

STRENGTHENING JUDICIAL INDEPENDENCE AND IMPARTIALITY AS A PRE-CONDITION FOR THE RULE OF LAW IN COUNCIL OF EUROPE MEMBER STATES

Opening and
concluding remarks,
key speeches
and General
Rapporteur's report

High-Level Conference of Ministers of Justice
and representatives of the Judiciary
(Sofia, Bulgaria, 21-22 April 2016)



Bulgarian Chairmanship
Council of Europe
November 2015 – May 2016
Présidence de la Bulgarie
Conseil de l'Europe
Novembre 2015 – Mai 2016



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Printed at the Council of Europe

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INTRODUCTION

The High-Level Conference of Ministers of Justice and representatives of the Judiciary was organised by the Ministry of Justice of Bulgaria in co-operation with the Council of Europe. It took place in Sofia on 21-22 April 2016 at the invitation of the Bulgarian Minister of Justice within the framework of the Bulgarian Chairmanship of the Council of Europe Committee of Ministers (November 2015 - May 2016).

The presence of the Prime Minister of Bulgaria, Mr Boyko Borisov, and the Secretary General of the Council of Europe, Mr Thorbjorn Jagland, attested to the importance of the topic of the Conference and their willingness to explore the role of the judiciary in a democratic system and its relations with the executive, independence of judges and measures to ensure their impartiality and boost trust in the system.

Three main themes were on the agenda: (i) the role of the judiciary in a democratic state and its relations with the executive and the judiciary; (ii) protecting the independence of individual judges and ensuring their impartiality; and (iii) securing public trust in the judicial process. See the programme in Appendix I.

The organisation of this event followed the 2nd report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe on “a shared responsibility for democratic security in Europe” (2015). This report found that standards of impartiality and independence were not sufficiently guaranteed in many Council of Europe member States and identified this failure as one of the biggest challenges to democratic society today. As a concrete and immediate follow-up to his report, the Secretary General, who had made the strengthening of judicial independence and impartiality in the Council of Europe member States a priority, proposed a plan of action for achieving an efficient and independent judiciary. The five-year Plan of Action was adopted by the Committee of Ministers on 13 April 2016 and the Conference in Sofia provided an excellent opportunity for its launch.

The Plan of Action draws upon the findings of a review undertaken jointly by the Bureaux of the Consultative Council of European Judges (CCJE) and of the Consultative Council of European Prosecutors (CCPE) on the challenges for judicial independence and impartiality in the member States of the Council of Europe, and on a review undertaken by the European Committee on Legal Co-operation (CDCJ) of the action taken by the member States to improve the independence, impartiality and efficiency of judges, as a follow-up to Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, adopted by the Council of Europe Committee of Ministers on 17 November 2010. The Plan of Action is based on three lines of action, each involving a series of measures: 1) Safeguard and strengthen the judiciary in its relation with the executive and legislature; 2) Protect the independence of individual judges and ensure their impartiality; 3) Reinforce the independence of the prosecution service. The Action Plan’s overall objective is to guide and support member States in implementing the concrete measures contained therein in order to give effect to Recommendation CM/Rec(2010)12.

The Conference brought together more than 150 participants. These included high-level representatives of Ministries of Justice and of the Judiciary as well as representatives of other invited states (Holy See, Japan, Mexico, United States of America, Belarus, Morocco), international organisations (European Union, OSCE-ODIHR) and Council of Europe bodies. See the list of participants in Appendix II.

Introduction

The Minister of Foreign Affairs of Bulgaria and Chair of the Committee of Ministers, Mr Daniel Mitov, took part in the opening session, while the Minister of Justice of Bulgaria, Ms Ekaterina Zaharieva, chaired and closed the conference.

Moderators and key speakers successfully contributed to the management of the lively, thorough and high quality discussions. The General Rapporteur of the Conference also noted the high quality of the debates and captured the nuances and differences of views freely expressed in his report to the participants at the close of the event and which is reproduced at page 47 of this publication.

The Conference provided an active forum for the exchange of ideas and experience between the participants on issues related to the independence and impartiality of the judiciary, to highlight ongoing reforms and give incentives for initiatives in that direction. The participants agreed on the measures to be taken at national level for strengthening the rule of law in general, the judicial independence and impartiality in particular, elaborating a common response to the emerging challenges on this crucial topic and implementing the common European standards in the area. Thanks to their frank and open discussions and valuable contributions, the participants made of the conference a unique event.

The Council of Europe expresses its gratitude to the Bulgarian authorities for having hosted this high-level event and for their hospitality shown to all participants.

OPENING REMARKS

Mr Thorbjørn JAGLAND
Secretary General of the Council of Europe

Ladies and gentlemen,

Democratic societies recognise conflict and the legitimacy of dispute. This is inherent in pluralism and diversity – values we cherish.

In order to manage people's differences successfully, and to allow individuals to live alongside each other, under majority government, democracies grant their citizens certain rights and freedoms:

Freedom of expression; the right to privacy and family life; the freedoms of the individual vis-à-vis the state; the protection of the weak and vulnerable against the interests of the rich and powerful, and so on.

Complex rules govern these norms and relations.

And when disputes arise, as they inevitably do, judges have the extremely important task of ensuring that they are resolved in accordance with the law.

The independence and impartiality of judges is therefore the primary guarantee, for the members of any society, that they will be treated fairly and equally before the law.

If a democratic society cannot manage conflict in this just, lawful and civilised manner, it will lose the very legitimacy it needs to survive.

And if people lose faith in the ability of their courts to perform this function, social stability cannot be guaranteed.

In recent years, in many European countries, we have seen trust in institutions plummet:

Anger at the banks and financial regulators.

Frustration with the political class, parts of the media and international institutions.

Outrage at greed and lies exposed in the world of sport.

But when people see self-interest, political agenda and corruption affecting their courts – then we are really in trouble.

Because then comes the abuse of power, the breakdown of the rule of law, widespread disillusionment...and unrest is never far away.

Ladies and gentlemen, judicial independence and impartiality are the cornerstone of any robust system of checks and balances – and for that reason I am greatly encouraged to see you all here today.

The state of judicial independence and impartiality in Europe today

My most recent annual report on democratic security in Europe, published last May, found that at least one third of member states were failing to guarantee sufficient levels of impartiality and independence.

It also exposed big gaps in the available data, which meant that, in reality, the situation might well have been worse.

Since then we have worked hard to put together a clearer picture.

I commissioned two reports.

One jointly from the Consultative Council of European Judges and the Consultative Council of European Prosecutors, on the challenges in member states;

And also a review of the action taken by national authorities to meet the principles set out in the Committee of Ministers Recommendation on the independence, efficiency and responsibilities of judges (CM/Rec(2010)12).

Of course, we in Strasbourg are alive to the great variation across Europe's judicial systems. But it is important to pause, reflect and take a pan-European view.

In nearly all member states, if not all, there are issues to be addressed – some minor or perhaps less fundamental; but even these smaller concerns will become larger ones if not dealt with promptly.

There are also trends, which require our collective attention. And, when it comes to Europe's democratic security, weaknesses in one state almost always have consequences beyond its borders. In terms of stability, our nations are like links in a chain.

I want to acknowledge, first, the progress which has been made.

Our continent contains some of the most respected and copied legal systems in the world.

Great efforts have been taken by most member states to adapt their legal systems to the principles set out by the Committee of Ministers recommendation I cited.

At a formal level, in most states, the principles of independence and impartiality are enshrined in the constitution – which is crucial.

And, in most of the member states which do not yet sufficiently guarantee impartiality and independence, reforms are underway which we hope will lead to significant improvements in the coming years.

Still, however, serious problems, even systemic problems, remain.

The report of the Consultative Councils bears witness to many examples of interference, particularly by the executive, leading in some cases to persecution of individual judges. In a number of states we find judicial systems which suffer from chronic corruption, political interference, inadequate funding and a lack of transparency in judicial appointments, further compounding public distrust in the fairness and quality of court decisions.

There are also very troubling examples of states which have previously achieved substantial judicial reform, yet where overbearing executives and wider political events

have very quickly caused setbacks for judicial independence. In these cases, appointment and removal processes for judges are increasingly politicised, while disciplinary proceedings are used – or threatened – to censor or intimidate judges.

In some of these states, judicial councils – which can be a very effective wall against interference – have been shown to be vulnerable to co-option and have been used by the executive to exert indirect control over the judiciary. Where there are unclear institutional arrangements relating to judicial self-governance, this also creates spaces in which judicial independence can be infringed.

From all this the lesson which is becoming increasingly clear – and which will feature prominently in my third annual report, which I will distribute to governments over the coming days – is, bluntly, that laws are not enough.

Constitutional guarantees, formal legal requirements and international safeguards are indispensable. Strong judicial independence and impartiality are impossible without them.

But alone they are insufficient.

In addition, we also need proper checks and balances to ensure a separation of powers between the judiciary and other branches of power.

We need a culture of independence and impartiality: the attitudes and personal integrity which sustain it in the long term.

These two additional safeguards – checks and balances and a culture of independence – are essential if states are to permanently insulate their courts from the twists and turns of politics.

The Action Plan

Putting these safeguards in place takes time. Judicial integrity, in particular, requires nurturing. The process of entry into the profession, training and promotion needs to be carefully protected from undue interference. This does not rule out any involvement of the executive or legislature, which can be beneficial. But it must always be respectful of judicial autonomy.

And not only does this process take time, it takes commitment: the personal commitment of the profession, of politicians and officials, as well as partners like ourselves.

As you know, last week, the Council of Europe's Committee of Ministers adopted, at my request, a new Action Plan to strengthen judicial independence and impartiality. We are here to launch it and to discuss how to implement it.

I'd like to quote the conclusion of the CCJE/CCPE report I referred to earlier, which says:

“What is critical is not the perfection of principles and, still less, the harmonisation of institutions; it is the putting into full effect of principles already developed. To live those principles is the challenge at hand.

For me, this objective is at the heart of the Action Plan.

It is a strategic approach to a series of fundamental and pressing problems.

It is about providing support – not creating new standards.

The Action Plan sets out the steps which need to be taken, first, to improve or establish formal legal guarantees of judicial independence and impartiality. As I said, these are an essential first condition.

And, secondly, to put in place the necessary structures, policies and practices to ensure that these guarantees are respected in practice.

It focuses on three areas:

- relations between the judiciary and the other powers;
- the individual judge and how to ensure his or her independence and impartiality;
- and the role of public prosecutors.

As well as highlighting the reforms needed from member states, it makes clear how the Council of Europe will continue to support you in this process. Including, of course, to help states avoid violations of the European Convention on Human Rights, which would otherwise find them in the Strasbourg Court.

While membership of the Council of Europe brings legal obligations, it also provides a community of shared experience and a wealth of expertise. This plan draws on the many bodies within the Organisation which you have at your disposal – many of whom I am pleased to see represented here today.

I also want you to be in no doubt of my personal commitment – and that of the secretariat – to this agenda.

Agreeing the Action Plan, and agreeing it so quickly, is already an achievement. It is credible, comprehensive, cost-neutral – but the work starts now.

I am doing everything I can – through my reports, the work I commission, this Action Plan – to keep judicial independence and impartiality on the international agenda, even though they may not seem as urgent as our other priorities, like the fight against terrorism or the refugee crisis...

...because honest and decent courts are there, until they are gone.

We are getting to that stage in some states, and we need to pull things back.

We, as a continent, need to say that this is a priority.

That Europe is a place where all judges should be fiercely proud of their independence and all judicial systems should be shielded from political dramas.

This is how we build our democracies on solid foundations, ensuring greater democratic security.

We all have a part to play, and I thank you very much for being here today.

ROLE OF THE JUDICIARY IN A DEMOCRATIC SOCIETY / RELATIONS BETWEEN THE EXECUTIVE AND THE JUDICIARY

Mr Philippe BOILLAT
Director General of Human Rights and Rule of Law
Council of Europe

(Moderator)

Ministers, Honorary Judges, Ambassadors and distinguished guests,

It is a privilege to be given the opportunity to open the first session of this Conference, a session dedicated to the “Role of the Judiciary in a democratic society/ relations between the executive and the judiciary”.

Before introducing the two prominent key note speakers of this session, I would like to make some brief introductory observations.

Montesquieu wrote « Il n'y a point encore de liberté si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutrice. Si elle était jointe à la puissance législative, le pouvoir sur la vie et la liberté des citoyens serait arbitraire: car le juge serait législateur. Si elle était jointe à la puissance exécutrice, le juge pourrait avoir la force d'un oppresseur. »¹

In order to protect the role of the judiciary as one of the essential pillars of the modern democratic state, it must be ensured that the three powers are independent and complementary to each other with no pillar dominating the others.

The complementarity of this system is based on a relationship of interdependence, where each pillar has its own independent function but is subject to the system of checks and balances that holds each pillar accountable. A certain level of tension between the three powers may therefore be a sign of a well-functioning system, showing that each power is providing the necessary check on the other powers.

However, the equilibrium between the three powers of state is delicate and can easily be disrupted. This has been the case in some states of Europe where incidents have been reported of excessive interference of the executive and legislative in the functioning of the judiciary. Such interferences greatly undermine the independence of the judiciary, without which it cannot fulfil its role as an impartial adjudicator between members of society and the state and between members of society themselves.

¹ Montesquieu (1748), De l'Esprit des lois, Deuxième partie, livres XI, Chapitre 6
English: „there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression“

Moderators' speeches – *Mr Philippe Boillat*

It must be kept in mind that it is by protecting the role of the judiciary and ensuring its independence that we can protect the essential rights of all citizens, especially those groups that are particularly vulnerable or unpopular in society. It is also by ensuring the independence of the judiciary that we can safeguard the rule of law, without which there can be no respect for democracy or human rights.

In this first session of our conference, I invite you to share with us your views and ideas on this topic of paramount importance, the role of the judiciary in a democratic society, and in particular its relations with the executive.

The first key note speaker for this session, Mr Gianni Buquicchio is the President of the European Commission for Democracy through Law, better known as the Venice Commission.

ROLE OF THE JUDICIARY IN A DEMOCRATIC SOCIETY / RELATIONS BETWEEN THE EXECUTIVE AND THE JUDICIARY

Mr Gianni BUQUICCHIO
President of the European Commission for Democracy through Law
(Venice Commission)
Council of Europe

(Key speaker)

Mr Chairman, Your Excellencies, Ladies and Gentlemen,

I would, first of all, like to thank the Bulgarian Chairmanship of the Committee of Ministers and the Secretariat of the Council of Europe for the excellent organisation of this Conference and for having invited me as a key note speaker.

An invitation, which I have gladly accepted because I think I can make a useful contribution to this Conference by sharing with you the experience gained by the Venice Commission through its involvement in judicial reforms in many countries.

I am also really pleased to be here, since I am convinced that ensuring and strengthening the independence and impartiality of the judiciary is one of the most crucial challenges Europe is facing at the moment.

The importance of an independent and impartial judiciary for foreign investment and economic development is well known. I do not have to stress it in front of this audience. I will rather dwell on its importance for human rights, the rule of law and democracy.

This is a Council of Europe conference and the Council of Europe is often referred to as a human rights organisation or rather the human rights organisation in Europe, even if this does not do justice to its wide scope of activities.

We all know that the right to a fair trial before an independent and impartial tribunal is one of the human rights guaranteed by the European Convention.

However, to conclude that this is just one of many human rights would grossly underestimate its importance. In fact, in order to be effective, all human rights have to be implemented by independent and impartial tribunals.

Otherwise, human rights will remain the subject matter for self-congratulatory speeches by politicians, but have no basis in real life. Without an independent and impartial judiciary, human rights cannot exist in practice.

It is also obvious that there can be no rule of law without an independent and impartial judiciary. But, there can also be no democracy without it. In a democracy, somebody has to ensure that the executive faithfully implements the laws adopted by the democratically elected parliament.

This role can only be played by an independent and impartial judiciary.

This is why all three basic values of the Council of Europe Statute: the respect for human rights, the rule of law and democracy, require the existence of an independent and impartial judiciary.

All countries represented here are member states of the Council of Europe and have accepted the Statute of this Organisation. In theory, all states present here today should have an independent and impartial judiciary.

Unfortunately, we are all painfully aware that this is by no means the case. Many member states are facing diminishing public trust in the judicial system and in these states judges and prosecutors are considered to be among the most corrupt groups in society.

This concerns, first and foremost, the post-communist countries in Central and Eastern Europe, but the problem is by no means limited to them.

The different rankings, such as the Rule of Law Index of the World Justice Project, show, however, that, on the judiciary, the scores for Central and Eastern European countries are lower than for West European countries, although there are countries doing relatively better in the East or relatively worse in the West.

At the political level, judicial reform has become one of the main issues in the EU Enlargement process. The absence of an independent and impartial judiciary has become a main brake on this process.

With respect to states having already joined the European Union, our host country Bulgaria as well as Romania are still subject to a special verification mechanism, which is motivated by the lack of trust in the functioning of the judiciary in both countries.

Fortunately, the states themselves are conscious of the problem. We can observe this well in the Venice Commission.

There is an upward trend in the number of requests made to the Venice Commission on judicial reforms in different states.

In view of this situation, I can only welcome the emphasis the Secretary General places on this issue as one of the main problems facing Europe.

Following his request, an excellent report on "Challenges for judicial independence and impartiality in the member states of the Council of Europe" was prepared by the Consultative Councils of European Judges and Prosecutors.

And we are gathered here today to launch the new Action Plan for "Strengthening Judicial independence and Impartiality".

Ladies and Gentlemen,

How can we explain that, more than 25 years after the end of Communism, the state of the judiciary in Central and Eastern Europe still leaves a lot to be desired?

We should, first of all, acknowledge that this is not primarily due to bad rules or a lack of legal rules. All new democracies have enshrined the principles of judicial independence and impartiality in their constitutions.

There is still room for improvement at the constitutional and legislative level, and we at the Venice Commission, are working hard for such an improvement to occur. But in general the rules are no worse than in Western Europe.

On the contrary, we can see that, following the accession by Central and Eastern European countries, the Council of Europe has increasingly developed and refined the standards on institutional guarantees for judicial independence.

Several Western European countries have introduced reforms, establishing judicial councils or enhancing their powers. These reforms bring them closer to the situation that already exists in most Central and Eastern European countries.

The real problem does not primarily lie in the rules. As is pointed out in the report by the two Consultative Councils:

“As valuable as they are, constitutional guarantees, formal legal rules and institutional safeguards are not in themselves sufficient if the values of independence and the separation of powers, which form the basis of such rules, are lacking. All parties concerned must act according to a culture of independence and mutual respect to create and sustain this basis. The introduction of formal legal guarantees forms the starting point, not the completion of this culture of independence and mutual respect.”

When the reforms started in the 1990s, we probably underestimated the importance of the mentality, or thought that the younger generation of legal practitioners would automatically develop a mentality in line with the rule of law.

This has, however, not happened on a large enough scale. Many judges and prosecutors in Central and Eastern Europe, but also in the other countries, see themselves as civil servants and legal technicians, whose role is to defend the state and not the rights of the citizens.

These judges do not really want to be independent. They are satisfied to be part of a hierarchy and to receive instructions on how to decide cases from higher courts or their superiors in the court.

In the Soviet system, it was not part of the tasks of the judges at the lower courts to interpret the law, they just had to apply it.

In criminal cases, many judges still find it normal to grant all the requests made by the prosecutors without taking the responsibility to independently evaluate them.

Other judges, on the contrary, render arbitrary decisions without taking into account the case-law of the higher courts. They misunderstand the absence of a *stare decisis* rule in the Civil Law system as an authorisation to decide at their personal whim.

Even worse, many judges abuse the new guarantees for their independence as a cover for corrupt practices. Cases are won not by the party which has the law on its side, but by the party ready to pay the highest bribe.

Corruption in the judiciary has become so wide-spread in some countries that radical measures need to be taken to fight it. I will address these measures at the end of my speech.

A corrupt judge is not only a partial judge, but also a judge who cannot be independent, since he or she is vulnerable to pressure from the executive or the judicial hierarchy.

Fighting judicial corruption is therefore fighting for judicial independence, although the means used to combat corruption have to respect the necessary safeguards to protect judicial independence.

In addition, it is quite clear that politicians have not lost their interest in influencing judicial decision-making. This temptation will always exist.

In recent years, we can observe a “winner takes all” approach to politics in a number of countries. Politicians, who did win elections, believe to have the right to govern without constraint.

Independent judges are considered obstacles in the decision-making process and, as a result, guarantees for judicial independence have been reduced in some countries. Politicians have sometimes been reluctant to accept court decisions or have even refused to respect and implement them.

Ladies and Gentlemen,

What are the lessons we can learn from the hitherto all too limited success of our efforts? And what should be done to move forward?

Although formal legal rules are insufficient on their own to guarantee an independent and impartial judiciary, we cannot abandon our efforts to further improve these rules. Wherever there is a weakness in the rules, there is a strong risk that it will be used to interfere with judicial independence.

The Action Plan therefore rightly stresses the need for further improving the legal framework in member states.

This is not the moment to go into detail, but you will find the reports of the Venice Commission on the independence of the judiciary and the prosecution service in your files ([CDL-AD\(2010\)004](#), [CDL-AD\(2010\)040](#)), together with other standard-setting documents prepared in the Council of Europe framework.

The rules on the composition and powers of judicial councils have to provide effective guarantees for judicial independence, without favouring corporatism and the lack of accountability. It is important not to look at specific rules in isolation, but to look at the legal framework as a whole.

It is, however, even more important to embed the rules in an overall culture of the rule of law. Judicial independence will only be guaranteed if the rule of law is internalised both by judges and by politicians.

Judicial independence and impartiality are only one part of the rule of law - although arguably the most essential one. They have to be seen together with the other elements of the rule of law, such as the principle of legality, legal certainty, the prevention of abuse of powers, equality before the law, access to justice and the right to a fair trial.

The Venice Commission adopted at its last session in March a Rule of Law Checklist, which you will find in your files ([CDL-AD\(2016\)007](#)). This Checklist tries to make the notion of the rule of law more operational by clearly identifying and describing its elements.

The Checklist should help states in developing a comprehensive approach towards the rule of law and to base legal education on the values of the rule of law.

Reforming legal education will be required in many countries to change the mentality of the actors in the legal system. The emphasis should not be placed on learning many rules by heart, but on developing the capacity for legal reasoning, without of course neglecting the need for wide legal knowledge. And the aim should not just be to form legal technicians, but persons who have internalised the values and elements of the rule of law.

Ladies and Gentlemen,

For me, it is particularly welcome that the Action Plan draws attention to internal independence within the judiciary.

Traditionally, international standards focused on ensuring the independence of the judiciary with respect to the other branches of power. But, if we want to favour a mentality of judicial independence, we have to ensure the independence of each individual judge.

We should not overlook the fact that court presidents can be tools of the executive, if it wishes to exercise influence on the judiciary. When drafting rules on judicial councils, it is therefore very important to ensure that these councils represent all levels of the judiciary and to avoid their domination by court presidents and judges of the highest courts.

With respect to prosecutors, it is more difficult to define ideal rules. In most countries prosecution services, for good reasons, have hierarchical structures.

Simply granting independence to the prosecution service would therefore mean granting enormous power to a single person, namely the prosecutor general, a person who has no or very little democratic legitimacy, and who may be a tool in the hands of the President of the state.

A more complex approach is therefore needed to ensure that the prosecution service takes decisions based on law and not on political expediency, that appointments in the service are based on merit and not on political considerations and that individual prosecutors do not have to execute illegal instructions.

Excessive powers of the prosecution service following the Soviet model of the *prokuratura* must be abrogated, where this has not yet happened. Such powers do not only tend to be abused for political purposes, but also become sources for corruption. They may even be used for purposes of blackmail and extortion.

Mr Chairman,

The most difficult challenge is likely to be corruption within the judiciary and the prosecution service. Some structural measures should be taken. First of all, it is important to ensure transparency in the working of the judiciary. This is a welcome element of the Action Plan, since it will make corruption more difficult.

In addition, the automatic allocation of cases is a measure which is useful both in the fight against corruption and to enhance independence.

Rules limiting the informal communication between judges and parties to a case can be useful. Judges should be obliged to report all attempts at exercising undue influence.

In countries, where judicial corruption is wide-spread, or maybe only perceived to be widespread, judges and prosecutors should be obliged to regularly provide declarations on their assets. These asset declarations should be checked effectively. Unexplained wealth should be a ground for dismissal.

These structural measures will have to be accompanied by disciplinary and criminal sanctions against judges who have misbehaved. It is never easy to take such steps against judges, since they entail an obvious risk of interfering with judicial independence. But, the alternative is to tolerate corruption, which would be the greater evil.

In some countries, steps against individual judges will not be sufficient. Recently, two countries, Ukraine and Albania, have launched a general vetting of all sitting judges. In Ukraine, a law was adopted and constitutional amendments prepared.

In Albania, constitutional amendments introducing temporary vetting of all judges and prosecutors with international support were prepared, but not yet adopted. To the disappointment of some judges, the Venice Commission, whose opinion was sought by both countries, has not raised an objection of principle.

Any dismissal of a judge interferes with judicial independence and is therefore undesirable in principle. But, we cannot overlook the fact that in some countries the judiciary has completely lost the trust of society. Corruption is the ultimate denial of judicial independence and impartiality. If it becomes pervasive, effective measures against it must be taken.

Obviously, sufficient guarantees have to be provided to ensure that the judges concerned are treated fairly and objectively. This sounds easier than it is since, in a system of pervasive corruption, who can be trusted to distinguish between the good and the bad judges? An international involvement in such a process, as foreseen in Albania, is therefore particularly useful.

Even with international involvement, such vetting will always remain a very delicate balancing act. It can be accepted only in countries, where there seems to be no other means of restoring trust in the judiciary. In other words, it should be considered only as a last resort.

Ladies and Gentlemen,

In my speech I have raised many existing problems and perhaps did not sound very optimistic. But a correct diagnosis of the problems is a precondition for finding the right solutions.

In addition, I have pointed to four main orientations for future action which, I think, would really bring us forward:

- We must continue working on the improvement of the legal and constitutional rules;
- We must be as attentive to the issue of internal independence within the judiciary as we have always been to the issue of its independence with respect to the executive and legislative powers;
- In many countries, we have to work on changing the mentality of the actors in the legal system, which has to be based on a full understanding of the rule of law;
- In many countries, the fight against corruption among judges and prosecutors is essential and may sometimes require unorthodox methods.

The proposed Action Plan is very much in line with this approach and I therefore reiterate my own strong support, and the strong support of the Venice Commission, for it.

ROLE OF THE JUDICIARY IN A DEMOCRATIC SOCIETY / RELATIONS BETWEEN THE EXECUTIVE AND THE JUDICIARY

Mrs Tiina ASTOLA
Director General for Justice and Consumers, DG JUST
European Commission

(Key speaker)

I would like to thank Minister Zaharieva and Secretary General Jagland for inviting the European Commission to this high-level conference.

I am sure that I do not have to convince you of the fundamental importance of judicial independence in our European democracies.

Instead, I will make 3 points: First, I will outline why the Council of Europe and the European Commission have a common interest to strengthen judicial independence. Second, I will talk about the challenge to safeguard judicial independence in practice. My third and last point will be on the Rule of Law Framework and how the Framework can help "safeguard the safeguards".

But let me start on the first point, why the Council of Europe and the European Union have a common interest to strengthen judicial independence. I recall that judicial independence is vital for upholding the rule of law which is a fundamental value that we have in common. Judicial independence is also a requirement enshrined **in Article 47** of the EU Charter of Fundamental Rights – the Right to an effective remedy and to a fair trial. When national courts apply EU legislation, they become a 'Union court', and must provide effective judicial protection to everyone. There is no effective judicial protection if a court is not independent.

The key challenge for all of us is how to better **safeguard judicial independence in practice**. As we have just heard from President Buquicchio, the Venice Commission's work has been instrumental for putting the standards on judicial independence into practice.

Moreover, I am pleased to see that the Committee of Ministers adopted a **Plan of Action** on judicial independence. I welcome the Council of Europe's approach to support Member States in their efforts. On our side, we also do our utmost to assist Member States where we can. This brings me to my **second point on encouraging justice reforms in EU Member States**.

The European Commission is encouraging Member States to improve the effectiveness of their justice systems, including their independence. Since 2012, the improvement of the independence, quality and efficiency of judicial systems is a priority in the EU's economic policy. In other words: justice reforms are part of the structural reforms supported by EU.

To identify potential shortcomings in the justice systems and to keep track of progress, the Commission has established the **EU Justice Scoreboard**. It is an information tool, published annually, which provides a comparative overview on the independence, quality and efficiency of justice systems – the three pillars of an effective justice system.

The Scoreboard contains figures on **perceived independence**. This is an important element because as the case law of the European Court of Human Rights shows, the *appearance* of independence and impartiality is a crucial element for people's confidence in the courts.

The Scoreboard's 2016 edition contains figures not only on the perceptions of citizens, but also of companies.

According to respondents, the interference from the government and from politicians is often ranked as the main reason for the perceived lack of independence.

I am therefore pleased to see that the Plan of Action calls on executive and legislative branches to be respectful of judicial decisions. All authorities and stakeholders should take poor results in perception surveys as an opportunity for deeper analysis of the reasons.

Effective legal safeguards to protect judicial independence are key for people's perception. These safeguards are particularly important in sensitive situations, for example, when judges are transferred without their consent or when they are dismissed. I welcome the call for formal legal guarantees of judicial independence and impartiality in the Plan of Action.

We have been collecting data on structural safeguards, based on the Council of Europe's standards, in particular those mentioned in the 2010 Committee of Ministers Recommendation. With this information, we have produced an overview of legal safeguards to protect judicial independence in situations where it could be at risk.

For example, our overview shows which authority decides on transferring judges without their consent and whether a judge can appeal, and how cases are allocated to courts. This factual comparative overview helps the justice systems to learn from each other.

While an overview of legal safeguards is useful, it is more difficult to examine whether these safeguards are effective in practice. The 2016 Scoreboard presents the first steps by the judicial networks in this delicate area. I hope that future Scoreboards will assess the effectiveness of safeguards for judicial independence in more detail.

I am fully aware that justice reforms require resources. The European Structural and Investment Funds are used in 14 Member States to improve the effectiveness of the justice system. The Commission is encouraging Member States to take into account the findings of the Scoreboard when using these funds.

This brings me to **my third and final point**. So far, we have focused on working together to encourage and support Member States in their efforts to strengthen judicial independence and justice reform more widely.

But what happens if Member State takes measures which threaten the **rule of law**, in particular judicial independence?

To deal with this kind of situation, the Commission established the Rule of Law Framework in 2014. It is a crisis mechanism which allows us to enter into a political dialogue with the Member State in question, to prevent an emerging threat to the rule of law from escalating further. The Framework aims at supporting the institutions which exist at national level to protect the rule of law, in particular independent courts. If these national rule of law safeguards fail to operate correctly or come under threat, the Framework serves as a "safeguard of the safeguards".

To conclude, I am convinced that the Council of Europe and the European Union have a mutual interest to encourage Member States to put the principle of judicial independence into practice. Whatever the model of the national justice system and whatever the legal tradition, we must guarantee and safeguard judicial independence.

I am very happy about the excellent cooperation between our institutions both on the EU Justice Scoreboard and on the Rule of Law Framework. National justice systems are key for upholding the rule of law. This mission deserves our joint and continued efforts.

**PROTECTING THE INDEPENDENCE OF INDIVIDUAL JUDGES
AND ENSURING THEIR IMPARTIALITY**

Ms Nino BAKAKURI
Judge of the Supreme Court of Georgia

(Moderator)

Dear Conference Participants,
Ministers of Justice and Representatives of the judiciary,
Invited guests,
Ladies and Gentlemen,

The main topic of our discussion is: Protecting the independence of individual judges and ensuring their impartiality.

Judicial independence and impartiality are fundamental rights of each individual as safeguarded by Article 6 of the European Human Rights Convention.

The independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. Judicial independence is the means by which judges' impartiality is ensured.

Independence protects judicial decision making from improper influence from outside the proceedings including by the judicial hierarchy. Impartiality guarantees that the judge has no conflicts of interest or association with the parties, or with the subject of the trial, that might be perceived to compromise objectivity.

Both are essential to guarantee the equality of parties before the courts.

The aim of today's discussion is to show, where challenges to independence and impartiality of individual judges and prosecutors may be found, in which ways they may occur and what their effects on the justice system can be.

The Joint Report by CCJE and CCPE on the Challenges for Judicial Independence and Impartiality in the Member State of the Council of Europe, presented at this conference, shows a number of challenges and concerns. Such challenges were identified in relation to: the appointment of judges and prosecutors, infringements of their security of tenure, interference by the judicial hierarchy in decision-making by individual judges, lack of effective remedies for judges who consider their independence and impartiality threatened, the economic basis of their work, public criticism, combatting corruption and other problems.

Incidents reported and analyzed in this and other reports show that quite often it is not the absence of formal legal guarantees but rather concrete political practices in the member states that cause concern. Therefore, more important than formal legal rules is how the powers of state, judges, prosecutors, politicians, victims, defendants, the media and society as whole interact in practice.

Encouraging international discussion on these issues is important to find a way to go forward.

PROTECTING THE INDEPENDENCE OF INDIVIDUAL JUDGES AND ENSURING THEIR IMPARTIALITY

Lord Justice Geoffrey VOS
Court of Appeal of England and Wales

(Key speaker)

First of all, I would like to say what a great honour it is to have been invited to speak at this important conference organised by the Council of Europe for the launch of its action plan on strengthening judicial independence and impartiality.

As many of you will know, the study of the “independence and accountability of the judiciary” is at the centre of the project of the organisation of which I am the current President, the European Network of Councils for the Judiciary. The ENCJ is really the only truly systemic judicial organisation in Europe. It deals with justice systems and not only judges individually. It has no individual members. It is a network of the Councils for the Judiciary and similar organisations in Europe that provide the all-important buffer between the judiciaries on the one hand and the executive and legislative branches of government on the other. Our members emanate from EU member states, but we also have some 15 observers from states that either have no formal Council for the Judiciary or are Councils in non-EU states.

We are in the course of undertaking the third year of our project on the subject of judicial independence, and I do not think I will be criticised if I say that some of the work we have done has been acknowledged as ground-breaking. Our objective, having spent 10 years concentrating on laying down a series of standards and guidelines for independent, accountable and effective justice systems, is now to take effective measures to help our member Councils for the Judiciary and Observers to put these standards fully into practice. In this way, I feel that our work chimes with the objectives of the Council of Europe’s new action plan

The independence project itself began by identifying the indicators of an independent and accountable judicial system, and applying those indicators to each of the justice systems operating in our members’ and observers’ countries. We drew a clear distinction between the objective indicators of independence and the subjective ones. For example, in many countries in Eastern Europe there is an entirely appropriate constitution enshrining the independence of the judiciary in a way that many of the older democracies cannot match, but whether subjectively the judges are as independent and accountable as would be desirable is, in some cases, a rather different matter. Our objective was to identify and score the indicators of true objective and subjective independence and accountability of both the individual judge and the justice system, and also to identify the generic challenges to the independence of the judiciary that all systems and judges face.

Our first conclusions were perhaps obvious. They were that the best safeguard of judicial independence is the provision of a high quality of justice for all in the form of timely, impartial and well-reasoned decisions, and that a judiciary that claims independence, but refuses to be accountable to society, will not gain its trust. Independence must be earned. The judiciary achieves legitimacy and the respect of its citizens by delivering high quality and transparent justice.

High standards will not, however, be achieved without objectively determined court budgets, proper administrative facilities and adequate human resources.

Moreover, the converse of what I have already said applies, a high quality of justice is not enough to guarantee an independent judiciary. There is still a need for formal safeguards, such as the existence of a Council for the Judiciary responsible for the governance of the judiciary, the protection of its independence, and improving the quality of judicial performance and for informing the public about the justice system.

It is clear that there are challenged judicial systems across the EU. An entirely compliant constitutional structure, including an apparently independent Council for the Judiciary, does not guarantee that the judicial system will be perceived as truly independent. Judicial accountability is a function of public understanding. The more interest that citizens show in the operation of their justice system, the more likely it is to be truly accountable.

Finally in this connection, another truism, but an important one: if politicians, citizens and judges alike recognise the need for real judicial independence, a lack of transparency and a lack of funding will not be tolerated. For that reason, education at all levels, including judicial training and promoting the public's understanding of the importance of independence for judges and the justice system, is key to ensuring that these aspirations are achieved.

These conclusions are crucial to an understanding of how we can work with challenged systems towards improving the confidence that citizens and the state have in them.

The primary challenges to independence were identified as being inadequate investment in the courts and judicial structures, increases in case complexity and workload, gratuitous criticism of judicial decisions by politicians, parliamentarians and the executive, and inadequate staffing and administrative assistance for judges.

Risks to the objective independence of the individual judge included changes to the retirement ages for judges, challenges to the security of tenure of judges, reduction in judicial pay and pensions and adverse changes to judicial conditions. Threats were posed across Europe from inappropriate pressure on judges arising from media comment. In some places, threats existed from internal pressure on judges exerted by court presidents or management, Councils for the Judiciary, or more senior judges. Increases were also observed in groundless complaints about judges personally or specific judicial decisions.

The main risks identified to the accountability of both the judiciary as a whole and of the individual judge were the failure of judges to reflect changes in civil society, and their being out of touch with ordinary citizens. Moreover, problems were created by judges having an online presence, for example by joining social networks, and by still prevalent judicial corruption in some member states. Accountability risks were also posed by the absence of a functioning press office to advise judges involved in cases attracting media attention.

Challenges to the independence of the judiciary are now very apparent in a number of countries both within the EU and in candidate member states. I will cite just a few of the examples already mentioned in the CCJE/CCPE's report commissioned by the Secretary General:- In Poland, the government is seeking unilaterally to change the composition and *modus operandi* of the Constitutional Tribunal in moves that are hotly resisted by the serving judiciary and the Council. In Turkey, the High Council has recently removed or demoted large numbers of judges on the supposed grounds that they support factions that oppose the serving government. In Albania, alleged judicial corruption has led to a dramatic loss of confidence in the justice system; massive international efforts have led to

important proposals for reform, but it remains to be seen how workable and effective these proposals will be.

These are not the only countries where judicial independence is seriously threatened; there are many others. This can be seen from the results of the ENCJ's 2015 survey of the opinions of nearly 6,000 judges in 22 countries as to their own independence. The results were astonishing and repay further study on the ENCJ website.

The survey showed that, on average, judges rated their own independence on a scale of 1 to 10, at 8.8, and the independence of judges in their own country generally at 7.9. So far, so good. But there were serious causes for concern. A large percentage of judges did not feel that their independence had been respected by government and the media. Many judges also thought that appointments and promotions in their countries had not been made only on the basis of ability and experience. Finally, in 11 of the 22 countries surveyed, more than 30% of judges either thought that judicial bribery had occurred in the last 2 years or were not sure if it had occurred.

Looking then at these problems from a judicial standpoint, what can be done to promote the “protection of the independence of individual judges and [ensure] their impartiality”?

It is first important to understand why individual judges and justice systems must be independent from the other pillars of the state. This is for one very simple reason. It is because they must decide issues that arise in every possible legal area between the citizen and the state. They must, therefore, be independent of the state, acting through either the executive or the legislature, if the public is to have confidence in the impartiality of their decisions.

Secondly, it is important to understand where the limits of judicial independence lie, if we are to be able effectively to protect that independence and ensure impartial judicial decision-making in every case. Rather like the rule of law itself, judicial independence is an aspiration rather than an absolute concept. Judges can and should be functionally and practically free from influence from the executive and the legislature, but they cannot operate in a constitutional vacuum.

Politicians often suggest that the limit is that the qualification is that “Judges can and should be functionally and practically free from influence from the executive and the legislature *in their decision-making*”. This qualification is explained by saying that it is not practicable for judges to be free from the peripheral influence of government decision-making when, in reality, the courts have to be financed by the government, and judicial leadership must in practice co-operate with government if the justice system is to operate within other state structures to deliver efficient high quality justice for all.

But I doubt whether the qualification is justified. Governments cannot do whatever they want in relation to judges and the justice system so long as they do not interfere with any individual decision. Government decisions can affect individual decisions both directly and indirectly, as the examples of Poland and Turkey that I have given so clearly demonstrate.

To understand the true and appropriate limits of judicial independence it is useful to consider just two well-known and well-established principles promulgated by the ENCJ:

- (1) Judges should be appointed on the basis of merit and capability alone.
- (2) Judges and the Council for the Judiciary should be closely involved in the formation and implementation of all plans for the reform of the judiciary and the judicial system.

First and foremost, judges must never be appointed for political reasons. They should be appointed on the basis of their ability to take impartial decisions on the basis of the law and the evidence and without fear or favour. This is an immutable rule. Because tinkering with judicial appointments for political reasons indirectly, but demonstrably, affects the decisions that courts make.

Secondly, judges and Councils must be closely involved in reforms to the judicial system. Reforms should not be done to judges of justice systems, even if judges cannot stand out against the will of a freely elected democratic government. Judges should not be hostile to modernisation and reform of the justice system, provided always that the contemplated reforms are aimed at improving the quality of the justice system for the benefit of those that it serves. Judicial involvement in the reform process should provide the balance between the wishes of the elected government and need to maintain judicial impartiality and the rule of law. Judges cannot stand apart from the economic austerity that everyone else in their countries face. But they can and should insist on a meaningful voice in how limited resources are deployed so as best to safeguard a high quality of justice.

Where then is the boundary between the judge's absolute right to decide the individual case on the basis of the law and the evidence, and the need to provide an efficient speedy quality justice system? Many judges complain of an infringement of their independence if they are told by their court president, for example, to deal with their cases more quickly, or they are required to operate in a more efficient way. But judges cannot be independent unless they are also accountable. Accountability is the *quid pro quo* for independence, and judges cannot simply say that they are the final arbiters of what they do and how they do it. They need to be seen to be co-operating in the operation of an efficient justice system.

That co-operation is a two-way street. Judges must be provided with the tools they need to do their work, including physical premises, Information Technology systems and staff to operate efficiently. That does not mean that judges are entitled to better facilities than anyone else in the public service. But it does mean that the justice system must be provided with adequate facilities and resources. In return, they must work with the executive and legislature to improve the efficiency and quality of what they deliver to the public. If that means co-operation in efficiency reforms, so be it.

I can perhaps interpose a cautionary tale from my own country. We are, in England and Wales, in the process of undergoing a major reform of the Court Service which operates and manages the courts and the deployment of judges. This will result in less physical courts, more online courts, more modern Information Technology, less staff overall and even perhaps less judges. But it is being undertaken with the co-operation of the judges. Such a reform offers the potential to interfere with the independence of the judiciary. But change does not automatically do so. The key to all such processes is, I think meaningful involvement of the judges and the Council for the Judiciary in the entire process.

The executive in all countries needs to have a clear understanding of what judicial independence and accountability entail. That is why the ENCJ has done so much to identify the indicators and the challenges to each of independence and accountability. Judges, however, need to realise that the concept of judicial independence is not an absolute one. They are responsible for the effective delivery of justice, and that is a great responsibility. To achieve it, they must work with their governments to provide what is imperative in every democratic state – a fair and impartial decision making process, in which citizens from all parts of society and the state itself has absolute confidence. This cannot be done by judges or the executive and parliament alone. There must be mutual respect and co-operation between the judiciary on the one hand and the executive and the legislature on the other hand if it is to be achieved.

In closing, I want to return to the theme of this presentation, namely the protection of the independence of individual judges and ensuring their impartiality. There is almost no more important task, because if public confidence in the justice system collapses, so does every other democratic protection for the citizen. The rule of law is most effectively upheld by a functioning and accessible justice system.

There are maybe 3 things that will most centrally ensure the independence and impartiality of judges. First, their appointment, promotion and discipline on the basis of merit and capability alone; secondly, their close and collaborative involvement in the formation and implementation of reforms to the judiciary and the justice system; and thirdly, the existence of durable constitutional safeguards that ensure proper finance and facilities for the operation of the justice system. Each of these three factors will have their effect on reducing and eradicating judicial corruption; ultimately that is a crucial goal, because otherwise public confidence in a quality justice system can never exist.

I am sure that this conference will be a great success. I am honoured to have been invited to take part.

COUNCIL OF EUROPE PLAN OF ACTION ON STRENGTHENING JUDICIAL INDEPENDENCE AND IMPARTIALITY

Ambassador Miroslav PAPA
Permanent Representative of Croatia to the Council of Europe
Chairman of the Committee of Ministers'
Rapporteur Group on Legal Co-operation (GR-J)

(Moderator)

Ministers, Ladies and Gentlemen,

I have the honour to moderate this session and to present to you the Council of Europe Plan of Action on "Strengthening Judicial Independence and Impartiality".

The Plan of Action has been prepared at the initiative of the Secretary General of the Council of Europe in line with the proposed action for achieving an efficient and independent judiciary indicated in his 2nd report on the State of Democracy, Human Rights and the Rule of Law in Europe – a shared responsibility for democratic stability in Europe and presented to the Committee of Ministers on the occasion of its 125th session held in Brussels on 19 May 2015.

It draws upon the findings of a review undertaken jointly by the Bureau of the Consultative Council of European Judges (CCJE) and that of the Consultative Council of European Prosecutors (CCPE) on the challenges for judicial independence and impartiality in the member States of the Council of Europe and a review of action taken by the member States to improve the independence, efficiency and responsibilities of judges, as set out in the appendix to Recommendation CM/Rec(2010)12 of the Committee of Ministers on the same subject.

These reviews were both undertaken as a follow-up to the Secretary General's 2nd Report. You will find the relevant documents in your folders.

The Plan of Action was adopted by the Committee of Ministers on 13 April 2016, after thorough discussion in its rapporteur group on legal co-operation, which I am chairing. I am very pleased to be able to present this document today. You should know that the review process preceding it began only in June 2015 and that in this relatively short period, it has been possible to gather information on the situation of the judiciary from all member States of the Council of Europe on this topic, to identify the main challenges and propose specific action to support and strengthen judicial independence and impartiality.

We must keep in mind that the Plan of Action is not as such a standard-setting instrument; it is a policy document representing a commitment on the part of the Secretary General and Council of Europe member States to strengthening judicial independence and impartiality. It sets out the ways in which the Council of Europe will guide and support its member States in the implementation of concrete measures for this purpose.

The Plan of Action thus aims to assist member States in establishing effective mechanisms and other measures to fully implement binding obligations under the European Convention on Human Rights to guarantee access to an independent and impartial tribunal whenever civil rights or obligations are at issue or criminal charges are to be determined. These mechanisms and action including all those that are required to implement the judgments of the European Court of Human Rights which affect the independence and impartiality of the

judiciary, particularly with regard to the guarantees provided by Article 6 concerning the right to a fair trial.

The seven main aims of the Action Plan have been defined after careful consideration of the information provided by judges and member States.

We hope that the remedial action proposed in the appended Explanatory Note will serve as a good basis for national reform efforts and for more specific co-operation between member States and the Council of Europe bodies in their efforts to strengthening judicial independence and impartiality in Europe.

The Plan of Action is due to be implemented within the next five years and its progress reviewed regularly by the Committee of Ministers on the basis of information submitted by member States. The support and advice the Council of Europe has been called upon to provide and the findings and analysis of its monitoring and advisory bodies will also be part of this review. It is intended for good practices to be identified and made available to member States.

The purpose of our debate this afternoon is to discuss the measures put forth in the Plan of Action and possible methods for its implementation in the Council of Europe member States. We would appreciate your input on how this Plan of Action can be implemented in terms of the key issues requiring specific attention, action already planned in your countries in these areas, and the role of the Council of Europe in addressing the issues.

Ladies and gentlemen,

I will not take more of your time, but will conclude by encouraging you to make good use of this opportunity for debate. I am convinced that with joint efforts we will be able to make good progress on the issues under discussion.

SECURING PUBLIC TRUST IN THE JUDICIAL PROCESS

Mr Nils ENGSTAD

Judge at Hålogaland Court of Appeal in Norway

President of the Consultative Council of European Judges (CCJE), Council of Europe

(Moderator)

Alexander Hamilton wrote quite correctly almost 250 years ago, in *The Federalist Papers*, that while the executive holds the sword of the community and the legislature commands the purse, the judge merely has his or her judgments. In its essence, this is still the case. Therefore, the judge and the judiciary are dependent on the public recognition of the legitimacy of the role of the judge in the society and the legitimacy of the judges' decisions.

As the Consultative Council of European Judges (CCJE) has pointed out; public confidence in and respect for the judiciary are the guarantees of the effectiveness of a judicial system.² Public trust in the judicial process is a precondition for the proper functioning of the courts in a democratic society.

Public trust and confidence in the judge entails public trust in the judicial system, that justice will be done, it entails public confidence in basic democratic values and that human rights will be upheld, eventually by the courts.

As the Secretary General of the Council of Europe expressed in his report of 2015 on the state of democracy, human rights and the rule of law in Europe; Honest and decent courts are the bedrock of any healthy democracy.

But, honesty and decency may not be sufficient. So, the question of today is: How can public confidence in the judicial process be achieved and reinforced?

I am pleased to introduce to you the key note speaker of this session; judge Julia Laffranque, who will provide us with a basis for further discussion.

Julia Laffranque is an Estonian judge and legal scientist. She has been a judge of the European Court of Human Rights since 2011. She is Vice-President of the second section of the Court, professor in European Law at the University of Tartu and former judge of the Supreme Court of Estonia. She is also former President of the Consultative Council of European Judges (CCJE).

² CCJE Opinion no. 18 (2015), on the position of the judiciary and its relations with other state powers.

SECURING PUBLIC TRUST IN THE JUDICIAL PROCESS

Ms Julia LAFFRANQUE
Judge at the European Court of Human Rights
elected in respect of Estonia

(Key speaker)

Prelude

“Always recognize that human individuals are ends, and do not use them as means to your end” - this is one of the central doctrines of German philosopher Immanuel Kant who was born today exactly 292 years ago in Königsberg.³

April 22nd is a birthdate of many other famous, as well as, controversial personalities, but I will limit myself to Kant as I think that this renowned quote of him illustrates very well one of the principal elements for securing public trust in the judicial process: respect for human beings and their rights, high ethical standards and sense of justice.

Introduction

Ladies and gentlemen, dear colleagues,

Let me express, how honoured I feel to address you this morning on this essential topic which has been thoroughly reflected in the Magna Charta of (European) Judges from 2010⁴, as well as in many of the opinions all adopted by the Consultative Council of European Judges, CCJE, an indispensable body for securing the judicial independence in Europe.⁵ One of these Opinions has already been referred to by the current president of the CCJE in his introduction.

I am also extremely happy to be for the first time in my life in Bulgaria, the “land of roses” and Sofia. In 2011 when I started my term as a judge at the European Court of Human Rights, two first pilot judgments concerning Bulgaria (Judgments *Finger v. Bulgaria*⁶ and *Dimitrov and Hamanov v. Bulgaria*⁷ of 10 May 2011) were adopted by our Court in which the Court asked the Bulgarian authorities to introduce remedies to deal with unreasonably long criminal proceedings and, a compensatory remedy in respect of unreasonably long criminal, civil and administrative proceedings. Indeed, two years later, on 18 June 2013, our Court had an opportunity in the cases *Valcheva and Abrashev v. Bulgaria*⁸ and *Balakchiev and Others v. Bulgaria*⁹ to examine the effectiveness of new administrative and judicial compensatory remedies that had been introduced in the meantime by the Bulgarian authorities following the two above mentioned pilot judgments. Our Court considered these new remedies to be effective despite an absence of a long term practice of them at that time. By now these remedies have been well established. You see, this Bulgarian example

³ Immanuel Kant, Grundlegung zur Metaphysik der Sitten (Groundwork of the Metaphysic of Morals): „Handle so, daß du die Menschheit sowohl in deiner Person, als auch in der Person eines jeden anderen jederzeit zugleich als Zweck, niemals bloß als Mittel brauchest“, Berlin: Holzinger, 2013, p. 39.

⁴ Magna Charta of Judges, Consultative Council of European Judges, Strasbourg, 17 November 2010 CCJE (2010)3 Final.

⁵ About CCJE and its Opinions see: http://www.coe.int/t/DGHL/cooperation/ccje/default_en.asp (22.April 2016).

⁶ *Finger v. Bulgaria*, no. 37346/05, 10 May 2011.

⁷ *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, 10 May 2011.

⁸ *Valcheva and Abrashev v. Bulgaria* [dec.] nos. 6194/11 and 34887/11, 18 June 2013.

⁹ *Balakchiev and Others v. Bulgaria* [dec.] no. 65187/10, 18. June 2013.

points out the importance of another aspect of securing public trust in the judicial process – rendering justice in a reasonable time.

Indeed, the jurisprudence of the European Court of Human Rights contains many elements and requirements which are more or less connected to securing the public trust in judicial process. Anyway, there is hardly a topic or field of life that has not yet been covered by our case-law!

Defining the Topic of my Intervention

As far as the topic I was asked to intervene as a keynote speaker:” Securing public trust in the judicial process” is concerned, then I must admit it is a bit difficult to define, as well as to measure the “public trust” as such.

It has to do on the one hand with the confidence and expectations of society in the judicial system, a system which should be transparent and accountable. It has to do with the image of judiciary and judges that people have and on the other hand also with the maintenance of the respect in, independence, authority and impartiality of the judiciary.

“Justice must not only be done; it must also be seen to be done.”¹⁰ This does not necessarily mean that the judgments of the courts including ours are always reflecting some abstract sense of justice a society might have at a given moment. Our judgments are not to please those in power, any state authorities or any other parties of the case; they are to be objective and impartial. What is important is that all courts and in particular human rights courts should themselves be human, in service of justice, respecting human rights and rule of law, faithful to the values the European Convention on Human Rights (Convention) endorses, independent and impartial and true to its own identity. Their judgments must be well drafted, reasoned and explained. When well-reasoned, the judgments will also be better accepted despite the possible disagreement.

I can't recall tangible examples where our Court has referred directly to “public sense of justice” as a decisive argument. In one exceptional case which concerned the issue of the deprivation of liberty during a pre-trial medical examination of an applicant, who at the age of fifteen, had been arrested in Greenland for rape and murder of an eighty-five-year-old lady in Denmark, our Court nevertheless acknowledged that the domestic courts relied not only on the gravity of the charge against the applicant, but also on the public reaction. Our Court accepted that more concretely the domestic courts found that it would have offended the public sense of justice if the applicant, who had been charged with rape and homicide of an old lady, had been released pending completion of his mental status examinations.¹¹

Staying firm to European values does however not mean that our Court disregards the real life, the problems societies are facing, their cultural and historic backgrounds as well as developments in new technologies and science. In determining the intensity of European supervision our Court does look at the European trends and consensus on a certain issue, if such trend or consensus exists and takes into consideration the principle of subsidiarity

¹⁰ *R v. Sussex Justices, Ex parte McCarthy*, [1924] 1 KB 256, [1923] All ER Rep 233, a leading English case on the impartiality and recusal of judges which is famous for its precedence in establishing the principle that the mere appearance of bias is sufficient to overturn a judicial decision and brought into common parlance the oft-quoted aphorism "Not only must Justice be done; it must also be seen to be done."

¹¹ *J.M. v. Denmark*, no. 34421/09, 13.November 2012.

according to which domestic judiciaries are often better placed to decide, as well as the margin of appreciation of local authorities, if there is any room for a margin. The European Convention of Human Rights itself is to be interpreted by our Court as a living instrument.¹² Public confidence in justice plays an important part in this context.

In the Grand Chamber judgment, *Morice v. France* from 23 April 2015,¹³ our Court elaborated on what can be understood under maintaining the authority and impartiality of the judiciary, which can as such according to Article 10 § 2 of the Convention be a ground for restrictions from freedom of expression if prescribed by law and necessary in democratic society. In this case the Court found a violation of freedom of expression of a lawyer, Mr. Morice who had been convicted in France for complicity with a newspaper in the defamation of investigating judges. Our Court found in particular that Mr Morice had expressed value judgments with a sufficient factual basis. His remarks had not exceeded the limits of the right guaranteed by freedom of expression and they concerned a matter of public interest, namely the functioning of the justice system. The Court further stressed that significant weight had to be attached to the context of the case, while pointing out that it was necessary to maintain the authority of the judiciary and to ensure mutual respect between judges and lawyers. Our Court said: "Questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In this connection, regard must be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, **it must enjoy public confidence if it is to be successful in carrying out its duties.** It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying."¹⁴

The Court continued that the phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the resolution of legal disputes and for the determination of a person's guilt or innocence on a criminal charge; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function. What is at stake is the confidence which the courts in a democratic society must inspire not only in the accused, as far as criminal proceedings are concerned.¹⁵

If public trust is a rather vague concept, which can encompass many aspects, some of which I am sure you covered Yesterday while speaking about independence and impartiality of judiciary when I unfortunately was still on my way to Sofia after a Grand Chamber hearing and deliberations in Strasbourg, then judicial process also covers a very large area and is not only limited to judges, but involves many other actors.

¹² *Tyrer v. the United Kingdom*, no. 5856/72, § 31, 25. April 1978 and *Christine Goodwin v. the United Kingdom*, [GC], no. 28957/95, § 75, 11 July 2002: „The Court proposes therefore to look at the situation within and outside the Contracting State to assess “in the light of present-day conditions” what is now the appropriate interpretation and application of the Convention.“

¹³ *Morice v. France* [GC], no. 29369/10, 23. April 2015.

¹⁴ *Morice v. France*, cited above, § 128; see also *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313; *Karpetas v. Greece*, no. 6086/10, § 68, 30 October 2012; and *Di Giovanni v. Italy*, no. 51160/06, § 71, 9 July 2013.

¹⁵ *Morice*, cited above, §§ 129-130, see also *Worm v. Austria*, 29 August 1997, § 40, Reports 1997-V, and *Prager and Oberschlick*, cited above; *Kyprianou v. Cyprus* [GC], no. 73797/01, § 172, ECHR 2005-XIII, *Kudeshkina v. Russia*, no. 29492/05, § 86, 26 February 2009, and *Di Giovanni*, cited above.

What is limited, is however, my speaking time and therefore please allow me now turn to some keywords which do not attempt to be exhaustive or go into details, but are to my mind relevant when we talk about securing public trust in the judicial process and can be further elaborated in our discussions.

Let me make ten points which are divided into two parts. In the first part I will concentrate on the judiciary itself and in the second part on the outside factors of the judiciary, but they are indeed often intertwined.

Securing the public trust within the judiciary

- 1) It goes without saying that courts must be independent from other state powers and established by law¹⁶;
- 2) One important aspect of public trust in judicial system has to do with the appointment of judiciary; stable term of office and irremovability of judges;

This means among other things that there exists a solid education and training of judges, real competition and high quality candidates for judicial posts, appointment procedure of judges which is transparent and free of political influences and involves an independent authority (Council for Judiciary)¹⁷ which itself is composed in a transparent and democratic manner, applies high standards and is free of any influences on the integrity of its decision-making process, also when it comes to the appointment of people to key positions.

We have had cases in our Court, where judges who have not been promoted to higher level courts or presidents of the courts argued that there was no review of these appointment procedures and no transparency.¹⁸ We have also had cases about removal of judges from the office for making critical statements in the media¹⁹ or for a misconduct and cases dealing with the issues of independent tribunal and structural defects of the system of judicial discipline: absence of limitation period for imposing disciplinary penalty on judges and abuse of electronic vote system in Parliament when adopting decision on dismissal of the judge of the Supreme Court;²⁰ as well as other cases concerning the procedure of dismissal of judges.²¹

¹⁶ Article 6 § 1 of the Convention.

¹⁷ See Opinion No. 10 of the CCJE (2007) on the Council for the Judiciary at the service of society, in particular Para. 18, available at: https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf (22 April 2016).

¹⁸ See for example *Tsanova-Gecheva v. Bulgaria*, no. 43800/12, 15 September 2015 where the applicant, a judge who had applied for the post of president of Sofia City Court, had not been appointed by the Supreme Judicial Council, was complaining of the manner in which the Supreme Administrative Court examined her subsequent claim for judicial review of the Council's decision to appoint another candidate. Our Court found no breach of Article 6 § 1 of the Convention, but it noted the concerns, expressed, among others, by the European Commission, about the lack of transparency in the judicial appointment process in Bulgaria, and about the allegations of interference of the political powers in that process, §§ 61, 62 and 104 of the judgment.

¹⁹ *Kudeshkina v. Russia*, no. 29492/05, 26 February 2009.

²⁰ *Oleksander Volkov v. Ukraine*, no. 21722/11, 9 January 2013.

²¹ For example, in the case of *Mitrinovski v. "The former Yugoslav Republic of Macedonia"*, no. 6899/12, 30 April 2015, the Court held that there had been a violation of right to a fair trial. The case concerned the dismissal from office of a judge of the Skopje Court of Appeal on the grounds of professional misconduct. Our Court found in particular that the role of the President of the Supreme Court in the proceedings leading to Mr Mitrinovski's dismissal lacked impartiality, as he had both initiated the proceedings and subsequently participated in the decision.

- 3) Related to the above is another important aspect of securing public trust in judicial system, namely independence and impartiality of judges²²

Independence of the courts and judges must never be taken for granted and must be guaranteed constantly both externally and internally. As far as the internal independence is concerned than the absence of sufficient safeguards ensuring the independence of judges within the judiciary and, in particular, vis-à-vis their judicial superiors, may lead our Court to conclude that there are problems with the independence of a court.²³

This includes autonomy of the courts to decide on its own rules and administrative matters, but also upholding the social guarantees, remunerations and pensions of judges and of others who work for the judiciary.

Judge must have the leading position in processing the case and receive support from the competent registry.

Independence also means that there is neither perceived nor real lack of independence of the courts when dealing with cases, including high-profile and politically sensitive ones and that there exist effective remedies to question/contest the lack of independence and impartiality of a judge.²⁴

- 4) This leads me to stress the importance of judicial ethics, Code of Ethics of judges, but also deontology of prosecutors, lawyers and other actors and organs involved in judicial protection.
- 5) A further element in this chain is a fair trial with all its procedural guarantees provided by Art 6 of the Convention (this involves also already outside actors such as lawyers, prosecutors, etc.) and the swift procedure within reasonable time in general; including judgments made within reasonable time.²⁵
- 6) Following the procedure, it is the high quality of the work of judiciary: well-reasoned judgments that contribute greatly to the public trust in judiciary.

²² In determining whether a body/tribunal can be considered to be "independent" for the purposes of Article 6 § 1 of the Convention – notably of the executive and of the parties to the case, but also from the legislature, the Parliament – our Court has had regard *inter alia*, to the following criteria: the manner of appointment of its members and the duration of their term of office; the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. See, *Le Compte, Van Leuven and De Meyere*, no. 6878/75; 7238/75, 23 June 1981, Series A no. 43, p. 24; *Crociani, Palmiotti, Tanassi, Lefebvre d'Ovidio v. Italy*, [dec.] no. 8603/79, 8722/79, 8723/79 and 8720/79, 18. December 1980; *Ninn-Hansen v. Denmark*, dec. no. no. 28972/95 of 18. May 1999; *Campbell and Fell v. the United Kingdom*, no. 7819/77, 7878/77, 28 June 1984; *Piersack v. Belgium*, no. 8692/79, 1 October 1982, Series A no. 53, p. 13, and *Delcourt v. Belgium*, no. 2689/65, 17 January 1970, Series A no. 11, p. 17. According to the Court's constant case-law, when the impartiality of a tribunal is being determined, regard must be had to the personal conviction and behaviour of a particular judge in a given case – the subjective approach – as well as to whether sufficient guarantees were afforded to exclude any legitimate doubt in this respect – the objective approach, see for example *Kyprianou v. Cyprus*, cited above, § 118, and *Fatullayev v. Azerbaijan*, no. 40984/07, 22 April 2010, § 136.

²³ See *Parlov-Tkalčić v. Croatia*, no. 24810/06, 22 December 2009, §86.

²⁴ For example our Court has held that if there is a reasoned doubt that the judge is not impartial, he or she needs to withdraw from the case, *Golubovic v. Croatia*, no 43947/10, 27 November 2012.

²⁵ Instead of referring to numerous case-law of our Court, let me point out further valuable materials prepared by the European Court of Human Rights where relevant references can be found: Guide on Article 6 Right to a fair trial (civil limb), available at: http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf (22 April 2016) and (criminal limb) available at: http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf (22 April 2016).

Our Court has continuously stressed the importance of reasoning²⁶, as well as pointed out to problems with inconsistencies in case-law.²⁷

Furthermore, it is important to have a right balance between quality and efficiency of judicial work.

- 7) Finally: a vital element for securing public trust is the accountability, possibility of disciplinary and other sanctions, liability and responsibility of judges.²⁸

This includes that there is no perceived and of course no real corruption and no trading of influence in any levels of judiciary.

Securing the public trust means also that when corruption is discovered it will be made public and reacted to.

As far as including the other actors outside judiciary is concerned

- 8) As mentioned above in looking at securing public trust in judicial process in a global picture: also other actors such as lawyers and prosecutors play an important role, in particular as far as their functions in proceedings regarding the division of powers, their independence and accountability, as well as relationships between them and judges, are concerned.

Our Court has stressed that the proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system.²⁹

This comprises dialogue and co-ordination between judges and between judges and different actors including international co-operation.

- 9) Furthermore, the roles of the legislature and executive are worth of separately mentioning.

Legislature is an important task in building the ground for public trust in judicial system in adopting both procedural as well as substantial laws that are coherent and clear.

As far as the role of executive and law enforcement authorities is concerned then the judgments would be illusory if they will not be enforced.³⁰

²⁶ For example, *H. v- Belgium*, no. 8950/80, 30 November 1987; *Ruiz Torija v. Spain*, no. 18390/91, 9 December 1994, *Hiro Balani v. Spain*, no. 18064/91, 9 December 1994, *Buzescu v. Romania*, no. 61302/00, 24 May 2005, *Donadze v. Georgia*, no. 74644/01, 7 March 2006, *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01 28 June 2007.

²⁷ For example in *Zivic v. Serbia*, no no. 37204/08, 13 September 2011, where our Court found that there has been a breach of Article 6 of the Convention on account of the profound and persistent judicial uncertainty which had not been remedied by the Supreme Court in a satisfactory manner.

²⁸ At this point a reflection of proportionality of sanctions of judges is worthwhile: on the one hand not unproportionally low e.g. in corruption cases only a reprimand, e.g. *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, 20 September 2011 or on the other hand no disciplinary sanctions up to losing their posts (dismissal) of judges when making use of their freedom of expression, e.g. *Kudeshkina v. Russia*, cited above.

²⁹ See *Morice v. France*, cited above, § 170.

³⁰ Our Court has said that the right to bring proceedings would be illusory if a final, binding judicial decision was allowed to remain inoperative, see *Hornsby v. Greece*, 19 March 1997, Reports of judgments and decisions 1997-II, § 40 and, among many authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and *Burdov v. Russia (no. 2)*, no. 33509/04, ECHR 2009.

Often the problem is that on paper good laws and judgments exist, but their application and implementation in practice is different and deficient.

In a nutshell, our Court has emphasised that the scope of the state's obligation to ensure a trial by an "independent and impartial tribunal" is not limited to the judiciary. It also implies obligations on the executive, the legislature and any other state authority, regardless of its level, to respect and abide by the judgments and decisions of the courts, even when they do not agree with them. Thus, the State's respecting the authority of the courts is an indispensable precondition for public confidence in the courts and, more broadly, for the rule of law. For this to be the case, the constitutional safeguards of the independence and impartiality of the judiciary do not suffice. They must be effectively incorporated into everyday administrative attitudes and practices.³¹ Also by executing the judgments, the independence and impartiality of courts must be preserved.³²

10) Last but not least, an important element in securing public trust in judicial process is the crucial role of media: both in explaining about the judicial system and giving objective information as well as in granting the freedom of expression of judges, and lawyers in contributing to a debate on a matter of public interest.

This includes awareness rising of the public as such. It is important that judges who wish to be involved in teaching and in expressing their views on judicial matters and legislative reforms affecting the judiciary, are in general, without of course commenting any pending cases or reveling secrecy of deliberations, able to do so, in particular judges in their professional capacities as presidents of the courts or Judicial Councils.

The relationship between media and judiciary plays a decisive role in reaching out people and informing them about their rights as well as justice system.

In this respect many questions have been raised, such as are courts to be seen as public service?³³ Are judges to speak freely about the problems of judiciaries, expressing their emotions on debates in society?³⁴ What is the role of lawyers and journalists in informing the public about shortcomings in the handling of ongoing proceedings and to contribute to a debate on a matter of public interest?

As far as freedom of expression of others than judges containing discussion on judiciary is concerned, our Court has expressed in addition to the above mentioned extracts from the judgment *Morice v. France* that members of the judiciary are part of a fundamental institution of the State and are therefore subject to wider limits of acceptable criticism than ordinary citizens.³⁵

Constructive critics can instead of harming, contribute to the improvement of authority and trust in judiciary.

As well as for example dissenting opinions of individual judges.

³¹ From *Agrokompleks v. Ukraine*, no. 23465/03, 6 October 2011, § 136.

³² *T v. the United Kingdom*, no. 24724/94, 6 December 1999.

³³ In this respect our Court has recognised in its case-law the applicability of freedom of expression to civil servants in general, it has also applied the criteria established in case law concerning the applicability of Article 6 of the Convention on civil servants in disputes regarding judges, see *G. v. Finland*, no.21722/11, 27 January 2009 ; *Oleksander Volkov v. Ukraine*, cited above; *Di Giovanni v. Italy*, no. 51160/06, 9 July 2013, *Harabin v. Slovakia*, no. 58688/11, 20 November 2012, *Olujić v. Croatia*, no. 2230/05, 5 February 2009 and *Tsanova-Gecheva v. Bulgaria*, cited above.

³⁴ See for example *Wille v. Liechtenstein*, [GC], no. 28396/95, *Kudeshkina v. Russia*, cited above.

³⁵ See *Morice v. France*, cited above, where

Our Court has nevertheless emphasised that lawyers could not be equated with journalists, not being external witnesses with the task of informing the public, but being directly involved in the functioning of the justice system and the defence of a party.³⁶

However, in the Grand Chamber judgment in the case of *Bédât v. Switzerland*,³⁷ our Court held, by a majority, that there had been: no violation of Article 10 (freedom of expression) of the Convention. The case concerned the fining of a journalist for having published documents covered by investigative secrecy in a criminal case. The Court found in particular that the publication of an article slanted in the way it had been at a time when the investigation was still ongoing comprised the inherent risk of influencing the conduct of proceedings which had in itself justified the adoption by the domestic authorities of deterrent measures, such as a ban on disclosing confidential information.

Concluding remarks covering also our Court

Hopefully, you have seen from these few random examples and keywords, that there are very many aspects in securing public trust in judicial process.

Securing public trust in judicial process is by no means a one-way street. It depends very much on a legal culture as such, on state of mind of common people, as well as judges themselves, how independent they feel themselves in their minds.³⁸

Swift in mentality takes a long time, I have experienced this in my country of origin, Estonia, it might take generations. Nowadays however I am proud to note that the Estonian courts are keen in applying European principles and extending them on the domains which are not covered as such by European law and do not necessarily fall outside the domestic law. It has become self-evident and natural and also the people are interested in the judgments of European Court of Human Rights.³⁹

The same aspects of securing public trust in judicial process apply also in relation to international courts, including our Court.

The European Court of Human Rights must itself also adhere to the principles it demands from the national jurisdictions: efficiency and authority: well-motivated judgments within reasonable time.

This precludes also continuous training of judges, keeping up with what is going on in the world. As French ethical code of judges so rightly puts it: "Ruling in an independent fashion is also a state of mind. It involves know-how and behaviours that must be taught, cultivated and developed throughout an entire career."⁴⁰

³⁶ *Morice v. France*, § 148.

³⁷ *Bédât v. Switzerland [GC]*, no. 56925/08, 29.03.2016.

³⁸ See about that *Julia Laffranque*, *Judicial Independence in Europe: Principles and Reality*, in particular, *Conclusions: the Culture of Judicial Independence*, in *The Independence of Judges*, Nils A Engstad, Astrid Laerdal Froseth and Bard Tonder (eds.), Eleven International Publishing, 2014, pp 127-148. *Julia Laffranque*, *Judicial independence – as natural as the air that we breathe*, in particular subtitle 6, CCJE: a Unique Body Encouraging Judicial Independence as a State of Mind, in *Dommernes Uavhengighet*, Nils A Engstad, Astrid Laerdal Froseth and Bard Tonder (eds.), Fagbokforlaget, 2012, pp 327-342.

³⁹ See further *Julia Laffranque*, *European Human Rights Law and Estonia : One-or Two-way Street ?*, *Juridica International*, 23/2015, pp. 4- 16.

⁴⁰ See 'Compendium of the Judiciary's Ethical Obligations of French Judges', Preamble, 2010, previously available at: http://www.conseil-superieur-magistrature.fr/files/recueil_des_obligations_deontologiques_des_magistrats_EN.pdf

I started with philosophy and will also conclude my speech with philosophy: Anatole France has written: "A good judge should have a spirit of a philosopher and a simple goodness."⁴¹

It is not easy to live up with the high expectations that our Court has often been set from our applicants and bear the careful-critical look at our case-law of the Member States. It needs strong and solid legal, ethical and legitimate bases for the Court to take up this huge responsibility, responsibility that ideally should be shared with States. But it also takes a lot of courage to admit mistakes and change the case-law if really need be, after all our Court is the conscience of Europe.

⁴¹ "*Le bon juge devrait unir l'esprit philosophique à la simple bonté.*" Citation d'Anatole France ; Opinions sciales - 1902.

CONCLUDING REMARKS

Mr Philippe BOILLAT
Director General of Human Rights and Rule of Law
Council of Europe

Ministers, honourable judges, excellences, distinguished guests,

We have come to the end of our programme, and on behalf of the Secretary General of the Council of Europe I would like to make some brief concluding remarks and, of course, not formal conclusions. I would like, first of all, to thank most sincerely the hosts of this prestigious event, the current Chairmanship of the Council of Europe Committee of Ministers, the Government of Bulgaria. Our particular thanks go to the Minister of Justice of Bulgaria, Ms Ekaterina Zaharieva, and her team for the efficient and professional manner in which they have organised the conference.

We are also very grateful to all the keynote speakers and moderators for their valuable contributions.

Since the opening yesterday morning we have grappled with many important but sensitive points related to the main theme of this event: judicial independence and impartiality as a pre-condition for the rule of law in each genuine democracy. Interventions have underlined and confirmed that the rule of law requires the establishment of competent courts that render decisions of the highest possible quality. And those courts must be presided over by well-qualified judges endowed with the necessary independence to be able to take such decisions, confident that their role and position will be respected.

Likewise, criminal charges must be brought, or a decision taken not to pursue such charges, by prosecutors who are able to operate in full professional autonomy within their hierarchy.

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The judiciary is one of the three branches of power and the judiciary is, by its inherently non-political nature, quite different from the executive and the legislative. Because of the role they are called upon to play, the members of the judiciary should enjoy a particular status vis-à-vis the state and the public. The judiciary is a public service, benefiting from and accountable for, taxpayers' money. All of this makes for a very complex set-up. The Council of Europe and the experts in our member states have given considerable thought to the ways in which the judiciary power should be set up and should interact with the other powers of state.

It was extensively referred to the Council of Europe standards in this area, and detailed guidance is also available in respect of the responsibilities and status of the members of the judiciary. Guidance which may be particularly useful in the context of reforms and the drafting of new legislation. Participants have shared examples of successful reform efforts carried out at the national level with the aim of strengthening judicial independence. In addition we have heard and understood some of the challenges that may be encountered when undertaking reforms. Judicial independence must be guaranteed in law but also in practice.

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Many important points have already been raised by our general rapporteur, Mr Francesco Chrisafulli, and for my part I would therefore like to highlight just four points from our discussion which I consider particularly noteworthy:

- An absolute bar on the politicisation of the judiciary is needed;
- Corruption within the judiciary must be fought by all means available. This cannot be done by working only with the judiciary but must involve all powers and institutions. Shining the light of public debate on the issue can only – in addition with other measures of course – increase the public trust in the judiciary and broader recognition of the value of the independence and impartiality;
- An issue to be looked at in future would be that of the balance between independence of the judiciary and freedom of expression: freedom of expression of the media, freedom of expression of the parliamentarians, freedom of expression of the judges themselves;
- Finally, and this is perhaps the issue that has been raised most frequently and on which a clear consensus seems to exist, there is a need for a culture of independence which is linked with a change of mentality, of state of mind. We can all agree that this is easier said than done but it is a prerequisite if judicial independence is to become a reality. The training offered to judges and prosecutors in this area could probably help.

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Dear participants,

This conference was also convened in order to provide a forum for the launch of the new Council of Europe Action Plan on “Strengthening Judicial Independence and Impartiality” adopted by the Committee of Ministers earlier this month (13 April 2016). The Action Plan will guide the work of the Council of Europe and its bodies in the field of judicial independence in the five coming years. It is a first step of an ongoing exercise which needs time. The Council of Europe will use this Action Plan when developing and implementing our cooperation programmes, when working with member states on new or draft legislation related to judicial independence and impartiality, and in relation to the work of our advisory bodies which will also have a crucial contribution to make in the follow-up, notably the CDCJ, the CCJE, the CCPE, and of course the Venice Commission and in particular its new Rule of Law Checklist.

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Ministers, your excellences, honourable judges, ladies and gentlemen,

Thank you once again on behalf of the Council of Europe for your presence and contributions here. Many thanks also to our interpreters. Judicial independence and impartiality will remain at the top of the agenda of the Council of Europe and we look forward to pursuing our activities in this important field with you, in all the different fora where we have the privilege of working with our member states and with other international organisations and associations active and knowledgeable in this field. I look forward to our continued cooperation.

REPORT OF THE GENERAL RAPPOREUR OF THE CONFERENCE

Mr Francesco CRISAFULLI
Judge at the Rome District Court (Italy)

This conference, for which the Bulgarian government must be heartily congratulated – and in particular Mrs Ekaterina Zaharieva, the Minister of Justice, to whom it is my pleasure to pay tribute – in view of its excellent organisation in co-operation with the Council of Europe, began yesterday under the auspices of Charles-Louis de Secondat, the Baron of La Brède and Montesquieu, who was quoted by the first moderator, Mr Boillat. The programme of the conference appears in the Appendix to this report.

The subsequent discussions showed us that this quotation is in principle still highly relevant today. Throughout the speeches, and especially (but not exclusively) during the first session, the spirit of laws (and, we might add, the spirit of case law) was the *leitmotiv* of the conference. All of the speakers clearly stated their commitment to the principle of the independence and impartiality of the judiciary: the minister also underlined this at the close of the discussions yesterday afternoon.

However, in my opinion, the conference also showed the extent to which, in practical and operational terms, Montesquieu's reasoning now constitutes a challenge on a scale that is perhaps greater than he himself imagined.

This is evident from the paradox mentioned several times during the discussions: the constitutions and laws of European States, although they can of course be improved upon, are generally adequate and satisfy the need to guarantee the independence and impartiality of the judiciary. However, in practice, we are still a long way from achieving this goal in a fully satisfactory manner in all of our countries. This paradox was expressed perhaps even more strikingly by Mr Buquicchio, who highlighted the relationship of inverse proportion that exists, if one compares old and new democracies, between legislative statements about the independence of the judiciary and the reality of this independence.

I do not claim to know what the everyday life of a judge – or a citizen – was like in Montesquieu's time, but the relationship between the branches of power must have appeared relatively simple: an executive – a sovereign – whose tendency to impose his authority on citizens (or subjects) to a degree that pushed the limits of arbitrariness, and even exceeded them, was only too well known, and *vis-à-vis* whom people felt they must be wary and protect themselves; a legislature which, due to the fact that it was an expression of the will of the people, was supposed to have the interests and rights of the people at heart; and a judiciary whose main task was to ensure that everyone, even the executive, obeyed the rules made by lawmakers. In this context, the question of independence and impartiality could be framed in relatively simple terms: protecting judges from undue pressures which the executive might exert on them, including threats or promises of advantages and promotions, in order to weaken and enslave them.

Nowadays, in modern or post-modern society, things are much more complex. Although they are democratic, lawmakers are not necessarily the friends of the people and a guarantor of individual rights; the constitutional mechanisms of representative democracies create an alliance (or even a misalliance), albeit a physiological one, between parliamentary assemblies and the executive, which means that the law can easily become an instrument of arbitrary governance; politics, the government, the administration, are no longer the only authorities that can threaten the independence of the judiciary and hence

the rule of law: there are also other authorities, other forces – economic or media forces – which now pose an equally worrying potential threat.

At the same time, the means whereby the independence and impartiality of the judiciary can be undermined are becoming increasingly subtle and sophisticated: the management of financial, human and material resources, or pay and pensions policy, are examples of this, and were mentioned several times.

Another example, which is an even trickier issue, is the responsibility of judges and prosecutors. This is a very sensitive matter which was touched upon during the discussions, but perhaps not in sufficient depth.

Judges cannot be exempt from all responsibility. It must even be acknowledged that responsibility goes hand in hand with independence: they are two sides of the same coin. A court judgment can destroy a company, make hundreds of workers penniless, dilapidate assets, undermine a country's economic policy, and crush a family or a person's life. It is no surprise that, in many countries, the public demands more careful oversight to prevent possible cases of maladministration of justice and tougher penalties against judges who "err", and that for their part, governments and lawmakers try to respond to the supervisory authorities. But determining the basis and extent of judicial responsibility – whether it be disciplinary, civil or even, to a lesser extent, criminal in nature – is of crucial importance if we want to prevent it from becoming a permanent threat to the freedom of judgment and hence the independence (and also impartiality) of the judiciary.

Striking a fair balance between the requirements of independence and responsibility is a major challenge for lawmakers who seek to establish or improve the conditions for judicial impartiality. I do not claim to be able to offer a ready-made solution to this problem, and I note that the conference has highlighted the importance of this question without attempting to answer it, which would have been impossible at this stage. I will limit myself to underlining, however, that in order to strike this balance, we must not lose sight of the primacy of the independence of the judiciary and the necessarily secondary importance of responsibility in all its forms. Of the latter, it is responsibility (criminal, civil and disciplinary) for acts of judicial corruption (of any kind whatsoever, including subservience to political authority) which must be punished most severely of all, as it undermines the very foundations of the impartiality of judges and the credibility of the judicial system as a whole. Conversely, when addressing miscarriages of justice (in both criminal and civil law), caution is necessary, and it must be remembered that law is not an exact science, and we must acknowledge that the subjective part of the task of interpreting the law is a factor in the development of case law, and disabuse ourselves of the pseudo-epistemological illusion that in court, we can find the "truth" about events, a truth which often escapes even the protagonists.

I have mentioned the relationship between independence and responsibility; I could add, following on from some of yesterday afternoon's speeches, the relationship between independence and freedom of expression: once again, the difficulty is striking the right balance between the two; and we cannot overlook the fact that this balance is sometimes absent, to the detriment of the impartiality that must accompany the independent exercise of judicial authority. The greatest possible attention should be paid to these challenges.

This brings me to another issue which has just been addressed this afternoon, during this final session of the conference: public confidence, the legitimacy of judges and prosecutors, and transparency. These are terms which were mentioned in this room yesterday, and have been mentioned again today. So, putting my role as a neutral and impartial rapporteur to one side for a moment, if I may express a personal opinion, these

are dangerous concepts which we should be wary of, or which should at least be used with circumspection.

Transparency in justice is inherent in the judicial mechanism itself: it is manifested in the fact that judicial proceedings are conducted in public and judgments and the reasons for decisions are published. This is the only form of transparency that we can demand from a truly independent and impartial judiciary: we should beware the temptation to oblige the courts to explain themselves in public otherwise than through reasoned decisions arising out of adversarial proceedings between parties who enjoy equality of arms. This applies equally to judges and prosecutors, whose investigations are secret by virtue of their very nature and whose decisions and acts can only be confirmed or contradicted by the final judgment.

In Italy, we have seen some examples of judges who allowed themselves to be drawn into “explaining” or commenting on a particular judgment in a case that received a lot of media attention, to which they had contributed. This added nothing to the transparency of justice, the acceptance or condoning of the decision, which some of the public disagreed with, or public confidence in the judiciary. On the other hand – and I apologise for mentioning my own country again, but I cannot keep abreast of legal developments in all 47 member States of the Council of Europe – almost daily, we see concrete expressions of what is very optimistically called “public confidence”: judges and prosecutors are regarded as the ultimate defenders of justice when they take a decision which satisfies the wishes of the people, even if, the very next day, they become traitors, murderers, accomplices of criminals, *Torquemadas* or executioners if a verdict does not find favour with the masses.

So the guarantee of independence and impartiality of the judiciary also entails the protection its members must receive from institutions, in particular the self-regulatory bodies, against media attacks and attacks from the public, which are not to be confused with criticism that continues to be legitimate provided that it is informed and argued in technical terms.

The legitimacy of the judiciary is not – and cannot be – “democratic”. Although it is no longer (at least in theory) the tyrannical rule of the majority, democracy is nonetheless an unstable and changing balance between different interests, different requirements, and sometimes different impulses. Democratic decisions are expressed through the law, which has the advantage of giving them a certain stability, a certain consistency, a degree of certainty (legal certainty, the protection against arbitrariness – and here I am also referring to the concept of “law” that the European Court of Human Rights adopts when it assesses the legal basis of an interference with guaranteed rights). They cannot be expressed through the courts: should judges who draw legitimacy from the democratic nature of their appointment lose that legitimacy when the majority changes? Should they swear allegiance to the majority that appointed them? And is it not the task of judges to defend above all the rights of minorities, who presumably did not select them?

I think that the only legitimacy of the judiciary and its members is technical and moral legitimacy, which is guaranteed by objective, transparent, strict and credible selection procedures, by thorough and proper initial and in-service training, by rigorous checks on the probity of its members, and by stringent punishments for misconduct and corruption. This is where the strength of the judiciary lies: in its privileged position of being not at all subject to the changeability of a democratic majority. And this is a different issue which has been addressed several times over these two days and to which the speakers have rightly attached great importance.

This is how we can hope to gain public confidence in the administration of justice. Not by giving way to temptations which are likely to weaken the independence of the judiciary

or by making it subject to the changing whims of public opinion, rather than strengthening it, and not by pandering unduly to unqualified public criticism, which is often unacceptably vehement and bereft of a sound foundation rooted in knowledge of the principles and rules that the judiciary must obey in the interests of citizens, but rather by ensuring that the judicial mechanism functions properly. This requires adequate resources and staff, a manageable workload which is compatible with swift but duly careful and thorough handling of cases, a level of pay which reflects the weighty responsibilities of judges, effective protection against attacks on the prestige of the judiciary and every judge, and a balanced system of penalties which combines prevention and suppression of misconduct (first and foremost corruption) with tranquillity and freedom of thought and action for judges in the exercise of their duties.

Other very important issues have also been addressed: in addition to corruption which I have already mentioned, these include the internal independence of judges from heads of courts or higher courts, and the place of prosecutors with its specific characteristics.

I will limit myself to a few very brief remarks as I do not want to take up too much of your time.

As was said several times during the discussions, independence is not a privilege which is given to judges in their own interests: it is a guarantee for citizens. And this is for the good reason that independence is an essential prerequisite for impartiality. It could even be said that independence is solely of value because it is one of the prerequisites for impartiality. But it is not the only one.

Moral integrity is another, and it is just as essential. Corruption often results from a lack of moral integrity, and also the inability to put up effective resistance to attempts to interfere in the exercise of judicial authority. But the vulnerability of judges and prosecutors to corruption can be reduced by appropriate living and working conditions and robust training, and their ability to resist pressure can be strengthened by a swift and effective response on the part of the authorities, and the self-regulating councils of the judiciary, in particular, to unacceptable attacks from any quarter.

As for internal independence from heads of courts or higher courts, the question can be framed in terms which are essentially similar to those of the question of external independence. There is a question of delicate balances which must be maintained. We have heard about proposals for creating an automatic – and even computerised – case allocation system. This is an excellent way of avoiding any form of “directing” of cases. But is it always desirable to forbid the head of a court to make legitimate case allocation decisions, for example by assigning a particularly difficult case to the most experienced judge? Would it not be preferable to set objective and transparent criteria in advance for the automatic allocation of “ordinary” cases while also allowing for a basis, which is just as transparent and objective, on which exceptions can be made? In Italy, there are no computerised tools that we can use, but we have adopted an automatic case allocation system in each court (or each division, for larger courts). The basis of the system is the creation, at predetermined times, of rules that are determined by the heads of courts, subsequently assessed by the judicial councils established within each appeal court district and finally approved by the High Judicial-Council, and that set the criteria for the allocation of cases to divisions and judges but can leave heads of courts some room for manoeuvre so that special needs can be met. This is one way of trying to combine certainty and flexibility: it is certainly not the only one, but this is perhaps a goal which should be pursued by the means best suited to each judicial system.

And finally, with regard to prosecutors: mention has been made of the advantages that could be gained from focusing more on this aspect of the independence of the judiciary (which is moreover not neglected by the Plan of Action). I think that this desire is entirely justifiable. However, it is essential to bear in mind the difference in meaning of the terms “independence” and “impartiality” according to whether they relate to judges or to prosecutors. This difference was also rightly acknowledged and highlighted by the President of the Consultative Council of European Prosecutors.

One other thing, just to pick up on the emphasis laid by several speakers on the fact that legislative measures alone are not enough but there also needs to be a change of mentality. I completely agree with this observation. I just wonder whether five years is a realistic timescale for such an arduous task as that of eradicating cultures, traditions and mentalities. In this regard, one cannot but agree with the judge of the European Court of Human Rights, Mr Yonko Grozev, when he said that as jurists, we are not best equipped for this kind of work. And if I may strike a jocular note, in the light of this remark I wonder whether the only failing of this conference is the fact that education ministers and schoolteachers were not involved in it!

Joking aside, I think we could find an interesting suggestion in the experience that was shared with us by Mr Christian Lange. Germany, he told us, has learned a valuable lesson from its dual totalitarian past: it has benefited from it by acquiring a keen awareness of the importance of the independence of the judiciary. Italy also experienced totalitarianism and, I think, has learned an important lesson from it in this respect. It is legitimate to ask why certain new democracies are finding it so difficult to do likewise and appear, on the contrary, to be having a great deal of difficulty in freeing themselves from a cultural and legal tradition which does not adequately value the difference – a subtle yet real and very important difference – between the concept of the State (or nation) and the concept of law. For judges, by contrast with civil servants and lawmakers, serving the State means serving the law, even where this appears to run counter to the interests of the State or popular sentiment.

Ultimately, and to conclude, it seems to me that this conference has been a great success and that it has laid the foundations for renewed commitment on the part of the member States to giving increasingly effective protection to the independence and impartiality of the judiciary, and for a commitment on the part of the Council of Europe bodies to assist them in this task. It has been agreed that the CCJE and the CCPE will co-operate in these matters, as their respective presidents have told us. I would add that the CDCJ also stands ready to lend its support; I say this under the supervision, of course, of my colleague and friend Mr Lennart Houmann, who is its vice-chair and to whom I convey my greetings.

It now only remains for us to await further developments, in the hope that the huge support for the Plan of Action expressed in this room and the pledge to contribute to its implementation can quickly translate into concrete and effective action, which will enable all of our respective countries to make progress along the road to an increasingly independent and impartial justice.

APPENDIX I

PROGRAMME

Wednesday, 20th April

Arrival of participants

19.00 Welcome reception (informal) & pre-registration
Sofia Hotel Balkan

Thursday, 21st April

8.15 - 8.45 Registration

9.00 - 10.00 Opening of the Conference (open to the press)

Chairperson, Mrs Ekaterina Zaharieva, Minister of Justice of the Republic of Bulgaria

- *Mr Daniel Mitov*, Minister of Foreign Affairs of the Republic of Bulgaria, and Chair of the Committee of Ministers of the Council of Europe
- *Mr Thorbjørn Jagland*, Secretary General of the Council of Europe
- *Mrs Ekaterina Zaharieva*, Minister of Justice of the Republic of Bulgaria
- *Mr Boyko Borissov*, Prime Minister of the Republic of Bulgaria

Family photo

10.00 - 12.00 *Role of the judiciary in a democratic society / relations between the executive and the judiciary*

- Moderator, *Mr Philippe Boillat*, Director General of Human Rights and Rule of Law, Council of Europe
- Key note speeches by *Mr Gianni Buquicchio*, President of the Venice Commission, Council of Europe and *Mrs Tiina Astola*, Director General for Justice and Consumers, European Commission
- Debate

12.00 - 12.30 Press Conference

12.30 - 14.00 Lunch

For heads of delegation and high representatives of the judiciary, offered by the Secretary General of the Council of Europe (by invitation)

For other participants, offered by the Minister of Justice of the Republic of Bulgaria

Appendix I – Programme

- 14.00 - 16.00 *Protecting the independence of individual judges and ensuring their impartiality*
- Moderator, *Ms Nino Bakakuri*, Judge of the Supreme Court of Georgia
 - Key note speech by *Lord Justice Vos*, Court of Appeal of England and Wales
 - Debate
- 16.00 - 16.30 Coffee break
- 16.30 - 17.45 *Council of Europe Plan of Action on strengthening judicial independence and impartiality*
- Moderator, *Ambassador Miroslav Papa*, Permanent Representative of Croatia to the Council of Europe and Chairman of the Committee of Ministers Rapporteur Group on Legal Co-operation
 - Presentation of the Action Plan
 - Debate
- 17.45 Close of the 1st day
- 20.00 Gala dinner & Visit to the National History Museum
(transport provided)

Friday, 22nd April

- 9.00 - 11.00 *Securing public trust in the judicial process*
- Moderator, *Mr Nils Engstad*, Judge at Hålogaland Court of Appeal in Norway and President of the Consultative Council of European Judges
 - Key note speech by *Ms Julia Laffranque*, Judge at the European Court of Human Rights elected in respect of Estonia
 - Debate
- 11.00 - 11.30 Coffee break
- 11.30 - 13.00 Concluding session (open to the press)
- Final remarks and questions
 - *Mr Francesco Crisafulli*, General Rapporteur of the Conference, Judge at the Rome District Court (Italy)
 - *Mr Philippe Boillat*, Director General of Human Rights and Rule of Law, Council of Europe
 - *Mrs Ekaterina Zaharieva*, Minister of Justice of the Republic of Bulgaria
- Close of the Conference
- 13.15 Lunch

APPENDIX II
PARTICIPANTS

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ÉTATS MEMBRES DU CONSEIL DE
L'EUROPE

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Ms Arber KACI
Adviser to the Minister of Justice

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Secrétaire d'Etat à la justice et à l'Intérieur

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Mr Vigen KOCHARYAN
Deputy Minister of Justice

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Ambassador of Armenia to Bulgaria

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Mr Adil ABILOV
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Mr Elchin GASIMOV
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Premier Président de la Cour de Cassation

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Mr Radomir BOGDANOVIC
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Prime Minister

Ms Ekaterina ZAHARIEVA
Minister of Justice

Ms Krasimira FILIPOVA
Deputy Minister of justice

Ms Verginia MICHEVA
Deputy Minister of justice

Ms Smilena KOSTOVA
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Mr Blagovest PUNEV
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Ms Ekaterina TODOROVA

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Supreme Judicial Council of the Republic of
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Mr George KOLEV
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Mr Antiy GALABOV
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Ms Karolina NEDELICHEVA
Supreme judicial council

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Ms Ida LEREOVA
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Mrs Keti MARKOVA
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Union of Bulgarian jurists
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**EUROPEAN COURT OF HUMAN RIGHTS /
COUR EUROPÉENNE DES DROITS DE
L'HOMME**

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Judge elected in respect of Bulgaria
Juge élu au titre de la Bulgarie

**EUROPEAN COMMISSION FOR
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COMMISSION) / COMMISSION
EUROPÉENNE POUR LA
DÉMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)**

Mr Gianni BUQUICCHIO
Chair / *Président*

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STEERING COMMITTEE FOR HUMAN RIGHTS / COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)

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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE / COMMISSION EUROPÉENNE POUR L'EFFICACITÉ DE LA JUSTICE (CEPEJ)

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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES / CONSEIL CONSULTATIF DE JUGES EUROPÉENS (CCJE)

Mr Nils ENGSTAD
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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS / CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS (CCPE)

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Se référer également à la délégation de l'Union européenne)

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Ms Julia LAFFRANQUE
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Judge of the Supreme Court of Georgia
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The Secretary General of the Council of Europe has made judicial independence and impartiality a priority. For him it is important that public confidence in the judiciary is maintained and restored. To this end, the Council of Europe designed an Action Plan on strengthening judicial independence and impartiality in the Council of Europe's 47 member states.

This Plan was presented at the high-level conference organised by the Ministry of Justice of Bulgaria, in co-operation with the Council of Europe, in the framework of the Bulgarian Chairmanship of the Committee of Ministers of the Council of Europe. This conference provided an opportunity for Ministers of Justice and high-level representatives of the judiciary to exchange experience and ideas, take stock of recent reforms, identify emerging challenges, and agree on targeted measures to be taken to implement European standards in this field and to promote a culture of respect for judicial independence and impartiality, a challenge which is crucial in a democratic society based on human rights and the rule of law.

Key presentations and the report of the General Rapporteur of the conference are set out in this publication.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



Bulgarian Chairmanship
Council of Europe
November 2015 – May 2016
Présidence de la Bulgarie
Conseil de l'Europe
Novembre 2015 – Mai 2016

