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SERBIA

Strengthening Independence and Accountability of the Judiciary

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FINAL REPORT WITH RECOMMENDATIONS FOR A SYSTEM OF CONFIDENTIAL COUNSELLING FOR JUDGES AND PROSECUTORS ON ETHICAL MATTERS

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I. OBJECTIVES

One of the envisaged outcomes of the project is reducing shortcomings in the Serbian judiciary in the sphere of competencies, ethics and discipline by improving the relevant legislature, supporting the HJC and the SPC ethics committees, and by designing measures to introduce a system of confidential counselling within both the judiciary and the prosecution service.

In this regard, one of the purposes of the project is to strengthen the independence and the responsibility of the judges, the autonomy and responsibility of the prosecutors and the confidence of the citizens in their justice system.

Having as beneficiaries of the project the Serbian national authorities – the Ministry of Justice, the High Judicial Council, the State Prosecutorial Council, and the Judicial Academy, the activities implemented in cooperation with the beneficiaries will contribute to strengthening independence and accountability of the judiciary and of the prosecutorial service.

II. SUMMARY

This Report consists of three main parts.

First part (A), dedicated to a review of international systems of confidential counselling for judges and prosecutors with special focus on CoE member states.

Second part (B), a comparative analysis of the different systems reviewed.

Third part (C), detailed recommendations with different options for possible implementation.

III. METHODOLOGY

In order to achieve the enunciated goals a comparative analysis of confidential counselling systems and best practices for judges and prosecutors in the CoE member states and in other relevant Countries was foreseen in order to be draft a set of recommendations for establishing a mechanism of confidential counselling for judges/prosecutors on ethical matters, including recommendations to strengthen a gender perspective.

For the purpose, meetings with the Council of Europe Action team, representatives of partner institutions (High Judicial Council/State Prosecutorial Council, Judicial Academy) and a selection of relevant stakeholders in Serbia such as representatives of civil society organisations and professional associations of judges and prosecutors took place. Former and current members of the Serbian High Judicial Council, State Prosecutorial Council and Ethical Boards, representatives of the two major professional associations of judges and prosecutors and of the Judicial Academy had the opportunity to express their perspectives about the confidential counselling of Judges and Prosecutors during the respective interviews performed.

Also relevant information and pertinent national legislation and regulations were collected and analyzed.

IV. INTERNATIONAL SYSTEMS OF CONFIDENTIAL COUNSELLING FOR JUDGES AND PROSECUTORS

A. REVIEW OF INTERNATIONAL SYSTEMS OF CONFIDENTIAL COUNSELLING FOR JUDGES AND PROSECUTORS

I. General Comments

The judicial power is an instance of resolution of conflicts and control of the other public powers, which leads to the strengthening of the mechanisms of democratic legitimacy and responsibility.

In the exercise of the profession of Judge or Prosecutor and in connection to the values of Justice and Human Rights that any citizen may legitimately expect from the courts and from each of the judges and Prosecutors entrusted with the protection of his rights, the independence, impartiality, integrity and competence in the exercise of the profession are key pillars in the Rule of Law, quality of Justice and the legitimacy and responsibility of judges.

Independence of the judiciary is not a privilege, it is “a pre-requisite to the rule of law and a fundamental guarantee of a fair trial”- CCJE, Opinion n° 1 and Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, Sep. 2007, commentary on Value n° 1, Independence.

The respect for ethical principles and statutory duties contributes to promote the independence, impartiality and the competence of Judges and Prosecutors. Also, the public information about the parameters of conduct for judges raises the public confidence in the system of justice.

In fact, judges and prosecutors must assume that their practice and insertion in a frame of values oriented by the interest of the citizens, in a subjection to statutory duties and ethical principles are the counterpart of the powers attributed to them by the Constitution and/or the Law.

As said in “CoE’s Judicial Professions, the Lisbon Network, THEMIS INITIAL TRAINING INTERNATIONAL SHOWROOM - Judicial Ethics: Developments, Challenges and Solutions. Moldova’s Experience in Enforcing Ethics Standards for Judges - *“Judicial ethics is the foundation upon which rests the ability of the judiciary, in any given country, to adequately and fairly protect the human rights provided for by the international documents. Judicial ethics is a complex area*

requiring significant efforts from judges, judicial self-administration bodies, the legislative and the executive branches of power, if ethics standards would to be upheld. Internationally and domestically, there is a more clear understanding of the link between judicial ethics and successful functioning of rule of law institutions, and societies are making increased efforts to make structural and mentality changes necessary for judicial ethics to consolidate. Still, debates and challenges around judicial ethics continue.”

A Code of Judicial Ethics, complemented with explanations, helps judges and Prosecutors to find answers to questions of ethic and professional deontology, giving them autonomy for the respective decision and assuring in a better way his independence in relation with the other powers. But, very often, these written explanations are not enough, due to the complexity of real life.

A Code of Conduct/Ethics provides guidance for judges and prosecutors on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance.

Judges in Serbia, just as in any other country, face daily problem issues, ethical/professional dilemmas, where even the explanations to the Code of Ethics are not sufficiently clear or enough.

Justice Marin Mrčela, President of the Council of Europe's Group of States against Corruption (GRECO), synthesized for UNODC - The Doha Declaration, in January 2020, the importance of Judicial Codes of conduct and Confidential Counselling for judges and prosecutors on ethic issues: *“Judges are the public face of justice and of the rule of law. As such, they have a duty to live up to the highest standards of integrity and impartiality in order to preserve public trust in what is a most fundamental pillar of democracy.*

Codes of conduct are a pivotal instrument to translate core values into behavioural norms. They do not only have an aspirational nature, showing the best path to resolve ethical dilemmas, but they must also be effectively implemented in practice. In keeping with safeguarding judicial independence, implementation must come first and foremost from within the judiciary itself.

Codes of conduct should, therefore, be useful and workable. For this to happen, the application of a code should consist of several elements:

1) Training. Judicial virtues must be fully embraced, nurtured, developed and practised. This requires a continuous process of self-improvement in which education plays a key role. Induction training on judicial ethics should be mandatory. In-service opportunities for further

developing knowledge on professional deontology, integrity and corruption prevention matters should also be actively promoted.

2) Confidential counselling. Peer-to-peer support programmes are key to strengthen and further develop a robust culture of integrity in the court. Mentoring and coaching arrangements have proven quite valuable in this respect. That said, they must also be coupled with an institutionalized system of counselling or advice, which provides focused and consistent backup to judges throughout their careers. In the current context of greater scrutiny of judicial conduct and the need to maintain judicial independence, a dedicated confidential service is an important professional tool to help judges to be proactive in resolving problems early, appropriately and authoritatively.

3) Breach of a code does not necessarily lead to disciplinary sanctions. Discipline is almost invariably connected to a breach of the code. Serious misconduct may not only give rise to administrative, but also criminal action. A graduated approach or course of action depending on the specificity of each situation needs to be followed.

4) Complaints. Appropriate avenues should be in place to allow for complaints when judicial misbehaviour occurs. The submission of complaints should be possible from colleagues and from the public.

5) Decision-making body. Codes have to be accompanied by oversight and accountability mechanisms. Such a body, composed of judges with the utmost reputation for integrity, should act with appropriate guarantees of independence and impartiality. A commission or committee could decide on breaches of ethical provisions and their degree of seriousness.

6) Procedure. Minor deviation from deontological provisions could trigger institutional action in the form of a declaration. In more serious cases, a public statement explicitly condemning the wrongful conduct may be needed. In both cases, constructive guidance on good practices should be provided.

7) Transparency. Serious breaches should be properly publicized. Such a public statement does not have to make reference to the identity of the individual concerned. There must be zero-tolerance to any violation of ethical standards.

These overarching guidelines ensure the effectiveness of codes of judicial conduct and, therefore, contribute to strengthening of the integrity of the judiciary.”

Accordingly, the GRECO Evaluation Report on Serbia, FOURTH EVALUATION ROUND “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted

on 19 June 2015, recommended (§ 131) that *“(i) that the Code of Ethics for judges be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all categories of judges.”*

The GRECO’s Compliance Report on Serbia, FOURTH EVALUATION ROUND “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted on 18 October 2017, stressed on § 56 that the recommended measures for guidance on the Code of Ethics, such as the confidential counselling, were not implemented.

Also the GRECO’s Interim Compliance Report on Serbia, FOURTH EVALUATION ROUND “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted on 22 March 2019, underlined on § 52 that, however giving the Ethics Committee also the mandate to carry out confidential counselling is a step forward, even if GRECO has a strong preference (as outlined in the Evaluation Report) for establishing such a mechanism outside the HJC. And as so far the Ethics Committee has only been given a mandate and a concrete mechanism for the provision of confidential counselling is not fully operational yet, GRECO considered this part of the recommendation to be partly implemented.

Finally, the GRECO’s Second Compliance Report on Serbia, FOURTH EVALUATION ROUND “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted on 29 October 2020, registered on § 45 that no new information has been provided to demonstrate that the Ethics Committee of the HJC is indeed implementing the mandate that has been given to it as regards confidential counselling on judicial ethics.

Looking into the members of CoE and in the Countries of North and South America we can find different solutions for the same subject, the confidential counselling on ethics for judges and prosecutors.

Some countries provide the advice directly from the respective High Council, others have an independent Ethic Commission entrusted with the advisory task and others have selected advisors’ judges in all courts or only in some courts.

The GRECO Evaluation Report on Serbia above mentioned, adopted on 19 June 2015, refers that *“regarding advice on ethical questions, it can in principle be obtained from the HJC. However, as described above, judges’ trust in that body in its present composition is low. While*

the GET is confident that this situation will improve once the HJC has been reformed as recommended above, it might be necessary to find a more immediate solution such as designating confidential counsellors – e.g. experienced judges in appellate courts – who command specific expertise in the field and are distinct from disciplinary bodies and placed outside the official hierarchy.”

II. International systems of confidential counselling

Let us consider now a survey of some international solutions that may help to find one suitable system for the Judicial Serbian reality.

Austria

The Association of Austrian Judges has established an Ethical Council ("Ethikrat") in 2018, consisting of 5 judges from various courts, elected by the General Assembly of the Association of Judges.

This Council deals with questions of judicial value concepts. If questions arise for a judge, she or he can contact the Council for advice.

It is in the discretion of the Ethics Council to process requests from members of the Association or not and to put forward recommendations based on its own motion.

Recommendations must be addressed to the Board of the Association. The members of the Council are independent.

There are no limitations for the way how to address the Council, including an anonymously way for a request on Ethics. It is then the Council to decide whether to address the question.

There is also a subject group in the Association of Austrian Judges which deals with Ethical topics, holds biannual conferences, is part of the education of judges-to-be and sends relevant decisions dealing with fundamental rights to the members of the subject group every month.

Albania

A new system was established in 2016.

The High Judicial Council assigns one Ethics Advisor from the ranks of judges, who meets legal requirements to be a member of the High Court and has the experience and knowledge on ethics matters.

The Ethics Advisor shall serve for a 5-year period, with the right to only one reappointment.

The High Judicial Council may, due to work needs, decide that the Ethics Advisor serves on full-time basis. In this case, the Council shall follow the secondment procedure for the assignment of the Ethics Advisor.

Under the Article 83 Justice Governance Law, the Ethics Advisor shall perform the following tasks:

a) give advice, upon the request of any judge on the most appropriate behaviour in and outside of the court, in the event of ethical uncertainties.

b) may ask for the opinion of the Council on certain issues relating to the conduct of judges in general, but not in relation to specific persons.

c) elaborate, publish, and continuously update an informative manual, which shall reflect questions and answers relating to ethical questions, based on the best international standards and practices and relevant decisions of the Council.

d) ensure, in collaboration with the School of Magistrates, the initial and continuous training on issues of ethics.

e) report in writing, not less than once a year, before the Council in relation with his/her activity.

The salary of the Ethics Advisor shall be determined based on the law “On the Status of Judges and Prosecutors in the Republic of Albania”.

The Ethics Advisor is bound to preserve confidentiality, refraining from disclosing any information to the structures of the governance bodies of the judiciary that exercise the competence to inspect and evaluate.

The Council shall provide the necessary support with human and financial resources to enable the activity of the Ethics Advisor.

There are no limitations on how to approach the Ethics Advisor, which includes an anonymously address and by any means like written form or e-platform.

In case of doubts the Ethics Advisor may approach the Council and have the Councils stand on it in general terms. This has the objective to allow the Council to set standards. The Council will then follow these standards in a disciplinary proceeding.

But of course, the boundaries are blurred and the Council may give general directions only. In concrete cases, the specific circumstances of the case must be considered.

In Albania, this is completely new and there is not really a practice established yet to understand what happens if the judge/prosecutor follows the advice of the Ethics Adviser but the High Council doesn't agree and wants to initiate a disciplinary proceeding.

Bulgaria

An Ethical Committee is established at each Court, composed by 3 members - acting judges from the same Court, elected by the General meeting of the judges at that court for a period of time of two years.

These Committees do not advise judges and do not work well because most of times the judges members of the Committee don't want to criticise their colleagues from the same court for ethical violations (which don't constitute disciplinary misconduct).

Canada

The Judicial Ethics Advisory Committee is appointed by a nomination committee jointly composed of representatives from the C.J.C. (Canadian Judicial Council) and the Canadian Superior Court Judges Association.

Its function is to provide confidential and prompt advice to judges who encounter an ethical dilemma.

On average it gives about ten advisory opinions per year.

The Committee rarely tells a judge that he or she must or must not undertake the proposed activity. The Committee uses language that speaks to the wisdom of the judge's proposed participation in the activity and leaves the ultimate decision to the judge.

The advisory opinions are crafted anonymously and, unless the inquiring judge requests otherwise, are accessible to all federally appointed judges on JudgeNet. But they are not available to the general public or researchers.

Croatia

JUDGES: The definition and procedure for the adoption of the Code of Judicial Ethics are laid down in the Courts Act. The Code establishes ethical principles and rules of conduct for judges in order to safeguard the dignity and reputation of judicial duty. It was adopted at the

Ethics Committee session, which was composed of the presidents of all judicial councils of the Republic of Croatia in 2006.

The Association of Croatian Judges has issued Instructions for the Application of the Code of Judicial Ethics. The Chamber of Presidents of all Judicial Councils of the Republic of Croatia has adopted Guidelines for the Interpretation and Application of the Code of Judicial Ethics.

In order to further strengthen the professionalism and accountability of judges, by the amendments to the Courts Act in 2018, the Committee was given new preventive powers to provide guidance on the interpretation of the Code and opinions and recommendations on the compliance of judges' behaviour with the Code.

To increase the transparency of these procedures, final decisions on the breach of the Code and the guidelines, opinions and recommendations of the Committee shall be published on the website of the Supreme Court in accordance with the regulations on personal data protection.

STATE PROSECUTORS: The State Prosecutor's Office Act establishes the definition and procedure for adopting the Code of Ethics of State Prosecutors and Deputy State Prosecutors, which defines the principles and rules of conduct of State Prosecutors and Deputy State Prosecutors which guarantee the preservation and promotion of their personal and professional integrity as officials in an independent state prosecutor's office. The extended college of the State Prosecutor's Office adopts the Code.

The Ethical Committee of Prosecutors, as an independent body in the State Prosecutor system, plays a particularly important role, which, at the request of the State Prosecutor or Deputy State Prosecutor, gives an opinion on the conformity of certain conduct with the Code, gives opinions and recommendations on the complaints raised, or on its own initiative, and generally provides guidelines for interpretation of the fundamental ethical and deontological principles of the Code. Its establishment is considered as a step forward in fostering a climate of integrity within the profession. It has seven members, of which two are the Deputy State Prosecutors of the Republic of Croatia, two are the Deputy County State's Prosecutors, two are the Deputy Municipal State Prosecutors and one is the Deputy State Prosecutor in the Special State Prosecutor's Office. They are elected for a term of five years.

A member of the State Prosecutor's Council cannot be elected to serve as a member of the Ethical Committee. They are elected by the Extended Collegium of the State Prosecution's

Office of the Republic of Croatia based on proposals from the Collegium of State Attorneys, in such a way that the Collegium of each County and the Municipal State Prosecution's Office proposes one candidate from their ranks; the Collegium of the Special State Prosecution's Office proposes two candidates from their ranks and the Collegium of the State Prosecution's Office of the Republic of Croatia proposes at least three candidates from its ranks.

In practice, the Committee receives a broad range of questions from the prosecutors, e.g. on how to act outside the court or the prosecution office in relation to a party in a case, on potential restrictions they should place on their social contacts, on possible membership of clubs and associations etc., which proves their need for guidance in this field, especially concerning potential incompatibilities and situations of conflict of interest.

The approach of the Ethical Committee is an informal one, its opinions are not binding, and breaches of ethical rules are not addressed by this Committee.

If the Ethical Committee assesses the petition or complaint as well-founded, it submits its decision with an opinion and recommendation to the State Prosecutor's Office in which the State Prosecutor or Deputy State Prosecutor performs his duties, the Higher State Prosecutor's Office and the State Prosecutor's Office of the Republic of Croatia.

Acting contrary to the basic principles of the Code of Ethics of the State Prosecutors and the Deputy State Prosecutors is among the disciplinary offences that harm the reputation of the State Prosecutor's Office or of the State Prosecutor's duty, and compliance with the Code of Ethics of the State Prosecutors and the Deputy State Prosecutors is also one of the evaluation criteria for the officials of the State Prosecutor office.

Czech Republic

STATE PROSECUTORS: The Supreme Public Prosecutor, the High Public Prosecutors, the Regional Public Prosecutors and the City Public Prosecutor in Prague approved the Code of Ethics for Public Prosecutors in 2019. The new Code entered into force on 1st May 2019 as an uniform code of ethics, binding on all prosecutors in the Czech Republic and replacing all previously existing codes of prosecutorial ethics. The main principles of ethics on which this Code rests are legality and independence, impartiality, professionalism, credibility, dignity and demeanour and cooperation. The Commentary covers, inter alia, issues relating to gifts, secondary activities, third party contacts and confidentiality.

The Prosecutorial Act (Measure of the Chief Public Prosecutor) approving the Code of Ethics from 16th April 2019 stipulates that consultation on the interpretation of and compliance with the Code of Ethics is provided by the Chief Public Prosecutors upon request of the prosecutor concerned, on the basis of confidentiality. It also envisages that the Chief Public Prosecutors provide training on the Code of Ethics to prosecutors at the time of taking up office and at least once in three years while in office.

France

The College of Ethics of Magistrates of the Judicial Order (Collège de déontologie des magistrats de l'ordre judiciaire) was created by Organic Law No. 206-1090 of 8 August 2016 relating to statutory obligations, ethical obligations and the recruitment of magistrates as well as the Supreme Council of the Judiciary.

In creating this institution, the legislator intended to provide judicial magistrates with an ethical body comparable to those already set up for magistrates of administrative and financial orders.

The legislator has attached two new statutory requirements to the creation of this body:

On the one hand, the obligation for all magistrates to carry out a "declaration of their interests" within two months of their installation (Article 7-2-I);

On the other hand, participation in an ethical interview conducted by the head of the court (President/chief-prosecutor) on the occasion of the handing over of this declaration of interest (Article 7-2-III).

The College has two responsibilities:

- To give opinions on any ethical matter concerning a magistrate personally, upon referral of the magistrate or one of his hierarchical superiors;

- Review declarations of interest under section 7-2 of the statutory order.

The College is therefore referred to the magistrate concerned or one of its hierarchical superiors for individual ethical matters, and, for declarations of interest, by the head of the line to whom they are given when there is doubt about a possible conflict of interest.

According to the will of the legislator, the College sits "alongside the Supreme Council of the Judiciary" in accordance with the responsibilities of this constitutional body, which is responsible, in particular, for the drafting of the Collection of Ethical Obligations of Magistrates.

The Higher Council intervenes directly in the composition of the College: thus one of the members of the College is appointed by the President of the Republic on the proposal of the plenary formation of the Higher Council of the Judiciary.

Finally, the College presents an annual public report to the Supreme Judicial Council without personal information, reporting on the performance of its missions.

In 2016, the Higher Council created the Ethics Assistance and Monitoring Service (SAVD) composed of three of its former members, which any magistrate can consult informally by telephone to obtain in a few days, or even immediately, advice or opinion on his personal situation.

The College of Ethics decides by way of written and reasoned opinion, a more solemn act, which may give rise to individual recommendations.

From the College's point of view, these two bodies are complementary in that they serve different purposes.

The High Judicial Council is not bound by the College's opinion.

The College sits at the Court of Cassation. It has the operational support of the General Secretariat of the First Presidency of the Court of Cassation. It is convened by its president and meets, depending on the referrals, usually once a month.

The College's methods of referral have been defined by its internal regulations adopted in accordance with the legal requirement:

- dematerialized and secured at the address;
- by mail to the general secretariat of the First Presidency of the Court of Cassation (with notice of receipt);
- direct delivery of the application to the same general secretariat.

Each referral is reviewed by two rapporteurs appointed by the President, and then gives rise to a written opinion after deliberation in plenary within a maximum of two months for questions relating to declarations of interest and without delay for the others (on average one month in 2019).

The notice is sent by letter with notice of receipt to the author of the referral. When it comes to a line manager, the magistrate concerned is informed.

The motivations for the opinions are essentially related to three categories of references:

- The status of the judiciary;
- The Book of Ethical Obligations prepared by the Supreme Judicial Council;

- If relevant, the opinions of other colleges of ethics (administrative or financial magistrates).

All the College's documents and debates are subject to secrecy. In addition, Decree No. 2017-713 of May 2, 2017 provided for the destruction of any documents submitted to the College as part of the review of a declaration of interest.

The members of the College participate in various training or awareness-raising activities, including the initial or ongoing training of the National School of the Judiciary.

Consultation meetings are also held with other ethics bodies.

Georgia

The Organic law of Georgia on Common Courts Article 65 (1) stipulates powers of the Conference of Judges. Sub section (e) defines that the Conference of Judges is authorized to adopt the Ethics Code and regulations of the Judicial Ethics Council and also elects its members. These amendments entered into force on January 1, 2020.

Since its enforcement the Conference of Judges has neither adopted new ethics code, nor regulations of the ethics council. The members of the Judicial Ethics Council have also not been selected as well. This body is supposed to give general guidance on the ethics issues. Nevertheless, at this moment there is no clear vision, what its mandate is going to be or how it will deal with the confidential counselling.

Prosecutor's Office and confidential counselling:

The Office of General Prosecutor of Georgia adopted new ethics code approximately 3 years ago. Following the adoption of the document the office in cooperation with various donor organizations drafted commentaries to the code, for further guidance. Nevertheless, the document has never been presented to wider public nor the prosecutors. In general, the Prosecutor's office does not have a separate professional counselling office, it has a general inspector's office, which deals with disciplining and integral inquiries and does not provide counselling.

Georgian Bar Association and confidential counselling:

The Georgian Bar has more experience, as well as practice in terms of providing guidance on professional behaviour of defence attorneys. The Ethics Commission is independent body within the Bar Association and performs its activities in accordance with the "Law of Georgia on

Lawyers” and on the basis of the principles of professional ethics. The Ethics Commission reviews the received information about a lawyer, studies its validity and decides on the issue of disciplinary liability of the lawyer. The Ethics Commission is composed of 15 members, of which at least 12 are lawyers, and 3 members are from different professional circles of society in order to improve the effectiveness and public trust of the Ethics Commission. Members of the Ethics Commission are elected by the General Assembly of the Bar Association for a four-year term.

Since 2013, the Ethics Commission has been operating a service solely for lawyers for the purpose of issuing recommendations on the professional ethics of the Bar.

Lawyers can ask hypothetical questions about the ethical issues related to the profession of lawyer and can receive recommendations by calling the hotline or by sending a mail electronically or via post office.

The question should describe hypothetical facts, possible action and should not include identification data of the person. Written questions can be submitted in the form approved by the Bar Association, which will be answered in writing by a lawyer of Ethics Commission, Disciplinary Collegium or the full composition of the Ethics Commission within the time limit depending on the complexity of the question.

The identity of the lawyer requesting the recommendation is confidential. The recommendations are published on the Association's website and in the Association's periodical publications without identifying a lawyer.

Italy

In Italy, all issues related to infringements of code of ethic are discussed within the association of judges and prosecutors, not in the High Council of Justice nor in the Regional Judicial Councils.

Lithuania

The Judicial Ethics and Discipline Commission is an institution of judicial self-governance deciding the issues of instituting disciplinary proceedings against judges and ensuring the promotion of judicial ethics.

One of the purposes of the Judicial Ethics and Discipline Commission is to promote the ethics of judges. Provide consulting on the matters of judicial ethics and organise the promotion of judicial ethics are two of the tasks of the same Commission.

Judges, self-governance institutions and commissions of courts as well as public organisations that unite judges may apply to the Commission for a consultation by submitting a request in writing or by means of electronic communications. The request shall set out the circumstances related to the judge's person or activities which raise doubts in terms of ethics.

Before referring an issue for consideration at the meeting of the Commission, the Chairperson of the Commission shall appoint a reporter, as well as may request additional data on the issue under consideration.

The consultation shall be published on the website of the National Courts Administration within 10 days after its signing without breaching the requirements for the protection of State, official, commercial, professional secrets and the secrets protected by other laws, as well as in line with other restrictions and prohibitions provided for in laws.

The Commission shall:

- submit to the Judicial Council and publish the annual performance report of the Commission once a year and not later than until 1 March of each year;
- prepare a newsletter for courts with summarised information about the decisions made and consultations provided by the Commission and about other relevant information on the issues of judicial ethics regularly, at least once per quarter.

The Commission shall prepare and publish an updated practical guide of the Code of Ethics of Judges on the website of the National Courts Administration not later than until 1 February of each year.

The Commission shall be formed of seven members. Two members of the Commission shall be appointed by the President of the Republic, one – by the Speaker of the Seimas (Parliament), and four – by the Judicial Council.

Latvia

In accordance with Chapter 14.1 of the Law "On Judicial Power", the Judicial Ethics Commission is a collegial institution of judicial self-government and its main purpose is to provide opinions on the interpretation and violations of ethical norms, as well as to explain ethical norms of judges.

In accordance with the Rules of Procedure of the Judicial Ethics Commission, the commission examines possible violations of ethical norms by specific judges, as well as clarifies

the norms of the Latvian Judicial Code of Ethics at the request of a judge or a member of the Judicial Ethics Commission.

The Judicial Ethics Commission consists of ten members, who are elected by secret ballot by the Conference of Judges. The Judicial Conference elects two members of the Judicial Ethics Commission from among the candidates nominated by the judges of the Land Register Divisions, three from among the candidates nominated by district (city) court judges, three from among the candidates nominated by regional court judges and two from among the candidates nominated by the Supreme Court. The term of office of a member of the Judicial Ethics Commission is four years with possible re-election, but not more than twice in a row.

The Judicial Ethics Commission was established on April 11, 2008. The work of the Judicial Ethics Commission is ensured by the Court Administration.

The functions of the Judicial Ethics Commission are:

1) at the request of the person who has the right to initiate disciplinary proceedings, as well as at the request of the Disciplinary Board of Judges or the Disciplinary Court to provide opinions regarding the interpretation of ethical norms and violations;

2) on their own initiative or at the request of judges, explain and analyse the norms of the Code of Judicial Ethics, as well as advise judges on matters of judicial ethics.

When Providing an explanation of ethical norms at the request of a judge or a proposal of a member of the commission to interpret the norms of the Latvian Code of Judicial Ethics, the chairman of the commission shall convene a meeting of the commission within a reasonable time, but not later than within two months from the date of receipt of the request. If necessary, the chairman of the commission shall appoint a member of the commission - a rapporteur - responsible for the evaluation of the ethical norms indicated in the request;

3) to compile and prepare for publication findings and explanations regarding the interpretation and application of ethical norms;

4) to discuss violations of ethical norms;

5) to develop the norms of the Code of Ethics for Judges and submit them for approval to the Conference of Judges;

6) decide on the initiation of disciplinary proceedings.

The Judicial Ethics Commission reports annually to the Judicial Conference on its work.

The Judicial Ethics Commission may invite a judge of the Constitutional Court, a representative of professions belonging to the judiciary, an ethics specialist or a recognized legal expert to participate in its sitting with the rights of an adviser.

Opinions of the Judicial Ethics Commission may not be appealed.

Findings, conclusions and explanations by the Judicial Ethics' Commission regarding interpretation and explanation of ethical norms are published on courts' website www.tiesas.lv.

Paraguay

The Consultive Council of Judicial Ethics has competence to provide advisory opinions to requests presented about interpretation and application of the Judicial Ethics code.

The requests can only be presented by the Supreme Court, by the Judges National association, by the judges, by the legal bodies of selection, appointment and dismissal of judges, by the Ethics Judicial Court related to his functioning, by the Bar Associations, by the Court Clerks Associations, and by the public and private recognized Law Schools.

The Consultive Council of Judicial Ethics may also issue advisory opinions without request in order to gradually build a system of normative criteria in judicial ethics.

The Consultive Council of Judicial Ethics must publicise all the issued advisory opinions.

It has also to issue opinions on specific ethic-judicial questions presented by judges and issue opinions requested by the Ethic Judicial Court in matters of ethical responsibility.

The Consultive opinions are public but the opinions on specific ethic-judicial questions presented by judges are reserve matter unless the judge who presented the request accepts, asks or promotes the disclosure.

The Consultive Council of Judicial Ethics nor its members shall not reveal the reserved opinions and those who are protected by professional secrecy.

The consultive opinions and the opinions on specific ethic-judicial questions presented by judges are not binding to the Ethics Judicial Court. The opinions issued by request of the Ethic Judicial Court in matters of ethical responsibility have no decision effect and cannot recommend or demand the imposition of any sanction.

The Consultive Council of Judicial Ethics is composed of three judges with at least 15 years on the bench, one lawyer with at least 20 years of practice and a Law professor with at least 15 years of teaching Juridic Ethics, Juridic Deontology or Law Philosophy.

The members of the Consultive Council of Judicial Ethics are appointed by the Supreme Court after proposal of five possible names by each professional branch.

Romania

The confidential counselling in Romania has been part of the broader efforts to ensure integrity of its public institutions and their employees. In 2007, these efforts led to the establishment of a position of “ethic counsellors” in the state administration bodies.

According to the Law no. 50/2007 Amending and Supplementing the Law no. 7/2004 on the Code of Conduct for Civil Servants, for the purpose of the effective application of the provisions of the Code of Conduct, the heads of public authorities and institutions shall appoint a civil servant, usually among the staff of the human resources department, who shall be in charge of providing ethical counselling to the civil servants, as well as of monitoring their compliance with rules of the Code of Conduct (Article 20, para. 1).

The idea to establish similar institution in the judicial and prosecutorial bodies was first put forward in the Action Plan for the Implementation of the Integrity Strategy of the Justice System, adopted by the Superior Council of Magistracy (SCM) on 22 November 2011. This document envisioned the establishment of a national network of judicial ethics advisers, in order to standardize ethical practices in the judiciary. However, the first concrete steps towards the establishment of the network on judicial ethics advisers were undertaken only in 2016, prompted, as it seems, by the cooperation project between the Superior Council of Magistracy and the Judicial Council of the Netherlands.

With this aim, in 2016, the Superior Council of Magistracy introduced the institution of ethics advisers in the Romanian judiciary and prosecution services.

The Section for Judges of the Superior Council of Magistracy on 17 May 2016 adopted Decision no. 434, and the Section for Prosecutors adopted the Decision no. 364 on 30 May 2016, in which the competences, the selection criteria and the methods of appointment, as well as other basic rules on the ethics advisers (“consilieri de etică”) were set for the courts and prosecution offices, respectively.

According to Decision no. 434, the several basic rules on ethic advisors are:

- Two ethics advisors are to be established for each court of appeal and one for each basic court (Article 1);

- The following cumulative criteria (Article 2) are to be fulfilled by the candidates for ethics advisors: a) candidate has to be a judge in the court in which is to serve as the ethics advisor, b) candidate has to have at least 15 years of experience of serving as a judge for the position of an ethics advisor in the court of appeal and 10 years for the position of an ethics advisor in the basic court, c) candidate received grade "very good" in all the appraisal procedures to which he/she was subjected before the candidature, d) candidate was never subject to disciplinary proceedings, e) candidate has never violated rules of the Code of Ethics for Judges and Prosecutors, f) candidate enjoys good professional reputation and exhibits high moral integrity; g) candidate has good communication skills.

- The selection procedure (Article 3) is to be carried out in three stages. In the first stage, judges are called to submit candidacy for the position of an ethics adviser. If there were no candidates, the President of the court is to propose a judge for the position of ethics advisor (two judges for the court of appeal) among the judges serving in the court who fulfil the conditions enlisted above. Prior to the final nomination of a candidate for the position of an ethics advisor, the President of the court is to consult in a confidential manner all judges of the court with regard to the candidates' merits and shall record the results of these consultations in a special report. If a candidate was proposed by a President of the court, his/her prior written consent need to be obtained. Upon the completion of these steps, the President of the court proposes to the Judicial Board of the court the candidate(s) to be appointed in the position of ethics advisors. In the second phase, the candidate for the position of an ethics advisor undergoes a training. The candidate(s) can be appointed to a position of the ethics advisor only if he/she completed a specific training programme provided by the National Institute of Magistracy and obtained a positive opinion from the trainers on the quality of his/her participation in the trainings. In the last, third phase, the Judicial Board of the Court is to appoint into the position of ethics advisor the candidate who has successfully completed the previous two phases. The appointment is made for a period of three years, without limitations with regards the subsequent renewals of the mandate.

- The ethics advisor has several competences (Article 4): to advise judges on various ethical issues, ex officio or upon request (para. e), to organise debates, round tables, workshops and trainings on the ethical issues, including those which have arisen during his/her activities (para. a), etc.

- A judge is to be removed from the position of ethics advisor (Article 6): if he/she has not received positive assessment (“very good”) in the process of appraisal of his performance as a judge (para. a), if he/she was found to be in breach of disciplinary rules in a final decision (para. b), if he/she was found to be in violation of the rules of the Code of Ethics (para. c), for non-exercise or improper exercise of the competences of ethics advisor (para. d).

Soon after their adoption, two professional associations of judges and prosecutors have asked the Supreme Council of Magistracy to revoke the decisions on the establishment of the ethics advisors and have subsequently lodged the pleadings against the two legal acts before the Bucharest Court of Appeal.

The National Union of Judges of Romania and the Association of Romanian Magistrates, in the capacity of plaintiffs, have raised before the court a number of arguments for the annulment of the Decisions no. 434 and no. 364 of the Superior Council of Magistrates. They have claimed that the institution of ethics advisers puts in jeopardy the independence and integrity of judges and violates several other fundamental principles which should guide judges in their work. They have in particular pointed out to the negative aspects of the rules which provide for ex officio ethical counselling by the ethics advisor (Article 4, para. e of the Decision 434), confidential consultations in the first phase of the selection procedure (Article 3, para. a), the criteria for the appointment and renewal of the position of ethics advisor (Article 3, para. c and Article 6), ambiguity of the rules on selection procedure (Article 2), possibility that the ethical issues discussed through the procedure of confidential counselling are discussed publicly in round tables, etc. (Article 4). The two associations also claimed that the Superior Council of Magistrates does not have the competences to adopt such decisions. Eventually, they stated that the contested Decisions could lead to the creation of a network of “informants” whose methods of work could become alike the methods used by the Ceausescu's regime.

It seems that the network of ethics advisors in the courts was never established given that soon after the adoption of the SCM Decision no. 434 and the SCM Decision no. 364, the two decisions were challenged before the court. On 24 October 2016, the Bucharest Court of Appeal admitted the action filed by the plaintiffs, the National Union of Judges of Romania and the Association of Romanian Magistrates and suspended the execution of the contested Decisions. In the appellate procedure, the High Court of Cassation and Justice uphold the decision of the court of first instance in its ruling of 24 May 2019. In its decision, the court of second instance

found that the adoption of the contested decisions goes beyond the mandate of the Section of Judges and the Section of Prosecutors of the Superior Council of Magistrates.

Following this, the Section for Judges of the Superior Council of Magistracy (SCM) in its Decision no. 1305 of 29 October 2020 pointed to the annulment of the its Decision no. 434 of 17 May 2016 and decided to repeal the Decision no. 877 of 23 August 2016 and the Decision no. 1005 of 18 October 2016 which have further regulated the institution of ethics advisers in courts.

Although the Superior Council of Magistracy invoked the GRECO recommendations among the reasons for the establishment of the ethics counsellors, it is interesting to note that GRECO has never explicitly recommended to the Romanian authorities the introduction of the mechanism for confidential counselling in its justice system. In the fourth-round evaluation, it has only recommended that “the justice system be made more responsive to risks for the integrity of judges and prosecutors, in particular by i) having the Supreme Council of Magistracy and the Judicial Inspectorate play a more active role in terms of analyses, information and advice”.

It is also interesting to note that in its arguments against the institution of ethics advisors, the national associations of judges and prosecutors point to the contested institution as a result of a failed legal transplant, modelled after the similar mechanism which exists in the Netherlands judiciary without taking into consideration the characteristics of the Romanian features of the justice system.

Slovenia

The Commission for Ethics and Integrity shall be appointed within the High Judicial Council, and has the following powers:

- adopt principle opinions on conduct in breach of the Code of Judicial Ethics,
- issue recommendations for compliance with the rules of judicial ethics and integrity in accordance with the Code of Judicial Ethics,
- adopt guidelines in the field of judicial ethics and integrity in accordance with the Code of Judicial Ethics,
- in cooperation with the Centre for Judicial Education, provide education and training.

In 2019, the Judicial Council initiated Pilot Project of the Advisor to the Judges on Ethics and Integrity. The Advisor is an autonomous body that advises judges on ethical issues they encounter in the performance of their judicial functions and in their private activities. The

Advisor is independent in his/her work, and his/her responsibilities are limited to providing written or oral advice, information on ethical standards and professional assistance. The Advisor does not propose concrete solutions nor does he/she issue binding decisions. The relationship between the Advisor and the judge seeking advice is regulated as a confidential relationship. Their communication is established through a dedicated email, however, a face to face or phone conversation can be organised in mutual agreement. The Advisor is appointed by the Judicial Council from among judges or retired judges who enjoy respect and trust among their peers and have good professional reputation. The Pilot Project has reportedly yielded very good results and is extended and set up to last until the end of 2021.

Spain

The Ethical Judicial Commission is entitled to give advice on judicial ethics through requests received and by the decisions and information provided, give guidance about the interpretation of the Principles of Judicial Ethics which were approved.

This Ethical Judicial Commission is composed of six members from the judicial ranks directly appointed by all the judges. The six judicial members appoint a seventh member, a Professor, expert on Ethics or on Law Philosophy.

The confidentiality of the requests for advice is assured and the opinions and decisions of the Commission have only a strict guidance character.

The functioning of the Commission is independent from the bodies of the Judicial Power but the High Judicial Council (Consejo General del Poder Judicial) must assure all the proper conditions and resources for the fulfilment of the goals of the Commission.

The functioning of the Commission cannot interfere with the exercise of the disciplinary liability nor have any action in regard to the determination of penal or civil responsibility of judges.

And cannot be used as reference or complement for any actions to decide disciplinary, civil or penal responsibilities, unless for the benefit of the judge.

The Organic Law 4/2018, 28 December, amended the Organic Law 6/1985, 1 July, of Judicial Power introduced a new rule nº 24 of the article 560º established that the High Judicial Council has the attribution to provide specialized advise to judges and prosecutors in questions of conflicts of interest and all subjects related to integrity.

Ukraine

There is an Ethical Committee of the Council of Judges of Ukraine (COJ) who considers respective requests of the judges and prepares the draft responses. Then the COJ discusses such draft responses and sends them individually to the judges.

The individual requests from judges and responses to them are not public. However, the COJ regularly summarizes the most common issues and comes up with the decisions which contain guidance for judges, and these decisions are published on the COJ website.

There is now under preparation a compendium for judges on the ethical and conflict of interest issues. It will include in this compendium the list of all respective COJ decisions, as well as the High Council of Justice decisions in disciplinary cases on the same topics. For each decision it will be provided a brief overview and a link that the reader can click to read the full document. Besides, it will include the overviews of individual cases (without indicating the names of the parties), organized by specific topic.

USA

(State of Washington)

There is in Washington State a formal process by which judicial officers can confidentially receive ethics counselling – it is called the Ethics Advisory Committee (EAC), established by a rule of the State Supreme Court.

The EAC publish their formal opinions that are available to anyone on the internet.

The EAC, as a committee formed under the authority of the State Supreme Court, is a separate body from the Commission on Judicial Conduct, which is a constitutionally-created independent agency of the judicial branch charged with enforcement of the ethics rules.

The EAC has discretion to accept ethics questions from sitting judicial officers, keeping the identity of the questioner anonymous. They deliberate and issue formal opinions and their staff attorney will have informal consultations with judicial officers who contact her.

The EAC's opinions are not binding on the Commission on Judicial Conduct, nor on the State Supreme Court, but if a judge is investigated by the Commission, the judge's reliance on an Ethics Advisory Opinion is prima facie evidence of good faith to both the Commission and to the Supreme Court.

The Director of the Commission on Judicial Conduct, also frequently give informal advice to judges who contact her, but they are cautioned initially that (1) the opinion is just the opinion

of the Director, and not binding on the Commission, and (2) if they are talking with the Director about a very serious violation that has actually occurred, the Director may be obliged to present the matter to the Commission.

(State of Michigan)

Any judge, prosecutor, or lawyer can ask a confidential question for guidance on an ethics issue. The professional associations have Committees to answer such questions. In this way, the legal professional can obtain "an advisory opinion" on the proper conduct in an uncertain situation. The services are actively used and relied upon by legal professionals.

The opinions that are sent to the legal professional who asked the question are indexed and published so that anyone can read them. They are published without any reference to the person who asked the question, and with details removed or generalized so that actual people involved are not easily identifiable.

A judge who is not sure what to do in a situation would almost always research these published advisory opinions for guidance. If the judge finds a situation like his or her own, they will confidently act according to the published opinion. If not, the judge will be free to write a question to the judges' association. The same is true for lawyers and prosecutors.

Anonymous questions through electronic means are not allowed. Questions by email are possible and there is a website-based question portal.

(State of Georgia)

There is an ethical "counselling" or consulting called "Director's Opinions" where the staff Director of the Commission on Judicial Conduct may give a judge his opinion on a specific question. That answer is not binding on the Hearing Panel or on the Supreme Court.

Those informal opinions can be a problem, particularly if the staff Director giving them is not educated as to the Code of Judicial Conduct.

There are also Official Formal Opinions given by the Commission. The Hearing Panel writes and issues Official Opinions, which are binding on all judges in the Georgia state. They are posted on the Commission's web site and are included in annual training the Commission give to judges. They are also published by the Supreme Court.

The best informal advice for judges is given by an individual experienced member of the Commission, who likely has a better understanding of how the rules of conduct for judges are utilized.

(State of Nebraska)

The Judicial Ethics Committee may express its opinion on proper judicial conduct with respect to the provisions of the Nebraska Code of Judicial Conduct, either on its own initiative, at the request of a judge or candidate for judicial office, or at the request of a court or the Nebraska Commission on Judicial Qualifications.

The Committee also has the authority to make recommendations to the Nebraska Supreme Court for amendment of the Code of Judicial Conduct.

All opinions, beginning in 1989, are on file with the State Court Administrator and are available on e-link.

The Judicial Ethics Committee consists of seven members appointed by the Nebraska Supreme Court. Two of the members are from each of the county and district courts and one from the Court of Appeals. The remaining members are from any affected courts, but not from the Nebraska Supreme Court.

The Supreme Court designates one of the members as chair and one member as vice chair who serves in the event of disqualification or unavailability of the chair. Terms are staggered and individuals may be reappointed after a lapse of 1 year.

(State of Arizona)

The Judicial Ethics Advisory Committee (JEAC), organized in 1976 by the Arizona Supreme Court, renders advisory opinions based on the Code of Judicial Conduct and the Code of Conduct for Judicial Employees.

All formal advisory opinions issued from 1976 to present are available through a e-link.

The advisory committee has authority to:

(1) render advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct, any financial reporting requirements, or any other requirement of law applicable to judges or candidates for judicial office provided that an opinion should not be requested and shall not be issued on a matter known to be pending before a court or before the Commission on Judicial Conduct;

(2) render opinions on proper employee conduct with respect to the provisions of the Code of Conduct for Judicial Employees;

(3) make recommendations to the Supreme Court for amendment of the Code of Judicial Conduct or these rules;

(4) make recommendations regarding appropriate subjects for judicial education programs.

Advisory opinions may be requested by a judge or candidate for judicial office, by a court, by an agency charged with judicial administration, by a judicial employee, or by any member of the advisory committee.

Requests for formal advisory opinions shall be submitted in writing at the committee's office or to any committee member and should be accompanied by a letter or memorandum describing the facts and discussing the issues presented in the request.

Each request for a formal opinion shall be assigned a number when received, and copies of requests shall be forwarded to all committee members.

The identity, organizational affiliation, and geographic location of persons requesting opinions shall be confidential.

Requests for informal advisory opinions may be submitted in writing to the committee's office or communicated in person or by telephone to any member of the committee or its staff.

The chairperson of the advisory committee shall determine whether a request for an opinion should be resolved formally with a written, published opinion or informally by letter or other communication.

Formal opinions shall be decided by a majority vote of the advisory committee. Informal opinions may be assigned to any member of the advisory committee or its staff to discuss and resolve directly with the person or organization requesting the opinion. The advisory committee may confer in person or by telephone as often as needed to conduct committee business and resolve pending requests.

Immediately upon approval, the advisory committee's formal opinion shall be initially distributed to the requester, the justices, clerk and chief staff attorney of the supreme court, the chief judges of the court of appeals, the presiding judges of the superior court, the director of the Administrative Office of the Courts, and the chief bar counsel to the Arizona State Bar.

Formal opinions shall be accumulated and distributed to all other judges at least annually. Records of advisory committee determinations and opinions shall be maintained at the committee's office.

The other US States have some form of judicial ethics advisory body, though the format and procedure may vary from state to state. In a few states, the enforcement agency is the same entity as the advisory body.

The best US national authority on such matters is Cynthia Gray, Director of the National Center for Judicial Ethics as a great resource and can be reached at <https://www.ncsc.org/topics/judicial-officers/ethics/center-for-judicial-ethics>.

Prosecutors have recourse to formal ethics advice from out state-wide Bar Association, www.wsba.org, as do other lawyers. There is also a state-wide prosecutors' association, <http://waprosecutors.org/>, and they likely have resources for prosecutors who wish to consult on ethics and other questions.

B. COMPARATIVE ANALYSIS

I. Position within the system

Considering the information provided by the international review, we can distinguish two main systems to offer confidential counselling on ethics available to judges and prosecutors.

One, with the Ethics Committee/Commission/Board under the frame of the High Judicial Council/Judicial Conduct Commission or State Prosecutors Office/High Council for Prosecutors, and with advisory competence (Albania, Croatia, Czech Republic, Lithuania, Romania, Slovenia, Spain, USA-State of Georgia).

Another, out of frame of the High Judicial Council/Judicial Conduct Commission or State Prosecutors Office/High Council for Prosecutors (Austria, Canada, Georgia, Latvia, Paraguay, Ukraine, USA-State of Washington, USA- State of Michigan, USA-State of Nebraska, USA-State of Arizona).

France has a double system with one body clearly out of the High Council (the College of Ethics) and another body also for ethics counselling within the High Council (the Ethics Service).

In Ukraine there is also an Ethics Commission within the Bar Association composed and working in a similar way to several other Judicial Ethics Commissions in the USA.

GRECO recommended a structure distinct from disciplinary bodies and placed outside the official hierarchy, outside the HJC. And it is one good solution.

Confidential counselling for judges and prosecutors aims to be helpful tool for them. But it is also a preventive tool to avoid possible unethical conducts that may damage the confidence in system of justice at the eyes of the citizens.

In this regard, the confidential ethical counselling for judges and prosecutors must be organized in a way that judges and prosecutors can look to it as reliable, independent, totally confidential and without any fears of possible, even informal, intercommunication of information between the Advisory Ethic Commission and the bodies charged with enforcement of disciplinary or ethic rules.

The ultimate purpose is to attract judges or prosecutors as many as possible to raise their ethical questions or doubts before any breaches or misconducts occur.

If they will feel confident, they will use the tool, if doubts are raised, although unfounded, the tool will face failure.

Of course, the composition of the Advisory Ethics Commission/Board plays also plays a decisive role on the desired confidence.

II. The Composition

The composition is another relevant aspect.

As we can notice, it is dominant the composition just with members from the ranks of judges or prosecutors (Austria, Albania, Croatia, Czech Republic, Georgia, Latvia, Romania, Ukraine, USA-State of Washington, USA- State of Michigan, USA-State of Nebraska, USA-State of Arizona).

In Lithuania none of its members is appointed by the judges or prosecutors (2 members appointed by the President of Republic, one by the parliament and four by the judicial council).

A diversified composition can be found in Canada, Lithuania, Paraguay, Spain and in the Georgian Bar Association.

In France it is the High Council who appoints all the members.

A diversified composition aims to create more confidence, not only to the judge or prosecutor who approaches the Advisory Commission to find support, but also increases the public trust on the Justice System.

The GRECO Evaluation Report on Serbia above referred (adopted on 19 June 2015) recommended confidential counselling provided for all categories of judges and suggested confidential counsellors chosen from experienced judges in appellate courts.

Perhaps an even better option is do not have the confidential counsellors based in judges of the courts of appeal.

In the countries where judges from each court were designated ethics advisors or members of Ethic Committee, that didn't prove well (Bulgaria and Romania). Judges, everywhere and for several reasons, usually restrain themselves in such matters before colleagues they know or with whom they work daily.

Besides, to have confidential counselling for "all categories of judges", maybe is not the best option to give the task only to judges of appellate courts. It is doubtful Judges of the Supreme Court would see it as a good option.

In similar way with the Prosecutors.

And, finally, many different counsellors in several courts mean a high probability of too many dissident advise/opinions on similar problems/questions, which is totally not recommendable.

An Advisory Ethic Commission, considering the number of Judges or Prosecutors in Serbia, should have no more than three or five members and, one possibility is that they are from different provenance.

Paraguay, Spain and the Georgian Bar Association show us interesting solutions which can give us guidance for a good solution to Serbian reality.

The participation of at least one member appointed by the judges or by the prosecutors, along with another participant from the Academia is important to give consistence and credibility to the Advisory Ethic Commission.

Another possibility is to have only judges and prosecutors (active or retired) as members of the counselling/advisory body in a mixed composition or only judges in the advisory body for judges and only prosecutors in the advisory body for prosecutors.

For the appointment procedure, one possibility is appointment by the largest Judges' and Prosecutors' Associations and, if the case, by the Academia. Another possibility is to use the procedure model for appointment of disciplinary bodies thru a public call issued by the HJC and the SPC, which they will chose and appoint the candidates. Candidates must have at least 15

years of professional experience, with recognized personal and professional integrity, with recognized independence and good reputation among peers.

A balanced geographical and gender composition should be considered in the final composition.

III. The functioning

All countries in review protect confidentiality.

Judges and Prosecutors should be able to address the Advisory Commission in any form they will prefer, including anonymously or not, but the Advisory Commission should provide dematerialized and secure form at the address if they prefer the electronic via.

As another option, professional organizations of judges and prosecutors could also have the right to Ethic Counselling but always thru non-anonymous requests.

The best results in terms of acceptance of the counselling by Judges and Prosecutors can be achieved with an electronic system where who raises the question remains anonymous and the advice/opinion is later available in an electronic address where the questioner can find the answer to his question.

That can be accomplished by a special online form made available at the web page of the Advisory Ethics Commission to which only judges and prosecutors would be able to access the form using a username and a password given to all judges and prosecutors, like a web portal reserved for judges or prosecutors only. Through a dedicated software solution, once the form is completed and submitted, it would be anonymized before being sent to the Advisory Ethics Commission, whose members would not be able to see who the sender of the request was.

Like most of the systems analysed, all advice provided by the Advisory Commissions should be available to judges or prosecutors on a e-link as they can be used as guidance to them. Names and details must be removed so that people involved are not easily identified.

Opinions of the Advisory Commissions must not be binding for the High Council or to the Ethic Committee as in most of the countries reviewed.

As in USA- Arizona, advice should be refused if related to matter known as pending before the Serbian High Council, the Serbian Ethic Committee, or any Court, to avoid any constrains.

A. DETAILED RECOMMENDATIONS FOR POSSIBLE IMPLEMENTATION

RECOMMENDATIONS

The recommendations are addressed both to the High Judicial Council and at the State Prosecutorial Council and their respective Ethics Committees. Some of the recommendations can be implemented in the short term (until the end of the Project i.e the end of 2022) whilst others can be achieved within this framework only through increased commitment on the part of all relevant stakeholders to implement the necessary changes in the regulatory framework (laws and secondary legislation). The options provided under certain recommendations are based on comparative analysis and an assessment of the viability of the solutions in the Serbian legal framework, and on the inputs received during the interviews. The recommendations provide a starting point for further discussion and development of solutions that are best suited to the Serbian judicial and prosecutorial corps.

Recommendation I

Option 1: The body providing confidential counselling shall be an independent body operating within the frameworks of the High Judicial Council and the State Prosecutorial Council. It shall also be independent from the Councils' Ethics Committees.

Reasoning behind this option: Confidential Counsellors or Confidential counselling services are present in certain jurisdictions in comparative law and they exist in parallel with the Ethics Committees.

Option 2: Confidential counselling is provided by the Ethics Committees of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) as permanent bodies.

Reasoning behind this option: This is in the spirit of the existing provisions of the Rules of Procedure of the HJC and SPC Ethics Committees envisioning that these two bodies "shall provide confidential counselling as needed" (Article 3, para. 1, line 5 of the Rules of Procedure of the HJC Ethics Committee; Article 3, para. 1, line 3 of the Rules of Procedure of the SPC Ethics Committee). Moreover, this solution was supported by an overwhelming majority of interviewees. We stress the need for the Ethics Committees to be permanent bodies. This solution would follow the existing rules whereby disciplinary prosecutors, disciplinary committees and the Performance Assessment Committee of the HJC are all permanent bodies. It would also ensure that the Ethics

Committees are provided the institutional and administrative support by the staff of the HJC and the SPC.

Recommendation II

The body providing confidential counselling shall be composed of three or five members and should reflect a balanced geographical and gender composition.

Number of members:

Option 1: The body providing confidential counselling shall be composed of three members.

Reasoning behind this option: We see this option as viable in case that confidential counselling is provided by a body different than Ethics Committee, and which has the sole responsibility to provide confidential counselling.

This option can be implemented in both short and mid term

Option 2: The body providing confidential counselling shall be composed of five members.

Reasoning behind this option: We see this option as viable in the situation where confidential counselling is provided by the Ethics Committee, in the case of which the scope of its responsibilities requires greater number of members to ensure its efficiency.

This option can be implemented in both short and mid term

Composition:

Option 1: Members of the body competent for confidential counselling/Ethics Committees are active and retired judges/prosecutors, having at least 15 years of professional experience, personal and professional integrity and independence beyond doubt, and good reputation among peers.

This option can be implemented in mid to long term

Option 2: All but one members of the body competent for confidential counselling/Ethics Committees are active or retired judges/prosecutors, having at least 15 years of professional experience, personal and professional integrity and independence beyond doubt, and good

reputation among peers. One member is a professor or researcher with notable scientific contribution to the fields of philosophy of law, legal ethics or ethics.

Reasoning behind Option 1 and Option 2: The inclusion of retired judges and prosecutors was almost unanimously supported by the interviewees, as they believe that this might increase the capacity of the relevant body to provide unbiased and far-reaching advice. The inclusion of the member of academia envisioned in Option 2 aims to broaden the capacity of the relevant body to find the most suitable solution to ethical dilemmas and mitigate limitations of a judiciary-centric approach to these dilemmas. Further, we believe that the proposed change in the composition of the Ethics Committees, i.e. the solution whereby the members of the Ethics Committees are not at the same time members of the HJC, would increase confidence of judicial corps in the Ethics Committee and encourage them to seek confidential counsel and opinions on ethical matters.

Appointment procedure:

Members of the body competent for confidential counselling/Ethics Committee shall be appointed by the High Judicial Council/State Prosecutorial Council after a public call issued by the HJC/SPC, from among active and retired judges/prosecutors and, in case of Option 2, from among professors or researchers. It is our proposal that the appointment procedure be modelled after the procedure for appointment of disciplinary bodies. This means that the HJC and the SPC shall issue a public call for all judges and prosecutors who fulfil the relevant requirements to apply. The candidacy should be supported by a certain number of judges/prosecutors (e.g. ten). The judges and prosecutors of all levels should be encouraged to apply. When appointing the members of the body competent for confidential counselling/Ethics Committee, the HJC/SPC shall ensure balanced geographical representation of the territories of the 4 courts of appeal/appellate prosecutorial offices and a balanced gender composition. The active judges/prosecutors appointed to the body competent for confidential counselling/Ethics Committees should be granted a partial workload reduction.

Recommendation III

Option 1 : Only judges and prosecutors can address the body competent for confidential counselling/Ethics Committees.

Option 2 : Judges, prosecutors and professional organizations of judges and prosecutors can address the body competent for confidential counselling/Ethics Committees.

Reasoning behind Option 2: The proposal that the professional organisations of judges and prosecutors should also be entitled to address the body competent for confidential counselling/Ethics Committee was supported by almost all interviewees and is found in comparative practice.

Recommendation IV

Judges and prosecutors shall be able to address the body competent for confidential counselling/Ethics Committees in a format of their choice. If they chose to address relevant body in an anonymous way, a special online form should be made available to them at the webpage of the relevant body. This web form would be available only for the judges and prosecutors, who would be able to access it by using a username and password provided to all judges/prosecutors once the web pages of the Ethics Committees have been created. Through a dedicated software solution, once the form is completed and submitted, it would be anonymized before being sent to the Ethics Committee. In such way its members would not be able to identify the sender of the request for confidential counselling. The advice/opinion should be later available in a secure electronic form at the webpage of the Ethics Committee that would be available only to the judge/prosecutor who has requested the confidential counselling. If the professional associations of judges and prosecutors were entitled to address the Ethics Committees, they should do so in a non-anonymous manner.

Recommendation V

Option 1: Advice should be refused if related to matter that the body competent for confidential counselling, at the time of the request, is aware as pending before the High Judicial Council the State Prosecutorial Council, the Ethic Committees, or any Court.

Reasoning behind this option: This option is needed in case that the body providing confidential counselling is independent from the Ethics Committee.

Option 2: The Rules of Procedure of the Ethics Committees should stipulate that any advice or opinion provided during confidential counselling is without prejudice to the procedures and decisions of other competent bodies and courts.

Reasoning behind this option: This option is needed in case that Ethics Committees provide confidential counselling.

Recommendation VI

The body competent for confidential counselling/Ethics Committees should preserve confidentiality of the counselling and anonymity of individual judges/prosecutors at all times.

Reasoning behind this option: Confidentiality is imperative for success of this mechanism.

Recommendation VII

Option 1: The advice given by the body competent for confidential counselling/Ethics Committee in the course of confidential counselling should be available only to judges and prosecutors through an e-link in an anonymized form.

Option 2: The advice given by the by the body competent for confidential counselling/Ethics Committees in the course of confidential counselling should be provided in a pseudonymised format and published on the web pages of the Ethics Committees.

Reasoning behind Option 2: This option was supported by the majority of interviewees. We believe that there is a need to further raise awareness of the society as a whole on ethical issues in the judicial and prosecutorial profession. Shifting the current narrative within the Serbian judiciary from what is generally perceived as narrow professional interests (appointment, promotion) to consideration of ethical issues and values would, in our opinion, contribute to an increasing confidence in and respect for among the general population in both judges and prosecutors. We believe it would also help re-establish and promote principal values among the members of the judicial and prosecutorial profession. This is why we would recommend for the opinions issued to be publicly available to everyone in a pseudonymised format (format in which not only the personal data but also the determining characteristics of judges/prosecutors involved and of the event at stake cannot be identified).

Recommendation VIII

In order to raise awareness on the scope of work of the bodies for confidential counselling/Ethics Committees and on the mechanism of confidential counselling, along with the publishing of the opinions of the Ethics Committees, an outreach campaign which includes visits to courts and prosecutorial offices should be delivered, to present the body, the procedure of confidential counselling and its possible outcomes. Development of annual reports and their systematic publication and presentation should also be envisaged. A public relations officer should be engaged in the awareness-raising campaigns.

Recommendation IX

As part of the initial outreach campaign or of the future trainings, differences between confidential counselling, on one hand, and disciplinary procedure in cases of undue influence, on the other hand, must be clarified in order to make sure that judges and prosecutors have clear understanding of the differences and potential overlaps between these two procedures and know what are the main characteristics, steps and outcomes of the confidential counselling procedure.

A special training should be delivered to new members of the Ethics Committees, which should provide them with the soft skills needed for an unbiased and non-judgmental confidential counselling, as well as an emphatic and clear communication during the counselling and in the phase of formulation of the advice. The training should cover the specific forms of discrimination and discriminatory treatment, including on the grounds of sex, gender, gender identity, marital status, family status, sexual orientation, appearance, and pregnancy and enable members of the Ethics Committees to recognize discriminatory speech, hate speech, harassment, sexual harassment, and any other unacceptable form of behaviour at workplace.

Recommendation X

Systemic training on ethical issues should be provided as a mandatory part of the initial training for judges and prosecutors. Furthermore, all judges and prosecutors should undergo training on ethical issues – given the size of the judicial and prosecutorial body, this should be set as a mid-term goal by the HJC, SPC and the Judicial Academy (HJC and SPC should give consent to the training curricula of the Judicial Academy). The training on ethical issues should be

interactive, and organised in the form of debates, workshops, case studies or in similar organisational forms and should focus on practical ethical issues.