# Portugal

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

a) of prosecutors;
b) of the judiciary or the justice system as a whole;
c) of judges.

If you know any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate the titles of these judgments and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

Regarding judges, one could refer to the following decisions of the ECHR: Ramos Nunes de Carvalho e Sá c. Portugal (arrêt de la Grande Chambre, du 6 novembre 2018, affaires n.ºs 55391/13, 57727/13 e 74041/13); Ibrahim Gurkan c. Turquie, arrêt du 2 juillet 2012 (tribunal militar); Baka c. Hongrie, arrêt du 23 juin 2016, de la Grande Chambre; Thiam c. France, arrêt du 18 de octobre 2018; Oleksandr Volkov c Ukraine, arrêt du 9 janvier 2013.

Regarding prosecutors, one could refer to the following decisions: Moulin c. France, arrêt du 23 novembre 2010 (affaire n.º 37104/06) (paragraphes 55 et suivants); Vasilescu c. Roumanie, arrêt du 22 mai 1998 (paragraphes 40 et 41).

Regarding judicial independence, one could refer to the following cases: Stafford c. Royaume Uni, arrêt du 28 mai 2002 (paragraphe 78); Kleyn et autres c. Pays-Bas, arrêt de la Grande Chambre, du 6 mai 2003) (paragraphes 190 et suivants)

Questions

IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

Once Portugal has ratified a treaty or convention establishing the competence of an international court or quasi-judicial body (as a treaty monitoring body), it will have to accept and abide by their decisions.
Domestic courts, particularly higher courts, are very attentive to decisions by international courts or treaty monitoring bodies having an impact on their activity and refer to such decisions frequently

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

Whenever a decision reached by an international court or treaty monitoring body relates to judges or public prosecutors, or the judicial activity as a whole, it is to be expected such decision to be referred to in the subsequent domestic case law.

3. Are these measures reflected in the law or in the prosecution policy or debate?

Since norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published and remain so for as long as they are internationally binding on the Portuguese state, decisions taken by international courts or treaty monitoring bodies, whose competence has been recognised by Portugal, are expected to be abided and respected by the State.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

For the preparation of the Statutes of the Public Prosecution which followed the approval of the Constitution of 1976, particularly attention was given to relevant international law, decisions by international organs, such as international courts, as well as comparative law. The same happened with the subsequent changes to the same Statute.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

Judgements of the Constitutional Court:

- 204/15, 220/15, 440/15, 441/15 – the public prosecution service is independent and autonomous, this meaning, in a negative dimension, to be independent from political interference and, in a positive dimension, to be able to take autonomous decisions, respecting legality, objectivity and impartiality. These characteristics are particularly important in the criminal procedure. It is however incumbent on judges to perform judicial functions, as they integrate the courts
- 305/11 – the constitutional autonomy of the public prosecution implies forms of self-government and the exercise of powers of direction and orientation within its hierarchical structure, namely the appointment of prosecutors to specific functions within the public prosecution service. The activity of the public prosecution requires a unified and coordinated action of its members, in order to ensure the equality of all before the law
- 336/95, 305/11 - The autonomy of prosecutors is not similar to the independence of courts and of judges, since prosecutors are integrated within a hierarchy and are responsible before such hierarchy. However, both judges and prosecutors should enjoy security of tenure
- 254/92 – the autonomy of the public prosecution would not be respected if the Government were to appoint the majority of the members of the High Council for the Prosecution. However, this does not prevent the Minister of Justice to appoint 2 members to the said High Council
- 160/10, 436/16 – since it is incumbent on the prosecution service to uphold democratic legality, it should have at its disposal possibilities to appeal in order to preserve legality and the good administration of justice
- 291/02 – the public prosecution may appeal judicial decisions which are deemed to be contrary to the law, even if in the interest of the defendant, therefore ensuring the respect for the principle of legality, although these decisions may be in line with its own interventions in the criminal procedure
- 226/11, 660/11 - in the case of administrative offences, whenever an administrative authority applies a sanction, there is a possibility to appeal before a court. It is then incumbent on the public prosecution to press charges. However, if the public prosecution decides to withdraw the charges, it will need to obtain the agreement of the administrative authority. This does not infringe the autonomy of the public prosecution
- 7/87, 23/90, 334/94, 517/96, 610/96, 694/96, 395/04, 121/21 – it is incumbent on the prosecution to direct and carry out inquiries in the criminal procedure, having competence to decide and carry out investigation activities and the gathering of evidence, ensuring the

respect for the principle of legality, with the exception of those activities which may infringe fundamental rights and freedoms, which need to be authorized by a judge

- 581/00, 121/21 – the involvement of the public prosecution in the inquiry is aimed at ensuring the impartiality of the judge, who, before the trial, applies measures that may infringe fundamental rights of the defendant
- 121/21 – the judge involved in the phase of the inquiry is to be conceived as a judge of fundamental rights and freedoms, not an investigating judge. If such a judge were to have an excessive prominence, this would infringe the autonomy of the prosecution service as regards instituting criminal proceedings and change the model of the criminal proceedings from an accusatorial into an inquisitorial model. The validity of the decision of the prosecution service to consider a person as a defendant and the ensuing statement of identity and residence is therefore outside the competence of the judge
- 581/00 – the public prosecution has competence to direct and carry out inquiries in the criminal procedure and to press charges, even when the offended person is the public prosecution itself, the High Council for the Prosecution or the Prosecutor General, but it must always respect the rule of law and the principles of legality and impartiality, due process guarantees and the rights of the defence
- 101/16, 274/16, 278/16, 139/17 – the provisional suspension of the criminal proceedings requires the agreement of the public prosecution, the victim and the judge presiding over the inquiry in matters relating to fundamental rights and freedoms. However, if the judge disagrees with the suspension, such a decision is not subject to appeal. Such decision does not infringe the principle of autonomy of the public prosecution
- 361/16 – the public prosecution service is not allowed to appeal a sentence of acquittal if, when presenting its oral pleadings during the trial, it has pleaded for the acquittal of the defendant, as such a change of position may infringe the duty of loyalty and the fair play in the criminal procedure. This seems to be an acceptable restriction to the possibility for the public prosecution to change its opinion during the proceedings, for instance, upon re-evaluation of the principle of legality in the case at hand
- 59/91, 33/2012 – the public prosecution is allowed to perform a procedural act within 3 working days of the expiry of the established time limit without the need for the payment of a fine and without the need for a previous statement concerning the intention to use such a possibility. This does not infringe the principle of equality or of due process guarantees, since the possibility for performing a procedural act within 3 working days also applies to the other parties in the proceedings

6. Does the prosecution system in your country belong to the judiciary?

Yes. Prosecution services in Portugal are seen as a part of the judiciary, although prosecutors don’t perform judicial functions and are not seen as integrating the courts, conceived as organs of sovereignty.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

Yes. The legal framework and the existing safeguards are the same for judges and prosecutors.

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Yes.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

The direction of criminal investigations is a prerogative of the Public Prosecution Service. However, frequently, it is the Criminal Investigation Police (Polícia Judiciária - PJ) that leads and executes most complex investigations. This is the case as regards more serious and complex crimes since the Criminal Investigating Police has at its disposal all the necessary, though often insufficient, technical, and forensic means. However, the final decision to press charges, or dismiss a case, lies with the prosecutor, although this decision can be challenged before a court.

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

Yes, there is. The High Council for the Prosecution is the competent body for disciplinary and all career related issues and has also competence to oversee the general functioning of the prosecution services and the activity of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?
7 (out of 19) of the members of the High Council are elected by their peers. Usually, several lists run, there is a campaign and therefore a debate about current issues concerning prosecution services and overall justice.
The remaining composition of the Council is the following: the Prosecutor General, 4 district prosecutors (by virtue of their office), 5 members elected by the Parliament, 2 members appointed by the Minister of Justice

10. Who has the initiative of disciplinary proceedings?

The High Council for the Prosecution and the Prosecutor General, but only the High Council has disciplinary powers.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

Prosecutors, like judges, are appointed for life.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Yes, they are.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

Neither the government nor any other institution or person outside the prosecution service can give such orders or instructions, in criminal proceedings, to prosecutors or prosecution services.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

Orders have to be given in writing and they can be challenged and/or refused, under grounds of unlawfulness or serious violation of one's legal conscience. Whether or not these orders can be given for specific cases was a matter of dispute and debate in Portugal.

Recently, in November 2020, the Prosecutor General has issued Directive 4/2020, setting guidelines for the exercise of hierarchical powers in criminal proceedings.
The direct hierarchical superior may now give orders and instructions to their subordinated prosecutors in a particular criminal file. These orders and instructions are given in writing and registered in a distinct file.
The subordinated prosecutor who is handling the criminal file will have to mention expressly, in his/her decision, that he/she is acting under a duty of hierarchical obedience.
However, the subordinated prosecutor may refuse, in writing, to obey such orders or instructions.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

Cases are allocated following abstract and general criteria previously established by the directors of the existing investigative departments of the public prosecution.

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

Besides specific training on Ethics and Deontology, given in the National School for Judges and Prosecutors, at the outset of their judicial training, regular training is yearly provided for prosecutors on the independence of public prosecution and public prosecutors.

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.
There are already, for many years, existing ethical and disciplinary obligations, laid down in the Statute for the Public Prosecution, that prosecutors must strictly follow. However, following GRECO recommendations, the State has passed a Law that foresees the drafting of a Code of Ethics and professional conduct for prosecutors and establishes the responsibility of the High Council for the Prosecution to approve it. The High Council for the Prosecution has already finalised a first version of this Code, which was until recently open to public consultation.
The contributions received will now be scrutinised and a final version of the Code will afterwards be submitted for approval before the High Council for the Prosecution.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?
Media are normally very attentive to decisions of international courts and monitoring treaty bodies relating to Portugal, particularly when they relate to courts and their functioning, or the work performed both by judges and prosecutors.
They are also paying attention to cases of other countries where attacks on the independence either of judges or prosecutors are taking place.

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The Prosecutor General's Office has a press unit, which regularly issues press releases whenever the public needs to be informed about the activity of the prosecution service, namely in particular mediatic cases.
This would also happen whenever a decision by an international court or monitoring treaty body would apply to the prosecution service or the prosecutors.

Annex

United Nations Human Rights Committee
(under the International Covenant on Civil and Political Rights)

A. General Comments

The Human Rights Committee has addressed issues regarding prosecutors and prosecutorial work in some of its General Comments:

a) General Comment 13 (1984) (Article 14 – administration of justice) (replaced by General Comment 32 – see § 1 of this General Comment):

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subpara. (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

b) General Comment 32 (2007) (Right to equality before courts and tribunals and to a fair trial):

13. The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. There is no equality of arms if, for instance, only the prosecutor, but not the defendant, is allowed to appeal a certain decision. The principle of equality between parties applies also to civil proceedings, and demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party. In exceptional cases, it also might require that the free assistance of an interpreter be provided where otherwise an indigent party could not participate in the proceedings on equal terms or witnesses produced by it be examined.

28. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing. The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pretrial decisions made by prosecutors and other public authorities.

30. According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.

33. “Adequate facilities” must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of article 7 of the Covenant, information about the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim. If the accused does not speak the language in which the proceedings are held, but is represented by counsel who is familiar with the language, it may be sufficient that the relevant documents in the case file are made available to counsel.

39. Paragraph 3 (e) of article 14 guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the

same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within these limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, it is primarily for the domestic legislatures of States parties to determine the admissibility of evidence and how their courts assess it.

50. A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor.

c) General Comment 35 (2014) (Article 9 – Liberty and security of person):

15. To the extent that States parties impose security detention (sometimes known as administrative detention or internment) not in contemplation of prosecution on a criminal charge, the Committee considers that such detention presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken.

29. The second requirement of paragraph 2 concerns notice of criminal charges. Persons arrested for the purpose of investigating crimes that they may have committed or for the purpose of holding them for criminal trial must be promptly informed of the crimes of which they are suspected or accused. That right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.

31. The first sentence of paragraph 3 applies to persons “arrested or detained on a criminal charge”, while the second sentence concerns persons “awaiting trial” on a criminal charge. Paragraph 3 applies in connection with ordinary criminal prosecutions, military prosecutions and other special regimes directed at criminal punishment.

32. Paragraph 3 requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. If a person already detained on one criminal charge is also ordered to be detained to face an unrelated criminal charge, the person must be promptly brought before a judge for control of the second detention. It is

inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3. .

d) General Comment 36 (2019) (Article 6 – Right to life):

41. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions; the inability of the accused to question relevant witnesses; lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings, including criminal interrogation, preliminary hearings, trial and appeal; failure to respect the presumption of innocence, which may manifest itself in the accused being placed in a cage or being handcuffed during the trial; lack of an effective right of appeal; lack of adequate time and facilities for the preparation of the defence, including the inability to access legal documents essential for conducting the legal defence or appeal, such as official prosecutorial applications to the court, the court's judgment or the trial transcript; lack of suitable interpretation; failure to provide accessible documents and procedural accommodation for persons with disabilities; excessive and unjustified delays in the trial or the appeal process; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court.

46. Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon. Furthermore, death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions, and international monitoring bodies, such as the United Nations treaty bodies. Failure to implement such interim measures is incompatible with the obligation to respect in good faith the procedures established under the specific treaties governing the work of the relevant international bodies.

B. Concluding Observations on States parties' reports

The Human Rights Committee has also addressed the problem of prosecutorial independence and prosecutorial autonomy in its Concluding Observations on the review of several States parties' reports:

Angola (08/05/2019)
Independence of the judiciary and administration of justice

37. The Committee welcomes efforts to decentralize courts through the adoption, in 2015, of Act No. 2/15 establishing the principles and rules for the organization and operations of ordinary courts. However, it remains concerned about reports claiming persistent shortcomings in the administration of justice, particularly the lack of independence of the judiciary and the insufficient number of trained judges, prosecutors and lawyers, which may prevent many citizens from accessing justice (art. 14).

38. The State party should pursue its efforts to reform the justice system and ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant. In particular, it should:

(a) Strengthen the independence of the judiciary and the prosecution service;

(b) Intensify its efforts to eliminate corruption in the judiciary, including by prosecuting and punishing perpetrators, including judges and prosecutors, who may be complicit therein;

(c) Continue efforts to increase the number of trained judges, prosecutors and lawyers through education and training, as well as their deployment in rural areas;

(d) Accelerate implementation of the judicial reform with a view to ensuring that the newly established tribunals and courts (municipal and provincial) are fully staffed and operational in order to ensure that justice is accessible to all, in particular to disadvantaged persons and those living in rural areas;

(e) Ensure that free legal aid is accessible in all cases in which it is required in the interest of justice.

Azerbaijan (16/11/2016)

Judicial independence

26. The Committee, while acknowledging the steps taken to reform the judiciary, remains concerned about the continued lack of judicial independence from the executive branch, including prosecuting authorities. In particular, it is concerned that: (a) the Judicial-Legal Council, which has been granted extensive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch; and (b) allegations of corruption within the judiciary continue to be reported. The Committee is also concerned about the number of disciplinary proceedings that have been instituted against judges in recent years and regrets the lack of information on safeguards in place to ensure that judges cannot be sanctioned for minor infractions or for a controversial interpretation of the law (arts. 2 and 14).

27. The Committee reiterates its previous recommendations (see CCPR/C/AZE/CO/3, para. 12). The State party should take all measures necessary to safeguard, in law and in practice, judicial independence. In particular, it should:

(a) Ensure that the Judicial-Legal Council is fully independent from the executive branch and operates with full transparency and, to that end, ensure that decisions affecting the personal independence of judges are not influenced by political considerations;

(b) Ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law;

(c) Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges;

(d) Ensure that an independent body is responsible for judicial discipline and that sufficient safeguards are in place to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law.

Belarus (22/11/2018)

Independence of the judiciary and fair trial

39. While noting the measures taken as part of judicial reform, such as the 2016 amendments to the Code on the Judicial System and the Status of Judges, the Committee remains concerned that the independence of the judiciary continues to be undermined by the President’s role in, and control over, the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and by the lack of security of tenure of judges, who are appointed initially for a term of five years with the possibility of reappointment for a further term or for indefinite terms. It is also concerned that the salaries of judges are determined by presidential decree rather than by law. The Committee is further concerned about: (a) the violation of the presumption of innocence for criminal defendants who continue to be held in glass or metal cages in court proceedings, and who are sometimes required to enter and leave the courtroom shackled and in a bent position, as addressed repeatedly by the Committee in its Views under the Optional Protocol; and (b) the reported failure to observe fair-trial guarantees, including the right to a public hearing, access to counsel and respect for the presumption of innocence during the trial of opposition candidates and activists relating to the elections of 2006 and 2010 (art. 14).

40. The State party should take all measures necessary to safeguard, in law and in practice, the full independence of the judiciary, including by: (a) reviewing the role of the

President in the selection, appointment, reappointment, promotion and dismissal of judges; (b) considering establishing an independent body to govern the judicial selection process; and (c) guaranteeing judges' security of tenure. The State party should also ensure that defendants are afforded all fair trial guarantees, including the presumption of innocence, and should discontinue the practices referred to in paragraph 39 (a) above.

Bulgaria (15/11/2018)
Independence of the judiciary and administration of justice
43. While noting the constitutional amendments of 2015 reinforcing the independence of the Supreme Judicial Council (see para. 3 (b) above), the Committee remains concerned at the low proportion of judges elected by their peers and the high proportion of members elected by the National Assembly in the Council, which may lead to potential politicization of its decisions. The Committee is also concerned that the election by the National Assembly of the members of the Inspectorate of the Council, which has disciplinary functions, creates a risk of political influence over this body. While noting the amendments of 2017 to the Judicial System Act, the Committee remains concerned by the weak accountability of the Prosecutor General, who (a) is essentially immune from criminal prosecution and irremovable by means of impeachment for other misconduct; (b) can request that the Council automatically suspend judges when they are suspected of committing an intentional indictable offence without an obligation to review the substance of the accusations or hearing the person affected; and (c) has coercive administrative powers outside of the criminal law. The Committee is also concerned about the uneven workload among the courts and the public's lack of trust in the judiciary (art. 14).
44. The State party should continue to review the legislative framework and take measures to further guarantee and protect the full independence and impartiality of the judiciary by, inter alia, ensuring that judges operate without pressure and interference from the executive branch and raising awareness about the importance of the independence of the judiciary. In this regard, the State party should (a) increase the proportion of judges elected by their peers within the Supreme Judicial Council; (b) reinforce the political detachment of the Inspectorate and enhance the role of the Council in disciplinary proceedings; (c) strengthen the accountability structure of the Prosecutor General in cases of misconduct and circumscribe the powers of the prosecution service in the non-criminal sphere; and (d) place sufficient resources at the disposal of the judicial system, particularly for overburdened courts.

Central African Republic (30/04/2020)
Administration of justice
27. While noting the State party's stated willingness to bring its current legislation into line with the requirements of judicial independence, the Committee regrets that these efforts have not yet led to such a reform and that frequent allegations of corruption in the judiciary have been reported but have not thus far been specifically addressed. The Committee is concerned at the shortage of judges and the uneven geographical coverage of the justice system, which has made justice inaccessible in practice to some sectors of the population (arts. 2 and 14).
28. In the light of the Committee's previous concluding observations (CCPR/C/CAF/CO/2, para. 18), the State party should:
(a) Fight corruption within the judiciary, including by reforming the Supreme Council of the Judiciary to make it independent of the executive and by strengthening procedures for shielding judges and prosecutors from any form of interference or corruption;
(b) Ensure, in practice, that judges and prosecutors have security of tenure;
(c) Recruit and train enough judges to ensure the proper administration of justice throughout its territory and to combat crime and impunity;
(d) Allocate adequate budgetary resources to the administration of justice;

(e) Strengthen measures to ensure access to justice for all, including investment in mobile justice systems, while taking account of the constraints currently faced as a result of the situation of insecurity.

Czech Republic (06/12/2019)
Independence of judges and prosecutors
32. The Committee is concerned about reports that the judiciary is susceptible to political interference, especially in high-profile cases, and that the independence of judges and prosecutors from the executive and legislative branches is not sufficiently secured under the law, owing in particular to: the current procedures for the selection, appointment, promotion and transfer of judges; the status of the Supreme Public Prosecutor's Office, formally part of the executive branch; and the procedure for the selection, appointment and removal of the Supreme Public Prosecutor and other public prosecutors. The Committee notes in this respect the plans for judicial reform, including the development of a new Code of Civil Procedure and the proposed amendments to the courts and judges act and to the Public Prosecutor Act (art. 14).
33. The State party should eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of judges and the independence and effective autonomy of the Supreme Public Prosecutor's Office, by, inter alia, ensuring that the procedures for the selection, appointment, promotion, transfer and removal of judges and prosecutors are in compliance with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors. The State party should give due consideration to establishing a supreme judicial council, or other similar bodies, that would be mandated to govern the judicial selection process, be fully independent, comprise mostly judges and prosecutors elected by professional self-governing bodies and operate with full transparency.

Equatorial Guinea (22/08/2019)
Independence of the judiciary and administration of justice
48. The Committee is concerned about the lack of independence of the judiciary, in particular the absence of a transparent procedure for the appointment and dismissal of judges and prosecutors, and the fact that many of them do not have adequate legal training. It notes with concern, moreover, that the executive plays a prominent role in the organization of the judiciary. While the Committee takes note of the delegation's explanation, it is concerned at reports that civilians can be tried by the military courts (art. 14).
49. The State party should continue its efforts to reform the justice system and ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant. In particular, it should:
(a) Guarantee the tenure and independence of judges and the impartiality of public prosecutors, by protecting the work of the judiciary from any interference;
(b) Intensify its efforts to eliminate corruption in the judiciary by, inter alia, prosecuting and punishing perpetrators, including any judges and prosecutors who are complicit therein;
(c) Ensure that judges and public prosecutors are appointed through an independent process that is based on objective, transparent criteria for assessing candidates' suitability in terms of the required skills, competence and reputation;
(d) Ensure that military courts adjudicate only cases involving military personnel, in keeping with domestic legislation.

Guatemala (07/05/2018)
Judicial independence, autonomy of the public prosecution service and efforts to combat corruption
30. The Committee regrets that, owing to the suspension of the constitutional reform process, the State party has not been able to strengthen the independence of the judiciary.

In this regard, the Committee is concerned about the fact that judges of first instance, justices of the peace and magistrates have a limited five-year mandate. It is also concerned about the politicization of the system for the selection and appointment of high-level judicial and prosecution authorities and the lack of separation between the judicial and administrative functions of the Supreme Court. While the Committee commends the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) on the progress they have made in combating corruption, it remains concerned about political decisions that may hamper further progress, such as the attempt made by the President of the Republic to have the CICIG Commissioner, Ivan Velázquez, declared persona non grata. The Committee is further concerned that the selection of a new Attorney General and the Comptroller General by the corresponding nominating committees may be subject to political interference. Furthermore, the Committee is concerned about reports of frequent attempts at outside interference in judicial decisions, the initiation of allegedly baseless disciplinary proceedings against justice officials and the spurious complaints, threats and attacks directed at judges, prosecutors, victims and witnesses involved in high-impact cases (arts. 14 and 25).

31. The State party should:

(a) Place priority on the adoption of constitutional and legislative reforms to ensure the security of tenure of judges and magistrates and to ensure that the administrative functions of the Supreme Court are carried out by an independent and impartial body;

(b) Ensure that the selection and appointment of magistrates, judges and prosecutors, as well as of the Attorney General and the Comptroller General, are based entirely on the use of objective, transparent criteria for the assessment of candidates' merits in terms of their qualifications, competence and integrity;

(c) Develop a protocol for the protection of justice officials and persons involved in judicial proceedings, strengthen the witness protection programme and uphold the independence of judicial officials in their deliberations, determinations and work;

(d) Amend the law on preliminary misconduct proceedings (Ley en Materia de Antejuicio) in order to clarify its scope;

(e) Strengthen support for the International Commission against Impunity in Guatemala and for the Attorney General's Office and ensure that they remain independent so that they can effectively combat corruption and impunity.

Lao People's Democratic Republic (23/11/2018)

Independence of the judiciary and fair trial

29. The Committee is concerned about (a) the influence and control exerted on the judiciary by the ruling party owing to, inter alia, the procedures for the appointment, transfer and removal of judges and prosecutors; (b) the constitutionally secured oversight of the National Assembly over people's courts and the Office of the Public Prosecutor, including competence to refer court decisions back in the event of identified irregularities; (c) allegations of violation of fair trial guarantees in practice, including of the right to be informed promptly and in detail about charges and failure to respect the presumption of innocence; and (d) the reported passive role of defence counsel during trial (arts. 2 and 14).

30. The State party should take all measures necessary to eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguard, in law and in practice, the full independence and impartiality of the judiciary by, inter alia, ensuring that procedures for the selection, appointment, promotion, suspension, removal of and disciplinary action against judges and prosecutors are in compliance with the Covenant and relevant international standards, and by revisiting the oversight role of the National Assembly over the judiciary and court decisions with a view to ensuring full respect for the principle of legal certainty and the separation of powers. It should ensure that accused persons are afforded all fair trial guarantees, including effective legal representation, and that the presumption of innocence is strictly observed in practice.

Lebanon (09/05/2018)

Independence of the judiciary and the right to a fair trial

41. The Committee is concerned about the political pressure reportedly exerted on the judiciary, particularly in the appointment of key prosecutors and investigating magistrates, and about allegations that politicians use their influence to protect supporters from prosecution. It regrets the lack of comprehensive information on the procedures and criteria for the selection, appointment, promotion, suspension, disciplining and removal of judges and notes that bills aimed at ensuring the independence of the judiciary are currently under discussion (arts. 2 and 14).

42. The State party should take all measures necessary to safeguard, in law and in practice, the full independence and impartiality of the judiciary, including by ensuring that the procedures for the selection, appointment, promotion, suspension, disciplining and removal of judges are in compliance with the principles of independence and impartiality, as set out in the Covenant. The State party should strengthen its efforts to guarantee that the judiciary can carry out its functions without any form of political interference.

Mongolia (22/08/2017)

Right to a fair trial and independence of the judiciary

31. The Committee welcomes the State party's amendments to the Law on Establishing Courts with a view to ensuring that access to justice is guaranteed in all districts of the country, and appreciates the steps taken by the State party to provide the judiciary with both adequate remuneration and tenure security, and to investigate allegations of corruption within the judiciary. However, it remains concerned about reports that corruption continues to exist within the judiciary, undermining the independence of judges and the confidence of the public in the justice system (art. 14).

32. The State party should continue to take steps to protect the full independence and impartiality of the judiciary, guarantee that it is free to operate without interference and ensure transparent and impartial processes for appointments to the judiciary. It should continue its efforts to fight corruption and ensure that disciplinary procedures and sanctions applicable to judges and prosecutors are duly established by law.

Niger (16/05/2019)

Independence of the judiciary and administration of justice

40. The Committee welcomes the State party's efforts to reform and modernize the justice system, including the organization of national consultations on the justice system in November 2012, and the adoption of Act No. 2018-36 of 24 May 2018 establishing regulations governing the judiciary. It notes with concern, however, that the independence of the judiciary is not sufficiently guaranteed and that the executive plays a significant role in the organization of the judicial branch. The Committee is also concerned about allegations of interference by the executive branch in judicial decisions (art. 14).

41. The State party should uphold the principle of the independence of the judiciary, as guaranteed under article 16 of the Constitution, and ensure that judges and public prosecutors are appointed on the basis of objective and transparent criteria that allow for candidates' qualifications to be assessed in terms of the required skills, competence and integrity. It should also guarantee the tenure and independence of judges and the impartiality of public prosecutors by protecting the work of the judiciary from any interference.

Paraguay (20/08/2019)

Independence of the judiciary

34. The Committee is concerned about the numerous reports of high levels of politicization and corruption within the judiciary, including interference in the judiciary by the executive and legislative branches of government, and the considerable number of politicians who serve as members of the bodies responsible for administering justice and applying judicial ethics. The Committee is further concerned about the information it has

received on the possible interference by the Office of the Prosecutor in the judiciary, in particular with regard to the Curuguaty case. The Committee is also concerned that the system for selecting and appointing judges and prosecutors advocated by the Council of the Judiciary may not adequately ensure the independence and competence of the judiciary and the Office of the Prosecutor (arts. 2 and 14).

35. The State party should:

(a) Strengthen its efforts to combat corruption within the judiciary, including by raising awareness among judges, prosecutors and police officers of the most effective ways to fight corruption;

(b) Eradicate all forms of interference in the judiciary by other branches of government; ensure prompt, thorough, independent and impartial investigations into all allegations of interference and corruption; and prosecute and punish the persons responsible;

(c) Review the laws and operations of the institutions responsible for administering justice, appointing judges and prosecutors and ensuring judicial ethics in order to ensure that, in law and in practice, the system in place guarantees the independence and impartiality of the judiciary and the autonomy of the Office of the Prosecutor, as well as transparency and public scrutiny.

Romania (11/12/2017)

Right to fair trial and independence of the judiciary

39. The Committee is concerned about reports of undue attacks on the independence of the judiciary by public officials and the media and the reported politicization of the public prosecutor's office. It is also concerned about reports of practical difficulties in obtaining effective legal assistance and representation during pretrial proceedings (art. 14).

40. The State party should continue its efforts to ensure and protect the full independence and impartiality of the judiciary and guarantee that it can carry out its judicial functions without any form of pressure or interference. The State party should also take measures to protect the prosecution against any undue interference and ensure that lawyers are able to effectively represent detainees in pretrial proceedings.

Serbia (10/04/2017)

Administration of justice

34. While acknowledging the national judicial reform strategy and recent efforts to reduce the large backlog of cases, the Committee is concerned about: (a) the probation period of three years for new judges; (b) alleged cases of pressure and retribution exercised by politicians and the media on judges, prosecutors, the High Judicial Council and the State Prosecutorial Council; (c) the remaining backlog of court cases; and (d) the delays in the adoption of the draft law on free legal aid (art. 14).

35. The State party should: (a) take steps to entrench judicial independence, including by ensuring the tenure of new judges and preventing any political interference in the work of the High Judicial Council and the State Prosecutorial Council; (b) take steps to ensure that all cases of political and media pressure on the judiciary and prosecutors are promptly investigated and sanctioned; (c) strengthen its efforts to ensure that trials take place in a reasonable time and reduce the backlog of court cases; and (d) strengthen its efforts to adopt the draft law on free legal aid.

Swaziland (23/08/2017)

Independence and impartiality of the judiciary and traditional courts

38. The Committee is concerned at reports of political interference in the judiciary by the executive and that recent measures taken by the State party are insufficient to guarantee the independence and impartiality of the judiciary. The Committee is also concerned that the traditional justice system does not meet the fair trial standards provided under the Covenant and that its jurisdiction is not sufficiently limited (art. 14).

39. The State party should put in place specific constitutional guarantees to protect judges and prosecutors from any form of political influence in their decision-making and effectively ensure that they are free of pressure and interference in the performance of their work. The State party should align the traditional justice system with fair trial standards under the Covenant. It should also ensure that the jurisdiction of traditional courts is limited to minor civil and criminal matters and that their judgments may be validated by State courts.

Tajikistan (22/08/2019)
Independence of the judiciary and the right to a fair trial
37. While noting the measures taken to reform the judiciary, including the constitutional amendments of 22 May 2016, the Committee remains concerned (CCPR/C/TJK/CO/2, para. 18) that the judiciary is still not fully independent owing, inter alia, to the role of and influence exerted by the executive and legislative branches; the criteria for selection, appointment, reappointment and dismissal of judges; and the lack of security of tenure of judges. The Committee is also concerned about the insufficient independence of prosecutors, owing mainly to the procedure for their appointment and dismissal, and about the extensive powers vested in them. The Committee is concerned about allegations of unfair trials, including violations of equality of arms between the defence and the prosecution; a bias in favour of the prosecution, violation of the presumption of innocence and an extremely low acquittal rate (about 0.1 per cent in 2018), unfair trials, closed to the public, in the case of the leaders of the Islamic Renaissance Party, and closed trials in cases not involving national security charges (arts. 2 and 14).
38. The State party should take all the measures necessary to safeguard, in law and in practice, the full independence of judges and prosecutors, including by:
(a) Ensuring that procedures for the selection, appointment, reappointment, suspension, removal of and disciplinary action against judges and prosecutors are in compliance with the Covenant and relevant international standards;
(b) Guaranteeing the security of tenure of judges, including by considering providing for the automatic extension of the contract of a judge for a new 10-year term if the judge has performed his duties conscientiously;
(c) Reducing the excessive powers of the Prosecutor's Office;
(d) Ensuring that defendants are in practice afforded all fair trial guarantees, regardless of their political affiliation or opinion, including equality of arms and presumption of innocence;
(e) Ensuring that any restrictions on the right to a public hearing are construed narrowly and are necessary, proportionate and justified in accordance with the Covenant.

Viet Nam (29/08/2019)
Independence of the judiciary and fair trial
33. The Committee is concerned regarding the influence on the procuracy and the judiciary of the ruling party, thereby undermining their independence, and the lack of confidence of the public in the justice system. It also remains concerned at judges' lack of security of tenure.
34. The Committee reiterates its recommendation (CCPR/CO/75/VNM, para. 9) that the State party should take immediate steps to protect the independence and impartiality of the judiciary and the procuracy, guarantee that they are free to operate without interference and ensure transparent and impartial processes for appointments to the judiciary and the procuracy.