

INDEPENDENCE AND IMPARTIALITY

OF THE JUDICIAL SYSTEM



DEPARTMENT FOR
THE EXECUTION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

December 2020

INDEPENDENCE AND IMPARTIALITY

OF THE JUDICIAL SYSTEM

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

1. INDEPENDENCE OF TRIBUNALS	3
1.1. Independence <i>vis-à-vis</i> the executive.....	3
1.2. Independence <i>vis-à-vis</i> the parties.....	5
1.3. Internal independence of tribunals	6
2. IMPARTIALITY OF TRIBUNALS	8
2.1 Objective Impartiality of tribunals	8
2.1.1. Exercise of advisory and judicial functions in a case	8
2.1.2. Exercise of judicial and extra-judicial functions in a case	8
2.1.3. Exercise of different judicial functions in a case	9
2.1.4. Situations of a personal nature including conflicts of interest.....	11
2.2 Subjective impartiality of tribunals	12
3. INDEPENDENCE AND IMPARTIALITY OF PROSECUTORS.....	13
INDEX OF CASES	15

The right to a fair trial is guaranteed by Article 6 of the European Convention on Human Rights. The effective implementation of this right notably requires that everyone is entitled to a hearing by an “independent and impartial tribunal established by law in the determination of his civil rights and obligations or of any criminal charge against him”. The principles of independence and impartiality are closely linked and, depending on the circumstances, may require joint examination by the European Court. They are institutional guarantees on which democracy and the rule of law depend.

The obligation of States 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. The constitutional safeguards of the independence and impartiality of the judiciary must be effectively incorporated into everyday administrative attitudes and practices.

The present factsheet sets out examples of measures adopted and reported by States in the context of the execution of the European Court’s judgments with a view to safeguarding and reinforcing the independence and impartiality of the national judicial systems. It includes a section on the independence and impartiality of prosecutors since they form an integral part of European judicial systems.

1. INDEPENDENCE OF TRIBUNALS

*The independence of tribunals is an inherent element of the rule of law, and indispensable to the functioning of the judicial system. It is a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system.*¹

Under the Court's case-law, in order to establish whether a tribunal is independent, notably of the executive and of the parties to the case, regard is had, inter alia, to: the manner of appointment of its members and their term of office; the existence of guarantees against outside pressures; and the question of whether the body presents an appearance of independence. The Court has observed that the notion of the separation of powers between the executive and the judiciary has assumed growing importance in its case-law.

1.1. Independence vis-à-vis the executive

<p>The Council of State's independence in the context of interpretation of international treaties: In 1990, the Plenary of the Council of State decided to abandon its practice of referring issues of interpretation of international treaties, the wording of which was uncertain or ambiguous, to the Minister of Foreign Affairs and to interpret henceforth itself terms of international treaties in proceedings pending before it. It thus acquired full jurisdiction and full independence of the executive. Should it nevertheless, in a specific case, request an opinion of the executive, it will not be bound by it.</p>	<p><i>FRA / Beaumartin (15287/89)</i></p> <p>Judgment final on 24/11/1994</p> <p>Final Resolution DH(95)254</p>
<p>Independence of maritime dispute chambers: The Act on Maritime Dispute Chambers was amended in 2009, addressing the issue of appointment and removal of maritime chambers' presidents and vice-presidents by the Minister of Justice in agreement with the Minister of Transport and Maritime Affairs which had placed the above judges in a subordinate position vis-à-vis these ministers. Now, a maritime dispute chamber is composed of professional judges (president and one or more vice-presidents) and lay judges, who are assigned to the chambers by the Minister of Justice in accordance with the Law on Common Courts System.</p>	<p><i>POL / Brudnicka and Others (54723/00)</i></p> <p>Judgment final on 03/06/2005</p> <p>Final Resolution CM/ResDH(2011)141</p>
<p>Improved statutory safeguards to ensure the independence of judicial assistants: Under the 2004 Law on Judicial Organisation and the 2005 Internal Regulation for the Courts of the Superior Council for the Magistracy, judicial assistants have acquired a professional status similar to that of judges and enjoy protection against arbitrary removals. They can also challenge disciplinary decisions against them before a court.</p>	<p><i>ROM / Luka (34197/02)</i></p> <p>Judgment final on 21/10/2009</p> <p>Action report</p> <p>Final Resolution CM/ResDH(2014)66</p>
<p>Independence of criminal courts in cases of offences committed by civilians and military staff: To prevent convictions of civilians by military courts, the Code of Criminal Procedure was amended in 2006 providing that civil courts will adjudicate on all cases where there is indivisibility or connection of offences committed by military staff and civilians. Furthermore,</p>	<p><i>ROM / Maszni (59892/00)</i></p> <p>Judgment final on 21/12/2006</p>

¹ See CM Recommendation [CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities.

according to the 2002 Law on the Status of Policemen, police staff became civil servants and are hence tried by civil courts.

[Final resolution
CM/ResDH\(2013\)168](#)

Limitation of military courts' jurisdiction and their subsequent abolition:

According to the 2010 amendments of the Law on the Establishment and Procedure of Military Courts, the provision requiring the presence of a military officer in the court panel was abolished. Henceforth, a military court panel was to be composed only of three military judges.

TUR / Bayrak (39429/98)

[Judgment final on
24/09/2007](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)22](#)

In 2013, an amendment to the Law on Military Disciplinary Courts limited the jurisdiction of Military Disciplinary Courts to disciplinary issues taking place at the time of war. In addition, Military Disciplinary Boards, which replaced Military Disciplinary Courts during peace time, could not impose disciplinary punishments entailing a deprivation of liberty.

*TUR / Ibrahim Gurkan
(10987/10)*

[Judgment final on
03/10/2012](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2016\)303](#)

All military courts including the Supreme Military Administrative Court (SMAC) were abolished by a constitutional amendment in 2017. The cases pending before the SMAC were transferred to either the Court of Cassation or the Council of State.

TUR / Tanisma (32219/05)

[Judgment final on
02/05/2016](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2018\)422](#)

Abolition of State Security Courts: Several legislative and constitutional reforms led ultimately to the abolition of state security courts. A constitutional amendment of 1999 provided that the State Security Courts should be composed of a president, two regular members and a substitute member. Subsequent legislative amendments abolished the functions of the military judge and military prosecutor in State Security Courts, who were replaced by civil judges.

TUR / Ciraklar (19601/92)

[Judgment final on
28/10/1998](#)

[Final Resolution DH\(99\)555](#)

State Security Courts were finally abolished by a constitutional reform in 2004. The jurisdiction of these courts was transferred to assize courts by amendments to the Code of Criminal Procedure and the Law on the Abolition of State Security Courts.

TUR / Sertkaya (77113/01)

[Judgment final on
22/09/2006](#)

[Final Resolution
CM/ResDH\(2008\)83](#)

Structural reforms ensuring the independence of courts-martial: Under the 1997 amendments to the Army Act 1955, courts-martial should include a judge-advocate (a legally qualified civilian) as a member whose advice on points of law would be binding on the court and who has a vote on sentence (but not on conviction). A right of appeal against sentences to the civilian Courts-Martial Appeal Court was added to the existing right of appeal against conviction. Thus, the final decision would hereafter always lie with a judicial body.

UK / Findlay (22107/93)

[Judgment final on
25/02/1997](#)

[Final Resolution DH\(98\)11](#)

<p>The Naval Discipline Act 1957 Remedial Order of 2004 transferred the responsibility of appointing (civilian) judge advocates in the Royal Navy Courts to the (civilian) Judge Advocate of the Fleet. The briefing notes prepared for ordinary members of naval courts-martial were amended in 2002 and 2004 to include instructions as to the need to function independently and free from outside pressure and to ensure maximum possible consistency with those of the Army and Royal Air Force. The new Armed Forces Act which entered into force in 2009, created a single, standing Court-Martial for all three branches of the armed forces (army, navy, air force) which may sit in more than one place at the same time. This court may be composed of different judge advocates and service personnel for different trials.</p>	<p><i>UK / Grieves (57067/00)</i></p> <p>Judgment final on 16/12/2003</p> <p>Final Resolution CM/ResDH(2011)290</p>
<p>Parole Board's full competence concerning mandatory life sentenced prisoners' release: As a result of amendments to the Criminal Justice Act in 2003, the Parole Board became competent to rule on the release of all mandatory life sentenced prisoners and the Secretary of State is no longer free to depart from its decisions. The Parole Board, as a public authority within the meaning of the Human Rights Act 1998, would be acting unlawfully if it now acted in a way incompatible with a right protected by the Convention.</p>	<p><i>UK / Stafford (46295/99)</i></p> <p>Judgment final on 28/05/2002</p> <p>Final Resolution CM/ResDH(2011)179</p>
<p>Comprehensive judicial reform to ensure separation of powers: Measures were adopted to ensure the structural independence of the judiciary, inter alia, by excluding political bodies (the President and the Parliament) from the process of the appointment and dismissal of judges.</p>	<p><i>UKR / Oleksandr Volkov (21722/11)</i></p> <p>Judgment final on 27/05/2013</p> <p>Action plan</p> <p>Status of execution: pending</p>

1.2. Independence vis-à-vis the parties

<p>Independence of the Social Insurance Regional Appeals Commission: The provision of the General Law of Social Insurance, governing the composition of the Regional Appeals Commission, was amended in 2000. The Chairman of the Commission shall henceforth be a judge appointed by the Federal Minister of Justice and, at the time of his nomination, be a member of a court in charge of matters of labour and social affairs. The Commission shall be composed of a further four members, two of whom proposed by the Chamber of Physicians and two by the General Association of Social Insurance.</p>	<p><i>AUT / Hortolomei (17291/90)</i></p> <p>Judgment final on 16/04/1998</p> <p>Final Resolution ResDH(2004)73</p>
<p>Independence of the Regional Real Property Transactions Authority: The Authority is composed by, <i>inter alia</i>, three civil servants from the Office of the Land Government, one of whom is acting as rapporteur, also in cases where the Office of the Land Government is itself involved as a party. The regional government of the Tyrol amended the organisation chart of its regional administration in 1984. Henceforth the Division to which the Authority's rapporteur belongs as a civil servant is separate from the Directorate headed by the "Controller of property transactions", who represents the Office of the Land Government in the proceedings. Thus, the Authority's rapporteur is no longer subordinate to that Controller.</p>	<p><i>AUT / Sramek (8790/79)</i></p> <p>Judgment final on 22/10/1984</p> <p>Final Resolution DH(85)6</p>
<p>Independence of the Chamber of Deputies' Judicial Section: In 2009 the composition of the Judicial Section, competent to decide in last instance on administrative disputes between employees of the Chamber of Deputies and its administration, was modified by the Assembly</p>	<p><i>ITA / Savino (17214/05)</i></p> <p>Judgment final on 28/07/2009</p>

and the President of the Chamber of Deputies. The Judicial Section is now exclusively composed of members of the Chamber of Deputies without particular links to its administration.

[Action report](#)
[Final Resolution CM/ResDH\(2020\)229](#)

Exclusion of lay assessors in case of conflict of interest in housing disputes: The Lease Review Boards and Rent Review Boards Act of 1973 and the Act concerning the Housing and Tenancy Court of 1974 were amended in 1991 providing that the lay assessors on the bench of the Rent Review Boards and of the Housing and Tenancy Court nominated by and having close links with interested associations must be replaced by ordinary judges whenever there may be a conflict of interest.

SWE / Langborger (11179/84)
[Judgment final on 22/06/1989](#)
[Final Resolution DH\(91\)25](#)

Legal review in housing benefit disputes: The Housing Benefit Review Board, which included five elected councillors from the local authority issuing the contested decision, was replaced by tribunals set up under the Child Support, Pensions and Social Security Act 2000. These tribunals are entirely independent from the local authorities and able to investigate all facts relevant in housing benefit disputes.

UK / Tsfayo (60860/00)
[Judgment final on 14/11/2006](#)
[Final Resolution CM/ResDH\(2010\)75](#)

1.3. Internal independence of tribunals

Improved safeguards for the independence of the Supreme Court as court of cassation in criminal cases: To address the issue of objectively justified doubts concerning the Supreme Court's exposure to pressure, the 2002 Criminal Procedure Code proscribed the lodging by Supreme Court judges and/or Division Presidents of cassation petitions to quash appellate decisions and reinstate the first instance judgment.

LIT / Daktaras (42095/98)
[Judgment final on 17/01/2001](#)
[Final Resolution CM/ResDH\(2004\)43](#)

Reform of the judicial career system: The 2016 constitutional reform and the adoption of implementing legislation created a new legal framework for the judiciary in Ukraine, including in respect of selection, appointment of judges and judicial discipline. This included new rules for the composition and operation of the competent body, the High Council of Justice. The decrease of the role of courts' presidents provided an additional guarantee for the internal independence of judges.

UKR / Oleksandr Volkov (21722/11)
[Judgment final on 27/05/2013](#)
[Action plan](#)
[Status of execution: pending](#)

In the Oleksandr Volkov case, in 2015 the Supreme Court, following a decision by Parliament, reinstated the applicant to his post of a Supreme Court judge.
In the Salov case, the judicial decisions against the applicant were quashed by the Supreme Court and the proceedings were terminated.
In the Sovtransavto Holding case, the impugned judgment was quashed, and the case was remitted for fresh consideration. In 2005 the applicant's company claim was partly satisfied.

UKR / Agrokompleks (23465/03)
[Judgment final on 08/03/2012](#)
[Action report](#)
[Status of execution: pending](#)
UKR / Salov (65518/01)
[Judgment final on 06/12/2005](#)

[Action plan](#)

[Final Resolution
CM/ResDH\(2018\)232](#)

*UKR / Sovtransavto Holding
(48553/99)*

[Judgment final on
06/11/2002](#)

[Action report](#)

[Final Resolution
CM/ResDH\(2019\)243](#)

2. IMPARTIALITY OF TRIBUNALS

Impartiality means the absence of prejudice or bias. According to the Court's case-law, the existence of impartiality must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is, by ascertaining whether the tribunal itself and, inter alia, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. In most of the relevant cases the Court has focused on the objective test. However, it has noted that there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test).

2.1 Objective Impartiality of tribunals

2.1.1. Exercise of advisory and judicial functions in a case

Separation of advisory and judicial functions of the Council of State judges: In 1995, an amendment to the 1961 Act on the Organisation of the Council of State provided that the members of the Judicial Committee of the Council of State shall not sit in cases concerning the application of laws or decrees in respect of which they had taken part in prior deliberations of the Council.

LUX / Procola (14570/89)

[Judgment final on 28/09/1995](#)

[Final Resolution DH\(96\)19](#)

2.1.2. Exercise of judicial and extra-judicial functions in a case

Incompatibility of membership in the Administrative Tribunal with other professional activities and professional representation of third parties: In 1997, in response to the Court's finding of a cantonal administrative court's lack of impartiality as two of its part-time alternate judges had been involved as advocates in earlier proceedings brought against the applicant before the same court, the Administrative Justice Act of the Canton of Zurich was amended providing that full-time membership of the administrative tribunal would be incompatible with the exercise of any other full-time professional activity or with the professional representation of third parties before judicial or administrative bodies.

SUI / Wettstein (33958/96)

[Judgment final on 21/03/2001](#)

[Final Resolution CM/ResDH\(2009\)14](#)

In 2001, the Federal Court approved the applicant's request for revision, admitted his appeal against the impugned decision and remitted the case to an administrative tribunal, the composition of which satisfied the requirements of article 6§1 of the ECHR and national law.

Ensuring impartiality of the presiding judge at the Royal Court of Guernsey: According to a Practice Direction of 2001, a specific procedure was developed regarding the disqualification of the presiding judge in administrative proceeding before the Royal Court of Guernsey: At the outset of the hearing, the legal counsels of all parties are required to state whether their clients have any objection to the presiding judge and the grounds for such objection. To enable the legal counsel to obtain satisfactory information, the presiding judge will inform them in writing, prior to the hearing, of his/her previous involvement in the issues to be considered or determined by the domestic court.

UK / McGonnell (28488/95)

[Judgment final on 08/02/2000](#)

[Final Resolution DH\(2001\)120](#)

2.1.3. Exercise of different judicial functions in a case

<p>Disqualification of investigating judges in subsequent trials: In 1992, the Federal Ministry of Justice addressed a circular to the Appeal Courts' Presidents and to the General Prosecutors setting out that the question of the possible disqualification of judges must be clarified before the setting of the hearing date. Only in exceptional circumstances, notably when it would be in the interest of the applicant not to have the proceedings delayed, a defendant's waiver of their right to apply for a judge's disqualification could be envisaged, on condition that minimum procedural guarantees are respected (examination of the waiver by an independent and impartial judge in the presence of the defendant's legal representative).</p>	<p><i>AUT / Pfeifer and Plankl (10802/84)</i></p> <p>Judgment final on 25/02/1992</p> <p>Final Resolution DH(92)64</p>
<p>Exclusion of the investigating judge from first instance court proceedings: Following the 1985 change of the Court of Cassation's case-law, a judge who acted as investigating judge is prevented from presiding over or participating as trial judge in proceedings before the first instance tribunal in the same case. The Judicial Code had already provided for the same rule in proceedings before appeal courts and assize courts.</p>	<p><i>BEL / De Cubber (9186/80)</i></p> <p>Judgment final on 26/10/1984</p> <p>Final Resolution DH(88)20</p>
<p>Exclusion of judges involved in pre-trial decisions: The Administration of Justice Act was amended in 1990 disqualifying a judge who had taken pre-trial decisions concerning remand in custody or certain other investigative steps, to sit as trial or appeal judge in the same case. An exception is made for trials under the special simplified procedure where the defendant has confessed the crime and for cases which require no decision on the evidence of the defendant's guilt. Furthermore, a general clause concerning the impartiality of judges was introduced providing that no-one shall act as judge in a case where any other circumstances are liable to call into question the impartiality of that person.</p>	<p><i>DNK / Hauschildt (10486/83)</i></p> <p>Final judgment on 24/05/1989</p> <p>Final Resolution DH(91)9</p>
<p>Introduction of distinctive functions of bodies of the bank supervisory authority: In 2010, by an Order amending the Monetary and Financial Code, the banking and insurance licensing and supervisory authorities were merged into a single authority, the Prudential Supervisory Authority. The Prudential Supervisory Authority consists of a College of 16 members and a Sanctions Committee of five members. The functions of a member of the Sanctions Committee are incompatible with those of a member of the College. The College alone has the power to initiate sanctions proceedings following the finding of deficiencies during inspections. The Sanctions Committee has the exclusive power to impose disciplinary sanctions and ensures compliance with the adversarial principle.</p>	<p><i>FRA / Dubus S.A (5242/04)</i></p> <p>Judgment final on 11/09/2009</p> <p>Action report</p> <p>Final Resolution CM/ResDH(2011)102</p>
<p>Limitation of the Government Commissioner's role in court proceedings: In 2006 the Code of Administrative Justice was amended to proscribe the participation of the Government Commissioner in deliberations during proceedings before the Council of State, administrative first instance and appeal courts. In proceedings before the Council of State, it will be open to the parties to request the Government Commissioner's exclusion from the deliberations. Parties are informed of this right in the summons. If no such request is submitted, the Government Commissioner will be present at the hearings to ensure all parties' procedural rights.</p>	<p><i>FRA / Kress (39594/98)</i></p> <p>Judgment final on 07/06/2001</p> <p>Final Resolution CM/ResDH(2007)44</p>

Ensuring impartiality of tribunals in judges' disciplinary proceedings: According to the 2018 amendment of the Organic Law on Common Courts, the president of a court is no longer competent to initiate disciplinary proceedings against his court's judges. This right is entrusted to a new institution, the Independent Inspector, who conducts a preliminary investigation and submits his conclusions to the High Council of Justice which can then decide by a two-third majority to start disciplinary proceedings or not. The merits of the disciplinary case are examined by the Common Courts Judges' Disciplinary Board - consisting of three judges of common courts and two lay members selected from professors and researchers working at higher education institutions, members of the Bar Association and/or persons nominated by non-commercial legal entities.

GEO / Sturua (45729/05)

[Judgment final on 27/04/2017](#)

[Action report](#)

[Status of execution: pending](#)

Judges' exclusion from proceedings at multiple levels in the same case: In 1996 the Constitutional Court declared unconstitutional the Code of Criminal Procedure (CCP) in two respects. First, in so far as it allowed the same judge to take part in first instance and appeal deliberations on the defendant's guilt. Second, insofar as it allowed judges having participated in decision-making concerning precautionary measures to participate in decisions on the merits. Subsequently, in another judgment of 1996, the Constitutional Court declared unconstitutional a different CCP provision, because it did not exclude a judge from participating in proceedings against a defendant whose criminal liability had already been incidentally evaluated by the same judge in a previous judgment.

ITA / Ferrantelli and Santangelo (19874/92)

[Judgment final on 07/08/1996](#)

[Final Resolution DH\(97\)502](#)

ITA / Cianetti (55634/00)

[Judgment final on 10/11/2004](#)

[Final Resolution CM/ResDH\(2010\)213](#)

Exclusion of Supreme Court judges who have participated in lower courts' proceedings in the same case: In 2013, the Civil Department of the Supreme Court adopted a binding opinion requiring it to take into account the European Court's case-law when applying the 2005 Civil Procedure Code, according to which a judge or a lay judge is deemed unable to perform a judicial duty if any circumstances raise doubts about their impartiality. In particular, this Opinion is applicable when a judge of the Supreme Court had earlier participated in lower courts in the same case.

MKD / Bajaldziev (4650/06)

[Judgment final on 25/01/2012](#)

[Action report](#)

[Final Resolution CM/ResDH\(2015\)189](#)

Ensuring impartiality in judges' misconduct proceedings before the State Judicial Council: In 2018, the State Judicial Council Act and the Courts Act were amended and now exclude State Council of Justice members who had initiated disciplinary proceedings from participating in the decision-making. The above laws also separated the inquiry phase conducted by the Inquiry Commission from the decision-making one where no Inquiry Commission member may participate.

MKD / Mitrinovski (6899/12)

[Judgment final on 30/07/2015](#)

[Action report](#)

[Final Resolution CM/ResDH\(2019\)300](#)

Clarification of the rules concerning disqualification of Supreme Court judges: To prevent the possibility that a Supreme Court judge could be called upon to sit on a bench to decide whether or not any of their previous legal interpretations or applications of substantive law in the same case was to be upheld or not, the Constitutional Court clarified, in a judgment of 2004, that the term "lower court" in the provision on judges' disqualification should comprise all lower court levels.

POL / Toziczka (29995/08)

[Judgment final on 24/10/2012](#)

[Action report](#)

[Final Resolution CM/ResDH\(2014\)146](#)

Impartiality of tribunals in contempt of court proceedings: In 2016 the Constitutional Court changed its case-law stating that in the framework of contempt of court proceedings, impartiality is infringed when a judge, who has been the alleged subject of contempt, pronounces the verdict and imposes a sanction. In 2017 the Civil Procedure Act was amended so that a judge's request for sanctioning someone who has allegedly committed contempt of court must be assigned to another judge.

SVN / Pecnik Alenka
(44901/05)

[Judgment final on](#)
[27/12/2012](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2018\)148](#)

Exclusion of Constitutional Court judges who have participated in lower court proceedings in the same case: In 2007, in order to remedy the Constitutional Court's lack of impartiality resulting from a decision taken by a bench which included a judge who had taken part in lower court proceedings in the same case, the Constitutional Court changed its case-law. It excluded from its bench judges who had previously delivered an expert opinion on the subject-matter of the relevant proceedings or judges who had participated in the decision-making in the same case before lower courts. Parties can file a motion for the disqualification of a Constitutional Court judge, as provided by the Constitutional Court's Rules of Procedure.

SVN / Svarc and Kavnic
(75617/01)

[Judgment final on](#)
[08/05/2007](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2018\)213](#)

Impartiality of the general assembly of the Supreme Administrative Court: In 2012, the Supreme Administrative Court (SAC) Act was amended, providing that the SAC's general assembly shall be composed of permanent selected members who only examine appeals addressed to this body. Exceptionally, members of the general assembly are allowed to participate in proceedings before the SAC's chambers only when necessary due to excessive workload.

TUR / Fazli Aslaner
(36073/04)

[Judgment final on](#)
[07/07/2014](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2017\)320](#)

The impugned proceedings were reopened and a judgment in favour of the applicant was delivered.

2.1.4. Situations of a personal nature including conflicts of interest

New Constitutional and Supreme Courts' case-law safeguarding impartiality of tribunals: In response to the European Court's judgment, the Constitutional and Supreme Courts changed their case-law applying henceforth the European Court's subjective and objective test criteria when assessing tribunals' impartiality. In the present case, the doubt concerning the appellate court's impartiality originated in the fact that the presiding judge's son was a trainee at the law firm representing the applicant's adversary. In 2013, the Ministry of Justice also introduced a search engine ensuring public access to information in domestic proceedings enabling parties to complain before domestic courts if they deem that impartiality of a tribunal is compromised.

CRO / Ramljak (5856/13)

[Judgment final on](#)
[13/11/2017](#)

[Action plan](#)

[Status of execution: pending](#)

Extension of the grounds for the withdrawal of judges to relations with "in-law" family members: This case concerned the objectively justified doubts on the impartiality of an appellate judge on account of his in-law relationship with the managing partner of the applicant's adversary law firm. To remedy this issue the Code of Judicial Practice was amended in 2018 to stipulate that an "in-law" relationship constitutes a ground for the withdrawal of a judge from a case. In cases where lawyers appear before a judge and these lawyers are employers, employees, partners or have a professional relationship with lawyers-members of the judge's family (including trainee lawyers), the judge in question must disclose the relevant

CYP / Nicholas (63246/10)

[Final judgment on](#)
[09/04/2018](#)

[Action report](#)

[Final Resolution](#)
[CM/ResDH\(2018\)359](#)

facts of the employment connection to the parties. If one of the parties objects to the judge's participation in the proceedings, the judge decides whether to recuse themselves or not.

Judges' withdrawal due to family relations with legal representatives: The case concerned the objectively justified doubts about the impartiality of the Chief Justice of the Court of Appeal, on account of his close family ties with the legal representatives of the applicant's opposing party. In 2007, following the facts of the case, the Code of Organisation and Civil Procedure was amended to allow a judge to be challenged or to abstain from dealing with a case if a legal representative pleading before a judge is their son or daughter, spouse, ascendant or sibling.

MLT / Micallef (17056/06)

[Judgment final on 15/10/2009](#)

[Final Resolution CM/ResDH\(2011\)232](#)

2.2 Subjective impartiality of tribunals

Restricting public statements by members of the National Judicial Council during disciplinary proceedings against judges: The lack of impartiality in the present case resulted from the public comments made by the National Judicial Council's (NJC) President and two of its members about the applicant judge during disciplinary proceedings against him. According to the 2011 amendment of the National Judicial Council Act, public statements shall only be made by the President of the NJC, a member of the NJC or by the NJC itself in case of an urgent public need to be informed about a specific matter. However, members of the NJC are not allowed to comment on a disciplinary procedure until the decision is final, nor are they allowed to give statements about the judge against whom disciplinary proceedings are pending.

CRO / Olujic (22330/05)

[Judgment final on 05/05/2009](#)

[Action report](#)

[Final Resolution CM/ResDH\(2011\)194](#)

Reform of contempt of court proceedings: In 2009 the Courts of Justice Law was amended underlining the need to strike a fair balance between the protection of the right to freedom of expression and the authority of the judiciary. The amendment provided that contempt of court cases are to be tried by a separate court designated for this purpose by the president of the Supreme Court on the request of the allegedly offended court. Before requesting the President of the Supreme Court to designate another court, the court before which the alleged contempt was committed must also inform the alleged offender about their impugned behaviour and the applicable sanctions. Finally, lawyers who appear in court on behalf of their clients are no longer subject to contempt proceedings, as any alleged misconduct by them now constitutes only a disciplinary offence and has to be referred by the court to the Advocates' Disciplinary Board.

CYP / Kyprianou (73797/01)

[Judgment final on 15/12/2005](#)

[Action report](#)

[Final Resolution CM/ResDH\(2015\)47](#)

3. INDEPENDENCE AND IMPARTIALITY OF PROSECUTORS

The European Court has underlined that democracy and the rule of law cannot be commanded by a text but need institutional guarantees. The independence and impartiality of public prosecutors, similarly to the courts, is a fundamental guarantee against misuse of power, while the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. In a similar vein, the Committee of Ministers has highlighted² that public prosecutors should exercise their responsibilities and powers in full accordance with the principles of legality, objectivity, fairness and impartiality.

<p>Exclusion of prosecutors from the deliberations of the Court of Cassation: This case concerns an unfair trial due to, inter alia, the participation of the <i>avocat général</i> in the deliberations of the Court of Cassation. In an immediate response to the European Court's findings, the latter provisionally adopted a new practice in criminal, civil and disciplinary proceedings, according to which the applicants could respond to the advice of the <i>avocat général</i> who no longer takes part in its deliberations. In 2000, the impugned provisions of the Judicial Code regarding the Court of Cassation were repealed. It was also decided to exclude the prosecutor's office from the deliberations of civil tribunals and courts.</p>	<p><i>BEL / Borgers (12005/86)</i></p> <p>Judgment final on 30/10/1991</p> <p>Final Resolution CM/ResDH(2001)108</p>
<p>Case-law and statutory changes enhancing independence of the Prosecution Service: In order to prevent the arrest/detention and opening of criminal proceedings against individuals with the sole aim of putting pressure on them (in the present case with a view to hindering another applicant from pursuing his application before the European Court), a substantial reform of the prosecution service was undertaken. It improved its independence from the legislative and the executive and established the disciplinary accountability of prosecutors.</p> <p>According to a Constitutional Court's ruling of September 2013, state authorities are prohibited from interfering with the prosecution service by demanding information in specific criminal cases or by enquiring and questioning a prosecutor on the investigation of concrete cases. In 2016 a new Law on the Prosecution Service was adopted establishing clear criteria and procedures for the selection of the Prosecutor General, prohibiting their involvement with political parties and securing respect of human rights in criminal proceedings. It further provided for disciplinary sanctions in cases of prosecutors' misconduct during their official duties and limited their involvement in activities related to law-making or the executive.</p> <p><i>The applicant was released and acquitted of all the charges wrongfully brought against him in 2007.</i></p>	<p><i>MDA / Cebotari (35615/06)</i></p> <p>Judgment final on 13/02/2008</p> <p>Action plan</p> <p>Final Resolution CM/ResDH(2016)147</p>
<p>Independence of the Prosecution Service: Following the 2016 constitutional amendments, the public prosecution service became a constituent part of the judicial system.</p> <p>The above amendments and the 2014 Law on the Public Prosecution Service led to a major reform of the public prosecution service, finally abolishing its general supervisory function in line with Ukraine's accession commitments to the Council of Europe. Moreover, the above Law provided for the principle of political neutrality, shielding prosecutors from illegal political, financial or other influence when performing official duties, guaranteeing individual prosecutorial autonomy and implementing a system of prosecutorial self-governance. It also</p>	<p><i>UKR / Lutsenko (6492/11)</i></p> <p>Judgment final on 19/11/2012</p> <p>Action report</p> <p>Status of execution: pending</p>

² See CM Recommendation [Rec\(2000\)19](#) on the role of public prosecution in the criminal justice system, and Recommendation [CM/Rec\(2012\)11](#) on the role of public prosecutors outside the criminal justice system.

established a framework for disciplinary proceedings and career-related issues. The 2017 Code of Professional Ethics and Conduct for Prosecutors further enhanced the principle of political neutrality and set out standards regulating the prosecutors' professional conduct.

In the Lutsenko case, the President pardoned the applicant in 2013 who was subsequently released. In 2014, a domestic court then quashed the applicant's convictions.

In the Tymoshenko case, the applicant was released from detention and fully rehabilitated in 2014.

**UKR / Tymoshenko
(49872/11)**

[Judgment final on
30/07/2013](#)

[Action report](#)

[Status of execution: pending](#)

INDEX OF CASES

<i>AUT / Hortolomei (17291/90)</i>	5	<i>POL / Toziczka (29995/08)</i>	10
<i>AUT / Pfeifer and Plankl (10802/84)</i>	9	<i>ROM / Luka (34197/02)</i>	3
<i>AUT / Sramek (8790/79)</i>	5	<i>ROM / Maszni (59892/00)</i>	3
<i>BEL / Borgers (12005/86)</i>	13	<i>SUI / Wettstein (33958/96)</i>	8
<i>BEL / De Cubber (9186/80)</i>	9	<i>SVN / Pecnik Alenka (44901/05)</i>	11
<i>CRO / Olujić (22330/05)</i>	12	<i>SVN / Svarc and Kavnic (75617/01)</i>	11
<i>CRO / Ramljak (5856/13)</i>	11	<i>SWE / Langborger (11179/84)</i>	6
<i>CYP / Kyprianou (73797/01)</i>	12	<i>TUR / Bayrak (39429/98)</i>	4
<i>CYP / Nicholas (63246/10)</i>	11	<i>TUR / Ciraklar (19601/92)</i>	4
<i>DNK / Hauschildt (10486/83)</i>	9	<i>TUR / Fazli Aslaner (36073/04)</i>	11
<i>FRA / Beaumartin (15287/89)</i>	3	<i>TUR / Ibrahim Gurkan (10987/10)</i>	4
<i>FRA / Dubus S.A (5242/04)</i>	9	<i>TUR / Sertkaya (77113/01)</i>	4
<i>FRA / Kress (39594/98)</i>	9	<i>TUR / Tanisma (32219/05)</i>	4
<i>GEO / Sturua (45729/05)</i>	10	<i>UK / Findlay (22107/93)</i>	4
<i>ITA / Cianetti (55634/00)</i>	10	<i>UK / Grieves (57067/00)</i>	5
<i>ITA / Ferrantelli and Santangelo (19874/92)</i>	10	<i>UK / McGonnell (28488/95)</i>	8
<i>ITA / Savino (17214/05)</i>	5	<i>UK / Stafford (46295/99)</i>	5
<i>LIT / Daktaras (42095/98)</i>	6	<i>UK / Tsfayo (60860/00)</i>	6
<i>LUX / Procola (14570/89)</i>	8	<i>UKR / Agrokompleks (23465/03)</i>	6
<i>MDA / Cebotari (35615/06)</i>	13	<i>UKR / Lutsenko (6492/11)</i>	13
<i>MKD / Bajaldziev (4650/06)</i>	10	<i>UKR / Oleksandr Volkov (21722/11)</i>	5, 6
<i>MKD / Mitrinovski (6899/12)</i>	10	<i>UKR / Salov (65518/01)</i>	6
<i>MLT / Micallef (17056/06)</i>	12	<i>UKR / Sovtransavto Holding (48553/99)</i>	7
<i>POL / Brudnicka and Others (54723/00)</i>	3	<i>UKR / Tymoshenko (49872/11)</i>	14