turkey. Demonstrators protested against the IS and those they claimed to be its supporters within Turkey and its government, who they alleged to be allowing the IS to advance. A week of protests and linked large-scale violence, left more than 40 people dead, including Kobani protestors, political opponents they accused of supporting IS, bystanders and three police officers and injuries of hundreds of people as well as destruction of public and private property in 32 provinces across the country[12]. The bulk of the evidence brought against Selahattin Demirtaş and others in relation to the October 2014 incidents are predominantly based on the facts which were already considered by the European Court as insufficient to justify detention. If they are found guilty, each defendant would face an aggravated life sentence.

This new indictment against Selahattin Demirtaş and other politicians and political activists is another example of the Turkish authorities' refusal to implement the ECtHR decisions and of their efforts to criminalize legitimate political acts and debates protected under the parliamentary immunity of Selahattin Demirtaş.

The Büyükada case

On 26 November, less than five months following the first instance court decision on 3 July 2020, the Third Chamber of the Istanbul Regional Court of Appeal upheld the convictions of four human rights defenders in the Büyükada case. The human rights defenders Günal Kurşun, İdil Eser, Özlem Dalkıran and Taner Kılıç were convicted on terrorism related charges, despite the absence of any evidence of criminal activity and the fact that allegations against these defendants had repeatedly been disproven, including by the state's own evidence.

[10] https://www.amnesty.org/en/latest/news/2019/05/turkey-constitutional-court-ruling-on-osman-kavala-rubs-salt-into-the-wound-of-injustice/.
[11] Demirtas v Turkey, Grand Chamber Judgment, 22 December 2020:"para 281 and 282.
[12] https://www.amnesty.org/en/documents/eur44/2017/2015/en/.

The decision of the Regional Court of Appeal which lack the necessary detailed justification for its conclusions, reiterates the Court as a rubberstamp of the first instance court's ruling. While the rights defenders have appealed their unjust and baseless convictions to the Court of Cassation, their ongoing ordeal is one of the most shameful examples of the lack of independence of the judiciary in Turkey.[13] The above cases are not isolated but rather ongoing and systemic. They are also the symbol of the flaws in the judicial system in Turkey.

For more examples, please refer to the following document:
https://www.amnesty.org/download/Documents/EUR4423722020ENGLISH.PDF

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

Amnesty International urges the Council of Europe and its members states to call on the Turkish authorities, in the strongest terms, to:

- End the prolonged and arbitrary detention and prosecution of politicians, human rights defenders, lawyers, journalists, writers, and others solely for exercising their rights to freedom of expression, association and peaceful assembly;
- Implement the judgments of the ECtHR and immediately and unconditionally release Osman Kavala and Selahattin Demirtaş from their prolonged and arbitrary detention;
- Take all necessary measures to ensure the independence of the judiciary, including by removing political pressure on judges and prosecutors;

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

In 2016, within days of the state of emergency being declared, large numbers of experienced and trained judges, prosecutors and other state officials were detained, accused of supporting Fethullah Gülen, the self-exiled cleric blamed by the government for the 2016 coup attempt. Over 4,000 members of the judiciary were dismissed during the state of emergency by the Council of Judges and Prosecutors through amended dismissal rules for links to "terrorist" organizations. Law 7145, adopted in July 2018 with the stated aim of enabling an effective fight against "terrorist" organizations after the end of the emergency rule, extended the possibility for dismissal for a further three years on the same vague grounds with a continuing risk for judges and prosecutors to be dismissed arbitrarily.

These developments seriously undermined the independence and integrity of the judicial system. This purge of the judiciary, as well as the frequent and repeated arrests and prosecutions of lawyers, and many more problems in the judiciary, has seriously undermined the ability of the criminal justice system to deliver fair and impartial trials.[14]

Three legislative reform packages introduced under the Judicial Reform Strategy, which was announced in May 2019, have however failed to address the most crucial problems in Turkey's judicial system, including the independence and impartiality of the judiciary.[15]

[13] https://www.amnesty.org/en/latest/campaigns/2020/12/turkey-buyukada-is-far-from-over/ https://www.amnesty.org/en/latest/news/2020/07/turkey-court-deals-crushing-blow-for-human-rights-and-for-justice-as-four-activists-convicted/.
[14] Amnesty International, Weathering the Storm: Defending Human Rights in Turkey's Climate of Fear, EUR4482002018ENGLISH.PDF (amnesty.org).
[15] Amnesty International, Turkey: "Judicial Reform" Package is a lost opportunity to address deep flows in the Justice System, EUR 44/1161/2019, Amnesty Public Statement.

The Commissioner for Human Rights of the Council of Europe also considered in her report following her visit to Turkey in 2019 that the Judicial Reform Strategy did not address some of the fundamental problems affecting the Turkish Judiciary including the constitutional framework guaranteeing judicial independence which was considered by the Commissioner manifestly contrary to the relevant Council of Europe standards.[16]

[16] Human Rights Commissioner for Council of Europe, Country Visit Report, CommDH(2020)1, 168099823e (coe.int).

European Judges and Public Prosecutors for Democracy and Fundamental Freedoms /
Magistrats Européens pour la Démocratie et les Libertés
(MEDEL)
25/02/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

MEDEL observes more negative than positive examples regarding the protection of judicial independence. In fact, it is difficult to provide any example of institutional legislature in MEDEL's members countries, which would strengthen judicial independence, judiciary faces the reverse process (especially in Turkey, Poland, Bulgaria). The only positive aspect in the period of last five years is the rising awareness of the importance of judicial independence and impartiality among magistrates themselves.

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

MEDEL released a number of statements regarding undue influence, mainly in Turkey, Poland and Bulgaria.

MEDEL believes, that situation in **Turkey** is well known to Council of Europe. With no doubt, it is not the problem of specific instances, but of the whole system of judiciary in Turkey.

In **Poland** there is ongoing process of deterioration of Rule of Law, worsening situation of judiciary each year. There is no independent Constitutional Court in Poland, the National Judicial Council (KRS) due to its politicisation lost its role of the guarantee of judicial independence, The Supreme Court has been packed with "new" judges. Public prosecution office has no autonomy.

There are plenty examples of harassing judges for delivering judicial decisions, for issuing preliminary questions to ECJ, for speaking out and activity in judicial associations. MEDEL referred to situation in Poland in many statements:

https://www.medelnet.eu/index.php/news/60-featured-news/710-medel-statement-on-judge-igor-tuleya-s-hearing-2
https://www.medelnet.eu/index.php/news/europe/643-medel-statement-on-judge-igor-tuleya-s-hearing

https://www.medelnet.eu/index.php/news/europe/723-medel-strongly-condemns-the-decision-of-the-polish-minister-of-justice-acting-as-prosecutor-general-to-transfer-independent-prosecutors-hundreds-of-kilometres-away-from-the-places-they-live

https://www.medelnet.eu/index.php/news/europe/594-medel-s-call-for-interim-measures-against-poland
https://www.medelnet.eu/index.php/news/europe/496-medel-letter-to-frans-timmermans-about-the-disciplinar-proceedings-against-judges-in-poland

There are also serious concerns about situation in Bulgaria. The members of Bulgarian government notoriously undermine the position of judges, make inappropriate remarks on judges and judicial decisions. For few years there were several legal amendments which violate the idea of the separation of powers and harm judicial independence.

https://verfassungsblog.de/this-is-how-bulgarian-judicial-independence-ends-not-with-a-bang-but-a-whimper/

https://www.medelnet.eu/index.php/news/europe/555-medel-statement-on-the-attacks-against-bulgarian-judges

MEDEL observes Serbian executive's attempts to have more impact on judiciary:

https://www.medelnet.eu/index.php/news/europe/545-medel-statement-on-the-recent-developments-in-the-judiciary-of-the-republic-of-serbia

Also Italian judiciary is struggling with attacks on its independence:
https://www.medelnet.eu/index.php/news/europe/519-blacklisting-of-judges-is-a-breach-of-the-rule-of-law

MEDEL is also worried about situation in Romania:
https://www.medelnet.eu/index.php/news/europe/503-medel-statement-on-the-judiciary-in-romania

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

With the above-mentioned problems judiciary faces in several European countries, it is not exaggeration to say, that judicial independence is much more at risk now than it used to be ten years ago. The main challenge is to bring back European standards (set f. ex. in Venice Commission's reports) and to adopt to the needs of XXI century. Judiciary needs to find the way to have dialog with society, especially in era of populism and social media.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

Regarding the survey, some attention should be directed to the autonomy of public prosecution office and prosecutor's independence. As MEDEL emphasised in the Florence statement, "effective independence and autonomy of public prosecutors is an added value to the independence of justice systems and a key component of the Rule of Law":

https://www.medelnet.eu/index.php/news/europe/669-ca-of-florence-statements-approved

Regarding the Sofia Action Plan, establishing mechanisms to fully implement member states' obligations under the European Convention on Human Rights to guarantee access to an independent and impartial tribunal (one of the objective of the plan) is now needed even more then in 2016.

European Union of Judges in Commercial Matters (EUJC) /
Union européenne des Magistrats statuat en matière commerciale (UEMC)
10/03/2021

1. Please describe any specific measures taken by your authorities during the timeframe of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021) which have an impact on the internal and external independence and impartiality of judges and prosecutors?

Please provide, in particular, concrete examples of any institutional, legislative, regulatory or other measures, as well as new practices that have been adopted or put in place in the past five years to prevent and/or address (including procedures, remedies and sanctions for) undue influence or interference (i.e. with respect to inter alia: selection, appointment, and promotion; working conditions (including safety and security); court financing; accountability; protection in decision-making against undue influence or interference from peers (including superior court judges or state prosecutor's offices), judicial or prosecutorial authorities or professional associations, political actors or legislature, the executive, media or other private actors (including financial actors).

None

2. Has there been any specific instances of reported undue influence or other forms of interference in the period 2015-2020?

If yes, please provide a short summary of aspects reported and types of influence or interference, including information on any actions taken or measures adopted to address these situations, and any available information on the impact of these measures and their effectiveness.

If no actions or measures were taken, what were the grounds for dismissing or not acting upon reported cases of undue influence or interference?

Please indicate what are the most important factors underlying the effectiveness of measures in place to ensure the respect of judicial independence and impartiality in your country.

None

3. Please describe any outstanding challenges in this area and/or trends observed with respect to judicial independence and impartiality that would require collective attention by the member states and/or by the Council of Europe

Answer: In Sweden an official government investigation is in progress in order to suggest even more adequate measures regarding strengthening the legal system and the courts independence. The working group will complete their report to the government in 2023 only.

4. Are there any specific aspects of the survey and of the Sofia Action Plan that you consider missing or not sufficiently detailed in the survey and that may be relevant to understanding judicial independence and impartiality in your country? If so, please provide any additional information you consider useful for the scope of this exercise.

We could NOT see any action of the governments to strengthen the juridical systems, except in Sweden, see 3)

Concerning G: Unfortunately we did NOT see any improvement of the integration of the civil society by honorary lay judges in the jurisdiction system, but only the tendency to cancel this participation (such as in Estland, in Finland, in France and in Spain) or to adapt the rules in a way that the participation of lay judges is dependent from a request by the litigation parties (which normally is NOT done as the lawyers hate the non-juridical lay judges as "danger" against their juridical argumentation!).

In addition there is a tendency to replace a three-judge jurisdiction (“senat”, “chamber”) by a single (professional) judge due to budgetary problems (by avoiding the fact that honorary lay judges are cost-free) by neglecting the fact that 6 eyes see more than only 2, and if there are more judges within a handling and a decision it is less possible for a (single) professional judge to loose time, to be “lazy”, not to well prepare the file before the session, etc. Etc.

And i.e. in Austria we are discussing to avoid lay judges in penal jurisdiction as they area “not qualified” to see the juridical sight of the professional judges and do not always decide as these professional judges prefer.

Enclosed please find a detailed description of the unsatisfactory situation in Germany (Appendix 1) and Italy (Appendix 2).

(G. Taking adequately into account society as a whole in the composition of tribunals and the judiciary to increase public trust in the judiciary. To achieve this result, a policy should be considered by member States aimed at ensuring gender equality and representation of society as a whole.)

Appendix 1 - **Participation in Justice (PariJus) Germany, Mr Hasso Lieber**

The following statement refers exclusively to the participation of honorary judges in the various jurisdictions of Germany.

Definition:

According to the requirements that honorary judges in Germany must have for their office, a distinction must be made between those, who, as representatives of the people, do not have to fulfil any further professional requirements apart from general experience of life, knowledge of human nature, ability to think logically and decision-making ability (e.g. jurors in criminal cases against adults, honorary judges at administrative courts); who must have special (non-legal) expertise and experience (e.g. commercial judges, juvenile jurors, honorary judges in labour or social courts); who, as representatives of so-called free professions (e.g. doctors, lawyers, tax consultants), participate in the proceedings and decisions in the professional jurisdiction or as members of the public service (judges and public prosecutors, civil servants, soldiers) in the service or disciplinary courts as honorary judges.

Aldermen and commercial judges have been participating in the administration of justice since the ninth and sixteenth centuries respectively, and according to modern court constitutions since the second half of the nineteenth century; participation in the other jurisdictions developed - in part by following historical precursors - in the young democracies after the first and second world wars respectively.

For various reasons, the honorary judicial office has experienced massive restrictions in recent decades. These have a more serious effect on the honorary judges, who participate in the administration of justice as general representatives of the people, than on those who participate in the administration of justice with specific expertise or as professionals.

1. Restrictions imposed by the legislator

From the point of view of economy, the provisions of court constitutional law and procedural law have been developed to the detriment of the participation of honorary judges. When the Judicial Constitution Act came into force in 1879 after the foundation of the German Empire, it was "decided once and for all", according to the official justification, that men and women (the latter since 1923) from the people would participate in all criminal proceedings. As a result of reforms to the criminal court constitution in 1924, 1975 and - in the course of German unification - 1993, the bulk of criminal proceedings were transferred to the criminal judge (single judge), so that today only about 20 % of all criminal proceedings take place in the factual courts of the general criminal and juvenile courts with the participation of lay judges.

In administrative jurisdiction, the participation of honorary judges is sinking into insignificance. Overall, more than 87 % of all first-instance proceedings were decided by a single judge in 2019. In proceedings relating to the law on asylum, which naturally attract particular public attention, the proportion of proceedings decided by a single judge is over 95%. In the fiscal jurisdiction, only just under 21 % of the proceedings concluded by judgement or court order in the first instance are decided by the entire senate.

In commercial jurisdiction, where disputes between or against merchants are decided, the legislator has created the possibility that, according to the rules of procedure (section 349 (3) of the Code of Civil Procedure), decisions can also be made without the honorary judges (commercial judges) at the request of the parties. It is thus also up to the chairperson's control by scheduling whether the parties make a corresponding application. A corresponding legislative initiative to introduce such a waiver option also in social jurisdiction was prevented in the reporting period by massive counter-proposals by the social associations and the Federal Association of Volunteer Judges.

Labour courts have so far been spared such cuts, which is mainly due to the fact that both trade unions and employers' associations have a high interest in having volunteer judges experienced in the world of work and in everyday company life participate in negotiations and decisions.

2. Limitations due to judicial practice

Restrictions against the participation of honorary judges can also be established through extensive interpretation of laws or the deliberate violation by professional judges.

After years of unregulated development, the legislator decided in 2009 to legally regulate informal plea bargaining in criminal cases between the court, the public prosecutor's office and the defence. Part of this regulation is that in the main hearing "the court" - i.e. including the honorary judges - decides whether and how to agree to a plea bargain. The procedure as such already impairs the equal participation of the honorary judges (Schöffen), who have no prior knowledge from the files. In addition, in a number of cases that have become known, they are kept away from necessary knowledge by insufficient information and partly by - unlawful - exclusion from the discussions with the parties to the proceedings. The extent of this is documented by two studies conducted by Düsseldorf law professor Altenhain in 2013 and 2020. Almost 30% of the judges surveyed admitted violations of the law, a large number of which have a direct or indirect impact on the participation of lay judges, especially in large white-collar crime proceedings.

Because a number of lay judges with unconstitutional attitudes were elected to office years ago, the legislature created the possibility of removing lay judges from office who grossly violate their official duties. This regulation is interpreted more and more widely in practice, most recently by the Essen Regional Court, which wanted to have a lay judge removed from office who criticised judges' choice of words and spoke of "trickery". Although the competent higher court rejected this application, the opinion of the Regional Court, which is shared by the Office of the Attorney General, gives cause for concern.
Due to the conversion of administrative procedures to digital processing, certain procedures are now only processed in standardised times. For example, in some courts, compensation for loss of earnings due to being called up for voluntary judicial service is only paid once per quarter. For employees, this means that they have to do without part of their income for quite a while, especially in the case of several assignments, because the employer does not pay the salary for the absence from work and the judicial administration waits with the compensation until the end of the quarter.

3. Disadvantages from case law

Even supreme court rulings - intentionally - work to the disadvantage of honorary judges. For example, the Federal Labour Court and the Federal Administrative Court have ruled that employees in their honorary office can be expected to accept a loss of income in their profession. To clarify: this criticism is not about providing remuneration to the holders of an honorary judicial office. The honorary judges' normal "civil" income is reduced by the exercise of their honorary office.

4. Discrimination by private and public employers

If an honorary judge takes part in proceedings, he or she is entitled to reimbursement of loss of earnings, but only up to a maximum amount of € 24 (gross) per hour. Any loss of earnings in excess of this amount must initially be borne by the employer. However, this statutory provision (section 616 BGB) can be waived by collective agreement or employment contract. Not only private employers, but also the public service have made use of such a provision to exclude section 616 of the BGB from the collective agreement or employment contract.

Conclusions

Although the provisions on the election of lay judges in particular explicitly provide for the representation of all social groups in the honorary office, and Article 33 (2) of the Basic Law stipulates that every German has equal access to public office, the financial hurdles in particular de facto deny large parts of the population access to the honorary judicial office.

The participation of "women and men from the people" (in modern terms: civil society), which is guaranteed in twelve of the 16 constitutions of the Länder, is thus subject to a creeping process of emaciation. The third power of the state in Germany is slowly but surely on its way to being perceived only by academic experts.

Appendix 2 **- UNIMO and Associazione Nazionale Giudici di Pace**

In Italy, honorary judges access the position through a competition based on qualifications. Those in possession of a law degree can enter the competition and a higher score is given to those who also have the title of lawyer. Once honorary judges have been appointed, an internship must be carried out alongside career judges, both in the civil and criminal fields. Every 4 years the honorary judges are subjected to the verification of the requirements to continue to perform the function and their reconfirmation takes place by the Superior Council of the Judiciary. In most cases the honorary judges have an autonomous role, they take binding decisions in the Courts and can judge either by composing the panels formed by the professional judges, or as single judges. The weekly commitment varies from 2 to 4 hearings per week which is followed by the drafting of the measures taken. Honorary judges are compensated for their work through the payment of an allowance.

In Italy an anomalous system has been created with respect to the European framework, because the functioning of the jurisdiction is currently based on a significant presence of honorary judges, without which some offices would be paralyzed, which are the subject of a substantial precariousness based on repeated extensions and characterized by an insufficient remuneration treatment. Added to this is the absence of any social security and welfare coverage. Even in Italy the non-professional (or lay) judge, as in other European countries, is commonly characterized by instability of the relationship and does not provide for a professional classification within the judiciary. This situation is completely normal compared to European lay judges whose presence in the courts is occasional or, in any case, completely voluntary (with the absence, therefore, of real remuneration and with the payment of mere reimbursement of expenses), it is incongruent in the Italian reality if only one thinks that the honorary judges manage in the civil sector beyond the 40% - 60% of the jurisdiction. And it is important in order to guarantee independence and impartiality, to highlight that for all the honorary magistrates currently in service, the law provides for the application of piecework allowances to the extent and in the manner provided for by the previous regulations, no payment during the working period, no social security protection, no protection for maternity, illness, accident including Covid.

It should be reiterated that this system exposes the honorary magistrate to possible repercussions on independence in relation to the acceptable workload with respect to the piecework forecast. And it is sad to have to point out that in the Covid period, the Italian honorary magistrates were forced to go to work even without anti-contagion aids and protections and found themselves without any protection in case of job failure. It is necessary to note that the Italian honorary judges have also been exposed to the Covid infection and have also fallen ill without obtaining any labor law protection. Finally, it is noted that the category is still awaiting an overall reorganization of their role, modified with Legislative Decree. 116/17, so-called Orlando law already under review and their stay in the offices still makes them precarious.

It should be noted that as for the European counterparts, also for the Italian honorary judges the principles of voluntariness, experience and professional integrity have been recalled and contained in Recommendation 12/2010 and must certainly be applied - according to the implementation of the principles brought by 'art. 6 of the ECHR - especially in relation to the independence and impartiality of honorary magistrates, the demand that they carry out their activities in offices with adequate resources and the need for them to contribute to creating a sufficient number of judges.
However, the simple payment of an indemnity, of negligible value, escapes the application of the precautions imposed by art 55 on remuneration which cannot be read detached from the principles of independence and impartiality.

In the summer of 2020, a ruling by the European Court of Justice (EU Court, judgment of 16 July 2020 C-658/18) addressed the issue of the unequal treatment between professional judges and honorary judges, in relation, in that case, to the right to paid holidays. The sentence, basing the reasoning on the principle of non-discrimination of comparable situations, raised the question of whether there is an objective difference between the two categories of magistrates, such as to justify a different labor law treatment. The Court of Justice, comparing the nature of the work, the training conditions and the conditions of employment, substantially concluded that the two activities are comparable in many respects, and noting the only difference, for which the honorary magistrates deal with issues of lesser importance.

The European judge left to the assessment of the Italian State whether this difference is sufficient to justify the profound difference in treatment. It is important to underline that, as reiterated several times

in many fora, the claims of honorary judges do not refer to equalization of status, but only to equalization for the purposes of employment law. In addition, at the end of November, sentence no. 267/2020 of the Constitutional Court, referring back to the ruling of the European judge, affirmed the function performed by the justice of the peace is identical with respect to professional judges. If the function is the same then, as stated by the President of the Constitutional Court commenting on the latter ruling, it is also necessary to guarantee the same serenity, objectivity and impartiality to the honorary judges in judging.

It is also represented that the European Commission has opened a pre-infringement procedure: CHAP (2015) 1071 in relation to the lack of effective wage, regulatory and social security safeguards of the honorary judiciary. Finally, we recall the first applications of the UX ruling of the Court of Justice by the Regional Administrative Court of Emilia Romagna and the labor courts of Vicenza and Naples.