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Anti-Corruption Network for Eastern Europe and Central Asia

in co-operation with Council of Europe Group of States against Corruption (GRECO),
United Nations Office on Drugs and Crime (UNODC),
OECD Public Sector Integrity Network

“INDEPENDENCE AND INTEGRITY OF THE JUDICIARY”

PROCEEDINGS OF THE REGIONAL SEMINAR

Held in **Istanbul, Turkey, 28 – 29 June 2012**, and

Co-organised and Hosted by the Ministry of Justice of Turkey and the High Council of Judges and Prosecutors of Turkey



Organisation for Economic Co-operation and Development

ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

The Anti-Corruption Network for Eastern Europe and Central Asia (ACN) was established in 1998 to support its members in their fight against corruption by providing a regional forum for promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor coordination.

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Seminar on Independence and Integrity of the Judiciary Istanbul 28-29 June 2012

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Introduction

The seminar “Independence and Integrity of Judiciary” took place on 28 – 29 June 2012 in Istanbul, Turkey. It was hosted by the Ministry of Justice and the High Council of Judges and Prosecutors of Turkey and organised by the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) together with the Council of Europe Group of States against Corruption (GRECO), the United Nations Office on Drugs and Crime (UNODC) and the OECD Public Sector Integrity Network.

The seminar brought together 64 participants from 24 countries including chairmen of courts, judges of supreme courts, representatives of judicial councils and ethics commissions, as well as associations of judges in their countries. Speakers from Croatia, Estonia, Italy, Poland, Portugal, Romania, Slovenia, Turkey, and Ukraine shared their national experiences. Speakers from the Venice Commission, GRECO, Council of Europe and the UNODC presented international standards and guidelines. The list of participants is attached.

This seminar focused on the following *themes*:

- Independence of judiciary;
- Integrity of judges;
- Transparency and accountability of judiciary.

The seminar included presentations, round-table discussions and working in groups. The seminar discussed international standards and good practice developed in the ACN and OECD countries in the area of independence and integrity of judges. Moreover, it provided an opportunity for networking among judges and institutions and organisations working in this field in Eastern Europe and Central Asia.

These proceedings contain a summary of discussion, all the presentations made during the seminar, a summary of the agenda and the list of participants.

Summary of Discussion

Mr. Veysi Kaynak, the Deputy Minister of Justice of Turkey, opened the meeting. *Mr. Marin Mrčela*, GRECO President, chaired the first day discussions and *Mr. Engin Durnagöl*, Deputy Secretary General of the High Council of Judges and Prosecutors of Turkey, chaired the second day of meeting. GRECO and UNODC representatives moderated the working groups.

The discussion during the seminar was very active and confirmed that independence and integrity of the judiciary are crucial issues in Eastern Europe and Central Asia and in many OECD countries. Judges and other participants were eager to share their experiences and learn from each other how other countries deal with similar problems, where other countries stand in implementing relevant international standards and where improvements are needed.

Independence of the judiciary

The first session included four *presentations* related to the independence of the judiciary by *Prof. Neppi Modona*, member of the Venice Commission, *Mr. Duro Sessa*, Judge of the Supreme Court of Croatia, *Mr. Ibrahim Okur*, Judge, Head of First Chamber of the High Council of Judges and Prosecutors of Turkey, and *Mr. Szymon Janczarek* from the Ministry of Justice in Poland.

Prof. Modona discussed the concept of independence of the judiciary including external independence from political power, economic or other interests, and internal independence of judges from the administrative structures in which they work. He stressed that judges should be appointed through independent bodies, such as judicial councils comprised mostly of judges. Decisions about their promotion, transfer, disciplinary measures, and dismissals should also be taken by these bodies.

Mr. Sessa presented the experience of the State Judiciary Council in Croatia, stressing that political will and the European accession process were important factors which facilitated the establishment of the Council. *Mr. Sessa* discussed the role of the Council in ensuring independence and integrity of judges, including its role in appointing and evaluation of judges, and lifting their immunities. He also pointed out the remaining deficiencies, such as the lack of criteria for judicial performance evaluation and lack of financial independence.

Mr. Okur presented the process of the establishment of the High Council of Judges and Prosecutors in Turkey as a part of the broader judiciary reform. He discussed the role that the Council plays in the functioning of the judicial system in Turkey, including the development of performance evaluation system for judges.

Mr. Janczarek presented a specific case of protecting judicial independence in Poland, where the system whereby persons wishing to become district court's judges had to work as assessors or court experts under the control of the Ministry of Justice for three years was revoked by the Constitutional Court as it did not provide guarantees of independence for the assessors from the Ministry. This change was brought about in particular by the case-law of the European Court of Human Rights.

During the ***discussion*** participants agreed that mechanisms to ensure judicial independence need to be strengthened in the ACN region. Judiciary should play a more prominent role in ensuring its

independence through self-governing bodies. Creation of judicial councils contributes to a fairer appointment of judges and allows them to adjudicate corruption cases involving political and economic interests from stronger positions. Countries shared their experience in establishing judicial councils and other self-governing bodies and argued that different systems are possible in regulation of judicial careers from judicial appointments to dismissals. Composition of judicial councils and system of nomination of its members and chairs were hotly debated, in particular it was noted that while the council has to include majority of judges, it is a good approach to choose its chairman from among non-judicial members. It is important to reach a balance in the council's composition to ensure not only its independence but also accountability and that possible corporatism is restrained.

Participants also discussed the scope of competence of the Councils, and noted the lack of a system of merit-based career of judges, including criteria for promotion and performance evaluation. Participants also agreed that the councils should foster the accountability of the judiciary, which among other measures can be achieved by giving them the function to control the asset declarations of judges. Problem of internal independence in courts was discussed with the focus on the need to limit authority of court presidents and establish fair and transparent systems of case allocation among judges.

Integrity of judges and enforcement of ethical rules

The second session dedicated to ethical rules and their enforcement started with *presentations* by Ms. Nina Betetto, Vice-President and Judge of the Supreme Court of Slovenia and Ms. Valentyna Simonenko, judge from the Higher Specialized Court in Civil and Criminal Cases in Ukraine.

Ms. Betetto highlighted the role of international standards in promoting judicial ethics, such as the Opinion of the Consultative Council of European Judges¹, which states that judges should behave with integrity in office and in their private lives, should act in a way that is both impartial in reality and in appearance. She noted that while ethical rules set out objectives, they are not a prescription how to act in a specific situation. It is the task of each judge to make ethical decisions; it is also important to have the possibility to assess if a certain activity complies with ethical standards

Ms. Simonenko described how the code of judicial ethics and enforcement of ethical rules for judges have evolved in Ukraine, moving from a declarative code to the introduction of disciplinary responsibility for violation of ethics rules. She discussed challenges in applying disciplinary sanctions for the violation of ethics rules by judges and ensuring that various abuses by judges, such as business activities, do not remain unpunished. Various conceptual and practical problems in developing the new code of ethics were discussed, such as how to define ethical rules which a judge can be held liable for breaching or how to delineate ethical rules from ethical and moral principles.

Discussion. Delegates stressed that the integrity of judges should be ensured by judicial self-governing bodies rather than by involving other branches of power or wider society. They warned that it was dangerous to try to regulate by law or by rules all possible forms of behaviour in the field of judicial ethics, and considered it more appropriate to rely on practice developed by judges. An example of the Lithuanian Ethics Commission of Judges was mentioned when most of the complaints received regarding unethical conduct of judges turned out to be not grounded. The question whether the self-recusal,

¹ Consultative Council of European Judges (CCJE) (2002), *Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality*, coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE%20Opinion%203_EN.pdf

namely the decision by a judge to abstain from a certain case, is ethical or not was raised. In the meantime, it can be noted that this discussion did not address steps needed in order to fight systemic integrity risks and corruption in the judiciary, and it was in sharp contrast with the widespread public perception of high levels of corruption among judges in the ACN region.

Disciplinary proceedings and immunity of judges

The third session focused on disciplinary responsibility and the immunity of judges, which were discussed by *Mr. Vasiliică-Cristi Danileț*, Member of the Superior Council of Magistracy of Romania and *Dr. Tilman Hoppe*, former judge from Germany, anti-corruption expert, Council of Europe. *Mr. Dalinet* discussed the importance of finding the right balance between the disciplinary actions against judges and genuine independence of judges and the importance that disciplinary proceedings are fair. He presented specific aspects of disciplinary responsibility of judges in Romania, and argued that the body in charge of disciplinary proceedings should be composed at least one half of elected judges and should not be submitted to control from the Parliament or the executive, such as the Ministry of Justice.

Dr. Hoppe provoked a lively debate by suggesting that judges should not enjoy immunity at all. He further discussed the difference between functional and personal immunity, and noted that only 16 out of 47 Council of Europe member states provide for personal immunity of judges. The current trend is therefore to abolish or at least restrict personal immunities of judges.

Accountability and transparency in the judiciary

Session four dedicated to the role of accountability and transparency in preventing corruption in the judiciary started with presentations by *Mr. José Manuel Igreja Martins Matos*, Judge and member of the Judicial Superior Council in Portugal, and *Ms. Kaidi Lippus*, Ministry of Justice of Estonia, the OECD Public Sector Integrity Network. *Mr. Matos* noted that careers of judges should be based on transparency, objectivity, professional qualification and merit. Using objective criteria in appointment, promotion, transfers and disciplinary proceedings of judges can be an important factor for prevention of corruption in the judiciary. Transparency in courts can also contribute to the efforts to prevent corruption. For instance, Judicial Councils or other judicial bodies in many countries increasingly provide information about judicial decisions, names of judges and their appointment, procedural rules, fees and costs, guidance on court proceedings, information on judicial council or courts' structures. *Ms. Lippus* presented the Estonian assets and conflict of interests' disclosure system for judges and examples on how transparent work of the judiciary is ensured in Estonia. In particular, it was explained how the assets declaration system is enforced in practice, stressing the role of the Parliament and the public access to judges' assets declarations. Further, different practical tools to ensure wide public access to court and judicial proceedings information were presented.

The **discussion** focused on the role of judicial councils in different countries and the careers of judges. Appointment, promotion and evaluation of judges attracted a lot of interest. The issue whether it is "moral" for a judge to ask for a promotion was raised by one country. It emerged from the discussion that there is an interest for evaluation of performance of judges, namely what criteria could be used and when such evaluations should be conducted. It was agreed that such evaluations should be done only on special occasions, such as possible promotion or recent disciplinary proceedings and there should be objective criteria. It was also highlighted by several participants that security of tenure is an important safeguard of independence.

In addition, presentation on asset declarations for judges provoked a lively debate on approaches on this issue in different countries. It was noted that it is important to verify the declarations, provide for sanctions and make the asset declarations public. The experience in the United States was mentioned where asset declarations are often used as references by parties to the cases reviewed by federal courts. The experience in Serbia shows that the previous assets declaration system that existed since 2005 had a limited effect, since it lacked a verification mechanism and declarations were not made public, therefore it was changed. At present, the Anti-Corruption Agency of Serbia checks the declarations and can start administrative proceedings; the declarations are partly made public and asset declarations serve as a tool for police investigations.

Working groups

Training on ethics and prevention of corruption for judges

Specialised judicial training institutions should be in charge of mandatory ethics training of judges – during initial training before or immediately after recruitment of a judge and during his/her career. It should combine various learning techniques, including practical case studies, role-playing games and other interactive methods. Senior judges should be involved in conducting trainings; it is also useful to have mixed groups of judges of different seniority and levels of the judicial system to provide various perspectives. It was acknowledged that added value can be found in joint ethics trainings for judges, prosecutors and lawyers, as well as in trainings where actors from outside of the justice system are involved, e.g. the media. Ethics training should target not only judges, but also non-judicial staff of courts who in many countries are governed by special codes of conduct. Special focus in ethics trainings for judges should be made on transparency of judicial activities, behaviour of a judge in court and outside the courtroom, ensuring that not only unethical behaviour does not happen, but that also the appearance of integrity in public eyes is kept.

Effective enforcement of ethical rules among judges

It was agreed that the authority in charge of development, application and implementation of ethical rules in concrete situations should be an independent body composed from judges or majority of judges, preferably existing authority, such as judicial council. Its opinions of general importance should be made public. It was highlighted that this body should not have the authority to initiate or adjudicate in cases where the breaches of ethical standards lead to possible disciplinary sanctions. In addition, it was agreed that the same body should be in charge of providing advice about ethical rules and their implementation in specific situations at request of those who would have justified reasons to seek such advice. Moreover, it was noted that a breach of ethical rules could lead to disciplinary responsibility of a judge, and consequences in such a case are to be set up in the law.

Assessment of the seminar and future priorities

At the final session, the participants were invited to assess the seminar, to identify its achievements and to suggest issues for follow-up. Participants pointed out the following areas where they gained new and useful knowledge, as well as the working methods that they have most appreciated:

- Comparison of situations in the judiciary across various countries;
- Networking and useful exchange of information with foreign colleagues working in the same field and often facing similar problems;

- Discussion on internal and external independence of judges, including ensuring actual independence in practice;
- Comparative overview of self-regulatory bodies in different countries;
- Raising the issue of immunities of judges;
- Ethical rules for judges.

Further, the participants were invited to identify areas for future work. The following specific suggestions were made:

- Role of the civil society and associations of judges in encouraging accountability and scrutiny of the judiciary, including compliance with international standards;
- Transparency of administration of justice;
- Involvement of judges in social life and its limits, openness about judges' personal life;
- Role of media;
- Financial resources and stability of judiciary;
- Disciplinary responsibility bodies, their composition and possible involvement of civil society and Members of Parliament;
- Training curricula/programme for judges on judicial ethics, institutions providing training to judges, possible role of anti-corruption bodies;
- Proper role of Chairs and Deputy Chairs of courts;
- Ethics in decision-making by judges;
- Measuring corruption in judiciary;
- Focus less on European standards and European criminal justice systems;
- Prosecutorial independence and organisation of prosecution systems (independent or part of executive).

Besides, it was suggested to involve in such events for judiciary also NGOs, media, defence lawyers, prosecutors, legislators and representatives of the executive branch.

Session 1: Independence and Integrity Safeguards in Judicial Systems

The following presentations were made:

- **Prof. Guido Neppi Modona**, Vice-President of the Constitutional Court (1996-2005), Substitute member of the Venice Commission, Italy
External and internal aspects of the independence of the judiciary
- **Mr. Đuro Sessa**, President of Association of Croatian Judges, Justice of Supreme Court of Republic of Croatia
Judicial councils, other self-governance institutions and their role to ensure integrity and independence of judges
- **Mr. Ibrahim Okur**, Judge, Head of First Chamber of the High Council of Judges and Prosecutors, Turkey
Reforms to reinforce independence, integrity and accountability in the judiciary in Turkey
- **Mr. Szymon Janczarek**, Judge, Ministry of Justice, Poland
Judicial independence in the appointment process: in search of a “perfect model”. Polish experience

External and Internal Aspects of the Independence of the Judiciary

Prof. Guido Neppi Modona

Vice-President of the Constitutional Court (1996-2005), Italy
Substitute member of the Venice Commission

1. Preliminary remarks

All of us know that integrity and independence of the judiciary are necessary conditions to prevent corruption within the judiciary itself; in its turn an independent judiciary is the indispensable premise for the judiciary to be able to conduct preliminary investigations, to implement criminal proceeding against corruption in all the sectors of state and local administration, and to ascertain the criminal responsibility of corrupted public officials.

Given that the main focus of the seminar is not the independence of the judiciary as a whole but of the single judges, I have been asked, as a member of the Venice Commission, to make a presentation of its last comprehensive report on the matter, adopted in 2010. In fact, from the very beginning of its activity in 1990, the Venice Commission dealt very often with the various aspects of external and internal independence of the judiciary, giving opinions on the judicial and prosecutorial systems of dozens of countries in Europe, Asia, Africa and South America. We can say that the Venice Commission gave an important contribution to the framework of the European standards on the matter.

2. The sources of European standards

At the European and international level there exist a very large number of texts on the independence of the judiciary: as for the legislative field, the most important is without doubt Article 6 of the European Convention of Human Rights, which guarantees the right to an independent and impartial tribunal established by law.

Probably the most comprehensive overview is the 2001 Opinion No. 1 of the CCJE (Consultative Council of European Judges)² and the most authoritative text at the European level is the Recommendation CM/Rec (2010)12 of the Committee of Ministers on “Judges: independence, efficiency and responsibilities”, adopted on 17 November 2010³.

As I told beforehand, today I will follow the outline of the Venice Commission report “On the independence of the judicial system: the independence of judges”, adopted on 13 March 2010 (CDL-AD(2010)004)⁴, which takes into account the most important documents on the matter of the last ten

² See the CCJE 2001 Opinion No. 1 at

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2001\)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2001)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

³ See the Council of Europe Committee of Ministers Recommendation CM/Rec (2010)12 at <https://wcd.coe.int/ViewDoc.jsp?id=1707137&Site=CM>

⁴ See the Venice Commission report at [www.venice.coe.int/docs/2010/CDL-AD\(2010\)004-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)004-e.pdf)

years, starting with the opinions of the CCJE, the Council of Ministers recommendations and the previous opinions of the Venice Commission itself.

All the documents I mentioned deal with the principles that are considered to be essential for guaranteeing the independence of the judiciary as a whole and the independence of single judges when they exercise judicial functions. There is a substantial agreement on the essential principles and very often the difference among the contents of the documents rests only on the order the principles are dealt with.

3. General and constitutional principles

First of all it is important to underline that the independence of the judiciary is neither an end in itself, nor a personal privilege of the judges. The main function of the independence is to guarantee the right of an individual to have his/her rights and freedoms determined, protected and implemented by an independent and impartial judge. We could say that the independence of the judiciary as a whole is the essential condition of the judicial independence, which enables judges to fulfil their role of guardians of the rights and freedoms of the people. By this point of view the independence of judges is an indispensable premise of the rule of law.

It is worth mentioning that the close relation between the judiciary's independence and the rule of law suggests that the basic principles ensuring the independence of the judges should be set up in the Constitution or equivalent texts, that is to say at the highest level of national legislative system. So, the fundamental principles cannot be repealed or modified by an ordinary law, and perform a role of binding guidance of the ordinary laws in the matter.

All that said about the close relationship between the independence of the judiciary, the safeguard of rights and freedoms of the people, and the rule of law, the independence of the judges can be viewed from two distinct but interlinked viewpoints:

- that of the relations of the judiciary as a whole (and of the single judges) with the political power – notably the government, the legislative power, the political parties, the economic power centres, etc. When we deal with this kind of problems, we refer to the so-called external independence.
- that of the relations of each judge with other judges – the president of the court and higher judges – that is, the independence and autonomy in carrying out the judicial functions in respect to the structure to which the judge belongs: the so-called internal independence.

4. External independence

Starting with the external independence, exhaustive and detailed standards have been proposed and adopted at the European level, even though they are not always followed by all States.

We can say that there is a progressive agreement on a system whereby the judges are appointed through an independent body composed largely – I would say at least half of the members – by judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary. Since such a body – normally called High Judicial Council or High Council of the Judiciary – must also be competent to take all measures concerning the legal status of judges (promotions, transfers, disciplinary measures, dismissals, etc.), and to promote the efficient functioning of the judicial system, it is normally composed by full time members. The main objective of the Judicial Council is to avoid undue influence

and pressures of the political power on the judges, removing from the government all the decisions concerning the legal status and the career aspirations of the judges.

In authoritarian regimes, as well as in systems that don't implement the principles of the separation of powers, the minister of justice is always entrusted with the power of governing the judiciary, which is in such a way submitted to the control of the executive; in democratic systems, based on the division of powers, the Judicial Council performs the role of a self-governing body, excluding any direct interference of the political power on the judges.

As for the role, composition and functions of the judicial council it suffices to refer to the standards contained in the CM/Rec (2010)12 (points 26 to 29), the Opinion 1 (2001) of CCJE, the European Charter on the Statute for Judges in Europe, the numerous opinions of the Venice Commission, in particular the Report adopted in 2007 on Judicial Appointments (CDL-AD(2007)028)⁵.

The large participation of judges in the Judicial Council has a decisive influence in safeguarding the autonomy and independence from political power, but it does not imply that judges may be quite self governing. It is necessary to provide a proper balance between self administration and the accountability of the judiciary, in order to avoid negative effects of corporatist management within the judiciary. One way to achieve this goal is to establish a balanced composition among the Judicial Council members.

In order to provide democratic legitimacy of the Judicial Council it seems reasonable that the council be linked to the representation of the will of the people, as expressed by the Parliament. Non judicial members should be elected by the Parliament among persons with appropriate legal qualification, as lawyers, law professors, and civil society exponents. The need to insulate the judicial council from politics suggests that non judicial members should not be current members of the Parliament. The *depolitisation* of such a body should be favoured by the election of non judicial members with qualified majority of the Parliament, for instance two thirds. Following this method, a compromise has to be sought with the opposition, which is more likely to bring about a balanced and high professional composition.

The presence of the minister of justice in the Judicial Council is quite common, but it raises some concern, above all in matters relating to transfers and disciplinary measures. So, it is advisable that the minister of justice, if an ex officio member, be not involved in decisions concerning the transfer of judges and disciplinary measures, as this could lead to inappropriate interference by the Government.

As for the President of the Judicial Council, the best solution in order to avoid possible corporatist tendencies within the judiciary should be to entrust the Council itself with the power to appoint the President from among non judicial members, with the qualified majority of two thirds. The system guarantees a right link between the judiciary and the political power expressed in a pluralistic way by the Parliament. Some systems provide that president of the Judicial Council be the president of the highest court of the judiciary, who normally is ex officio member of the body, but the solution could have the negative effect of judicial corporatism within the council.

All the decisions of the Judicial Council on the legal status of judges might be submitted to judicial review by a judicial body, such as the Court of Cassation, the highest administrative court, or the Constitutional Court, as for instance in Croatia.

⁵ See the full text at [www.venice.coe.int/docs/2007/CDL-AD\(2007\)028-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)028-e.pdf)

5. Internal independence

While great attention has been devoted to the standards of the external independence of the judiciary, the internal independence has received less attention, at least from a quantitative point of view. The fundamental principles of independence within the organization of the judiciary are contained in the already mentioned Recommendation of the Committee of the Ministers and in numerous opinions of the Venice Commission, in particular they are set out in the 2008 document “*European Standards on the Independence of the Judiciary. A systematic Overview*” (CDL-JD(2008)002), under the subtitle “*Independence within the Judiciary*”.⁶

The first constitutional basis to ensure internal independence is the implementation of the principle of the natural judge established by law, that is to say the right of everybody to a lawful judge. Such a right means that the judge who rules a specific case must be identified on the basis of objective criteria predetermined by law, and not on the basis of discretionary choices of any individual, be he or she internal or external to the judiciary.

It has been noted that in the frequent cases of a court with more than one collegial body or more individual judges, the allocation of the work to the specific section or judge is often left to the subjective and discretionary choices of the president of the court. In such a way it should be possible to influence the outcome of the case by choosing a judge with certain ideological or political inclinations or, if we want to deal with the corruption within the judiciary, a judge who is supposed to be susceptible to corrupting proposals.

In order to overcome the risk of discretionary choices, which are inherent in the power of the head of the office, the rule has been adopted that the natural judge is identified - which specific exceptions which are also provided for by law or by special regulations - on the basis of objective and general criteria, as for instance the alphabetical or chronological order of the cases, the categories of cases, a computerized system. The exceptions should take into account the workload, the specialization of the judges, the complexity of legal issues, etc.

The principle of the natural or lawful judge, established in art. 6 of the European Convention of Human Rights, is also present in numerous Constitutions, such as Austria, Germany, Greece, Portugal, Luxembourg, Estonia, Spain, Slovakia, Italy, mostly in a negative form such as “Nobody can be removed from the natural judge established by law” (see for instance Article 25.1 of the Italian Constitution). As a consequence, a case could be withdrawn from the natural judge only on the basis of objective criteria provided for by the law and following a transparent procedure before a pre-established authority within the judiciary.

The right to a lawful judge is an essential but not sufficient guarantee. The internal independence can be jeopardized by a hierarchical organization of the judiciary. In such a system the decisions taken by a given judge are subjected to the control of the president of the court over the subordinated judges and, more in general, through preliminary instructions and directives and subsequent checks by higher judges, be they appeal, court of cassation, Supreme Court judges.

⁶ See the full text at [www.venice.coe.int/docs/2008/CDL-JD\(2008\)002-e.pdf](http://www.venice.coe.int/docs/2008/CDL-JD(2008)002-e.pdf)

As regards to hierarchical systems it must be recalled that the presidents of courts can be the privileged channel for the executive power to exercise pressure on the whole judiciary. In a corrupted judiciary system, sometimes the Court's presidents can also be the easier channel to practice corrupting pressures on individual judges. This is one of the reasons why a hierarchical structure of the judiciary has been unanimously criticized as incompatible with the independence of the single judge.

The constitutional principle that more directly sets out the incompatibility between the hierarchical structure and the independence of the judges is formulated in some constitutions with the formula "Judges are subject only to the law" (see for instance Article 101.2 of the Italian Constitution). The principle guarantees at the same time the independence of the individual judges from undue influences, instructions and recommendations coming from within the judiciary, and from external pressures coming from the political power or from illegal power centers out of the judiciary.

From another viewpoint, the principle sets out the rule that the control over the decisions of the single judge can be exercised only through procedural remedies, that is an appeal to a higher judge, and not through preventive recommendations, explanatory directives or legal interpretations addressed to the lower courts.

The subordination of the judge only to the law is closely linked to the constitutional principle of equality between judges. On the one hand the principle implies the refusal of a hierarchical power of control of upper judges on lower judges, on the other it means that judges can be distinguished only by their different functions, such as first instance, appeal, legitimacy, investigative, adjudication. Both meanings of the principle are incompatible with any form of hierarchical organization or supremacy within the judiciary.

In the framework of the internal independence we can say that the two constitutional principles of the natural judge established by law and the subjection of the judge only to the law play an important role in contrasting the corruption within the judiciary; at the same time they make easier for individual judges to defend themselves from unlawful corrupting interferences coming from outside the judiciary.

6. Effects of the judges independence

Some necessary corollaries of the external and internal independence of the judges can be summarized as follows:

- The tenure until the mandatory retirement age or the expiry of the term of office is a fundamental guarantee of the external independence. In effect, when the recruitment procedures provide for a trial period before confirmation on a permanent basis or the appointment is made for a limited period capable of renewal, the independence of judges is undermined, since they may feel under pressure to decide cases in a particular way which can favour the renewal or the reappointment.

In order to reconcile the need of probation and evaluation with the independence of judges some systems provide probationary periods during which candidate judges can assist in the preparation of adjudication without taking judicial decisions which are reserved to permanent judges.

- The guarantee of irremovability, normally established at the constitutional level, is strictly linked to external and internal independence. The transfer of a judge to another court or to another judicial office, even by the way of promotion, should be provided only with his/her consent, or in case of disciplinary

sanctions, lawful alteration of the court system, temporary assignment to reinforce a neighbouring court. In fact, the fear to be transferred without consent to another court or office can undermine the freedom of judgment, influence the decision and interfere more generally with judicial independence. It can also be a channel through which corrupting pressures on individual judges are carried out.

- The remuneration of judges, corresponding to the dignity of the profession and adequate for protecting judges from undue outside interference, should be established and guaranteed by law. Non monetary remunerations, such as apartments, cars, holiday resorts, etc. even if defined by law, always involve scope for discretion and are a potential threat to judicial independence and a privileged channel for corrupting pressures on individual judges.

- The independence of the judiciary requires that Courts should be financed on the basis of objective and transparent criteria established by law, and not on the basis of discretionary decision of the executive or legislative power. In particular, the judiciary should be given the opportunity to express its views about the proposed budget through the Judicial Council.

- External independence needs to be protected from civil liability in case of judicial errors or other failings done in good faith in the administration of justice. In these cases civil liability should lie only against the State. On the contrary, when not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.

25 June 2012, Torino, Italy

Judicial Councils, other Self-Governance Institutions and their Role to Ensure Integrity and Independence of Judges

Mr. Đuro Sessa

Justice of Supreme Court of Republic of Croatia

President of Association of Croatian Judges

Member of CCJE and its Working Party

Introduction

- Balance between legislative, executive and judicial powers.
- Relation between state governed by rule of law and independence of Judiciary.
- Guarantees of independence of a judge i.e. system of appointment and promotion autonomous from government and political forces, suitable working conditions, irremovability and tenure of office

Introduction

- **International standards:**
- **Basic principles on the Independence of Judiciary-** UN General Assembly Resolution No.40/32 29.November 1985.- Principle No. 1. and 10.
- **Guidelines on the role of prosecutors-** UN Congress on prevention on Crime, Cuba, September 1990.- Principle No.1.and 2.a.and b.
- **Declaration on Independence on Justice (“Singhavi Declaration”)-** Articles 9.,10.,11. 13. 14.and 15.
- **The Universal Charter of a Judge –** International Association of Judges 17.November 1997. – Articles 9. and 11.

Introduction

- **Standards endorsed by Council of Europe:**
- **European Charter on the Statute for Judges-** Strasbourg 1998.- Articles 1.3., 2.1.- 2.3. and 4.1.to 4.4.
- **Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges, independence, efficiency and responsibilities** — Strasbourg 17.November2010- Articles 7.,26.,27.,28.,29.44.,45.,46.,47.,48.
- **Magna Carta of Judges- CCJE-** Strasbourg, 17.November 2010-Principles No. 3., 5.,10. and 13.
- **Opinion No. 10 of CCJE On The Councils For the Judiciary at the Service of Society,** Strasbourg 2007.

Common grounds

- **What is common in all of International documents?**
- Admitting that there are various systems of appointment.
- Council of Judiciary should be established by highest statutory level- / Constitution preferably/
- Councils for judiciary are seen as best model for appointment, promotion and removal from office
- Councils of judiciary should act and perform duties invested to them by Constitution and/or laws independently

Common grounds

- Councils should have decisive role on appointment and promotion of judges
- Method how members of Councils are elected
- Composition of the Councils- balance between non judicial and judicial members- /discrepancy about majority/
- Method of electing chair of the Council
- Elements for election and promotion

Croatian Experience

- Development from 1991.to 2010.
 - Two of three models of appointing judges existed.
 - State Judicial Council
 - From 1994.to 2000.
 - From 2000. to 2010.
- / Legal frame, Composition, Scope of duties,
Election of its members, Term of office .../
Croatian paradox !?!

Croatian experience

- Reasons to intervene in system of appointment, promotion and discipline proceedings of judges.
- Role of Negotiations with EU and role of Association of Judges
- Legal frame
 1. Constitution
 2. Law on State Judiciary Council
 3. Law on Courts

Croatian experience

- Constitutional provisions
- Article 124. of the Constitution
 - State Judiciary Council (SJC) is autonomous and independent body with a role to ensure independence of judicial power.
 - Authority of SJC- appointment, promotion, transfer, dismissal and disciplinary liability of judges and presidents of courts,
 - Role in training of judges
 - Composition- 11 members -7 judges,2 professors of law and two members of the parliament

Croatian Experience



- **Law on State Judicial Council**
 - Composition
 - Representation
 - Mandate for period of 4 years
 - Election of members -procedure, bodies in election process, candidacy, voting process and establishing the results, possibility to appeal
 - During exercising duty as a member of SJC he/she can not be promoted or appointed as president of court
 - Election of President of HJC

Croatian Experience

Powers of SJC

- Appointment of judges,
- Appointment and dismissal of presidents of courts
- Immunity of judges
- Transfer of judges,
- Disciplinary proceedings and decisions
- Dismissal from office
- Training of judges and court clerks,
 - Proceedings regarding entering the School for Judges and governing the final exam
 - Delivering the Methodology for evaluation of judges,
 - Collecting, maintaining and control on Declaration of Assets

Croatian Experience

- **Appointment of judges**
- Conditions are proscribed in Law on SJC
- Dual system exists until January 1st 2013.
- Appointment of a Judge of first instance courts
- Promotion to higher courts-based exclusively on points gained through decision on performance of judges duties and interview before SJC

Croatian Experience

- **Transfer of judges**
- Judge can not be transferred without his/hers consent-exception reorganization of a court
- Transfer-permanent or for limited period of time

Croatian Experience

- **Disciplinary responsibility of judges**
- Disciplinary offences proscribed in the Law /nula poena nulum crimen sine lege/
- Disciplinary measures- warning, fine, dismissal (possibility to suspend the measure) , prohibition to promotion
- Statute of limitation -1year,3 years
- Procedural safeguards according to rules of Criminal Proceedings Act
- Right to appeal to Constitutional Court

Croatian Experience

- **Suspension**
- Decision of SJC
- In a case when criminal proceedings against judges are initiated, when disciplinary proceedings are initiated and dismissal from duty is proposed, when judge is involved in activity which is incompatible with his/hers duties
- Decision has to be in written and reasoned with possibility to appeal to Constitutional Court

Croatian Experience

- **Termination of office**
 - Office of a judge can be terminated only for a reasons proscribed in Law:
 - On his/hers request,
 - If he/she becomes permanently incapable for fulfilling duties,
 - If he/she will be convicted for a crime which makes a judge unbecoming for a duty,
 - If he/she is relived form duty in disciplinary proceedings,
 - If he/she reaches 70 years of age
- Decision is reached after a judge had an opportunity to respond to the request,
Appeal to Constitutional Court.

Croatian Experience

- **Immunity of judges**
- Constitution: “Judges have immunity according to law”
- Law on Courts:
 - immunity from any form of responsibility for opinion delivered or expressed in process of delivering court decision,
 - Against judge criminal proceeding can not be initiated and judge can not be detained in pretrial detention with out permission of SJC
 - Civil liability- only secondary in case of intention or gross negligence

Croatian Experience

- **Councils of judges**
- Specific body of self governance regulated in Law on Courts
- Authority:
 - Delivering decision on performance of judges duties – application of Methodology
 - Opinion on candidates for presidents of courts
 - Composition -15 members/1+8+6/
 - Election of members
 - Established at every County Court / Court of Appeal/ and at high specialized courts
 - Decision on performance is appeal able- -Decision of Supreme Court panel of 5 judges is final.

Croatian Experience



- **Challenge:**
- Decision on evaluation of performance of duty is delivered on basis of Criteria delivered by Minister of Justice,
- Dual system of appointment
- Members of parliament as members of SJC- possibility to introduce partisan policy in process of appointing judges,
- No precise criteria for points gained through interview –
- Budget of SJC- not independent
- SJC has no duties and authority on questions of quality of justice
- No role in creating budget for judiciary

Reforms to Reinforce Independence, Integrity and Accountability in the Judiciary in Turkey

Mr. Ibrahim Okur

Judge

Head of First Chamber of the High Council of Judges and Prosecutors
Turkey

FOUNDATIONS OF THE REFORM

- ✓ Constitutional amendments,
- ✓ Social Demand,
- ✓ Efforts to execute court judgements as a result of recognizing the right of individual application to the European Court of Human Rights,
- ✓ Works carried out for European Union membership process,
- ✓ Accession Partnership Document,
- ✓ Progress report.

THE STEPS OF THE REFORM

- ✓ Recognizing the right of individual application to ECHR,
- ✓ Priority of international contracts to laws in the hierarchy national law,
- ✓ Shutting down State Security Court,
- ✓ Preventing trials of civilians in military courts,
- ✓ Accepting the Bangalore Principles of Judicial Conduct,
- ✓ Founding of Turkish Justice Academy,
- ✓ Reconstruction of HCJP and Constitutional Court via Constitutional Amendments of 2010

FORM OF HCJP PRIOR TO THE REFORM

According to Article 159 of Constitution:

Minister of Justice is the President and the Undersecretary is ex officio member of the Council. President of Republic shall select;

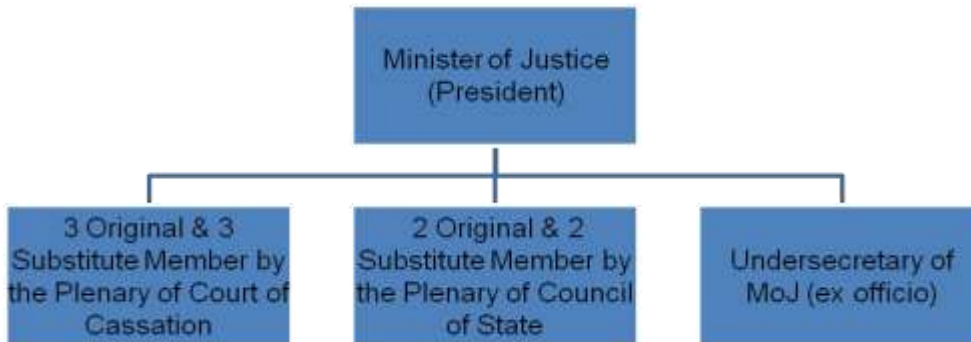
- ✓ 3 original & 3 substitute members (among 3 candidates for each position by the Plenary of Court of Cassation),
- ✓ 2 original & 2 substitute members (among 3 candidates for each position by the Plenary of Council of State)

For a period of 4 years.

CONSTITUTION OF 1982

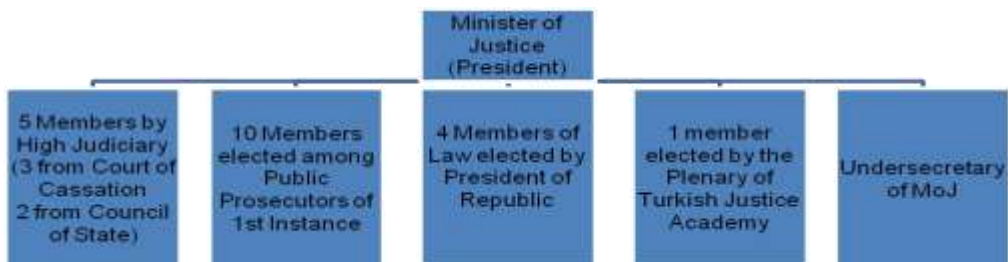
(High Council of Judges & Prosecutors)

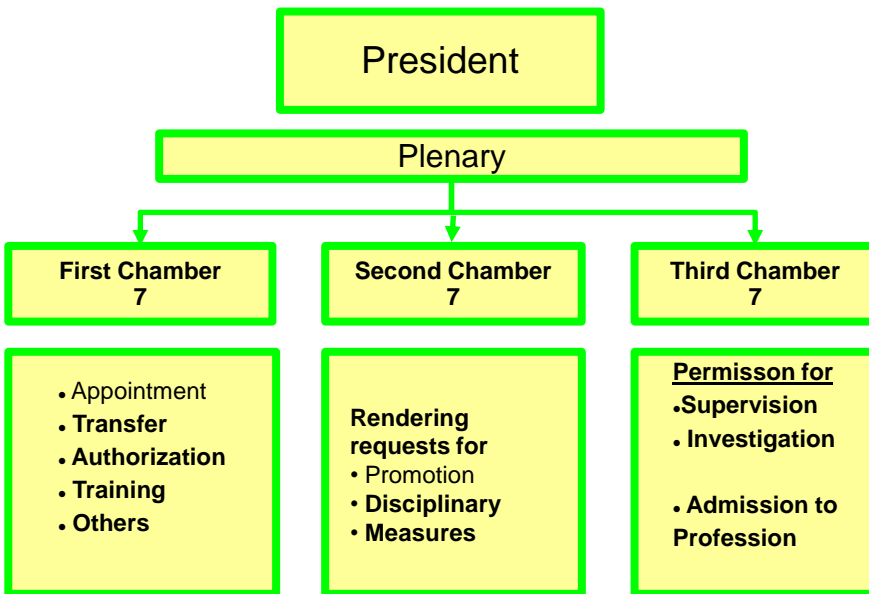
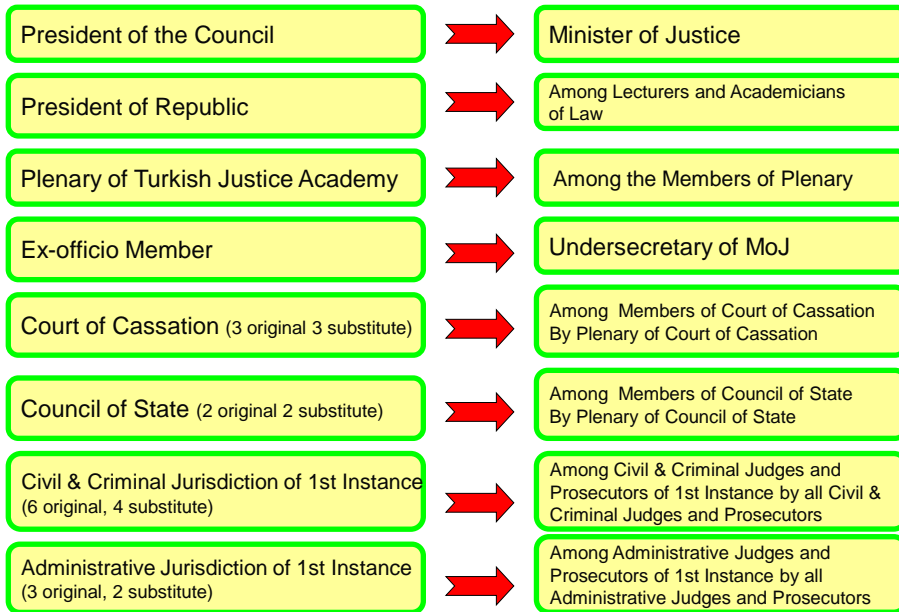
(7 Original, 5 Substitute Members)

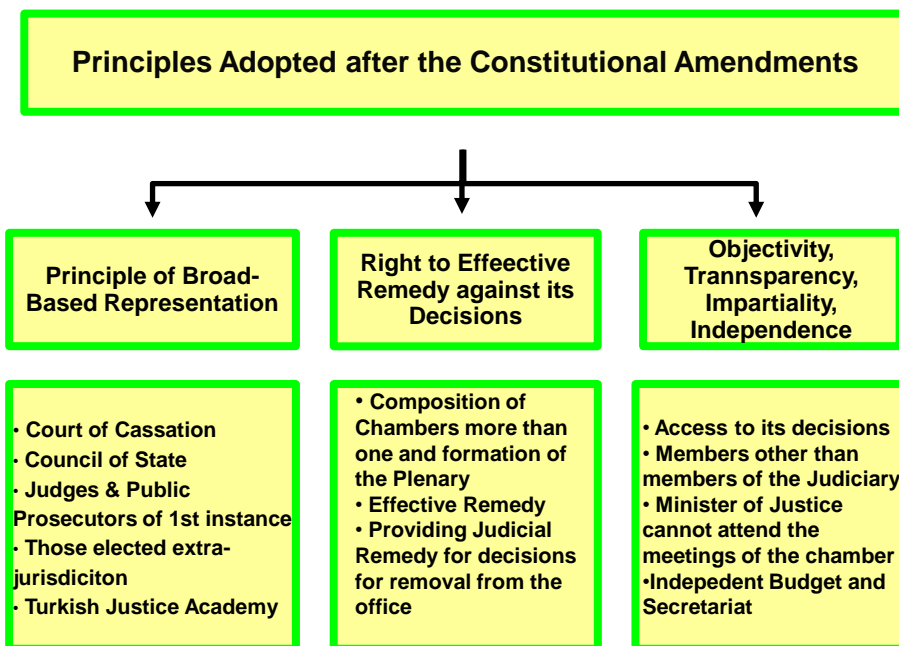


Distribution of the Members of the new High Council of Judges and Prosecutors

(22 members)







HCJP AFTER REFORM

- ✓ Judicial remedy against decision of removal, and effective remedy against other decisions,
- ✓ Administrative and financial autonomy,
- ✓ Secretariat established under its command,
- ✓ Inspection Board subordinated to HCJP, and the right to do supervision and disciplinary proceedings about judges and prosecutors,
- ✓ The right to determine the agenda of meetings.

The following have been a turning point for transparency and accountability, and prevented professional favouritism:

- ✓ Members elected by their peers shall return to their places among their colleagues,
- ✓ Members selected by the President of Republic are from outside the Judiciary,
- ✓ The possibility that the member elected by Turkish Justice Academy may be outside judiciary.
- ✓ A strategic Plan has been prepared and published,
- ✓ Annual Activity Report in which the work of the Council is detailed has been made public,
- ✓ By publishing the some decisions of the Council via Official Gazette and some via the internet, the Council exhibited a transparent administration and aimed accountability before public and stakeholders.

THE ROLE OF HCJP

- In addition to personnel procedures of judges and prosecutors, HCJP is responsible for
- ✓ Well-functioning of the judiciary in Turkish Republic,
 - ✓ Taking measures necessary for providing trials via independent and impartial judiciary,
 - ✓ Providing opinions to relevant places in determination of judicial policies,

- ✓ And effective and productive functioning of the Judiciary.

MEETINGS FOR CONDITION ANALYSIS IN THE JUDICIARY

17 regions were determined nationwide and with 4 groups of 20 people in each region, the answers to the following questions were sought:

“What do you think is the most important problem of the judiciary?”

“What are your recommendations to solve them?”

“What should be done to accelerate the judiciary?”

1200 judges & prosecutors attended these meetings and the courthouses of those unable to attend were visited to receive recommendations. Thus all judges and prosecutors were interviewed in person.

INDEPENDENCE AGAINST HIGH JUDICIARY

These applications were abolished:

- ✓ grading judges and prosecutors by high judiciary during examinations of appeals, which is considered as an internal threat in the consultative visit reports; and
- ✓ the obligation of the number of cases which passes the examination of appeals for the promotion of judges and prosecutors.

PREDICTABILITY IN APPOINTMENTS

Prior to decrees, the available vacancies are announced, thus making the decree published on schedule, eliminating the ambiguity about the announcement time of the decree.

SPECIALIZATION AND TIMELY AUTHORIZATION

Permanent authorizations are determined right after the decrees, thus stopping the complaints of vacant courts or judges, and determining the courts where new judges will work prior to starting their term of office.

Considering specialization, often changes in authorizations have been avoided.

OBJECTIVE SUPERVISION OF PERFORMANCE

Inspection regulations have been changed and the application of “condition document” which included subjective evaluation has been abolished and the application of objective and measurable performance assessment has been adopted.

GROUNDLESS COMPLAINTS & NOTICES

Judges and prosecutors are protected thanks to the application of ignoring the petitions of complaint which do not include concrete claim or event, or anonymous complaints.

85% of the petitions received were not processed, and 90% of the remaining 15% was stopped at the examination phase.

CIRCULARS

After the constitutional amendment, the circulars that the Council should issue have been issued after a meticulous study, especially aimed to eliminate the applications treathening the personal rights and freedom.

TRAINING OF JUDGES AND PROSECUTORS

In collaboration with Turkish Justice Academy, approximately 5000 judges and prosecutors were provided with trainings not only on recently enforced laws but also on personal development.

MEETING TO ASSESS RESULTS OF MEETINGS FOR CONDITION ANALYSIS IN THE JUDICIARY

At the end of the series of Meetings for Condition Analysis in the Judiciary, In October 3-5, 2011, a final assessment meeting was held with 150 participants in Ankara.

The meeting, where concrete recommendations to increase the efficiency and productivity of the judiciary were dealt with, was attended by the spokespersons elected by the judges and prosecutors who attended the previous meetings, advocates, academicians and representatives of high courts and Ministry of Justice. The outcomes of this meeting were published via the internet and printed.

FOLLOW-UP OF THE DECISIONS BY ECHR

In order to follow-up of the ECHR decisions by judges and prosecutors and to decrease the violations, it was decided to consider ECHR decisions in promotions and, to this end, a collaboration with Directory General of International Law and Foreign Affairs of Ministry of Justice.

Our Council was the first to consider ECHR decisions, immediately enforcing the ECHR decisions concerning our Council.

JUDGES AND PROSECUTORS DEALING WITH PRESS CRIMES

Those judges and prosecutors dealing with press crimes were taken to Turkish Justice Academy for in-service training.

Receiving theoretical training, 34 judges and prosecutors were provided with study visits to ECHR.

PRESS SPOKESPERSONS/PRESS JUDGES

Within the same concept, in order to provide public & press with correct information, and in order to diminish the number of aforementioned crimes and cases, 16 public prosecutors and chief public prosecutors were appointed as spokespersons in 14 centers where media cases are mostly dealt with.

In June 2011, a symposium on the institution of press spokespersons and the relationship between judiciary and media was held in Ankara, and 6 spokespersons were sent to Germany for a study visit, and afterwards 16 more were sent to the Netherlands to observe and examine the application of spokesperson on-location.

Judicial Independence in the Appointment Process: in Search of a “Perfect Model”: Polish Experience

Mr. Szymon Janczarek

Judge

Head of Unit for Proceedings before the European Court of Human Rights

Department of International Cooperation and Human Rights

Ministry of Justice

Poland

LEGAL BACKGROUND

The Constitution

The Constitution of the Republic of Poland was adopted by the National Assembly on 2 April 1997 and entered into force on 17 October 1997.

Article 45 § 1 of the Constitution reads:

Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

(Art. 45 § 1 follows the European Convention model contained in its Art. 6)

The Law on the Organisation of Courts

The Law of 27 July 2001 on the Organisation of Courts (*Prawo o ustroju sądów powszechnych*; hereinafter – the 2001 Act) sets out comprehensively all matters related to the organisation and administration of courts of general jurisdiction, the status of judges and their self-governing bodies, and the position of assessors and judicial trainees, court employees and officers and lay judges.

District Court`s Judge

The 2001 Act stipulated the requirements that have to be fulfilled to assume the office of a district court judge.

A candidate for such office was required, among other conditions, to complete a judge's or prosecutor's training (*aplikacja*) and then pass the relevant examination. Subsequently, he or she had to work a minimum of three years as **an assessor** in a district court.

Sections 134-136 of the 2001 Act regulate the position of assessors. They provide, in so far as relevant:

Section 134

§ 1. **The Minister of Justice may appoint as an assessor** a person who has completed a judge's or prosecutor's training and passed the judge's or prosecutor's examination and who meets the requirements specified in section 61 § 1 (1-4).

[...]

§ 5. **The Minister of Justice may discharge an assessor** having given him notice and subject to approval by the board (of judges) of a regional court.”

Section 135

§ 1. **The Minister of Justice** may, subject to approval by the board (of judges) of a regional court, **authorise an assessor to exercise judicial powers in a district court** for a specified period of time, not exceeding four years. [...]

§ 2. **While adjudicating, assessors shall be independent and subject only to the Constitution and statutes.**

[...]

§ 5. During the period in which an assessor exercises judicial powers he or she remains **under the supervision** of a judge designated to carry out the function **of a consulting judge.**

[...]

The aim of the assessor`s institution

- intermediate stage between judicial traineeship and professional judge
- preparation for the execution of judicial duties
- verifying whether particular person is suitable for judicial positions in order to guarantee the highest possible standard (sufficient level of ethics and morality as well as professionalism)
- institution of consulting judge (help, upon request from an assessor, on the technic of judicial work and judicial administration as well as inspection of court`s sessions and drawing quarterly reports on the functions performed)

Institutional position of assessors

1. assessors adjudicated the matters entrusted to them rendering legally binding decisions
2. within their adjudicative function assessors were independent and subject only to the Constitution and statutes
3. the only way to review decisions issued by the assessors was to initiate appellate proceedings before the court of second instance
4. a decision issued by an assistant judge could not be challenged, reversed, remanded for re-examination or suspended by executive
5. the scope of duties imposed on a court by procedural laws (criminal/civil procedure) was the same, regardless whether a case was heard by a professional judge or an assessor
6. assessors and professional judges rendered judgments in the name of Republic of Poland
7. requirements set before a person applying for a post of assessor were almost identical as those imposed on candidates for an office of professional judge
8. judges` professional ethics rules⁷ was applicable to assessors entrusted with judicial powers
9. the level of professional training required was the same as for professional judges
10. opinions of the board of judges (judges` professional body) on candidate for assessor`s office and its right to veto the decision of the Minister of Justice to entrust an assessor with a power to adjudicate (not a free and unrestricted power)
11. consent of the board of judges of a Regional Court for a dismissal of an assessor (not unrestricted dismissal by the executive)
12. a role of consulting judge – to assist in organising work and improve juristic competence (explain methodology of judicial work and courts administration tasks) – assistance only on the request
13. assessors adjudicated only in the first instance courts

⁷ Resolution 16/2003 of the National Council of Judiciary, adopted on 19 February 2003

14. assessors were provided with the same immunity as that given to professional judges
15. assessors vested with judicial powers were subject to disciplinary liability as professional judges
16. assessors vested with judicial powers were members of the community of judges
17. official court dress was the same for an assessor and a professional judge
18. like professional judges assessors were covered by the prohibition to take additional employment
19. like professional judges assessors were obliged to submit a statement on their material status
20. assessors were considered members of judiciary by both – judges and the court staff
21. the institution of assessor was deeply rooted in the Polish judicial system
22. according to legal doctrine and legal community in Poland even though from procedural perspective assessors were not judges in reality they enjoyed equivalent status

Problem appeared in public opinion because of the growing number of assessors and activity of the Constitutional Tribunal.

CONSTITUTIONAL COURT'S JUDGEEMENT

Judgment of the Constitutional Court of 24 October 2007, case no. SK 7/06

Two constitutional complaints before the Constitutional Court (complaint that detention had been imposed by an assessor, complaint that a prosecutor's decision discontinuing a criminal investigation had been reviewed by an assessor).

Allegations: various provisions of the 2001 Act which govern the position of assessors were incompatible, *inter alia*, with Article 45 of the Constitution, providing for the right to have one's case examined by an impartial and independent court.

The Constitutional Court heard the case as a full court (fourteen judges). In the first part of the operative part it held that:

Section 135 § 1 of the Law of 27 July 2001 on the Organisation of Courts was incompatible with Article 45 § 1 of the Constitution.

Principals reasons for the judgement

In accordance with the text of the statute, while adjudicating, an assessor shall be independent and subject only to the Constitution and statutes (section 135 § 2). However, ..., such regulation of itself is only a declaration, not ensuring the real and effective independence required by the Constitution, unless the independence is supplemented by concrete guarantees, namely particular legal regulations related to effective securing of the observance of the particular elements of the concept of independence. (...)

Independence of assessors from the Minister of Justice – crucial points

1. assessor's appointment;
2. vesting of judicial powers in an assessor;
3. assessor's dismissal.

(..)

The principal argument indicative of the unconstitutionality of the vesting of judicial powers in an assessor is the admissibility of his or her dismissal, even during the period in which an assessor exercises judicial powers. Even assuming the constitutional admissibility of the institution of temporarily vesting those powers in an assessor within the jurisdictional and temporal limits specified by a statute, then a rudimentary aspect of the principle of independence which must be adhered to also in this case requires that it should be possible to remove an assessor from office only in the same way as judges may be so removed or even only in some of those cases.

(..)

Conclusions:

The Constitutional Court did not exclude the possibility of the existence of assessors as an institution.

However, it questioned its normative framework, having regard to the vesting of judicial powers in assessors (by the Minister of Justice, a representative of the executive) to carry out the constitutional function of the administration of justice without also [securing] the constitutionally required guarantees of independence which judges enjoy.

Nor should the judgment of the Constitutional Court be understood as ruling out, in principle, the possibility to allow adjudication by persons other than judges within the meaning of the Constitution.

In any case solutions to be considered should be such as to guarantee real separation between the judiciary and the other powers (Article 10 of the Constitution), to loosen the bond between the assessors and the Minister of Justice [and] to ensure the influence of the National Judicial Council on the professional career of a judge *in spe*.

Without prejudging the future normative regulation of the institution of assessors, the present judgment of the Constitutional Court should be understood as a negative constitutional assessment of the currently existing normative model of this institution. (...)

ECHR`S JUDGEMENT

Henryk Urban and Ryszard Urban v. Poland, application no. 23614/08, judgement of 30 November 2010

The applicants argued that the assessor who heard their case in the court of first instance had not been an independent tribunal within the meaning of Article 6(1) of the Convention, that stipulates

in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair... hearing ... by an independent and impartial tribunal established by law

The Court recalled that in determining whether a body can be considered as “independent” – notably of the executive and of the parties to the case – regard must be had, *inter alia*, to 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.

It noted that the principal reason for the Constitutional Court's finding had been related to the Minister's power to remove an assessor who had exercised judicial powers, and the lack of adequate substantive and procedural safeguards against the discretionary exercise of that power.

The 2001 Act did not specify what factual grounds could serve as the basis for removal of an assessor and provided for the decision on removal to be taken by the Minister and not by a court. The

lack of the requisite guarantees prompted the Constitutional Court to note that the removal of an assessor based on the content of his rulings was not excluded.

Furthermore, the Constitutional Court found, contrary to what was asserted by the Government, that the requirement to secure the approval of the board of judges was not a sufficient safeguard.

The Government's statistics indicating that the Minister of Justice never exercised the power to remove an assessor do not, in the Court's view, invalidate the reasons for the finding of unconstitutionality.

(..)

Conclusion:

1. The Court considers that the assessor in a given case lacked the independence required by Article 6 § 1 of the Convention, as she could have been removed by the Minister of Justice at any time during her term of office and that there were no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister.

2. It is not necessary to consider other aspects of the status of assessors since their removability by the executive is sufficient to vitiate the independence of the court which was composed of the particular assessor.

LEGISLATIVE AMENDMENTS

The Law on the National School for the Judiciary and the Prosecution Service

On 23 January 2009 Parliament enacted the Law on the National School for the Judiciary and the Prosecution Service (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*), which entered into force on 4 March 2009. The law establishes a comprehensive and centralised institution responsible for training judges and prosecutors.

The Law on the National School for the Judiciary and the Prosecution Service

Requirements for judicial appointment:

- Polish citizenship, full civil rights;
- impeccable character;
- master degree in law;
- is healthy enough to perform judicial duties
- age over 29
- completed judge's initial training in the National School of Judiciary and Prosecutorial Service
- passed judicial or prosecutorial exam.

(Previously: judicial or prosecutorial traineeship, minimum of three years work as an assessor in a district court)

New training system

- Judge's initial training shall last 48 months.
- Within the framework of the judge's initial training, trainees attend a 30-month-long course at the National School and an apprenticeship schemes in accordance with the curriculum as well as serve 18-month-long on the positions of assistant judge and a court referendary.
- Trainee judges shall take judge's examination in the thirtieth month of training. In order to be entitled to take the judge's examination, the trainee must gain positive notes on all tests and apprenticeship schemes attended as part of the training

Number of judges and assessors

2000 – 7253 judges and 1082 assessors
2001 – 7614 judges and 1154 assessors
2002 – 7837 judges and 1192 assessors
2003 – 8336 judges and 1140 assessors
2004 – 8160 judges and 1596 assessors
2005 – 8151 judges and 1676 assessors
2006 – 8254 judges and 1636 assessors
2007 – 8631 judges and 1451 assessors
2008 – 9060 judges and 858 assessors
2009 – 9803 judges and 125 assessors (30/06/2009)

Middle of 2006:

- 1675 assessors (1637 with judicial powers)
- 8181 judges of general courts
- 5237 judges in district courts
- Assessors – 31,26% of this number
- in 2006 – more than 8.000.000 new cases in district courts

IS THERE A PERFECT MODEL?

Session 2: Rules of Conduct and Ethics for Judges and their Effective Enforcement

The following presentations were made:

- **Ms. Nina Betetto**, Vice-President and Judge of the Supreme Court, Member of the Consultative Council of European Judges, Slovenia, GRECO evaluator
Judicial ethics and enforcement mechanisms. European Court for Human Rights practice
- **Ms. Valentyna Simonenko**, Judge, Higher Specialized Court of Ukraine in Civil and Criminal Cases, member of the Expert group for drafting new Code of Judicial Ethics, Ukraine
Judicial ethics in Ukraine and main challenges for enforcement

Judicial Ethics and Enforcement Mechanisms. European Court for Human Rights Practice

Mag. Nina Betetto

Vice-President and Judge of the Supreme Court of the Republic of Slovenia
Member of the Consultative Council of European Judges
GRECO evaluator

Overview

- Judicial ethics as an attitude about judge's professional conduct
- The impact of the ECHR jurisprudence in the field of judicial independence

The impact of international law on national law - UK

- National law international law
- Concept of judicial independence originates from England (1701):
 - it impacted the thinking of political leaders in the transnational level
 - the international community embodied the principle of judicial independence into international treaties
- The international law of judicial independence has impacted the domestic law: UK introduced ECHR into the British domestic law (1998; British Constitutional Reform Act, 2005)

Law : ethics



- Wolcher: “Ethics entails freedom because it entails the possibility of choice.”
- G. Guillaume: “The judge who wants to be independent is independent.”
- Irmgard Gris: “To be a good judge is a matter of character.”
- Politics: “To be a judge is a mission, thus the judge should adjudicate even without being paid”?

Law : ethics

- The autonomous character of ethical rules
- Ethical rules prescribe objectives to be pursued, not activity
- Ethical rules establish guide governing conduct: guidelines
- A different method is used when assessing whether a certain activity complies with ethical standards



The Bangalore principles of judicial conduct (2002)

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and diligence



CCJE Opinion No. 3

- i) each individual judge should do everything to uphold judicial **independence** at both the institutional and the individual level,
- ii) judges should behave with **integrity** in office and in their private lives,
- iii) they should at all times adopt an approach which both is and appears **impartial**,
- iv) they should discharge their duties without favouritism and without actual or apparent prejudice or bias,
- v) their decisions should be reached by taking into account all considerations material to the **application of the relevant rules of law**, and excluding from account all immaterial considerations,



CCJE Opinion No. 3

- vi) they should show **the consideration due** to all persons taking part in the judicial proceedings or affected by these proceedings,
- vii) they should discharge their duties with due respect for the **equal treatment of parties**, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring each a fair hearing,
- viii) they should show **circumspection in their relations with the media**, maintain their independence and impartiality by refraining from any personal exploitation of any relations with the media and from making any unjustified comments on the cases they are dealing with,



CCJE Opinion No. 3

- ix) they should ensure they maintain a high degree of **professional competence**,
- x) they should have a high degree of professional awareness and be subject to an **obligation of diligence** in order to comply with the requirement to deliver their judgments in a reasonable time,
- xi) they should devote the most of their working time to their judicial functions, including associated activities,
- xii) they should **refrain from any political activity** which could compromise their independence and cause detriment to their image of impartiality.



Independence

- Legal elements: institutional framework establishing legislative provisions and constitutional safeguards of judiciary and judges
- Ethical elements: the code of judicial conduct
- Independence:
 - of the judiciary as a body
 - individual



Independent tribunal

- **Campbell and Fell v. UK (1977):**
 - manner of appointment of its members
 - duration of their term of office
 - existence of guarantees against outside pressure
 - appearance of independence



Institutional independence

- Independence of the executive:
Beaumartin v. France (1994)
- Independence of the legislature:
McGonnell v. UK (2000)
- *Judges assigned to a Ministry of Justice???*



Impartiality/independence

- CCJE (Opinion No. 1, 1994): “The judicial independence serves as the guarantee of impartiality.”
- CCJE (Opinion No. 3): “The judicial independence is a pre-condition of the impartiality of the judge, which is essential to the credibility of the judicial system and the confidence that it should inspire in a democratic society.”
- They are functional in character: they are means protecting the ability of the judge to perform the relevant judicial function
- Independence: no outside source, which would prevent the judge from performing his function
- Impartiality: freedom from irrelevant pressures with regard to the decision to be taken (towards himself, parties, lawyers, public opinion)

Impartiality – subjective/objective test

- The **subjective** impartiality is presumed as long as the contrary has not been proved
- **Objective** test: account must also be taken of considerations relating to the functions exercised and to internal organisation: “Justice must not only be done; it must also be seen to be done”.
- **Piersack v. Belgium**: “What is at stake is the confidence which the courts in a democratic society must inspire in the public.”
- **Hauschildt v. Denmark**: “The fear that the judge or tribunal lacks impartiality must be such that it can be held to be objectively justified; the standpoint of the accused on this matter, although important, is not decisive.”

Appearance of impartiality

- **De Cubber v. Belgium**:
One of the three judges of the criminal court who had given judgment on the charges against the applicant had previously acted as investigating judge in the two cases in question.
- “Even appearances may be important ...”
- How about this?
- Bangalore principle 4.3.





Ethical theories

- The deontological theory states that people should adhere to their obligations and duties when analyzing an ethical dilemma
- Utilitarianism: the choice that yields the greatest benefit to the most people is the choice that is ethically correct



Ethical theories

- *Casuist*: The casuist ethical theory is one that compares a current ethical dilemma with examples of similar ethical dilemmas and their outcomes.
- *Virtue*: The virtue ethical theory judges a person by his character rather than by an action that may deviate from his normal behavior .



Ten commandments for a judge

- Be kind
- Be patient
- Be dignified
- Don't take yourself too seriously
- Lazy judge is a poor judge
- Don't fear reversal
- There are no insignificant cases
- Be prompt
- Common sense
- Pray for divine guidance

Judicial Ethics and Problems of its Implementation in Ukraine

Ms. Valentyna Simonenko

Judge of High Specialized Court in Civil and Criminal Matters
Ukraine

Ukrainian judges have been dealing with judicial ethics issues and ethical behavior for more than 10 years.

Such attention to these issues was explained by the fact that in late 90s and early 2000 the number of complaints about judges started to rise. The Soviet legal system as a one party state institution did not pay much attention to fair trial right and judicial ethical issues in this regard.

Back in 2002 upon initiative of judges and under the auspices of the Council of Judges of Ukraine with international technical support a working group was created, which undertook the obligation to develop and present at the Congress of Judges the Code of Judicial Ethics. This was the first attempt by Ukrainian judges to define judicial ethical principles. It did not take long to draft the Code which was adopted in October 2002 by the fifth Congress of Judges of Ukraine.

At that time Ukrainian judges resisted its adoption and the content of the Code ended up being of a very declarative nature. There was no liability for violation of the Code rules, but the Code nevertheless established the standards for judicial behavior on and off the bench to foster public trust and confidence.

The Academy of Judges had launched a course on Judicial Ethics as part of its ongoing training.

In 2010 the Parliament of Ukraine approved a new law “On the Judiciary and Status of Judges”, which radically changed the attitude of the state to ethics of judicial behavior. In 2012 “Rules of conduct for civil servants” have been adopted.

The Law of Ukraine “On the Judiciary and Status of Judges” for the first time introduced disciplinary responsibility for violation of ethics rules. The September 2010 Congress of Judges authorized Council of Judges of Ukraine to bring the Code in line with the new legislation.

On one hand the law sets more strict ethics requirements for judges, on the other hand the wording of the law sometimes is too perplexing in terms of the concept for judicial behavior (its principles and rules) giving rise to a number of problems that the developers of the new Judicial Code of Ethics are now trying to solve.

There are different views on the issue in Ukraine ranging from approving to obvious resentment. However, a rule of thumb states that one can believe in an ideal judge while justice is administered by people who unfortunately not always meet the high standard of their profession. Therefore the responsibility of judicial community is to take care of its integrity to make sure individual judge feels connected to the professional group.

Let me brief you on some issues related to the adopted law. Perhaps analysis of those issues will be useful for my peers.

According to the Constitution of Ukraine a judge has a long term appointment till he/she reaches the age of 65. A judge may be terminated in case of violation of requirements concerning incompatibility or the breach of oath.

According to Law of Ukraine “On the Judiciary and Status of Judges” the judges may be disciplined by High Council of Justice of Ukraine or by High Qualifications and Discipline Commission of Judges of Ukraine (depending on level of court they work in) and currently the breach of ethics rules serves as a basis for disciplining a judge or termination for violation of the oath, the text of which includes the obligation to comply with moral and ethical principles.

At the same time the law points out that rules of judicial ethics are defined in the Code of Judicial Ethics adopted by Congress of Judges of Ukraine. Due to this fact the importance of the Code significantly changes as it becomes a bylaw\normative act on the basis of which a judge may be disciplined (admonished) or terminated. On the other hand the judicial community wants to see the Code as a means of protection of their interests against abuse by other branches of power representatives.

Combining those two functions of the normative act is not only the challenge that the Code developers face, but also a problem.

The second challenge - is to delineate ethical principles from ethical rules, which in the Law of Ukraine "On the Judiciary and Status of Judges" are presented as separate notions.

Thus the text of the oath (art. 55 of the Law) says, among other things, that a judge when delivering justice should comply with moral and ethical principles of judicial behavior.

At the same time pursuant to art. 83 of the above Law a judge may be disciplined for violation of judicial ethics rules, which undermine the authority of the judiciary.

The law does not differentiate the notions: what are moral and ethical principles and what are judicial ethics rules.

The scope & content of the judicial ethical principles we can borrow from the Bangalore Principles of Judicial Conduct.

But in order to ensure the proper interpretation of domestic legislation with the aim to protect judges against disciplinary bodies abuse, there is a need to determine violation of what ethics principles by a judge should entail the dismissal from office and under what circumstances the violation of judicial ethics rules is considered to be the one leading only to reprimand. In line with the common rule, if a principle consists of rules, then violation of one of the rules is the violation of the principle with all the consequences that come with it for Ukrainian judges.

When developing the draft the judges also encountered the problem of defining the notion of "gross" and "systematic" violations of judicial ethics rules, which may undermine the authority of judiciary.

These notions have been introduced by Article 83 of the law as a basis for disciplining.

There are several approaches to it. One is that the Code of Judicial Ethics itself or in its Commentary should have a definition of what is meant by "gross" and what is meant by "systematic" violation of judicial ethics rules or expressly state which violations are gross.

However, there is another point of view that notions of gross and systematic violations are of evaluative nature and therefore their definition falls under the competence of agencies that will decide whether to discipline a judge.

There is also a point of view that only the notion of systematic violation should be defined, which can be understood as a repeated (similar or not) violation or violation committed at least twice.

Despite these conceptual issues that arise during the process of drafting the Code of Judicial Ethics, the Working Group developed a draft of the Code of Judicial Ethics.

The draft is called a working draft as it was developed to start discussions of the future draft and it allows not only text changes but also structural ones.

Currently in Ukraine a number of discussions of the working draft are underway with USAID assistance aimed at introducing the novelties of the Code and collecting proposals on the draft. It is expected that the draft will be submitted for consideration first to the Council of Judges and then to the Congress of Judges for adoption.

Additionally, on the Judiciary Internet portal there is a forum to discuss the draft. Participants to the discussion are judges, judicial administration officers, judges to be and judges' assistants. They provide online comments and recommendations to be considered by the group of drafters.

It should be mentioned that there are a lot of clever and constructive proposals.

In the current Code there are no provisions addressing conflict of the interest of a judge in a specific case or prohibiting ex-parte communication. Some proposals are about self-recusal of a judge.

The issue of self-recusal is less regulated by Ukrainian legislation than the issue of recusal initiated by parties to court hearing.

In the past there was a common understanding in the judicial community that a judge can not take self-recusal because by doing so he/she admits his interest or partiality. It was deemed to be unethical for a judge to take self-recusal. At present the ethical side of self-recusal is interpreted differently by the society – self-recusal is perceived as a demonstration by a judge of honesty/integrity towards litigants to ensure judicial impartiality in the case as well as openness in relations with them. Therefore, self-recusal by a judge is ethical.

However, there is a problem to find a fine line between justified self-recusal and abuse of the right to self-recusal that some judges may practice in order to avoid hearing a certain case. In the latter case the issue of ethical behavior arises both towards litigants and other judges in court who will have to hear the case that the self-recused judge unfoundedly avoided. Does a systematic unfounded self-recusal present a violation of moral and ethical principles or it is a violation of rules that entail discipline sanctions?

Let me give you an example, there was a decision of the High Qualifications Commission of Judges of Ukraine to reject a motion to discipline a judge who after hearing a case for several years recused herself on the grounds that one of the parties to the case was constantly submitting complaints about her including insulting statements. The High Qualifications Commission of Judges came to the conclusion that the nature of statements and complaints gave all the grounds/reasons to the judge to recuse herself.

At the same time in one of courts there was a serious problem when a judge who wished to avoid hearing of complicated and high profile cases assigned to him recused himself repeatedly at various stages of court hearings which lead to the need to start hearings from a scratch and caused in many instances further difficulties in adjudication.

Given the existing at that time Code of 2002 and the current legislation it was impossible to take any discipline sanctions against such a judge whereas numerous verbal reprimands of the chief judge or his peers had no effect on him.

The current law “On the Judiciary and Status of Judges” allows to find solution to this situation.

I would also like to talk about instances when a judge hears cases where litigants’ representatives are close or distant relatives of the judge (sister’s husband, brother of the spouse), or when a judge of a higher instance court hears the case decided by his relative in a lower court.

These instances are not regulated by procedural laws and do not serve as unconditional reason for self-recusal, but can be interpreted as judge’s interest in the result of adjudication, which affects a person’s right to fair trial.

For example, one high profile case in Ukraine related to removal of a judge from office. One of the grounds for his termination by High Council of Justice was the fact that the judge failed to recuse himself on a panel of judges in cassation court hearing. High Council of Justice thought that the judge had to recuse himself because his brother-in-law was on the panel of judges when this case was decided in appellate court.

When the judge appealed this termination decision, the High Administrative Court did not find this violation to be the basis for dismissal for not complying with procedural law and ethics as procedural legislation does not stipulate that the above mentioned circumstances serve as a basis for self-recusal, and at that moment there was no ethical requirement for a judge to step aside in such situation.

Nevertheless, discussions on this issue are still underway. Can participation of a top level court judge in a panel of judges’ court hearing be deemed ethical if this is a hearing on reviewing the decision taken by a lower court judge who is somehow related to him through family members? In the draft Code that we are working on now we are trying to address such situations.

The next similar example is when a judge was removed from office because of his numerous travels abroad. The High Council of Justice by its decision recommended to the Parliament to dismiss a judge for violation of the oath on the ground that he spent more than 100 days during a calendar year outside Ukraine by using expensive private chartered planes /flights abroad including the time he claimed to be on a sick leave. High Administrative Court of Ukraine affirmed the Parliament decision to dismiss judge, rejecting the judge's appeal of such decision.

Discussing such situation judges are inclined to think that the given judge serving his term in office should have matched his behavior and spending with his position and even if he legally earned the income allowing him to spend more than he earned as a judge he should take into consideration how his actions will be perceived by the public and keep in mind the general level of income of other judges.

However the judges think that one can not perceive as unethical the behavior of a judge who justifiably needs healthcare and can afford to visit other healthcare establishments, including foreign, when on sick leave.

At the same time, the current Code of Judicial Ethics serves to protect judges.

There was one issue widely discussed in Ukraine: whether a judge has the right to get additional income from dividends as an owner of shares or as an owner of a company.

At the beginning many thought that such activity is entrepreneurship and a judge cannot be involved in it. Later given the provisions of the Code and case law on appealing the decisions to discipline judges the society agreed that a judge has the right to found a company or be the owner of shares. At the same time a judge should not participate in the management of such a company and has to transfer management functions to another person. The judge certainly can not hear a case with participation of this company.

The problem was that judges were not required to declare their property and parties to the case may never find out the judge's potential interest in the case outcome.

Finally, I want to state that the judicial community of Ukraine has a long way to go to earn the public trust to the judiciary in general and to court decisions in particular. As experience shows, the ability of a judge to keep up with ethics rules should be identified at the very early stage of judicial selection.

Additionally, judges have to persuade the public that the mere fact that there are lawyers of other specializations in judge's family is not a sign that the judge is violating ethics on condition the judge is not part of court hearing.

Currently the immediate attention should be given to creation of Ethics committee within the Council of Judges of Ukraine where judges can seek the colleagues' advice in specific situations they face.

Many judges think that there is a need to write commentary to the Code of Judicial Ethics in order to interpret the Code provisions.

Some think that there should be judicial ethics course in the curricular of universities that train professional judges. This course should be further taught as a practical subject in the National School of Judges.

One of the challenges is to change the attitude of judges to self-recusal and abuse of self-recusal.

To sum up, a lot remains to be done and we hope that international judicial community will share its experience with us and we are ready to share our achievement and views with them.

Session 3: Disciplinary Proceedings and Immunity of Judges

The following presentations were made:

- **Mr. Vasiliță-Cristi Danileț**, Member of the Superior Council of Magistracy, Romania
Disciplinary proceedings against judges
- **Dr. Tilman Hoppe**, former judge, anti-corruption expert, Council of Europe
Immunities of judges and procedures for their lifting

Disciplinary Proceedings against Judges

Mr. Vasiliță-Cristi Danileț
Member of the Superior Council of Magistracy
Romania

1 + 1 = ...1

Motto:

Being independent does not make a judge irresponsible!

International standards

- Universal Declaration on the Independence of Justice (*First World Conference on the Independence of Justice, Montreal, Canada, 1983*).
- Basic Principles on the Independence of the Judiciary (*United Nations, 1985*)
- European Charter on the Statute for Judges (*Council of Europe, 1998*)
- Universal Charter of the Judge (*International Association of Judges, 1999*)
- Opinion n° 3 (2002) on Ethics and Liability of Judges (*CCJE, 2002*)
- The Bangalore Principles of Judicial Conduct (*Judicial Group on Strengthening Judicial Integrity, 2002*)
- Draft Vademecum On The Judiciary (*Venice Commission, 2008*), Report on the independence of the judicial system (*Venice Commission, 2010*)
- Recommendation (2010)12 on Judges: Independence, Efficiency and Responsibilities (*Committee of Ministers, CoE, 2010*)
- Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (*OSCE, 2010*)

Disciplinary liability – the general principle

Protect the independence of justice:

The disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant.

Disciplinary procedure – aspects

1. what conduct could be qualified as disciplinary misconduct?
2. who can file a complaint against a judge for misconduct and which is the competent authority for preliminary investigations?
3. how can be contested the Judicial Inspection's refusal to notify the disciplinary authority?
4. what authority has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by judges?

5. who can notify the disciplinary authority?
6. what is the time limit to initiate a disciplinary action?
7. what rights do judges have within the disciplinary proceeding?
8. what are the disciplinary sanctions?
9. how can be appealed the decisions of disciplinary authority
10. what is the effect on the judge's career if he/she is sanctioned?

1. Disciplinary offences

- *Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner.*
- **! principle of the legality**
- *Oztuk vs Turkey, 2012*
- *e.g: Romanian legislation*

2. Complaints against judges

- *Individual*
- *Body responsible for initiating disciplinary action*

3. Dismissal of complaint

Romanian legislation:

- The complaint is **dismissed** if the judicial inspector determines that no misconduct was committed.
- The decision shall be subject to **appeal** by the administrative division of the Bucharest Court of Appeal within 15 days of the notification by the person who filed the complaint.

4. The disciplinary body

- *independent body (court, commission or council)*
- *composition: at least as to one half of elected judges, but no control from Parliament and no MoJ involve*
- *permanent activity*

5. Referring disciplinary action

Romanian legislation:

- The disciplinary action on a **judge's misconduct** is referred by the Judicial Inspection through a judicial inspector, by the minister of justice or the president of the supreme court.
- The disciplinary action on a **prosecutor's** misconduct is referred by the Judicial Inspection through a judicial inspector by the minister of justice or by the general prosecutor of Romania.

6. Time limit for initiate disciplinary action

Romanian legislation:

- the disciplinary action shall be referred within 2 years since the day the judge has committed the misconduct.

7. Disciplinary hearings

- *confidentiality*
- *speed*
- *rights of defence*

! No differences between judges.

- *transparency*

8. The disciplinary sanctions

- *the principle of the legality*
- *the principle of proportionality*

9. Judicial review

Decisions in disciplinary proceedings should be subject to an independent review.

10. Effects of disciplinary sanction

- **temporary:** delay in promotion for three years with regard to the sanctioned judge
- **permanent:** impossibility to be candidate to promote within the Supreme Court

Immunities of Judges

Dr. Tilman Hoppe

Former judge

Anti-corruption expert, Council of Europe

Overview

1. What is immunity?
2. Who is covered?
3. How far does it go?
4. How is it lifted?
5. Do judges need immunity?

1. What is immunity?

- **Functional**
 - opinions
 - votes
 - within function
- **Personal**
 - any conduct
 - in- and outside office

Functional

- Insults
- Abuse of office

Personal

- Any crime
- Any ethical violation

➔ main focus

2. Who is covered?

- a. Judges
- b. President of courts
- c. Constitutional court judges
- d. High court judges
- e. Judicial Councils (non-judges)

- f. Prosecutors, Councils
- g. Notaries, bailiffs, lawyers

Personal immunity (member states)	EU 1995 (15)	EU 2011 (27)	CoE (47)
High Court Judges	1	8	20
Judges	0	4	16

3. How far does it go?

- a. Deputy's (ME) or special immunity (PL)
- b. Prosecution (AL)
- c. Detention (HR)
- d. Duration of mandate (most) or beyond (CZ)
- e. Exceptions
 - In flagrante delicto (AM)
 - Grave crime (BU)

4. How is it lifted?

- a. Deciding body
 - Parliament (AL)
 - Supreme Court (AL)
 - High Council of Justice (AL)
 - Constitutional Court for peers (MK)
 - Supreme Court and President (EE)
 - President for normal judges (GE)
 - Quotas (AZ)
 - 2/3 majority for Constitutional Judges
 - 1/2 majority for normal judges
- b. Procedure

- Normally: Notification and decision
- Supreme Court, President, Parliament (AZ)
- No consent in 24 hours – release (CZ)
- Decision in next hearing of Senate (CZ)

5. Do judges need immunity?

- Political prosecution
 - Do immunities really help?
 - Judges have best protection already – peers
- Weaknesses of personal immunity
 - Ineffective prosecution
 - Perception of corruption
 - Breach of separation of powers
 - Confidentiality

Ineffective prosecution

“[T]hree basic court judges [were investigated] for abuse of office in the sale of public land in Ulcinj. Unfortunately, the failure of the Parliament to lift the judges’ immunity has stalled the investigation.”

UNHCR on Montenegro (2006)

“In the course of 2010, the Superior Council of Magistracy considered 3 requests of General Prosecutor to authorize the initiation of criminal investigation against judges. In all 3 cases the General Prosecutor’s requests were rejected.”

Justice Reform Report (2011) on Moldova

“Judges are disproportionately protected by immunity, which even protects them when they have demonstrably accepted bribes, and it is hardly ever lifted.”

Council of Europe CLAHR on Turkey (2009)

Breach of separation of powers

“Legal procedures are lacking, and often parliamentarians overstep their competence and start analyzing the evidence presented by the prosecutors together with the request to lift immunity.”

Justice Reform Report (2011) on Romania

Confidentiality

“If the General Prosecutor’s Office seeks the authorisation to investigate a judge on corruption-related charges, the investigation has already become public [...]. It’s not possible to investigate a judge on corruption, if he knows that he is being investigated.”

General Prosecutor, Albania (2009)

→ *Current trend: abolishing personal immunity*

OSCE, Best practices in combating corruption, 2004 (English/Русский),
Chapter 5, “Immunity”, www.osce.org/eea/13738

T. Hoppe, “Limiting Criminal Immunity in Europe”,
5 Vienna Journal on Int’l Constitutional Law 2011, 538.
http://tilman-hoppe.de/ICL_Journal_5_4_11.pdf

Session 4: Accountability and Transparency in the Judiciary

The following presentations were made:

- **Ms. Kaidi Lippus**, Ministry of Justice of Estonia, OECD Public Sector Integrity Network
Assets and conflict of interests' disclosure for judges and its control mechanism. Transparent work of the judiciary. Experience in Estonia
- **Mr. José Manuel Igreja Martins Matos**, Judge, Portugal, GRECO evaluator
Transparency of procedures related to judicial careers

Assets and Conflict of Interests' Disclosure for Judges. Transparent Work of the Judiciary: Experience in Estonia

Ms. Kaidi Lippus

Head

Legislative Drafting and Development Division

Ministry of Justice Estonia

OECD Public Sector Integrity Network

Structure of the presentation

- Figures concerning Estonia
- Experiences with GRECO
- Guarantees for transparent and fair justice
- Disclosure of interests of judge (current/future)
- Access to declarations (current/future)
- Control system of declarations (current/future)
- Liability for violating the Anti-Corruption Act (hereafter – ACA)⁸
- Accession to Court Decisions
- Publicity and disclosure of court sessions

Estonia in number

- Population: 1 340 194;
- 242 judges (19 justices in Supreme Court);
- [Transparency International's 2010 Corruption Preceptions Index](#) placed Estonia to the 26th position among 178 states over the world;
- 5 judges have been convicted of corruption offences in Estonia;
- The average salary on the first instance court judge is EUR 2666 and of a Supreme Court Justice EUR 3666.

Estonia and GRECO

- Estonia joined GRECO in 1999.
- The Group of States against Corruption [GRECO](#) has monitored Estonia several times. The current Fourth Evaluation Round launched on 1st January 2012 and is devoted to the prevention of corruption in respect of Members of Parliament, Judges and Prosecutors.

⁸ The new Anti-Corruption Act enters into force in Estonia on 1 April 2013, see the full text at www.legaltext.ee/en/andmebaas/ava.asp?m=022

GRECO recommendations for Estonia in 2004

- to adopt the revised general anti-corruption strategy and policy with a view to making the existing efforts against corruption in public administration more coherent both at central and municipal level;
- to raise the awareness among public officials of existing anti-corruption regulation and guidelines and of their duty to implement them;
- to review the system of public officials' declarations of assets and interests, in particular in respect of the access to data necessary for the control of such declarations;

Legal framework for transparent and fair justice and prevention of conflicts on interest

- **The Constitution** Art 146-153
- **The Courts Act 2002**
- **The Anti-Corruption Act 1995** (new ACA was adopted and it enters into force on 1 April 2013)
- **The Code of Ethics of the Estonian Judges 2002** (CEEJ) -
- **The procedural codes** (The Civil Procedural Code; Administrative Procedural Code; Criminal Procedural Code)

Incompatibility of activities

- A judge may not undertake additional employment, except for that of teaching or research.
- A judge may not be a member of Parliament, of a political party, of a rural municipality or a city council, a founder, a managing partner, a member of the management board or supervisory board of a company, a director of a branch of a foreign company, a trustee in bankruptcy, a member of a bankruptcy committee or a compulsory administrator of immovable property, or an arbitrator in a dispute.
- Conflicts of interest are and punishable by a fine, notified to a president of court and are subject to disciplinary liability and are also subject to misdemeanor liability

Removal from the case, routine withdrawal

- A judge must withdraw him/herself in case if there are circumstances which putting in doubt his/her impartiality.
- The grounds of removal of the judge from procedural codes: a judge, his/her spouse or cohabite, close relatives or close relatives of the judge's spouse or cohabite is a party to the proceedings, where the judge has acted as a representative or adviser to one of the parties or conducted pre-trial proceedings or participated in the adoption of a decision subsequently annulled by a higher court.

Gifts, third party contacts

- A judge may not solicit or accept gifts or consent to benefits which are made or granted to him/her, or his/her close relatives, if this may influence, directly or indirectly, the impartial performance of his/her duties;

- A judge is to refrain from political and business lunches and get-togethers with participants in a proceeding, if this may prejudice his/her impartiality and give rise to conflicts of interest. Also, in personal relations with members of the legal profession regularly practicing in court, a judge is to avoid situations which could give rise to doubts of favoritism or impartiality, or appear as such.

Disclosure of interest /declaration of economic interest

- ..is defined as a document in which an official declares his/her property, proprietary obligations and other circumstances allowing to determine his/her economic interests and financial situation;
- Shall be submitted once a year; first time within 1 (4 new ACA) month assuming an office;
- A first or second instance courts judges present their declaration to the Ministry of Justice / to the register of declaration (register);
- The Chief Justice and justices of the Supreme Court and presidents of first and second instance courts to the committee designated by Parliament / to the register

Content on the declaration

individual assets and joint assets of spouses about

- immovable property; limited real rights
- vehicles entered in the state register;
- the immovable property and vehicles which were in the possession of the declarant in total for at least six months during the previous year. The declaration shall not set out the information concerning any immovable property and vehicles which were transferred into the possession of the declarant by his or her employer.
Also in foreign state!
- shares and other securities;
- debts and liabilities, in case the amount of debt exceeds a six months' salary or 3 500 Euros a year;
- Proprietary claims against other person;
- other income, taxable income and dividend income; received proprietary and other benefits (market value exceeding 4 min wages) income tax returns
- bank accounts. Also in foreign state!
- In the case of signature of a marital property contract, within one month from its entry into force (or of amendments thereof), the judge is to submit a copy of the contract entered in the marital property register to a depositary of asset declarations.

Access to declarations

- Judges' declarations are made public in the on-line State Gazette, except for personal data, information on the income, taxable income and dividend income and contents of judges' marital property contracts. [Judges`declarations made public 2012](#)
- After new the ACA has entered into force : In order to access the information of the declarations, persons shall identify themselves by digital identity cards. A declarant has the right to obtain information from the register about who accessed his or her declaration. Personal data, information on the income, taxable income, dividend income, marital property contracts remain still for internal use only.

Current Control System

- Ministry of Justice is depositary of judges (except justices of Supreme court, presidents of the courts) declarations and organises their timely collection, verification, storage and publication.
- The Minister of Justice, investigative bodies (police, Prosecutor's Office, Defence Police, Tax and Customs Board) and courts have right to control declarations of judges.
- In practice the control is mainly technical and validity control is rather rare and selective. Control has been carried out by one official in MoJ. In 2001-2004 the correctness of data given in the judges declarations were controlled comprehensively (inquiries to the database, to the credit institutions), the results were good, no severe
- Violations were discovered.

Control System in new ACA

- The select anti-corruption committee of Riigikogu (or an official authorised by it) has exclusive right to verify the judges declarations.
- Data from state registers will be automatically controlled as the declaration is prefilled with data from state registers and declarant only has to verify the correctness of data.
- The committee has the right:
 - 1) to request explanations from declarants and any third persons concerning the contents of the declarations and disregard of the date for submission of the declaration or reasons for failure to submit the declaration;
 - 2) to make inquiries to and receive information concerning declarants from credit institutions and the databases of the state and local governments to the extent necessary for verification of declarations.

Diciplinary liability of a judge

- ..is provided for wrongful act which consists in a failure to perform or inappropriate performance of official duties.
- Violation of ACA is also consider as a diciplinary offence.
- Penalties are reprimand, fine in the amount of up to one month's salary, a reduction in salary and removal from office.

Misdemeanours applying to situations of conflicts of interest

- a violation of the rules on the obligation to submit an economic interests declaration
- submission of false information to a person, agency or committee verifying declarations of economic interests
- a violation of restrictions on employment or activities or procedural restrictions established by law
- failure to notify a corruption
- a corruption act entailing the receipt of income or gains derived from corrupt or illegal practices

Criminal offences applying to situations of conflicts of interest

- person who knowingly violates a procedural restriction established by the Anti-corruption Act to a large extent is punishable by a fine or up to one year of imprisonment.
- (The same act if it is committed to the extent of more than EUR 320.000 shall be punished by a fine or up to 3 years' imprisonment.

Statistics

Between 2009 and 2011 there were no cases of violation of assets declaration rules. As concerns former judges, in 2010 two such judges failed to submit their assets declarations on time to the Ministry of Justice; however, no proceedings were initiated. In 2012 one former judge didn't submit his declaration on time.

Accession to Court Decisions

- Court Information System (www.kohus.ee/kohtulahendid)
Information system for Estonian courts of 1st and 2nd instance
- Public E-File (www.e-toimik.ee)
- Riigi Teataja (www.riigiteataja.ee)
- Supreme Court webpage (www.riigikohus.ee)

Court Information System

1. Accessible to the public - <http://www.kohus.ee/kohtulahendid>

2. Accessible authorised users

2.1. post office users

court staff, judges, officials from different government institutions (prosecutors, probation officers, other government officials etc).

2.2. other users

Information Board, Estonian National Social Insurance Board, Patent Office, Security Police Board, notaries ect.

Public Accessibility

Lahendi Otsing		Otsingu tulemused
		Lahendi täpsus
Kõik kohtumenetlused	Kohtuasja number:	<input type="text"/> <input type="button" value="Otsi lahendit"/> <input type="button" value="Puhasta väljad"/>
	Kas kõik asja lahendid	<input type="checkbox"/>
Kriminaalkohtumenetlus	Kohus/kohtumaja:	--Kõik kohtud--
	Kohtulahendi kuupäev vahemikus:	<input type="text"/> <input type="text"/>
Tsviilikohtumenetlus	Menetluse kuupäev vahemikus:	<input type="text"/> <input type="text"/>
	Lahendi liik:	--Kõik lahendi liigid--
Halduskohtumenetlus	Lahendi sisu otsing:	<input type="text"/>
		Ülamärkiga paragrahve otsides sisestage palun kõik numbrid järjest. Näiteks: § 26 ^a asemel § 264.
Väärteomenetlus		

Näide: 1 või 1-06-101/1 täpne otsing, 1% leidmaks ühega algavaid numberid

Kindla kuupäevaga lahendi leidmiseks sisestada sama kuupäev mõlemasse lahtrisse.

Mitte sisestada üksikut tähte!

Authorised Users Accessibility

Kohtuasjade ja menetluste otsinguvorm			
Kohtuasja nr:	<input type="text"/>	KOLA nr:	<input type="text"/>
		Kriminaalasja nr:	<input type="text"/>
Põhiotsing		Otsingu täpsustus	
Kohus:	Harju Maakohus	Kohtumaja:	HMK Liivalaia
Menetluse liik:	Väärteomenetlus	Kohtunik:	Anne Rebane - Kohtunik
Liik:	Liiklusväärteod	Kategooria:	Füüsilise isiku väärteoasjad
Kohtuasja staatus:	Menetluses	Nõude tüüp:	-
Eesnimi:	<input type="text"/>	Menetlusstaadium:	-
Isikukood/registrikood:	<input type="text"/>	Perekonnanimi:	<input type="text"/>
Muu isik:	<input type="text"/>		
Menetlus loodud vahemikus:	algus <input type="text"/>	lõpp	<input type="text"/>
			<input type="button" value="Otsi"/> <input type="button" value="Tühjenda"/>

-
- Kirjalik menetlus
- Lõpplahend kuulutatud
- Lõpplahendi kuulutamise aeg määratud
- Jagamata
- Istungimenetlus
- Menetlus peatatud
- Liidetud teise asjaga
- Menetluses

Court Information System and Public E-file

- Connection to Public E-File in civil and administrative proceedings
- Possibilities in public e-file:
 - See proceedings
 - Submit documents to court
 - See judgments and summons
- Possibility to serve documents to parties through Internet
- A document is deemed to have been served, if the recipient opens the document in the Public E-File
- Court Information System receives information that the document has been viewed.

Services via Public E-File

- court uploads a document to the Court IS
- document is sent via X-Road and E-File to the AET
- addressee receives the notification to the e-mail
- addressee accesses AET with the ID-card
- addressee opens the document in the AET
- Court IS receives notification that the document has been viewed by the addressee or her/his representative
- document is considered as legally received



If the document is not received in the AET during the concrete time-period – court uses other methods of service

Riigi Teataja

www.riigiteataja.ee

Kõik kohtumenetlused Halduskohtumenetlus Väärteomenetlus Tsiviilkohtumenetlus Kriminaalkohtumenetlus

Kohtuasja number: ⓘ

Kohtumaja: ⓘ

Lahendi kuupäev: - ⓘ

Lahendi liik: ⓘ

Menetlus kuupäev: - ⓘ

Lahendi sisu otsing: ⓘ

Kas kõik asja lahendid:

Otsi

Järjestus:

- HALDUSASJAD
- KURITEO- JA VÄÄRTEOASJAD
- PÕHISEADUSLIKULISE JÄRELEVALVE ASJAD
- TSIVIILASJAD
 - PÕHIÕIGUSED
 - PÕHISEADUSE AJALINE KEHTIVUS
 - ÕIGUS AULE JA HEALE NIMELE
 - ÕIGUS AVALIKULE KOHTUASJA ARUTAMISELE
 - ÕIGUS ERAELU PUUTUMATUSELE
 - ÕIGUS HEALE HALDUSELE
 - ÕIGUS KOONDUDA UHINGUTESSE
 - ÕIGUS OMANDI KAITSELE
 - ÕIGUS VABADUSELE JA ISIKU PUUTUMATUSELE
 - ÕIGUS VABALE ENESETEOSTUSELE
 - ÕIGUS VÕRDSELE KOHTLEMISELE
 - ÕIGUS KODU PUUTUMATUSELE
 - VÄLJENDUSVABADUS
 - ÕIGUS ÕIGUSLIKU NÄPÄHMÄTTED

MÄRKSONASTIK: ÕIGUS AVALIKULE KOHTUASJA ARUTAMISELE

AAA

Leiti 8 kirjet

Otsuse kuupäev	Asja reg. number	Annotatsioon
18.12.1997	3-2-1-134-97 RT III 1998, 3, 25	Apellatsioonikohus ei ole rikkunud EIÕK art 6 p-is 1 ega põhiseaduse §-is 24 sätestatud lahendades asja TsKS § 298 p 2 kohaselt kirjalikus menetluses, sest apellatsioonkaebuses ei vaidlustatud asja tõenduslikku külge vaid üksnes materiaaõiguse normide kohaldamist.
23.12.1997	3-2-1-138-97 RT III 1998, 4, 40	Kui apellatsioonikohus lahendab kaebust asja faktilise külje osas, ei saa seda teha TsKS § 292 alusel üksnes kaebuse põhjal ilma menetlust jätkamata ja protsessiosalisi kohtuistungile kutsumata. See on vastuolus põhiseaduse §-ga 24 ja inimõiguste kaitse konventsiooni art 6 p-ga 1.
03.11.2003	3-2-3-6-03 RT III 2003, 34, 351	Kui kostja jätab hagile vastamata või kohtusse ilmumata, peab kohus enne otsuse tegemist veenduma, et kostja on kohtukutse kätte saanud. Selle kohustuse eiramine rikub PS § 24 lg-s 2 sätestatud igaiühe õigust olla oma kohtuasja arutamise juures.

Publicity of Court Sessions

The Constitution of the Republic of Estonia

Section 24:

Court sessions shall be public. A court may, in the cases and pursuant to procedure provided by law, declare that a session or a part thereof be held *in camera* to protect a state or business secret, morals or the private and family life of a person, or where the interests of a minor, a victim, or justice so require.

Disclosure of Court Sessions

1. Info-TV
2. Riigi Teataja (www.riigiteataja.ee)

Kohtuistungi aja ja toimumiskoha otsing

Riigikohtu menetlusaotluse läbivaatamise [otsing](#) ja riigikohtu istungiaegade [otsing](#)

Andmed uuendatud:	20.06.2012 04:38:24	
Kohus ja kohtumaja:	<input type="text"/>	
Saal/Kuulutamine:	<input type="text"/>	
Kohtunik:	<input type="text"/>	
Kohtuasja nr või menetlusosaline:	<input type="text"/>	
Algusaeg:	20.06.2012 – 04.07.2012	

Judicial Careers: Transparency of Procedures

Mr. José Manuel Igreja Martins Matos
Judge,
Portugal,
GRECO evaluator

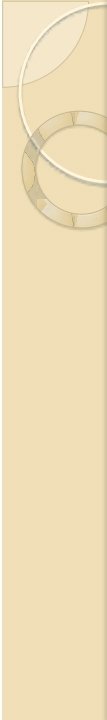
“Sunlight is the best disinfectant.”

William O Douglas (Judge in Supreme Court of USA)



Quality in Justice
The importance of the Intervient
An Historical Upraise

- **5 moments of Quality Control (B.Fridman)**
 - Legal Control;
 - Values Control
 - Motivation Control;
 - Procedure Control;
 - Stakeholders Control



A worldwide perception –
Transparency in Judicial Careers
Key principles

- **Universal Charter for Judges**

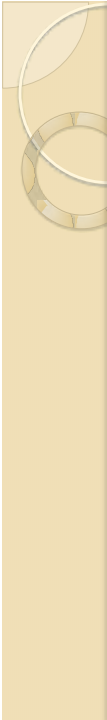
The selection and each appointment of a judge must be carried out according to **objective and transparent criteria based on proper professional qualification.**

- **European Judges Charter**

Article 5º Judicial promotion (...) depend upon the **same principles of objectivity, professional ability and independence.**

- **Council of Europe Recommendation**

(...) the selection and career of judges should be based on **merit.**



A worldwide perception –
Transparency in Judicial Careers

- Cairo Declaration on Judicial Independence, The Second Arab Justice Conference, Cairo, Egypt:

- **Increasing transparency in the judicial career and its rules.**

- GRECO Fourth Evaluation Round:

Judicial Careers as an important issue to preventing corruption in the judiciary (internal independence)

Independent Bodies

How to ensure transparency

Where this is not ensured in other ways, that are rooted in established and proven tradition, selection should be carried out by an independent body, that include substantial judicial representation

(UNIVERSAL CHARTER OF JUDGES)

The Role of Judicial Councils

Specially in Southern Europe, the Higher Judicial Council have been set up in order to protect the independence of the judiciary.

The Judicial Council play a key role in fostering transparency in judicial career's.

A new trend:


– transparency policies in Judicial Councils with public scrutiny providing extensive information, for instance in the respective website, about internal decisions and proceedings.



Best Practices

- Judiciary information must be **publicly available** in Internet.
- Some examples:

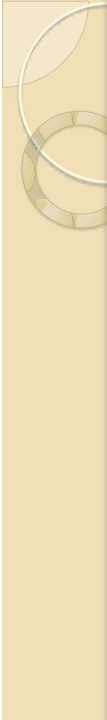
Judicial Decisions, Court Forms, Names of judges and their Appointment details, Procedural Rules, Fees and Costs, Policy Documents, Guidance and Protocols, Information on Judicial Council or Courts Structures.



European Network of Councils for the Judiciary *Key Examples*

The entire appointment and selection process must be open to public scrutiny, since the public has a right to know how its judges are selected.

The internal regulations in Councils or independent bodies must be sustained in an ethical basis and assure impartiality.



Appointment A Comparative Approach *Europe (mainly civil law)*

Almost all of them:

- a university qualification in legal studies;
- a minimum age together with “good character”

Open Competition is the Rule in Western and Southern Continental Europe (with some few exceptions - Swiss cantons). The open competition is also to be found in Turkey or in the Baltic states.

Depending on the country concerned, the competition can give either direct access to the judiciary, subject to a period of initial training (Italy), or access to a training institution (France, the Netherlands and Portugal); the result is practically the same in Germany, although the training is common to judges, barristers and Solicitors.



Appointment **Common Law – UK, NZ, USA, Canada and South Africa**

The Anglo-Saxon culture are historically based on a respect for the judiciary, to the point where a Higher Council could be seen as a threat to the independence of the judiciary.

Therefore the formal appointment belongs to established political powers or supreme courts. However, the monitoring of the merit is made by **independent boards** who select the candidates.

England:- JCA – Judicial Appointments Commission

New Zealand: – Judicial Appointments Unit.

USA: Merits plan or Missouri Plan (reviewing by a panel)

Canada : Advisory committee at a Federal level

South Africa: Judicial Services Commission




Promotion

- The promotion must be linked to some objective criteria.
Examples:
- Seniority (minimum number of years of judge)
- Approval on training courses as a requisite (for instance, to have access to specialized courts)
- Periodical assessments (evaluation) made by judges. Must be used to reasons of promotion and not for random disciplinary issues.



Evaluation *Concrete Restrictions*

- > Evaluation cannot interfere with the independence of judges and the **right to the seat**.
- > The evaluated must have the right to participate on its assessment (the **right to be heard**) and the **right to appeal**.
- > **Criteria** must be **public** to all judges and evaluation must be based on **reliable and objective information**



Opinion n° 10 (2007) of the Consultative Council of European Judges (CCJE)

Selection, appointment and promotion of judges

- 50. The Council for the Judiciary shall also ensure that procedures for judicial appointment and promotion based on merit are opened to a pool of candidates as **diverse and reflective of society as a whole** as possible.
- 51. In addition, this choice should be based exclusively on a **candidate's merits** rather than on more subjective reasons, such as **personal, political or an association/trade union interests**.



Transfers

- It should be considered the hypothesis of scheduling *a periodical movement of judges (f.i., every year or every six months)*, to ensure that, for one part, every judge has an opportunity to ask for transfer for a vacant seat and to concentrate in one period all the transfers, thus minimizing the costs of the process.



Transfers


BEST PRACTICE EXAMPLE:

Judges cannot be transferred against their will, except in the following cases: in consequence of disciplinary measures; in case of extinction of his/her place or court, determined by objective and transparent criteria.



Disciplinary proceedings

- **Objective criteria**: accessibility and transparency of the criteria and of the procedures, availability to judges, well defined conduct giving rise to disciplinary action.
Written regulations are essential.
- **Full access to all evidence collected** during the preliminary investigation implies, necessarily, the existence of records (written, audio or video) of witness' testimonies during the investigation.



Case Assignment

Case Assignment *Versus* Management Constraints

Case assignment should not be within the discretionary power of court chairpersons.

In general, case assignment must be either:

- random; or
- on the basis of predetermined, clear and objective criteria that are defined for time periods.



Transparency safeguards

- Every decision regarding unwanted transfer, refusal of appointment or refusal of promotion should be in **written form and** should **specify the reasons on which the decision is founded**.
- The **appeal** before a court must be provisioned.
- All regulations regarding the judicial career should be made **public** before its enforcement.
- Judicial Councils or Independent Bodies must be obliged by **written ethical and procedure Rules**.

Towards conclusion A check list



Lessons learned and way forward **Judicial Transparency Checklist** *I - Selection Process*

- Is the judicial selection process clearly defined by law ?
- Is it designed on the merits, for example an exam or the academic evaluation of candidates?
- Are the vacancies, the selection process and objective criteria advertized and publicized?
- Are the responsibilities for the process divided into two bodies, one that nominates and a second that selects and appoints?
- Is diversity taken in account in judicial selection?



II – Promotion Process

- Is the judicial promotion process clearly defined by law?
- Is there a fair evaluation process based on objective criteria?
- Can promotions be used to punish judges considered as “too independent”?
- Do judges have the possibility to appeal the results having full access to the procedure?

III – Disciplinary Process

- Is the judicial disciplinary process clearly defined by law?
- Is there a fair disciplinary process and are the punishable conducts and sanctions clearly defined with objective criteria?
- Is the disciplinary mechanism the same for judges at all levels?
- Can the disciplinary process be used to punish judges considered as “too independent”?
- Are the responsibilities for the process divided in two, one that accuses and a second that judges and imposes sanctions?
- Can the judge appeal to a superior court with effective judicial remedies?
- Is the process open to the public when concluded?



Transparency in the Judiciary
- a commitment to openness and truth
The vital importance of Citizen's Trust

One does not attain freedom seeking only freedom,
but the truth.

Freedom is not an end but a consequence.

(Léon Tolstoi)

Annex 1: Seminar Agenda

DAY I

THURSDAY, 28 JUNE

9:30

Welcome remarks

Mr. Veysi Kaynak, Deputy Minister of Justice, Turkey

Moderators: *Mr. Marin Mrčela*, GRECO's President; *Mrs. Olga Savran*, Manager, Anti-Corruption Network for Eastern Europe and Central Asia

10:00 – 11:30 **SESSION 1: INDEPENDENCE AND INTEGRITY SAFEGUARDS IN JUDICIAL SYSTEMS**

External and internal aspects of the independence of the judiciary

Prof. Guido Neppi Modona, Vice-President of the Constitutional Court (1996-2005), Substitute member of the Venice Commission, Italy

Judicial councils, other self-governance institutions and their role to ensure integrity and independence of judges

Mr. Đuro Sessa, President of Association of Croatian Judges, Justice of Supreme Court of Republic of Croatia

Questions/answers

11:30 – 12:00 Coffee break

12:00 – 13:00 ***Reforms promoting independence, integrity and accountability in the judiciary in Turkey***

Mr. Ibrahim Okur, Judge, Head of First Chamber of the High Council of Judges and Prosecutors, Turkey

Judicial independence in the appointment process: in search of a "perfect model". Polish experience

Mr. Szymon Janczarek, Judge, Ministry of Justice, Poland

13:00 – 14:00 Lunch

14:00 – 15:30 **SESSION 2: RULES OF CONDUCT AND ETHICS FOR JUDGES AND THEIR EFFECTIVE ENFORCEMENT**

Judicial ethics and enforcement mechanisms. European Court for Human Rights practice

Ms. Nina Betetto, Vice-President and Judge of the Supreme Court, Member of the Consultative Council of European Judges, Slovenia, GRECO evaluator

Judicial ethics in Ukraine and main challenges for enforcement

Ms. Valentyna Simonenko, Judge, Higher Specialized Court of Ukraine in Civil and Criminal Cases, member of the Expert group for drafting new Code of Judicial Ethics, Ukraine

Questions/answers

15:00 – 15:30 Coffee break

15:30 – 17:00 **SESSION 3: DISCIPLINARY PROCEEDINGS AND IMMUNITY OF JUDGES**

Disciplinary proceedings against judges

Mr. Vasiliică-Cristi Danileț, Member of the Superior Council of Magistracy, Romania

Immunities of judges and procedures for their lifting

Dr. Tilman Hoppe, former judge, anti-corruption expert, Council of Europe

DAY II **FRIDAY, 29 JUNE**

Moderator: *Mr. Engin Durnagöl, Deputy Secretary General of the High Council of Judges and Prosecutors of Turkey*

9:30 – 11:00 **SESSION 4: ACCOUNTABILITY AND TRANSPARENCY IN THE JUDICIARY**

Transparent work of the judiciary, making judicial decisions public and assuring access to court hearings. Assets and conflict of interests' disclosure for judges and its control mechanism in Estonia

Ms. Kaidi Lippus, Ministry of Justice of Estonia, OECD Public Sector Integrity Network

Questions – answers

11:00 – 11:30 Coffee break

11:30 – 13:00 ***Transparency of procedures related to judicial careers***

Mr. José Manuel Igreja Martins Matos, Judge, Portugal, GRECO evaluator

Round-table discussion

13:00 – 14:00 Lunch

14:00 – 15:30 PARALLEL WORKING GROUPS

<p>WORKING GROUP 1: Training on ethics and prevention of corruption for judges Moderators: <i>Mrs. Olga Zudova, Mr. Jason D. Reichelt</i>, UNODC</p>	<p>WORKING GROUP 2: Effective enforcement of ethical rules among judges Moderator: <i>Mr. Marin Mrčela</i>, GRECO's President</p>
<p>Participants will be split in two working groups and invited to discuss the topics based on a set of questions and should develop a joint proposal. Each participant is encouraged to actively participate in the discussion and share her/his professional experience and good practices in her/his country.</p>	
	<p><u>Working Group 2 Issues for discussion:</u></p> <ul style="list-style-type: none"> - What body is best fit to oversee enforcement of ethical rules among judges? - Should there be a mechanism for judges to obtain consultation about ethical rules and their implementation in specific situations? - What link should exist between compliance with ethical rules and disciplining of judges? - Can violation of ethical rules lead to dismissal of a judge? - What consequences should follow violation by a judge of ethical rules? Who and how can initiate proceedings and adjudicate in such cases?

15:30 – 16:00 Coffee break

16:00 – 17:00 **Reporting back from Working Groups 1 and 2**
Emerging good practice/recommendations for further work
Conclusions

Annex 2: List of Participants

COUNTRIES

1. **Albania**
Mr. Ervin Metalla
Court
Judge
Blvd. "Zogu I" Durres
Tirana Albania
2. **Mr. Ened Nakuçi**
Prosecutor for serious crimes
Prosecution Office
Rr. "Jordan Misja"
Tirana Albania
3. **Armenia**
Mr. Mkhitar Papoyan
Court of General Jurisdiction of Kentron and Nork-Marash
Administrative
Districts
Judge
Tigran Mets 23/1
Yerevan Armenia
4. **Ms. Lusine Abgaryan**
Court of Cassation of the Republic of Armenia
Criminal Chamber
Senior assistant of the judge
Vazgen Sargsyan 5
Yerevan Armenia
5. **Azerbaijan**
Mr. Aslan Kalbaliev
Supreme Court of the Republic of Azerbaijan
Member of Judicial-Legal Council
Judge
Iosif Safarov Street 14, entry nr. 1193
Baku
Azerbaijan
6. **Mr. Novruz Kerimov**
Baku Serious Crimes Court
Judge
Samed Vurgun street 30
Baku
Azerbaijan

7. **Bosnia and Herzegovina** **Mr. Sanja Stefanović**
District Court Banja Luka
Judge
Banja Luka
Bosnia and Herzegovina
8. **Ms. Ljiljana Lalović**
Court of Bosnia and Herzegovina
Civil Department
Judge
Kraljice Jelene br.88
Sarajevo
Bosnia and Herzegovina
9. **Bulgaria** **Mr. Georgi Gatev**
Chairman of the Commission on international legal
co-operation
Member of the Supreme Judicial Council
of the Republic of Bulgaria
12 Ekzarh Yosif street
Sofia 1000 Bulgaria
10. **Mr. Bozhidar Suknarov**
Member
Supreme Judicial Council
of the Republic of Bulgaria
12 Ekzarh Yosif street
Sofia 1000 Bulgaria
11. **Croatia** **Mr. Đuro Sessa**
Association of Croatian Judges
Justice Of Supreme Court
Civil Department
President Of Association/ Justice
Supreme Court Of Republic Of Croatia
Trg N.S.Zrinskog 3
Zagreb, Croatia
12. **Estonia** **Ms. Kaidi Lippus**
Director
Legislative Drafting and Development Division
Policy Department
Judicial Administration
Estonia

13. **FYR of Macedonia** **Ms. Anita Andonoska**
 Judicial Council of the Republic of Macedonia
 State Anvisor
 Velko Vlahovic bb
 Skopje
 Republic of Macedonia
14. **Ms. Elizabeta Vaskova**
 Judicial Council of the Republic of Macedonia
 General Secretary of the Council
 Velko Vlahovic bb
 Skopje
 Republic of Macedonia
15. **Georgia** **Mr. Giorgi Tshekhani**
 Ministry of Justice
 Department of Public International Law
 Legal Advisor
 24 Gorgasali Street, 0114
 Tbilisi
 Georgia
16. **Italy/ Venice Commission** **Prof. Guido Neppi Modona**
 Vice-President of the Constitutional Court (1996-2005)
 Substitute member of the Venice Commission
 Substitute Member
 Venice Commission
 10153 Lungo Po Antonelli 45
 Torino
 Italy
17. **Kazakhstan** **Mr. Chokan Kenzhekhanov**
 Supreme Court of the Republic of Kazakhstan
 Chairman of the
 Shuiskiy District Court of Zhambilskiy region
18. **Mr. Adil-Omar Zhaxibayev**
 Supreme Court
 Chairman of the
 Koksuskiy District Court of Almaty region
19. **Kyrgyz Republic** **Ms. Guljan Esenalieva**
 Chairman of Bishkek Interregional Court
 Member of Judiciary Council
 Bulevard Molodoy Gvardiy 32
 Bishkek
 Kyrgyz Republic

20. **Mr. Kubanychbek Shatenov**
Counselor of the Prosecutor General
General Prosecutor's Office of the Kyrgyz Republic
Bulevard Erkindik 39
Biskhek
Kyrgyz Republic
21. **Latvia** **Ms. Dzintra Baltā**
Committee on Judicial Ethics
The Judicial Panel of Civil Cases of Riga regional court
Brivibas blvd.34
Riga
Latvia
22. **Ms. Anita Poļakova**
The Judicial Disciplinary Committee
The Chamber of Criminal Cases of the Supreme Court
Brivibas blvd.36
Riga
Latvia
23. **Lithuania** **Mr. Algis Norkūnas**
The Supreme Court of Lithuania
Division of Civil Cases
Judge
Judge of the Supreme Court of Lithuania
Chairman of the Judicial Ethics and Discipline Commission
Vilnius
Lithuania
24. **Mr. Remigijus Preikšaitis**
Klaipėda Regional Court
Division of Criminal Cases
Judge
Judge of Klaipėda Regional Court
Member of the Judicial Court of Honour
Klaipėda
Lithuania
25. **Montenegro** **Ms. Natasa Radonjic**
Ministry of Justice and Human Rights
Department for Judiciary
Independent adviser
Vuka Karadzica 3
Podgorica
Montenegro

26. **Ms. Merima Baković**
Ministry of Justice and Human Rights
Department for Judiciary
Senior adviser
Vuka Karadžića 3
Podgorica
Montenegro
27. **Poland** **Mr. Szymon Janczarek**
Ministry of Justice
Department of International Cooperation and Human Rights
Judge, Head of Unit for proceedings before the ECHR
Al. Ujazdowskie 11, 00-950
Warszawa
Poland
28. **Portugal**
GRECO evaluator **Mr. José Igreja Matos**
Judge
Vice-President of the Ibero-American Group of the
International Association of Judges
Judge in courts in criminal, civil and labour matters
Rua Eng^o Pimentel, n^o 9, Tenões
4715-359 BRAGA
Portugal
29. **Romania** **Mr. Vasiliță – Cristi Danileț**
Judge
Romanian Superior Council of Magistracy
Calea Plevnei nr.141
București
Romania
30. **Mr. Bogdan Gabor**
Superior Council of Magistracy of Romania
Prosecutor Elected as Member of The Council
Bucharest, Calea Plevnei no. 141B, sector 6,
Postal Code: 060011
Bucharest
Romania
31. **Serbia** **Ms. Zorana Markovic**
Director
Anti Corruption Agency
Palace Serbia
1 Carice Milice St
Belgrade
Serbia

32. **Mr. Nenad Vujic**
Director
Judicial Academy
48, Karadjordjeva Street
11000 Belgrade
Serbia
33. **Slovenia**
GRECO evaluator **Ms. Nina Betetto**
Vice-President
Supreme Court of the Republic of Slovenia
Tavcarjeva 9, 1000 Ljubljana, Slovenia
34. **Turkey** **Mr. Veysi Kaynak**
Deputy Minister of Justice
Turkey
35. **Mr. İbrahim Okur**
Head of 1st Chamber
High Council of Judges and Prosecutors
Konya Yolu No:70 Beşevler / ANKARA
06330
36. **Mrs. Nesibe Özer**
Head of 2nd Chamber
High Council of Judges and Prosecutors
Konya Yolu No:70 Beşevler / ANKARA
06330
37. **Mr. Muzaffer Bayram**
Secretary General
High Council of Judges and Prosecutors
Konya Yolu No:70 Beşevler / ANKARA
06330
38. **Mrs. Neslihan Ekinci**
Deputy Secretary General
High Council of Judges and Prosecutors
Konya Yolu No:70 Beşevler / ANKARA
06330
39. **Mr. Engin Durnagöl**
Deputy Secretary General
High Council of Judges and Prosecutors
Konya Yolu No:70 Beşevler / ANKARA
06330

40. **Dr. Nurdan Okur**
General Director of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
41. **Mr. Abdullah Cebeci**
Deputy General Director of International Law and Foreign
Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
42. **Mrs. Seval Arslan**
Judge
General Directorate of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
43. **Mr. İlyas Pehlivan**
Judge
General Directorate of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
44. **Ms. Elif Özalp**
Judge
General Directorate of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
45. **Mrs. Emine Gülnihal Şener**
Judge
General Directorate of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA
46. **Mr. Mehmet Polat**
Head of Section
General Directorate of International Law and Foreign Affairs
Ministry of Justice
Adalet Bakanlıđı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söđütözü ANKARA

47. **Mr. Özgür Beyaz**
Judge
General Directorate of the European Union
Ministry of Justice
Adalet Bakanlığı Ek Binası Mustafa Kemal Mahallesi 2151.
Cadde No:34/A 06520 Söğütözü ANKARA
48. **Tajikistan** **Ms. Sanobar Kholova**
Supreme Court of the Republic of Tajikistan
Collegium on criminal cases
734018 Negmata Karabaeva street Building Nr. 1
Dushanbe, Tajikistan
49. **Mr. Marufjon Burhonov**
Judicial Council of the Republic of Tajikistan
Department of Court's Administration
Deputy Head
Karamova street 20
Dushanbe
Tajikistan
50. **Ukraine** **Mr. Andrey Verba**
Ministry of Justice of Ukraine
Department of anti-corruption legislation and legislation on
justice
Justice Division
01001, Kyiv, Gorodeckovo street 13
Ukraine
51. **Ms. Valentyna Simonenko**
High Specialized Court in Civil & Criminal matters of Ukraine
Judge
Kiev, 4 Pylypa Orlyka St.01024
Kiev
Ukraine
52. **Mr. Kobylanskyi Mykola**
The High Administrative Court of Ukraine
Judge
8 Moskovska street
Kyiv Ukraine
53. **Ms. Galyna Kanygina**
Supreme Court of Ukraine
Justice
Kiev, 8 B Pylyp Orlik St.
Kiev
Ukraine

54. **Uzbekistan** **Mr. Ikram Muslimov**
 Judge
 Supreme Court of the Republic of Uzbekistan
 Collegium of Judges on Criminal Cases
 100186, Republic of Uzbekistan, A.Kadiri Street 1
 Tashkent
 Uzbekistan
55. **Mr. Khurshid Khudaiberdiev**
 Head of Division
 Department of Criminal, Administrative and Social Legislation
 Ministry of Justice
 100047, Tashkent city, Sailgoh street 5
 Tashkent
 Uzbekistan

INTERNATIONAL ORGANISATIONS, CIVIL SOCIETY, EXPERTS

56. **OECD** **Mrs. Olga Savran**
 Manager
 Anti-Corruption Network for Eastern Europe and Central Asia
 Anti-Corruption Division
 Organisation for Economic Co-operation and Development
 (OECD)
 Paris, France
57. **Ms. Inese Gaika**
 Project Manager
 Anti-Corruption Network for Eastern Europe and Central Asia
 Anti-Corruption Division
 OECD
 Paris, France
58. **Mr. Dmytro Kotlyar**
 Resident Advisor
 Anti-Corruption Division
 Anti-Corruption Network for Eastern Europe and Central Asia
 OECD
 Kyiv, Ukraine
59. **Council of Europe GRECO** **Mr. Marin Mrčela**
 President of GRECO
 Justice at the Supreme Court
 Zrinjevac 3
 10000 ZAGREB

60. **Ms. Laura Sanz-Levia**
Administrative Officer
GRECO Secretariat
Group of States against Corruption
Council of Europe
61. **Council of Europe** **Dr. Tilman Hoppe**
Council of Europe
Economic Crime Unit
Long Term Adviser
Tilman Hoppe, Pappelallee 10
Berlin, 10437
Germany
62. **UNODC** **Mr. Jason D. Reichelt**
Crime Prevention & Criminal Justice Officer
Corruption and Economic Crime Branch
Division for Treaty Affairs
United Nations Office on Drugs and Crime
63. **UNODC** **Ms. Olga Zudova**
Regional Office for Central Asia
Senior Regional Legal Adviser
United Nations Office on Drugs and Crime
Regional Office for Central Asia
Programme Office in Kazakhstan (Almaty)
67, Tole Bi Street, Almaty, Kazakhstan, 050 000
64. **USAID FAIR Project** **Ms. Nataliya Petrova**
Deputy Director
USAID FAIR Justice Project
01030 Kyiv 36 Ivana Franko street office 3