Funded
by the European Union

Implemented
by the Council of Europe

Eastern Partnership
Enhancing Judicial Reform in the Eastern Partnership Countries

Working Group on
Independent Judicial Systems

PROJECT REPORT

Judicial self-governing bodies

Judges' Career

Directorate General of Human Rights and Rule of Law

Strasbourg, September 2011

Contents

LIST OF ABBREVIATIONS

CCJE	Consultative Council of European Judges, Council of Europe
CEPEJ	European Commission for the Efficiency of Justice, Council of Europe
CM	Committee of Ministers, Council of Europe
CM Rec	Recommendation of the Committee of Ministers of the Council of Europe
CoE	Council of Europe
EaP	Eastern Partnership
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HCJ/G	High Council of Justice (Georgia)
HCJ/U	High Council of Justice (Ukraine)
HQC	High Qualifications Commission (Ukraine)
JLC	Judicial-Legal Council (Azerbaijan)
MoJ	Ministry of Justice
SCM	Superior Council of Magistracy (Moldova)
VC	Venice Commission, Council of Europe

Foreword

In March 2011, the Project on "Enhancing Judicial Reform in the Eastern Partnership Countries" was launched with a view to supporting the on-going process of reform of the judiciary in six participating countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. The project is funded by the European Union and implemented by the Council of Europe and will end in September 2013.

I am pleased to present to you the report on independent judicial systems, which has been drafted by a Project Working Group made up of representatives from the Ministries of Justice and judicial self-governing bodies of the beneficiary countries, supported by Council of Europe consultants.

The report provides an overview of the state of implementation in the participating countries of the European standards on an independent judiciary. It dwells upon issues related to the institutional independence of the judiciary, in particular the important role played by judicial self-governing bodies in ensuring the independence of the judiciary, as well as those related to the independence of the individual judge (including appointment, promotion and dismissal of judges, ethics and safeguards against undue pressure). It also describes the main challenges the countries have to meet to enhance the independence of their own judiciaries, and steps which could be taken to fulfil that objective.

I am confident that the report will serve as a guiding tool for those involved in judicial reform processes in the six countries (*in primis* national authorities). The analysis of the obstacles to the implementation of relevant European standards, combined with specific recommendations to increase the compliance of domestic law and practice with such standards, should be particularly valuable in order to push the necessary changes.

I would like to thank everyone involved for their contributions and commitment throughout the preparation of the report. The Directorate General of Human Rights and Rule of Law of the Council of Europe stands ready to continue to work with the national authorities in the implementation of the report's recommendations, and more generally in their reform endeavours.

Philippe Boillat
Director General of Human Rights and Rule of Law

Introduction

The objective of the Joint Project "Enhancing Judicial Reform in the Eastern Partnership Countries" funded by the European Union and implemented by the Council of Europe, is to support the on-going process of reform of the judiciary in Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine.

The Project is designed to provide a multilateral forum for identifying the obstacles to the implementation of European standards on an independent judiciary in the six participating countries, as well as possible steps to be taken to meet those standards. The latter will be subsequently discussed at a bilateral level, with the involvement of civil society. The objective is to strengthen the ownership of the Project recommendations and follow-up at the national level. The Project methodology focuses on intensive information exchange and best practice sharing.

During the initial multilateral phase of the Project, three working groups were set up to examine issues related to the "Independence of judicial systems", "Professionalism of judicial systems" and "Efficiency of judicial systems."

This report is the result of the work of Working Group 1 on Independent Judicial Systems. The Group comprises representatives nominated by the Ministries of Justice, judges, and representatives of judicial self-governing bodies from Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

The Working Group held three meetings and focused on topics related to the institutional independence of the judiciary and the independence of the individual judge. The report has been structured accordingly and consists of two sections on "Judicial Councils" and "Judges' Careers", including chapters providing a detailed analysis of the countries' legislation and practice. In addition, each chapter includes recommendations both at country and regional level, and provides examples of best practice from the participating countries.

The report is supplemented by country sheets, setting out the relevant legislation of the participating countries on the issues examined by Working Group 1.

The sources of the report have been the legislation of the participating countries, made available by the national delegations, presentations by the countries' delegates, as well as views, explanations and clarifications provided by them during the meetings. The material has subsequently been analysed by the Council of Europe Project consultants in the light of relevant European standards. The draft report was presented to the delegates for comments in August 2011.

The Project consultants and authors of the report are:

Mr Carsten Mahnke, a German lawyer and former Long-Term Consultant under the Council of Europe/European Union Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine,

and

Mr Virgilijus Valancius, Judge of the Supreme Administrative Court and Professor of Mykolas Romeris University, Lithuania.

Ms Clementina Barbaro, Ms Anastasia Shadarova and Mr Sergey Dikman from the Justice and Human Dignity Directorate, Directorate General of Human Rights and Rule of Law of the Council of Europe contributed to the drafting of the report.

The report is available in English and Russian at the following link: http://www.coe.int/capacitybuilding/. The link includes also general information about the Project expected results and activities.

PART I: JUDICIAL SELF-GOVERNING BODIES

1.1. General mandate and main objectives of judicial self-governing bodies

Relevant European Standards

Before discussing the applicable standards in relation to the composition of judicial self-governing bodies (often quoted as "Justice Councils" or "Councils for the Judiciary", or "Judicial Councils") and the methods of selection of their members, it is worth recalling the principle function and objective of these bodies which is, in accordance with the recommendation of the CM Rec (2010)12 and CCJE Opinion No. 10, to **safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.**

In seeking a common understanding as to the meaning of this main objective, it is necessary to first agree upon a definition of judicial independence.

In its Joint Opinion with the CoE Directorate General of Human Rights and Rule of Law on the "Law on the Judicial System and Status of Judges of Ukraine", the Venice Commission quoted the Study Commission of the International Association of Judges, held at Recife in 2000. It provided the following definition of judicial independence:

"Judicial independence is independence from any external influence on a judge's decisions in judicial matters, ensuring citizens an impartial trial in accordance with law. This means that the judge must be protected against the possibility of pressure and other influence by the executive and legislative powers of state as well as by the media, business enterprises, passing popular opinion etc. But it also implies guarantees against influence from within the judiciary itself. […] 3. The proper administration of the judicial system must create and ensure the conditions necessary for judicial independence"

The Magna Carta (adopted by the CCJE on 17 November 2010) sees judicial independence in the following terms:

"Judicial Independence

2. Judicial independence and impartiality are essential prerequisites for the operation of justice.
3. Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.
4. Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary".

With this understanding of the meaning of judicial independence in mind, the next task is to consider how the guarantor of this independence ought to fulfil its crucial role.

In light of European best practice and standards, it follows that one of the Justice Council's main tools in safeguarding and fostering the independence of the judiciary is judicial **self-governing, i.e. self-managing the judicial system**, as described *inter alia,* in the Magna Carta, paragraph13.

A common understanding throughout society of the basic principle that **Justice Councils contribute to the independence of the judiciary by facilitating the self-management of the latter** is crucial to considering the principles that ought to guide the council's composition, the selection of its members and its functions.

In accordance with the CCJE Opinion No.10, the Council should enjoy the leading role *("the Council for the Judiciary ensures that the following tasks, to be performed preferably by the Council itself, or in cooperation with other bodies, are fulfilled in an independent manner*") in numerous fields pertaining to the judiciary:

- Selection and appointment of judges;
- Promotion of judges;
- Evaluation of judges;
- Disciplinary and ethical matters;
- Training;
- Control and management of a separate budget;
- Administration and management of courts;
- Protection of the image of judges;
- Provision of opinions to other state authorities; and
- Responsibility to the public: transparency, accountability and reporting.

It should be noted that the specific mandate of the Justice Council must be determined against the backdrop of its general mandate and objectives. Thus, it is important that the council be established as an independent **decision-making** body and not as a body capable only of issuing recommendations to other state authorities.

In this context, the *primary challenge* seems to arise from the fact that this major function and objective is not being given clear expression in any of the constitutions or laws of participating countries. Most laws relating to the Justice Councils do not formulate succinctly the overarching function or objective of the council, but are focused upon describing in detail its competences and functions. This can lead to a lack of understanding of basic principles on the part of some legislatures. As soon as one understands that the role of Justice Councils is to protect the independence of the judiciary, most of the requirements flowing from that role, such as the members of these bodies, and their qualification and selection, become self-explanatory. The same is true of the main functions of these bodies, which are also simply the logical extension of the their main objective.

Regulatory framework in the participating countries

Armenia

Current situation:

The **Armenian** Constitution (Art. 94-95) sets out the composition of the Justice Council and lists its duties and responsibilities without specifying that the main objective of the Justice Council (as a self-governing judicial body) is to implement and secure judicial independence.

It is interesting to note that, in accordance with the Judicial Code of Armenia (Art. 70), the Justice Council is not a judicial self-governing body, as those functions are carried out by the General Assembly of Judges (which elects the members of the Justice Council) and the Council of Presidents of Courts. None of the mandates of the three institutions involved in self-governing activities in relation to the judiciary mentions the safeguarding of judicial independence as the overarching objective.

Summary and Recommendations

The Armenian law does not view the Justice Council as part of the judicial self-governing system, even if the rights and obligations of the Council, as defined by the law permit it, to a certain extent, to act as a self-governing body. Therefore, the legislature ought to clarify the role and functions of the Council, particularly in light of the existence of the other two judicial self-governing bodies. Until such a clear delineation of powers is achieved, the main function of "judicial self-governing" ought to be defined in law in a way that will enable it be seen as the principal guarantor of judicial independence, irrespective of the body responsible for carrying it out.

Azerbaijan

Current situation

The Constitution of **Azerbaijan** (Art. 8) designates the President of the country as the main guarantor of judicial independence. Moreover, the Judicial-Legal Council Act does not include ensuring and implementing judicial independence among the Council's functions. Article 1 of the Act (Purpose of the Judicial-Legal Council) provides that the Judicial-Legal Council is the body which, within its field of competence:

- Ensures the organization and operation of the court system;
- Undertakes the selection of candidates who are not judges to vacant judicial posts;
- Evaluates the work of judges;
- Determines issues relating to the transfer of judges to different judicial posts, their promotion, initiating disciplinary proceedings against judges, and, other issues relating to courts and judges; and
- Implements the self-governing of the judiciary.

During the Working Group sessions it was stressed by representatives of **Azerbaijan** that the President guarantees judicial independence as the Head of State rather than as the head of the

executive. The representatives pointed out that such a solemn role resting with the President contributes to generating and maintaining respect for judicial independence within the state. As it underlined during the discussions, it appears problematic in any event to rely upon a single person instead of an independent institution to ensure the independence of the judiciary. This concern applies whether or not the practice shows any actual abuse of powers.

Summary and Recommendations

Azerbaijan ought to enshrine the main function of the Justice Council in the Constitution or the The Judicial-Legal Council Act in order to strengthen and safeguard judicial independence.

Georgia

Current situation

In accordance with the Constitution of **Georgia** (Art. 86-1), the main objective of the High Council of Justice (HCJ) is to appoint and dismiss judges. Pursuant to Art. 47 of the Law on the Common Courts, the HCJ is also responsible for organising qualification exams, for elaborating proposals for judicial reform and for performing other tasks as required by the law[1].

It is not disputed that the appointment and dismissal of judges and the other functions mentioned are very important and ought to be carried out by the Council.

However, in light what has been discussed above and in order to engender a better understanding of the role of the Justice Council, Georgia ought to express clearly the main objective of judicial self-governing, as described above, either in the Constitution or in the relevant specific law.

However, such clarification can only serve to increase levels of understanding and the definition of the role of the Council in **Georgia** if there is a common understanding that the Council acts as a judicial self-governing body. Following discussions held during the meetings of the Working Group and bearing in mind the list of duties and rights of the Council, it appears that there exists a common understanding that the Council is indeed a tool of judicial self-governance. However, neither the Constitution nor the relevant law explicitly defines the Council in this way.

Summary and Recommendations

It is proposed that the role of the High Justice Council, as a judicial self-governing body be clarified expressly in law together with its main function as guarantor judicial independence.

[1] Art. 1 of the Regulations of the HCJ adds to its competences the coordination of budgetary, logistical and operational issues relating to the general courts.

Moldova

Current situation

The **Moldovan** Constitution sets out in detail in Article 123 the functions of the Superior Council of Magistrates (SCM) without any reference to its crucial role of safeguarding judicial independence.

In **Moldova**, the Law on the Superior Council of Magistrates (Art. 1) states that the "Superior Council of Magistracy is an independent body, created to oversee the organization and functioning of the judicial system, and is the guarantee of the **independence of the judiciary**"**.** Therefore, there exists in statute, at least, a clear reference to the body's main objective.

Summary and Recommendations

Moldovan law sufficiently describes the main function of the SCM. As part of the already lengthy discussion of substantial changes to the constitution, emphasising the Council's main function as guarantor of judicial independence ought to be a consideration.

Ukraine

Current situation:

In **Ukraine,** the description of the objective and duties of judicial self-governance can be found in the new Law on the Judiciary and Status of Judges.

Article 113 of that law provides, at paragraph 2:

*"*Judicial self-governance shall be one of the most important guarantees of the autonomy of the courts and the independence of judges. The activities of judicial self-governing bodies shall serve to facilitate the creation of adequate … conditions essential for the normal functioning of the courts and judges, shall enhance the independence of courts, shall ensure the protection of judges from interference in their judicial activities, and shall help to improve standards in the management of staff within the court system*".*

The **Ukrainian** law expresses very clearly the idea of guaranteeing judicial independence through judicial self-governance. It therefore forms a strong basis on which to understand the role of the modern judiciary.

The law yet portrays the principle of judicial self-governance[1] as focusing mainly upon management functions. Of particular note is the fact that the law does not view the High Council of the Judiciary as a part of the self-governing system in Ukraine. Instead of concentrating the self-governing function on one or two bodies, Ukrainian law recognises 5 different judicial self-governing bodies.[2] This system, involving as it does a considerable number of different players, is a direct consequence of the managerial focus that surrounds self-governing in the Ukrainian system, which requires, especially in light of the size of the country and the diverse functions of each body, a comprehensive system throughout all levels of the judiciary and regions of the country.

As a result of this "management centred" understanding of judicial self-governing, it becomes clear why the High Council of Justice is not seen as part of the self-governing system, its obligations and competences being of a different nature. Yet, in accordance with Article 3 of the law on the High Council of Justice, this body has nevertheless responsibility for aspects of the Ukrainian system crucial to securing judicial independence. These include judicial appointments and disciplinary matters involving judges of the Supreme Court and High Specialised Courts.

Summary and Recommendations

The Ukrainian legislature should reconsider how the idea of judicial self-governance is understood in the national legislation currently in force, and bring together under one umbrella managerial functions and those of a more substantive nature. As part of this exercise, the legislature ought also to reassess whether it is indeed desirable from efficiency and transparency perspectives to have a number of different institutions carrying out judicial self-governing functions, or whether a reduction in the number of institutions involved and a streamlining of their competences would be advisable.

[1] Article 113 paragraph 4 provides that the objectives of judicial self-governance should include:
1) ensuring the organizational coordination of the functioning of judicial bodies;
2) strengthening the independence of courts and judges and protecting them from interference in their functions and work;
3) a role in the determination of requirements relating to recruitment of staff members, financial, logistical and other forms of support for the courts, and supervision of compliance with the established standards for such support;
4) resolving issues regarding judicial appointments to administrative positions within courts in accordance with the procedures set out in this Law;
5) the appointment of justices of the Constitutional Court of Ukraine; and
6) judicial appointments to the High Council of Justice and to the High Qualifications Commission of Judges of Ukraine, in accordance with the procedures set out in this Law.

[2] Art. 114, paragraph 2 lists the following bodies:
1) meetings of judges of local courts, courts of appeal, high specialized courts, and the Supreme Court of Ukraine;
2) councils of judges of the respective courts;
3) conferences of judges of the respective courts;
4) the Council of Judges of Ukraine; and
5) the Congress of Judges of Ukraine.

General conclusions on the mandate and main objectives of judicial self-governing bodies

There remains no coherent, common understanding as to the meaning of judicial independence or of ways of ensuring its protection.

The different approaches that can be observed from constitution to constitution and from country to country as to the very idea of judicial independence, the role of judicial self-governing bodies and of judicial self-governance as a whole, can lead to misunderstandings over the principles that ought to guide the composition of self-governing bodies as well as the selection of members and allocation of functions.

Consideration should be given to highlighting within the respective national laws the main objective of judicial self-governance and to underline its key role in safeguarding judicial independence. Furthermore, the respective domestic laws ought to make clear that, aside from the legal framework that exists in each country, the council of judiciary acts as the principal safeguard of judicial independence and that its main objective is to foster and maintain this independence. An example of good practice in this connexion is **Moldova**. National systems should also ensure that the Justice Council has functions not only in relation to the management of the judiciary, as in **Ukraine**, but also the core functions mentioned above.

Misinterpretations as to the role of judicial self-governing bodies might lead, on the one hand, to an undermining of their importance when viewed from outside the system, and on the other – to a tendency to abuse the mechanism in order to assert the interests of inside forces.

In order to deepen understandings of judicial self-governance, a constant dialogue throughout civil society and particularly amongst stakeholders in the judicial system should be further encouraged in **all participating countries**.

1.2 Composition of Justice Councils and the selection of their members

Relevant European standards

In accordance with European standards, not less than half of the members should be judges chosen by their peers.

The Magna Carta states that

"Body in charge of guaranteeing independence
13. To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organization, the functioning and the image of judicial institutions. ***The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers****. The Council for the Judiciary shall be accountable for its activities and decisions".*

Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities proceeds in a similar vein whilst setting a slightly lower requirement as to the proportion of judges within the council**:**

"Chapter IV − Councils for the judiciary
26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.
27. ***Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary".***

In summary, therefore, the requirement that "at least half of the members of the HJC should be judges elected by their peers" represents a minimum standard in terms of the "composition of the Justice Council".

These two basic requirements, that is (1) that half of council members must be judges and (2) that the judges must be chosen by their peers, have yet to be fully implemented in some participating countries. However each requirement is of crucial importance in establishing a true self-governance system. Any judicial administration body either dominated or heavily influenced by persons from outside the judiciary (or, worse still, from inside the other two branches of the state) can hardly be said to be a tool of ***self*-governance**.

Regulatory framework of the participating countries

Armenia

Current situation:

In accordance with the **Armenian** Constitution (Art. 94.1), nine of the thirteen members of the Justice Council shall be judges elected by their peers, with two additional members appointed by Parliament (National Assembly) and another two by the President.

The General Assembly of Judges elects, pursuant to Article 99 of the Judicial Code, nine Justice Council members from a list of candidates. This list contains the names of all judges who have not been subjected to disciplinary measures during the last three years and who have not rejected their nomination. It is noteworthy that the voting process is not entirely free as the General Assembly is curtailed by Article 99 in that it prescribes a number of judges who should be elected from each jurisdiction[1]. This limitation does not, however, raise any particular issue of concern as it serves to guarantee an equal distribution of places between the different jurisdictions.

In **Armenia**, on the other hand**,** there is some cause for concern arising out of the parallel functioning of the High Council of Justice and the Council of Presidents of the Courts, as highlighted in the previous chapter.

In the current system, the HCJ does not appear to be as effective a body as the Council of Presidents of the Courts. Thus, the HCJ either needs to be disbanded or have its powers extended. A better option would be to pass the self-governance powers of the Council of Presidents of Courts to the HCJ in order to guarantee the involvement of ordinary judges in the self-governance process.

Consequently, the Armenian judicial self-governance system, which shares the function between a number of different bodies, does little to achieve effective and transparent judicial self-governance and risks contributing, as a result, to lowering rather than raising standards within the judicial system.

[1] **Article 99.** Procedure for the Election of Judicial Members of the Justice Council

1. The judicial members of the Justice Council shall be elected by the General Assembly of Judges as follows:
   1) One member from the general courts of Yerevan;
   2) One member from the general courts of the Marzes;
   3) One member from the criminal courts;
   4) One member from the civil courts;
   5) One member from the civil appellate court;
   6) One member from the criminal appellate court;
   7) One member from the administrative court; and
   8) Two members from the Cassation Court.

Summary and Recommendations

The Armenian legislature should consider merging the functions of the High Council of Justice and those of the Council of Presidents of the Courts. Whilst the Council of Presidents of the Courts retains judicial self-governance competences, it should facilitate the participation of ordinary judges elected by their peers.

Azerbaijan

Current situation:

In **Azerbaijan**, members of the council are appointed by different bodies.
In accordance with Article 6.1 of the Judicial-Legal Council Act, the Council shall be composed of 15 members. Article 6.2. provides that
*"*The Judicial-Legal Council shall be mainly composed of judges and representatives of executive and legislative bodies, the prosecutor's office, and the bar association […]*"*.

It follows from the list of members set out in the law that the majority of the members are judges. In this respect, therefore, the relevant European standard is met.

On the other hand, however, the appointment procedure is relatively complicated. Different judges are appointed by the Minister of Justice, the Constitutional Court and the Supreme Court of Justice. Appointments are made on the basis of a recommendation of the General Assembly of Judges. Of crucial importance here is the fact that the General Assembly must always recommend at least two candidates for one position and that the final choice is made by various bodies, one of which is outside the judiciary.[1]

[1] 6.2.1. The head of the relevant executive body* of the Republic of Azerbaijan;
6.2.2. The President of the Supreme Court of the Republic of Azerbaijan;
6.2.3. A person appointed by the head of the relevant executive body of the Republic of Azerbaijan;
6.2.4. A person appointed by the Milli Majlis of the Republic of Azerbaijan;
6.2.5. A judge appointed by the Constitutional Court of the Republic of Azerbaijan;
6.2.6. Two judges from the Cassation Instance Court appointed by the Supreme Court from the candidates put forward by the associations of judges;
6.2.7. Two judges from the courts of appeal appointed by the Supreme Court from among the candidates put forward by the associations of judges;
6.2.8. A judge of the Supreme Court of Nakhchivan Autonomous Republic (NAR) appointed by the NAR Supreme Court from the candidates put forward by the associations of judges;
6.2.9. Two judges from the first instance courts appointed by the head of the relevant executive body of the Republic of Azerbaijan from the candidates put forward by the associations of judges;
6.2.10. A person appointed by the head of the relevant executive body* of the Republic of Azerbaijan;
6.2.11. A lawyer appointed by the Collegial Board of the Bar Association of the Republic of Azerbaijan; and
6.2.12. A person appointed by the General Prosecutor's Office of the Republic of Azerbaijan.
6.3. The head of the relevant executive body of the Republic of Azerbaijan and the President of the Supreme Court of the Republic of Azerbaijan are *ex officio* members of the Judicial-Legal Council.
6.4. The persons appointed to the Judicial-Legal Council by the relevant executive body of the Republic of Azerbaijan, the Milli Majlis of the Republic of Azerbaijan, the relevant executive body and the General Prosecutor's Office of the Republic of Azerbaijan shall have an advanced law education and more than five years' work experience.
6.5. The association of judges shall put forward at least two candidates for every one vacancy in the Judicial-Legal Council. The list of candidates for membership of the Judicial-Legal Council can be rejected only once by the person who appoints them. Subsequently nominated persons shall be appointed to the Judicial-Legal Council.

Consequently, selection of the majority of the members of the council does not rest with judges electing their peers but involves many bodies and institutions, comprised to a large extent by members of the executive.

It is not clear why such a complicated system, which in the Experts' view does not comply with CoE standards, is necessary. The system could be rendered much more transparent if the General Assembly of judges were vested with the powers of election or appointment instead of being an advisory body empowered merely to propose candidates for a final determination to be made by different institutions residing in other branches of state power.

Summary and Recommendations

Azerbaijan is advised, in light of the European standards, to streamline the procedure for selection and appointment of members of the Council and to transfer the right to directly select or elect Council members to the General Assembly of Judges. However, this recommendation does not mean that European standards or the Experts' opinion oppose the use of a system of checks and balances in the appointment process which prevents the possibility of the Council becoming open to abuse by external influences.

Georgia

Current situation

In **Georgia** the High Council of Justice consists, in accordance with Article 47 of the Law on the Common Courts, of 15 members appointed by the Judiciary, Parliament and the President of Georgia.

The HCJ has been restructured and expanded from nine to fifteen members, more than half of whom are currently judges, including the Chairman of the Supreme Court and eight common court judges elected by the Conference of Judges. This meets applicable European standards.

However, the question of the proportion of judges to non-judges in the HCJ raises concern. The present composition of the HCJ meets European standards. However, Article 47 of the Law on the Common Courts may create a situation where only seven members meet the required criteria of holding judicial status and having been elected by their peers. This risk is created by the fact that the law grants the Conference of Judges a right to elect the secretary of the HJC as one of the eight elected members and provides that the secretary may not be a judge.

Summary and Recommendations

As stressed by the Georgian delegation, the elected secretary has hitherto always been a judge, meaning that, in practice, European standards have been observed. However, in the Experts' opinion, the standards in question require both practice in line with European norms and a legislative framework that sufficiently safeguards this practice and does not allow for deviation from it. Accordingly, the legislature is strongly advised

6.6.Other than persons who are *ex officio* the members of the Judicial-Legal Council, the same person should not be appointed as a member of the Judicial-Legal Council more than twice.

to introduce a provision ensuring that the majority of HCJ members are judges elected by their peers.

A brief digression on the influence of the executive branch upon the selection of council members

On this point, it is useful to look again at CCJE Opinion No.10:

"31. The CCJE does not advocate systems that involve political authorities such as Parliament or the executive at any stage of the selection process (of judge-members). All interference of the judicial hierarchies in the process should be avoided. All forms of appointment by authorities internal or external to the judiciary should be excluded.

*32. **Non-judge members should not be appointed by the executive**. Although it is for each state to strike a balance between conflicting needs, the CCJE would commend a system that entrusts appointments of non-judges to non-political authorities. If in any state any non judge members are elected by Parliament, they should not be members of Parliament, should be elected by a qualified majority necessitating significant opposition support, and should be persons affording, in the overall composition of the Council for the Judiciary, a diverse representation of society."*

This excerpt makes clear that the selection process as established under the legislation of all participating countries is not fully in line with best European practice as it allows the executive and legislative authorities, both of which are traditionally guided by political interests, to have a not insignificant influence on the composition of the body responsible for judicial self-governing.

This accords with the presentation made by the **Georgian** delegation, the members of which pointed out (after the meeting) that further discussions should cover questions relating to how best to set high moral standards for individuals nominated by the President and Parliament to the High Council of Justice, and how to set restrictions upon membership of political parties of HJC members nominated by the President. The delegation emphasised that members of the HJC appointed by the President of Georgia should be not have any active involvement in politics.

The **Georgian** contribution highlights an issue deserving of particular attention: How can appropriate qualifications and ethical standards be ensured with regard to members who are not judges?

Moldova

Current situation

For **Moldova**, the ABA Judicial Reform Index 2009 states:

"[T]he amendments to the composition of the Superior Council of Magistracy and its disciplinary and qualification boards, described as hastily adopted by Parliament without consultation with civil society or the judiciary, are viewed as an attempt by the executive to infringe judicial independence. In the case of the Superior Council of Magistracy and its qualification board, the proportion of judges to non-judges has been reduced".

Currently the SCM consists, in accordance with Articles 3 and 4 of the Law on the SCM, of twelve members. Five judicial members are elected by the General Assembly of Judges, four scholars are elected by Parliament while the Prosecutor General, the Minister of Justice and the President of the Supreme Court are *ex officio* members. It follows that the law guarantees that half of the council's members are judges. However, only five are elected by their peers, whilst the sixth member - namely the President of the Supreme Court - is an *ex officio* member. Moreover, the latter is appointed by Parliament, which seriously reduces the independence of the SCM, considering the recent change in the proportion of judges to non-judges in favour of non-judges.

What raises an additional concern here is that, in accordance with different sources, such as the European Union/Council if Europe Joint Programme on "Independence, transparency and efficiency of the justice system of the Republic of Moldova", as well as the above-mentioned ABA Index, the change in the national legislation which led to a reduction in the number of judges within the SCM was effected without any prior public debate and without the appropriate involvement (i.e. prior discussion) of the judiciary or of its self-governing bodies.

Summary and Recommendations

The current composition of the SCM does not correspond to CoE standards as it does not require that half of SCM members are judges elected by their peers. The national legislature should increase the number of elected judges by amending the relevant legislation until the ratio is reached, or decrease the number of *ex officio* members by eliminating, for example, the role of the Minister of Justice or the General Prosecutor currently enshrined in the Constitution.

Ukraine

Current situation:

Despite the fact that the High Council of Justice of Ukraine (HCJ) is not among the self-governing judicial institutions listed at Article 114 of the Law on the Judicial System and Status of Judges, it performs certain functions falling generally within the competence of such institutions. Therefore it should be measured against the relevant European standards.

The majority of members of the HCJ are judges. However, they are not elected by their peers but by Parliament, the President, Higher Educational Bodies, and so on.

Article 131 of the Ukrainian Constitution provides that the High Council of Justice shall consist of 20 members. The Verkhovna Rada of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions each appoints three members to the High Council of Justice. The All-Ukrainian Conference of Employees of the Procuratura appoints two members. The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Prosecutor General of Ukraine are *ex officio* members of the High Council of Justice.

Summary and Recommendations I:

It would be advisable to change the appointment procedure in order to exclude the possibility of creating any (improper) influence upon the selection process. It is important to ensure that at least half of the members of the Council are elected by their peers, that is, by other judges.

The Ukrainian system is somewhat unique as it recognises several different fora at the regional and national levels as being involved in the self-governance of the judiciary. In accordance with Article 114 of the Law on the Judiciary and Status of Judges, judicial self-governance is carried out through –

1) Meetings of judges of local courts, courts of appeal, high specialized courts, and the Supreme Court of Ukraine;
2) Councils of judges of the respective courts;
3) Conferences of judges of the respective courts;
4) The Council of Judges of Ukraine; and
5) The Congress of Judges of Ukraine.

The Judicial Conference determines questions relating to jurisdiction (four of which now exist in Ukraine).

The Council of Judges of Ukraine is answerable to the Judicial Conference.

The Meeting of Judges, together with the Council of Judges, determines questions relating to organization of the judiciary.

Pre-selection of candidates is undertaken by the High Council of Justice which is not itself part of the judiciary.

The HCJ, which, according to the law, has no self-governance role in relation to of the judiciary, consists of 20 members. Eleven of its members are judges, but they are not elected by their peers. The HCJ selects candidates for judicial office but does not appoint them. There could be some functional overlap with the High Qualification Commission but, in accordance with the national delegation, the latter is not a self-governing body and its decisions as to candidates for judicial positions are not reviewed by the HCJ.

The status of the HCJ is defined in neither the Constitution or at statute. The delegation agreed that this should be remedied, as specifying the place of the HCJ within the judicial system would help to avoid overlap of functions and powers. Moreover, the HCJ should be named as the guarantor of judicial independence and vested with the powers in needs in order to carry out this function.

This unique national system necessitates an analysis not only of the composition of the Council and the selection procedure for its members but also of its role and place in terms of the overall judicial system in Ukraine and, in particular, in terms of the self-governance of the judiciary.

It has been noted on several occasions that where a large number of bodies are involved in the administration and self-governance of the judiciary, this risks reducing the effectiveness and transparency of the organisation and functioning of the relevant institutions and leads,

ultimately, to a reduction in quality within the judicial system (for further details see, for example, the documentation produced following the joint conference of the Joint Programme between the Council of Europe and the EU on "Transparency and Efficiency of the Judicial system of Ukraine (TEJSU) and USAID, Lvov, April 2011).

Summary and Recommendations II

There could be scope to re-assess the role, functioning and competences of the High Qualification Commission, an additional and newly-created body. Like the High Council of Justice, it has not been made a part of the judicial self-governance system. In practice, however, it also plays an important role in the field of judicial training, careers and discipline, all of which lie at the heart of judicial self-governing. Therefore both the High Qualification Commission and the HCJ should be integrated into the system of judicial self-governing in Ukraine.

Moreover, the competences of the various fora and organs involved in judicial self-governing ought to be reconsidered with a view to adapting the structure and optimising the transparency of judicial self-governing bodies.

General conclusions on composition and selection of members of Justice Councils

In summary, there is room for improvement across **all participating countries** in terms of the composition of Justice Councils and the selection of their members .

Current practice is not in line with CoE standards in all countries. Most of the participating countries reserve at least 50% of Justice Council posts for judicial members, but these judges are not always elected by their peers (see **Azerbaijan, Georgia, Moldova and Ukraine**).

In participating countries, the executive has legal authority to influence the selection of council members to a greater than marginal extent. Such influence leaves open the door to influencing the day-to-day work of the councils. Equally, it raises questions over the qualifications and ethical and moral standards of non-judicial members.

Once again, the Experts wish to reiterate that the requirement that at least half of the members of Justice Councils must be judges elected by their peers is a minimum European standard. As a result, Councils ought to be composed either exclusively or mostly of judges elected by their peers.

The Experts therefore recommend that steps are taken to ensure by means of a clear legislative requirement that at least half of council are judges (Georgia) and that those judges are elected by their peers (Moldova, Ukraine, Azerbaijan).

1.3 The role of Justice Councils in the process of negotiation of budgets for the judiciary

Relevant European Standards

The independence and self-governance of the judiciary do not come without certain requirements surrounding the budget of the judiciary and of the self-governing body itself. It is of crucial importance that the judiciary is able to influence its own budget at least by direct negotiations with the various stakeholders and representatives of other branches of government power.

CM/Rec(2010)12 provides at paragraph 40:

"Councils for the judiciary, where existing, or other independent authorities with responsibility for the administration of courts, the courts themselves and/or judges' professional organizations may be consulted when the judicial system's budget is being prepared".

On the question of resources, CM/Rec(2010)12, paragraph 33, provides:

"Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently".

The power of a judge to make a decision in a particular case should not be limited by a need to make the most efficient use of resources (CM/Rec(2010)12, paragraph 34).

The proper financing of the judiciary will be always linked to ensuring that a sufficient number of judges and appropriately qualified support staff are allocated to the courts. (CM/Rec(2010)12, paragraph 35).

The CCJE in its Opinion No 2 also recognized this close link between the funding of courts and the independence of judges and that funding determines the conditions in which courts are able to perform (paragraph 2).

It further stated that although the funding of courts is part of the State budget as presented to Parliament by the Ministry of Finances, such funding should not be subject to fluctuations for political reasons. Although the level of funding a country allocates to its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence (paragraph 5)

The CCJE advocated greater involvement by the courts themselves in the process of drawing up the budget. The CCJE's position was based on the presumption that courts should express an opinion on "appropriate funding the courts require. Therefore it agreed that it was *"important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views"* (paragraph 10).

The CCJE pointed out the importance of appropriate funding to fulfilling judicial duties and obligations towards society. *"The CCJE in particular further draws attention to the need to allocate sufficient resources to courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights"* (paragraph 14).

The CCJE Opinion underlines the importance of sufficient resources in order to ensure financing, personnel and technical expertise. In accordance with the Opinion, the Council should have the means appropriate to operate independently and autonomously as well as the power and capacity to negotiate and organise its own budget. Integral to this kind of budgetary autonomy is the right of the Council to have its own staff according to its own needs.

The European Charter on the Statute for Judges (1998) emphasizes at paragraph 1.8 that judges should be involved in *"any decisions taken on the administration of the courts, the determination of the courts' budgetary resources and the implementation of such decisions at the local and national levels"*.

The Charter further provides that whilst not advocating any specific legal form or degree of constraint, this provision requires that judges be involved in the determination of the overall judicial budget and in the earmarking of resources for individual courts, and this implies also the need to establish consultation or representation procedures at the national and local levels. This also applies more broadly to the administration of justice and of the courts.

Decisions on the allocation of funds to courts must be taken with the strictest respect for judicial independence. In this context it should be noted that European standards do not advocate different budget-drafting procedures or the allocation of financial recourses depending on the relative level of a court within the judicial hierarchy. It would be advisable, and in the interests of the judiciary as one of the branches of state power, for judicial self-governing bodies to be involved in the procedure of drafting of budgets for all courts of all levels, without exception. This would enable discussions to be had and the relevant state authorities to be presented with a common approach for the whole judicial system.

Regulatory framework of the participating countries

All beneficiary countries provide for a more or less separate budget for the judiciary and its self-governance institutions in their respective laws. However, in order to ensure that the needs of the judiciary are met, the involvement of self- governing judicial bodies in (1) the process of drafting budgets for the judiciary and its institutions, and (2) the process of negotiation with government and parliament is a pre-requisite to ensuring judicial institutional independence.

Armenia

In accordance with Article 64 of the Judicial Code, the financing of the courts is managed by the Judicial Department. The documents submitted by the national delegation, or otherwise available to the Expert, do not describe the status of this body. Accordingly, it is not entirely clear to which branch of state power it belongs. However, from the context of the materials available, it appears, at least, that it is not an element of the judiciary.

The budget is drafted by the Judicial Department. The Head of the Department then forwards the document to the Council of Presidents of Courts for its approval. The extent to which changes can be made by the latter remains unclear. Consequently, its influence cannot be accurately measured. However, it has been indicated that, in principle, changes can be made and that the draft needs the approval of the Council of Presidents of Courts before being submitted to the Government. Some involvement of the judiciary in the process is therefore ensured. However, additional enquiries are required in order to arrive at an accurate conclusion as to whether the Council's involvement is formal in nature or enables it to exercise real influence upon on the budget drafting process.

The Justice Council has no influence in the further stages of the budgetary process. Having received the approval of the Council of Presidents of Courts, the Judicial Department submits the draft to the Government. The latter in turn presents the budget to the National Assembly. All objections and enquiries are then dealt with by the Head of the Judicial Department.

Summary and Recommendations

The Justice Council exercises rather limited influence on the budget-drafting process. Direct negotiations are only envisaged at an early stage of that process. During the later stages, the interests of the judiciary are represented by the Judicial Department. In the early stages the judiciary is represented only by the Council of Presidents of Courts, with the Council of Justice not involved at all. This situation is not in line with European best practice.

Azerbaijan

The financing of the courts and the powers of the Judicial-Legal Council in that process are regulated by two laws – the "The Court and Judges Act" and the "The Judicial-Legal Council Act".

The Court and Judges Act provides:

"In order to secure the conditions necessary to the proper administration of justice by the courts in accordance with the requirements of the procedural legislation, each court shall be provided with:
specially equipped premises; judicial emblems: the State Flag and State emblem of the Republic of Azerbaijan and the Emblem of Justice; a judicial mantle; necessary transport means and technical equipment; and forms, stamps and a seal with the name of the court and the State Emblem.
Judges of the Republic of Azerbaijan shall be provided with service identification cards confirming their status.

The work of and logistical support for the courts shall be provided at the expense of the state budget. Under a specific section of the State Budget of the Republic of Azerbaijan, financial means shall be set aside in order to finance the courts' activity and improve their logistical support.
The relevant executive bodies (note that the financial powers of the relevant executive body are carried out by the Cabinet of Ministers, and financial and technical support matters by the Ministry of Justice of the Republic of Azerbaijan), within the limits provided by the state

budget of the Republic of Azerbaijan, shall take all necessary measures to secure the financing and logistical support of the courts as required (Article 90. Logistics and financing of courts)".

The Judicial-Legal Council Act states:

"The Judicial-Legal Council submits proposals on supplying the courts with equipment and funds (Article 11.0.9)".

In the implementation decree of the President for the Legal Council Act, it was stated that the Cabinet of Ministers shall be charged with *"allocating under a separate article of each annual draft State budget the means for financial and logistical support of the operation Judicial-Legal Council, its staff and the Judge Selection Committee"* (point 1.5).

As to the functioning of the Council itself, the Act on the Council provides:

"29.1. The Staff of the Judicial-Legal Council shall be set up to deal with organizational matters relating to the preparation of sessions of the Judicial-Legal Council, to prepare minutes of the sessions of the Council, and to address other issues relating to the functions of the Judicial-Legal Council.
29.2. The status of the Staff of the Judicial-Legal Council shall be equal to that of the Staff of the Supreme Court of the Republic of Azerbaijan. The Staff shall operate in accordance with the Regulations approved by the Judicial-Legal Council. Members of the Council are public servants. The structure and number of members of the Staff shall be determined according to the funds allocated from the State Budget to the Judicial-Legal Council (in Article 29)".

Summary and Recommendations

The Court and Judges Act does not envisage any interplay between the executive and the judiciary when it comes to the planning, drafting and processing of the budget of the judiciary. No negotiation between these two arms of the state can be found in the regulations cited. The Judicial-Legal Council Act provides only that the Council can submit proposals on the issue of supplying the courts with equipment and funds.

In summary, given the very limited scope for the influence of judicial self-governance in the courts' budget drafting process, the current system is not in line with European best practice.

The regulations do not indicate the extent to which the JLC exercises powers in relation to its own budget. However, the situation appears quite similar to that which prevails with regard to the financing of the courts.

Georgia

Article 67 of the Organic Law of Georgia on Common courts provides that "the *common courts are financed by state funds. The costs relating to the organization and activities of the Supreme Court of Georgia are dealt with by the Law on the State Budget and the applicable funds are provided in a dedicated section of the State budget*".

On the basis of the materials submitted by the national delegation, it can be said that the High Council of Justice (HCJ) is responsible for presenting the Government with the "funding of common courts", with proposals from the Department of Common Courts. The part of the draft budget relating to the activities of the Supreme Court is presented by the Chairman of the Supreme Court, in accordance with the law. The chairmen of each court are obliged to indicate their needs to the HCJ. In practice, the budget of the common courts is based on a needs assessment carried out in relation to each individual court.

A reduction of funds allocated to the Common courts in the State budget for the upcoming year is possible with the consent of the HCJ. However, any budgetary request made by the HCJ to the government that exceeds the previous year's allocation can be denied by the other branches of government without any consultation with the self-governing bodies of the judiciary.

Therefore, despite the fact that the Department of Common Courts prepares the draft budget of the Common Courts and that this has to be approved by the HCJ, the participation of the self-governing bodies of the judiciary in the later stages is curtailed considerably.

Summary and Recommendations

The legislative involvement of the HCJ in budgetary issues in Georgia appears rather declaratory in nature as a result of its very early participation in the process and due to the requirement to present the judicial budgetary needs to the executive.

Moldova

According to the Moldovan delegation, the national regulatory framework regarding the preparation and negotiation of the budget of the courts is neither coherent nor free of internal contradiction.

Article 123 of the Constitution sets out the powers of the Superior Council of Magistracy (SCM) without mentioning any competences relating to the financing of the judiciary/courts. It appears, in accordance with Article 131, which provides that each year the Government has to prepare the state Budget and present it to Parliament for approval, that the Government alone is responsible for the determination of the needs of the judicial system. On the other hand, according to the Law on Courts, the funds necessary for the proper functioning of the courts are to be approved by Parliament upon the Council's proposal.

The Moldovan delegation pointed out that the current legislative set-up resulted in various practical problems during annual budget negotiations and that a clear demarcation of powers of the SCM and the Government when presenting proposals for the funding of the judiciary is one of the main objectives of the reform currently being undertaken in Moldova.

Article 22 of the Law on Courts provides that the SCM presents the budgetary needs of the judiciary to Parliament. However, in accordance with Article 131 of the Constitution of Moldova, the Government (executive) is the key institution when it comes to the presentation of the draft budget. According to the representatives of Moldova, what happens in practice is that the proposals of the SCM are simply dismissed and what the executive wants to do prevails.

The Department of Court Administration acting under the Ministry of Justice (Regulation of the Government No1202 6 November 2007) is in charge, *inter alia,* of collecting from the first and second instance courts their submissions for use in the budget drafting process. The current legislation enables the SCM to discuss the budget with the executive, but it also allows the Council to approach Parliament directly.

As for the own budget and functioning of the SCM, the Law on the SCM provides:

"Article 26. Secretarial Work
(1) The secretarial work of the Superior Council of Magistracy shall be performed by members of the Council's support staff.

Article 27. The Superior Council of the Magistracy - Funding

(1) In order to ensure it can carry out its activities, The Superior Council of the Magistracy shall have its own dedicated budget funded from the state budget.
(2) The Superior Council of Magistracy shall have a support staff.
(3) The support staff of the Superior Council of Magistracy shall be made up of 13 persons and shall help ensure the proper functioning of the Council, the Qualifications Board and the Disciplinary Board.
(4) The Superior Council of Magistracy shall appoint the head of the Council's support staff, as well as the head and the members of the justice and personnel department. Those staff members who do not hold the status of magistrate shall have the status of civil servant…"

In principle, the Moldovan legislation provides for certain negotiation tools. However, it is striking that the law determines the actual number of staff members. In the Expert's opinion, such a law lacks flexibility and does not seem capable of bringing about any benefit.

Summary and Recommendations

The lack of proper institutional cooperation, partly caused by the ambiguities that exist within the relevant legislation, excludes the SCM from the negotiating process surrounding the judicial budget at the Parliamentary level. The legislature should reconsider its approach in this respect.

Ukraine

In accordance with the Law of Ukraine "On the Judiciary and the Status of Judges", courts are financed "*exclusively from the State Budget of Ukraine*".

The number of judges in a court is determined by the Minister of Justice of Ukraine upon a proposal by the State Judicial Administration of Ukraine. That proposal is based upon the recommendations of the Chair of the relevant specialized court designed to reflect the caseload of the court and within the limited funds approved in the State Budget of Ukraine for the courts' maintenance/support (paragraph 4 of Article 17).

In accordance with the Law on the Judiciary and Status of Judges (Art. 145-148), the State Judicial Administration is responsible for representing the judiciary in its relations with the

Cabinet of Ministers and Parliament (Verkhovna Rada). This means that the State Judicial Administration has a key role in the negotiation of the budget.

The powers of the State Judicial Administration of Ukraine are extensive. It is, for example, the Head of the State Judicial Administration who appoints and dismisses staff managers of the courts. He or she seems to have considerable individual power over the operational side of court administration. It is clear that the exercise of such competences can interfere with the principle of judicial independence in a way that would contradict international standards. Officials of the State Judicial Administration are public servants (Article 145.4). It is a legal entity and maintains an independent balance sheet and accounts in the State Treasury of Ukraine (Article 145.5)

Article 144 of the Law provides that the State Judicial Administration does not belong to the judicial self-governing bodies.

However, the State Judicial Administration acts under the authority of the Congress of Judges of Ukraine, and its regulations have to be approved by the Council of Judges of Ukraine. Further, the Head of the State Judicial Administration is appointed and removed from office by the Council of Judges of Ukraine. This represents a significant improvement in terms of judicial independence when compared with legal requirements that applied previously and ensures that the judiciary maintains a degree over the determination of its budget.

As for the functioning of the High Council of Justice (HCJ), Article 1 of the Law provides that it is *"a legal entity with funds for its maintenance determined separately by the State budget of Ukraine*". In accordance with Article 48, "The Secretariat of the HCJ provides it with support in terms of organisation, information and *other support. The regulations applicable to the Secretariat of the HCJ, as well as its structure and staff members, are approved by the HCJ. The director and other officials of the High Council of Justice are civil servants*.

In theory, the financing of the courts and of judicial self-governing bodies seems satisfactory and judicial bodies seem to have a certain degree of influence over the negotiation of budgets. In practice, according to the information provided by the national delegation, during the first five months of the year 2011, only 25.1% of the relevant financial needs were met by the State Budget. Such a situation places the operation of the system at a significant degree of risk.

The Ukrainian delegation stated that in practice its courts have never received a sufficient allocation of finances. This suggests that the state authorities in Ukraine are failing to secure for society a properly functioning and efficient justice system.

Summary and Recommendations

Current Ukrainian practice is based on a legal framework that fails to facilitate full representation by judicial self-governing bodies in negotiations relating to the budget of the judiciary. Furthermore, the demands of the judiciary expressed through its self-governing bodies should be taken into serious consideration.

General conclusions on the role of the Justice Council in the process of negotiation of budgets for the judiciary

In all five countries, the judicial self-governing bodies are rather limited in terms of their capacity to present the budgetary needs of the judiciary to their governments and parliaments. There exist negotiation mechanisms with regard to establishing the budgets of the judicial systems. However, these mechanisms have to be reformed in order to further strengthen the influence of judicial self-governance institutions and to ensure that parliamentary adoption of budgets requires parliament to obtain the views of the judiciary. Such mechanisms should be provided for in legislation and be strictly adhered to in practice. Moreover, the role of judicial self-governing bodies in relation to the management of allocated funds ought to be enhanced.

PART II: JUDGES' CAREER

2.1 Selection, appointment and promotion

Relevant European Standards

The manner of selection, appointment and promotion of judges is of crucial importance to securing the independence of the judiciary. Selection, appointment and promotion must remain free from any political influence. Therefore the role of the legislature and the executive in the process of selection of the judiciary should be limited.

European standards on judicial careers have undergone considerable development in recent decades. They were influenced by various international documents, such as the United Nations Basic Principles on the Independence of the Judiciary (1985), which provided that the promotion of judges should be based on objective factors, on merit, on integrity and on experience (paragraph 13).

The European Charter on the Statute for Judges (1998) sent an important message that "*the rules of the statute relating to the selection and recruitment of judges by an independent body or panel, base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity*" (paragraph 2.1). The statute excludes any possibility that a candidate can be ruled out on the ground of sex, ethnic or social origin, or philosophical and political opinions or religious convictions.

In practice, the selection procedure is often separate from the appointment procedure. It is important to specify the particular safeguards that apply to the selection procedure.

Candidates for judicial office must be selected and recruited by an independent body or panel. The Charter highlights that examination or selection panels can be used for this purpose provided they are sufficiently independent.

The choice made by the selection body must be based on criteria relevant to the nature of the duties to be discharged. The main aim in this regard must be to evaluate the candidate's ability to adjudicate cases independently. His or her ability to display impartiality in the exercise of judicial functions is also essential, and the requirement that he or she is able to apply the law refers to both legal knowledge and the capacity to apply it in practice. The selection body must also ensure that the candidate's conduct will always respect human dignity, as this is indispensable in the context of disputes between persons in positions of power and individual litigants, many of whom will be people who find themselves in difficult personal situations (paragraph 2.1; Explanatory Memorandum to the European Charter on the Statute for Judges).

In its Opinion No 1, the CCJE pointed out that *"the central problems remain (a) of giving content to general aspirations towards "merits-based" appointments and "objectivity" and (b) of aligning theory and reality"* (paragraph 18).

In underlining the importance of the applicable pre-established criteria, the CCJE added that any "*objective criteria*" applied in the process of the selection and promotion of judges should be "*based on merit, having regard to qualifications, integrity, ability and efficiency"* and ought to be cast in general terms. Nonetheless, ultimately it is their content and practical effect in any given state that is important (paragraph 25).

The CCJE (Opinion No 1) recommended that the authorities responsible in member States for making and advising on appointments and promotions should introduce, publish and give effect to such objective criteria. Once this is done, the relevant bodies or authorities will be obliged to act accordingly, meaning that it will then be at least possible to scrutinize the content of the criteria adopted and their actual effect in practice.

CCJE Opinion 10:

"V. A. Selection, appointment and promotion of judges
48. It is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent ***and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary***[1].
49. While it is widely accepted that appointment or promotion can be made by an official act of the Head of State, given the importance of judges in society and in order to emphasize the fundamental nature of their function, ***Heads of States must be bound by the proposal from the Council for the Judiciary****. This body cannot just be consulted for an opinion on an appointment proposal prepared in advance by the executive, since the very fact that the proposal stems from a political authority may have a negative impact on the judge's image of independence, irrespective of the personal qualities of the candidate proposed".*

Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities:

"44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and ability required to adjudicate cases by applying the law while respecting human dignity. (...)
46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.
47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.
48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made".

[1] See also Opinion No.1(2001) of the CCJE.

The issues relating to the selection, appointment and promotion of judges was dealt with also in the Magna Carta (2010): judicial independence shall be guaranteed in respect of judicial activities and "*in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary*" (paragraph 4) and "*decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence*" (paragraph 5).

Regulatory framework of the participating countries

Armenia

With minor exceptions, the President of Armenia retains the discretion to accept or reject nominations for judicial appointment or advancement without specifying any reason for doing so. In fact, although proposals are made by the judicial self-governing body and are based on objective and transparent criteria, it is the President of the country who decides whether he wishes to appoint the candidates or not. The criteria used by the President remain entirely unclear as he is not required to explain his decision (for further details see also the ABA Judicial Reform Index 2008).

The selection is made from candidates on a so-called 'reserve list' (Art. 122). Candidates appearing on the list, with a few exceptions, will have been subjected to a testing procedure described in Art. 115 *et seq.* and carried out under the auspices of the Judicial School (Art. 115). According to Article 115, paragraph 4, E every Armenian citizen aged between 22 and 60 years, with a higher legal education ("specialist with diploma") is, in theory, eligible for selection. The testing takes place in September each year in order to supplement the existing reserve list if it contains fewer than 13 candidates (Art. 115, paragraph 1).

The law further prescribes the documents to be presented in support of an individual candidacy, the procedure for the written exam, and appeals against exam admission decisions (Art. 116 *et seq*.). The 16 candidates scoring the best results in the written test are, in accordance with Art. 117, invited to an interview with the Justice Council. After the interview each Council member casts his or her vote in relation to 10 of the candidates and the 10 candidates with the most votes are included in the list.

To the extent that the law outlines clearly the method of compiling the list, it appears that this kind of pre-selection procedure is based upon objective criteria, in particular upon the results of a written examination[1].

As mentioned above, however, the involvement of the President of the country in the procedure of approving the list is a cause for concern. As provided by Art. 117, paragraph 2 and 4, it is the President who approves the list drawn up by the council, selecting those candidates *"who are acceptable to him".*

[1] The specific testing procedure and its regulatory framework do not fall within the scope of the current study.

In the existing system, it is therefore the President who has the final say on those candidates included on the list. There is no requirement for the President to explain his decision nor any procedure to challenge it. In light of the fundamental criteria described above, it is clear that this practice is not in line with European standards. Those standards expressly require according the judiciary itself (for example, through the Justice Councils) the decisive power to determine matters relating to the selection of judges. In Armenia, the Council only has a power to recommend and no actual decision-making power.

Once a candidate is on the list, his or her appointment is not guaranteed. Instead, he or she must still be selected from the list and appointed by the President (Art. 122). The procedure for making offers to candidates is described in Article 122[1]. Any candidate accepting an offer will be nominated in accordance with Article 123 to the Justice Council for its consideration, which must in turn propose the candidate for appointment by the President.[2]

---

[1] ***Article 122. Procedure for Nominating a Candidate for a Vacant Judicial Position in a Universal Jurisdiction Court***

1. When a vacant judicial position emerges within a universal jurisdiction court, the Court of Cassation shall, for the purposes of nominating a candidate to the President of the Republic, make a written offer to the candidates on behalf of the Justice Council in the following order (candidates against whom a criminal prosecution has been instigated shall not be considered):

1) Firstly, the Chairman of the Court of Cassation shall make an offer to such first instance or appellate court chairman, or such judge of a first instance specialized court or appellate court, or such chamber chairman or judge of the Court of Cassation, who has filed a written request asking the Chairman of the Court of Cassation to transfer him to the position of universal court judge. If several candidates have made such an application, the position shall be offered in the first instance to the chairman of the court in which the vacancy emerged, and the in the second instance, to the eldest candidate;

2) Secondly, the Chairman of the Court of Cassation shall make an offer to the eldest reserve judge as referred to in Article 14(7) of this Code, provided he has not been appointed to a judicial position in another court (with the exception of persons referred to at Article 139 of the Code);

3) Thirdly, the of the Court of Cassation shall make an offer to such redundant judge referred to in Article 14(6) of this Code, provided he has not been appointed to a judicial position in another court. If there are several such persons, priority shall be given first to the eldest judge of another first instance court, followed by the eldest judge of the appellate court, followed by the eldest judge of the Court of Cassation (with the exception of persons referred to at Article 139 of the Code);

4) Fourthly, the Chairman of the Court of Cassation shall make an offer to such advocates, prosecutors, or investigators included in the List of Judicial Candidates in accordance with the procedure set out at Article 118 of this Code, provided they have completed the training program in the Judicial School, as well as to former judges included in the List of Judicial Candidates in accordance with the procedure set out at Article 118 of this Code. These persons shall be nominated, even if they are included in the Promotion List. If there are several such persons, priority shall be given first to the eldest former judge, followed by the eldest person;

5) Fifthly, the Chairman of the Court of Cassation shall make an offer to candidates who have graduated from the Judicial School, with the exception of persons performing mandatory military service duties. Such an offer shall be made in order of the total credits obtained by each candidate upon his or her graduation from the Judicial School. Where two or more candidates have obtained the same number of total credits, the priority shall be given to the eldest of those candidates. Graduates from any given year group may receive an offer only where the List of Judicial Candidates does not include candidates who have graduated from the Judicial School in previous years, or where all the candidates who graduated the Judicial School in previous years and are currently on the List of Judicial Candidates are currently performing mandatory military service duties.

2. The Chairman of the Court of Cassation shall issue his written offer to reserve judges, former judges, and the persons referred to in Paragraph 1(5) of this Article to the candidate's residential address. In other cases, the Chairman of the Court of Cassation shall issue his written offer to the work address of the candidate.

[2] Art. 123, paragraph 9-10: Where a candidate consents, the Court of Cassation shall nominate him or her to the Justice Council. The Justice Council shall, by open vote, approve the nominated candidate, provided that the procedures provided by this Code have not been breached. Following the approval of the Justice Council, the candidacy shall be presented to the President of the Republic of Armenia. If within two weeks of receiving the nomination the President of the Republic does not appoint the judge, then his or her candidacy shall be

In this context, two matters are of particular note. Firstly, it seems that under the law, the Justice Council has no discretion but must propose a candidate to the President if the offer which has been made to the candidate was made fully in line with the applicable conditions and procedure. In this connexion, it would be interesting to know what happens where the Council does not propose a candidate notwithstanding that the relevant legal conditions are fulfilled. The law does not contain a special procedure capable of forcing the Council to make a proposal in these circumstances or which would allow it to replace such a proposal with the proposal of another candidate.

Secondly, the renewed involvement and decision-making power of the President is of particular interest. Under Art. 123, it is the President who is responsible for appointing the proposed candidate to judicial office. That fact the President has a real decision-making power and that his involvement is not merely formal in nature is clear from the fact that the same regulation provides that should the candidacy be rejected by the President, the candidate shall be removed from the list of judicial candidates and that the nomination procedure for the vacant position shall start again if, within a two-week period from having received the nomination, the President of the Republic does not appoint the judge. As a result, the President has – in addition to his role in accepting a candidate on the reserve list - a second chance to decide upon the candidacy.

The central involvement and decisive role of the executive branch in the process of the selection and careers of judges and the resulting relegation of the Justice Council to an advisory body is not in line with the above-mentioned European standards.

The legal regulation of judicial promotion in Armenia is rather minimal. Article 136 of Judicial Code deals with official lists of judges for promotion: "*The Justice Council shall compile and present for the approval of the President of the Republic the Official Promotion List of Judges. Amendments and supplements to the Official Promotion List of Judges shall be made in accordance with the same procedure*". The legal provisions provided to the Experts are silent as to the criteria on which judges are promoted.

Summary and Recommendations

In light of the above standards, the Experts recommend overhauling the system of appointing judges and transferring the right to select and appoint to one of the bodies listed under the previous chapter. The need for such a substantial change is not overcome by the fact that the President has so far, according to the Armenian delegation, never used his power to reject a proposed candidate.

As for the arguments that the role of the President in appointing judges is enshrined in the Constitution or should be kept for reasons of tradition, the Experts wish to emphasize once again that the President should play only a formalistic role in the appointment procedure.

Finally, it would be advisable for the Armenian legislation to be complemented by legal provisions concerning judicial promotion that enshrine in law the pre-established judicial promotion criteria.

---

considered to be rejected, he or she shall be removed from the list of Judicial Candidates, and nomination for the vacant position shall begin afresh.

Azerbaijan

The Judicial-Legal Council Act

Article 11. *Functions of the Judicial-Legal Council:*
11.0.2. Arranges the selection of candidates to judicial posts;

Article 16*. Motion for the appointment of nominees to judicial posts*
16.0. The Judicial-Legal Council shall pass motions for the appointment of candidates to vacant judicial posts to the relevant executive body of the Republic of Azerbaijan.*
** here the powers of the relevant executive body are in fact carried out by the President of the Republic of Azerbaijan*

Courts and Judges Act 1997

Article 94*.* Subject to part IX Article 109 of the Constitution of the Republic of Azerbaijan, the President of the Republic of Azerbaijan appoints judges of the Republic of Azerbaijan.

A review of the main laws regulating the appointment of judges, namely the Constitution, the Judicial-Legal Act and the Courts and Judges Act, makes clear that in Azerbaijan the Head of the State still retains considerable influence over the appointment of judges.

Whilst it appears that in Azerbaijan the selection of candidates is made on the basis of objective criteria (for further details see the Judicial Selection Committee Charter), the final appointment decision is still rests with the executive, that is, the President, who need not justify his decision and is not bound by proposals made by the Judicial-Legal Council (JLC).

The Constitution of Azerbaijan (Art. 93-1) and the Judicial-legal Council Act (Art. 11), provide that the Council is responsible for conducting the initial selection of candidates for judicial office.

Pursuant to Art. 12.0.3 and Art. 14 of the Judicial-Legal Council Act, the Council shall form a judges selection committee charged with selecting candidates for the vacant judicial posts. In accordance with Art. 14 of the Act, the list of candidates shall comprise 11 persons, six of whom shall be judges (two from the Supreme Court, three from the court of appeal and one NAR court judge). The members are elected by the JLC, based on two nominations for each position by the relevant court. The testing and selection process is regulated by the Charter of the Judicial Selection Committee. This committee is responsible for all questions relating to the structure, methodology and organisation of the selection process. In light of the legislation and of the presentation made by the national delegation, it appears that the selection and testing process is based on objective criteria and conducted in a transparent manner.

The selection process consists, according to the presentation (see also Art. 93-3) of the following:

- Test;
- Written examination;
- Oral examination;
- Long-term training (lectures and internships in courts);
- Written examination based on the results of long-term training;

- Oral examination based on results of long-term training;
- Interview with the JLC.

Based on the outcome of the selection process described above, the JLC shall, pursuant to Art. 15 of the Law on the Judicial-Legal Council, pass an appointment motion to the President, who, in accordance with Art. 109 of the Constitution of Azerbaijan, then appoints the judges.

The national delegation underlined that the President has never used his power to influence the appointment of judges. However, as stressed before in relation to other chapters, the European standards require not only compliant practice, but a corresponding, compliant legislative framework. Judicial independence cannot depend solely upon the good will of other branches of power.

The legislation with which the Experts were provided did not contain any provisions on judicial promotion.

Summary and Recommendations

Despite the well-developed testing and selection procedure, the current practice in Azerbaijan is not in line with European standards due to the decision-making power of the President over the appointment of judges.

The legislature should increase the role of the Judicial-Legal Council in the appointment process by upgrading it from a recommending body to a decision-making body.

Azerbaijan is also advised to establish criteria for judicial promotion.

Georgia

The High Council of Justice (HCJ), which had previously been only an advisory body to the President of Georgia on judicial matters, has now been re-established as an independent agency of the judiciary. The HCJ is now directly responsible for appointing and dismissing judges of the regional (city) and appellate courts, instead of making only recommendations concerning such decisions to the President (see Art. 36 of the Constitution of Georgia, Art. 47; 49, paragraph 1 (a) Law on the Common Courts and Art. 9 of the regulations of the High Council of Justice of Georgia). European standards seem thus to be fully implemented in this regard.

The selection procedure for candidates for judicial office is regulated primarily in the Law on the Common Courts.

Art. 34[1] of this Law sets out the requirements for candidates for judicial office as follows: a minimum age of 28 years, an advanced legal education, at least 5 years' experience in the

[1] Article 34. Requirements for Candidates for Judicial Office

1. Any capable Georgian citizen of 28 years or more, who holds an advanced legal education, at least 5 years' experience in legal practice, a command of the state language, who has passed the judges' qualification exams and the full educational course at the High School of Justice and has been included in the qualification list may be appointed (elected) to judicial office.

legal practice, a full command of the state language, and the passing of qualification exams and the full course at the High School of Justice.

Persons who fulfil these conditions can be included in the "*qualification list*" and may be appointed to judicial office. The Article lists some exemptions from the above requirements which do not require specific discussion.

The qualification exam, which is generally a necessary pre-requisite to applications for judicial office is regulated by Art. 53 of the Law. This Article also contains additional requirements, such as the holding of an advanced legal education as well as Georgian citizenship. The minimum age for taking the exam is 25 years. This seems, at first glance, to contradict the age requirement provided by Article 34 (see above), but when read in context it is clear that the provision means that between the exam and a possible appointment to judicial office candidates must attend the High School of Justice. This might explain the difference in the respective age requirements[1].

The exam itself is organized by the "Qualifying Examination Commission", set up by the HCJG no earlier than 10 days prior to the exam (Art. 21, paragraph 1 of the Regulations of the HCJ).

"*The full course of education at the High School of Justice*" is a further pre-requisite to any application for judicial office. This means that the entrance exam to the school is an additional milestone for potential candidates[2].

Finally, it is worth examining Art. 35, which regulates the rules that apply to taking judicial office[3]:

---

2. Any individual with a criminal record or who has been dismissed from judicial office on any of the grounds set out in sub-paragraphs 'b', 'c' and 'h' of article 43 of this law shall not be appointed to the Judge's office.

3. The exemption from obligatory education at the High School of Justice shall apply to those nominees to the position of judge of the Supreme Court, to former judges who have passed the judicial qualification exams, and to those who have worked as a judge at the Supreme Court or regional (city) court or appellate court according to the competition and who have at least 18 months' experience in judicial office. Any person who has passed the full course of education at the High School of Justice and who has been included in the qualification list for the purposes of taking judicial office shall be exempted from attending the High School of Justice, irrespective of the term during which he/she held judicial office or whether or not he or she was appointed to his or her position after graduation from the High School of Justice.

4. The President of Georgia is authorized to nominate to the Parliament of Georgia a candidate to be elected as a member of the Supreme Court who has not passed the qualification exams and whose professional experience is commensurate with the high status of members of the Supreme Court. Any person nominated to the position of President of the Supreme Court shall be exempted from passing this exam.

5. Any former judge of the common court of Georgia shall be exempted from passing the qualification exams unless seven years have passed since the termination of his/her judicial powers.

6. Present and former members the Constitutional Court of Georgia shall be exempted from passing the qualification exam and the educational course at the High School of Justice.

[1] The regulations relating to access to the school and the duration of training there were not available.

[2] Entrance rules of the school will be measured against relevant European standards by the Working Group on "Professional Judicial Systems".

[3] **Article 35. The Rules for taking up judicial office**

1. A person who meets the requirements set out in paragraphs 1 and 2 of article 34 shall be deemed a candidate for judicial office upon his or her submission of an application for a vacant position to the High Council of Justice. When deciding whether to appoint a person to judicial office, his/her position in the qualification list of the High School of Justice and the assessment made by the Independent Board of the High School of Justice shall be taken into account. The candidate shall be invited to the session by High Council of Justice of Georgia if it chooses to do so..

Paragraph 1 of this Article provides that where an application for judicial office is submitted by a person who fulfils the criteria set out in Art. 34, paragraphs 1 and 2 (the completion of the full course of education), his position in the qualification list should be taken into account. Documents made available to the Experts in English do not appear to be conclusive, but reading into the context it appears that the candidate's position in the list depends on the results the candidate achieved at the High School of Justice.

Persons exempted from studying at the High School of Justice should take part in a competition. The rules relating to the competition and the criteria for the selection of judges shall be determined by a Decision of the HCJ (paragraph 3). As those regulations are not available, further comments cannot be made. However, it would be interesting to learn how candidates who take part in the competition compete with those candidates named on the list.

The Law on the Common Courts (Article 41) sets out some formal requirements for judicial promotion. It also states that "*the criteria for promoting a judge shall be elaborated by the High Council of Justice"*. The Georgian legislation envisages that, in normal circumstances, a regional court judge can be promoted after two years of service. However, a judge shall be granted an earlier promotion "*if he/she has made a special contribution to the development of justice, the elaboration of the unified judicial practice, has been responsible for administering prompt and effective justice, and has demonstrated a high level of judicial skills in the exercise of his/her duties*"(part 2; Article 41).

These legislative provisions are positive in the sense that the law clearly states that judicial promotion should be done on the basis of pre-established criteria. The Experts, however, were not provided with the said criteria (in the regulations of the HCJ), and thus were not able to assess these against European standards.

Summary and Recommendations

As regards the body with responsibility for the appointment and promotion of judges, namely the HCJ, the Georgian legislation fully complies with European requirements and is a good example that could be followed by the other beneficiary counties.

---

2. A person refusing to take judicial office after he/she has been included in the qualification list shall have no right to apply to the High Council of Justice to take a vacant judicial position for 5 years from the date of approval of the list. The High Council of Justice shall consider the issue of admission to the competition of such a person on an exceptional basis.

3. A person exempted from studying at the High School of Justice shall take judicial office pursuant to the competition procedure. This person shall be deemed a candidate for judicial office from the date he/she submits his or her application to the competition announced by the High Council of Justice. The competitions shall be announced by the High Council of Justice by means of official printed media as and when judicial vacancies in Regional (City) and Appellate Courts arise. The period of registration for candidates to judicial office shall be determined by the High Council of Justice when it announces the competition. The competition shall take place after the expiry of the term for registration of candidates to judicial office. The rules of the competition and the criteria for the selection of judges shall be determined by a decision of the High Council of Justice of Georgia.

4. A candidate shall submit to the High Council of Justice within 7 days from the moment of submitting his or her application a certificate on filing the declaration of Financial Status in the Bureau of Registration of Material and Financial Status of Public Officials in accordance with Georgian legislation.

5. Where no candidate to judicial office is selected, the High Council of Judges shall within 3 months from the date of announcing the results of the competition announce a new competition pursuant to the procedure provided for by this article.

Further, the Georgian legislation lays down several requirements for candidates for judicial office. The existing regulations determine the procedure for nomination of members of the qualifications commission.

The documents made available to the Experts in English are incomplete but reading into their context it appears that a candidate's position in the above-mentioned list depends on the results the candidate achieves at the High School of Justice.

The legislative provisions on promotion in Georgia are positive in the sense that the law clearly indicates that judicial promotion should proceed on the basis of pre-established criteria.

Moldova

The selection of judges is carried out by the Superior Council of Magistracy (SCM) (Art. 4, paragraph 1,a; Art. 19 Law on Superior Council of Magistracy).

The basic requirements for judicial candidates are set out by Art. 6 of the Law on the Status of Judges[1].

The list of requirements shows that an internship at the National Institute of Justice is, in principle, mandatory. The exceptions to this requirement are listed in paragraph 2. This allows experienced experts to apply without the having completed this internship. The possibility for experienced experts to enter the judges' profession more easily is a valuable tool for a small country like Moldova. It is important, however, that this exception should not become the general rule with the effect of marginalising the role of the National Institute. In this context, the legislature's decision to limit the number of newly-appointed judges who do not hold an internship is a sound one. However, in the experts' view the current maximum quota of 20% is too high.

Persons who wish to apply without having undertaken the internship shall sit a qualification exam (Art. 17; 20 of the Law on the Qualification and Evaluation Boards). With this

[1] **Article 6. General Requirements for Judicial Candidates**
(1) A citizen of the Republic of Moldova may run for judicial office if he or she he or she is resident on its territory and meets the following requirements. The candidate should:
a) be capable of holding judicial office;
b) have an official law degree;
c) have passed an internship at the National Institute of Justice;
d) have no criminal record and be of good reputation;
e) speak the official state language;
f) be able, from a medical point of view, to exercise judicial functions. This should be certified by the Ministry of Health and Social Care.
(2) Subject to the provisions of Part (1), any person who has worked for 5 years as a member of Parliament, a member of the Chamber of auditors, a law professor in a licensed university, a prosecutor, an investigator, a criminal persecution officer, a court lawyer, a parliamentary lawyer, a notary, a judicial assistant, a bailiff, a consultant, or a court secretary, and has had 5 years of legal work experience at the Secretariat of the Constitutional Court, The Superior Council of the Magistracy or state bodies, and who has passed the qualification exam, may apply for judicial office. The number of judicial vacancies open to the above persons is determined by The Superior Council of the Magistracy and shall not exceed 20% of the total vacancies available over the relevant 3-year period.
(3) A person with six or more years' experience may apply for judicial office at the appeal chamber and a person with ten or more years' experience may apply to the Supreme Judicial Chamber.

additional requirement, the current legislation ensures that candidates who have not completed an internship in the National Institute are eligible not only on the basis of formal criteria (such as the length of service) but that they also have to prove their general knowledge and suitability for judicial office. There are no special remarks on the organisation of the exam as set out in the law.

The competition for judicial office is regulated by Art. 9 of the Law on the Status of Judges[1] and is organised by the SCM in accordance with its own regulation (not submitted as part of the materials scrutinised by the project). Pursuant to paragraph 3 of this provision, graduates of the institute take part in the competition according to their average grade during the internship, whereas other applicants take part on the basis of the result obtained in their qualification exam.

What raises some concern is that under paragraph 3, it can be seen that there are two separate competitions for the two categories of applicants, those having completed the internship and those who have not. These different competitions also require separate lists of vacancies for each group of candidates[2] but such a separation has the potential to hinder a merits-based selection procedure. The only justification for opening the competition to people who have not completed the full internship at the National Institute is to attract well-qualified people to the judiciary. With this aim in mind, it would be better to organise a single/joint competition for both groups of candidates.

The appointment is still made by the President. The President's role is not simply to rubber-stamp appointments as s/he has the right to refuse a proposed candidate. However judicial independence and the decision-making power of the SCM is maintained by the fact that the President has to give reasons for any refusal and, more importantly, where a repeated proposal is made by the Council, the President must appoint the proposed candidate[3].

---

[1] **Article 9. Competition for judicial office**

(1) Judicial office shall only be offered via open competition. The Superior Council of the Magistracy regularly publishes in the Official Monitor of the Republic of Moldova information on judicial vacancies.

(2) The competition shall be organized by The Superior Council of the Magistracy in accordance with a Regulation adopted by the Council. The regulation should contain objective selection criteria. Information about the date and place of the competition and the procedure it shall follow shall be published in the mass media and on the Council's website at least 90 days in advance of it taking place.

(3) Graduates of the National Institute of Justice shall participate in the competition in accordance with the average grade in their certificates. Persons who have a sufficient number of years of legal work experience to hold judicial office shall participate in the competition in accordance with the results of the qualification exam organized by the Qualifications Board.

(4) The competition shall be organized for each category of applicants set in Part (3), with consideration of the number of vacant positions, assigned for every category separately by The Superior Council of the Magistracy.

[2] See also Art. 6, para 2 (last sentence).

[3] **Article 11. Appointment**

(1) Judges of courts, including specialized courts, criminal judges and judges of appeal chambers shall be appointed from those selected by the President of Moldova upon a proposal by the Superior Council of the Magistracy based on the results of the competition. Selected candidates who meet the requirements set out in Article 6 shall be appointed for judicial office for an initial 5-year term. After the initial 5-year term, judges shall be appointed for a term which should be over when they reach the age limit – 65 years.

(2) Judges of the Supreme Judicial Chamber shall be appointed by Parliament after the proposal of The Superior Council of the Magistracy.

(3) The President of Moldova may reject only once the candidate for judicial office proposed by The Superior Council of the Magistracy for a 5-year term or for a term until the reach of age limit. The rejection is possible only in case of existence of doubtless evidence that the candidate is incompatible with the judicial position, that he had violated the law or there had been a breach in selection procedure.

However, as in some other countries, there exists no enforcement mechanism to ensure that the President fulfils his duty where he/she refuses to do so. The Experts therefore recommend that this situation is resolved, for example by requiring by law that after the second proposal has been made the candidate is appointed without any need for the consent of the President.

The legislation submitted contained no provisions on judicial promotion.

Summary and Recommendations

The Moldovan legislation on the selection, appointment and promotion of judges is not at odds with the European standards.

However, the legislature should consider whether the quota of judicial candidates who have not completed an internship at the National Institute of Justice – currently set at 20% - is too high and whether it ought to be reduced. In order to ensure that only the best candidates are selected, it seems advisable to have one, single competition for candidates whether they have completed an internship or not.

The role of the President in the appointment and promotion of judges is not as problematic as in some other beneficiary countries. Thus, it would be advisable for the other countries in the region, where politicians are empowered to decide on issues of judicial appointment and promotion, to follow Moldova's example as minimum European standard.

With regard to the appointment procedure, the legislature should establish an appropriate legal mechanism with which to deal with cases where the President, in breach of his or her duty, fails to appoint a proposed candidate.

The Experts also advise the establishment of criteria for judicial promotion which will be followed in practice.

Ukraine

In Ukraine there are a number of actors and fora involved in the selection/appointment of judges including, in accordance with Art. 64 *et seq.* of the Law on the Judiciary and the status of Judges, the Council of Justice, the High Qualifications Commission (HQC) and the President.

Art. 64, paragraph 1 sets out the general requirements for eligibility for judicial office[1] and does not raise any particular concerns.

---

(4) The rejection or approval of the candidate shall be given within 30 days after the proposal was made. If there are circumstances that require additional time for consideration, the President of Moldova shall notify The Superior Council of the Magistracy on the 15-days extension of the consideration period.
(5) After the repeated proposal of a candidate by the Superior Council of the Magistracy the President of Moldova within 30 days shall issue an order of appointment of the candidate for judicial office.

[1] **Article 64**. Requirements for Judicial Candidates
1. To be eligible for recommendation for a judicial position, a candidate must be a citizen of Ukraine, be at least twenty-five years of age, possess an advanced legal education, have practised law for at least three years, have resided in Ukraine for at least ten years, and have a command of the state language.

The selection of candidates from these eligible persons shall be based on "*selection results, [...] special training and a qualification exam*" (Art. 65 of the same law).

The procedure for appointment is described in a very detailed manner in Art. 66 of the Law[1]. In accordance with this provision, all eligible candidates are required to take an examination on general legal knowledge before of the HQC and those The procedure for appointment is described in a very detailed manner in Art. 66 of the Law[2]. In accordance with this provision,

---

2. Citizens shall not be eligible for recommendation for judicial office if they:
1) have been found by court to have limited legal capacity or legal incapacity;
2) are suffering from chronic psychological or other diseases preventing them from performing judicial duties;
3) have been convicted (of a criminal offence).
3. Additional requirements for candidates for judicial positions in the higher courts shall be specified by this Law.
4. For the purposes of this Article:
1) "advanced legal education" shall mean Specialist or Masters degree received in Ukraine, and shall include advanced legal education of a relevant educational level and level of qualification received in foreign countries and recognized in Ukraine by virtue of legislation;
2) "practised law for at least three years" shall refer to a person's overall record of service in the legal profession post-higher legal education in positions requiring higher legal education to a specialist level.

[1] **Article 66**. Procedure for Appointment to Judicial Office
1. Persons appointed to judicial office for the first time shall be so appointed in accordance with the procedure defined by this Law which shall include the following stages:
1) Taking into account the estimated number of open judicial vacancies, the High Qualifications Commission of Judges of Ukraine shall post on its website an advertisement announcing the competition for judicial office and shall publish a notice to the same effect in the Holos Ukrainy and Uriadovyi Kurier newspapers;
2) Persons wishing to become judges shall submit to the High Qualifications Commission of Judges of Ukraine their application together with the supporting documents required by this Law;
3) On the basis of the documents submitted, the High Qualifications Commission of Judges of Ukraine shall review the eligibility of the candidate for judicial office and conduct a background check in the manner prescribed by law;
4) Persons who meet the requirements established for judicial candidacy shall sit an examination on general theoretical knowledge set by the High Qualifications Commission of Judges of Ukraine;
5) Candidates who pass the examination and the required inspections/checks shall be sent to take special training at a specialized higher law school of fourth level accreditation;
6) After successful training at a specialized higher law school of fourth level accreditation, the High Qualifications Commission of Judges of Ukraine shall send the candidate to take special training at the National School of Judges of Ukraine;
7) Candidates who successfully pass the special training shall be admitted to take a qualification examination by the High Qualifications Commission of Judges of Ukraine;
8) Taking into account the results of the qualification examination, the High Qualifications Commission of Judges of Ukraine shall rate candidates and put them on a reserve list in order to fill vacancies;
9) When vacancies become available, the High Qualifications Commission of Judges of Ukraine shall announce a competition for appointment between the candidates on the reserve list;
10) Taking into account the relative position of each candidate in the rating list and the number of vacancies, the High Qualifications Commission of Judges of Ukraine shall conduct select from the candidates who have taken part in the competition and forward to the High Council of Justice a recommendation to appoint a candidate to the vacant judicial position;
11) Following the recommendation of the High Qualifications Commission of Judges of Ukraine, the High Council of Justice shall consider at its meeting whether to appoint the candidate to the vacant judicial position and where it decides to do so it shall consider the issue of submitting a motion to the President of Ukraine for the appointment of the candidate to the vacant judicial position;
12) The President of Ukraine shall decide whether to appoint the candidate to the vacant judicial position.

[2] **Article 66**. Procedure for Appointment to Judicial Office
1. Persons appointed to judicial office for the first time shall be so appointed in accordance with the procedure defined by this Law which shall include the following stages:

all eligible candidates are required to take an examination on general legal knowledge before of the HQC and those successful in this examination shall then undergo special training. After training successfully, there is then another exam before the HQC, and successful candidates will then be placed on a reserve list in the order of their examination results. When a vacancy is announced, candidates are selected from the list and proposed to the High Council of Justice. When it decides to propose an appointment, it submits a motion to the President of the country for the appointment of the relevant candidate.

Whilst the procedure appears bureaucratic, the Experts agree with the Venice Commission in that *"this procedure generally allows for a transparent and fair appointment process. In particular, the fact that recommendations for the appointment of judges are to be based on objective criteria is much welcomed"*[1].

The Experts also fully agree with another conclusion of the Venice Commission, which in the "Joint Opinion on the Law on the Judicial System and Status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the CoE"[2], pointed out that *"it is unclear what the role of the High Council of Justice is when considering these recommendations of the HQC at a meeting. It is difficult to understand why the High Council of Justice and the President of Ukraine must approve the appointment unless the criteria on which a negative decision might be given were to be set forth in the Law. The criteria for appointment should be absolutely*

---

1) Taking into account the estimated number of open judicial vacancies, the High Qualifications Commission of Judges of Ukraine shall post on its website an advertisement announcing the competition for judicial office and shall publish a notice to the same effect in the Holos Ukrainy and Uriadovyi Kurier newspapers;
2) Persons wishing to become judges shall submit to the High Qualifications Commission of Judges of Ukraine their application together with the supporting documents required by this Law;
3) On the basis of the documents submitted, the High Qualifications Commission of Judges of Ukraine shall review the eligibility of the candidate for judicial office and conduct a background check in the manner prescribed by law;
4) Persons who meet the requirements established for judicial candidacy shall sit an examination on general theoretical knowledge set by the High Qualifications Commission of Judges of Ukraine;
5) Candidates who pass the examination and the required inspections/checks shall be sent to take special training at a specialized higher law school of fourth level accreditation;
6) After successful training at a specialized higher law school of fourth level accreditation, the High Qualifications Commission of Judges of Ukraine shall send the candidate to take special training at the National School of Judges of Ukraine;
7) Candidates who successfully pass the special training shall be admitted to take a qualification examination by the High Qualifications Commission of Judges of Ukraine;
8) Taking into account the results of the qualification examination, the High Qualifications Commission of Judges of Ukraine shall rate candidates and put them on a reserve list in order to fill vacancies;
9) When vacancies become available, the High Qualifications Commission of Judges of Ukraine shall announce a competition for appointment between the candidates on the reserve list;
10) Taking into account the relative position of each candidate in the rating list and the number of vacancies, the High Qualifications Commission of Judges of Ukraine shall conduct select from the candidates who have taken part in the competition and forward to the High Council of Justice a recommendation to appoint a candidate to the vacant judicial position;
11) Following the recommendation of the High Qualifications Commission of Judges of Ukraine, the High Council of Justice shall consider at its meeting whether to appoint the candidate to the vacant judicial position and where it decides to do so it shall consider the issue of submitting a motion to the President of Ukraine for the appointment of the candidate to the vacant judicial position;
12) The President of Ukraine shall decide whether to appoint the candidate to the vacant judicial position.

[1] CDL-AD(2010)026
[2] CDL-AD(2010)026

clear and, as far as the process up to the decision of the HQC is concerned, the Law seems quite clear that it is to be based on an initial assessment of suitability taking into account the various documents which have to be supplied and on the results in the examination. However, no criteria on which the High Council of Justice or the President of Ukraine might second guess the decisions of the HQC are set out. This is unsatisfactory. Article 71.6 simply states that the High Council of Justice shall "review" the issue of appointing the candidate to a judicial position and, "if the decision is positive", shall submit a motion for appointment to the President. Article 29 of the Law on the High Council of Justice, which concerns the initial appointment of judges, does not mention such criteria either. What is more, it results from this provision that a report on each nominee is made by a member of the High Council of Justice and that the nominee is heard by the High Council of Justice. This seems to imply that the High Council of Justice may reassess the candidature, and come to a different conclusion than the HQC."

In accordance with the procedure as it is outlined above, it appears that the High Council of Justice is entitled to disagree with any recommendation of the HQC without having to provide any justification for doing so. Such a degree of "freedom" in taking decisions creates a risk of decision-making that is not based on objective criteria or the merits of the candidate.

Another concern highlighted by the Venice Commission is also shared by the Experts: Article 68 of the Law provides that the selection of candidates is to be anonymous. "*However, following this, the HQC is to carry out a background check and has the right to collect information about the candidate, and make enquiries to enterprises, institutions and organisations in order to receive information. Organisations and citizens have the right to present to the HQC information they may have about a candidate (Article 68.3). This seems to be somewhat at odds with the anonymous testing. These provisions are not clear as they do not set out what information is sought here. What kind of information can be collected and received? What kind of procedure regulates the collection of this kind of information? What is the state of knowledge of the candidate about this information? Does the candidate have the right to contest this information? Without further clarification, these provisions are not in line with European standards and go against the transparency of the process of selection of judges. There would seem to be little point in having an anonymous examination if it can then be overridden by some unspecified information, in order to deprive a person of the opportunity to participate further in the process".*

The legislation submitted to the Experts did not contain any provisions on judicial promotion.

Summary and Recommendations

With regard to Ukraine, the Experts maintain the recommendation made previously, namely to reduce the number of bodies involved in the selection process, to streamline the appointment procedure, and to establish clear criteria for the rejection of proposed candidates.

Furthermore, the Experts recommend that the role of the High Council of Justice in the selection process is described more precisely. The Experts agree with the Venice Commission Opinion in advising that the role of the HCJ, if it is to remain part of the process, ought to be more limited given the role of the HCJ and the procedure it has to follow.

Finally, the Experts recommend the establishment of criteria for judicial promotion that are followed in practice.

General conclusions on selection, appointment and promotion of judges

The selection procedure for candidates for judicial office has undergone substantial improvements in all participating countries and is based on criteria as set out in their various laws. The *modus operandi* seen in the **Azerbaijani** case as presented during the working group meeting can serve as a good example which could be followed by the other participating countries.

Most countries recognize the need to open careers in the judiciary to persons changing careers, and this is ensured by, for example, granting exemptions from special trainings (**Armenia, Georgia, Moldova**). In one case in particular, the legislature was not successful in regulating those exemptions in a manner capable of guaranteeing that only the best candidates were appointed (**Moldova**). Fast-track entry into the profession by circumventing diligently-developed preparation and selection procedures should only used in cases where the resources of "normally" trained candidates are not sufficient and where recourse to persons crossing over to the judiciary from other careers will bring a clear benefit in terms of the quality of the professional corps. For the sake of transparency and fairness and in order not to undermine the role of candidates from established training institutions, such fast-track selection should be the clear exception.

Also, despite tremendous improvements in recent years, the appointment and promotion of judges continues to represent a problem in some countries as the executive continues to be able to exert different methods of influencing the process (**Armenia, Azerbaijan**).

In terms of the body responsible for appointment and promotion of judges (the High Council of Justice), the **Georgian** legislation fully meets European requirements and could be followed as an example by the other participating counties.

In some countries the councils still have a more or less advisory role, with the final decision taken by the executive (**Armenia, Azerbaijan**).

Where Heads of States still play a role in judicial careers, the Experts advise that they ought to be bound by proposal(s) from the Council for the Judiciary (**Armenia, Azerbaijan and Ukraine**). The compromise introduced in the **Moldovan** legislation, namely that the Head of State can refuse to follow a first proposal from the High Council for the Judiciary as to a judicial appointment but is bound to approve a further proposal of the same candidate, appears to meet minimum European standards.

The promotion of judges is dealt with by the legislature only in **Georgia and Armenia** (though to a limited extent). The legislative provisions on promotion in **Georgia** are positive in the sense that the law clearly indicates that judicial promotion should be carried out in accordance with pre-established criteria. It would be advisable that those beneficiary countries that do not yet have a set of pre-established criteria for judicial promotion to introduce them in the near future.

2.2. Tenure

Relevant European Standards

Since the adoption of the Universal declaration on the Independence of Justice (Montreal, Canada, June 1983), the appointment of temporary judges and the appointment of judges for a probationary period have been considered to be inconsistent with judicial independence. In terms of European standards, this conclusion was accepted as part of the underlying concept of tenure for judges.

Permanent judicial appointments are seen as one of the basic safeguards in terms of, *inter alia*, eliminating undue outside influence. Indeed, there is a danger that the need to retain his or her position may put pressure on a judge and that this pressure might be abused in order to influence the way in which he or she fulfils his or her tasks. Thus, such temporary judicial appointments should be avoided.

The CCJE, in its Opinion No 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, recalling the European Charter, referred to recruitment procedures (paragraph 47). It provided that any temporary appointment should be "necessarily short, after nomination to the position of judge but before confirmation on a permanent basis".

According to CCJE Opinion No 1 (paragraph 48), European practice encourages full-time appointments until the legal retirement age because "this is the approach least problematic from the viewpoint of independence".

CM/Rec(2010)12 further develops the principal of security of tenure, citing it as a "key element of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists" (paragraph 49).

CM/Rec(2010)12 also clearly states that "terms of office of judges should be established by law" (paragraph 50). Moreover, in order to secure the independence of judges, European standards envisage that "a permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds" (paragraph 50 of the latter Recommendation).

The Council of Europe recommends that "where recruitment is made for a probationary period or fixed term, the decision on whether to confirm or renew such an appointment should only be taken in accordance with paragraph 44 so as to ensure that the independence of the judiciary is fully respected (paragraph 51 of the said Recommendation").

It should be noted that the duration of office of judges is closely related to the appointment of judges. The appointment system that exists in each beneficiary country reflects whether the tenure of judicial office in that country is secure and therefore meets European standards.

Regulatory framework of the participating countries

Armenia

The legislative framework of Armenia as regards the duration and security of judicial tenure is clear and unambiguous in terms of the way in which it reflects European understandings of judicial independence. All judges are appointed to hold office until they reach the age of 65 (Article 96 of the Constitution of Armenia). The same legal provision is provided in Article 14 of the Judicial Code. Therefore, the legislature has implemented the principle of security of tenure for judges and it is followed in practice. Security of tenure eliminates many of the possible threats that are or may be experienced by judges who do not hold a permanent appointment.

Summary and Recommendations

Security of judicial tenure is directly related to the idea of permanent appointment, which is established at the highest legislative level in Armenia. Such an approach fully complies with European standards relating to the individual independence of judges and could be held up as an example that should be followed.

Azerbaijan

The legislation of Azerbaijan provides for two types of judicial appointment with the possibility of extending the permanent appointment of some judges for five years. Judges are appointed (1) for a period of 5 years, and where they obtain satisfactory evaluation results, they are appointed (2) until the age of 65 (until retirement). The Judicial-Legal Council (Article 96 of the Law on Courts), however, may, of its own motion, extend the term of office of a particular judge until the age of 70 because of his/her qualification and experience.

As mentioned above, European standards advocate the permanency of judicial office. Where an initial appointment period still exists, it should last for a relatively short period of time. In such cases, several requirements should be met in order to ensure that the national judicial appointment system does not infringe the individual independence of a judge. According to European standards, the assessment of the qualifications, skills and ability required to adjudicate cases by applying the law prior making a the lifetime appointment should be based on objective, fair, clear, pre-established and accessible criteria.

Article 96 of the Law on the Courts of Azerbaijan provides that *"*[a]t the end of this period [the judges'] activity shall be evaluated. If the evaluation does not reveal any professional shortcomings, the mandate of the judge shall be extended until the age of retirement of 65, following a proposal by the Judicial-Legal Council." The fact the judicial mandate "is extended" until the age of retirement seems in accordance with European standards as it implies that judicial appointment took place at an earlier stage and does not occur twice. The Experts, however, have not been provided with documents that could enable them to conclude that clear and pre-established criteria for the evaluation of judges for the purpose of their permanent appointment to judicial office exist.

The provision that envisages, upon a proposal of the Judicial Legal Council, the extension of the term of a judge who has reached the age of 65 where it is considered that society could benefit from his or her particular attributes (Article 96 of the Law on Courts) may give rise to an undue impact on the individual independence of the judge in question, in particular where the difference between a judge's salary and his pension is significant. Such an exception and differentiation depending solely upon the discretion of the JLC cannot be considered compatible with European standards. The Experts are of the opinion that a mandatory retirement age for all judges without exception would fully comply with those standards and the principle of judicial independence.

A crucial role is given to the Judicial-Legal Council, which determines the procedure and methodology for evaluating the work of judges. It is very important that the criteria for this evaluation are based on merit, having regard to the qualifications, skills and ability required to adjudicate cases by applying the law while respecting human dignity, as envisaged in Recommendation CM (2010)12. It is no less important that the procedure for this evaluation be fair and objective allowing an individual judge to have access to his/her files and the right to comment upon the subject matter of the evaluation.

It is unclear what kind of role 'information collected by the relevant executive body in the course of implementation of its functions provided by the legislation and information submitted to the Judicial-Legal Council" (Article 13.3 of Law on the Judicial-Legal Council) might play during the evaluation procedure. In reality, the executive and the legislature usually have no real knowledge as to the qualifications, skills and ability required to adjudicate cases by applying the law. In order to ensure the objectivity of information concerning the ability of a judge to adjudicate cases, the opinions of upper court judges (and not only the president of the court) should prevail.

Summary and Recommendations

In order to fully meet the relevant European standards, the duration of the terms of office of judges should be permanent, and this is not the case in Azerbaijan. The legal regulation and practice relating to the extension of judicial tenure for some judges from the age of 65 to the age of 70 cannot be considered compatible with the European standards. In order to ensure the individual independence of judges, there should be a mandatory age of retirement for all judges fixed by law. Case-by-case decisions by the Judicial-Legal Council on the retirement of judges also risks bringing to bear undue influence upon the individual independence of judges.

Georgia

The President and judges of the Supreme Court are elected by Parliament whilst other judges and leaders of courts are appointed by the High Council of Justice.

The analysis of the legislation currently in force indicates that security of judicial tenure is not ensured. Instead, the applicable tenure is 10 years and no extension or reappointment is possible (Article 36 of the Organic Law on the Common Courts of Georgia). However, in accordance with Article 86.2 of the Constitution of Georgia, a judge shall be assigned to his or her position for life until he/she reaches the retirement age set out in the law. The law can provide for the appointment of judges for a definite probationary period before they are assigned to their position for life but this probationary period is limited to 3 years.

The rules for the selection, appointment and dismissal of judges are contained in the Constitution and the Organic Law.

The constitutional provision which is due to come into force in October 2013 is in line with the European standards.

Summary and Recommendations

The current legal situation in Georgia with regard to tenure, based on temporary appointment for ten years, falls well short of European standards. Such legal regulation, as well as the state practice, could be seen as a serious threat the independence of the judge, whose judicial decisions could in practice, or in the eyes of the impartial observer, be affected by the state of uncertainty surrounding his or her office, particularly as he or she approaches the end of the ten-year term of office.

Taking into consideration that in October 2013 the permanent appointment of judges is to be introduced, it is crucial that a solution that fully meets European standards on the security of judicial tenure is found for all judges who at that time are still acting on a temporary basis.

Moldova

As in majority of other beneficiary countries, full security of judicial tenure is yet not guaranteed in Moldova.

The Constitution of Moldova provides for two types of duration of judicial office: Initially, judges are appointed for terms of 5 years, and after the expiry of that term they may be appointed until they reach the retirement age set out in law (Article 116 of the Constitution).

It should be noted that in comparison with the 1994 Constitution, where a "three-step" appointment system was introduced, the current two-step (the initial fixed-term appointment and then the permanent appointment) duration of judicial office appears much closer to European standards.

Summary and Recommendations

Taking into consideration that a temporary appointment system still exists in Moldova, and in light of the need for security of tenure, the Experts advise that permanent appointment be considered as an extension of the first appointment where judges meet objective, transparent and pre-established criteria.

Ukraine

There are two types of judicial appointment in Ukraine: temporary for five years and permanent until retirement age.

The initial appointment of a professional judge for a five-year term is made by the President of Ukraine.

All judges, except judges of the Constitutional Court of Ukraine, are elected by the Verkhovna Rada of Ukraine for a permanent term in accordance with the procedure established by law (Article 129 of the Constitution).

After the expiry of a temporary (provisional) term, a judge may apply for permanent appointment until the age of retirement. Article 74 of the Law of Ukraine "On the Judiciary and the Status of Judges" provides that a judge whose tenure of judicial office has expired must be recommended by the High Qualification Commission to be elected to a lifetime judicial position by the Verkhovna Rada of Ukraine, provided that there are no circumstances preventing this from happening (the retirement age for judges is fixed by Article 126 of the Constitution of Ukraine).

A candidate for permanent appointment must fulfil certain requirements - in other words follow certain steps: (1) s/he should apply in writing to the Commission for its recommendation to be elected to a lifetime judicial position; (2) the Commission publishes the information that it is preparing materials for the lifetime election of the candidate concerned in local printed media and on its official web site; (3) the Commission verifies information relating to the candidate; (4) the Commission then decides either to recommend or to refuse to recommend the candidate to be elected to a lifetime judicial position and forwards its motion to the Verkhovna Rada of Ukraine; (5) the Verkhovna Rada of Ukraine, upon the Commission's motion, takes a decision to elect the candidate in the manner prescribed by the Law.

Part 3 of Article 76 of the Law "On the Judicial System and Status of Judges" states that "The High Qualifications Commission of Judges of Ukraine shall measure the compliance of the candidate for a lifetime judicial position against the requirements of Article 127 of the Constitution of Ukraine, Articles 53, 64 of the present Law, and consider any petitions received from citizens, public organizations, enterprises, institutions, and/or central and local government bodies regarding his or her judicial performance."

The condition regarding "petitions received" from different sources is disturbing as it is not clear (i) what weight is attached to these petitions in the process of making a decision as to whether to grant the judge a permanent tenure and (ii) how "citizens, public organizations, enterprises, institutions, central and local government bodies" can influence the assessment of the qualifications, skills and ability required to adjudicate cases applying the law. As far as the integrity of the judge is concerned, such petitions may be of use. The Experts consider, however, that only well-founded complaints that have been carefully evaluated should be capable of having any impact upon the judicial career of any judge.

Summary and Recommendations

No security of judicial tenure is guaranteed in Ukraine at present. The two-step appointment system (probationary and permanent appointment) means that the tenure of judges does not meet European standards. In this context, the Experts advise that permanent appointment be considered as an extension of the initial appointment where the judge concerned meets objective, transparent and pre-established criteria.

The establishment of criteria for the appointment of judges at the legislative level is welcomed. However, the mechanism for lifetime appointment introduced in Ukraine seems to be cumbersome and could benefit from streamlining.

Petitions and complaints from various sources may have a serious impact on the duration of office of judges as they are evaluated before the permanent appointment is processed. Under the current system, only well-founded complaints should be taken into account for the purpose of deciding any question relating to the career of the judge concerned. However the
legislature is encouraged to reconsider its position on this issue.

General conclusions on tenure of judges

The situation in the five beneficiary countries as regards security of tenure varies.

The European standards prescribe that where the practice of temporary initial appointment to judicial office still exists, the appointment should be for a relatively short time and should usually be considered as an extension of the first appointment based on the evaluation procedure. The manner in accordance with which a judge, after the expiration of his or her "probationary" term, is appointed to office permanently is of crucial importance. The assessment of the qualifications, skills and ability required to adjudicate cases by applying the law prior making a the lifetime appointment should be based on objective, fair, clear, pre-established and accessible criteria.

In principle, **all five beneficiary countries** under consideration meet at least minimum European standards. **Armenia** is the only country in the region that meets the standards in full by having given effect to the principle of permanent tenure of judges.

In **Georgia** currently the term of judicial office is 10 years, which is not compatible with European standards. However, it is envisaged that in October 2013 the legal provision on permanent judicial appointment shall come into force. **It is crucial that a solution which fully meets the European standards relating to security of judicial tenure is found for all judges who at that time will be still be acting on a temporary basis.**

In light of the fact that a temporary appointment system still exists in some beneficiary states (**Moldova, Ukraine**), it is advisable that in order to strengthen the security of judicial tenure permanent appointment be considered as an extension of the initial appointment where the judge concerned meets objective, transparent and pre-established criteria.

In some of the beneficiary countries, the criteria upon which a decision on permanent appointment is made leaves room for the involvement of the executive (**Azerbaijan**) or other actors (**Ukraine**). The Experts recommend consideration of whether the legal framework in these countries should be enhanced in order to mitigate the risk of undue interference.

The law and practice dealing with the extension of tenure for some judges from the age of 65 until the age of 70 in **Azerbaijan** cannot be considered compatible with European standards. To help ensure the individual independence of judges, there should be a mandatory age of retirement for all judges provided in law, without exception. Deciding on the retirement of judges on a case-by-case basis gives rise to risks of undue internal influence.

2.3. Dismissal

Relevant European Standards

The dismissal of judges raises issues at the heart of judicial independence. Accordingly, various documents deal with those issues either directly or indirectly.

The "Magna Carta of Judges" states under point 4 that:

"Judicial independence shall be guaranteed in respect of judicial activities and in particular in respect of recruitment, ***nomination until the age of retirement****, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary."*

CCJE opinion 1 states:

"It is a fundamental tenet of judicial independence ***that tenure is guaranteed until a mandatory retirement age*** *or the expiry of a fixed term of office: see the UN basic principles, paragraph 12"*

"The ***existence of exceptions to irremovability, particularly those deriving from disciplinary sanctions, leads immediately to consideration of the body and method by which, and basis upon which, judges may be disciplined****.*

Rec (94) 12, Principle VI(2) and (3), insists on the need for a "*precise definition of offences for which a judge may be removed from office and for disciplinary procedures complying with the due process requirements of the Convention on Human Rights.*"

Rec (2010) 12 underlines in a chapter dedicated to tenure and irremovability (see paragraphs 42, 43 of the recommendation) that:

"Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should ***have guaranteed tenure until a mandatory retirement age****, where such exists.*

The terms of office of judges should be established by law. ***A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions****."*

Under paragraph 69 it considers that

"Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. ***Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction****."*

A brief perusal of the above sources, which define European standards, reveals that there are many different reasons that might lead to the termination of a judge's tenure. The Experts decided to focus in this paper upon termination resulting from breaches of disciplinary provisions, as this is often an Achilles' heel in the area of judicial independence.

Regulatory framework of the participating countries:

Armenia

Art. 157, paragraph 1 (4) list as a possible disciplinary sanction against a judge the *"filing (of) a motion requesting that the president of the Republic terminate the judge's powers"*, and paragraph 3 of the same provision provides that:

"The type of disciplinary sanction prescribed by Paragraph 1(4) of this Article shall be applied if a grave disciplinary offence or the regular disciplinary offences committed by the judge render him incompatible with holding judicial office."

Paragraph 4 continues:
"*The disciplinary sanction applied shall be proportionate to the offence. When applying a disciplinary sanction, the Justice Council shall also take into account the consequences of the offence, the personal characteristics of the judge, the degree of guilt, any pending sanctions, and other noteworthy circumstances surrounding the judge*."

In this respect the legislature underlines the fact that dismissal has is be used as the *ultima ratio* where other (milder) sanctions are not sufficient and the judge's conduct is incompatible with his or her office.

If these provisions are applied in accordance with European standards and with sufficient consideration of the required proportionality, the European standards will be met such that the current legislation does not give any reason for specific concern.

Art. 158, paragraph 1 and 3 set out some important procedural rules relating to disciplinary proceedings. First, it is provided here that during disciplinary proceedings the Council acts as a court and that its procedure follows the rules set out in the administrative procedure code. As the Experts are not aware of the actual administrative procedure code of the country, some details relating to the system remain unclear, such as whether the judge under suspicion has the right to legal representation by a lawyer or colleague.

However, the current legislative provision places the burden of proof that there are grounds for subjecting a judge to disciplinary liability upon the person or institution that instigated the proceedings, and makes clear that any remaining suspicion as to whether the judge committed a disciplinary offence shall be dispelled in favour of the judge.

In this respect it appears that the relevant basic standards are fulfilled.

A definitive comment on the procedures as envisaged under Armenian law would require a study of the administrative procedure code, which is not available to the Experts and, in any event, this would go beyond the Experts' mandate. However, as far as the above provisions are concerned, the Experts do not see any reasons for specific concerns.

It has been stated above that this chapter will mainly focus upon the termination of a judge's power as a result of disciplinary proceedings. Nevertheless a remark should be made on the reasons for termination unrelated to such proceedings as regulated in Art. 167 of the Judicial Code.

Under paragraph 1 the law lists among other reasons that:

"a judge's powers must be terminated by the President of the Republic, if:
3) Due to temporary inability, the judge has been unable to perform his official duties for more than four consecutive months, or for more than six months during a calendar year;
8) He has not passed annual training programs for two consecutive years […]"

With regard to illness, the Experts are of the opinion that no kind of "temporary" illness can ever justify the termination of a judge's powers as this would infringe the standards mentioned above. This is especially true if the termination is made without any negative prognosis as to the recovery of the judge.

Training is a right and a duty at the same time. Dismissal for the reason provided under point 8 is, in the Experts' view, not proportionate, as the circumstances it envisages cannot be seen as severely impacting upon judge's duties.

These considerations are especially valid as the legislature does not afford any margin of discretion from case to case, but has determined that in the listed circumstances the judge's powers **must** be terminated.

Summary and Recommendations

The conditions and procedure regarding dismissal as a consequence of disciplinary violations does not raise any specific concerns and can in part be used as a source of inspiration for other countries.

However, in relation to dismissal for reasons other than those provided as a result of the disciplinary procedure, the legislature should reconsider the provisions relating to the non-attendance at training and illness as the current provisions seem to be overly harsh and might be seen as a threat to judicial independence

Azerbaijan

In accordance with the Judicial-Legal Council Act (Art.11.0.4), one of the functions of the Council is *"to discuss the issues of.....dismissal and appointment....."* and (Art. 12.0.8) *"to deliberate upon termination of the office of judges and submit proposals to this effect to the relevant executive body of the Republic of Azerbaijan"*.

The grounds for terminating judicial powers are listed in Art. 113 of the Court and Judges Act[1]. In accordance with paragraph 10 of this Article, judicial powers may be terminated "If

[1] **Article 113. Grounds for terminating judicial powers**
Judges' powers are terminated by the Judicial-Legal Council on the expiry of their term of office.
Judges' powers may be terminated before the expiry of their terms of office on the following grounds:
1. A written application of resignation;
2. Their dismissal from office;
3. Upon the issuing of a court ruling declaring the judge physically disabled and/or otherwise afflicted;
4. In case of death;
5. Upon a court ruling declaring him dead or missing;
6. Upon revealing a failure to meet the requirements set out herein as to candidates for judicial office;
7. Engaging in activities not compatible with his position;

disciplinary liability has been imposed upon on a judge twice in a calendar year on the grounds set out in Article 111-1.*"*

The procedure for disciplinary cases has been discussed in a separate chapter on disciplinary liability and it has been stated therein that the procedure is described in a detailed manner, which allows for an appeal and gives judges under suspicion all the tools they need in order to defend themselves effectively.

It is worth recalling here that the penalties envisaged for disciplinary violations are quite diverse and range from a reprimand to the termination of office. Against this backdrop, it does not seem justified to provide for termination of office for each of two disciplinary violations within one year, without distinguishing between the different possible violations and sanctions applied. Such a provision affords excessive discretion to the Council and, ultimately, to the President, who has the ultimate power to take the decision to terminate a judge's powers (Art. 112 of the same law)

Another reason for terminating a judge's office due to misconduct or some related failure is found in Art. 113, No 11, which provides that a judge's powers also may be terminated "If s/he has committed multiple gross violations of legislation in the course of considering a case."

Aside from the fact that the provision seems to be extremely vague (for example, what is a "gross" violation, how might we define "multiple", and must these "multiple" violations be made during a single case as the wording indicates?), one also has to read this provision in the context of Art. 111-1 of the same law. There, the legislation provides that one ground for disciplinary liability is "[e]ither a gross infringement or multiple infringements of the requirements of legislation in the course of considering cases". The question of whether both of these provisions apply to multiple infringements in the course of a single case is of pivotal importance, as Art. 112 sets out the sanctions that apply in the circumstances set out in Article 111-1. Those sanctions do not include termination of a judge's powers, and only a severe reprimand or transfer to a different judicial post [1] If both provisions cover the same case, the law contains an inconsistency which should be eradicated.

Paragraph 2 of Art.113 is also unclear in providing that a judge's powers may also be terminated as a result of "*dismissal from judicial office*". The Expert was not able to determine what was meant with this.

For cases in which the termination does not result from disciplinary proceedings against the relevant judge, the Expert could not see any clearly-defined procedure set out in the materials

---

8. On relinquishing citizenship of the Republic of Azerbaijan, adopting citizenship of a foreign country or assuming obligations towards a foreign country;
9. If the special medical commission set up by the Judicial-Legal Council has issued an opinion proving his/her inability to fulfil his or her duties due to sickness for over a period in excess of six months;
10. If disciplinary liability has been imposed upon on a judge twice in a calendar year on the grounds set out in Article 111-1.
11. If s/he has committed multiple gross violations of legislation in the course of considering a case.

[1] In this context, it is of note (and this has been not mentioned in the chapter dealing with disciplinary procedures) that Art. 112 first lists all available sanctions and than defines which sanction or sanctions can be used in response to each of the different violations set out in Art. 111. Whilst termination of office appears in the list of sanctions available, there appear to be no violations for which the legislation envisages the use of this sanction.

submitted. If such a procedure is missing from the legislation, it should be developed, bearing in mind the fair trial guarantees enshrined in the ECHR.

Finally, the legislation of Azerbaijan contains a provision (Art. 113) that allows for termination where a *"*[a] special medical commission set up by the Judicial-Legal Council has issued an opinion proving his/her inability to fulfil his or her duties due to sickness for over a period in excess of six months*"*.

As described above, European standards require lifetime appointment of judges and a permanent appointment should only be terminated in cases of serious breach of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Against this backdrop, termination based on only six months of sickness does not appear justified. Termination for reasons of sickness should, in the Expert's opinion, always follow a prognosis as to the ability of the judge to perform his or her duties in the future. Only a negative prognosis might justify such early termination of his or her powers.

Summary and Recommendations

The legislature should clarify the procedure and procedural rights in cases of termination of office not directly resulting from disciplinary proceedings.

The existing inconsistencies within the legislation, as described above and particularly those relating to violations of legislation in the course of considering a case, should be eradicated.

The termination of a judge's powers for health reasons should be reconsidered and only be allowed in the event of a negative prognosis with regard to the judge's future working capacity, that is, in cases of indefinite inability to work.

Georgia

The dismissal of judges falls under the competence of the High Council of Justice (HCJ) (Art. 42; 49, paragraph 1, a and g of the Law on the Common Courts, Art. 25 Regulations of the HCJ).

Art. 43 of the Law on the Common Courts lists the reasons for dismissal of judges[1], which is one of the disciplinary penalties envisaged by Art. 4 of the Law on Disciplinary

[1] **Article 43.** Grounds for dismissal of a judge and for termination of powers of the President and members of the Supreme Court
1. The Grounds for dismissal of a judge and for termination of the powers of the President and the members of the Supreme Court shall be:
a) personal application;
b) disciplinary violation;
c) occupation of a position or engagement in an activity incompatible with the status of a judge;
d) recognition by a court as legally or partially incapable;
e) loss of Georgian citizenship;
f) a final judgement of conviction rendered by a court against him/her;
g) reaching his or her 65th birthday;
h) commission of offence relating to corruption according to the procedure established under article 20 (6) of the law of Georgia "On Conflicts of Interest in Public Service and Corruption"
i) death;

Responsibility and Disciplinary Proceedings Against Judges of The Common Courts. This law also sets out clearly the cases in which a disciplinary violation can lead to dismissal. As for the applicable procedural rules, reference can be made to the chapter on disciplinary proceedings.

In accordance with Art 43, paragraph 2, a disciplinary violation can only serve as a reason for dismissal following a motion from the disciplinary collegium (also referred to as the Disciplinary Panel).[1]

Where the disciplinary collegium deems dismissal the appropriate penalty for a disciplinary violation, a motion to the HCJ is required in order to execute the decision (see also Art. 75-80 of the Disciplinary Law). It is important to underline that under these provisions the HCJ does not have any discretion to influence the decision of the Disciplinary Panel or Disciplinary Chamber (in the case of an appeal). It only formally executes the decision regarding the dismissal of a judge.

As in the case of Armenia, it should also be noted here that the possibility of dismissing a judge *"if he/she fails to exercise his/her authority for a period of more than four months during a period of 12 months"* seems overly severe, and is, in the Experts' view, not compliant with European standards, especially as it is not clear that the relevant judge can challenge such a decision. Furthermore, the provision does not distinguish between the possible reasons for his or her failure to exercise his or her authority or envisage any prognostic element that would look at his or her future performance.

Summary and Recommendations

The Experts do not see any particular point for criticism in relation to proceedings for the dismissal of judges in Georgia as a consequence of disciplinary liability. The procedures are clear and guarantee the main elements of a "fair trial" as enshrined in Art. 6 ECHR.

As mentioned above, the legislature might consider rethinking the provisions for dismissal of a judge who is unable to exercise his/her duties for a period of more than four months within a period of twelve months.

---

j) closing of the court or reduction of the judges' position;
k) appointment (election) to another court;
l) election or appointment to a position at another agency;
m) expiration of term of judicial authority;
2. For cases referred to in para 1(b) of this article, a motion from the disciplinary collegium shall be necessary.
3. The High Council of Justice of Georgia shall be entitled to dismiss a judge if he/she fails to exercise his/her authority for a period of more than four months during a period of 12 months.

[1] The disciplinary collegium consists, according to Art. 24 of the Law on "Disciplinary responsibility and disciplinary proceeding of judges of the Common Courts of Georgia" of six members, three of whom are judges of the common courts of Georgia and three of whom are non-judges. Three judicial members in the Disciplinary Panel who are also members of the High Council of Justice shall be elected by the Conference of Judges of Georgia or at a time between its sessions, or the administrative committee of the conference of judges, upon a proposal by the Chairman of the Supreme Court of Georgia. Those members who are not judges shall be elected by the High Council of Justice from among its members. Members of the Disciplinary Panel shall each be elected for a 2-year term.

Moldova

In accordance with Art. 20, paragraph 1 of the law on the Superior Council of Magistrates (SCM), issues relating to "*....removal from the position of judges shall be examined by the SCM.....:"*

The reasons for removing a judge from his or her position are set out in Art. 25 of the Law on the Status of Judges[1].
In terms of disciplinary liability, the law envisages removal for *"committing disciplinary offences, set by part (1) of Art. 22"*.

As described in the chapter on disciplinary liability, in such cases it is the disciplinary board (see Art. 1 and 19 of the Law on the Disciplinary Board and Disciplinary Liability of Judges) that decides on the applicable penalty, and it can propose the dismissal of the judge. In such circumstances, the SCM approves the decision or proposal of the disciplinary board (Art. 21 of the law on SCM) and (in accordance with Art. 25, paragraph 2) proposes the dismissal of the judge to the President.

The law is silent as to the specific procedure to be followed in order to dismiss a judge and also as to the procedural rights of the judge concerned. It is also not clear from the law what the consequences would be if the President does not follow the proposal, and how a dismissal could be effected in this case. Clarification in this regard is necessary.

Of even greater concern is the reason listed at paragraph e), "*professional incompetence"*. It is not clear what exactly is meant by this or who determines that incompetence has taken place and on what basis. Such a vague and under-developed criterion threatens judicial independence and is therefore not in line with European standards.

Summary and Recommendations

Moldovan law leaves a too broad margin of discretion within the dismissal procedure. The law should clarify the circumstances in which disciplinary violations can lead to dismissal.

[1] **Article 25. Removal of judges from their positions**
(1) The powers of a judge shall be withdrawn by the body that appointed him or her in where the judge:
a) tenders his or her resignation pursuant to Part (2) of Article 26;
b) resigns of his or her own will;
c) resigns upon reaching the judicial age limit;
d) is transferred to another position;
e) is found to have demonstrated professional incompetence;
f) is found to have committed disciplinary offences set out in Part (1) of Article 22;
g) is convicted by a court;
h) loses his or her Moldovan citizenship;
i) Breaches Article 8;
j) Lacks capacity as demonstrated by a medical certificate;
k) sees his or her powers expire; or
l) Is deemed to be 'impaired'.
(2) A proposal on the removal of a judge shall be made The Superior Council of the Magistracy to the President of Moldova or to Parliament.

Dismissal due to incompetence is not an acceptable criterion in the absence of a specific definition.

The law should provide for procedural guarantees for judges, taking into account fair trial principles.

Ukraine

Articles 100 to 112 of the Law on the Judiciary and the Status of Judges deals with removal from office of professional judges in courts of general jurisdiction.

The Law includes the nine constitutional grounds for removal of a judge from office (in accordance with Article 125.5 of the Constitution and Article 100 of the Law)[1].

The constitutional grounds seem to include both reasons based on the judge's misconduct, such as his or her conviction of a criminal offence (Article 126.5 point 6 of the Constitution and Article 106 of the Law), and circumstances in connection with which no misconduct need be attributed to the judge, such as reaching retirement age (Article 126.5 point 2 of the Constitution and Article 102 of the Law). As recommended in the VC, Joint Opinion with the Directorate General of Human Rights and Legal Affairs of March 2010 recommended clarifying the distinction between these two kinds of situations, which arguably should engage different types of proceedings:

"*It is to be noted that different types of proceedings, based on the nature of the various grounds for removal from office, are provided for in the chapter of the Law on the High Council of Justice relating to the removal of judges from their office: Article 31 of that Law relates to removal "on general grounds" (mentioned in Article 126.5 points 1-3 and 7-9 of the Constitution), while Article 32 relates to removal "on special grounds" (mentioned in Article 126.5 points 4-6 of the Constitution)."*

"As in the former draft, some of the grounds relating to culpable behaviour seem to be very vaguely or widely defined. Indeed, it seems as if the Law tries to avoid at this point going any further than the provisions already contained in Article 126 of the Constitution of Ukraine. Those provisions include the violation by the judge of requirements concerning incompatibility and the breach of oath by the judge. The grounds for removal from office should be set out in a more precise and narrow way."

"In any event, there should be provisions setting forth what is to happen in relation to such procedural matters as the right to be present at the hearing, the right to be assisted or represented the right to call witnesses, and how to challenge the findings of the High Council of Justice."
"It may be added that Article 126.5 of the Constitution provides that the body that elects or appoints judges is also the body that dismisses them. Since Article 128.1 of the Constitution provides for the initial appointment of a judge by the President of Ukraine and for election to

[1] **Article 100**. General Conditions for the Dismissal of a Judge

1. A judge of a court of general jurisdiction shall be removed from office by the body which appointed or elected him or her on the exhaustive grounds set forth in part five, Article 126 of the Constitution of Ukraine, following a motion by the High Council of Justice.

a lifetime position by the Verkhovna Rada, it is not possible to take the power to dismiss judges away from the Verkhovna Rada without an amendment to the Constitution. Nonetheless, the conferral of this power on the Verkhovna Rada, taken together with the failure to provide for procedural safeguards, risks politicising the method of dismissal of judges (just as this risk exists in relation to the election of judges). Article 126 of the Constitution should therefore be amended in order to exclude the possibility that judges can be removed by the Verkhovna Rada."

"Another problem concerns the possibility to appeal against a dismissal. It seems that in practice, a decision of the High Council of Justice on the dismissal of a judge goes immediately to the Verkhovna Rada, which decides, and only after a decision by the Verkhovna Rada is taken both the decisions of the High Council of Justice and of Parliament can be appealed against to the High Administrative Court. This seems odd; the appeal to the High Administrative Court should come before the start of the procedure in the Verkhovna Rada."

Summary and Recommendations

The Experts fully share the opinion expressed in the VC documents cited above. They therefore recommend that the reasons for dismissal be drafted in a more concise and predictable way.

The legislature should consider improving the appeal procedure relating to dismissal and ensure that the currently procedure through the Verkhovna Rada can start only after an unsuccessful appeal to the High Administrative Court.

General conclusions on dismissal of judges

Not all countries describe the reasons for dismissal, particularly dismissal as a consequence of disciplinary proceedings, in a concise and predictable way and they should therefore adopt more succinct legal provisions in this regard (**Moldova, Ukraine**).

Dismissal because of incompetence as envisaged in **Moldova** is not acceptable as long as the term "incompetence" and the factors that indicate its existence are not precisely defined.

Countries should ensure that their legislation provides for procedural guarantees for judges facing dismissal, taking into account the principles of a fair trial as enshrined in Art. 6 ECHR (**Azerbaijan, Moldova and Ukraine**). In this regard, the legislation of **Georgia** can serve as an example.

Termination of judges' powers for health reasons should be reconsidered and only be allowed where there exists a negative prognosis regarding the relevant judge's future working capacity, that is, where there exists a prognosis of indefinite inability to work (all countries).

Non-attendance of (mandatory) training should not lead automatically to dismissal (**Armenia**).

2.4. Remuneration

Relevant European Standards

The remuneration of judges, as well as the provision of other social and economic guarantees to them, is essential to their individual judicial independence. The level of remuneration can have a direct impact on the personal independence of judges. It may strengthen or weaken judicial independence in any given country.

The European Charter on the Statute for Judges (1998) provides (paragraph 6.1 of the Explanatory memorandum) that "*the level of the remuneration to which judges are entitled for performing their professional judicial duties must be set so as to shield them from pressures intended to influence their decisions or judicial conduct in general, impairing their independence and impartiality*". It further specifies that judges who have reached the age of retirement after a requisite time spent as judges must receive a retirement pension the level of which must be as close as possible to the level of their final salary (paragraph 6.4 of the Explanatory memorandum).

The CM/Rec(2010)12 envisages as a prerequisite to the financial independence of judges that "*the principal rules of the system of remuneration for professional judges should be laid down by law*" (paragraph 53).

In accordance with European standards, judges' remuneration should be commensurate with their role and responsibilities and should provide appropriately for sickness pay and retirement pay. It should be guaranteed by specific legal provisions preventing its reduction and there should be provision for increases in line with the cost of living (paragraph 72.8 of the CCJE Opinion No 1).

The Committee of Ministers of the Council of Europe also stressed that "*guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working*" (paragraph 54 of the CM/Rec(2010)12). And there is a repeat of the statement that "*remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges*" (paragraph 55). This should be understood as an instruction to national state authorities to avoid the introduction of such remuneration systems.

The CCJE Magna Carta (2010) reiterates that in order to eliminate the risk of undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme established by law (paragraph 7).

The requirement to determine the remuneration of judges at the legislative level means, *inter alia,* that judicial salaries should not depend on the discretion of officials of either the executive or judiciary. Salaries should be based on clear, transparent and objective criteria. Differences in the remuneration of judges can normally be justified on the grounds of judicial experience and the level of the court in which those judges serve. It should to be noted that judicial salaries should not serve as the only motivation to seek promotion.

In accordance with the CEPEJ Report on the evaluation of judicial systems (2010), the remuneration of judges is a sensitive subject. The objective is to give the judge a fair reward which takes into account the difficulties relating to the exercise of his or her judicial functions and which allows the judge be protected from any pressure that might challenge her/his independence and impartiality. The remuneration is composed of a basic salary that may be supplemented with bonuses and/or other material or financial advantages.

The Experts are of the opinion that states cannot be given specific guidelines or recommendations on the actual amounts which judges should be paid. It is up to each country to decide what remuneration would be adequate in the given jurisdiction and light of economic realities. Nevertheless, it is very important to introduce a system capable of attracting the most qualified and efficient lawyers to take judicial positions and at the same time ensures the efficiency of the judiciary in general. A well-balanced remuneration system also helps the state to create obstacles to interest groups that may seek to exert some influence on judicial decisions.

Specific legal provisions should be introduced as a safeguard against salary reductions for judges. Reduction of judicial remuneration should normally not be allowed except where a state faces serious economic difficulties. Even in such situations, reductions should be temporary and proportionate to reductions in other sectors paid from the state budget.

Finally, it is important to measure the ratio of the salary of a judge to the national average salary. During previous studies on the evaluation of judicial systems, the CEPEJ has reported that the average ratio in Europe was 2.5.

Regulatory framework of the participating countries

Armenia

Judicial remuneration is set out in law and is not based on performance. A general principle prohibiting the reduction of remuneration of judges "*during the judge's term of office*" (part 3 of Article 75 of Judicial Code) is enforced. The remuneration of judges consists of salary pay and supplements provided for in Article 75 of Judicial Code.

The legislation envisages that as a disciplinary sanction a judge's salary may be reduced, but that "the total reduction for each month cannot exceed 50% of the salary" (part 6 of Article 157 of Judicial Code). Where the disciplinary action is brought against the chairman of a court and it appears that the court chairman (or chamber chairman of the Cassation Court) violated his/her judge's or chair's duties, "*the Justice Council may impose a severe reprimand, which shall be combined with depriving the judge of 25% of his judge salary and of the court chairman's salary supplement for a 12-month period* (sub-part 3, part 4 of Article 165 of the Judicial Code)".

This system, together with restrictions on some payments as provided in Article 93 of the Judicial Code, cannot be considered inconsistent with European standards. However, it should be noted that the judicial self-governing bodies are not involved in the process of determining judicial remuneration.

Summary and Recommendations

Providing for remuneration of judges in law and the introduction of a prohibition on reductions of judicial remuneration fully meets European standards. Therefore it would be advisable for national authorities to consider how and to what extent the judiciary, through the self-governing bodies can be involved in the determination of judicial remuneration.

Azerbaijan

The remuneration system of judges is set out in law and is not based on judicial performance, which corresponds entirely with European standards. Differences in judicial salaries and pension schemes for judges working at different court levels are based on objective criteria established by law (Article 106 and Article 109 of the Law "On Courts"). Judges are paid twice the amount of their monthly wage when on vacation leave (Article 107 of the Law "On Courts"). Court presidents, self-governing bodies and the executive, do not have a right to intervene in the remuneration scheme.

A point of criticism is that the laws of Azerbaijan do not provide for safeguards to prevent the possible reduction of judicial salaries. Also, the judicial self-governing bodies are not involved in the determination of judicial remuneration.

Summary and Recommendations

The financial provisions (rates of judicial salaries and pensions) for the judges of Azerbaijan do not contradict European standards. However, the lack of legislative safeguards to prevent the reduction of judicial salaries does not comply with the standards. Finally, national authorities are invited to consider how and to what extent the judiciary, via its self-governing bodies, can contribute to the determination of judicial remuneration levels.

Georgia

No reduction in the wage of a judge in Georgia is permitted during the whole period of his/her term in office (part 1 of Article 69 of the Law "On Common Courts"). Further, the Law "On Common Courts" (part 2 of Article 69) provides that the monthly wage of a judge shall be determined "*pursuant to the Georgian legislation*". In this respect, the Georgian legislature has adopted the Law of Georgia on Remuneration of Judges of Common Courts adopted in 2005 and amended in 2007.[1]

[1] **"Article 1 of the said law:** The amount of monthly salaries of Common Court judges shall be set as follows:
a) Chairman of the Supreme Court of Georgia – 5650 GEL;
b) First Deputy Chairman of the Supreme Court of Georgia – 5100 GEL;
c) Deputy Chairman of the Supreme Court of Georgia – 4800 GEL;
d) Judge of the Supreme Court of Georgia – 4400 GEL;
e) Chairman of the Appellate Court – 4200 GEL;
f) Deputy Chairman of the Appellate Court – 3300 GEL;
g) Chairman of the Chamber (Collegium) of the Appellate Court – 2900 GEL;
h) Judge of the Appellate Court – 2500 GEL;
i) Chairman of a Regional (City) Court - 2500 GEL;

Part 3 of Article 69 of the Law "On Common Courts" envisages that "*an increase in the wage of a judge (except of the President of the Supreme Court) shall be determined by the High Council of Justice of Georgia*" (the rise of the salary of the President of the Supreme Court "*shall be determined by the Plenum of the Supreme Court*"). The latter legal provision is unique in the region. Though no documents or indications as regards the legal/economic grounds on which the HCJ can determine these issues were provided for the Experts' analysis, it appears that, at least on paper, the extent to which the self-governing body is involved in the determination of the "increase" of remuneration of judges in Georgia is remarkable.

Summary and Recommendations

The statutory regulations concerning judicial remuneration, as well as the prohibition of deductions in remuneration for judges in Georgia, meets the European standards. The same can be said of the involvement of the self-governing bodies in the determination of "increases" in the remuneration of judges.

Moldova

The Constitution of Moldova provides that "*salaries and other rights of judges are established by law*" (part 2, Article 121 of the Constitution). This demonstrates that European standards regarding the provision of judicial remuneration at the legislative level are met. On the other hand, the Moldovan legislation remains silent on the possibility of reducing judicial salaries. The laws concerning the judiciary do not address the issue of judicial remuneration as it is dealt with by the Law on Remuneration in the Public Sphere" (Article 28 of the Law "On the Status of a Judge"). Article 32 of this law states that "a judge has a right to a pension in accordance with the Law on Pensions of State Social Security". Even though this does not contradict explicitly the European standards, it would be advisable for the legislature to deal with the social and economic guarantees of judges in one single legal document.

Article 17 of the Law On the Status of Judges provides for "*adequate financing of the judiciary*". The practice in Moldova does not demonstrate that judicial remuneration there ensures the true independence of judges. This conclusion is based on the CEPEJ 2010 Report which shows that the ratio of the salary of a judge *vis-à-vis* the national average salary does not correspond even with the median ratio of salaries in the states belonging to the Council of Europe (the rate in Moldova remains 1.7 compared with the European 2.5).

Finally, the judicial self-governing bodies are not involved in the process of determining the remuneration for judges. The national authorities are advised to engage the judiciary in this respect

Summary and Recommendations

In principle, the legislation of Moldova meets European standards on remuneration. The Experts recommend, however, the introduction of a prohibition on the reduction of

j) Chairman of the Collegium of a Regional (City) Court – 2400 GEL;
k) Judge of the Regional (City) Court – 2300 GEL;
l) Reserve judge – 500 GEL."

judicial salaries. Furthermore, it would be advisable to address social and economic guarantees for judges in one single legal act and to engage the judicial self-governing bodies in the process of determining of remuneration for judges.

Ukraine

The remuneration of judges is set out in law. There is no prohibition upon the reduction of judges' salaries. The Law On the Judicial System and Status of Judges provides that judicial remuneration consists of the fixed official salary and bonus payments for (1) length of service; (2) the holding an administrative position in a court; (3) a scientific degree; and (4) work involving access to state secrets (part 2 of Article 129).

As has already been mentioned, allowing for bonuses is in line with European standards. Some types of bonuses might, however, be a matter for discussion. For instance, one may doubt whether the obtaining of a scientific degree or work involving access to state secrets merits the payment of bonuses.

The rate of judicial salaries introduced in part 3 of Article 129 of the Law On the Judicial System and Status of Judges in comparison with the minimal salaries in the state generally shows that the state authorities consider the judicial profession to be an important one and aim to increase the attractiveness of judicial work in Ukraine.

Part 3 of Article 138 of the Law On the Judicial System and Status of Judges sets out a progressive legal regulation as regards social guarantees:

"*[A] monthly lifetime allowance shall be paid to a judge in the amount of 80 percent of the remuneration of an active judge holding a comparable position. For each full year of work in excess of 20 years in a judicial position, the rate of the monthly lifetime allowance shall be increased by two percent of the salary, provided that it does not exceed 90 percent of a judge's salary, there being no upper limit to the amount of the monthly lifetime allowance*". Such approach may serve as an example to other countries in the region.

As to the involvement of the judicial self-governing bodies in the determination of judicial remuneration, the national authorities of Ukraine should be encouraged to invite the judiciary to participate in this activity.

Summary and Recommendations

The law in Ukraine generally envisages appropriate guarantees regarding judicial remuneration, though the lack of legal safeguards with regard to the reduction of judicial salaries still leaves room for inappropriate interference by the other state authorities into judicial independence. It is also doubtful whether the obtaining of a "scientific degree" or "work involving access to state secrets" should be retained as appropriate grounds that merit the payment of bonuses for judicial activities. The judicial self-governing bodies should be engaged in the determination of remuneration for judges. The legal regulation in respect of payments to retired judges based on the economic security of judges may serve as an example to other countries in the region.

General conclusions on remuneration of judges

European and international documents provide for "*adequate remuneration*" (Basic Principles), "*remuneration that shields judges from pressure aimed at influencing their decisions*" (European Charter), remuneration "*commensurate with the profession and their responsibilities*" (CM/Rec(2010)12), remuneration "*corresponding to the dignity of their office and scope of their duties*" (VC), and remuneration sufficient "*to secure true economic independence*" (Universal Charter). These standards are still to be met in all countries of the region. Even though states cannot be given specific guidelines as to the actual sums judges should be paid, it is important to set up such a system that on the one hand makes judicial positions attractive and at the same time ensures the efficiency of the judiciary in general.

The European standards do not advocate remuneration systems based on judicial performance. Therefore, all five countries under consideration are compliant in this respect.

In almost all beneficiary countries (except **Moldova**), the remuneration and pensions of judges are set out in specific legal acts. In almost all countries, monthly bonuses are provided for length of service, which is probably one of the most objective criteria, granting all judges an additional financial resource.

The legislative prohibition on reducing judicial remuneration is envisaged in **Armenia** and **Georgia.** This fully corresponds to the European standards and is recommended to other beneficiary countries as the correct approach.

The reduction of judicial remuneration should normally not be allowed, except where serious economic difficulties in the state concerned justify it, but even in such situations the reduction must be temporary and proportionate to reductions in other sectors paid from the state budget.

The involvement of judicial self-governing bodies in the determination of judicial remuneration in **Georgia** demonstrates that the state recognizes the importance of the opinions of the judiciary and should be considered as a good example to follow.

The legal regulation in **Ukraine** regarding payments to retired judges so as to ensure the economic security of judges is also exemplary.

2.5 Guarantees against undue pressure

Relevant European Standards

The CCJE Opinion No 1 states as follows: "*The difficulty lies rather in deciding what constitutes undue influence, and in striking an appropriate balance between for example the need to protect the judicial process against distortion and pressure, whether from political, press or other sources, and the interests of open discussion of matters of public interest in public life and in a free press. Judges must accept that they are public figures and must not be too susceptible or of too fragile a constitution. The CCJE agreed that no alteration of the existing principle seems required, but that judges in different States could benefit from discussing together and exchanging information about particular situations*" (paragraph 63).

Another important aspect stressed by the CCJE relates to undue influence of an internal nature: "The independence of any individual judge in the performance of his or her functions exists notwithstanding any internal court hierarchy" (paragraph 72.9).

The Magna Carta adopted by the CCJE on 17 November 2010 provides in its Paragraph 10) that "*In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law*".

CM/Rec(2010)12 (paragraph 22) envisages that "*the principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision-making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organization should not undermine individual independence*".

"*Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies in accordance with the law" and "the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case*" (paragraph 24).

In order to combat undue influence, interference, pressure judges should be free to form and join professional organizations whose objectives are to safeguard their independence, protect their interests and promote the rule of law (paragraph 25 of the Recommendation).

Taking into consideration the growing influence of judicial self-governing bodies and potential threats to the individual independence of judges, the Recommendation of the Council of Europe CM/Rec(2010)12 (paragraph 29) provides that "in exercising their functions, councils for the judiciary should not interfere with the independence of individual judges".

There is an expectation in every society that justice is exercised efficiently, fairly and objectively, and by professional, impartial and independent judges. The separation of powers enshrined in the majority of the Constitutions all over the globe is an important prerequisite to the institutional independence of the system. Recent trends in Europe reflect attempts to

strengthen the self-governing of judicial power on one the hand and to weaken the structural ties between the executive and the judiciary on the other.

The individual independence of judges, however, is not less important than institutional independence. Both the institutional and individual aspects of judicial independence are of key importance and should be equally safeguarded. The principle of judicial independence requires the independence of each individual judge in the exercise of his/her functions. In their decision-making, judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organization should not undermine individual independence.

Any undue pressure, improper influence, threat or interference with judicial work should be considered as a real danger in terms of the individual's rights to a fair trial conducted by an impartial and independent court in accordance with Article 6 of the ECHR. In order to minimize any kind of undue interference with judicial activities, states have introduced various obstacles and safeguards.

Despite the existence of the possibility or duty to report cases of undue influence in the beneficiary countries, no examples were given to the Experts about such reports. Having considered many cases of undue influence, interference or pressure on judges in other countries, the Experts consider that there could be attempts of improper influence in the beneficiary countries. Thus, some recommendations with regard to undue internal interference, influence or pressure were provided on the basis of the Experts' international experience in this field.

Judges should be encouraged to make public any kind of undue influence. Reported cases of undue influence should be carefully assessed by the competent authorities who should take adequate measures against those responsible.

European standards prohibit any kind of undue pressure, influence or interference with judges including that exercised by members of the judiciary themselves. In cases of unethical behaviour, such as attempts of undue influence on other judges, those members of the judiciary should be considered and held liable on an equal basis to other citizens in accordance with the law.

Undue internal influence on judges should be prevented. In this respect the role of presidents of courts in their relationship with other judges is very important. It should be based on the concept of *primus inter pares*. The president of the court should be not considered as the boss or "natchalnik" who may give advice to a judge on how to decide the case or give instructions to a judge how the law or facts have to be interpreted. He or she cannot influence the individual judge's activities through administrative measures such as the distribution of cases, better working facilities, and so on, or have any say on judges' remuneration, including bonuses where these still exist. The role of court presidents in selection and promotion of judges should also be kept to a minimum. While exercising their representative and administrative functions, the court presidents' activities should be limited to the control of non-judicial staff without any link to the control of judges while they are exercising justice.

The curricula of training programmes as part of pre-trial and continuous legal education for judges should involve judicial ethics in general and cover the requirements surrounding the proper behaviour of judges in particular, in order to avoid undue influence. One of the

activities of court presidents as well as self-governing bodies should be to foster a common judicial culture where undue contacts with the parties in a case or other persons interested in the outcome of court proceedings is considered abnormal.

In order to avoid inappropriate influence, judges are ordinarily not allowed to hold a position in any other body of state power or local government, or to hold any representative mandate. In the beneficiary states, judges are usually allowed to be involved in pedagogical, research or creative activities and to be paid for it. It is obvious that political activities are not compatible with judicial duties in Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Therefore it is understandable that judges are expected to "demonstrate political restraint and neutrality" (see, for instance, Article 10 of the Judicial Code of Armenia). Such legal regulation and practice seems natural in Eastern Europe in light of its Soviet past and should be kept in order to demonstrate to society that the judiciary is not directly influenced by the political power.

Regulatory framework of the participating countries

Armenia

In administering justice, judges shall be independent and shall be subject only to the Constitution and the law (Article 97 of the Constitution of Armenia). Judges are excluded from participating in political activities. They may participate in elections of central and local government bodies only as voters. Judges may not participate in election campaigns (Article 10 of the Judicial Code of Armenia). A person might be held criminally liable for any interference with the activities of a judge prohibited by law. Public servants risk disciplinary liability where their activities are considered to unduly influence judicial activities.

Some legal provisions, such as that "Judges and members of the Constitutional Court may not be detained or subjected to criminal or administrative charge except with the consent of the Council of Justice or the Constitutional Court, as applicable" (part 3, Article 97 of the Constitution of Armenia) appear excessive. Historically, such legal provisions aimed to play a role in protecting judges from undue influence. Immunity from legal liability for judges should be based on objective and well-founded grounds. Immunity from administrative liability appears to be a remnant of the Soviet system and is not subject to objective grounds. Such "positive" discrimination in the treatment of judges compared with other members of society is of doubtful validity and should not occur in a state governed by the rule of law. The Experts are of the opinion that such immunity for judges may be reconsidered and reduced in appropriate legislation.

In accordance with the Armenian legislation a judge must immediately inform the Ethics Committee of the Council of Presidents of Courts as to any interference with his activities relating to the administration of justice or the performance of other powers provided by law, if such interference is not permitted by the law. If the Ethics Committee finds that the judge's activities have been interfered with in a way that is not permitted by law, "it must petition the competent authorities to hold those responsible accountable" (part 4 of Article 11 of Judicial Code). It is not clear, however, how the Council of Court Presidents would evaluate the situation in a case of undue influence with judicial activities exercised by authorities internal to the judiciary.

Enshrining in law the possibility of reporting cases of improper influence to the president of the court (or where the president is involved, to the highest judicial self-governing body) is a progressive step which fully meets the European standards. Notwithstanding the existence of similar legal provisions (including the possibility or duty to report cases of undue influence) in the other beneficiary countries, no examples were given to the Experts as to their practical application. This suggests that either there were no cases of undue influence or judges for some reason did not report such issues to the self-governing bodies.

Summary and Recommendations

The legal liability for undue outside pressure, influence or interference against judicial activities provided for in the Armenian legislation meets European standards.

The judge may and should report to the Ethics Committee any interference with the administration of justice. However the law does not set up a clear procedure for the Council of Court Presidents in terms of how it ought to deal with undue influence by internal judicial authorities.

Azerbaijan

The Constitution of Azerbaijan provides that "any direct or indirect restriction upon legal proceedings by any person and by means of illegal influence, threats or interference is not allowed" (part 3 of Article 127 of the Constitution of Azerbaijan).

In order to avoid undue outside pressure, judges in Azerbaijan are depoliticized. This means that they have no right to be involved in the activities of political parties or organizations. The legislation of Azerbaijan provides that the independence of judges shall be provided for, *inter alia,* by "preventing the imposing of any limitations on or interference with court proceedings; ensuring the personal safety [of judges]; and supplying [judges] with the financial and social provisions they require to fulfil their posts, throughout the entire term of their office" (Article 100 of the Law "On Courts and Judges").

The legal provisions above are generally in line with European standards. However, the norms may be rendered merely declaratory in the absence of proper implementation.

Even though Article 11.07 of the JLC Act provides that the Council is obliged "to prevent any interference" with judges, this legal provision is no more than declaratory.

Some shortcomings can be seen in the legal provisions relating to possible inside undue pressure or interference. The most important of these concerns is the lack of any provision as to the factors that constitute inside pressure. Moreover, no state body is mentioned as being responsible for dealing with cases of interference from inside of the judiciary.

Summary and Recommendations

Overall, the legal provisions in Azerbaijan regarding undue influence, interference or pressure meet European standards.

As mentioned above, the legal provisions prohibiting undue influence on judges and courts - even though provided at the highest level and apparently accorded the utmost

importance - are no more than a prerequisite for judicial independence. These safeguards and prohibitions can only be effective where they are enforceable in practice. Undue interference and pressure can be counterbalanced only if: (1) judges report it to the competent authorities (including judicial self-governing bodies) and, even more importantly, (2) the persons who attempt to unduly influence judges are held accountable.

It would be advisable that the legislature or the judicial self-governing bodies develop guidelines on what kinds of actions should be taken should be considered inside pressure on a judge or undue interference with his or her activities.

Georgia

Part 3 of Article 84 of the Constitution of Georgia contains an important legal provision dealing with undue political influence: "No one shall have the right to demand an explanation from a judge in a particular case". Such a guarantee against outside pressure might serve as an example for the other countries in the region in demonstrating that the principle of separation of powers is not simply declaratory. The requirement also protects the individual independence of a judge. The principle that judges are not accountable for their decisions usually means that the state authorities have no right to demand judges to give any explanations or legal arguments other than those that appear in their decisions, judgments or rulings. European standards are relatively strict regarding the individual independence of judges. Respect for the individual independence of judges extends to the judicial authorities also: "In exercising their functions, councils for the judiciary should not interfere with the independence of individual judges" (Recommendation CM(2010)12, paragraph 29) .

"Any pressure upon a judge or interference in his/her activity with the aim of influencing his/her decision shall be prohibited and punishable by law", according to part 1 of Article 84 of the Constitution of Georgia. In this respect, the prohibition of undue interference into judicial activities at the highest possible legislative level is a natural attribute of any state governed by the rule of law.

However this constitutional provision would be reduced merely to a declaration if not given a specific expression in appropriate laws or regulations.

In this respect the legislation in Georgia probably went further than other beneficiary countries: the law requires judges to submit promptly a written report to the president of the court if the participants of proceedings, interested persons, public servants or state officials communication with the judge in a manner prohibited by the law (Article 4 of the Law" On the Rule of Communication with the Common Court Judges").

The Georgian legislation provides that from the moment of submission of a case to the court until the entry into effect of the court judgment on the case, and also during the investigation of a criminal case, the participants of proceedings, interested persons, public servants and the state officials shall be prohibited from any communication with the judge relating to his or her consideration of the case and/or the possible outcome of the case that violates the principles of independence and impartiality of the judge or the adversarial nature of the proceedings (Article 3 of the Law "On the Rule of Communication with the Common Court Judges"). Such measures represent rather novel guarantees at the European level and could probably be

used in countries where traditionally the culture of pre-trial contacts between various persons and members of the judiciary were not considered improper.

Summary and Recommendations

The legal regulation regarding undue influence, interference or pressure on judges provided in Georgia meets European standards.

Provision of Article 84, part 3, of Constitution of Georgia which states that "No one shall have the right to demand an explanation from a judge in a particular case" may serve as an example to other countries in the region of a guarantee against outside pressure and can demonstrate that the principle of separation of powers is not simply declaratory.

The rules relating to communications with judges adopted in Georgia could also serve as an example for other states in the region.

Moldova

Article 16 (part 1) of the Constitution of Moldova provides that judges sitting in the courts of law are independent, impartial, and irremovable under the law. This constitutional provision is positive but should be given specific expression in appropriate laws or regulations.

In accordance with Article 17 of the Law on the Status of a Judge, the independence of a judge shall be secured, *inter alia*, by "sanctions for interfering with the judicial process" (part "e"). The Law on the Organization of the Judiciary also contains a prohibition of interference with "the administration of justice"[1].

Criminal liability for any interference with the "administration of Justice and with criminal investigations" is provided in Article 303 of the Criminal Code of Moldova[2].

The legal provisions cited above are supposed to be minimum legislative guarantees in order to prevent undue influence, interference or pressure upon judicial activities.

[1] Article 13 of the said Law, for instance, provides for that (1) any interference with the administration of justice is prohibited and (2) any influence on judges aimed at preventing their full and objective consideration of the case before them or preventing them from issuing their judgment shall entail the administrative or criminal liability of the person(s) responsible in accordance with the law.

[2](1) Any interference with the examination of cases by courts in order to hinder their comprehensive, complete, and objective examination of a specific case or in order to obtain an illegal court decision shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 2 years.
(2) Any interference in any form with the activities of criminal investigative bodies in order to hinder the speedy, complete, and objective investigation of a criminal case shall be punished by a fine of up to 350 conventional units or by community service for 180 to 240 hours.
(3) The actions set out in paras (1) or (2) where committed through the abuse of an official position shall be punished by a fine in the amount of 400 to 600 conventional units or by imprisonment for up to 4 years, and in both cases this will result in a deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.

The legal regulation does not envisage what steps any judge facing undue influence or interference that does not engage criminal liability is supposed to take. It is not clear what role is given to the judicial self-governing bodies in preventing external or internal undue influence, interference or pressure. Therefore, it would be advisable to further develop national legislation and practice in order to preclude undue external influence or interference or internal influence such as internal hierarchical pressure.

As for some other countries in the region, Moldova is advised to strengthen the self-governance of the judiciary on the one hand and to weaken the structural ties between the executive and the judiciary on the other. This would have a positive impact in terms of diminishing the scope for improper external influence, interference or pressure.

Summary and Recommendations

The legal provisions regarding undue influence, interference or pressure on judges in Moldova meet European minimum standards.

It would be advisable, however, for Moldova to strengthen the self-governance of the judiciary on the one hand and to weaken the structural ties between the executive and the judiciary on the other. This would have a positive impact in terms of diminishing the scope for improper external influence, interference or pressure.

It would be advisable to further develop national legislation and practice in order to preclude undue external influence or interference or internal influence such as internal hierarchical pressure.

Ukraine

Article 126 of the Constitution of Ukraine provides that “any influence on judges shall be prohibited“. This provision fully meets the European standards. It must, however, developed in primary and/or secondary legislation. It seems that the mere declaration that “[i]n their professional activities, judges shall be independent of any undue influence, pressure or interference” (Article 47 of the Law "On the Judicial System and Status of Judges") is not enough to develop the constitutional guarantee.

Therefore the further development of guarantees against undue influence, interference or pressure upon judicial activities made in Ukraine is welcomed. For instance, the provision that “a judge shall not be obliged to provide any explanations regarding the merits of cases under his/her consideration, except where required by law” should be considered as a progressive one. On the other hand, the exception “when required by the law” needs to be clarified. It appears that to legislate for various cases in which a judge may be required to provide explanations regarding the merits of cases under his/her consideration might create a situation not fully in line with the European standards.

The provision that “a judge shall be entitled to report the existence of a threat to his/her independence to the Council of Judges of Ukraine, which shall be obliged to urgently verify and examine such a report and take necessary action to eliminate the threat” (Article 47 of the Law "On the Judicial System and Status of Judges") seems relevant to strengthening the individual independence of judges in terms of preventing undue influence, interference and pressure. As in Georgia, this Ukrainian approach could be also considered as a good example.

Associations of judges are useful fora for discussions of matters relating to the judiciary, including the independence of judges in general and undue influence, interference or internal or external in particular. Judges must be allowed to form associations and participate in them on a voluntary basis. It has been seen on various occasions in Europe that associations of judges can play a significant role in combating undue influence upon judges. Consequently, legal provisions encouraging judges to participate in judicial self-governing as well in associations as a means of protecting their rights and interests and to improve their professional skills (for instance, Article 54 of the Law "On the Judicial System and Status of Judges of Ukraine") fully correspond with European standards. Such approaches are good examples worthy of replication in other participating countries.

Summary and Recommendations

In principle, the legal regulation regarding undue influence, interference or pressure on judges meets European standards.

The requirement that "a judge shall be entitled to report the existence of a threat to his/her independence to the Council of Judges of Ukraine, which shall be obliged to urgently verify and examine such a report and take necessary action to eliminate the threat" set out in the Ukrainian legislation could be also considered as an example to follow.

Legislative provisions such as "judge shall not be obliged to provide any explanations regarding the merits of cases under his/her consideration, except when required by law" is in principle progressive. However, the exception "when required by the law" needs clarification. Otherwise it might be considered inconsistent with the European standards.

Legal provisions encouraging judges to participate in judicial self-governing as well in associations as a means of protecting their rights and interests and to improve professional standards fully corresponds with European standards. Such an approach ought to be followed in other participating countries.

General conclusions on guarantees against undue pressure

Any undue pressure or improper influence upon, and any threat to or interference with judicial work should be considered a real danger in terms of the potential violation of the individual's right to a fair trial conducted by an impartial and independent court in accordance with Article 6 of the ECHR.

There were no practical examples provided to the Experts as to reports by judges in the **participating countries** of cases of undue influence (except for four cases reported by the delegation of **Georgia**). This suggests that either there were no such cases or judges for some reason do not report such issues to the self-governing bodies.

In the context of undue internal interference, the role of court presidents is of vital importance. In line with a general trend identified, *inter alia*, in the OSCE/ODHIR Kyiv recommendations (2010), the role of court presidents in terms of their relationship with other judges should be based on the concept of *primus inter pares*. The president of the court should be not considered as a boss or "natchalnik" who may give advice or instructions as to how a judge ought to decide a case or on how the law or facts ought to be interpreted.

One of the activities of the court presidents as well as the judicial self-governing bodies should be to foster a common judicial culture in which undue contact with the parties of a case or with others with an interest in the outcome of court proceedings are considered improper.

An important guarantee against undue influence or pressure is the prohibition upon forcing judges to explain their judicial decisions to the executive or legislature. The principle that judges are not accountable for their decisions usually means that the state authorities have no right to demand from them any explanations or legal arguments other than those which appear in their decisions, judgments or rulings.

Legal responsibility for undue outside pressure or influence upon, or interference with judicial activities as provided for in the **Armenian** legislation meets European standards.

The **Armenian** legislation lays down an *obligation* for judges to report to the Ethics Committee of the Council of Court Presidents any interference with his/her activities relating to the administration of justice. It is not sufficiently clear, however, how the Council of Court Presidents would deal with a case of undue influence with judicial activities by authorities internal to the judiciary.

The legal regulation surrounding undue influence, interference or pressure on judges set out in **Moldova** meets minimal European standards. It would be advisable, however, to further develop national legislation and practice in order to prevent any judge from undue external influence, interference or internal hierarchical pressure. It would also be advisable to strengthen the self-governance of the judiciary on the one hand whilst weakening structural ties between the executive and the judiciary on the other. This would have a positive impact in terms of diminishing the scope for improper external influence, interference or pressure.

The legal regulation in **Ukraine** regarding undue influence, interference or pressure envisaged in Azerbaijan in principle meets the European standards.

It would be advisable for the legislature or judicial self-governing bodies in **Azerbaijan** to develop guidelines or regulations as to the actions that flow from cases of undue influence, interference or pressure and to which body judges ought to report such cases.

The legal regulation on undue influence, interference or pressure in **Georgia** meets the European standards.

"No one shall have the right to demand from a judge an explanation as to his or her decision(s) in a particular case". Such a guarantee against outside pressure as set out in the Constitution of **Georgia** could serve as an example for the other countries in the region in terms of demonstrating that the principle of separation of powers is not merely declaratory in nature.

The rules on communication with judges adopted in Georgia could also serve as an example for other states in the region.

The Experts are unable to provide any assessment or to make any recommendations in relation to **Moldovan** law on this point, as no legislation or other information was available to them. If the Moldovan legislation does not provide for any guarantees against undue outside or inside interference, influence or pressure on judges, Moldova would be strongly advised to follow the example of the other states in the region and provide for such guarantees in legislation.

In **Moldova**, the legal regulation of undue influence, interference or pressure on judges, in principle, meets the European standards.

The requirement that "a judge shall be entitled to report the existence of a threat to his/her independence to the Council of Judges of **Ukraine**, which shall be obliged to urgently verify and examine such report and take necessary action to eliminate the threat" provided for in the Ukrainian legislation could be also considered as an example to follow.

In **Ukraine**, legislative provisions such as that "a judge shall not be obliged to provide any explanations regarding the merits of cases under his/her consideration, except when required by law" are in principle progressive. On the other hand, the exception "when required by law" needs clarification. Otherwise it might be considered as inconsistent with the European standards.

The provisions of the law encouraging judges to participate in judicial self-governing bodies and in associations in order to protect their rights and interests and to improve professional standards fully corresponds with European standards. Such an approach would be advisable in other beneficiary countries as well.

2.6 Unethical behaviour: delineation from disciplinary liability

Relevant European Standards

The ethical aspect of judges' work and their possible disciplinary liability are relatively complex fields to examine.

As the CCJE landmark Opinion No 3 clearly states, the ethical aspects of judges' conduct need to be discussed for various reasons:

"The methods used in the settlement of disputes should always inspire confidence. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice."

The question then arises as to what kinds of standards should apply to judges with regard to their conduct.

According to the above opinion, any analysis of the rules governing the professional standards applicable to judges ought to include consideration of the underlying principles at stake and the objectives pursued.

Therefore it is important that the conduct rules contribute to protecting the impartiality of a judge. This lies at the heart of the right to a fair trial enshrined in Article 6 of the ECHR and, consequently, at the heart of each set of conduct rules.

Accordingly, Article 2 of the "Basic principles on the independence of the judiciary" drawn up by the United Nations in 1985 provides:

"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".

Under Article 8 of these principles, judges:

"Shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".

The CCJE underlines that judges should, in all circumstances, act impartially, to ensure that there can be no legitimate reason for citizens to suspect any element of partiality. In this regard, impartiality should be apparent both in the exercise of the judge's judicial functions and in his or her other activities.

A code of rules for judges can also serve to foster trust in the judiciary. As public trust in the judiciary is determined mainly by the behaviour of each individual judge, it is important to regulate this behaviour in a clear and transparent way.

Unlike in some other professions, judges are generally perceived as judges even when they act in a private capacity. In light of the fact that trust in the work of judges relates intimately with

the level of trust that exists in relation to the judge as a person, it is necessary to have a closer look not only at judges' conduct when exercising their official functions but also at their conduct during extra-judicial and other professional activities.

With regard to **the impartiality and conduct of judges in the exercise of their judicial functions,** CCJE Opinion states under paragraph 22-23 that:

"Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts. Judges should therefore discharge their duties without any favouritism, display of prejudice or bias. They should not reach their decisions by taking into consideration anything which falls outside the application of the rules of law"

As for the **impartiality and extra-judicial conduct of judges**, it is noteworthy that expectations as to judges' behaviour outside their judicial office even have an impact upon judges' rights as citizens as set out notably in the ECHR.

CCJE states in paragraph 27-29 of its Opinion that:

"Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality……..

A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality……..

Judges should conduct themselves in a respectable way in their private life."

Finally, **impartiality in terms of other professional activities of judges** is also relevant**:**

CCJE Opinion states in paragraph 37 and 39 that:

"The specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power. This requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner.

The CCJE considers that rules of professional conduct should require judges to avoid any activities liable to compromise the dignity of their office and to maintain public confidence in the judicial system by minimising the risk of conflicts of interest. To this end, they should refrain from any supplementary professional activity that would restrict their independence and jeopardise their impartiality."

Having delineated the areas of judges' lives that should be covered by conduct rules, the next question that arises is: "***How should standards of conduct be formulated?"***

The continental judicial tradition strongly advocates codification, and there are valid arguments in support of this:

- A code of conduct can help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence from other authorities.

- Additionally, conduct rules help civil society to have a better understanding as to what kind of conduct it is entitled to expect from judges. In this way, such rules also contribute to maintaining public confidence that justice is being administrated independently and impartially.

- Conduct rules demonstrate the profession's ability to produce, as a counterbalance to its powers, a set of values matching public expectations. These are **self-regulatory standards** that constitute a recognition that the application of the law is not a mechanical exercise, involves real discretionary power and places judges in a relationship of responsibility towards themselves and towards citizens.

The most important difference between the codes of conduct, or in the wording of Opinion No 3 of the CCJE, "the statement of standards of professional conduct", on the one hand and disciplinary rules on the other, is that the statement of standards results from ongoing professional discussions among judges as to how they should perform their duties towards society, whilst disciplinary sanctions are there to punish with the aim of reducing certain conduct of judges. For that reason it is strongly advisable to all judiciaries and Councils for the Judiciary **not to bring into force rules that provide that behaviour that is not in conformity with ethical** standards is automatically labelled a disciplinary offence. **The Magna Carta of Judges** is also absolutely clear in this respect. It provides at paragraph 19 that in each State, statutes or charters applicable to judges shall define any misconduct that may lead to disciplinary sanction or proceedings.

The CCJE considers that the preparation of such statements in each country is to be encouraged, even though they are not the only method of disseminating rules of professional conduct.

In its chapter 3, the CCJE is summarising its conclusion on standards of conduct as follows:

"3°) Conclusions on the standards of conduct

49. The CCJE is of the opinion that:

i) judges should be guided in their activities by principles of professional conduct,

ii) such principles should offer judges guidelines on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality,

*iii) the said principles should be drawn up by the judges themselves and be **totally separate from the judges' disciplinary system,***

iv) it is desirable to establish in each country one or more bodies or persons within the judiciary to advise judges confronted with a problem relating to professional ethics or compatibility of non judicial activities with their status.

50. As regards the conduct rules of every judge, the CCJE is of the opinion that:

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,

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,

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".

Additional information as to the ethical behaviour expected of judges as well as their disciplinary liability in CM/Rec(2010)12:

Liability and disciplinary proceedings

66. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence.

67. Only the state may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation.

68. The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice.

69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.

70. Judges should not be personally accountable where their decision is overruled or modified on appeal.

71. When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.

Chapter VIII − Ethics of judges

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary."

With the above opinion and recommendations in mind, this paper will now look at the Regulatory framework that exist in the participating countries.

Regulatory framework of the countries

The following chapter attempts to briefly analyse the main aspects of each system following the structure of the above Opinion in assessing each participating country. It aims, in particular, to look at whether a set of rules regulating judicial conduct exists, who approved those rules where they do exist, and what they contain. In addition, the paper looks at whether the conduct rules are clearly distinguished from rules governing disciplinary proceedings.

Armenia

The Judicial Code of Armenia contains a dedicated chapter (chapter 12, Art. 87 *et seq*.) on "rules of judicial conduct".

In accordance with Article 87, the rules, as described in this chapter, are not exhaustive but can be supplemented by additional rules as approved by the general assembly of judges.

The Experts are not aware of the specific content of such additional rules, so the comments herein are limited to the rules set out in the judicial code.

As stated above, in accordance with the CCJE Opinion No. 3, rules governing the judiciary should come from judges themselves rather than from the legislature. In Armenia, the rules emanate from the latter institution. The current structure of Armenian law, which sets out a basic set of standards in its legislation and then leaves it up to the judiciary to come up with additional rules is problematic insofar as it may appear to be a sign of the legislature's lack of trust in the judiciary as to its ability and/or willingness to come up with sufficient rules on its own.

Moreover, it is striking when reading the relevant provisions that the list of rules set out in the judicial act is substantial, leaving little room for supplementary rules to be added by the judiciary.

However, the judicial self-governing body, that is the Council of Court Presidents, has developed its own book on ethics, which must be read together with the regulations contained in the judicial act. As mentioned above, it would appear advisable to limit the conduct rules to a set of regulations created by the self-administrative body itself. This would avoid overlap and duplication and contribute to a better-structured set of regulations.

In addition, the current two-track approach contradicts the main objective of conduct rules in failing to facilitate the development of professional self-reflection and self-determination.

The law does not contain specific provisions as to the application of the conduct rules across judges of all instances.

Furthermore, it is not clear who is responsible for monitoring the conduct of judges and what happens in cases of misconduct. It does appear that the Council of Court Presidents has an ethics committee is responsible for this. As the Experts have not been provided with the relevant regulations, this cannot be discussed in this paper.

As to the substantive content of the law, on a positive note it should be emphasised that the legislature followed a similar structure to the CCJE in distinguishing between judicial conduct and extra-judicial conduct, pointing out that society has certain expectations of a judge that go beyond his judicial office.

On the other hand, one cannot avoid noting that the legislature, when drawing up the standards, has again followed the well-known "positivist approach" of codification, producing a content that is both extensive and detailed. This approach makes the regulatory framework quite confusing and might mislead the reader into assuming that anything not expressively forbidden under the code is in line with professional ethics.

The chapter on judicial conduct also deals in a very detailed way with the question of "*ex parte*" communications between the judges and parties. It appears that this part of the chapter amounts to over-regulation, and that some of the regulations would be better placed in different procedural codes rather in a chapter addressing judicial conduct.

Another example of over-regulation can be found at Art. 95 of the Judicial Code, which sets out the prohibition on the acceptance of gifts by judges. Aside from the fact that this article is confusing as a result of its very detailed description of different factual scenarios and particular gifts, there are some ambiguities in the text susceptible of giving rise to misunderstandings.

In its third sentence, Art. 95 defines a gift as "any pecuniary advantage that would be reasonably given to a non-judge". The Experts do not know of any common differentiation of presents, such as those could be reasonably given to non-judge and those that could not be reasonably given to a judge. In the Experts' view, a gift in the context of ethical behaviour is any pecuniary advantage. The differentiation between gifts that can reasonably given to non-judges as opposed to judges can only confuse and should be avoided.

Paragraph 2 of the same Article also merits discussion. It allows a judge to accept, *inter alia, "books, computer software and other material provided at no cost, for official use"*.

In the Experts' view, this regulation is extremely problematic as it opens the door for wealthy clients such as banks to build influence with the judicial institutions by generously supporting them.

Summary and Recommendations

As stated above, it is positive that the Armenian judiciary has a codified set of conduct rules.

The current two-track approach, however, of having some, very extensive regulation in the judicial act and of allowing the General Assembly of Judges to approve additional regulations seems too complicated and creates a risk of overlap and contradiction. In accordance with the CCJE Opinion, all regulations with surrounding judicial conduct should come directly from the judiciary itself. It would be advisable for the legislator to reconsider the current approach and revise the provisions of Chapter 12 or to remove it from the Judicial Code.

As to its substantive content, the current version of the regulations is very detailed and a relatively confusing. A new version of standards of judicial conduct should be more succinct, thereby contributing to a better understanding of its guiding principles.

Azerbaijan

In accordance with Art. 11.0.10 of the Judicial-Legal Council Act, it is for the Judicial-Legal Council to adopt a code of ethics for judges. In this respect, the legislation follows the CCJE Opinion No.3 and accords the power of regulating ethical questions to the profession itself.

Art. 99 of the Court and Judges Act provides:

"The code of ethical behaviour for judges is a collection of the principles and standards of ethics relevant to a judge's activities. The code shall prescribe ethical and conduct requirements and regulate professional ethics issues relating to judicial and extra-judicial conduct, as well as judges' attitudes towards their professional activities. The JLC shall approve the Code of Ethical Behaviour for Judges."

This brief definition demonstrates that the legislature of Azerbaijan also differentiated between judicial and extra-judicial behaviour of judges.

What can be said is that Art. 111-1, which lists the grounds giving rise to the disciplinary liability of judges, provides that breaches of ethics constitute a ground for disciplinary liability.

In terms of this close link between ethical behaviour and disciplinary proceedings, the legislation is not fully in line with the CCJE Opinion No.3, which states that conduct rules should:

"[B]e totally separate from the judges' disciplinary system."

Summary and Recommendations

The current code of ethics was not available, therefore, it was not possible for the Experts to make any recommendations as to its contents or the mechanisms used to increase awareness of its existence or to monitor its observance.

Georgia

In accordance with Art. 65(g) of the Law on the Common Courts, it is for the Conference of judges of Georgia to adopt a "Judicial Ethics Code". The current code was adopted in 2007 and is aimed, according to its preamble, at "strengthening the independence, impartiality and unity of the judiciary, increasing public trust and faith in it, and protecting the prestige and authority of the judicial office."

It is clear that due to the adoption of the code by the conference of judges themselves, Georgia is fully implementing the recommendation contained in CCJE Opinion 3.

Of greater concern is the close link between ethical rules and disciplinary proceedings. The Law on Disciplinary Responsibility defines in Art. 2.2.(i) a violation of judicial ethics norms as a disciplinary violation. Sanctions for such violations may include a notice, a reprimand, a strict reprimand, and a removal from office or from the reserve list (Id. art. 54^1 1.(d)). In this regard, the same comments made above apply.

The Judicial Ethics Rules consist of 28 articles, which cover important areas such as judicial impartiality, independence, competence and diligence, as well as relations between the courts and the media, and non-judicial activities. The Judicial Ethics Rules specifically prohibit *ex parte* communications and require a judge to inform the court chair in writing of any attempt to communicate with him or her about a pending case. In addition, judges are prohibited from belonging to a political party or engaging in any political activities. For further details on the content of the code, reference can be made to ABA/ROLI JRI II, which was used as a source for the present report. In summary, it can be said that the code covers all the important aspects of ethical behaviour and appears to follow a clear and intelligible structure free of unnecessary overlap or duplication.

Summary and Recommendations

The Experts recommend a review of the current link between ethical standards and disciplinary liability and to separate more clearly these two fields as necessary.

Moldova

It is for the Superior Council of Magistrates to approve an ethical code. As the Superior Council of Magistrates (SCM) is a judicial self-governing body, this practice fully accords with CCJE Opinion 3.

As noted in the chapters concerning **Georgia** and others, in **Moldova** the SCM created a strong link between unethical behaviour and disciplinary liability in the current legislation. The rules as laid down by the ethical code are binding, and breach of them may result in disciplinary proceedings and, potentially, a finding of a liability. Therefore it would be advisable to re-consider the major aim and objective of an ethical code in light of European traditions and to consider a stronger separation between ethics and discipline.

The SCM approved a new Judicial Code of Ethics on November 29, 2007. The earlier code, adopted in 2000, was very brief, with 30 one-sentence rules governing judicial behaviour. The new Code, which took effect January 1, 2008, is intended to provide more concrete rules in specific areas, with corresponding explanatory passages on the meaning and application of the rules for the conduct of judges.

The new Code contains five chapters covering issues such as judicial independence and impartiality, judges' duties and obligations, incompatibilities and prohibitions, as well as liability. The 15 articles contained within these chapters cover a wide range of conduct, including recusal in light of conflict of interest or potential conflict of interest; a prohibition on *ex parte* communications; a ban on supporting political candidates or taking part in political activities; and a requirement to act in a dignified, patient, and courteous manner during proceedings.

Summary and Recommendations

The Experts recommend a review of the current link between ethical standards and disciplinary liability and to separate more clearly these two fields as necessary.

Ukraine

Ukraine has a Code of Judicial Ethics for Judges, adopted by the Congress of Judges in 2002.

At present, a working group is dealing with drafting a new set of conduct rules. Thus, only some general remarks should be made as to the content of the current code.

The code makes clear at the outset that its norms cannot be used as reasons for disciplinary punishment of judges or to determine their guilt. In this respect, the current version of the code is in line with the CCJE Opinion in that it seeks to avoid a close link between the ethical code and disciplinary proceedings. The only question that arises is whether these general and very strict limitations are consistent with Art. 83 of the Law on the Judicial System and the Status of Judges. It provides that "systematic or gross, one-off violations of the rules of judicial ethics […]" constitute a valid ground for disciplinary action (for further details, see the chapter below on disciplinary liability).

Summary and Recommendations

The ethical code of Ukraine is a very good example of the difficulties all the countries face in keeping ethical rules separate from disciplinary proceedings on the one hand, and developing a tool with which to bring the ethical standards to life on the other hand.

General conclusions on unethical behaviour and delineation from disciplinary liability

It is very positive that **all participating countries** have a code of ethics for judges. However, the judges themselves do not or did not decide on the set of conduct rules in all countries (**Armenia**). Therefore, the Experts strongly recommended that judicial self-governing bodies in certain countries ought to be exclusively responsible for the adoption of a set of ethical rules.

Most problems encountered relate to finding a balance between a necessity to strictly separate ethical rules from disciplinary rules on the one hand, and the desire to prevent at least the most serious or repeated violations of ethical rules on the other (**Armenia, Azerbaijan, Georgia, Moldova, Ukraine**). To achieve this, countries must avoid an automatic approach that labels all ethical breaches as grounds for disciplinary proceedings.

All countries should consider adopting a clear system through which to increase awareness of the applicable ethical rules and an understanding of their nature as constantly developing standards. A body should be appointed in order to take the lead in this dissemination process and offer additional guidance to individual judges.

2.7 Judges' liability and disciplinary proceedings

Relevant European Standards

Alongside rules relating to the ethical behaviour of judges, there is the question of disciplinary proceedings against them.

The corollary of the powers and trust conferred by society upon judges is that there should be some means of holding them responsible and even of removing them from office where their misconduct is so serious as to justify such a course. The regulation of disciplinary liability must be done, however, whilst recognizing the need to maintain judicial independence and freedom from undue pressure.

The area of judges' discipline and liability can be divided into three tranches, namely criminal, civil and disciplinary liability.

The interpretation of the law, the assessment of facts or the weighing of evidence by judges in order to determine cases should not be capable of giving rise to civil or disciplinary liability, except in cases of malice or gross negligence – CM Rec 2010 (12), para 66.

In accordance with CCJE Opinion 3 as regards to **criminal liability:**

- judges should be criminally liable in ordinary law for offences committed outside their judicial office and

- criminal liability should not be imposed on judges for unintentional failings in the exercise of their functions.

With regard to **civil liability,** the CCJE, bearing in mind the principle of independence, considers that:

- the remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals (whether with or without permission of the court);

- any claim for remedy for other failings in the administration of justice (including for example excessive delay) should be brought only against the state;

- it is not appropriate if a judge be exposed, in respect of the purported exercise of judicial functions, to any personal liability even by way of reimbursement of the state expenses, except in a case of wilful default.

As regards **disciplinary liability**, the CCJE considers that:

i) In each country the statute or fundamental charter applicable to judges should define, **as far as possible in specific terms, the failings that may give rise to disciplinary sanctions as well as the procedures to be followed**;

ii) As regards the instigation of disciplinary proceedings, countries should envisage introducing **a specific body or person** with responsibility for receiving complaints, for obtaining the representations of the judge and for considering in their light whether or not there is a sufficient case against the judge to call for the initiation of such proceedings;

iii) Any disciplinary proceedings initiated should be determined by an **independent authority or tribunal, operating a procedure guaranteeing full rights of defence**;

iv) When such authority or tribunal is not itself a court, then its members should be appointed by the independent authority (with substantial judicial representation chosen democratically by other judges) advocated by the CCJE in paragraph 46 of its Opinion N° 1 (2001);

v) The arrangements regarding disciplinary proceedings in each country should be such as **to allow an appeal from the initial disciplinary body** (whether that is itself an authority, tribunal or court) to a court;

vi) The sanctions available to such authority in a case of a proven misconduct should be defined, as far as possible in specific terms, by the statute or fundamental charter of judges, and should be applied in a **proportionate** manner.

Regulatory framework in the participating countries

Armenia

In **Armenia**, the Justice Council has, in accordance with Art. 106 of the Judicial Act, a power to elect a disciplinary committee made up of three members of the Council. The committee must include two judicial members.

In accordance with Art. 106, paragraph 2, this disciplinary committee has a right to institute disciplinary proceedings against first instance court judges, appellate court judges and court chairmen, and to file motions thereon to the Council.

As for Cassation Court judges, chamber chairmen and the Cassation Court Chairmen, the committee can institute proceedings following a request by the Ethics Committee of the Council of Court Presidents.

In accordance with Art. 155 of the Judicial Code, the Minister of Justice is also vested with this right. This is surprising given that disciplinary proceedings against judges are usually seen as a matter of self-governance. It is not clear why the Minister of Justice should have the right to institute proceedings. This is even more anomalous upon a reading of paragraph 5 of Art. 155, which lists grounds for bringing disciplinary proceedings. The disciplinary committee or the Minister of Justice may each act on the following grounds:

1) Following a decision of the Cassation Court confirming that a clearly illegal judicial act was carried out in the administration of justice or the determination of a substantive case, or the judge committed an obvious and grave violation of the rules of procedural law in the administration of justice;

2) Following an application by an individual;

3) Following a communication from a state or local government body or official;

4) Upon the filing of a motion by the Ethics Committee of the Council of Court Chairmen;

5) Upon the discovery as a result of reviewing or studying court practice of an act giving rise to disciplinary liability; or

6) Upon the discovery by the person instigating the proceedings of an act giving rise to disciplinary liability.

The list shows that the committee and the MoJ can act of their own motion (6) and each can act in the presence of five other grounds. The reason for this duality in Armenian law is not clear.

The involvement of the MoJ becomes even more problematic when one examines the rights set out in Art. 156. In accordance with paragraph 2 (2) 'In court, familiarize himself with materials relating to any criminal, civil or other case on which there is still no final judgment.'

In the Experts' view, this provision opens the door for all manner of improper influence upon the judge with respect to ongoing legal proceedings. It is extremely questionable whether such extensive rights should be granted to the disciplinary committee (and, in Experts' opinion, they should not be), but it is in any event unjustifiable to allow the MoJ, a part of the executive branch, to collect information on ongoing cases and proceedings. This is even more concerning in light of the fact that the provision does not limit this right to looking into cases under live consideration but entitles the MoJ to look into **any** ongoing case.

In addition to concerns over the procedure relating to the disciplinary of judges, the list of grounds for disciplinary action is also problematic.

In line with the CCJE Opinion, the grounds are clearly listed in law at Art. 153. In accordance with paragraph 2 of the provision:

2. A judge may be subject to disciplinary liability on the following grounds:

1) An obvious and grave violation of a provision of substantive law in the administration of justice: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one year of the judge resolving the substantive case;

2) An obvious and grave violation of a provision of procedural law in the administration of justice: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one year of the judge resolving the substantive case;

3) Regular violations or a grave violation of work discipline: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one month of the

discovery of the ground on which disciplinary liability is based, but not later than six months following the emergence of such ground;

4) Regular violations or a grave violation by the judge of the Code of Conduct: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within three months of discovery of the ground on which disciplinary liability is based, but not later than one year following the emergence of such ground;
5) The judge's failure to carry out the judicial duties prescribed by Article 12, Article 72, Article 105(2), Article 156(3), Article 159(3), Article 191, Article 167(3), and Article 193 of this Code: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one month of the judge committing the violation; or

6) The failure to notify the Ethics Committee, in accordance with the procedure provided by this Code, of any interference with his activities of administering justice or exercising other powers provided by law, or of other influence not prescribed by law: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within three months of the discovery of the violation, but not later than one year following the violation itself.

3. The quashing or amendment of a judicial act shall not, *per se*, give rise to the liability of a judge that made such judicial act.

4. Subjecting a judge to criminal, administrative, civil, or other liability prescribed by law does not preclude the possibility of subjecting the judge to disciplinary liability, and vice-versa.

In this context, it is interesting to note that the quashing or amendment of a judicial act shall not *per se* constitute a ground for disciplinary action, as opposed to any obvious or grave violation of substantive or procedural law.

It appears to be in accordance with the CCJE Opinion to allow only repeated or grave violations by judges to lead to disciplinary liability. As has been stated above, states should avoid automatic disciplinary liability for unethical behaviour, and instead it should only be possible to take ethical violations into account in determining such liability. So in this respect, the Armenian system appears to be in line with the CCJE Opinion.

As for the disciplinary sanctions applied to judges, a list of possible penalties can be found in Art. 157. In principle, this list enables the Justice Council to choose a sanction in line with Art. 157, paragraph 4 of the law, which requires that the sanction applied be proportionate to the seriousness of the offence.

Of some concern in this context are the rather rigid combinations of a reprimand with a reduction of 25% in a judge's salary over a six-month period, and of a severe reprimand with the same reduction over a one-year period. The Experts would advocate greater flexibility in this respect. One option would be to set the 25 % reduction and the six-month or one-year period as a ceiling for possible sanctions.

Whenever reductions of salary are envisaged as a sanction (which does not, as such, conflict with European standards), the legislature should be alive to the fact that, especially in countries and regions in which the judicial salary is relatively low, such reductions may

increase the risk for corruption and may ultimately prejudice the parties to a case rather than the judge in question.

In this respect, the Experts wish to underline the fact that Art. 157, paragraph 6 limits the total salary reduction in the event of consecutively applied sanctions to 50% of the judge's salary. In the Experts' opinion, this stipulation is prudent in order to avoid depriving judges an amount of income necessary to survive and potentially forcing them, as a result, to resort to corruption. However, a reduction of 50 % appears, in light of the discussion above, excessive.

Summary and Recommendations

The legislature should review the questionable involvement of the Ministry of Justice in disciplinary proceedings against judges. A two-track system featuring both the disciplinary committee and the MoJ, both of which enjoy parallel competences, seems inadvisable. Such powers should be granted instead only to the judicial self-governing body.

In light of the need to secure the independence of the judiciary, the powers of the disciplinary committee and the MoJ to interfere in ongoing judicial proceedings is unacceptable and should be revised.

Azerbaijan

In accordance with Art 1 of the Judicial-Legal Council Act, the Judicial-Legal Council (JLC) is responsible for *'initiating disciplinary proceedings against judges',* and art. 19 of the same law provides that it is only the JLC which is entitled to commence disciplinary proceedings against judges (for this see also Art.112 The Court and Judges Act). All other institutions and persons, including the President of the Supreme Court, are only entitled to apply to the JLC with a motion to institute disciplinary proceedings against a judge. They are not entitled to instigate such proceedings of their own motion.

It can be said that the legislation in Azerbaijan is in line with the CCJE Opinion as there is a single, independent body with responsibility for addressing issues surrounding the disciplinary liability of judges.

Arts. 21-23 of the JLC Act regulate the applicable disciplinary procedure and do require any specific comment.

The grounds for disciplinary liability of judges can be found in Art. 111-1 of the Courts and Judges Act. It provides that:

"Judges shall be subjected to disciplinary liability only on the following grounds:

Either a gross infringement or multiple infringements of the requirements of legislation in the course of considering of cases;
Breach of judicial ethics;
Gross violation of legislative provisions in terms of labour or performance;
Failure to comply with requirements of a financial nature contained in Article 5.1 of the Combating Corruption Act of the Republic of Azerbaijan;

Commission of acts provided by Article 9 of the Combating Corruption Act of the Republic of Azerbaijan;
Commission of acts that bring the judiciary into disrepute."

Automatic subjection to disciplinary proceedings for breaches of an ethical code have been discussed above. The legislature should therefore abrogate the existing law that views any ethical breach as a ground for disciplinary liability.

As for the possible sanction, Art. 112 provides several options, namely a reprimand, a severe reprimand, and a proposal to the relevant executive body to demote the judge or to transfer him or her to another judicial post or to terminate his or her powers.

As in the **Georgian** example, the **Azerbaijani** legislation also prescribes which of the listed sanctions can be resorted to in relation to each disciplinary violation. Of particular note in the case of **Azerbaijan** is that the sanctions are numerous and generally quite severe. It is not clear to the Experts what 'transfer to another judicial position' entails. Here it would be important to know what is considered another judicial position. Is it a position as a judge but in a different court, or is it a position below that of judge? In either scenario, it would be interesting to know if the transfer is temporary or permanent.

Summary and Recommendations

Where the procedure and consequences of transfers have not yet been defined, the legislature should address this in order to guarantee a fair and transparent procedure.

Transfer as a consequence of disciplinary liability for an unlimited period.

Georgia

In accordance with the Law on the Common Courts (Art. 49), the High Council of Justice (HCJ) is empowered to exercise disciplinary proceedings against Common Court judges as provided by law and within its authority. Thus, the Georgian legislation also follows the CCJE Opinion, in accordance with which a special body should be entrusted with administering disciplinary proceedings.

Further details on disciplinary proceedings are regulated in the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges of Common Courts. In this respect, it is worth a closer look at the list of possible disciplinary violations, as defined by paragraph 2 of Art.2 of this law.

The law lists the following disciplinary violations:

' a) a gross violation of the law committed by a judge in the exercise of his or her judicial powers. Gross violation of the law shall be deemed as a violation of fundamental norms of the Georgian Constitution, the international conventions and agreements entered into by Georgia and Georgian legislation, where it has substantially damaged (or could have damaged) the rights or legal interests of participants in the case or the public interest.

b) a violation of the law relating to corruption, or abuse of power contrary to the interests of justice and the interests of the judicial office. Offences contained in the law on "conflicts of

interest and corruption in public office" shall constitute a violation of the law relating to corruption, unless it entails criminal or administrative responsibility.

c) activities incompatible with the position of a judge or conflicts of interest with the duties of a judge;

d) an action inappropriate for a judge to carry out and which discredits the prestige of the court or undermines public trust towards it;

e) delay in the consideration of the case without good reason;

f) failure to fulfil or inadequate fulfilment of the duties of the judge;

g) disclosure of the secrets of judicial deliberation or of a professional secret;

h) hindering the activities of bodies charged with judicial discipline, or showing disrespect towards them;

i) violation of the norms of judicial ethics;

j) violation of work discipline.'

The following provision provides further clarification:

'Incorrect interpretation of the law, based on the conviction of the judge, shall not be deemed as a disciplinary violation, and no judge shall bear disciplinary responsibility for such an action.'

The first matter of note is that in the Georgian legislation, the violation of norms of judicial ethics also constitute a ground for disciplinary proceedings. Given the automatic link between an ethic breach and disciplinary liability, the experts refer once again to CCJE Opinion No.3. It provides in paragraph 49.III that ethical rules should be entirely separate from the judicial disciplinary system.

As mentioned in the CCJE Opinion

'in each country the statute or fundamental charter applicable to judges should define, as far as possible in specific terms, the failings that may give rise to disciplinary sanctions as well as the procedures to be followed'.

Having this principle in mind, one can raise questions with regard to point (f) of the above list, which provides that the *'failure to fulfil or inadequate fulfilment of the duties of the judge'* might lead to disciplinary sanctions.

The Experts fully support legislation that leaves a margin of interpretation to the judiciary or to those responsible for its implementation. However, it must be stressed that the provisions that provide for this margin of interpretation must be give rise to a measure of predictability. In this case, it appears that the provision is too loose and is capable of covering virtually any kind of unsatisfactory behaviour by a judge. In its broad and almost unlimited terms, the provision places too much power in the hands of disciplinary bodies.

In addition to this very specific reason for concern, it is interesting to note behaviours listed in Art. 2 that one would expect to see instead in a code of ethics (for example, c, d, and e). This raises further concerns that the delineation between rules on ethics and rules relating to behaviour engaging disciplinary liability has not been fully developed.

The disciplinary procedure is also noteworthy.

In accordance with Art. 7 of the law on disciplinary proceedings, there are 3 persons or bodies, entitled to initiate disciplinary proceedings, namely:

- The Chairman of the Supreme Court, against judges of the Supreme Court, appellate courts and the regional (city) courts;

- The Chairman of the appellate court, against judges of the relevant appellate court and the regional (city) courts covered by the relevant appellate court; and

- The High Justice Council, against all judges of the Common Courts.

It is difficult to see how such a multiplicity of institutions entitled to open proceedings can be effective, and such a system is confusing. This is especially true in the light of the further procedural provisions.

Art. 8 of the law entitles the three institutions or persons above to:

'*carry out preliminary enquiries on the basis of the complaint, on the application or on other information received.....'*

This regulation leaves room for parallel or even competing investigations being carried out by different institutions. As the law does not provide that any one investigation has priority over the other, this might lead to confusion and to an ineffective process.

Summary and Recommendations

In the Experts' opinion, the legislature ought to consider whether the process surrounding disciplinary proceedings could be streamlined, by, for example, granting an exclusive right to initiate and carry out disciplinary proceedings (including enquiries) to the HCJ, instead of the *status quo*, which accords the same right to two separate actors. The law differentiates between investigations and preliminary enquiries and grants an exclusive right to investigations to the HCJ. However, without clearly defining which rights and obligations relate to which procedure, duplication and overlap cannot be excluded.

The list of disciplinary penalties include a notice, a reprimand, a strict reprimand and removal from office or from the reserve list (Art. 4). After extensive discussions during the working group meeting, it seems that the existing arsenal of measures and penalties affords sufficient space for manoeuvre so that an appropriate sanction can be adopted in response to a disciplinary failure. In this respect, the law accords with relevant European standards. However the direct escalation from a strict reprimand (a sanction which cannot be "felt" directly by the judge concerned as there are no tangible consequences to his daily life) to removal from the office as the most severe sanction

appears to be an extreme step. Thus, a discussion on possible intermediate steps (for example, suspension from office for a very limited time) could be considered.

It is remarkable that the Georgian legislature has drafted not only a list of possible disciplinary failures and a list of possible sanctions, but has also provided which sanctions should be applied for which disciplinary violation (Art. 54).

Moldova

In accordance with the Constitution (Art. 123), the Superior Council of Magistrates (SCM) is responsible for administering the disciplinary liability of judges.

In accordance with Art. 4 of the Law on the SCM, the body considers citizens' petitions on problems relating to judicial ethics, examines appeals against decisions taken by the Disciplinary Board, administers disciplinary sanctions to judges and validates decisions issued by the Disciplinary Board.

The Disciplinary Board, which is subordinate to the SCM and acts in accordance with Art. 1 of the Law on Disciplinary Board and Disciplinary Liability of Judges, considers questions pertaining to the disciplinary liability of judges and decides upon questions relating to early annulment of disciplinary sanctions (Art. 7 of the aforementioned law).

Having power over the procedure for disciplinary liability concentrated within the SCM and its disciplinary board means that the Moldovan legislation is in line with the CCJE Opinion. As mentioned above, the Opinion provides that a specific body or person ought to be entrusted with responsibility for receiving complaints, for obtaining representation from the judge and for considering, in the light of that information, whether or not there is a sufficient case against the judge in question on which disciplinary proceedings could be founded.

The grounds for disciplinary liability are, as envisaged in the CCJE opinion, set out in law and namely in Art. 22 of the Law on Status of Judges, to which Art. 9 of the Law on Disciplinary Board and Disciplinary Liability refers.

In accordance with Art. 22 of the Law on Status of Judges, the list of disciplinary offences is as follows:

"a) Breach of impartiality;

b) Deliberate or intentional misinterpretation or application of law not justified by a change in judicial practice;

c) Interference with the activities of another judge or seeking to influence a public body or civil servants in order to resolve a personal or family issue and perverting normal legal procedures as provided by law;

d) Violation of the secrecy of the deliberation room or other confidential activities;

e) Political activities;

f) Breach of the principle of random distribution of cases;

f[1]) Breach of rules regarding the consideration of pending cases without good reason, or violation of fundamental norms of legislation;

g) Breaching the law relating to mandatory declaration of income and property;

h) Unjustified refusal to perform duties;

h[1]) Breach of the requirement to draft judgments and communicate them to the parties.
h[2]) Failure through his or her own fault to publish judgments on the court's website.

i) Unjustified absence, delay, or leaving work early;

j) Showing disrespect to colleagues, lawyers, experts or other trial participants;

k) Violation of the Judicial Code of Ethics;

l) Failure by the president of the court to report to the SCM the disciplinary offences of a judge;

m) Abuse of judicial office;

n) Violation of the laws limiting judicial powers;

o) Public dissent or disagreement with the decisions of colleagues in an attempt to interfere with their work;

(2) Reversal or variation of a judgment is not a ground for liability provided the judge who produced the judgment in question did not violate the law intentionally, except where a violation is the result of negligence resulting in serious material or moral damage."

Art. 9 of the Law on Disciplinary Board and Disciplinary Liability of Judges adds under its paragraphs 2 and 3:

"(2) The reversal or variation of a judgment is not a ground for disciplinary liability, unless a violation of the law was committed by a judge intentionally or as a result of serious misconduct.

(3) Presidents and Deputy Presidents may be disciplined where they fail to ensure the proper functioning of their court."

Given their number, it has not been possible within the scope of this project to look in detail at each of the grounds listed by the Moldovan legislation. The Expert therefore decided to select certain provisions that might be characteristic for the legislature's approach.

First, several provisions deal with disciplinary liability in connection with wrongly-decided judgements, namely:

Art. 9, para 2 of the Law on the Disciplinary Board and the Disciplinary Liability of Judges, and Art. 22, para 2 of the Law on the Status of Judges.

- The reversal or variation of a judgment is not a ground for disciplinary liability, unless a violation of the law was committed by a judge intentionally or as a result of serious misconduct; and
- Reversal or variation of a judgment is not a ground for liability provided the judge who produced the judgment in question did not violate the law intentionally, except where a violation is the result of negligence resulting in serious material or moral damage

From a legal drafting perspective, one has to criticise the duplication and slight inconsistency in the wording of these provisions (which might, of course, be a result of translation). There is no reason to deal with one kind of misbehaviour in three different provisions. Further, there is a possible inconsistency between these regulations as Art. 22 para 1 (b) (obviously) excuses misinterpretation if it was caused by a change in judicial practice. The fact that the other two provisions, which deal with the same issue, do not account for such a justification might lead to confusion and legal uncertainty.

Furthermore, the list of possible grounds set out in Art. 22 contains many provisions one might expect to see in a set of conduct rules, such as those relating to political activities (e) or disrespect for colleagues, lawyers, experts and other trial participants (j). Point (k) of Art. 22 is even more confusing, declaring that a violation of the code of ethics of judges leads to disciplinary liability.

Therefore, it is worth stressing once again that breach of a code of ethics or conduct should not automatically lead to disciplinary liability.

The legislature should consider therefore streamlining the relevant legislation to eradicate the situation where breach of the ethical code automatically engages disciplinary liability.

As for the disciplinary sanctions, Art. 19 of the law on the Disciplinary Board and Disciplinary Liability of Judges contains, in its paragraph 2, a list (statement, reprimand, severe reprimand, a lowering of the judge's qualification grade, a proposal to dismiss a judge from the office of President or Deputy President of the court; or a proposal to dismiss a judge) which should afford enough room for manoeuvre and enables the disciplinary board to take into account:

'the character of the disciplinary offence in question, its consequences, and its gravity, as well as the character of the judge, his degree of responsibility for the offence and any other relevant circumstances.

Art 19, paragraph 3 lists the circumstances that have been taken into account and calls for proportionate penalties, as recommended by the CCJE.

Finally, the Experts noted the following in relation to Art. 24 of the Law of the Disciplinary Board and Disciplinary Liability of Judges.

In accordance with this provision, a disciplinary record is cleared if the judge concerned is not subject to a new disciplinary penalty within one year from the original disciplinary decision. This term seems, in the Experts' view, extremely short given that a disciplinary penalty should exceptional in nature. Any judge who would be liable to disciplinary measures twice in a period of thirteen months, for example, would, in the Experts' view, simply not be fit to

hold judicial office, but under the current Moldovan legislation he or she would be able to have a more or less undisturbed working life despite such repeated disciplinary liability.

Paragraph 2 of the same provision allows for an a shorter period of six months where this is requested by the person who initiated the disciplinary proceedings or on the initiative of the board itself where the judge has not committed any new disciplinary offence in the intervening period, has displayed exemplary behaviour and has performed his duties responsibly.

The Experts do not understand why, for example, the person who initiated the proceedings should have the right to request such erasure of the records as judicial discipline is carried out in the public interest rather than in the interests of an individual. Penalties and disciplinary records should not, therefore, be capable of being overturned and erased by individuals.

Insofar as the article lists preconditions to clearing a judge's disciplinary record, the Experts are of the view that all the aspects of judge's behaviour set out therein should be considered a matter of course and should not qualify the judge for any special treatment.

It should be stated that remarks on timeframes for clearing disciplinary records might not appear, at first glance, to be based on any specific European standard. However, the Experts wish to reiterate that in accordance with Recommendation (2010) 12, sanctions should be proportionate, and these timeframes are clearly a matter of proportionality.

Also, given the objective that lies behind disciplinary proceedings, it seems preferable not to clear records too early. Disciplinary proceedings are conducted in order to "punish" present misbehaviour and to deter future misbehaviour. At the same time, they should be used as one of the means of evaluating judges when it comes to their career development and promotion. Such functions can only be fulfilled if there exists a degree of institutional memory.

Moreover, disciplinary sanctions, as interpreted in the light of the European standards, are an exceptional tool requiring severe misbehaviour. In the Experts' view, it is therefore appropriate and proportionate to record applied sanctions over a longer term.

Summary and Recommendations

The legislature should consider streamlining the relevant legislation to eradicate the situation where breach of the ethical code automatically engages disciplinary liability.

The timeframes for erasure of a disciplinary record appear too short and can be shortened further for reasons that are not justified. As such, they should be reconsidered

Ukraine

Disciplinary proceedings are regulated by the Law on the "Judicial System and Status of Judges".

In accordance with Art. 85, there are two bodies entitled to conduct disciplinary proceedings, namely the High Qualification Commission in relation to judges of local and appellate courts

and the High Council of Judges in relation to judges of the high specialised courts and the Supreme Court.

Generally, the involvement of two different bodies in disciplinary proceedings for different categories of judges does not, in the Experts' eyes, achieve any justifiable benefit. However, in the case of **Ukraine**, the competences and jurisdiction of each body are clearly separated so as to exclude, at least, any overlap, inconsistency or confusion.

The Experts consider that it is positive that, in accordance with Art 84, anyone can file a complaint regarding the conduct of a judge, and that the law envisages that the High Qualification Commission shall post a template complaint form for this on the internet (the Expert does not know how this works in practice). To prevent a deluge of unmeritorious and/or frivolous complaints, the law provides in the same article that the complaint shall contain evidence of a disciplinary offence and cannot be made anonymously.

Art. 83 of the law contains an exhaustive list of grounds for disciplinary proceedings against a judge:

1) fundamental violation of norms of procedural law whilst administering justice, in particular denying a person's access to justice on grounds not provided by law, violation of requirements relating to case assignment and registration of cases in court, rules of jurisdiction, or unlawful steps taken to dispose of a case, etc.;

2) failure to dispose of an application, complaint, or case within the time periods established by law;

3) breach of requirements relating to bias, and in particular, breach of the rules relating to recusal (self-recusal);

4) systematic or isolated gross violation of the rules of judicial ethics tending to undermines public confidence in the courts;

5) disclosure of secret information protected by law, including confidential information exchanged in the deliberation room, or secrets the judge obtained in-camera;

6) non-submission or late submission of a publicized property status declaration (financial disclosure statement) or the inclusion of intentionally false information in the declaration.

On a positive note, the Ukrainian legislation makes clear that breaches of conduct rules do not automatically engage disciplinary liability, but that (only) systematic or gross one-off violations ethical rules and which undermine the authority of the judiciary may constitute a ground for disciplinary liability. This regulation leaves sufficient room for manoeuvre for the disciplinary board to decide whether the violation of ethical rules is severe enough to entail disciplinary liability.

The procedure of disciplinary proceedings as regulated by Art. 86 does, however, raise concerns.

As mentioned above with regard to another country, it is, in the Experts' view, extremely problematic to allow access to court cases during disciplinary proceedings, as this raises a risk

of undue influence. Art. 86, paragraph 3 allows a member of the High Qualification Commission to study and to make copies of court materials.

Also unusual is the obligation upon a very wide number of persons to provide information to the High Qualification commission. It seems that even persons entirely uninvolved in the proceedings might be obliged to actively contribute to disciplinary proceedings against a judge.

The most unusual aspect of Ukrainian law in this area is contained in Art. 88, where the law deals with disciplinary sanctions. As discussed above, the sanction should be proportionate to the violation and so a flexible system of sanctions is necessary. Ukrainian law provides that "*disciplinary sanction by way of censure or reprimand may be imposed on a judge".*

This means that the Ukrainian law envisages only a reprimand or censure as a sanction for disciplinary violations. The only sense in which proportionality is used in this case is, as provided by Art. 87 paragraph 2, in relation to the question of whether there should be a sanction or not, and not with regard to the type of sanction imposed.

For the sake of completeness, it should be noted that a judge can also be dismissed under the dismissal procedure for a disciplinary violation and so, in theory, dismissal can also be viewed as a possible sanction in response to disciplinary violations.

As is the case in the Moldovan legislation, the timeframe for erasing a disciplinary record is very short. Under Art. 44 of the Law on the High Council of Justice, the relevant record is cleared after just one year, unless within that time the judge has been held liable for a disciplinary offence again. Further, the HCJ can clear the record after just six months, although the law does not guide the HCJ as to the circumstances in which it would do so. The same remarks made in relation to Moldova therefore apply to Ukraine on this point.

Summary and Recommendations

The legislature should consider widening the number of possible sanctions in response to disciplinary violations as the current set of sanctions does not allow for an appropriate and proportionate response.

The Experts recommend restricting the very far-reaching powers of the High Qualification Commission with regard to disciplinary proceedings. In order to exclude any possibility of undue influence *vis-à-vis* ongoing proceedings, the right to review files and other documents relating to cases should be limited to those cases in which a final adjudication has been made.

General conclusions on judges' liability and disciplinary proceedings

All countries have mechanisms for disciplinary proceedings against judges in place. Unfortunately, there is no clear delineation between the responses to breaches of codes of ethics and breaches of disciplinary standards.

In some countries, there are too many actors involved in disciplinary proceedings, creating scope for confusion and bureaucracy. Such systems also bear risks in terms of duplication, overlap and inconsistencies (**Armenia**).

It seems advisable to reduce the number of persons and/or institutions entitled to conduct disciplinary proceedings and to streamline the procedure while ensuring the maintenance of the procedural rights of judges (**Armenia, Georgia**).

The very far-reaching powers of institutions investigating and conducting disciplinary proceedings should be re-considered. This is especially true of all cases in which those institutions have a right to request information or explanations with regard to ongoing judicial proceedings, and of those countries in which outsiders and third parties are obliged to render information to the relevant authorities (**Armenia, Ukraine**).

Not all countries envisage a sufficient array of possible disciplinary sanctions. A portfolio of sanctions that does not contain enough alternative sanctions or contains only severe or mild sanctions with nothing in between, will hinder the application of proportionality when it comes to determining the appropriate sanction in a particular case.

Countries should therefore re-consider the existing list of sanctions and make changes where necessary (**Azerbaijan, Ukraine**).

Moreover, disciplinary sanctions, as interpreted in the light of the European standards, are an exceptional tool requiring severe misbehaviour. In the Experts' view, it is therefore appropriate and proportionate to record applied sanctions for terms longer than six months or one year.

Thus, the Experts propose that legislatures reconsider current provisions, which envisage erasure of disciplinary records after a period of less than two years (**Moldova, Ukraine**).

Appendix 1: Country sheets

Armenia

Self-governing judicial bodies

Legal basis	**Constitution of Armenia** ***Article 94.1*** The Constitution and the law shall define the procedure for the formation and activities of the Council of Justice. The Council of Justice shall consist of up to nine judges elected by secret ballot for a period of five years by the General Assembly of Judges of the Republic of Armenia, two legal scholars appointed by the President of the Republic and two legal scholars appointed by the National Assembly in accordance with the procedure set out in the law. Sittings of the Justice Council shall be chaired by the Chairman of the Cassation Court, who will not be entitled to vote. ***Article 95*** In accordance with the procedure set out in the law, the Council of Justice shall: 1) produce and present for the approval of the President of the Republic a list of judicial candidates, setting out their professional qualifications, which shall be used as a basis for the appointment of judges; 2) submit its conclusions as to the relative merits of the judicial candidates; 3) nominate candidates for Chairman of the Cassation Court, chairmen and members of its chambers, and candidates for the chairmanship of the appeal courts, first instance courts and specialized courts; 4) submit advice on issues of pardon at the request of the President of the Republic; 5) subject judges to disciplinary proceedings, and submit recommendations to the President of the Republic as to their dismissal, detention, or criminal or administrative trial or charge. **Judicial Code** **Article 9.** Autonomy of the Judiciary 1. The judiciary shall be autonomous. 2. Self-governance of the judiciary shall be carried out through self-governing bodies as defined by this Code. **Article 70.** Self-Governing Bodies of the Judiciary 1. In the Republic of Armenia, the judiciary shall function on the basis of the self-governance principle.

	2. The self-governing bodies of the judiciary are the General Meeting of Judges of the Republic of Armenia and the Council of Court Chairmen. 3. The activities of the self-governing bodies of the judiciary may not restrict the independence of a judge. **Article 71.** General Meeting of Judges 1. The General Meeting is the highest self-governing body of the judiciary. Its decisions shall prevail over decisions of the Council of Court Chairmen. The General Meeting shall be comprised of all the judges of the Republic of Armenia. **Article 72.** Council of Court Chairmen 1. The Council of Court Chairmen is a standing self-governing body of the judiciary. **Article 97.** The Justice Council and its Powers The Justice Council is an independent body which shall exercise its powers as enshrined in the Constitution in accordance with the procedure set out in this Code.[1]
Composition and selection	**Judicial Code** **Article 72.** Council of Court Chairmen 2. The members of the Council of Court Chairmen shall be the chairmen of the first instance and appellate courts, the Cassation Court, and the Chambers of the Cassation Court. In the event of a member of the Council being absent, his powers shall be exercised by the person under him in his capacity of the court or chamber chairman. **Article 73.** Chairman of the Council of Court Chairmen 1. The Cassation Court Chairman is *ex officio* the Chairman of the Council of Court Chairmen. In the event that the Chairman of the Cassation Court being absent, the Council of Court Chairmen shall be chaired by the person replacing the Chairman of the Cassation Court. **Article 74.** Committees of the Council of Court Chairmen 1. From among its members, the Council of Court Chairmen shall form the following committees: 1) An Ethics Committee; and 2) A Training Committee. 2. The Council of Court Chairmen may create additional committees. 3. Committees shall perform the functions vested in them by this Code and delegated to them by decisions of the Council of Court Chairmen.

[1] **Neither the Constitution or the law defines the High Council of Justice as a self-governing judicial body.**

4. Each committee shall be chaired by one of its members as selected by the relevant committee.

Article 98. Eligibility of Justice Council Members

1. Judges with five or more years of judicial experience and who, during the last five years, have not been subject to any disciplinary sanction, may be elected as judicial members of the Justice Council. Court chairmen and chamber chairmen of the Cassation Court are not eligible to be Justice Council members.

2. The position of the academic Justice Council member shall be considered a state office.

Article 99. Procedure for the Election of Judicial Members of the Justice Council

1. The judicial members of the Justice Council shall be elected by the General Assembly of Judges as follows:
1) One member from the general courts of Yerevan;
2) One member from the general courts of the Marzes;
3) One member from the criminal courts;
4) One member from the civil courts;
5) One member from the civil appellate court;
6) One member from the criminal appellate court;
7) One member from the administrative court; and
8) Two members from the Cassation Court.

2. When the position of a judicial member of the Justice Council becomes vacant, a new judicial member shall be elected in accordance with the procedure stipulated by this Code within three months of the vacancy arising, or within one week thereof should the number of remaining judicial members of the Justice Council be fewer than seven.

3. When a judicial member of the Justice Council is transferred to another court or ceases to exercise his judicial powers due to the closure of his court, he shall continue to serve as a Justice Council member, but when a vacancy within the Justice Council arises, the General Meeting of Judges shall, where possible, fill the vacancy so as to restore the proportion of serving judicial members in the Justice Council as required by Paragraph 1 of this Article.

Article 103. Tenure of Justice Council Members

1. The powers of judicial members of the Justice Council shall cease on the first day following the end of the fifth year since the relevant decision taken under Article 100 became final.

2. The powers of academic members of the Justice Council appointed by the President of the Republic shall cease when the powers of the President of the Republic cease.

3. The powers of academic members of the Justice Council appointed by the National Assembly shall cease if the powers of the National Assembly cease or if the National Assembly is disbanded.

	Article 106. Disciplinary Committee of the Justice Council 1. A Disciplinary Committee made up of three members of the Justice Council shall be formed for a one-year term. The composition of the Disciplinary Committee shall include two judicial members and one academic member of the Justice Council. The Disciplinary Committee shall operate in accordance with a rotation principle based on the date on which each Council member was elected or appointed. The composition of the Disciplinary Committee shall include those Council members previously elected or appointed. If the Council members' election or appointment dates coincide, the composition of the Disciplinary Committee shall be formed by alphabetic order of the surnames of the relevant Council members.
General competence	**Judicial Code** **Article 71**. General Meeting of Judges 2. A regular General Meeting shall be convened at least once a year by the Cassation Court Chairman. An Extraordinary General Meeting may be convened by at least one third of the total number of judges, the Council of Court Chairmen, or the Chairman of the Cassation Court. 3. The General Meeting: 1) Discusses any matter related to the normal functioning of the judiciary, including matters pertaining to the authority of the Council of Court Chairmen; and 2) Elects the judicial members of the Justice Council. 4. The General Meeting shall operate in accordance with its own bye-laws, which it shall approve. 5. The General Meeting shall have legal competence to act if it is attended by more than half of the total number of judges. In the Meeting, decisions shall be taken by simple majority vote of those judges participating in the vote. The voting shall be open. *In camera* voting may be conducted in accordance with the bye-laws of the Meeting or where it so decides. Elections shall be carried out by secret ballot. 6. The General Meeting shall be chaired by the Chairman of the Cassation Court or, in his absence, the person replacing the Cassation Court Chairman. **Article 72.** Council of Court Chairmen 3. The Council of Court Chairmen: 1) Is responsible for the self-governance of the judiciary of the Republic of Armenia and discusses any matter related to the normal functioning of the judiciary, with the exception of matters over which the Council of Court Chairmen committees have legal authority; 2) Develops activities and recommendations to improve the functioning of courts, and submits such recommendations to the competent state bodies; 3) Submits recommendations to the competent state bodies on the improvement of legislation and other legal provisions;

General competence	4) Approves rules to ensure compliance with the requirements of the procedural legislation concerning judicial examination; 5) Approves the case management rules applicable to courts; 6) Makes decisions that the Judicial Department must then carry out; 7) Approves the design of the judicial robe and the standard furniture in judge's offices; 8) Determines the information that must be kept in a judge's personnel file; 9) Approves job descriptions for judicial service; 10) Approves lists of judicial service positions by subdivision, and the titles and number of positions available; 11) Determines the procedure for conducting closed tenders for filling vacant judicial positions, as well as the procedure for testing, interviewing, and assessing the character of open tender candidates, the procedure for forming tender committees, and the operational procedure of such committees; 12) Approves the procedure for training judges and judicial assistants; 13) Approves the budgetary proposal drafted by the Judicial Department; 14) Distributes monies from the courts' financial reserves; 15) Based on proposals submitted by the courts, develops the Medium-Term Expenditure Programme; 16) Drafts and approves the rules relating to the courts' cooperation with the mass media; 17) Upon the nomination of the Chairman of the Cassation Court, appoints and recalls the Head of the Judicial Department; 18) Establishes the court seats not stipulated by law and approves the distribution of judges between seats; 19) Drafts and approves procedures governing case allocation in the first instance courts, the appointment of judicial benches and their presiding judges in the appellate courts, and the substitution of the court chairman and judges in cases of recusal, self-withdrawal, leave, or illness of judges; 20) Approves the list of individual subdivisions of the Service of Judicial Bailiffs presented to it by the Head of the Judicial Department; 21) Approves, within the limits of the State Budget allocations, the number of positions of Judicial Bailiffs per individual subdivision presented to it by the Head of the Judicial Department; 22) Determines the types and forms of pins awarded to Judicial Bailiffs as rewards; 23) Determines the procedure for allocating uniforms to Judicial Bailiffs and the wearing such uniforms; and 24) Performs other functions vested in it by law. 4. The Council of Court Chairmen functions in accordance with its bye-laws, which it shall approve. 5. Sessions of the Council of Court Chairmen shall be convened as necessary, but no less than once every quarter. The Council shall have legal competence to act if attended by more than half its total membership. Decisions of the Council shall be taken by a simple majority of the Council members taking part in the vote. The voting in the Council shall be open. Where provided by the bye-laws of the Council, voting *in camera* may take place. **Article 73.** Chairman of the Council of Court Chairmen 2. The Chairman of the Council of Court Chairmen: 1) Chairs the Council of Court Chairmen; 2) Appoints one judge from among the Cassation Court judges as a member of the

	Qualification Committee of the Chamber of Advocates; 3) Presents to the Council of Court Chairmen a candidate for the position of Head of the Judicial Department, or a proposal on removing from office the Head of the Judicial Department; 4) Carries out the overall management of the activities of the Judicial Department; 5) Appoints an acting first instance or appellate court chairman, where a vacancy arises; 6) Reports violations of the Judicial Code of Conduct to the Ethics Committee of the Council of Court Chairmen or to the Disciplinary Committee of the Justice Council, as appropriate; 7) Represents the judiciary in relations with other bodies; and 8) Performs other functions vested in him by law. **Article 106.** Disciplinary Committee of the Justice Council 2. The Disciplinary Committee shall be entitled: 1) To instigate disciplinary proceedings against first instance and appellate judges and court chairmen and to file motions thereon to the Justice Council; and 2) Following a request by the Ethics Committee of the Council of Court Chairmen, to instigate disciplinary proceedings against a Cassation Court judge, or Chairman of the Cassation Court, and to file motions thereon to the Justice Council.
Competence in the field of judges' careers *Appointment* *Dismissal* *Disciplinary proceedings* *Other*	*Please see below "Juges' career"* **Judicial Code** **Article 168.** Proposals to subject judges to detention or to criminal or administrative charge 1. The Prosecutor General shall have the power to ask the Justice Council to make a proposal to the President of the Republic requesting his authority to subject a judge to detention or to criminal or administrative charge. If the case against the judge is already at the stage of being examined by the court, the court handling the case shall have the power to ask the Justice Council to make a proposal to the President of the Republic requesting his authority to detain the judge in question. 2. The Prosecutor General or the court handling the case shall present to the Justice Council materials justifying the judge's detention or criminal or administrative charge. 3. The Justice Council's proposal requesting the authority of the President of the Republic to detain or to subject the judge to criminal or administrative charges shall be reviewed and determined by the President of the Republic within a two-day period. Where the President of the Republic does not grant his proposal within that period, the proposal to detain or to subject the judge to criminal or administrative charges will be deemed to have been rejected. 4. The Justice Council's proposal requesting the authority of the President of the Republic to detain or to subject the judge to criminal or administrative charges and any authority granted as a result shall not be taken as confirming the existence or otherwise of grounds to detain or to subject the judge to criminal or administrative charge, and nor do they bind the competent court in its determination of the matter in accordance with the procedure defined by law.

	5. The Justice Council may not propose to detain or to subject a judge to criminal or administrative charges based on grounds submitted previously. 6. If, following the grant of Presidential authority to detain or to subject a judge to criminal or administrative charges, it becomes necessary to amend the scope of the charges against that judge in a manner prejudicial or potentially prejudicial to his case, then such an amendment may only be made in accordance with the procedure prescribed by this Article. 7. When making the decision on submitting a proposal to the President of the Republic requesting the President's consent to detain or to subject a judge to criminal or administrative charges, the Justice Council shall take all reasonable steps to avoid any interruption or delay in its proceedings. **Article 171.** Expressing an Opinion on Matters Relating to Pardon 1. Following a request by the President of the Republic, the Justice Council shall issue its opinion on matters relating to pardon. 2. The Minister of Justice and the Prosecutor General shall be invited to any Justice Council session relating to matters of pardon and may, prior to the Council taking its decision, express their opinions on such matters.
Competence relating to budgetary issues	**Judicial Code** **Article 64.** Funding the Courts 1. The courts shall be funded by the Republic of Armenia Judicial Department (hereinafter, "the Judicial Department") in accordance with the expenditure framework laid out in the State Budget. Funding of the central body and separate subdivisions of the Judicial Department shall be set out in a budgetary proposal and contained in a separate part of the State Budget entitled "Courts of the Republic of Armenia." 2. Budgetary proposals concerning separate subdivisions of the Judicial Department shall be drafted by the relevant subdivision, and budgetary proposals concerning the central body of the Judicial Department shall be drafted by the relevant structural unit of the central body. 3. Based on proposals submitted by the central body and separate subdivisions of the Judicial Department, the Medium-Term Expenditure Programme and Court Budgetary Proposal shall be prepared, before being submitted by the Head of the Judicial Department for the approval of the **Council of Court Chairmen**. The **Council of Court Chairmen** may make necessary modifications to the Budgetary Proposal. The approved Budgetary Proposal and the Medium-Term Expenditure Programme shall, within the time period set out in the decision to begin the following year's budgeting process, be submitted to the Government for inclusion in the draft State Budget. 4. The Government shall accept the Budgetary Proposal and incorporate it in the draft State Budget. Where the Government objects to the Budgetary Proposal, the proposal shall be submitted to the National Assembly together with the draft State Budget.

	The Government shall present to both the National Assembly and **Council of Court Chairmen** a detailed justification in support of its objections to the Budgetary Proposal. 5. The Budgetary Proposal shall envisage all the expenditure necessary to ensure the proper functioning of the courts. 6. The position of the **Council of Court Chairmen** on the Budgetary Proposal and the Medium-Term Expenditure Programme shall be presented in the National Assembly by the Head of the Judicial Department. 7. A judicial reserve fund shall be set up to fund unplanned expenditure needed in order to ensure the proper functioning of the courts. The judicial reserve fund shall be ring-fenced with the budget. The size of the reserve fund shall be equal to 2% of the judicial expenditure provided for in the current year's state budget law. Decisions as to the allocation of monies from the reserve fund shall be made by the Council of Court Chairmen. 8. If the judicial reserve fund is inadequate to safeguard the proper functioning of the courts, the Government must make up the shortfall from the Government's Reserve Fund.

Judges' career

Selection	**Judicial Code** **Article 115**. Qualification Testing **4.** Participation in the qualification exam is open to citizens of the Republic of Armenia who are 22-60 years old and have obtained in the Republic of Armenia a Bachelor's degree or a "specialist with diploma" degree in higher legal education, or have obtained a similar degree in a foreign state, which has been recognized as to its adequacy in the Republic of Armenia in accordance with the procedure stipulated by law, and provided that they have a command of the Armenian language, that they have not been deprived of the right to apply to the Judicial School based on Article 185 hereof, and that they comply with the requirements of Article 119(1) hereof. 5. Applications shall be submitted to the Judicial School Director by 25 October. 6. Applicants shall submit with their applications their consent to necessary information about them being obtained from state bodies and officials, including confidential medical information. 9. The Judicial School Director may check the credibility of the documents submitted. 10. Applications submitted in breach of the deadline for submission and applications that do not meet the requirements stipulated by law shall be rejected and returned by the Judicial School Director within three working days. The Judicial School Director's decision to reject an application may be appealed to the administrative court by the applicant within three working days of receiving the rejection.

	The administrative court shall examine and resolve the case within three working days of receiving it. 11. A court appeal against the Judicial School Director's decision to reject an application shall not suspend the procedure stipulated by this Code for accepting applications and testing qualification. 12. If the Judicial School Director's decision to reject an application is found unlawful by court, the applicant shall be entitled to sit a qualification test and, if the qualification testing has already begun, then the applicant shall be entitled to take part in the next qualification test without having to submit a new application. **Article 116.** Preparing Materials Relating to Qualification Testing for Discussion in the Justice Council 1. After expiry of the time limit for any appeals relating to the Qualifications Testing, the Judicial School Governing Board shall submit to the Justice Council the results of the 16 highest-scoring candidates. 2. State bodies or officials with information (including confidential information) which casts doubt on a candidate's reputation or ability to properly exercise judicial powers, must communicate such information to the Justice Council. 3. The Minister of Justice and the Justice Council may obtain necessary information about a candidate from state bodies and officials, and make enquiries with those who provided written reference in support of his or her application. **Article 117.** Compilation and Approval of the List of Judicial Candidates 1. The Justice Council shall, when it sits, assess the nominated candidates and invite them to interview. 2. The Justice Council shall vote on the nominated candidates by secret ballot. The list of votes shall be submitted to the President of the Republic no later than December 15. 3. Gender balance shall be taken into consideration. 4. The President of the Republic shall issue a decree approving those candidates from the list compiled by the Justice Council who are acceptable to him. **Article 118.** Procedure for the Inclusion of Former Judges, Prosecutors, Advocates, and Investigators in the Lists of Judicial Candidates and in the Promotion List 1. Persons who have previously held judicial office and who had their powers terminated prematurely on a ground stipulated by either of sub-paragraphs 1, 3, 5, or 9 of Paragraph 1 of Article 167 hereof (hereinafter, "former judges"), and who held office for two or more of the last 10 years, may be included in the list of judicial candidates and in the promotion list in accordance with the procedure stipulated by this Article. Former judges whose powers were terminated prematurely on a ground stipulated by either sub-paragraphs 5 or 9 of Paragraph 1 of Article 167 hereof, may apply to be included in the list of judicial candidates and in the promotion list if the circumstances that resulted in the premature termination of their powers no longer exist.

	2. Persons who have worked as prosecutors, advocates, or investigators for two or more of the last three years and who work as a prosecutor, advocate, or investigator at the time of applying may be included in the list of judicial candidates in accordance with the procedure stipulated by this Article. **Article 119.** Limitations on Appointment as a Judge 1. A person may not be appointed as a judge, if: 1) He has been convicted of a crime, regardless of whether his conviction has expired or been removed; 2) His criminal prosecution was terminated on a non-acquittal ground; 3) He is currently subject to criminal prosecution; 4) He has a physical disability or illness that hinders his appointment to the position of a judge; or 5) He has not completed mandatory military service, with the exception of persons relieved of such service or who have had such service deferred in accordance with the procedure and on a ground provided by law. 2. The list of physical disabilities and illnesses referred to in Paragraph 1(4) of this Article shall be determined by the Government. **Article 120.** Grounds for Removal of a Candidate from the List of Judicial Candidates 1. A person included in the List of Judicial Candidates shall be removed from the List, if: 1) He has been appointed to the position of a judge; 2) He has requested removal from the List; 3) He has reached his 65th birthday; 4) A final judgment of a court has determined that he was included in the List in breach of the requirements of the law; 5) He has been removed from the Judicial School for reasons stipulated by this Code; 6) After graduating from the Judicial School, he has failed without good reason to pass the annual training program; 7) After graduating from the Judicial School, he has been dismissed or removed from service in the Judicial Department; 8) In the cases stipulated by Paragraphs 6 and 7 of Article 123 of this Code, he does not agree to be appointed to the judicial position offered to him; 9) He has been declared legally incapable, missing or dead by a final judgment of a court; 10) His criminal prosecution has been terminated on a non-acquittal ground; 11) He has been convicted by a final judgment of a court; or 12) He has lost citizenship of the Republic of Armenia. 2. A person included in the List of Judicial Candidates who is referred to in Article 118(2) of this Code shall be removed from the List also in the following cases: 1) If he stops working as a prosecutor, advocate, or investigator; or 2) If, within two years of being included in the List of Judicial Candidates, he does not complete the individual training course in the Judicial School.

Appointment and term of office	See Articles 121-135 of the Code for details as to the appointment to various courts **Constitution of Armenia** ***Article 96*** Judges and members of the Constitutional Court shall enjoy security of tenure. Judges and members of the Constitutional Court shall hold office until the age of 65. They may be removed from office only in the cases and in the manner prescribed by the Constitution and the law. **Please note:** It appears that no probation period for newly-appointed judges is provided for by the Code.
Promotion	**Judicial Code** **Article 136**. Official Promotion Lists of Judges 1. The Justice Council shall compile and present for the approval of the President of the Republic the Official Promotion List of Judges. Amendments and supplements to the Official Promotion List of Judges shall be made following the same procedure. 2. The Official Promotion List of Judges shall consist of: 1) The Official Promotion List of First Instance Specialized Court Judges; and 2) The Official Promotion List of Appellate Court Judges. 3. Persons working as judges (including reserve and redundant judges, notwithstanding their appointment to a judicial position in a lower court), as well as other persons stipulated by this Code may be included in the Official Promotion List of Judges. See Articles 137-152 of the Code for details as to promotion-lists for, and promotions to, various courts and the inclusion of scholars in the promotion lists.
Remuneration and other social guarantees	**Judicial Code** **Article 75**. Judge's Salary and Supplements 1. The salary of a judge shall be comprised of pay at the official rate of pay and supplements. 2. The official rate of pay of a judge shall be prescribed by law, provided that: 1) The official rates of pay of judges of the first instance criminal, civil, and appellate courts shall be 15% greater than the official rate of pay of a General Court judge; 2) The official rates of pay of judges of appellate courts shall be 30% greater than the official pay rate of a General Court judge; 3) The official rates of pay of judges of the Cassation Court shall be 50% greater than the official rate of pay of a General Court judge; 4) A court chairman shall receive a monetary supplement in the amount of 25% of the official rate of pay, and a Chamber Chairman of the Cassation Court shall receive a monetary supplement in the amount of 15% of the official rate of pay;

	5) A supplement shall be paid to each judge for his experience as a judge: 2% for each of the first five years (a total of 10%), and 5% for the sixth year and each year thereafter. 3. A judge's salary and supplements may not be reduced during his term of office. This rule shall not preclude the possibility of temporary reduction of salaries under Article 157(1) and Article 165(4) hereof. **Article 93.** Compensation Received from Non-Judicial Activities of a Judge 1. Payment for a judge's scientific, pedagogic, and creative work may not exceed a reasonable amount, that is, the amount that a non-judge with similar qualifications would aspire to receive for the same work. 2. For non-judicial activities carried out in compliance with Paragraph 1 of this Article, a judge may receive reimbursement of expenses, provided the source of such reimbursement cannot reasonably be perceived as having an influence over the judge in the performance of his judicial duties, and provided such reimbursement of expenses is limited to the real amount of reasonable costs of travel, food, and accommodation of the judge (and, where appropriate, his spouse).
Disciplinary proceedings	**Judicial Code** **Article 153.** Grounds for Subjecting a Judge to Disciplinary Liability 1. The power to subject a judge to disciplinary liability is vested in the Justice Council. 2. A judge may be subject to disciplinary liability on the following grounds: 1) An obvious and grave violation of a provision of substantive law in the administration of justice: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one year of the judge determining the substantive case; 2) An obvious and grave violation of a provision of procedural law in the administration of justice: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one year of the judge determining the substantive case; 3) Regular violations or a grave violation of work discipline: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one month of the discovery of the ground on which disciplinary liability is based, but not later than six months following the emergence of such ground; 4) Regular violations or a grave violation by the judge of the Code of Conduct: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within three months of discovery of the ground on which disciplinary liability is based, but not later than one year following the emergence of such ground; 5) The judge's failure to carry out the judicial duties prescribed by Article 12, Article 72, Article 105(2), Article 156(3), Article 159(3), Article 191, Article 167(3), and Article 193 of this Code: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within one month of the judge committing the violation; or 6) The failure to notify the Ethics Committee, in accordance with the procedure stipulated by this Code, of any interference with his activities of administering justice or exercising other powers stipulated by law, or of other influence not prescribed by law: proceedings for subjecting a judge to disciplinary liability on this ground may be instigated within three months of the discovery of the violation, but not later than one year following the violation itself.

	3. The quashing or amendment of a judicial act shall not, *per se*, give rise to the liability of the judge responsible for such judicial act. 4. Subjecting a judge to criminal, administrative, civil, or other liability prescribed by law does not preclude the possibility of subjecting the judge to disciplinary liability, and vice-versa. **Article 155.** Instigating Disciplinary Proceedings against a Judge 1. The following shall be entitled to instigate disciplinary proceedings against first instance and appellate court judges and chairmen: 1) The Minister of Justice; and 2) The Disciplinary Committee of the Justice Council. 2. The following shall be entitled to instigate disciplinary proceedings against Cassation Court chamber judges and chamber chairman: 1) The Chairman of the Cassation Court; and 2) The Disciplinary Committee of the Justice Council, upon a motion from the Ethics Committee of the Council of Court Chairmen. 3. The Disciplinary Committee of the Justice Council, upon a motion from the Ethics Committee of the Council of Court Chairmen, is entitled to file disciplinary proceedings against the Chairman of the Cassation Court. 4. If the Minister of Justice or the Chairman of the Cassation Court instigated disciplinary proceedings, then he shall notify the Disciplinary Committee of the Justice Council of such instigation and of the alleged offence. Where the disciplinary proceedings in question have been instigated against a first instance or appellate court judge or chairman, the Disciplinary Committee of the Justice Council shall notify the Minister of Justice of such instigation and of the alleged offence. Where the disciplinary proceedings in question have been instigated against a Cassation Court chamber judge or chamber chairman, the Disciplinary Committee of the Justice Council shall notify the Chairman of the Cassation Court of such instigation and of the alleged offence. Two concurrent sets of proceedings shall not be instigated against the same person in connection with the same offence. 5. The reasons for instigating disciplinary proceedings are limited to the following: 1) Following a decision of the Cassation Court confirming that a clearly illegal judicial act was carried out in the administration of justice in the determination of a substantive case, or that the judge committed an obvious and grave violation of the rules of procedural law in the administration of justice; 2) Following an application by an individual; 3) Following a communication from a state or local government body or official; 4) Upon the filing of a motion by the Ethics Committee of the Council of Court Chairmen; 5) Upon the discovery as a result of reviewing or studying court practice of an act giving rise to disciplinary liability; or 6) Upon the discovery by the persons instigating the proceedings of an act giving rise to disciplinary liability.

6. Any application, communication, or motion stipulated by Paragraphs 5(1), 5(3), and 5(4) of this Article not containing *prima facie* evidence of a judge having committed an act giving rise to disciplinary liability, shall be returned to the person that submitted it, without any examination thereof.

7. Where disciplinary proceedings are not instigated as a result of the application, communication, or motion stipulated by Paragraphs 5(1), 5(3), and 5(4) of this Article, the person responsible for instigating proceedings need not substantiate in his response his decision not to do so.

Article 156. Conduct of Disciplinary Proceedings against a Judge

1. Disciplinary proceedings may not last longer than six weeks, with the exception of cases in which the judge is absent. The duration of disciplinary proceedings may be extended for a term equal to the term of the judge's absence.

2. In the framework of disciplinary proceedings, the person instigating the proceedings may:
1) Demand from a court and study the materials relating to any criminal, civil, or other case on which there is a final judicial act;
2) In court, familiarize himself with materials relating to any criminal, civil or other case on which there is still no final judgment;
3) Demand written explanations from a judge;
4) Summon and hear witnesses;
5) Demand and receive materials from state and local government bodies and officials; and
6) Request from the person who submitted the application based on which disciplinary proceedings were instigated additional clarifications. State and local government bodies and officials must provide such clarifications.

3. A judge against whom disciplinary proceedings were instigated must provide written explanations to the person who instigated the proceedings.

4. As a result of the enquiries made, the person who instigated the proceedings shall take either of the following decisions:
1) A decision to terminate the disciplinary proceedings; or
2) A decision to file a motion requesting the Justice Council to subject the judge to disciplinary liability.

5. If the Minister of Justice or the Chairman of the Cassation Court has terminated the disciplinary proceedings, he shall inform the Disciplinary Committee of the Justice Council accordingly. Where disciplinary proceedings against a first instance or appellate court judge or chairman are terminated, the Disciplinary Committee of the Justice Council shall inform the Minister of Justice accordingly. Where disciplinary proceedings against a Cassation Court chamber judge or chamber chairman are terminated, the Disciplinary Committee of the Justice Council shall inform the Chairman of the Cassation Court accordingly. After deciding to halt disciplinary proceedings, the person who instigated the proceedings may not instigate proceedings on the same ground again.

	6. If the person who instigated the proceedings decides to file a motion requesting the Justice Council to subject the judge to disciplinary liability, he shall prepare an opinion on the disciplinary offence, which shall describe each act committed by the judge constituting a disciplinary offence, and provide evidence demonstrating that such an act was committed and demonstrate why the act in question ought to be considered a disciplinary offence, including by explaining the judge's guilt for the committed act and the level of guilt involved. 7. Before forwarding the materials relating to the disciplinary proceedings to the Justice Council, the judge against whom disciplinary proceedings have been instigated is entitled to familiarize himself with them. The materials shall be provided to the judge no later than two weeks before the deadline stipulated by Paragraph 1 of this Article. Within a week of receiving the materials, the judge may present additional explanations or file a motion requesting additional checks to be performed. Based on the judge's additional explanations or the additional checks, the person who instigated the proceedings is entitled to change his opinion, unless it would prejudice the judge's. 8. The person who instigated the proceedings shall send the materials relating to the disciplinary proceedings to the Justice Council and to the judge against whom disciplinary proceedings have been instigated, together with a notification of delivery. From the moment the materials relating to the disciplinary proceedings are sent to the Justice Council, the person who instigated the proceedings may not recall the materials relating to the proceedings, and the materials are then the subject of a substantive discussion in the Justice Council. 9. Within a week of receiving the materials relating to the disciplinary proceedings, the judge may send a response to the Justice Council. The judge's failure to send a response shall not hinder the Justice Council's review of the disciplinary case against the judge. Upon the judge's application, the Council may extend the term granted to the judge. 10. The person who instigated the proceedings, witnesses to the proceedings, and other persons must maintain the confidentiality of the disciplinary proceedings. All documents sent in the course of the disciplinary proceedings must be sent in closed envelopes marked "Confidential." **Article 157.** Disciplinary Sanctions for Judges 1. After considering the disciplinary liability of a judge, the Justice Council may apply any of the following types of disciplinary sanctions against him: 1) A censure; 2) A reprimand, which shall include depriving the judge of 25% of his salary for a six-month period; 3) A severe reprimand, which shall include depriving the judge of 25% of his salary for a one-year period; or 4) The filing of a motion requesting that the President of the Republic terminate the judge's powers. 2. A warning is formal reproach of a judge and is applied for a disciplinary offence that the Justice Council considers an offence of the lowest level of gravity, unless there is another pending sanction against the judge.

	3. The type of disciplinary sanction prescribed by Paragraph 1(4) of this Article shall be applied if the grave disciplinary offence or the regular disciplinary offences committed by the judge render him incompatible with holding judicial office. 4. The disciplinary sanction applied shall be proportionate to the offence. When applying a disciplinary sanction, the Justice Council shall also take into account the consequences of the offence, the personal characteristics of the judge, the degree of guilt, any pending sanctions, and other noteworthy circumstances surrounding the judge. 5. If a judge is not subjected to another disciplinary sanction within two years of receiving a reprimand or severe reprimand, or within one year of receiving a warning, he shall be considered not to have any disciplinary sanction. 6. If a judge is subjected to consecutive disciplinary sanctions that result in a reduction of his salary, the total reduction for each month shall not exceed 50% of his salary. **Article 158.** Examining a Proposal to Subject a Judge to Disciplinary Liability 1. When examining whether a judge ought to be subjected to disciplinary liability, the Justice Council shall act as a court. When the Justice Council acts as a court to examine cases, its procedure shall be subject to the rules of the Republic of Armenia Administrative Procedure Code to the extent that such rules are substantively applicable to the examination by the Justice Council of the case before it and do not conflict with the rules of this Code. 2. A member of the Justice Council may not declare a self-withdrawal. 3. The person who instigated the proceedings carries the burden of proof that there exist grounds for subjecting a judge to disciplinary liability. When the Justice Council sits, any suspicion that remains about whether or not the judge committed a disciplinary offence shall be disposed of in favour of the judge. 4. The Justice Council shall examine whether a judge ought to be subjected to disciplinary liability within a reasonable period. 5. Documents considered by the Justice Council shall be attached to the case materials either in original or certified copy form. **Article 161.** Justice Council's Decision on Subjecting a Judge to Disciplinary Liability 1. When dealing with one set of disciplinary proceedings, and notwithstanding that the same judge may have committed several disciplinary offences, the Justice Council shall make a single decision. 2. The decision shall be made in the consultative room. For the purpose of making a decision on a matter examined by the Justice Council, only members of the Justice Council may be present in the consultative room. If the disciplinary proceedings were instigated by the Disciplinary Committee of the Justice Council, then the Disciplinary Committee members who instigated such proceedings shall not be present in the consultative room. The decision shall be made by an open vote of the Justice Council members. Where there is a tied vote, the decision most favourable to the judge shall prevail.

	3. Any matters discussed by the Justice Council in the consultative room, any positions expressed by the Justice Council members, and the results of the vote shall not be publicized either during the session or following the conclusion of the case examination. 4. Upon examining the matter of subjecting a judge to disciplinary liability, the Justice Council may take either of the following decisions: 1) To apply a disciplinary sanction stipulated by this Code in relation to the judge; or 2) To discontinue the case. **Article 163.** Requirements for and Publication of the Justice Council's Decision to Subject a Judge to Disciplinary Liability 1. The Justice Council's decision to subject a judge to disciplinary liability must contain: 1) The name and composition of the Justice Council … 2. … The decision shall be promulgated within 15 days of the conclusion of the case examination. 3. Within five days of its promulgation, the decision shall be sent to the person who instigated the proceedings, the judge concerned, and the Judicial Department. If a decision was made to file a motion requesting the President of the Republic to terminate the powers of the judge, then such decision shall also, within five days of its promulgation, be sent to the President of the Republic. 4. Decisions of the Justice Council shall be published… **Article 164.** Review of the Justice Council's Decision to Subject a Judge to Disciplinary Liability on the Basis of Newly-emerging Circumstances 1. On the basis of newly-emerging circumstances, the Justice Council may review its decision to subject a judge to disciplinary liability[1]…
Dismissal	**Judicial Code** **Article 167.** Termination of a Judge's Powers on a Ground Unrelated to Disciplinary Liability 1. Following a recommendation by the Justice Council, a judge's powers must be terminated by the President of the Republic, if: 1) The judge files his resignation; 2) The judge has reached his 65th birthday (the retirement age); 3) Due to temporary inability, the judge has been unable to perform his official duties for more than four consecutive months, or for more than six months during a calendar year; 4) A final court judgment has determined that the judge was appointed to judicial office contrary of the requirements of the law; 5) A final court judgment has declared the judge to have limited or no legal capacity, or to be missing or dead; 6) A judgment convicting him has become final, or his criminal prosecution has been terminated on a non-acquittal ground; 7) He has lost citizenship of the Republic of Armenia; 8) He has not passed annual training programs for two consecutive years; or

[1] It appears that there is no any other procedure for reviewing a decision in a disciplinary case.

	9) Following his appointment, he acquired a physical disability or illness that hinders appointment to a judicial office. 2. Where the grounds prescribed by sub-paragraphs 1-8 of Paragraph 1 of this Article apply, the Chairman of the Cassation Court must file a motion requesting that the Justice Council terminate the judge's powers. 3. Where, *prima facie*, the ground prescribed by Paragraph 1(9) of this Article applies, then the Minister of Justice and the Chairman of the Cassation Court shall jointly request the competent state body to arrange for the judge's medical examination. The judge must undergo the medical examination. If the medical examination demonstrates that the ground prescribed by Paragraph 1(9) of this Article applies, then the Chairman of the Cassation Court shall file an appropriate motion with the Justice Council.
Guarantees against undue pressure	**Constitution of Armenia** ***Article 97*** When administering justice, judges and members of the Constitutional Court shall be independent and shall be subject only to the Constitution and the law. The guarantees relating to the exercise of their duties and the grounds and procedures relating to the liability of judges and members of the Constitutional Court shall be prescribed by law. Judges and members of the Constitutional Court may not be detained or subjected to criminal or administrative charge except with the consent of the Council of Justice or the Constitutional Court, as applicable. Judges and members of the Constitutional Court shall not be arrested save when caught in or immediately following a criminal act. In such circumstances the President of the Republic and the Chairman of the Cassation Court or Constitutional Court, as applicable, shall be notified immediately of such arrest. ***Article 98*** Judges and members of the Constitutional Court may not engage in entrepreneurial activities or hold office in either state or local self-government bodies, in commercial organizations not connected with their duties, or engage in any other paid occupation, except for scientific, pedagogical and creative work. Judges and members of the Constitutional Court may not be members of any political party or engage in any political activity. **Judicial Code** **Article 10.** Non-politicization of Judges 1. A judge may not be a member of any party or otherwise engage in political activities. In all circumstances, a judge must demonstrate political restraint and neutrality. 2. A judge may participate in elections of central and local government bodies only as a voter. A judge may not participate in election campaigns.

	3. Neither the professional discussions or opinions of judges, their professional associations' or self-governing bodies' in relation to draft legal acts regulating or relating to the functioning of the judiciary, or their discussions or statements on day-to-day activities, including public activities, of the judiciary, violate the principle of non-politicization. **Article 11.** Independence of the Judge and the Autonomy of the Court 1. In the administration of justice and the performance of other powers stipulated by law, the judge is independent. 2. In the exercise of other powers stipulated by law, the judge is not accountable to anyone and, *inter alia*, is not required to give any explanation, save where provided for by law. 3. Any interference with the activities of a judge in any way not provided for by law shall be prohibited. Any such act is subject to criminal prosecution. For public servants, such an act gives rise also to disciplinary liability, up to and including dismissal from office or service in accordance with the procedure stipulated by the relevant laws regulating public service. 4. A judge must immediately inform the Ethics Committee of the Republic of Armenia Council of Court Chairmen (hereinafter, "the Council of Court Chairmen") about any interference with his activities relating to the administration of justice or the performance of other powers stipulated by law, if such interference is not provided for by law. If the Ethics Committee finds that the judge's activities have been interfered with in a way that is not provided by law, it must petition the competent authorities to hold those responsible to account. 5. During his term of office and following the termination thereof, a judge may not be interrogated as a witness about a case tried by him. **Article 12.** Limitation of the Performance of Certain Types of Activities by the Judge A judge may not carry out entrepreneurial activities, or occupy in central or local government bodies a position not related to the performance of his duties, or hold an office in a commercial organization, or perform any other paid work, save for scientific, pedagogical and creative work. **Article 13.** Immunity of the Judge 1. A judge shall be immune. 2. A judge may not be arrested, with the exception of cases in which the arrest is performed during or immediately following the commission of a crime. The arrest of a judge shall immediately be communicated to the President of the Republic and to the Chairman of the Cassation Court. Within 24 hours of the arrest, the arrest decision shall be forwarded to the President of the Republic and the Chairman of the Cassation Court. The bodies and officials that carried out the arrest must ensure the Chairman of the Cassation Court's unimpeded access to the place in which the arrested judge is held and must ensure that the Chairman of the Cassation Court can visit the judge.

	3. A judge may not be detained or subjected to criminal or administrative charge without the consent of the President of the Republic, granted following a proposal by the Republic of Armenia Justice Council (hereinafter, "the Justice Council"). 4. From the moment the criminal prosecution of a judge is instigated, prosecutorial control of the pre-trial proceedings in the case shall be conducted by the Republic of Armenia Prosecutor General (hereinafter, "the Prosecutor General"). 5. A judge may not be apprehended. After the identity of a judge apprehended without documents is established, the competent state body shall immediately release him. 6. Criminal prosecution of a judge for the latter making a manifestly unfair judgment, decision, or other judicial act out of pecuniary or other personal motives may not be instigated, unless the act has been quashed by a superior court. 7. Entry into a court building for purposes of a search, examination, or seizure of documents or objects shall be performed upon notification of the court chairman. 8. A judge may not be subjected to civil liability for damage inflicted as a consequence of the improper performance of his official duties, unless the damage was inflicted as a consequence of an intentional act. 9. The declaration of a state of war or emergency shall not suspend the guarantees laid down in this Article. **Article 14.** Irremovability of a Judge 1. A judge shall be irremovable. 2. A judge shall serve in office until reaching the age of 65 years. The powers of a judge whose term of office has expired shall cease on the day following the judge's 65th birthday. 3. If a case cannot be examined by a court due to an insufficient number of judges caused by recusal or self-withdrawal of judges or other reasons, the Chairman of the Cassation Court may assign another judge of the same instance to that court or to another Chamber of the Cassation Court for a term of up to six months, with or without suspension of such judge's exercise of his primary powers. This term may be extended only if the examination of a case assumed by that judge has not ended prior to the examination of the relevant case. The same judge may not be assigned again within a year of the end of the previous assignment. 4. If a case cannot be examined by a court due to an insufficient number of judges caused by recusal or self-withdrawal of judges or other reasons, the Chairman of the Cassation Court may decide to assign the judge stipulated by Paragraph 7 of this Article (of the same instance or of a higher instance) to another court. 5. When the volume of cases examined by a court is too small compared to the number of judges working in that court, a judge of that court may, by decision of the Chairman of the Cassation Court, be assigned to another court for a term of up to six months, with the suspension of such judge's exercise of his primary powers. This term may be extended only if the examination of a case allocated to that judge has not ended prior to the examination of the relevant case.

	The same judge may not be assigned again within a year of the end of the previous assignment. 6. If the number of judges required in a court is reduced, priority in continuing to serve in office in that court shall first be given to the court chairman and, then, to the judges in order of seniority. The powers of redundant judges shall not cease, and they shall continue to serve in office, unless this Code prescribes otherwise. The status of such judges, including the right to receive salary and bonuses and the right to be included or to remain on the official promotion list, shall be preserved until the judge reaches the constitutionally-prescribed retirement age, unless this Code provides otherwise. 7. If the law stipulates the elimination of a court or of a Cassation Court chamber, then the relevant judges shall be considered reserve judges, and their status, including the right to receive salary and bonuses and the right to become included or to remain in the official promotion list, shall be preserved until the judge reaches the constitutionally-prescribed retirement age, unless this Code provides otherwise. 8. If, in the cases stipulated by paragraphs 6 and 7 of this Article, a judge is appointed to the position of a judge in a lower court in accordance with the procedure stipulated by this Code, the salary received in his previous position, including bonuses (with the exception of bonuses paid for the position of the court chairman) shall be preserved, and, where there is an increase in judges' salaries, their salary will increase proportionally.

Azerbaijan

Self-governing judicial bodies

Legal Basis	**Constitution of Azerbaijan** ***Article 8. The Head of the Azerbaijanian state*** IV. The President of the Azerbaijan Republic is guarantor of the independence of judicial power. ***Article 95. Competence of Milli Majlis of the Azerbaijan Republic*** 10) Following a recommendation by the President of the Azerbaijan Republic, the appointment of judges of the Constitutional Court of the Azerbaijan Republic, the Supreme Court of the Azerbaijan Republic and the Economic Court of the Azerbaijan Republic. **Judicial-Legal Council Act 2004 (as amended as at January 1, 2006)** **Article 1. Purpose of the Judicial-Legal Council** The Judicial-Legal Council is the body, which, within its competence: ensures the organization and operation of the court system; arranges selection of candidates who are not judges (hereinafter, candidates to the judicial post) to the vacant judicial posts; evaluates the activity of judges; determines issues of transfer of judges to different judicial post, their promotion, subjecting judges to disciplinary liability, in addition to other issues relating to courts and judges, and implements the self-governance functions of the judiciary. **Article 4. The independence of the Judicial-Legal Council** 4.1.The Judicial-Legal Council is a permanently functioning independent body and does not depend on legislative, executive or judicial authorities, local self-governments or legal or natural persons in organizational, financial or other matters. 4.2.The Judicial-Legal Council operates jointly with legislative, executive and judicial powers, the Bar Association of the Republic of Azerbaijan and scientific organizations. **Courts and Judges Act 1997 (as at January 1, 2006)** **Article 93-1. Judicial-Legal Council** The Judicial-Legal Council is the institution that carries out the function of self-governance of the judiciary and, which, within its the scope of its authority, carries out the organization of the court system, arranging the selection of candidates for judicial posts, ensuring the operation of the judiciary, transferring judges across judicial posts, promoting judges, subjecting judges to disciplinary liability, evaluating the work of judges, in addition to resolving other issues relating to the courts and judges of the Republic of Azerbaijan.

	The structure, legal basis and authority of the work of the Judicial-Legal Council are set out in this act and in the Judicial-Legal Council Act of the Republic of Azerbaijan.
Composition and Selection	**Judicial-Legal Council Act 2004 (as at January 1 2006)** **Article 6. Composition of the Judicial-Legal Council** 6.1.The Judicial-Legal Council shall be composed of 15 members. 6.2. The Judicial-Legal Council shall be mainly composed of judges and representatives of executive and legislative bodies, the prosecutor's office, and the bar association, in the following manner: 6.2.1.the head of the relevant executive body* of the Republic of Azerbaijan; 6.2.2.The President of the Supreme Court of the Republic of Azerbaijan; 6.2.3.A person appointed by the head of the relevant executive body of the Republic of Azerbaijan; 6.2.4.A person appointed by the Milli Majlis of the Republic of Azerbaijan; 6.2.5.A judge appointed by the Constitutional Court of the Republic of Azerbaijan; 6.2.6. Two judges from the Cassation Instance Court appointed by the Supreme Court from the candidates put forward by the associations of judges; 6.2.7.Two judges from the courts of appeal appointed by the Supreme Court from among the candidates put forward by the associations of judges; 6.2.8. A judge of the Supreme Court of Nakhchivan Autonomous Republic (NAR) appointed by the NAR Supreme Court from the candidates put forward by the associations of judges; 6.2.9.Two judges from the first instance courts appointed by the head of the relevant executive body of the Republic of Azerbaijan from the candidates put forward by the associations of judges; 6.2.10. A person appointed by the head of the relevant executive body* of the Republic of Azerbaijan; 6.2.11.A lawyer appointed by the Collegial Board of the Bar Association of the Republic of Azerbaijan; and 6.2.12. A person appointed by the General Prosecutor's Office of the Republic of Azerbaijan. 6.3.The head of the relevant executive body of the Republic of Azerbaijan and the President of the Supreme Court of the Republic of Azerbaijan are *ex officio* members of the Judicial-Legal Council. 6.4.The persons appointed to the Judicial-Legal Council by the relevant executive body of the Republic of Azerbaijan, the Milli Majlis of the Republic of Azerbaijan, the relevant executive body and the General Prosecutor's Office of the Republic of Azerbaijan shall have an advanced law education and more than five years' work experience. 6.5.The association of judges shall put forward at least two candidates for every one vacancy in the Judicial-Legal Council. The list of candidates for membership of the Judicial-Legal Council can be rejected only once by the person who appoints them. Subsequently nominated persons shall be appointed to the Judicial-Legal Council. 6.6.Other than persons who are *ex officio* members of the Judicial-Legal Council, the same person should not be appointed as a member of the Judicial-Legal Council more than twice.

Article 7. The requirements related to the members of the Judicial-Legal Council

Persons, who have dual nationality, obligations towards other countries, hold elected public positions, have previous convictions, are engaged in business, commercial and other remunerated activities except for scientific, pedagogical or artistic activities, and clergy shall not be eligible for appointment to the Judicial-Legal Council.

Article 10. Early termination of the office of the members of the Judicial-Legal Council

10.1. The office of any member of the Judicial-Legal Council shall be terminated before expiry only upon a decision of that Council, on the initiative of the President of the Judicial-Legal Council or he or she who appointed him/her, and in the following cases:
10.1.1. If s/he applies in writing for termination of his/her membership in the Judicial-Legal Council;
10.1.2. If the court issues a verdict abrogating a criminal prosecution against him/her without exculpatory grounds, or issues a criminal conviction which becomes final or a decision that s/he receive compulsory medical treatment;
10.1.3. If it is revealed that the member of the Council does not meet the requirements of Article 6.4 or Article 7 of this Act;
10.1.4. If s/he had responsibility for particular proceedings in the Judicial-Legal Council and is transferred to proceedings in another case;
10.1.5. If the court determines that s/he is disabled or has restricted ability;
10.1.6. If s/he dies;
10.1.7. If s/he is acknowledged as dead or missing by the court;
10.1.8. If s/he is incapable to carry out his or her responsibilities for more than six months, as supported by medical documents;
10.1.9. If s/he fails to participate at sessions of the Judicial-Legal Council three times consecutively or six times during a year without good reason;
10.1.10. If s/he fails to perform the responsibilities specified in Article 7.2 of the present Act;
10.1.11. If s/he conducts his or herself in a way that compromises his or her fitness to act as a member.
10.2. The authority of the member of the Judicial-Legal Council may be terminated following his or her dismissal from membership.
10.3. Any new member of the Judicial-Legal Council appointed to replace a member whose term of office was terminated before its expiration, shall be appointed only for the remainder of his or her predecessor's term in accordance with the procedure set out in Article 6 of this Act.

Article 26. President of the Judicial-Legal Council

26.1.Members of the Judicial-Legal Council shall elect the President of the Council from among themselves and according to a simple majority vote. The term of the office of the President shall be two years and six months. The same person may be re-elected to the position of the President more than once.

26.2.8 to one of the members of the Judicial- Legal Council.

	26.3.Where the President of the Council becomes temporarily incapable to carry out his or her functions, members of the Judicial- Legal Council shall select from among themselves an acting president. The acting president shall carry out in full the functions of the President of the Judicial-Legal Council. 26.4.The President may delegate his or her functions provided by Articles 26.2.6 to
Competence in general	**Judicial-Legal Council Act 2004 (as at January 1 2006)** **Article 11. Functions of the Judicial-Legal Council** 11.0.The Judicial-Legal Council carries out the following functions: 11.0.1. Submits proposals on the structure of the courts to the relevant executive body of the Republic of Azerbaijan (location, territorial jurisdiction and number of judges); 11.0.2. Arranges the selection of candidates for judicial posts; 11.0.3. Evaluates the activities of judges and the organization of work by the presidents and deputy presidents of the courts and the presidents of the collegial boards of courts; 11.0.4. Discusses issues of transfer to other positions, dismissal and appointment of the appointed judges, the presidents of the courts of the Republic of Azerbaijan, the deputy presidents and presidents of the collegial board from among the elected judges, except for the President of the Supreme Court, courts of appeal, NAR Supreme Court, and serious crime courts; 11.0.5. Takes measures to raise the professional standards of judges and the preparation of candidates for judicial posts; 11.0.6. Provides wages to candidates for vacant judicial posts assigned to preliminary training courses; 11.0.7. Takes measures to ensure the independence of judges and to prevent interference with their activities; 11.0.8. Takes measures to supply the courts with legal materials and information; 11.0.9. Submits proposals on supplying the courts with equipment and funds; 11.0.10. Approves the judicial code of ethics; 11.0.11. Considers issues of awarding, rewarding and disciplining judges; 11.0.12. Considers motions for the termination of the office of judges and the institution of criminal prosecution of judges; 11.0.13. Considers applications and complaints against decisions of the Judges Selection Committee; and 11.0.14. Carries out other functions set out in legislation. **Article 12. Authorities of the Judicial-Legal Council** 12.0. The Judicial-Legal Council shall be vested with the following powers in order to carry out its functions: 12.0.1. To prepare written and oral examinations designed to select candidates for judicial posts, evaluate candidates following long-term training and conducting final interviews; 12.0.2. To recruit the staff of the Judicial-Legal Council; 12.0.3. To approve the Charter of and to appoint the Judge Selection Committee;

	12.0.4. To propose the relevant executive body appointment from among appointed judges and the removal from office and transfer to other positions of the presidents and deputy presidents of the courts of the Republic of Azerbaijan, except the presidents of the Supreme Court of the Republic of Azerbaijan, the courts of appeal, the NAR Supreme Court and the serious crimes courts; 12.0.5. To propose the conferral of awards to judges by the relevant executive body* of the Republic of Azerbaijan ; 12.0.6. To reward judges; 12.0.7. To impose disciplinary liability upon judges; 12.0.8. To decide issues of termination of judicial office and submit proposals regarding termination to the relevant executive body of the Republic of Azerbaijan; 12.0.9. To approve the instigation criminal prosecutions of judges and their temporary suspension from office; 12.0.10. To set up special medical commissions to determine whether judges have been prevented for more than six months from properly exercising their functions due to ill-health; 12.0.11. To receive documents and information from courts, public institutions and private individuals relating to the issues considered by the Judicial-Legal Council; 12.0.12. To engage for the Judicial council's purposes the services of employees, specialists and experts from the public organizations, scientific institutions, and state organs; 12.0.13. To develop statutory instruments in order to implement and regulate the functions vested in the Judicial-Legal Council; 12.0.14. To pass appropriate decisions on the issues considered by the Judicial-Legal Council; 12.0.15. To supervise the implementation of its decisions; 12.0.16. To analyze the activities of judges and the organization of the courts; 12.0.17. To hold discussions with candidates nominated by the Judges Selection Committee; 12.0.18. To receive reports by the Judge Selection Committee regarding its activities; 12.0.19. To submit proposals on the improvement of legislation relating to courts and judges; 12.0.20. To arrange specialized courses, seminars and training sessions in training centres in order to raise professional standards within the judiciary; 12.0.21. To arrange long-term training within the training centres for candidates for appointment to vacant judicial posts; 12.0.22. To submit proposals to the presidents of the first instance courts regarding the distribution of cases between judges in accordance with their respective specialisations; 12.0.23. To establish international relations relative to its activities in order to facilitate the exchange of experience in the field of court practice; 12.0.24. To attract funds from local and foreign organizations and receive grants in order to promote the functions of the Judicial-Legal Council; 12.0.25. To cooperate with non-governmental organizations and the mass media in order to inform the public about the courts' activities; 12.0.26. To make proposals regarding the improvement of work conditions of judges and court staff; 12.0.27. To exercise other powers provided by legislation. **Article 26. President of the Judicial-Legal Council** 26.2. The President of the Judicial-Legal shall: 26.2.1. Represent the Judicial-Legal Council; 26.2.2. Arrange the work of the Judicial-Legal Council;

	26.2.3. Convene sessions of the Judicial-Legal Council; 26.2.4. Preside over Sessions of the Judicial-Legal Council; 26.2.5. Raise issues relating to the functions of the Judicial-Legal Council at its sessions; 26.2.6. Manage funds assigned to the Judicial-Legal Council from the state budget for its operation; 26.2.7. Manage the staff of the Judicial-Legal Council; 26.2.8. Appoint, dismiss, discipline and grant bonuses to staff; 26.2.9. Carry out such other functions as are vested in him by the legislation of the Republic of Azerbaijan. **Article 27. Rights and duties of the members of the Judicial-Legal Council** 27.1.Members of the Judicial-Legal Council shall enjoy the following rights: 27.1.1. To participate in sessions of the Judicial-Legal Council and to express opinions as to the conduct of those sessions; 27.1.2. To play a role in determining questions relating to the functions of the Judicial-Legal Council; 27.1.3. To ask questions of the rapporteur and of any other person participating at sessions of the Judicial-Legal Council; 27.1.4.To demand any information or documents relevant to the subject matter of the forthcoming session from legislative, executive and judicial bodies, local administration and legal and physical persons; 27.1.5. To familiarize themselves with appeals, motions and other materials submitted to sessions of the Judicial-Legal Council; 27.1.6. To express opinions on the questions to be determined by the Judicial-Legal Council; 27.1.7. To provide special opinions where they do not agree fully or in part with the decision taken by the Judicial-Legal Council; 27.1.8. To propose for the consideration of the Judicial-Legal Council session issues relevant to the functions of the Judicial-Legal Council; 27.1.9. To familiarize themselves with the decisions, minutes and other documents of the Judicial-Legal Council; 27.1.10. To carry out other functions as specified in the legislation of the Republic of Azerbaijan. 27.2.In the course of their activities, members of the Judicial-Legal Council: 27.2.1.Shall be bound by the Constitution of the Republic of Azerbaijan, this Act, the Courts and Judges Act of the Republic of Azerbaijan and other legislative acts and instruments of the Republic of Azerbaijan; 27.2.2. Shall act impartially, and in the interests of law and justice on all issues considered at sessions of the Judicial-Legal Council; 27.2.3. Shall not fail to attend sessions of the Judicial-Legal Council without good reason; 27.2.4. Shall take part in voting during sessions of the Judicial-Legal Council or submit his/her written opinion; 27.2.5. Shall not act or speak publicly in a way that may harm the reputation of members of the Judicial-Legal Council; 27.2.6. Shall not express his/her opinion on issues to be considered by the Judicial-Legal Council until the relevant decision on it has been passed; 27.2.7. Shall not violate the requirements contained in Article 7 of this Act.

	Courts and Judges Act 1997 **(as at January 1, 2006)** **Article 21. Organization of district (city) court** The district (city) court is established in districts, towns (except towns subordinated to districts) and city districts of the Republic of Azerbaijan and its jurisdiction covers relevant districts, towns and city districts of the Republic of Azerbaijan. The organization and location of the district (city) court shall be determined according to paragraph 32 Article 109 of the Constitution of the Republic of Azerbaijan following due consideration of proposals made by of the Judicial-Legal Council. Only one district (city) court shall be established in each district (city). **Article 32. Organization of military court** The military court is established in each administratively sub-divided territorial area containing military units of the Armed Forces of the Republic of Azerbaijan and other armed formations, following due consideration to the number of military units to be covered by the jurisdiction of each military court. The organization, location and territorial jurisdiction of each military court shall be determined in accordance with paragraph 32 Article 109 of the Constitution of the Republic of Azerbaijan, following due consideration of proposals made by the Judicial-Legal Council. **Article 43. Organization of local economic court** The local economic court is established in each administratively sub-divided territorial area or free trade zone of the Republic of Azerbaijan. The organization, location and jurisdiction of each local economic court shall be determined in accordance with paragraph 32 Article 109 of the Constitution of the Republic of Azerbaijan, following due consideration of the proposals made by the Judicial-Legal Council. **Article 61. Court of appeal** Subject to point I of Article 132, the court of appeal is a higher instance court on civil, economic, criminal and administrative offences cases. The organization, location and territorial jurisdiction the court of appeal shall be determined in accordance with paragraph 32 Article 109 of the Constitution of the Republic of Azerbaijan following due consideration of the proposals made by the Judicial-Legal Council.
Competence in the field of the judicial profession	**Judicial-Legal Council Act 2004 (as at January 1 2006)** **Article 14. Judges Selection Committee** 14.1. The Judicial-Legal Council shall form the Judges Selection Committee which shall be responsible for the selection of candidates for vacant judicial posts and shall be composed of 11 members as follows and shall include judges, Council staff,

Competence in the field of the judicial profession *Appointment*	representatives of the relevant executive body* of the Republic of Azerbaijan and the Prosecutor's Office, in addition to defence lawyers and academics: 14.1.1. Two judges of the Supreme Court of the Republic of Azerbaijan; 14.1.2. Three judges of the courts of appeal; 14.1.3. One NAR Supreme Court judge; 14.1.4. One member of the Judicial-Legal Council staff; 14.1.5. One representative of the relevant executive body of the Republic of Azerbaijan; 14.1.6. One representative of the Prosecutor's Office of the Republic of Azerbaijan; 14.1.7. One member of the Bar of the Republic of Azerbaijan; and 14.1.8. One legal academic. 14.2.Members of the Judicial-Legal Council cannot simultaneously be members of the Judges Selection Committee. 14.3.The Judges Selection Committee shall receive applications from candidates for the vacant judicial posts, organize, in a transparent manner, a written test and oral exam in order to examine the aptitude and suitability of candidates for holding judicial office, engage judicial candidates in long-term training, and interview judicial candidates in order to assess their professional aptitude. 14.4. The Judges Selection Committee is funded out of the state budget. The maintenance payments to members of the Judicial-Legal Council pursuant to Article 8 of this Act shall also be provided to members of the Judges Selection Committee. 14.5.Appeals against decisions of the Judges Selection Committee may be made to the Judicial-Legal Council. Each appeal shall be considered within 10 days and determined in order to uphold, quash or amend the decision; **Article 15. Determination of the Service Venue of Nominees for Judicial Posts** 15.2. The Judicial-Legal Council shall consider each nomination for a judicial post by the Judges Selection Committee and determine whether legislation or the Charter of the Judge Selection Committee has been violated in any way in the course of selecting the nominee, and shall propose appointment to a judicial post of those candidates who have attained the minimum required grade prescribed by the Judicial-Legal Council. **Article 16. Motions for appointment of nominees to judicial posts** 16.0. The Judicial-Legal Council shall pass motions for the appointment of candidates to each vacant judicial post to the relevant executive body* of the Republic of Azerbaijan. The following information shall be included to the motion for appointment: 16.0.1. First name, traditional name and family name; 16.0.2. A brief CV and personal information; 16.0.3. The results of the preliminary training and final interview; 16.0.4. Information about the professional aptitude of the candidate, including his or her specialization; 16.0.5. The proposed judicial post. * Here the powers of the relevant executive body are carried out by the President of the Republic of Azerbaijan

Dismissal and Disciplinary proceedings	**Article 17. Decisions of the Judicial-Legal Council** 17.6. Decisions of the Judicial-Legal Council subsequent to disciplinary proceedings shall be published within one month of being taken. **Article 19. Disciplinary liability of judges** 19.1.Judges shall be subjected to disciplinary liability only in the existence of the grounds contained in the Courts and Judges Act of the Republic of Azerbaijan. 19.2. Subject to the Courts and Judges Act of the Republic of Azerbaijan, only the Judicial-Legal Council shall be entitled to commence disciplinary proceedings against judges following the motions of those entitled to pass motions under the same Act. 19.3.Subject to the Courts and Judges Act of the Republic of Azerbaijan, those entitled to pass motions to the Judicial Legal Council shall be required to do so in order to bring disciplinary proceedings if the reasons for doing so, as set out in the same act, exist. 19.4. The Judicial-Legal Council shall consider each motion to bring disciplinary proceedings within two months of it being made, and shall then decide whether the motion should be upheld, and disciplinary proceedings brought, or dismissed. **Article 21. Disciplinary Proceedings** 21.1.Within three months of disciplinary proceedings being brought, the Judicial-Legal Council and a judge shall together examine the case and issue an appropriate decision. The Judicial Legal Council may extend this time period if the judge is, for good reason, not able to appear before it within three months. 21.2. The President of the Judicial-Legal Council shall appoint a rapporteur from among the judicial members of the Council to report on the issue that forms the grounds on which disciplinary proceedings being commenced. The rapporteur shall examine the relevant materials assisted by the staff of the Judicial- Legal Council and shall submit his report on the relevant issue together with proposals to the President of the Judicial-Legal Council that the person shall be invited to a session of the Judicial- Legal Council. The President shall set aside a session of the Council to address the issue. 21.3.Members of the Judicial-Legal Council and the invited persons shall be informed as to the time and venue of the relevant Council session at least three days before it is due to take place. During this period the members of the Council shall be familiarized with the agenda of the session and the materials to be examined. 21.4.The judge against whom the disciplinary proceedings have been brought shall be informed as to the time and venue of the session of the Judicial-Legal Council at least five days before it is due to take place. If the judge has not been informed about the date of the session in an appropriate manner or if s/he has had a valid reason to to miss the session of the Judicial-Legal Council, the hearing shall be adjourned. If the judge has been informed as to the date of the session, familiarized him or herself with the materials and does not have a valid reason to miss the session, the Council shall hear the case in his absence. An official record shall be made as to any refusal to familiarise him or herself with the documents or to attend the session.

	21.5. The session of the Judicial-Legal Council as to the judge's disciplinary liability shall be considered valid if five of its members holding voting powers are present. The President shall open the session on the appointed date, announce the agenda, take a note of those in attendance, inquire as to the reasons for any non-attendance, discuss the possibility of considering the materials, and determine any objections from Council members. 21.6. The Judicial-Legal Council's disciplinary hearing shall commence with the report of the rapporteur who has examined the materials pertaining to the issue. In addition, the Judicial-Legal Council shall hear from the judge against whom disciplinary proceedings have been brought and invited persons, and motions shall be considered, appropriate documents and materials studied, enquiries made, and the results discussed, before the Judicial-Legal Council issues one of the decisions set out in Article 112 of the Courts and Judges Act. 21.7.The Judicial-Legal Council shall base its disciplinary decision on the main issues raised in the proceedings, the character of the judge, and the gravity and consequences of the actions he or she has committed. **Article 22. Termination of disciplinary proceedings** 22.1.1. The Judicial-Legal Council shall terminate disciplinary proceedings in the following cases: 22.1.1. If no violations by the judge have been found; 22.1.2.If the disciplinary proceedings against a judge have not been instituted until a year or more after the violation was detected or three years after the violation was committed. 22.2. Disciplinary proceedings can be terminated following discussion and due consideration of case facts of the case and the extent of any disciplinary offence. **Article 23. Disciplinary Decisions of the Judicial-Legal Council** 23.1. The Judicial-Legal Council shall set out the following information in the written decision it issues: 23.1.1. The name of the council and the names of those members present; 23.1.2. The time and venue of the decision; 23.1.3. The first name, family name, traditional name and post of the judge against whom disciplinary proceedings were brought; 23.1.4. The name of the person who submitted the motion for bringing disciplinary proceedings; 23.1.5. A summary of the issue considered; 23.1.6. The explanation of the judge against whom the proceedings were brought; 23.1.7. The findings of fact and the conclusions drawn by the Judicial-Legal Council; 23.1.8. The decision reached; 23.1.9. The order and the period allowed for an appeal. 23.2. The Judicial-Legal Council passes its decision by simple majority of its judicial members. Voting on disciplinary liability shall be carried out without the participation of the judge against whom the proceedings were brought, the person who applied for or submitted a motion that the proceedings be brought, and the invited persons. If the votes are tied, the judge shall not be called to account. The resolution part of the decision on disciplinary proceedings shall be announced immediately. The reasoned decision shall be prepared within ten days. 23.3. The decision shall, within three days, be forwarded to the judge against whom proceedings were brought and the person who moved to have the proceedings brought.

	23.4.The judge against whom proceedings were brought and the person on whose motion they were brought shall be entitled to copies of the hearing minutes after proceedings have been concluded. **Courts and Judges Act 1997** **(as at January 1 2006)** **Article 101. Immunity of judges** Judges shall enjoy immunity subject to Article 128 of the Constitution of the Republic of Azerbaijan. Except where caught committing a crime, judge shall not be subject to detention, arrest, personal search or examination and shall be criminally prosecuted only with the permission of the Judicial-Legal Council. The immunity of judges applies also to their homes, public offices, vehicles, communication means, post-telegraph correspondence, private property and documents. Where an officer or organ of law enforcement catches a judge committing a crime, he/she/it shall immediately inform the Prosecutor-General of the Republic of Azerbaijan. Should the Prosecutor-General find that there are sufficient grounds on which to pursue a criminal prosecution, s/he shall immediately lodge a motion to that effect to the Judicial-Legal Council. The Judicial-Legal Council shall consider the motion with the assistance of the Prosecutor General of the Republic of Azerbaijan or his/her deputy, within twenty-four hours from the moment it is lodged, and pass a decision either upholding or rejecting it. This decision shall immediately be submitted to the Prosecutor General of the Republic of Azerbaijan. Where the Judicial-Legal Council issues its permission, the judge caught committing a crime shall be prosecuted in accordance with the criminal-procedure legislation of the Republic of Azerbaijan. Without this permission, the judge shall be released immediately. In all other cases, the motion of the Prosecutor-General of the Republic of Azerbaijan as to the criminal prosecution of a judge shall be considered within ten days from the moment it is lodged. Where the Judicial-Legal Council grants permission, the criminal prosecution shall pursued as prescribed by the criminal procedure legislation of the Republic of Azerbaijan. The judge against whom a criminal prosecution has been permitted shall be suspended from exercising of his/her judicial powers from this moment onwards. A judge whose powers are temporarily suspended shall continue to receive a wage. Where the judge is acquitted or where criminal proceedings are terminated due to exculpatory grounds set out in by the criminal procedural legislation, the judges powers shall be restored. In other cases, including where the judge receives a guilty verdict or the court decides to make a mandatory order relating to medical assessment or treatment, the judge shall be dismissed from office.

	Dismissal shall be conducted pursuant to parts IV and V of Article 128 of the Constitution of the Republic of Azerbaijan. Dismissal from office shall have the effect of terminating the judge's powers.
Competence in the field of budgetary issues	

Judges' career

Selection[1]	**Courts and Judges Act 1997** **(as at January 1 2006)** **Article 93-2. Judges Selection Committee** The Judicial-Legal Council shall establish the Judges Selection Committee to carry out the selection of candidates for judicial posts. This Act, Judicial Legal Council Act and the Charter of the Judges Selection Committee approved by the Judicial-Legal Council shall regulate the activity of the Judges Selection Committee. **Article 93-3. Selection of nominees for judicial office** Applicants for judicial office shall sit a written exam and an oral exam. The Judges Selection Committee arranges these exams to select candidates. The results of these exams are evaluated by the Judges Selection Committee. The Judges Selection Committee may engage an *ad hoc* commission in the implementation of this function. The applicants who have succeeded in these exams are automatically admitted to perform a long-term training period. This training period is organized by the training centre. The place of work and salary of each applicants admitted to undertake long-term training shall be maintained. Financial support for those applicants who are not working is provided by the Judicial-Legal Council. The level of support is determined by the Judicial-Legal Council and is paid from resources assigned to the Council from the state budget. At the end of his or her training, each trainee is evaluated. The results of his or her evaluation are based on considerations made by the Training Centre and summaries of each trainee's interview with members of the Judge Selection Committee. As part of the evaluation, each trainee is marked.

[1] See also: Charter (Statute) of Judges Selection Committee (approved by the Judicial-Legal Council on March 11, 2005)

	Applicants shall then be ranked according to merit based on the mark obtained. The results of this evaluation are submitted to the Judicial-Legal Council. The Judicial-Legal Council proposes to the relevant executive body of the Republic of Azerbaijan the appointment of candidates in accordance with the number of the judicial positions available. Applicants who complete training successfully but fail to receive an appointment may be appointed to administrative positions in the judicial bodies or admitted to service in the prosecutor's office and then to a judicial post if and when one becomes available.
Appointment (procedure)	**Constitution of Azerbaijan** **Article 109. Competence of the President of the Azerbaijan Republic** The President of Azerbaijan Republic: Submits proposals to the Milli Majlis of the Azerbaijan Republic as to the appointment of judges of the Constitutional Court of the Azerbaijan Republic, the Supreme Court of the Azerbaijan Republic and of the Economic Court of the Azerbaijan Republic, and appoints judges of other courts of the Azerbaijan Republic; **Courts and Judges Act 1997** **(as at January 1 2006)** **Article 93-4. Special procedures applicable to judicial appointments** Subject to Article 93-3 of this Act, persons meeting the requirements set out in paragraph 1 Article 126 of the Constitution of the Republic of Azerbaijan, who are prominent in the legal profession, who have 20 years or more experience as legal practitioners and who maintain high moral standards may, following a proposal by the Judicial-Legal Council, be appointed to the high judicial posts according to the procedures laid down in legislation. **Article 94. Appointment of judges, presidents, deputy presidents and presidents of chambers** Subject to part IX Article 109 of the Constitution of the Republic of Azerbaijan, the President of the Republic of Azerbaijan appoints judges of the Republic of Azerbaijan. Subject to part IX Article 109 and part X Article 95 of the Constitution of the Republic of Azerbaijan, the Milli Majlis of the Republic of Azerbaijan appoints the judges of the Supreme Court, NAR Supreme Court and courts of appeal, upon the advice of the President of the Republic of Azerbaijan. As a rule, the post of high court judge shall be filled by persons who have at least five years of work experience as judges of first instance. The President of the NAR National Assembly shall participate in the selection of the candidates to judicial posts in the NAR.

	The Presidents of the courts of the Republic of Azerbaijan, deputy presidents and chamber presidents shall be elected from among the judges of the appropriate courts and appointed for five year terms and, as a rule, may not be appointed to the same position twice. The presidents of the Supreme Court, appellate courts, NAR Supreme Court and serious crimes courts shall be appointed according to the procedure provided for in paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan. Presidents of other courts of the Republic of Azerbaijan, deputy presidents of the courts of the Republic of Azerbaijan as well as chamber presidents shall be appointed, following a proposal by the Judicial-Legal Council, according to paragraph 32 of Section 109 of the Constitution of the Republic of Azerbaijan.
Terms of office and Promotion	**Courts and Judges Act 1997** **(as at January 1 2006)** **Article 96. Terms of Judicial Office** New judges shall be appointed for terms of five years. During this term judges shall take a training course at least once a year. At the end of this period their activity shall be evaluated. If the evaluation does not reveal any professional shortcomings, the mandate of the judge shall be extended until the age of retirement of 65, following a proposal by the Judicial-Legal Council. There shall be a discretion to extend the terms of judges who have reached the age of retirement to 70 upon a proposal by the Judicial Legal Council. If the evaluation reveals professional shortcomings, the mandate of the judge shall not be extended. The evaluation is carried out according to Article 13 of the Judicial-Legal Council Act of the Republic of Azerbaijan. If the judge reaches the age of retirement while in the process of considering a case, his mandate shall be valid until the case concludes. **Article 97. Inalterability** Subject to part I article 127 of the Constitution of the Republic of Azerbaijan, the terms of office of judges shall not be altered. Judges shall not transferred to another post without their consent. Subject to the exceptions provided for by this Act, judges shall not be dismissed from their posts and their powers shall not be terminated. **Judicial-Legal Council Act 2004 (as at January 1, 2006)** **Article 13. Evaluation of the work of judges** 13.1. As a rule, the Judicial-Legal Council evaluates the work of judges once every three years. 13.2.Evaluation of the work of judges is carried out in order to improve the administration of justice, organize adequate judicial training and to review the aptitude of judges to carry out their judicial duties. 13.3.The activities of judges are evaluated on the basis of the opinions as to how

	they perform their duties of the President of the Supreme Court of the Republic of Azerbaijan, presidents of the courts of appeal, the NAR Supreme Court and the presidents of the courts in the jurisdiction in which the judges are appointed. Evaluations also draw upon information collected by the relevant executive body in the course of implementation of its functions as set out in legislation and information submitted to the Judicial-Legal Council. The information at the disposal of the members of the Judicial-Legal Council also contributes to the setting up of the evaluation. 13.4. The Judicial-Legal Council shall determine the procedure and methodology for evaluation the work of judges. **Courts and Judges Act 1997** **(as at January 1 2006)** **Article 66. Powers of the President of the court of appeal** The President of the court of appeal shall be entitled to: Propose that the Judicial-Legal Council reward judges of the court of appeal and first instance within the territorial jurisdiction of the relevant court of appeal; **Article 83. Powers of the President of the Supreme Court** The President of the Supreme Court shall be entitled to: Propose that the Judicial-Legal Council reward judges of the Republic of Azerbaijan; **Article 110. Encouragement of judges** The Judicial-Legal Council shall be entitled to take the following measures to encourage judges where they carry out their duties in an exemplary manner, have a long record of impeccable judicial experience, or attain other achievements: - Declare gratitude to the judges; - Reward the judges.
Remuneration and other social guarantees	**Courts and Judges Act 1997** **(as at January 1 2006)** **Article 106. Funding of judges** Judges shall have their wages determined at the following rate: President of the Supreme Court at the rate of 1,300 of the conditional monetary units; Presidents of the NAR Supreme Court and courts of appeal at the rate of 90 percent of the wage of the President of the Supreme Court; Presidents of the Serious Crime Court, Military Serious Crimes Court and Serious Crimes Court of the Nakhchivan Autonomous Republic at the rate of 80 percent of the wage of the President of the Supreme Court; Presidents of other courts, at the rate of 60 percent of the wage of the Supreme Court President; Deputy presidents of courts, at the rate of 90 percent of the wage of their respective courts' presidents; Presidents of chambers of the Supreme Court, NAR Supreme Court and courts of appeal at the rate of 85 percent of the wage of their respective courts' presidents;

	Judges of all the courts, at the rate of 80 percent of the wage of their respective courts' presidents. For every five years of judicial experience, as well as, for attaining academic degrees, judges shall receive a bonus payment at the rate of 15 percent of their official wage, on the condition that the bonus does not exceed 45 percent*. The employees of the Prosecutor's Office appointed to a judicial post shall have a bonus added to their wage for every 5 years of their work experience. **Article 107. Vacation term and remuneration for judges** Judges shall get annual vacation leave for forty calendar days. Judges shall be paid twice their monthly wage when on vacation leave. The judges of the Supreme Court, courts of appeal and NAR Supreme Court shall be granted annual vacation leave from the their respective presidents; all other judges shall be granted vacation leave by the relevant executive body*. * According to the decision of the Constitutional Court of the Republic of Azerbaijan dated January 23 2001, the provisions of part two of the article 106 shall apply in respect of judges appointed according to this Act by taking into account their judicial experience gained prior to passing of this Act. * Here the powers of the relevant executive body are carried out by the Ministry of Justice of the Republic of Azerbaijan **Article 108. Accommodation of judges** Judges requiring accommodation at the place of their appointment or improvements in their living conditions shall be provided with dwelling premises by the relevant executive body within six months of their appointment. **Article 109. Social security of judges** The life and health of judges are insured by the State Budget at the rate of their five-yearly wage. Judges who, whilst in office, die, contract illness, are wounded or contused, or sustain injury that prevents them from carrying out their duties, shall receive a one-time payment in accordance with and in the amount set out in legislation. Judges or their family members shall be reimbursed for judges' property destroyed or damaged in the course of their judicial activities. Damage described in this Article shall be reimbursed from the State Budget of the Republic of Azerbaijan as provided by the legislation and subsequently retrieved from the responsible person for the damage. Judges shall be provided with public medical service. Judges shall be furnished with financial means at the rate of two months' wages as provided by the relevant executive body*. Judges who have held office for at least 5 years and reach pension age shall have their pensions determined with due consideration of their judicial experience at the following rate: Judges with 5 years' judicial experience - at the rate of 45 percent of the average wages received in judicial office during 5 years; Judges with 5 - 10 years' judicial experience - at the rate of 45 percent of the average wages received in judicial office during 5 years with extra charge at the rate of 2 percent for every next year; Judges with 10 - 15 years' judicial experience - at the rate of 55 percent of the average wages received in judicial office during 5 years with extra charge at the rate of 5 percent for every next year over 10 years' judicial experience, but not exceeding 80 percent of the average wage.

	The pension shall be altered according to the following changes in salaries*. * In this connexion, the powers of the relevant executive body are exercised by local (district) executive bodies. * In this connexion, the powers of the relevant executive body are exercised by the Cabinet of Ministers. Paragraph 5 of this Article shall apply to judges who reached the age of retirement before appointments were made according to this Act.
Disciplinary proceedings	**Judicial-Legal Council Act 2004 (as at January 1 2006)** **Article 18. Appeals against decisions of the Judicial-Legal Council** 18.1.Appeals against decisions of the Judicial-Legal Council on judges or judicial candidates, including decisions following disciplinary proceedings (excluding decisions provided by Article 17.4 of this Act) shall be lodged with the Plenary Board of the Supreme Court within twenty days from the date of the decision and shall be made on points of law only. 18.2.The Plenary Board of the Supreme Court shall consider an appeal against a decision of the Council within three months, issue a decision to the effect of either upholding, abrogating or amending the decision, and shall present its decision to the President of the Judicial-Legal Council. 18.3.Appeal determinations of the Plenary Board of the Supreme Court shall be final. 18.4.The Plenary Board of the Supreme Council shall consider appeals against decisions of the Judicial-Legal Council according to its general work practice. **Article 20. Rights of judges subject to disciplinary proceedings** 20.0.Judges who are subject to disciplinary proceedings shall be entitled to: 20.0.1. Familiarize themselves with the relevant materials; 20.0.2. Have their case defended by a judge or member of Bar Association of the Republic of Azerbaijan of his/her choice; 20.0.3. Be informed of the time and venue of their disciplinary hearing; 20.0.4. Object to a Member of the Judicial-Legal Council on the grounds set out in Article 28 of this Act; 20.0.5. Participate at the disciplinary hearing and lodge his/her explanations, applications and/or documents; 20.0.6. Receive a copy of the decision reached as a result of the disciplinary proceedings; 20.0.7. Appeal against the decision to subject him or her to disciplinary liability. **Article 24. Appeals against decisions following administrative proceedings** A judge subjected to disciplinary liability shall be entitled to appeal against the decision to discipline him to the Plenary Board of the Supreme Court of the Republic of Azerbaijan according to Article 18 of this Act.

Courts and Judges Act 1997
(as at January 1 2006)

Article 66. Powers of the President of the court of appeal

The President of the court of appeal shall be entitled to:
Apply to the Judicial-Legal Council for disciplinary proceedings to be commenced in respect of judges of the first instance courts within the territorial jurisdiction of the relevant court of appeal and court of appeal judges, in the circumstances and in accordance with the procedure set out in the legislation of the Republic of Azerbaijan;

Article 83. Powers of the President of the Supreme Court

The President of the Supreme Court shall be entitled to:
Apply to the Judicial-Legal Council for disciplinary proceedings to be commenced or offices to be terminated in respect of judges of the courts of the Republic of Azerbaijan, in the circumstances and in accordance with the procedure set out in the legislation of the Republic of
Azerbaijan.

Article 111. Grounds for Commencing Disciplinary Proceedings

Disciplinary proceedings shall be commenced if one or more of the following exist:

- A complaint of a natural or legal person;
- Information published in the mass media;
- Statutory violations by the judge in question revealed in the course of considering cases in the appellate and cassation courts or special decisions of higher instance courts;
- Statutory violations reflected in the decisions of the European Court of Human Rights and the Constitutional Court of the Republic of Azerbaijan;
- Statutory violations revealed during the evaluation of judges' activity and the summarizing of judicial experience;
- Other information received by a person entitled to apply for the commencement of disciplinary proceedings.

Article 111-1. Grounds for disciplinary liability of judges

Judges shall be subjected to disciplinary liability only on the following grounds:

- Either a gross infringement or multiple infringements of the requirements of legislation in the course of considering of cases;
- Breach of judicial ethics;
- Gross violation of legislative provisions in terms of labour or performance;
- Failure to comply with requirements of a financial nature contained in Article 5.1 of the Combating Corruption Act of the Republic of Azerbaijan;
- Commission of acts provided by Article 9 of the Combating Corruption Act of the Republic of Azerbaijan;
- Commission of acts that bring the judiciary into disrepute.

	Article 112. Procedures for subjecting judges to disciplinary liability Only the Judicial-Legal Council shall be entitled to institute disciplinary proceedings against a judge. The Presidents of the Supreme Court, courts of appeal, NAR Supreme Court and the relevant executive body shall be required, within the scope of their competence, to apply to the Judicial-Legal Council with a motion to institute disciplinary proceedings if there are grounds on which the opening of disciplinary proceedings can be based or grounds for subjecting a judge to disciplinary liability. Natural and legal persons, where they possess information on the grounds provided by paragraph 6 Article 111-1 of this Act on which the opening of disciplinary proceedings can be based, may apply to the Judicial-Legal Council. The President of the Supreme Court of the Republic of Azerbaijan shall be entitled to apply to the Judicial-Legal Council with a motion to commence disciplinary proceedings in respect of all judges of the first, appellate and cassation courts. The Presidents of the courts of appeal shall be entitled to apply to the Judicial-Legal Council with a motion to commence disciplinary proceedings in respect of judges of the relevant court of appeal as well as judges of the first instance courts within the territorial jurisdiction of the relevant court of appeal. The President of the NAR Supreme Court shall be entitled to apply to the Judicial-Legal Council with a motion to commence disciplinary proceedings with respect to judges of this court and judges of the first instance courts within territorial jurisdiction of the NAR Supreme Court. The relevant executive body of the Republic of Azerbaijan shall be entitled to apply to the Judicial-Legal Council with a motion to commence disciplinary proceedings in respect of judges of the first and appellate instances. Disciplinary proceedings against a judge may be instituted within one year after exposure and within three years after commission of the violation. Only the Judicial-Legal Council may subject judges to disciplinary liability. The Judicial-Legal Council shall pass one of the following decisions following a disciplinary procedure: Reprimand the judge; Reattestation of the judge; Propose that the relevant executive body of the Republic of Azerbaijan demote the judge; Propose that the relevant executive body of the Republic of Azerbaijan transfer the judge to a different judicial post; Propose that the relevant executive body* of the Republic of Azerbaijan terminate the powers of the judge; Terminate the disciplinary proceedings. Depending on the grounds for disciplinary liability provided in article 111-1 of this Law, one of the following punishments may be prescribed: A gross infringement or multiple infringements of the requirements of legislation in the course of considering cases – reattestation of the judge or proposing that the relevant executive body of the Republic of Azerbaijan transfer the judge to different judicial post; Breach of judicial ethics - reattestation or reprimanding the judge or proposing that the relevant executive body of the Republic of Azerbaijan transfer the judge to different judicial post;

Gross violation of legislative provisions in relation to labour of performance standards - reattestation or reprimanding the judge or proposing that the relevant executive body of the Republic of Azerbaijan transfer the judge to a different judicial post;

Failure to comply with a requirement of a financial nature contained in Article 5.1 of the Combating Corruption Act of the Republic of Azerbaijan - reproofing or reprimanding the judge;
Commission of acts prohibited by Article 9 of the Combating Corruption Act of the Republic of Azerbaijan - reprimanding * In this connexion, the powers of the relevant executive body are exercised by the President of the Republic of Azerbaijan.

Commission of acts bringing the judiciary into disrepute - reproofing of or reprimanding of the judge or proposing that the relevant executive body of the Republic of Azerbaijan demote the judge.

The decision as to the disciplinary liability of a judge, in the absence of an appeal being submitted, shall take effect twenty days after enactment.
During this period, appeals against decisions of the Judicial-Legal Council on subjecting a judge to disciplinary liability shall be made to the Plenary Board of the Supreme Court.

The Plenary Board of the Supreme Court shall consider appeals against decisions of the Council within three months, issue a decision upholding, abrogating or amending it, and present its decision to the Council. The decision of the Plenary Board of the Supreme Court shall be final. During consideration of appeals against decisions as to the disciplinary liability of a judge, members of the Judicial-Legal Council who participated in voting may not participate in voting on these decisions at the Plenary Board of the Supreme Court. Where the judge is not subjected to disciplinary liability again in the same year, s/he will be considered not to have been subjected to disciplinary liability after expiry of that year. This Act and the Judicial-Legal Council Act of the Republic of Azerbaijan shall regulate the procedure for subjecting judges to disciplinary liability.

Combating Corruption Act of the Republic of Azerbaijan
(adopted by Parliament on 13 January 2004)

Article 5. Requirements of a financial nature
(As amended by the law of 01.04.2005)

5.1. Officials shall submit the following information in accordance with the procedure laid down in the legislation:
5.1.1. Their yearly income, indicating the source, type and amount thereof;
5.1.2. Property held on which they are taxed;
5.1.3. Deposits in banks, securities and other financial means;
5.1.4. Participation in the activities of companies, funds and other economic entities as shareholders or founders, and their property share in such enterprises;
5.1.5. Their debts of over five thousand times the nominal financial unit ;
5.1.6. Their other obligations in terms of finances and property over a thousand times the nominal financial unit .
5.2. The information envisaged in Article 5.1 of this Law can be demanded in an order defined by the legislation.

Dismissal	**Constitution of Azerbaijan** **Article 128. Immunity of judges** IV. Whenever judges commit crimes, the President of the Azerbaijan Republic, based on conclusions of the Supreme Court of the Azerbaijan Republic, may make a statement in the Milli Majlis of the Azerbaijan Republic in order to dismiss judges from their posts. The conclusions of the Supreme Court of the Azerbaijan Republic must be presented to the President of the Azerbaijan Republic within 30 days following his request. V. Decisions on the dismissal of judges of the Constitutional Court of the Azerbaijan Republic, Supreme Court of the Azerbaijan Republic and Economic Court of the Azerbaijan Republic are taken by the Milli Majlis of the Azerbaijan Republic with a majority of 83 votes; decisions on the dismissal of other judges is taken by the Milli Majlis of the Azerbaijan Republic with a majority of 63 votes**.** **Courts and Judges Act 1997** **(as at January 1, 2006)** **Article 113. Grounds for terminating judicial powers** Judges' powers are terminated by the Judicial-Legal Council on the expiry of their term of office. Judges' powers may be terminated before the expiry of their terms of office on the following grounds: 1. A written application of resignation; 2. Their dismissal from office; 3. Upon the issuing of a court ruling declaring the judge physically disabled and/or otherwise afflicted; 4. Death; 5. Upon a court ruling declaring him dead or missing; 6. Upon revealing a failure to meet the requirements set out herein as to candidates for judicial office; 7. Engaging in activities not compatible with his position; 8. On relinquishing citizenship of the Republic of Azerbaijan, adopting citizenship of a foreign country or assuming obligations towards a foreign country; 9. If the special medical commission set up by the Judicial-Legal Council has issued an opinion proving his/her inability to fulfil his or her duties due to sickness for over a period in excess of six months; 10. If disciplinary liability has been imposed upon on a judge twice in a calendar year on the grounds set out in Article 111-1. 11. If s/he has committed multiple gross violations of legislation in the course of considering a case. **Article 114. Termination of Judicial Office prior to Expiry of Term** If there are grounds as specified in paragraph 6-11 Section 113 of this Act, the President of the Supreme Court or the relevant executive body, in order to secure early termination of the powers of judges, shall submit a motion to the Judicial-Legal Council to commence disciplinary proceedings. If the Judicial-Legal Council passes a decision on early termination of powers of a judge, it shall make a proposal to the relevant executive body* of the Republic of Azerbaijan to this effect.

	In the presence of any of the grounds set out in points 1 and 6-11 of article 113 hereof, termination of the powers of a judge prior to expiry of his or her term of office shall be determined by the institution that appointed the judge. In the presence of any of the grounds provided in points 3-5 of article 113 hereof, termination of the powers of a judge prior to expiry of his or her term of office shall be determined by the Judicial-Legal Council.
Guarantees against undue pressure	**Constitution of Azerbaijan** **Article 127. Independence of judges, main principles and conditions of implementation of justice** I. Judges are independent: They are subordinate only to the Constitution and laws of the Azerbaijan Republic, and they cannot be replaced during their terms of office. III. No one shall for any reason directly or indirectly pervert legal proceedings via illegal influence, threats or interference. **Article 128. Immunity of judges** I. Judges shall have immunity from prosecution. II. A judge may be subjected to criminal charges only in accordance with the law. III. The powers of judges may be suspended only based on reasons and rules provided by law. IV. When a judge commits a crime, the President of the Azerbaijan Republic, taking into account the conclusions of the Supreme Court of the Azerbaijan Republic, may make a statement in the Milli Majlis of the Azerbaijan Republic to dismiss the judge in question from his or her post. Respective conclusions of Supreme Court of the Azerbaijan Republic must be presented to the President of the Azerbaijan Republic within 30 days after his request. V. Decisions on the dismissal of judges of the Constitutional Court of the Azerbaijan Republic, the Supreme Court of the Azerbaijan Republic and the Economic Court of the Azerbaijan Republic are taken by the Milli Majlis of the Azerbaijan Republic by a majority of 83 votes; Decisions on the dismissal of other judges are taken by the Milli Majlis of the Azerbaijan Republic by a majority of 63 votes**.** **Courts and Judges Act 1997** **(as at January 1 2006)** **Article 98. Rights of judges** In order to administer justice, judges shall be vested with the powers provided by this Act. Judges have the following rights: a right to independence, a right not to irremovability, a right of immunity from prosecution, a right to associate in organizations representing their interests, a right to personal security and safety, and social security rights secured by the State.

	Article 100. Independence of judges Subject to part I, Article 127 of the Constitution of the Republic of Azerbaijan, judges are independent and bound only by the Constitution and legislation of the Republic of Azerbaijan. The independence of judges shall be ensured through the following means: Preventing judges from establishing political affiliations; Ensuring judges cannot be replaced; Securing their immunity from prosecution; Regulating their appointment; Subjecting judges to liability, suspension and termination of office; Ensuring the independent operation of the judiciary; Ensuring that justice is administered in accordance with legislation; Preventing interference with or limits being imposed upon court proceedings; Ensuring judges' personal safety; Supplying judges with appropriate remuneration and social security in accordance with the office they hold and throughout the entire term of that office. Court judgments shall be based solely on the independent conclusions of the judge and the outcome of the trial. **Article 101. Immunity of judges** Judges shall not be held liable for damages incurred by parties to legal proceedings or others participating in them as a result of mistakes made by the court. Such damages shall be compensated by the State depending on their circumstances and in accordance with the procedure prescribed by law.

Georgia

Self-governing judicial bodies

Legal Basis	**Constitution of Georgia** **Article 86-1** 1. The Supreme Council of Justice of Georgia shall be set up to appoint and dismiss judges from/to office and for other purposes. 2. Half of the Supreme Council of Justice of Georgia shall be composed of members elected by a self-government body of the judges of general courts of Georgia. Chairperson of the Supreme Court of Georgia shall chair the Supreme Council of Justice of Georgia. 3. Powers and a setting up procedure of the Supreme Council of Justice of Georgia shall be determined by an organic law. **Law "On Common Courts"** **Article 63.** The Conference of Judges of Georgia 1. The Conference of Judges of Georgia is the self-governing body of the common court judges of Georgia. The Conference of Judges consists of judges of the Supreme Court of Georgia, Appellate Courts and Regional (City) Courts. 2.The Conference of Judges of Georgia shall safeguard and foster the independence of the judicial power, ensure strengthening the public trust and confidence to the courts and increase authority of judges. 3. In the performance of its duties the Judicial Conference of Georgia shall observe the Constitution and the legislation of Georgia, the Charter and the Regulations of the Conference of Judges of Georgia. The Charter and the Regulations of the Conference of Judges of Georgia establishing the major principles of its activity shall be approved by the majority of the Conference of Judges of Georgia upon submission of the High Council of Justice of Georgia. **Article 47. The High Council of Justice of Georgia**[1] 1. The High Council of Justice of Georgia shall be set up to appoint and dismiss judges from/to office, organize qualification exams, work out proposals for judiciary reform and perform other tasks established by the law.

[1] **Neither the Constitution, nor the Law defines the High Council of Justice as a self-governing judicial body.**

	Regulations of the High Council of Justice of Georgia **Article 1. The Status of the High Council of Justice of Georgia** The High Council of Justice of Georgia (hereinafter the HCOJ) is set up for the purposes of selection of the judicial candidates, appointments and dismissals of judges, organization of judicial qualifying examinations, development of the proposals for the implementation of reforms, coordination of the budgetary, logistical and operational issues of general courts and performing other tasks provided for under the law.
Composition and Selection	**Law "On Common Courts"** **Article 64. The Organizational Structure of the Conference** 1. In order to perform the functions established under article 63 of this law the Administrative Committee shall be set up within the system of the Conference of Judges of Georgia. 2. Administrative Committee of the Conference of Judges of Georgia shall consist of 9 members. The Administrative Committee shall have the following competences: a. in the period between the sittings of the Conference of judges of Georgia to elect to and dismiss from the position the secretary of the High Council of Justice of Georgia and other members of the Council upon submission of the President of the Supreme Court of Georgia; b. in the period between the sittings of the Conference of Judges of Georgia to elect judge members of the High Council of Justice of Georgia from the disciplinary collegiums of the common courts of Georgia upon submission of the President of the Supreme Court of Georgia; c. to adopt decisions and draft the acts on administrative issues of the Common Courts; the acts shall be submitted to the Conference of Judges of Georgia for approval. 3.Composition of the administrative committee shall be elected by the Conference of Judges of Georgia for 3 years term. A member of the administrative committee, unless he/she is the President of the Supreme Court of Georgia, shall not be a Chairperson of the court, the first deputy, a deputy or a chairperson of the Collegiums or of a Chamber. **Article 47. The High Council of Justice of Georgia** 2. The High Council of Justice of Georgia shall consist of 15 members assigned by the judicial authority, the Parliament and the President of Georgia. The President of the Supreme Court of Georgia shall chair the High Council of Justice of Georgia.

	3. The members elected by the self-governing body of the Common Court Judges of Georgia according to the rule established by this law shall represent more than half of the members of the High Council of Georgia. 4. Common Courts of Georgia shall be represented in the High Council of justice of Georgia by the **Supreme Court and 8 members elected by the Conference of Judges** [*problem: the phrase which should follow next, namely "on recommendation of the President of the Supreme Court, including the Secretary of the High Council of Justice" is missing in the English version*]. A member elected by the Conference of Judges shall be only the Common Court Judge, if he/she is not a secretary of the High Council of Justice. 5. The **Parliament of Georgia** in the High Council of Georgia shall be represented by **3** members of the Parliament elected by the Parliament of Georgia and by the **chairperson of the Legal Committee of the Parliament of Georgia** the position of which shall be included in the composition of the High Council of Justice of Georgia. One member out of three elected by the Parliament shall be elected from the faction (factions) which is not united with the majority, or from those members of the Parliament who is not a member of any faction. 6. The **President of Georgia** shall be represented in the High Council of Justice of Georgia by **2** members appointed by the President. 7. For assignment as a member to the High Council of Justice of Georgia a prior consent in writing from the candidate shall be necessary, save the cases when persons' positions are included in the membership of the High Council of Justice. 8. A member of the High Council of Justice of Georgia, if one is not a Member of Parliament, may be a citizen of Georgia who attained 25 years and has high legal education. 9. The term in office of the member of the High Council of Justice, except of *ex officio* members of the High Council of Justice and of the Secretary of the High Council of Justice shall be 4 years. A member of the High Council of Justice may not perform his duties after the expiration of the term. A new member of the High Council of Justice of Georgia shall be appointed (elected) not earlier than 30 days and not later than 7 days before the term of the respective member is expired. In the instance envisaged in para 1 of article 48 of this law a new member of the High Council of Justice shall be appointed (elected) not later than a month after the respective member is dismissed, and if no Parliament sittings are scheduled within this period then at the first earliest sitting of the Parliament. 10. A member of the High Council of Justice of Georgia, unless he/she is a member of the Parliament of a judge, shall not occupy any other office in state service or self- government body or carry out remunerated activities, except the scientific, pedagogical and art activities. 11. For effective performance of the duties the High Council of Justice may assign the service allowance to the judge and the member of the Parliament who are the members of the High Council of Justice. These allowances shall be provided within the budgetary appropriations allocated for the Common courts of Georgia.

12. The sittings of the High Council of Justice shall be convened when needed, but not less than once in three months by the President of the Supreme Court of Georgia, or on his commission by the secretary of the High Council of Justice. If the President of the Supreme Court fails to fulfill his/her duties, and if there is necessity to convene the sitting of the High Council of Justice as provided by the law, the secretary of the High Council of Justice shall convene the sitting of the High Council of Justice.

13. The President of the Supreme Court of Georgia shall chair the sittings of the Supreme Council of Georgia, or upon his/her commission – the secretary of the High Council of Justice.

14. The secretary of the High Council of Justice shall sign the decisions adopted by the High Council of Justice, except the cases determined in paragraph 15 of this law.

15. The decisions of the High Council of Justice on appointment and dismissal of a judge to/from the judge's office, assigning the authority of a judge to another judge or of the chairperson (the court collegium or the chamber), also on assigning the judge's authority or terminating the assigned authority at the liquidation of the court or reduction of the judge's position shall be signed by the President of the Supreme Court of Georgia, and in his/her absence – the secretary of the High Council of Justice of Georgia.

Article 51. The Secretary of the High Council of Justice

1. The secretary of the High Council of Justice of Georgia shall be elected by the Conference of Judges of Georgia upon nomination of the President of the Supreme Court of Georgia for a 3-year term in office.

2. The secretary of the High Council of Justice of Georgia, if he/she is not a common court judge, may not take any other position. When the common court judge is elected as a secretary of the High Council of Justice, he/she shall exercise the authorities referred to in paragraph 3 of this article simultaneously to performing the judicial authority, without the relevant payment determined for the secretary of the High Council of Justice.

3. The Secretary of the High Council of Justice shall:
a. ensure administrative logistical support of the High Council of Justice of Georgia;
b. guide the staff of the High Council of Justice of Georgia, appoint and dismiss the employees and other personnel of the office of the High Council of Justice of Georgia;
c. prepare the sittings of the High Council of Justice of Georgia;

d. sign official documents within his/her competence;
e. carry out other official duties determined by the Georgian legislation.

Regulations of the High Council of Justice of Georgia

Article 2. The Composition of the HCOJ

1. The HCOJ shall be composed of 15 members nominated by the Parliament of Georgia, the President of Georgia and the Judiciary. The HCOJ shall be chaired by the Chairman of the Supreme Court of Georgia.

2. More than half of the HCOJ's composition shall be made up by the members elected, in accordance with the procedure prescribed under the law, by self-governing body of the judges of the Georgian general courts.

3. The Parliament of Georgia shall be represented in the HCOJ by 3 members, elected by the Parliament of Georgia, and the Chairman of the Legal Committee of the Parliament of Georgia, whose post is established in the composition of HCOJ. One out of three members of the HCOJ elected by the Parliament of Georgia shall be elected from the fraction (fractions) not joining the majority or of the members of the Georgian Parliament who are not members of any fraction. *(26.02.2010 N 1/19)*

4. The President of Georgia shall be represented in the HCOJ by two members appointed by the President of Georgia.

5. The general courts of Georgia shall be represented in the HCOJ by the Chairman of the Supreme Court of Georgia and 8 members elected by the Conference of Georgian Judges based on the nomination of the Chairman of Supreme Court of Georgia, including the Secretary of the HCOJ. A member elected by the conference of judges, unless s/he is a Secretary of the HCOJ, may be a judge of general court only.

Article 3. The Necessary Preconditions for the Membership of the HCOJ

1. When appointing for the membership of the HCOJ, the candidate's preliminary written consent shall be sought, except for the persons whose posts are established in the composition of HCOJ.
2. A member of the HCOJ, unless a member of the Georgian Parliament, may be a Georgian citizen over the age of 25 years with university degree in law.

Article 4. The Term of Office of the Members of the HCOJ

1. The term of office of a member of the HCOJ, except for the members whose posts are established in the composition of the HCOJ and the Secretary of the HCOJ, shall be 4 years. A member of the HCOJ shall not undertake his/her duty after the expiry of the term of office. New member of the HCOJ shall be appointed (elected) no earlier than 30 days and no later than 7 days before expiry of the term of office of the respective member of the HCOJ. In the case under Article 7.1 of these Regulations, the new member of the HCOJ shall be appointed (elected) within no later than one month from the date of dismissal of the respective member of the HCOJ and if during this period sittings of the Parliament of Georgia are not held – at the earliest Parliamentary sitting.

	2. Secretary of the HCOJ shall be elected by the Conference of Georgian Judges, under the nomination of the Chairman of the Supreme Court of Georgia, for 3 years term of office. 3. The term of office of the members of the HCOJ whose posts are established in the HCOJ composition, shall be determined commensurate with the period of their stay on this position. **Article 5. Commencement of the Term of Office of a Member of the HCOJ** 1. The term of office of the members of the HCOJ whose posts are established therein, shall commence from the date of appointing them on the relevant post. 2. The term of office of other members of the HCOJ shall commence from the date of their election (appointment) on the post of the member of the HCOJ. 3. If the date of expiry of the term of office of a member of the HCOJ coincides with weekend, his/her term of office shall terminate at 18:00 of the next workday. **Article 6. Ineligibility of a Member of the HCOJ** Member of the HCOJ, unless s/he is a member of the Georgian Parliament or a judge, may not hold any other post in the public service or self-governing body, or pursue other paid job except for scientific, teaching and artistic activity.
Competence in general	**Law "On Common Courts"** **Article 65. The authority of the Conference of Judges of Georgia** The Conference of Judges of Georgia shall: a. elect the composition of the administrative committee; b. elect the secretary and other members of the High Council of Justice; c. elect judge members of the High Council of Justice of Georgia in the composition of Disciplinary Collegiums of the Common Courts of Georgia upon submission of the President of the Supreme Court of Georgia; d. approve the Charter and the Regulations of the Conference of Judges of Georgia; e. hear the annual reports of the Head of the Conference of Judges and of the chairperson of the Department of the Common Court concerning the activity of these bodies; f. perform other authorities provided for by law and the Charter and Regulations of the Conference of Judges of Georgia. g. adopt judicial Ethic Code upon submission of the High Council of Justice of Georgia.

Article 49. The Authority of the High Council of Justice of Georgia

1 The High Council of Justice of Georgia shall:
a. Appoint to and dismiss from the office the judges of the common courts of Georgia (except the President and the members of the Supreme Court of Georgia);
b. determine the composition of the qualification exam commission;
c. determine the specialization of the regional (city) court judges;
d. approve the established posts and structure of the staff of the High Council of Justice of Georgia, the wage of the members of the High Council of Justice of Georgia, also the wages and the titles of positions for the servants of the staff and auxiliary staff; approve upon submission of the Common Courts' Department the structure and the established posts of the common courts of Georgia (except of the Supreme Court);
d^1. establish the rule for reimbursement of expenses of the business trips for the representative of the President of Georgia at the High Council of Justice of Georgia according the order of precedence of the similar positions at the branches of power; (22.03.2011. #4461)
e. work out and approve the rules of administration of the common courts;
f. consider the materials of analysis of the court statistics;
g. exercise disciplinary proceedings against the Common Court judges pursuant to the law and within its authority;
h. hear the report of the Chairman of the Common Court Department;
i. adopt decision on incentives for the judges according to the procedure established by the law;
j. work out the proposals for the judiciary reform;
k. exercise other authorities provided for by the legislation of Georgia.

2. The rules of activity of the High Council of Justice of Georgia shall be determined by the Regulations, which shall be approved by the 3/5 of the members of the High Council of Justice of Georgia.

3. In order to ensure administrative and logistical support of the High Council of Justice of Georgia the office of the High Council of Justice of Georgia shall be created.

Regulations of the High Council of Justice of Georgia

Article 9. The Mandate of the HCOJ

The HCOJ:

a) appoints and dismisses the judges of district (city) and appellate courts, chairman of district (city) court, chairman and deputy chairman of appellate court, chairman of panel of judges of district (city) court, chairman of panel of judges of appellate court and chairman of investigative panel.

b) approves:
b.a) the organizational structure of the Office of the HCOJ and the staff list;
b.b) official gross salaries and titles of the positions of employees and of support staff of the Office of the HCOJ;

	b.c) upon the submission of the Department of General Courts, the organizational structure and number of staff of the Offices of general courts (except for the Supreme Court of Georgia), official gross salaries and titles of the positions of employees and support staff of the Offices; b.d) organizational structure and operating procedures of the Department of General Courts; b.e) the rule of conduction of judicial qualifying examination and the qualifying examination program; b.f) the composition and the statute of the judicial qualifying examination commission; b.g) the text of judge's oath; b.h) official uniform and badge of a court marshal; b.i) judge's official distinguishable symbols and judge's uniform; b.j) template of judge's service certificate; c) identifies: c.a) the area of jurisdiction of district (city) and appellate courts; c.b) the number of judges in district (city) and appellate courts; c.c) the area of jurisdiction and number of magistrates; c.d) the composition of panels of judges; c.e) the number of judges and the composition of the chambers of appellate courts and investigative panels; c.f) specialization of district (city) court judges; c.g) the composition of judicial qualifying examination commission; d) sets up: d.a) district (city) and appellate courts; d.b) specialized panels of judges; d.c) judicial qualifying examination commission; e) in district (city) courts with high intensity of caseload, is authorized to exercise narrower specialization of judges: f) determines the number of judges in the panels of judges; g) develops and approves the operational procedures of general courts; h) reviews judicial statistical analytical material; i) in accordance with the procedure prescribed under the law, within the framework of its mandate, exercises disciplinary proceedings against the judges of general courts; j) hears the report of the Chairman of the Department of General Courts; k) takes decision on encouragement of judges in accordance with the procedure laid down under the law; l) develops proposals on judicial reforms; m) gives consent to the Secretary of HCOJ on the appointment of the Chairman and deputy chairmen of the Department of General Courts;

n) in the case of a judicial vacancy in district (city) and appellate courts, makes a vacancy announcement and lays down the deadline for registration of judicial candidates;

o) reviews the material submitted by the chairmen of the district (city) and appellate courts concerning the case law, customer applications, complaints and suggestions, takes appropriate decision within the framework of its mandate;

p) Removed *(26.02.2010 N 1/19)*

q) conducts the competition for admission of a trainee of justice to the High School of Justice;

r) submits to the GoG the draft of the part of the state budget on financing of general courts and the Department of General Courts;

s) submits for approval to the Conference of the Judges of Georgian General Courts, the Statute and the Regulations of the Conference of Georgian Judges, as well as Code of Ethics.

t) takes decision on proper functioning and administration of the system of general courts and based on this grounds gives relevant assignments to the Department of General Courts.

Article 10. Other rights of the HCOJ

1. In order to exercise the rights laid down under the law, the HCOJ;
a) develops the draft-laws related to judicial activity;
b) reviews the draft-laws related to judicial activity and develops appropriate opinions;
c) within the framework of its mandate, develops proposals on the issues addressed to it by the Judges' Conference or by the state authorities;
d) sets up interim commissions to effectively implement the tasks of the HCOJ;
e) approves the work plans of the HCOJ;
f) develops appropriate recommendations and suggestions related to the tasks of the HCOJ;
g) develops appropriate recommendations and suggestions related to the operational procedures of general courts;
h) exercises other rights laid down under the law.

2. With regard to the issues under paragraph 1 of this Article, the HCOJ may take appropriate decisions.

3. On the basis of Article 13 of the Law of Georgia on the Procedure of Distribution of Caseload and Transfer of the Duty to other Judge in General Courts", if a judge is sent on a mission to other court, the HCOJ may take a decision sending the assistant judge and secretary of the sitting on a mission to the relevant court.

	4. Before appointing a Chairman in a district (city) court, and in the courts where panel of judges are established – before appointing a Chairman of a panel of judges, as well as before appointing a Chairman of an appellate court, court chamber or investigative panel, the HCOJ shall take a decision on transferring the Chairman's duty to other judge and on releasing the judge from the duty transferred thereto.
Competence in the field of judges' career *Appointment* *Dismissal and Disciplinary proceedings*	**Regulations of the High Council of Justice of Georgia** **Article 21. The Qualifying Examination Commission** 1. In order to evaluate the results of judicial qualifying examination, the HCOJ shall set up a qualifying examination commission. The qualifying examination commission shall be set up no earlier than 10 days before conducting the examination and its composition shall not be announced until approving the results of the examination. 2. The HCOJ shall approve the Chairman and composition of the qualifying examination commission. 3. Members of the HCOJ may nominate the candidates for membership of the qualifying examination commission. A member of the HCOJ shall not simultaneously be the member of the qualifying examination commission. 4. Each nominated candidate shall be voted separately. Before voting, a candidate's written consent shall be sought. 5. If two or more candidates receive equal number of votes during reviewing the issue at the sitting of the HCOJ, priority shall be given to the one nominated by more number of HCOJ members, has higher academic degree and/or longer work experience. These circumstances shall be taken into account in the same sequence respectively. 6. In order to conduct qualifying examination in an organized manner, the qualifying examination organizational commission shall be set up to be headed by the secretary of the HCOJ. **Article 22. Development and Approval of the Operating Procedures of the Qualifying Examination Commission, of the Procedure of Conduction of Examination and of the Examination Programs** 1. Operating procedures of the qualifying examination commission shall be laid down under the statute of the qualifying examination commission to be approved by the HCOJ. 2. The procedure of conduction of judicial qualifying examination and the qualifying examination program shall be approved by the HCOJ.

	Article 23. The Procedure of Conduction of Judicial Candidates Selection Competition The procedure of conduction of judicial candidates selection competition shall be laid down under the statute of the competition to be approved by the HCOJ. **Article 25. Disciplinary Proceedings** The HCOJ shall take disciplinary proceedings against judges of Georgian general courts, in accordance with the procedure laid down under the Law of Georgia on Disciplinary Liability of and Disciplinary Proceedings against the Judges of Georgian General Courts.
Competence in the field of budgetary issues	**Law "On Common Courts"** **Article 67. Financing of Common Courts** 1. Common Courts of Georgia shall be financed from the State Budget. The funds necessary for organization and activity of the Supreme Court shall be provided under the separate close in the State Budget of Georgia. 2. The draft on the part of financing of the Common Courts (except of the Supreme Court) and of the Department of Common Courts in the State Budget shall be submitted to the Government of Georgia pursuant to the procedure established by law by the High Council of Justice of Georgia on the basis of proposals submitted by the Department of Common Courts. 3. Reduction of the current costs in the State Budget intended for the Common Courts in comparison with the budgetary allocations of the previous year shall be allowed only at the consent of the High Council of Justice of Georgia. Article 68. Legal and Social Protection of a judge

Judges' career

Selection	**Law "On Common Courts"** **Article 53. Qualification Exam for Judges** 1. All citizens of Georgia who have attained **25 years**, and have higher legal education shall have the right to pass a qualification exam for judges. 2. The rules for holding the exam and the exam program shall be approved by the High Council of Justice of Georgia. 3. Qualification exam program is to be passed through tests. After successful completion of tests, the candidate shall pass the written exam. Test and written exams shall be passed in the following subjects: a) Constitutional Law of Georgia; b) Criminal Law;

	c) Criminal Procedure Law; d) Civil Law; c) Civil Procedural Law; e) Administrative Law; f) Administrative proceedings; f) International acts on human rights, and international treaties and agreements of Georgia. 4. The results of the qualification exam shall become invalid if a person fails to be enlisted at the High School of Justice or to be assigned to a judge's office within 7 years after passing an exam. **Article 34. Requirements for the Candidate to the judge** 1. A capable citizen of Georgia who has attained the age of **28**, and has the highest legal education, at least 5 years experience in the practice of law, has the command in the state language, has passed the judges' qualification exams and the full educational course at the High School of Justice and has been included in the qualification list of the listeners may be appointed (elected) to the judge's office. 2. An individual with a criminal record, also a person who has been dismissed from the judge's office on any grounds as defined under sub-paragraph 'b', 'c' and 'h' of article 43 of this law shall not be appointed to the Judge's office. 3. For taking the judge's office exemption from obligatory education at the High School of Justice shall apply to the nominees to the position of a judge of the Supreme Court, also to the former judge who has passed the qualification exams for judges, worked as a judge at the Supreme Court or regional (city) court or appellate court according to the competition and has at least 18 month experience in the practice of judge's office. A person who has passed the full course of education at the High School of justice and has been included in the qualification list of the listeners, for the purposes of taking the judge's office shall be exempted from educating at the High School of Justice, irrespective of the term he/she held the judges' office or whether was appointed or not to that position after graduation of the high school of justice. 4. The President of Georgia is authorized to submit to the Parliament of Georgia a candidate to be elected as a member of the Supreme Court who has not passed the qualification exams and whose professional experience shall comply with the high status of the member of the Supreme Court. A person nominated to the position of the President of the Supreme Court also shall be exempted from passing this exam. 5. The former judge of the common court of Georgia shall be exempted from passing the qualification exams unless the seven years have passed since termination of his/her authority of a judge. 6. The active, as well as the former members the Constitutional Court of Georgia shall be exempted from passing the qualification exam and the educational course at the High School of Justice.

	Article 35. The Rules of taking the judge's position 1. A person who meets the requirements envisaged in paragraphs 1 and 2 of article 34 shall be deemed a candidate to the judge after he/she submits an application for a vacant position to the High Council of Justice. When adopting decision on appointing a person to the judge's position his/her number in the qualification list of the listeners of the High School of Justice and the assessment made by the Independent Board of the High School of Justice. The candidate to the judge shall be invited to the session under the decision of the High Council of Justice of Georgia. 2. A person refusing to take a judge's position after he/she has been included in the qualification list of the listeners of the Justice shall have no right to apply to the High Council of Justice for taking the judge's vacant position within 5 years from the date of approval of the list. The High Council of Justice shall consider the issue of admission of such person to the competition on the exceptional basis. 3. A person exempted from studying at the High School of Justice shall take the judge's position pursuant to the competition procedure. This person shall be deemed as a candidate to the judge from the date he/she submits the application to the competition announced by the High Council of Justice. The competitions shall be announced by the High Council of Justice by means of official printed media of when vacancy of the position of a judge in Regional (City) and Appellate Courts are created. The term of registration for candidates to the judge shall be determined by the High Council of Justice when announcing the competition. The competition shall take place after expiration of the term for registration of candidates to the judge's position. Conditions of competition and the criteria for selection of judges shall be determined by the Decision of the High Council of Justice of Georgia. 4. A candidate shall submit to the High Council of Justice within 7 days from the moment of submitting the application a certificate on filing the declaration of Financial Status in the Bureau of Registration of Material and Financial Status of Public Officials in accordance with the Georgian legislation. 5. In case of failure to select the candidate to the judge's position, the High Council of Judges within 3 month from the date of announcing the results of the competition shall announce a new competition pursuant to the procedure provided for by this article.
Appointment and term of office	**Constitution of Georgia** **Article 86.2** A judge shall be assigned to the position for life, until he/she reaches the retirement age defined by the law. The law might prescribe the appointment of judges for a defined probationary period before they are assigned to the position for life-time, but by no more than 3 years. The rule for selection, appointment and dismissal of judges is defined by the Constitution and Organic Law *(shall come into force in October 2013*).

Law "On Common Courts"

Article 36. Appointment (election) of a judge to the Office

1. The Presdient and the judges of the Supreme Court of Georgia shall be elected for a period of ten years by the parliament of Georgia by the majority of the numer of the members of Parliament on the current nominal list upon the submission of the President of Georgia.

2. The President of the Supreme Court of Georgia shall have the right to submit to the President of Georgia a candidate to be elected as a judge of the Supreme Court, and the President of Georgia shall have the right to submit to the Parliament of Georgia for election any candidate who meets the criteria determined by the Constitution of Georgia and by this law.

3. One and the same person may be submitted to the Parlament of Georgia for election as a member of the Supreme Cout only twice.

4. Judges of regional (city) and Applellate Courts shall be appointed by the High Council of Justice of Georgia for ten years term in office.

5. If the judge attained the age of retirement or the term of his/her authority determined under this article expired before the completion of a pending case, the authority of a judge may be extended by the High Council of Justice until he/she or a collegium where he/she sits makes final decision.

6. When the judge is transferred to another court, before starting his/her new judicial authority, he/she may not be withdrawn from the pending case he/she dealt with at the time of transferring to another court.

Article 37**.** The rule of appointment of a judge as judge of another court without competition

In case of appearance of vacancy the appointed judge may be assigned as a judge without competition to the courts of lower, repective or upper instanes upon his/her consent and for the period of his/her authority**.**

Please note the following:

There is no any reappointment procedure in the Law for judges whose initial term of office has come to the end. In such a case, ex-judges, in order to be appointed for another 10 years, should undergo the same procedure together with other candidates. This will be valid until life-time appointment, which will start in 2013.

The High Council of Justice is currently working on rules and procedures regarding the appointment for life-time of those judges who will have practiced by October 2013. It is expected that these rules and procedures will be in place by the end of 2012 latest.

Promotion	**Law "On Common Courts"** **Article 41. Promotion of a judge** 1. Regional (city) court judge may be appointed at the Appellate court if he/she exercised judicial function at least for 2 years at the regional (city) court. The criteria for promoting a judge shall be elaborated by the High Council of Justice. 2. A judge shall be granted with earlier promotion than it is established under para 1 of this article if he/she has made a special contribution to the development of justice, elaboration of the unified judicial practice and administration of the prompt and effective justice, also for demonstrating high qualified judicial skills while exercising his/her duties. 3. The High Council of Justice shall carry out a judge's assessment on the basis of promotion criteria.
Remuneration and other social guarantees	**Law "On Common Courts"** **Article 68. Legal and Social Protection of a Judge** 1. Guarantees for legal and social protection of a judge shall be determined by the Constitution, this law and the Georgian legislation. 2. In order to secure judge's independence the state shall have the obligation to ensure the worthy conditions for life and activity of a judge, the security of judge and his/her family. If the life and health of a judge is under the danger, at the application of a judge, under the Decree of the president the relevant state authorities shall ensure the protection of a judge and his/her family pursuant to the procedure established by the law. 3. Judge having no place of residence in the city (municipality) where he/she is performing judicial authorities, the state shall provide the necessary housing or pay for it. The decision on providing the President and the members of the Supreme Court with housing shall be made by the President of the Supreme Court, and the decision on providing the judges of the Appellate and Regional (city) courts with the housing shall be adopted by the High Council of Justice of Georgia. 4. In the performance of judicial authorities a judge enrolled in the reserve of the Military Forces of Georgia shall not be subjected to the call up. 5. Designation of a judge shall not result in terminating of his/her membership to the association. A person designated as a judge shall terminate his/her membership in the political party. 6. A judge shall be provided with annual paid vacation for 30 calendar days.

7. The rule for reimbursement of the business trip expenses for the President of the Supreme Court, his first deputy and a deputy, a member of the Supreme Court, a chairperson of the Appellate court and his/her deputy, a chairperson of the regional (city) court and a judge of the Common Court shall be decided by the High Council of Justice, according to the order of precedence determined for the branches of state power.

Article 69. Remuneration of a Judge

1. A judge's remuneration shall consist of a wage and a rise.

2. Amount of a monthly wage of a judge and material privileges shall be determined pursuant to the Georgian legislation. Reduction of the wage of a judge shall be inadmissible during the whole period of his/her term in office.

3. The rise to the wage of a judge (except of the President of the Supreme Court) shall be determined by the High Council of Justice of Georgia.

4. The amount of rise to the wage of the judge of the Supreme Court of Georgia shall be determined by the Plenum of the Supreme Court.

Article 70. Rule for granting the state compensation to a judge of the Common Court of Georgia

1. At the expiry of the term of judicial authority or attaining the age of retirement a judge of the Supreme Court shall receive the state compensation in amount of 1200 lari.

2. A judge of the Common Court of Georgia (except a judge of the Supreme Court) appointed to the office according to article 35 of this law shall be granted with the state compensation pursuant to the rule and amount established by the law of Georgia on "State Compensation and State Academic Allowance".

Article 71. Assistance provided to a judge in the case of death, injury or recognition as a disable

1. In the case of death of a judge during the performance of his/her duties, lump sum in amount of 25 000 lari shall be paid to his/her family from the state budget of Georgia.

2. In the case of body injury or deterioration of the health during the performance of his/her official duties, in the course of which a judge was recognized as disabled, he/she shall receive lump sum in amount of 10000 lari.

3. In the case of death of a judge the state compensation shall be granted to the member (members) of his/her family according to the rule and in the amount determined by the law of Georgia on "State Compensation and State Academic Allowance".

	Article 72. Insurance of a judge 1. Insurance of judge's life and health shall be obligatory. Insurance of the President and the members of the Supreme Court shall be provided from the state budget, and of the judges of the Appellate and regional (city) courts – from the budget of the Common Courts. 2. The obligatory insurance for the president and the members of the Supreme Court of Georgia shall be organized through the agreement between the Supreme Court of Georgia and the licensed Insurance Company, or through the voucher pursuant to the rule established by Georgian legislation. Obligatory insurance of judges of the Appellate and Regional (city) courts shall be organized through the agreement between the Department of Common Courts and the licensed insurance company, or through the voucher pursuant to the rule established by Georgian legislation.
Disciplinary proceedings	**Law "On Common Courts"** **Article 46. Disciplinary Responsibility of a Judge** The grounds for disciplinary responsibilities, types of disciplinary actions, the rules of disciplinary proceedings and imposition of disciplinary sanctions against the Common Court judges of Georgia shall be determined by the Law of Georgia on "Disciplinary Responsibility and disciplinary Proceedings of the Judges of Georgia". **Law "On Disciplinary responsibility and Disciplinary Proceedings against Judges of Common Courts of Georgia"** **Article 2. Basis for Disciplinary Responsibility of a Judge and the Types of Disciplinary Violation** 1. Disciplinary responsibility and measures can be imposed over a judge of a common court for the commission of a disciplinary violation. 2. There are the following types of disciplinary violations: a) gross violation of the law committed by the judge upon exercise of judicial powers. Gross violation of law shall be deemed as violation of imperative norms of Georgian Constitution, international contracts and agreements of Georgia and Georgian legislation, which has substantially damaged (or could have damaged) the rights or legal interests of participants of the case or the public interest. b) corruption law violation, or abuse of power against the interests of justice and interests of office. The offence stipulated under the law of "conflict of interest and corruption in public office" shall be deemed as corruption violation, unless it entails criminal or administrative responsibility. c) activity incompatible with the position of a judge or conflict of interests with the duties of a judge; d) an action inappropriate for a judge, which discredits the prestige of the court or undermines public trust towards the court; e) groundless delay of the consideration of the case; f) failure to fulfill or inadequate fulfillment of the duties of the judge; g) disclosure of secrecy of judicial deliberation or professional secret;

h) hindering the activity of bodies (agencies) having disciplinary authority, or showing disrespect towards them;
i) violation of norms of judicial ethics;
j) violation of labor discipline.

3. Incorrect interpretation of the law, which is based on intimate conviction of the judge shall not be deemed as disciplinary violation and no judge shall bear disciplinary responsibility for this action.

Article 3. Time limits for disciplinary proceedings

A judge may not be disciplined, if 5 years have passed since the date of commitment of the disciplinary violation and one year has passed since the day of making decision on disciplinary charge (ruling).

Article 4. Types of the Disciplinary Penalties and Disciplinary Reaction

1. Disciplinary penalties are:
a) Notice;
b) Reprimand;
c) Strict reprimand;
d) Removal from office of the judge;
e) Removal of a judge from the reserve list of the judges of the common courts

2. Disciplinary measures are:
a) Sending of a private letter of recommendation to a judge
b) Removal from the position of the Chairman of a Court, his first deputy or a deputy and a chairman of the Court Panel or Court Chamber.

3. Judges placed in the reserve list can be subjected to disciplinary measures listed in the "a"-"c" and "e" subparagraphs of this article

Article 6. Procedural Basis for starting disciplinary proceedings

The following can serve as the basis for commencing the disciplinary proceedings against a judge:
a) A complaint or an application from any person (except for anonymous application or complaint);
b) An clarification of another judge or an officer of High Council of Justice related the commission of a disciplinary violation by a judge;
c) Private ruling or other decision of a higher instance court, according to which a gross violation of a law by a judge was contemplated during the exercise of judicial functions;
d) notification received from an investigator or prosecutor;
e) Private decision (ruling) of other judge or court on the substantiated assumption of the commitment of disciplinary violation by a judge
f) Information disseminated by mass media on an action committed by a judge which can be considered as the disciplinary violation
g) Proposal of Disciplinary Panel to commence disciplinary prosecution against the judge on new basis.

Article 7. The Right to Commence Disciplinary Proceedings

1. The following persons can commence disciplinary proceedings against a judge except for the case stipulated by art. 2. par.2 "a" of this law:
a) **Chairman of the Supreme Court of Georgia** (or acting Chairman of the Supreme Court) - against the judges of the Supreme Court of Georgia, Appellate Courts and the Regional (City) Courts;
b) **Chairmen of Appellate Court** (or acting Chairman) – against the judges of relevant Appellate Court, also the judges of regional (city) courts covered by the jurisdiction of relevant appellate court.

2. The **High Council of Justice of Georgia** may commence disciplinary proceedings against all judges of the Common Courts of Georgia under any grounds determined in section 2 of Article 2 of this law.

Article 8. Starting disciplinary proceedings and Preliminary Inquiry

1. Upon receipt of complaint or application or any other information regarding a disciplinary violation committed by a judge, **the Chairman of the Supreme Court of Georgia, the Chairmen of the appellate court, Secretary of the High Council of Justice of Georgia or any other member of the Council** (staff member of the High council of Justice upon instruction of Secretary of the high Council of Justice) shall carry out preliminary inquiry into the basis of complaint, application or other information within 2 months from its receipt. The term for preliminary inquiry can be prolonged for two weeks or suspended in a case of inability to conduct the preliminary inquiry.

2. In cases determined in sections "b", "e", "g" of Article 6 preliminary inquiry is not necessary, and the Chairman of a respective court or the Secretary of High Council of Justice of Georgia is authorized to take decision related to further course of disciplinary prosecution.

3. Grounds of commencing the disciplinary proceedings against the judge can be based on circumstances not indicated in the complaint, application or other information on the disciplinary violation of the judge, but detected during preliminary inquiry.

…

Article 15. Bringing disciplinary charges against the judge or dismissal of disciplinary prosecution

1. Upon having completed the investigation of disciplinary case, subsequent to inquiry into the grounds of disciplinary prosecution, the **chairman of the court** shall issue a ruling and **the secretary of the High Council of Justice** shall submit proposal to the High Council of Justice to bring disciplinary charges against the judge or to terminate disciplinary prosecution.

2. The authority bringing disciplinary charges against the judge is authorized to disagree with the results of preliminary inquiry related to disciplinary charges or dismissal of charges and take opposite decision. It is also authorized to disagree with legal evaluations of the preliminary inquiry, and taking into account the collected materials, modify the grounds of disciplinary charges against the judge.

	… **Article 17. Rendering of Decision on Disciplinary Issues by the High Council of Justice**[1] 1. The High Council of Justice of Georgia shall make decisions according to rules and procedures, determined by the organic law of Georgia on" Common Courts", and the regulations of the High Council of Justice. 2. Upon consideration of disciplinary matters, the sessions shall be chaired by Chairman of the Supreme Court. 3. Member of High Council of Justice, which is at the same time a member of Disciplinary Panel of the common courts shall not participate in disciplinary hearing of the High Council of Justice or in the making of decision. 4. Sessions of the High Council of Justice dedicated to disciplinary issues shall be convened by the Secretary of High Council of Justice. 5. At the session, the High Council of Justice shall hear the issues of dismissal of disciplinary proceedings, as well as disciplinary prosecution of judges and shall examine related materials. It is also authorized to invite the judge, the author of the complaint (application), listen to their information and clarifications. **Article. 48 Types of decisions of the Disciplinary Panel** 1. Disciplinary Panel is entitled to take one of following decisions: a. Suspend disciplinary case; b. Dismiss the disciplinary proceedings; c. Find the judge guilty for the commission of disciplinary offence and impose disciplinary disciplinary liability and penalty upon him; d. Find the judge guilty for commission of disciplinary offence, impose disciplinary liability upon him and address the judge with private recommendation letter. e. Acquit the judge. 2. The decisions envisaged by par. “c”, “d”, and “e” of this article shall be taken only subsequent to the trial on the merits of the case. **Article.54^{1}.The application of disciplinary penalty** For the disciplinary violation stipulated by art. 2, par. 2 “a”, “b” or “d” of this law, the judge can be sentenced to following disciplinary penalty: reprimand, severe reprimand, or removal from office (exclusion from the reserve list of judges of the common courts).

[1] There is also exists the Disciplinary Panel of the Common Courts of Georgia. The delimitation of powers between the High Council of Justice and the Disciplinary Panel is not clear.
Furthermore, it can be said that the composition of the High Council of Justice is as follows. According to Article 24 of the Disciplinary Law, this body comprises 3 judges and 3 non-judicial members.
However, there are all elected among the members of the High Council of Justice: “three judicial members who are simultaneously members of the High Council of Justice shall be elected by Conference of Judges of Georgia or between its sessions – the administrative committee of the conference of judges upon proposal of the Chairman of the Supreme Court of Georgia. Those members who are not judges shall be elected by High Council of Justice among its members”.

	For the disciplinary violation envisaged by par. "c", the judge can be sentenced to reprimand or removal from office (exclusion from the reserve list of judges of the common court). For the violations stipulated by par. "e", "g", "h", "j", the judge can be sentenced to notice or reprimand. For disciplinary violation stipulated under par. "f" and "I", the judge can be sentenced to notice, reprimand, severe reprimand or removal from office (exclusion from the reserve list of judges of the common court). In case, where three or more disciplinary violations are committed, the Disciplinary Panel is entitled to apply a more severe sentence. **Article. 60 Lodging an appeal against decision of Disciplinary Panel** 1. Decision of Disciplinary Panel can be reexamined by way of lodging an appeal against it with the Disciplinary Chamber of the Supreme Court of Georgia. Only decisions stipulated by Article 48, par. 1 "b – e" can be appealed. The appeal can be lodged by parties of the disciplinary. 2. An appeal can be lodged … within 10 days. This term can not be extended, it starts from the moment of submission of copy of decision of Disciplinary Panel to the party. The delivery of the copy of the decision to the party directly at the Disciplinary Panel or … sending by … post shall be deemed as the delivery of the copy of the decision to the party. 3. The decision whether or not to lodge an appeal shall be taken by the High Council of Justice at the session of the Council, while the defendant judge shall take relevant decision alone. 3. The judge who was subjected to the disciplinary liability shall lodge an appeal against the decision of the panel personally or through counsel or other representative. 4. Within 5 days from the receipt of the complaint from one or both parties, the chairman of the Disciplinary Panel shall transfer the case to the Disciplinary Chamber and notify the parties thereof. 5. For the lodging of appeal against the decision of the Disciplinary Panel no payment of court fee is required
Dismissal	**Law "On Common Courts"** **Article 42. Dismissal of a judge from a judge's office** 1. The President of the Supreme Court shall be dismissed on the basis of impeachment procedure. 2. For breaching the Constitution of Georgia and commission of a crime the impeachment procedure can be initiated by the Parliament by not less than two thirds of the total number of the members of Parliament. The Parliament of Georgia is authorized, upon receipt the relevant conclusion from the Supreme Court or from

	the Constitutional Court of Georgia, to dismiss from the office the President of the Supreme Court by majority of the members of Parliament. During consideration of this case the session of the Plenum of the Supreme Court shall be chaired by the first Vice-president of the Supreme Court, and in the absence of the first vice-president – the oldest vice-president. 3. Pre-term termination of authority of the member of the Supreme Court shall be exercised by the High Council of Justice of Georgia on the ground provided for in article 43 of this law. 4. Judges of the Appellate and Regional (City) Courts shall be dismissed by the High Council of Justice of Georgia **Article 43. The Grounds for dismissal of a judge and for termination of authority of the President and the members of the Supreme Court** 1. The Grounds for dismissal of a judge and for termination of authority of the President and the members of the Supreme Court shall be: a) personal application; b) disciplinary violation; c) occupation of a position or engagement in an activity incompatible with the status of a judge; d) recognition by a court as legally incapable or partially incapable; e) loss of Georgian citizenship; f) a final judgment of conviction is rendered by a court against him/her g) attainment to 65 years old; h) commission of offense related to the corruption according to the procedure established under article 20 (6) of the law of Georgia "On Conflict of Interests in the Public Service and Corruption" i) death; j) liquidation of the court, reduction of the judges' position; k) appointment (election) to another court; l) election or appointment to the position at another agency; m) expiration of the term of judicial authority 2. For instances referred to in para 1(b) of this article existence of the motion from the disciplinary collegium shall be necessary. 3. The High Council of Justice of Georgia shall be entitled to dismiss a judge if he/she fails to exercise his/her authority for a period of more than four months during the last 12 months. **Article 44. Assignment of a Judge to another Court Position and Dismissal During Court Liquidation and Reduction of Judicial Positions.** 1. In the case of court liquidation, also reduction of judicial positions a judge may be assigned to a respective or lower instance court to carry out judicial duties within the terms of his judicial authority, with his prior consent in writing and in accordance with the rules determined by law. 2. In case a judge rejects to carry out his duties or fails to exercise the duties of a judge of another court assigned to him on the ground and procedure as determined in the 1st paragraph of this article, the judge concerned not later than 3 months after

	the court's liquidation or reduction of judicial positions shall be dismissed from the position and with a prior consent in writing, in accordance with the rules determined by Georgian legislation, shall be enlisted in reserve for 3 years period, but no longer of expiration of his/her judicial authority. 3. The judge, who is dismissed from the position according to procedure provided for in paragraph 2 of this article and has not been stricken off the reserve list shall receive monthly allowance in the amount determined by the Georgian legislation. Any time he/she may be assigned to the other court according to the procedure established by the Georgian legislation with his/her written preliminary consent within his/her judicial tenure. In such case a judge shall be deemed stricken off the reserve fro the period of assignment. **Article 45. Judge's Withdrawal from Case Hearing and from performing the other duties** 1. From the moment of charging a judge with criminal responsibility or adoption of a decision on his dismissal by disciplinary collegiums the judge concerned shall be withdrawn from case hearing and other official duties until the final resolution of the matter. 2. Decision about withdrawal of a judge from case hearing shall be made by the President of the Supreme Court of Georgia on the ground of the relevant submission. 3.Withdrawal of the judges from case hearing shall automatically ensure his/her withdrawal from other official duties.
Guarantees against undue pressure	**Constitution of Georgia** **Article 84** 1. A judge shall be independent in his/her activity and shall be subject only to the Constitution and law. Any pressure upon the judge or interference in his/her activity with the view of influencing his/her decision shall be prohibited and punishable by law. 2. The removal of a judge from the consideration of a case, his/her pre-term dismissal or transfer to another position shall be permissible only in the circumstances determined by law. 3. No one shall have the right to demand from a judge an account as to a particular case. 4. All acts restricting the independence of a judge shall be annulled. **Article 86** 3. The position of a judge shall be incompatible with any other occupation and remunerative activity, except for pedagogical and scientific activities. A judge shall not be a member of a political party or participate in a political activity.

Article 87

1. A judge shall enjoy personal immunity. Criminal proceeding of a judge, his/her arrest or detention, the search of his/her apartment, car, workplace or his/her person shall be permissible by the consent of the President of the Supreme Court of Georgia, except when he/she is caught *flagrante delicto*, which shall immediately be notified to the President of the Supreme Court of Georgia. Unless the President of the Supreme Court gives his/her consent to the arrest or detention, the arrested or detained judge shall immediately be released.
2. The state shall ensure the security of a judge and his/her family.

Law "On Common Courts"

Article 7. Independence of a Judge

1. A judge shall be independent in his/her activity. The judge shall assess the factual circumstances and adopt the decision only on the basis of the Constitution of Georgia, universally recognized principles and norms of the International Law, the other laws and of his/her internal conviction. No one shall have the right to demand from a judge an account as to a particular case.

2. The removal of a judge from the consideration of a case, his/her pre-term dismissal or transfer to another position shall be permissible only in the circumstances determined by law.

3. If in the course of hearing of the concrete case the Common Court decides that there is enough ground for a law or other normative act, which the court intents to apply for deciding the given case, deem to be incompatible in full or partially with the Constitution, it shall suspend the hearing and address the Constitutional court of Georgia. The hearing shall be resumed by the Constitutional Court after resolving this issue.

4. If the adjudicating court decides that reviewing a normative act incompatible with Constitution fells outside of the jurisdiction of the Constitutional Court, the court shall make a decision on the issue according to the Constitution.

Article 8. Prohibition of Interference in Court's Operation

1. State and local self-government body, agency, public or political association, an official, legal or private person shall be prohibited to encroach upon independence of judiciary.

2. Any pressure upon the judge or interference in his/her activity with the view of influencing his/her decision shall be prohibited and punishable by law.

Law "On the Rule of Communication with the Common Court Judges"

Article 3. Restrictions on communication with the judge

1. From the moment of submission of the case to the court until the entry into effect the court judgment on this case, also during the investigation of the criminal case the participants of proceedings, interested persons, public servants and the state-political officials shall be prohibited to establish with the judge any communication related to the consideration of the given case and/or the possible outcome of the

	case that violate the principles of independence and impartiality of the judge and of the adversarial proceedings. (24.09.2010. #3619 shall come into effect from 1 October 2010). 2. The liability prescribed for by this law shall not apply the cases implying the signs of crimes established as such by the Penal Code of Georgia. **Article 4. Responsibility of a judge** 1. If the participants of proceedings, interested persons, public servants and the state-political officials establish with a judge the communication referred to in article 3 of this law the judge shall submit promptly the written report about it to the president of the court or to the judge authorized by the president of the court. If the communication concerns the president of the court, he/she shall submit the written report to the president of the court of higher instance or to the judge authorized by the president of the upper instance court. If the communication concerns the judge of the Supreme Court of Georgia he/she shall submit the written report promptly to the Vice-President of the Supreme Court of Georgia or to the authorized Vice-President of the Supreme Court. If the communication concerns the President of the Supreme Court of Georgia, he/she shall submit the written report about it to the High Council of Justice of Georgia. 2. When the communication with a judge referred in article 3 of this law happens, the judge authorized to consider the written report on communication, as well as the High Council of Justice of Georgia in the cases provided for in this law, shall have the right to apply against the participant of the proceedings, interested person, public servant and the state-political official the following measures[1]**:** a) to make a decision on adoption of a penalty; b) to raise the issue on applying the disciplinary measure before the Secretary of the High Council of Justice of Georgia. 3. Violation of requirements established under article 3(1) and article 4(1,2) of this law by the judge shall raise the disciplinary liability envisaged in the law of Georgia "on the Common Court Judges Disciplinary Liability and Disciplinary Proceedings" and through the procedure established under the same law.

[1] **Please see the Specific Law.**

Moldova

Self-governing judicial bodies

Legal Basis	**Organic Law of 19.07.1996** **On The Superior Council of the Magistracy** **Article 1. The Superior Council of the Magistracy– Judicial Self-Governing Body** **(**1) The Superior Council of the Magistracy is an independent body responsible for the organization and functioning of the judicial system, and guarantees the independence of the judiciary. (2) The Superior Council of the Magistracy shall ensure the self-governance of the judiciary.
Composition and Selection	**Constitution of Moldova** **Article 122. Composition** (1) The Superior Council of the Magistracy is composed of judges and law professors each elected for a 4-year term. (2) The President of the Supreme Judicial Chamber, the Minister of Justice and the Prosecutor General are *ex officio* members of the Superior Council of the Magistracy. **Organic Law of 19.07.1996** **On The Superior Council of the Magistracy** **Article 3. Composition** (1) The Superior Council of the Magistracy is composed of 12 members. (2) The Superior Council of the Magistracy consists of judges and university teachers, in addition to the Chair of the Supreme Judicial Chamber, the Minster of Justice, and Prosecutor General, who are *ex officio* members of the Council. (4) Five judicial members shall be elected by secret ballot by the General Assembly of Judges of the Republic of Moldova. Parliament shall elect four academic members by simple majority. The candidates for academic membership shall require to be proposed by at least 20 members of Parliament.

	(5) The General Assembly of Judges ensures the achievement of the other principles on which the self-governance of the judiciary is based. The Superior Council of the Magistracy has exclusive competence to elect five of its members, and the Assembly has no power in relation to any other decision as to the functioning of the judiciary. In order to the supervise the election process of the Superior Council of the Magistracy, the General Assembly of Judges shall establish by simple majority vote a special commission, consisting of 5 judges. A judge is considered elected as a member of the Superior Council of the Magistracy if he or she receives more than half of the votes of the judges present at the Assembly. Ordinarily, the General Assembly of Judges convenes once every 4 years. It can convene a special session. Where a vacancy emerges within the membership of the Superior Council of Magistracy, the Assembly is empowered to elect a new member. Sessions of the General Assembly of Judges are valid if at least two thirds of the judges in Moldova are present at their session, and it can be demonstrated that those judges who are absent were duly notified about the session. If a session is convened, the Ministry of Justice shall announce this no later than 15 days in advance of the session taking place. A judge elected as a member of the Superior Council of the Magistracy shall be seconded by the court for the duration of his term as a member of the Council. (6) Members of the Superior Council of the Magistracy, save for *ex officio* members, are not entitled to hold any other paid job, except for the purposes of teaching and research. (7) Persons holding administrative positions shall be dismissed where they are elected as members of the Superior Council of the Magistracy. **Article 5**. The President (1) The President of the Superior Council of the Magistracy shall be elected by secret ballot and a simple majority of the Council, and shall excercise his duties on a permanent basis. (2) Where the President is absent, his duties shall be carried out by a Council member appointed by Council decision to carry out those duties. (3) The *Ex officio* members referred to in Article 3 (2) cannot serve as President of the Superior Council of the Magistracy. **Article 9. Term of Office** (1) The term of office of a member of The Superior Council of the Magistracy shall be 4 years. (2) Paragraph (1) shall not apply to *ex officio* members of the Council.

	Article 13. Completion of Vacancy Where the term of office of a member of the Superior Council of the Magistracy has ceased, a new member shall be elected or appointed within 30 days from the date on which the vacancy arose, in accordance with the applicable election or appointment procedure.
Competence	**Constitution of Moldova** **Article 123. Mandate** (1) The Superior Council of the Magistracy shall be responsible for the appointment, transfer, secondment, promotion and disciplinary regulation of judges; (2) The organization of and procedure to be followed by the Superior Council of the Magistracy shall be established by the Organic Law. **Organic Law of 19.07.1996** **On The Superior Council of the Magistracy** **Article 4. Jurisdiction** (4) In the exercise of its functions, the Superior Council of the Magistracy has the following powers in the field of the administration of the courts: a) To review information provided by the Ministry of Justice relating to the organization, resourcing and funding of the courts; b) To approve the distribution of cases in the courts, in order to ensure the transparency, objectivity and impartiality of this process; c) To examine, approve and propose, as prescribed by law, the draft budget of the courts; d) To submit to Parliament and to the President of the Republic of Moldova on an annual basis and no later than 1 April, a report on the organization and functioning of the courts during the previous year. e) To approve the structure of the Superior Council of the Magistracy staff, to appoint, promote, transfers and dismiss staff as required the Superior Council of the Magistracy and to incentivise and discipline them as appropriate; f) To co-ordinate annual leave for judges of the courts and the courts of appeal and for the presidents and deputy presidents of these courts. **Article 6. President's Responsibilities** The President of The Superior Council of the Magistracy: a) Convenes and chairs sessions of the Council; b) Coordinates the activities of the Council and assigns any materials for consideration; c) Represents the Council in state bodies and abroad; d) Manages the budget of the Council; e) Performs other responsibilities as provided by law.

Competence in the field of judges' career	Organic Law of 19.07.1996 On The Superior Council of the Magistracy
	Article 4. Jurisdiction
Appointment	(1) In the exercise its functions, the Superior Council of the Magistracy has the following powers in relation to judges' careers: a) To submit proposals to the President of the Republic of Moldova or, as appropriate, to Parliament, in relation to the appointment, promotion, transfer or removal from office of judges, presidents and deputy presidents of courts; b) To administer the judicial oath; c) To check the authenticity of documents submitted by candidates for judicial office, and in support of the appointment or promotion of judges up to retirement age; d) To organize and regulate as provided by law competitions for judicial office, president and deputy president of the court, and to select candidates for vacancies for judicial office or president or deputy president of the court; e) To appoint an acting president or deputy president of the court or appeal court where a vacancy arises or where the occupant of the office in question is suspended until the post is filled or the suspension is lifted in accordance with the law; and f) To incentivize judges. (2) In the exercise of its functions, the Superior Council of the Magistracy has the following powers in relation to the induction and continuous training of judges: a) To nominate judges for membership of the National Institute of Justice; b) To approve induction and continuous training courses for judges, and to share its views on plans for the delivery of those courses; c) To examine and share its views on the rules relating to the contest for admission to the National Institute of Justice, on the curriculum and course plans for the institute's induction and continuous training programme, on the rules relating to the contest for admission to the position of lecturer, and on the composition of the commission responsible for entrance exams and graduation from the National Institute of Justice; d) To express its opinion on the number of places made available for admission to the initial instruction programme at the National Institute of Justice; e) To examine appeals against decisions or recommendations issued by the Qualifications Board (3) In the exercise of its functions, the Superior Council of the Magistracy has the following powers in relation to discipline and ethical standards of judges: a) To examine citizens' complaints in relation to judges' ethical standards; b) To examine appeals against decisions of the Disciplinary Board; c) To discipline judges; d) To approve decisions or recommendations of the Disciplinary and Qualifications Boards; e) To require from competent bodies information concerning income and property declarations by judges; f) To require from the fiscal authorities the carrying out of checks upon the accuracy of income declarations made by judges' family members; and g) To upload judges' declarations as to income and property on its website.

Article 19. Proposing Candidates for the Positions of Judge, President and Deputy President of the Court

(1) The Superior Council of the Magistracy shall make proposals to the President of the Republic of Moldova or to Parliament, as appropriate, on the appointment of candidates to the positions of judge, court president and deputy court president.

(2) In order to make its proposals, the Superior Council of the Magistracy shall examine applications and select candidates based on the performance indicators it has prescribed by the Superior Council of the Magistracy.

(3) The decision of the Superior Council of the Magistracy and its proposal concerning the appointment of judges, court presidents or court deputy presidents, the candidate's personnel file with a curriculum vitae setting out his or her experience and a draft decree or draft decision on the appointment shall be forwarded by the President of the Council.

(4) If the President of the Republic of Moldova or, Parliament, as appropriate, rejects the proposed candidate, the Superior Council of the Magistracy may propose by a two-thirds majority vote the same candidate or another candidate to fill the vacancy in question pursuant to article 11 of the Law on the Status of the Judge, Article 16 of the Law on the Judiciary and Article 9 of the Law on the Supreme Judicial Chamber.

Article 20. Promotion, Transfer, Discharge, Detachment, Suspension, Resignation and Removal from Judicial Office

(1) Responsibility for promotion, transfer, discharge, detachment, suspension, resignation and removal from judicial office shall rest with The Superior Council of the Magistracy in accordance with the law.

(2) The promotion or temporary transfer of a judge to another court shall be determined by the Superior Council of the Magistracy pursuant to Article 20 of the Law on the Status of a Judge

(3) A judge may be detached from his or her position by the Superior Council of the Magistracy pursuant to article 24/1 of the Law on the Status of Judge.

(4) Decisions relating to the transfer, promotion, resignation or removal of a judge shall be forwarded to the President of the Republic of Moldova or to Parliament, as appropriate, together with the judge's *curriculum vitae* setting out information as to his or her experience and a draft decree or decision to the President of the Republic of Moldova or to Parliament, as appropriate.

(5) Suspension from judicial office shall be determined by the Superior Council of the Magistracy, pursuant to article 24 of the Law on the Status of the Judge.

(6) Where the circumstances on which a judge's suspension was based no longer exist, The Superior Council of the Magistracy shall decide whether to repeal the suspension in question.

Dismissal and Disciplinary proceedings	(7) The decision of The Superior Council of the Magistracy as to suspension or repeal of suspension shall immediately be submitted to the President of the Republic of Moldova or to Parliament, as appropriate. (8) The Superior Council of the Magistracy shall cease the resignation of judge and order the cessation of the monthly life allowance payment pursuant to article 26 from Law on the Status of Judge. (9) The decision of The Superior Council of Magistracy as to the cessation of the resignation may be appealed to the Appeal Chamber of Chisinau within a period of 10 days following the date on which a copy of the decision was received. **Article 21. Approval of Decisions Issued by the Qualifications Board and Disciplinary Board** (1) Decisions of the Qualifications Board and Disciplinary Board that have not been appealed shall be forwarded within seven days to the Superior Council of the Magistracy for its approval. (2) Decisions shall be approved within one month from the date the relevant materials were received by the Superior Council of the Magistracy. (3) The Superior Council of the Magistracy may invite members of the Qualifications Board or Disciplinary Board, as appropriate, and the persons affected by the decision, to attend its sessions. (4) After examining the issue, the Superior Council of the Magistracy shall decide to: a) Approve the decision of the Qualifications Board or Disciplinary Board; b) Vary the decision of the Qualifications Board or Disciplinary Board or quash it and adopt a new decision; c) Quash the decision of the Qualifications Board or Disciplinary Board and close the procedure. (5) Where the Superior Council of the Magistracy varies the decision of the Qualifications Board or Disciplinary Board or quashes it and adopts a new decision, it may grant an additional qualification to the judge or apply a disciplinary sanction as provided by law. (6) In order to confer the highest qualification upon a judge or to remove him or her from his or her position, the Superior Council of the Magistracy shall submit its proposals to the President of the Republic of Moldova or to Parliament, as appropriate. (7) The provisions of paragraphs (5) and (6) shall apply to the process of examining appeals against decisions of the Qualifications Board or Disciplinary Board pursuant to article 22 of this law.

Law of 19.07.1996 On the Qualifications and Evaluation Boards

Article 1. Tasks

The Qualifications Board operates under The Superior Council of the Magistracy, for the purpose of selecting candidates for judicial office where they are able to administer justice adequately and with integrity and objectivity, based on the law. It is also responsible for evaluating professional standards among acting judges.

Article 7. Mandate

The Qualifications Board:
a) Administers the qualification exam for candidates for judicial office, as referred to in Part (3) of Article 6 of the Law on the Status of a Judge;
b) Submits recommendations regarding each candidate for judicial office, and makes recommendations for the promotion of judges to higher courts;
c) Organizes judicial attestation and confers qualifications upon judges.

Organic Law of 19.07.1996
On The Superior Council of the Magistracy

Article 7^1. Judicial Inspection Team

(1) The Judicial Inspection Team consists of five Judicial Inspectors.

(2) The term of office of a judicial inspector is 4 years. Judicial Inspectors may not serve two consecutive terms.

(3) Vacancies for the position of Judicial Inspector shall be filled following an open competition between reputable persons holding a law degree, having at least 7 years of legal experience. Candidates must receive the supporting votes of more than one half of the members of the Superior Council of the Magistracy

(4) The Chief Judicial Inspector is appointed from among the Judicial Inspectors by the Superior Council of the Magistracy, and his appointment shall be effective for his full 4-year term. The Chief Judicial Inspector is directly answerable to the Superior Council of the Magistracy.

(5) In accordance with article 19 of the Law on the Status of a Judge, Judicial Inspectors enjoy immunity from prosecution in the performance of their duties On the Status of a Judge.

(6) The functions of the Judicial Inspection Team include:
a) Examining the functioning of judicial bodies in the administration of justice;
b) Considering individual petitions submitted to the Superior Council of the Magistracy on questions of judicial ethics and the mandatory written explanations of judges cited in such petitions;
c) Examining requests by the Prosecutor General to the Superior Council of the Magistracy seeking the approval criminal justice proceedings, which, in accordance with the law, must be approved by the Council. These include: detention, search and arrest, and examining requests by the Prosecutor General for approval of bringing criminal or administrative proceedings;

d) Considering whether or not any Presidential or Parliamentary rejection of candidates proposed by the Superior Council of the Magistracy for the positions of judge, president or deputy president of the judicial body is justified.

Law of 19.07.1996 On the Disciplinary Board and Disciplinary Liability of Judges

Article 1. Disciplinary Board

(1) The Disciplinary Board acts under the authority of the Superior Council of the Magistracy and considers questions surrounding the disciplinary liability of judges.
(2) The term of office of the Disciplinary Board is 4 years. Members of the Disciplinary Board cannot serve two consecutive terms.

Article 7. Mandate of the Disciplinary Board

The Disciplinary Board:
a) Considers questions surrounding the disciplinary liability of judges; and
b) Determines questions relating to the annulment of disciplinary sanctions.

Article 10. Right to initiate disciplinary proceedings

(1) Any member of the Superior Council of the Magistracy is entitled to initiate disciplinary proceedings.

(2) Disciplinary proceedings against members of the Superior Council of the Magistracy and members of the Disciplinary Board may be initiated by a decision of three or more members of the Superior Council of the Magistracy.

Article 12. Initiating disciplinary proceedings

(1) When disciplinary proceedings are initiated, the person who initiated them or the Judicial Inspectors shall review whether the grounds for disciplinary liability are made out and request written explanations from the judge in question.

(2) Prior to forwarding a disciplinary case for consideration, the person against whom proceedings have been brought should have been afforded an opportunity to familiarise himself or herself with the case. The person in question may provide explanations or evidence and/or apply for an additional review of the case.

Article 13. Annulment of disciplinary proceedings

(1) A decision to initiate disciplinary proceedings may be annulled by the person who initiated them prior to the case being considered by the Disciplinary Board.
(2) Where disciplinary proceedings against a judge are, the judge is entitled to request its consideration, and in such circumstances the Disciplinary Board or Superior Council of the Magistracy should consider the case on the merits.

Competence in the field of budgetary issues	**Organic Law of 19.07.1996** **On The Superior Council of the Magistracy** **Article 27. Funding of The Superior Council of the Magistracy** (1) In order to ensure it can carry out its activities, The Superior Council of the Magistracy shall have its own dedicated budget funded from the state budget.

Judges' career

Selection	**Law of 07.02.1995 On the Status of a Judge** **Article 6. General Requirements for Judicial Candidates** (1) A citizen of the Republic of Moldova may run for judicial office if he or she he or she is resident on its territory and meets the following requirements. The candidate should: a) Be capable; b) Have an official law degree; c) Have completed an internship at the National Institute of Justice; d) Have no criminal record and be of good reputation; e) Speak the official state language; f) Be able, from a medical point of view, to exercise judicial functions. This should be certified by the Ministry of Health and Social Care. (2) Subject to the provisions of Part (1), any person who has worked for 5 years as a member of Parliament, a member of the Chamber of auditors, a law professor in a licensed university, a prosecutor, an investigator, a criminal persecution officer, a court lawyer, a parliamentary lawyer, a notary, a judicial assistant, a bailiff, a consultant, or a court secretary, and has had 5 years of legal work experience at the Secretariat of the Constitutional Court, the Superior Council of the Magistracy or state bodies, and who has passed the qualification exam, may apply for judicial office. The number of judicial vacancies open to the above persons is determined by the Superior Council of the Magistracy and shall not exceed 20% of the total vacancies available over the relevant 3-year period. (3) A person with six or more years' experience may apply for judicial office at the appeal chamber and a person with ten or more years' experience may apply to the Supreme Judicial Chamber. **Law of 19.07.1996 On the Qualification and the Evaluation Boards** **Article 17. Applications for the Qualification Exam** (1) Persons with at least 5 years' legal experience and who meet the conditions of Article 6 of the Law on the Status of a Judge may submit an application to the Superior Council of the Magistracy to sit the qualification exam.

	(2) Sittings of the qualification exam take place twice a year. If necessary, and additional exam can be arranged. The time and venue of the exam shall be determined by the Qualifications Board, and information relating to the exam shall be published in the mass media and on the internet no later than 60 days in advance of the relevant sitting. (1) The procedure for the examination shall be set by a Regulation adopted by the Superior Council of the Magistracy. **Article 20. Qualification exam** (1) The qualification exam shall comprise the following: a) Oral tests on civil and criminal procedure and on civil, criminal, administrative, constitutional, economic, and employment law and tests on the status of the judge and the structure of the judiciary. b) Drafting two procedural documents and problem solving (2) Each answer shall be marked out of 10 points. (3) The pass mark for the exam shall be 75%. (4) Candidates who fail to pass the exam may re-sit the exam in the following year. (5) Results of the qualification exam remain valid for 3 years. If during this period a candidate does not take part in or fails the competition for judicial office, he/she shall be required by law to take the qualification exam once again in accordance with. **Article 21. Decisions of the Qualifications Board** (1) After the qualification exam the Qualifications Board shall determine whether or not a candidate has passed an exam and the board shall indicate in its decision the number of points scored by the candidate in question. (2) Where the Qualifications Board decides that a candidate has passed the qualifications exam, this shall be a ground for the relevant candidate's participation in the competition for judicial office. The results of the qualifications exam shall be forwarded to the of the Magistracy for publication on its website.
Appointment (procedure)	**Constitution of Moldova** **Article 116. Status of Judges** (1) The law provides that judges are independent, impartial, and enjoy security of tenure. (2) Judges are appointed by the President of the Republic of Moldova upon a proposal from the Higher Superior Council of the Magistracy. Judges who have passed the judicature entry test are appointed for an initial 5-year term after which they shall be appointed for a term of office which expires once they have reached the age limit established by the law. (3) Presidents and their deputies in the Supreme judicial bodies shall be appointed for four-year terms by the President following a proposal from the Superior Council of the Magistracy.

(4) Both the President and the members of the Supreme Judicial Chamber shall be appointed by Parliament following a proposal from The Superior Council of the Magistracy. Only persons who can provide evidence of ten years' work experience in the courts of law will be eligible to be appointed President or members of the Supreme Judicial Chamber.

Law of 19.07.1996 On the Qualification and the Evaluation Boards

Article 9. Competition for judicial office

(1) Judicial office shall only be offered via open competition. The Superior Council of the Magistracy regularly publishes in the Official Monitor of the Republic of Moldova information on judicial vacancies.

(2) The competition shall be organized by the Superior Council of the Magistracy in accordance with a Regulation adopted by the Council. The regulation should contain objective selection criteria. Information about the date and place of the competition and the procedure it shall follow shall be published in the mass media and on the Council's website at least 90 days in advance of it taking place.

(3) Graduates of the National Institute of Justice shall participate in the competition in accordance with the average grade in their certificates. Persons who have a sufficient number of years of legal work experience to hold judicial office shall participate in the competition in accordance with the results of the qualification exam organized by the Qualifications Board.

(4) The competition shall be organized for each category of applicants set in Part (3), with consideration of the number of vacant positions, assigned for every category separately by the Superior Council of the Magistracy.

Article 11. Appointment

(1) Judges of courts, including specialized courts, criminal judges and judges of appeal chambers shall be appointed from those selected by the President of Moldova upon a proposal by the Superior Council of the Magistracy based on the results of the competition. Selected candidates who meet the requirements set out in Article 6 shall be appointed for judicial office for an initial 5-year term. After the initial 5-year term, judges shall be appointed for a term ending when they reach the age limit – 65 years.

(2) Judges of the Supreme Judicial Chamber shall be appointed by Parliament after the proposal of The Superior Council of the Magistracy.

(3) The President of Moldova may reject a candidate for judicial office proposed by the Superior Council of the Magistracy for a 5-year term or for a term until the reach of age limit only once. Rejection is possible only where there is incontrovertible evidence that the candidate is incompatible with judicial office, that he or she has violated the law, or that there has been a breach of the selection procedure.

(4) The rejection or approval of the candidate shall be decided upon within 30 days after the proposal was made. If there are circumstances that require additional time for consideration, the President of Moldova shall notify the Superior Council of the Magistracy that there shall be a 15-day extension to the consideration period.

	(5) Upon a repeat proposal of a candidate by the Superior Council of the Magistracy, the President of Moldova shall, within 30 days, issue an order granting the appointment of the candidate for judicial office.
Term of office and Promotion	**Constitution of Moldova** **Article 116. Status of Judges** (5) Judges may be promoted or transferred only with their consent. (6) Judges may be punished as provided under the rule of law. (7) The office of judge is incompatible with the holding of another public or private remunerated position, except in the sphere of teaching or scientific research. **Law of 07.02.1995 On the Status of a Judge** **Article 8. Restrictions on the Office of a Judge** (1) A judge my not: a) Hold any other public or private positions except for research or teaching activities; b) Be member of Parliament or a counsellor within a local authority; c) Be a member of any political party or any other social or political organisation, carry out activities of a political nature, or collaborate in the carrying out of activities incompatible with the judicial oath; d) Carry out commercial activities; e) Give oral or written legal advice on litigation-related matters except in cases concerning his/ her parents, spouse, children, or other individuals under his or her custody. f) Carry out any activity that conflicts with the interests of the administration of justice, except where the President of the court or the Superior Council of the Magistracy are informed about the existence of such conflict of interest. (2) A judge may cooperate with researchers, socio-political journals and magazines and may participate in television and radio discussions, but is prohibited from commenting on current internal political questions. (3) A judge may not provide to the mass media any information concerning pending cases except through a judge with responsibility for media relations. **Law of 19.07.1996 On the Qualification and Evaluation Boards** **Article 22. Aim of the judicial attestation** The aim of the judicial attestation is to assess a judge's professionalism, to stimulate his professional growth, and to increase his levels of responsibility and observance of legislation in the administration of justice. **Article 23. Terms of judicial attestation** (1) A person appointed for the first time as a judge shall be attested within 6 months of his appointment.

(2) Generally, judges shall be required to pass the judicial attestation every 3 years, except for judges who hold a higher qualification degree.

(3) Judges shall also be attested upon:
a) The award of a qualification degree;
b) The lodging of a proposal for the appointment of a judge prior to his or her reaching retirement age; and
c) The proposal of candidates for the position of President, Deputy-President of court.

(4) Where a judge demonstrates poor performance or does not improve his performance as required, he or she may be subjected to attestation prior to the expiry of the term set out in para (2), but no judge will require to be attested more than once in any year.

(5) A proposal for attestation shall be made in the following cases:
a) under para (2) and para (3) sub.(a), by the president of the appropriate court or by the president of the higher court, as applicable;
b) under para (3) sub.(b) and (c), by the members of the Superior Council of the Magistracy; or
c) under para (4), by the court above or by the members of The Superior Council of the Magistracy, setting out why the attestation is required .

Article 24. Attestation

(1) In order to conduct a judge's attestation, the President of the court or a member of the Superior Council of the Magistracy shall prepare an assessment designed to examine the judge's skills, moral standards and professionalism. This document, together with the recommendation, shall be forwarded to the Qualifications Board.

(2) For the judicial attestation of the President of court, the assessment document and other necessary materials shall be prepared by the President of the court above.

(3) For the judicial attestation of Supreme Court judges, the documents mentioned under para (1) shall be prepared by the President of the Supreme Judicial Chamber and forwarded to the Superior Council of the Magistracy.

(4) The judge being attested shall have the opportunity to read the assessment document at least 15 days before his or her judicial attestation.

(5) The judicial attestation shall be conducted in the presence of the attested person.

Article 25. Decision on the judicial attestation

(1) Depending on the judge's level of professional training, tenure and position, the Qualifications Board shall issue one of the following decisions:
a) To award a qualification degree held by the judge or to award a higher qualification degree;

b) To maintain the current qualification degree held by the judge;
c) To postpone the judicial attestation; or
d) To decrease the qualification degree held by the judge.

Article 27. Qualification degrees of judges

(1) Depending on the judge's position, work experience and professional experience there are six possible qualification degrees provided to judges:
a) Qualification degree no.5;
b) Qualification degree no.4;
c) Qualification degree no.3;
d) Qualification degree no.2;
e) Qualification degree no.1;
f) The superior qualification degree.
(2) The superior qualification degree shall be awarded by the President of the Republic of Moldova. All other degrees shall be awarded by the Qualifications Board.
(3) The qualification degrees shall be awarded as follows:
a) The superior qualification degree - for the President and Deputy-Presidents of the Supreme Judicial Chamber and to the members of the Supreme Judicial Chamber (the latter in recognition of their considerable experience within the judiciary and high professional standards);
b) Qualification degree no.1 - for members of the Supreme Judicial Chamber, the President, Deputy-Presidents and judges of the Appeal Chambers, and assistant-judges of the Constitutional Court;
c) Qualification degree no.2 - for judges of the appeal chambers;
d) Qualification degree no.3 - for judges of the appeal chambers, and Presidents and Deputy-Presidents of the courts;
e) Qualification degree no.4 and degree no.5 - for the Presidents, Deputy-Presidents and judges of the courts.
(4) The lowering of a judge's qualification degree pursuant to Article 25 shall constitute a ground on which he or she may be transferred to a lower court.

Article 29. Experience requirements for the award qualification degrees

(1) Judges shall be entitled to be awarded qualification degrees upon completing the following numbers of years' experience:
a) Qualification degree no.5 - 2 years;
b) Qualification degree no.4 - 4 years;
c) Qualification degree no.3 - 5 years;
d) Qualification degree no.2 - 5 years.
(2) The period of time for qualification degree no.1 is not prescribed.
(3) Judges demonstrating high professional standards and who hold scientific degrees or other awards can be awarded a qualification degree without having been awarded the qualification degree immediately below it, but on no more than two separate occasions.

	Law of 07.02.1995 On the Status of a Judge **Article 20. Promotion or transfer of a judge** (1) Judges may be promoted or transferred to another position indefinitely only with their consent and upon a proposal by the President of Moldova or Parliament to the Superior Council of the Magistracy Promotion shall follow open competition. (2) Judges may be temporarily promoted or transferred to the office of a judge who has been suspended, stripped of his or her functions or dismissed only with his or her consent and at the instance of the Superior Council of the Magistracy. (3) The main criteria for promotion are the extent of a judge's professional experience and his or her participation in continuous judicial training. (5) Judges subjected to disciplinary punishment, or who fail to pass their attestation, or who have had their qualification grade lowered as a result of a lack of professional knowledge, may not be transferred to a higher court or appointed President or Deputy President of the court or become a member of the Qualification or Disciplinary Boards for at least one year thereafter.
Remuneration and other social guarantees	**Constitution of Moldova** ***Article 121. Court Budget, Remuneration and Other Rights*** (1) The budget of the courts of law is approved by Parliament and is included in the national budget. (2) The remuneration and other rights of judges shall be provided by law. **Law of 07.02.1995 On the Status of a Judge** **Article 27. State protection for judges and their families** (1) Judges, their family members and their property falls under the protection of the state. Upon the judge's request, the police shall take all necessary measures to ensure the safety of the judge, his family members and their property. (2) Persons responsible for the following actions towards judges and their families shall be answerable to the law: attempted murder, murder, violent assault, violent threats and libel. A judge is entitled to the personal security services of the police. **Article 28. Remuneration** The remuneration of a judge is regulated by the Law on Remuneration in the Public Sector. **Article 29. Leave** (1) Judges are entitled to 30 days' paid annual leave. (2) Where a judge has held office for fewer than 5 years, his annual leave entitlement shall increase by an additional 2 days every year; 5 – 10 years – by 5 days, 10 to 15 years – by 10 days, and more than 15 years – by 15 days.

	(3) Annual leave is approved by the presidents of each court in accordance with the leave schedule, which is coordinated at least 2 weeks before the beginning of the each year with the Superior Council of Judiciary. The Superior Council of the Magistracy shall approve the annual leave of Presidents and Deputy Presidents. **Article 31. Other social guarantees** Judges and their family members enjoy the right to free medical care and other social guarantees provided by law. **Article 32. Pensions** A judge is entitled to a pension in accordance with the Law on Pensions of State Social Security
Disciplinary proceedings	**Law of 19.07.1996 On the Disciplinary Board and the Disciplinary Liability of Judges** **Article 9. Grounds for Disciplinary Liability** (1) A judge may be disciplined where he or she commits disciplinary offences, set out in Article 22 of the Law on the Status of a Judge. (2) The reversal or variation of a judgment is not a ground for disciplinary liability, unless a violation of the law was committed by a judge intentionally or as a result of serious misconduct. (3) Presidents and Deputy Presidents may be disciplined where they fail to ensure the proper functioning of their court. **Article 11. Time limit for bringing disciplinary proceedings** A judge may be disciplined within 6 months of the date when his or her offence was discovered (discounting his or her sick leave or vacation periods), and within one year of the date the offence was committed. Where a disciplinary offence is determined by a final judgment of a domestic or international judicial body, disciplinary proceedings must be brought within a year of the date on which the judgment became effective. **Article 16. Length of disciplinary proceedings** Each disciplinary case shall be considered within one month from the date of its receipt by the Disciplinary Board or the Superior Council of the Magistracy. This period does not include any period of absence of the judge facing the disciplinary proceedings referred to in Article 11. **Article 17. Participation in disciplinary proceedings** (1) The judge facing disciplinary proceedings must be involved in them. The judge is entitled to an advocate as required. If the judge fails to appear before the Board without a reasonable excuse, the Disciplinary Board may decide to consider his case in his absence.

(2) The person who initiated the proceedings or his representative may participate in the hearing. Other judges may be present whilst a disciplinary case is being considered.

Article 19. Decision in a disciplinary case

(1) The Disciplinary Board may take one of the following decisions:
a) To impose a disciplinary penalty;
b) To reject the proposal on imposition of a penalty and to stop the disciplinary proceedings;
c) To pass the materials of the case to the Superior Council of the Magistracy to initiate the procedure of dismissal of the judge.
(2) The Disciplinary Board may impose the following disciplinary penalties:
a) A statement;
b) A reprimand;
c) A severe reprimand;
d) A lowering of the judge's qualification grade
e) A proposal to dismiss a judge from the office of President or a Deputy President of the court; or
f) A proposal to dismiss a judge.
(3) When imposing a penalty, the Disciplinary Board shall take into account the nature of the disciplinary offence in question, its consequences, and its gravity, as well as the character of the judge, his degree of responsibility for the offence and any other relevant circumstances.
(4) The Disciplinary Board may terminate the proceedings if:
a) There are no grounds on which to discipline the judge;
b) The time limits set out at Article 11 have expired.

Article 24. Removal of disciplinary record

(1) If a judge has not received any new disciplinary penalty within one year from a previous decision imposing a disciplinary penalty, his disciplinary penalty record is cleared.
(2) Upon the request of the person who initiated the disciplinary proceedings or of the Disciplinary Board itself, the Board may decide to cancel the penalty if the judge in question has not committed any new disciplinary offence in the six months since the penalty was imposed, has demonstrated exemplary behaviour, and has performed his duties responsibly.
(3) During the term of validity of a disciplinary penalty, the disciplined judge may not receive any rewards or promotion.

Law of 07.02.1995 On the Status of a Judge

Article 22. Disciplinary offences

(1) The following offences are disciplinary offences:

a) Breach of impartiality;
b) Deliberate or intentional misinterpretation or application of law not justified by a change in judicial practice;
c) Interference with the activities of another judge or seeking to influence a public body or civil servants in order to resolve a personal or family issue and perverting normal legal procedures as provided by law;

d) Violation of the secrecy of the deliberation room or other confidential activities;
e) Political activities;
f) Breach of the principle of random distribution of cases;
f[1]) Breach of rules regarding the consideration of pending cases without good reason, or violation of fundamental norms of legislation;
g) Breaching the law relating to mandatory declaration of income and property;
h) Unjustified refusal to perform duties;
h[1]) Breach of the requirement to draft judgments and communicate them to the parties.
h[2]) Failure through his or her own fault to publish judgments on the court's website.
i) Unjustified absence, delay, or leaving work early;
j) Showing disrespect to colleagues, lawyers, experts or other trial participants;
k) Violation of the Judicial Code of Ethics;
l) Failure by the president of the court to report to the Superior Council of the Magistracy the disciplinary offences of a judge;
m) Abuse of judicial office;
n) Violation of the laws limiting judicial powers;
o) Public dissent or disagreement with the decisions of colleagues in an attempt to interfere with their work;
(2) Reversal or variation of a judgment is not a ground for liability provided the judge who produced the judgment in question did not violate the law intentionally, except where a violation is the result of negligence resulting in serious material or moral damage.

Article 24. Suspension of powers

(1) The powers of a judge can be suspended by order of The Superior Council of the Magistracy in the following circumstances:
a) The bringing of criminal proceedings against a judge shall result in his or her suspension until the final judgment in their case;
b) The judge is declared missing by a final court judgment;
c) The judge stands for election to a state or local government office and is elected to that office;
d) The judge is granted maternity and child care leave of up to 3 years.

(3) The suspension of judicial powers pursuant to Part (1) (except for para a)) shall not affect his or her entitlement to immunity from prosecution and to social benefits and guarantees.

(4) Where para a) of Part 1 applies and the judge's guilt was not proven, he or she was acquitted, or the criminal investigation was terminated, his or her suspension of judicial powers shall be lifted and his or her judges rights and privileges restored.

(5) Where paras c) and d) of Part 1 apply and the term of the judge's suspension expires, the judge shall be restored to the same or a similar position to that which he/she held prior to the suspension, and if the position is not the same position but a similar one, the judge's consent shall be required.

Article 24[1]. Temporary detachment and secondment of judges

(1) A judge can be temporary discharged from his or her position by order of the Superior Council of the Magistracy as provided by law.

Dismissal	(2) Where the Superior Council of the Magistracy so orders and a judge so consents, he or she may be seconded to the Secretariat of the Council or to the National Institute of Justice for up to 18 months which can be extended for a further 18 months. A judge elected to the Judicial Inspection Team of the Superior Council of the Magistracy having succeeded at open competition shall be seconded for the whole term of his or her office. **Article 25. Removal of judges from their positions** (1) The powers of a judge shall be withdrawn by the body that appointed him or her in where the judge: a) Tenders his or her resignation pursuant to Part (2) of Article 26; b) Resigns of his or her own will; c) Resigns upon reaching the judicial age limit; d) is transferred to another position; e) Is found to have demonstrated professional incompetence; f) Is found to have committed disciplinary offences set out in Part (1) of Article 22; g) Is convicted by a court; h) Loses his or her Moldovan citizenship; i) Breaches Article 8; j) Lacks capacity as demonstrated by a medical certificate; k) Sees his or her powers expire; or l) Is deemed to be 'impaired'. (2) A proposal on the removal of a judge shall be made the Superior Council of the Magistracy to the President of Moldova or to Parliament. **Article 26. Resignation** (1) Where a judge is dismissed without having committed any offences that bring the judiciary into disrepute he or she shall be deemed to have retired honourably. (2) A judge is entitled to be dismissed upon tendering his or her resignation. (3) Following dismissal the judge shall retain the title of Magistrate and immunity from prosecution. (4) A dismissed or retired judge shall be paid a one-off *ex gratia* payment equivalent to his or her average monthly salary for each year of service completed. (5) A dismissed judge is entitled to a pension in accordance with the law, or to a monthly lifetime allowance. (6) A retired judge with 20 or more years' service shall receives a lifetime allowance equal to 80 percent, from 25 to 30 years – 85 percent, from 30-35 years – 90 percent, and from 35-40 years – 100 percent of the average salary paid whilst in office taking into account indexation. (7) Judges who have resigned shall be entitled to work in the area of justice. (9) A judge is considered to have resigned provided he or she holds Moldovan citizenship, meets the requirements of Article 8 and does not commit offences capable of bringing the judiciary into disrepute. (10) If the Superior Council of the Magistracy decides that the judge no longer meets the requirements of the current law, it shall terminate his resignation. Where a judge's resignation is terminated, he or she shall be entitled to appeal to the Supreme Judicial Chamber within 10 days. (11) A judge's resignation shall also be terminated if he or she is appointed to judicial office.

Guarantees against undue pressure	**Organic Law of 19.07.1996** **On The Superior Council of the Magistracy** **Article 23. Safeguarding Judicial Immunity** (1) Upon examining the Prosecutor General's proposal to bring criminal proceedings against a judge, to hold him or her criminally liable, to detain or arrest him or her, the Superior Council of the Magistracy shall adopt, recalling the principle of judicial immunity, a decision: a) Granting its consent; or b) Refusing its consent. The Prosecutor General is entitled to attend the deliberations relating to the examination of his or her proposal pursuant to paragraph (1). **Law of 07.02.1995 On the Status of a Judge** **Article 17. The independence of judges** The independence of the judge shall be secured by: a) Court procedure; b) The procedure regulating his or her appointment and dismissal; c) Judicial immunity; d) The secrecy of the deliberation room; e) Sanctions for interfering with the judicial process; and f) Adequate funding of the judiciary.

Ukraine

Self-governing judicial bodies

Legal Basis	**Constitution of Ukraine** **Article 130** The State shall ensure the funding and maintenance of proper conditions for the functioning of the courts and the activities of judges. The budget for the maintenance of the courts shall be ring-fenced in the State Budget of Ukraine. Judicial self-governance shall operate to ensure the proper administration of the internal affairs of courts. **Article 131** The High Council of Justice[1] operates in Ukraine and performs the following functions: 1) Forwarding submissions on the appointment or on their dismissal from office; 2) Adopting decisions regarding the violation by judges and prosecutors of the rules relating to matters incompatible with judicial or prosecutorial office; 3) Exercising jurisdiction over disciplinary procedure as it concerns judges of the Supreme Court of Ukraine and judges of the high specialised courts, and the consideration of complaints following decisions to discipline court of appeal and local court judges and prosecutors. The High Council of Justice consists of twenty members. The Verkhovna Rada of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions, each appoints three members to the High Council of Justice, and the All-Ukrainian Conference of Employees of the Procuratura (Office of the Prosecutor) appoints two members to the High Council of Justice. The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Prosecutor General of Ukraine are *ex officio* members of the High Council of Justice.

[1] In fact, the High Council of Justice does not belong to judicial self-governing bodies. Neither the Constitution, nor Article 114 of the recent law "On judicial system and status of judges" make this clear. However, I shall continue to copy and paste provisions which relate to its status and activities.

Law "On the Judicial System and Status of Judges"

Article 113. **Objectives of Judicial Self-regulation**

1. Judicial self-regulation shall be used to address issues relating to the internal functioning of the Ukrainian courts. This means that such issues shall be addressed by independent collective resolution by judges.

2. Judicial self-regulation shall be one of the most important guarantees of the autonomy of the courts and the independence of judges. The activities of judicial self-regulation bodies shall serve to facilitate the creation of adequate … conditions essential for the normal functioning of the courts and judges, shall enhance the independence of courts, shall ensure the protection of judges from interference in their judicial activities, and shall help to improve standards in the management of staff within the court system.

3. Issues relating to the internal functioning of the courts shall include issues of technical support for the activities of courts and judges, social security for judges and their families, and other issues not directly related to the administration of justice.

4. The objectives of judicial self-regulation shall include the resolution of issues relating to:

1) Ensuring the organizational coordination of the functioning of judicial bodies;
2) Strengthening the independence of courts and judges and protecting them from interference in their functions and work;
3) A role in the determination of requirements relating to recruitment of staff members, financial, logistical and other forms of support for the courts, and supervision of compliance with the established standards for such support;
4) Resolving issues regarding the appointment of judges to administrative positions within courts in accordance with the procedures set out in this Law;
5) The appointment of justices of the Constitutional Court of Ukraine; and
6) The appointment of judges to the High Council of Justice and to the High Qualifications Commission of Judges of Ukraine, in accordance with the procedures set out in this Law.

Article 114. **Mechanisms for Judicial Self-regulation**

1. The mechanisms for judicial self-regulation shall include meetings of judges, councils of judges, conferences of judges, and the Congress of Judges of Ukraine.

2. Judicial self-regulation in Ukraine shall be carried out through:

1) Meetings of judges of local courts, courts of appeal, high specialized courts, and the Supreme Court of Ukraine;
2) Councils of judges of the respective courts;
3) Conferences of judges of the respective courts;
4) The Council of Judges of Ukraine; and
5) The Congress of Judges of Ukraine.

3. Pursuant to the Constitution of Ukraine, the procedure for carrying out judicial self-regulation shall be determined by the present law, by other laws, and by regulations and statutes adopted by judicial self-regulation bodies in accordance with the present Law.

Article 123. **The Congress of Judges of Ukraine**

1. The highest body of judicial self-regulation shall be the Congress of Judges of Ukraine.

Article 124. **Procedure for Convening the Congress of Judges of Ukraine**

1. A regular Congress of Judges of Ukraine shall be convened by the Council of Judges of Ukraine once every two years. An extraordinary Congress of Judges of Ukraine may be convened by a decision of the Council of Judges of Ukraine or the conference of judges of the various courts.

Article 127. **The Council of Judges of Ukraine**

1. During the period between the Congresses of Judges of Ukraine, the highest body of judicial self-regulation shall be the Council of Judges of Ukraine.

Law "On High Council of Justice"

Article 1. **The status of the High Council of Justice**

The status of the High Council of Justice shall be determined by the Constitution of Ukraine and the Present Act.

The High Council of Justice is a collective, independent body in charge of establishing a highly professional judiciary capable of administering justice competently, conscientiously and impartially... [The High Council of Justice shall also be in charge] of making decisions, within its competence on failures to fulfil the requirement that judges to not act in a manner incompatible with the holding of judicial office compatibility requirement and [making decisions on] offences committed by judges and prosecutors…
(In its Ruling no. 9-pn/2002 of 21 May 2002, the Constitutional Court declared the provision concerning "making decisions" on offences committed by prosecutors unconstitutional).

The term of office of all members of the High Council of Justice (except *ex officio* members) is 6 years.

The High Council of Justice has legal personality, and its budget shall be set in the State Budget of Ukraine.

Article 2. **Regulatory framework of the High Council of Justice**

The competence, organisation and activities of the High Council of Justice shall be set out in the Constitution of Ukraine, the present act and the [internal] Regulations of the High Council of Justice.

Composition and Selection	**Law "On the Judicial System and Status of Judges"** **Article 125**. **Election of Delegates to the Congress of Judges of Ukraine** 1. Delegates to the Congress of Judges of Ukraine shall be elected by the conference of judges of general courts, the conference of judges of commercial courts and the conference of judges of administrative courts, following the principal of equal representation of each judicial jurisdiction first namely one judge from each region (*oblast*), the Autonomous Republic of Crimea, the City of Kiev, and the City of Sevastopol. Each high-specialised court shall be represented by three delegates from among the judges of those courts. 2. Meetings of justices of the Constitutional Court of Ukraine and the Supreme Court of Ukraine shall elect three delegates each from among the judges of these courts. 3. Delegates to the Congress of Judges of Ukraine shall be elected by open ballot on a competitive basis, with free nomination of candidates for election. **Article 127**. **The Council of Judges of Ukraine** 2. The Council of Judges of Ukraine to be composed of eleven members shall be elected by the Congress of Judges of Ukraine. The Council of Judges of Ukraine shall be composed of three representatives from each conference of judges, a representative of the Constitutional Court of Ukraine and a representative of the Supreme Court of Ukraine. Proposals on the nomination of candidates to the Council of Judges of Ukraine may be submitted by the conferences of judges as well as by individual delegates to the Congress. Judges holding administrative positions and the secretaries of judicial chambers cannot be members of the Council of Judges of Ukraine. 7. The Minister of Justice of Ukraine shall be invited to meetings of the Council of Judges of Ukraine. 8. When it considers issues relating to the funding of the courts, the Minister of Finance of Ukraine shall be invited to the meeting of the Council of Judges of Ukraine. **Law "On the High Council of Justice"** **Article 6**. **Requirements and safeguards of members of the High Council of Justice** A nominee to this office shall be a citizen of Ukraine aged 35 to 60 years who has been resident in Ukraine during the previous ten-year period, who has a strong command of the national language, has an advanced legal education and a high level of professional experience in the field of law amounting to no less than ten years. Judges appointed to this office should be elected from those who hold their judicial office on "lifetime" basis.

	The requirements specified in paragraphs one and shall not apply to *ex officio* members of the High Council of Justice. No one shall be allowed to influence in any manner whatsoever any member of the High Council of Justice. **Article 8. Procedure for appointment of members of the High Council of Justice by the Verkhovna Rada of Ukraine** Members of the High Council of Justice shall be appointed by the Verkhovna Rada of Ukraine by secret ballot. Proposals for nominations to the High Council of Justice shall be made by groups and factions of deputies within the Verkhovna Rada of Ukraine. Nominees shall require to obtain a majority of votes of the constitutional membership of the Verkhovna Rada of Ukraine by the results of secret ballot in order to be appointed members of the High Council of Justice. **Article 9. Procedure for appointment of members of the High Council of Justice by the President of Ukraine** The President of Ukraine shall issue a Decree on the appointment of members of the High Council of Justice. **Article 10. Procedure of appointment of members of the High Council of Justice by the Congress of Judges of Ukraine** Nominees for membership of the High Council of Justice of Ukraine shall be selected by the Congress of Judges of Ukraine following a proposal by the congress delegates, voted upon by a show of hands and obtaining a majority of the votes of those congress delegates present. Nominees shall then be entered into a secret ballot. In order to be appointed members of the High Council of Justice of Ukraine, nominees shall be required to obtain a majority of the votes of elected delegates to the Congress of Judges of Ukraine. Where the number of nominees obtaining a majority votes exceeds the number of vacant High Council of Justice member seats, those nominees who have obtained the highest numbers of votes shall be appointed. When the voting results are gathered, the chairman and the secretary of the Congress shall sign resolutions appointing the new High Council of Justice members. The procedure for convening a Congress of Judges of Ukraine shall be determined by the Law of Ukraine On Judicial Self-Administration Bodies (3909-12).

Article 11. **Procedure of appointment of members of the High Council of Justice by the Congress of Advocates of Ukraine**

The nomination and appointment of members of the High Council of Justice of Ukraine by the Congress of Advocates of Ukraine shall be conducted in accordance with the procedure laid out in paragraphs one to three, Article 10 of this Law.

Delegates to the Congress of Advocates of Ukraine shall be elected at the Republican (the Autonomous Republic of Crimea), regional, and city (Kyiv and Sevastopol) conferences of lawyers. No more than five delegates shall be allowed to attend those conferences from each district or regional authority town as elected by the relevant district or regional authority town conference of lawyers.

Other matters relating to the procedure for convening a Congress of lawyers shall be specified in the Law of Ukraine On the Bar (2887-12).

Article 12. **Procedure for appointment of members of the High Council of Justice by the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions**

The nomination and appointment of members of the High Council of Justice of Ukraine by the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions shall be conducted in accordance with the procedure set by Paragraphs one to three, Article 10 of this Law.

Delegates to the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions shall be elected at the Republican (the Autonomous Republic of Crimea), regional and city (Kyiv and Sevastopol) conferences of employees of the said institutions.

Higher judicial educational institutions, faculties and scientific establishments of the Autonomous Republic of Crimea, regions, and the cities of Kyiv and Sevastopol shall elect to the congress five delegates each.

Article 13. Procedure for appointment of members of the High Council of Justice by the All-Ukrainian Conference of Employees of the Procuratura

The nomination of members of the High Council of Justice of Ukraine and voting at the All-Ukrainian Conference of Employees of the *Procuratura* shall be conducted in accordance with the procedure set by Paragraphs one to three, Article 10 of this Law.

Representatives of the All-Ukrainian Conference of Employees of the *Procuratura* shall be elected at the Republican (the Autonomous Republic of Crimea), regional, and city (Kyiv and Sevastopol) conferences of employees of public prosecutor's offices. All officials of procurator's offices of the relevant administrative-territorial units shall be eligible to participate in those conferences.

	Where more than two candidates are nominated for membership of the High Council of Justice at a conference, and none of them or only one of them has been elected, a further round of voting shall be held in respect of the two nominees who have obtained the most votes from amongst those of the conference delegates in the first round. Where the necessary number of members of the High Council of Justice within the specified limit have not been elected as a result of the second round of voting, another round of voting shall be held in respect of the other nominees for vacant seats in the High Council of Justice, in accordance with the procedure set out in Paragraph three of this Article. Where no more than two nominees are named at a conference, and neither of them has received the required majority of votes, further rounds of voting with respect to the other nominees shall be held in order to fill the vacant seats within the High Council of Justice. **Article 18. Termination of office of a member of the High Council of Justice** The office of a member of the High Council of Justice shall be terminated in following circumstances: 1) Expiration of the term of office; 2) A conviction for a criminal offence that has taken effect; 3) Loss of Ukrainian citizenship; 4) Declaration of missing or deceased status; 5) Presence of the grounds specified in Article 7 of this Law; 6) Resignation; 7) Loss of ability to perform his or her on health grounds; or 8) Breach of the judicial moral oath. Where an *ex officio* member breaches the oath, the High Council of Justice shall order the body which elected or appointed the person concerned to conduct an inquiry on whether he or she ought to continue to serve; 9) Dismissal from office through which the individual obtained membership in the High Council of Justice; 10) Death. A decision as to the termination of office of a member of the High Council of Justice on the grounds set out in points 1–4, 6, 7, and 9 shall be taken by the High Council of Justice. A decision on the grounds set out in points 5 and 8 shall instead be taken by the body which appointed or elected the member concerned. *Ex officio* members of the High Council of Justice shall withdraw from the High Council of Justice on the day of their dismissal from the their judicial position. A replacement shall be arranged no later than two months after the decisions mentioned at paragraph two have been passed.

Competence in general	**Law "On the Judicial System and the Status of Judges"** **Article 123**. **The Congress of Judges of Ukraine** 2. The Congress of Judges of Ukraine shall: 1) Receive a report by the Council of Judges of Ukraine on the fulfilment of tasks by the various judicial self-governing bodies as to judicial independence and on the state of funding and organizational support for the operation of the courts; 2) Receive reports from the High Qualifications Commission of Judges of Ukraine and the Head of the State Judicial Administration of Ukraine as to the operation of those bodies; 3) Appoint and dismiss justices of the Constitutional Court of Ukraine in accordance with the Constitution of Ukraine and the laws of Ukraine; 4) Appoint members of the **High Council of Justice** and take decisions regarding the termination of their office in accordance with the Constitution of Ukraine and the laws of Ukraine; 5) Appoint members of the High Qualifications Commission of Judges of Ukraine; 6) Submit proposals regarding the resolution of issues relating to functioning of the courts to the responsible state bodies and officials; 7) Elect the Council of Judges of Ukraine; 8) Consider other issues impinging upon judicial self-regulation. **Article 127**. **The Council of Judges of Ukraine** 5. The Council of Judges of Ukraine shall: 1) Develop and secure the implementation of measures aimed at ensuring judicial independence and the improvement of organizational support for the functioning of courts; 2) Consider issues relating to the legal protection of judges, social security and welfare support for judges and members of their families, and take decisions effecting this sphere; 3) Appoint and dismiss the Head and the Deputy Heads of the State Judicial Administration of Ukraine; 4) Supervise the organizational functioning of the courts; 5) Submit proposals regarding the resolution of court functioning issues to state bodies and municipal authorities; 6) Approve the form of certificates for judges, retired judges, lay judges and jurors; and 7) Exercise other powers in accordance with the present law.

	Law "On the High Council of Justice" **Article 3. Competence of the High Council of Justice** The High Council of Justice shall: 1) Submit proposals to the President of Ukraine as to the appointment of judges or their release from their duties; 1-1) Upon the motion of a competent council of judges, appoint and dismiss court presidents and deputy court presidents; 2) Examine cases and take decisions as to judges' and public prosecutors' infringement of the requirements surrounding the duty not to combine jobs; 3) Conduct disciplinary proceedings involving judges of the Supreme Court of Ukraine and judges of the highest specialized courts; 4) Consider complaints about disciplinary decisions relating to judges of the courts of appeal, local courts, and public prosecutors.
Competence in the field of judges' career *Appointment*	**Law "On the High Council of Justice"** **Article 29. Recommendation for the initial appointment to judicial office** Upon a proposal by the High Qualification Commission of judges of Ukraine, the High Council of Justice shall make to the President of Ukraine its recommendation for the initial appointment of a Ukrainian citizen to judicial office. The following documents shall be enclosed: 1) A proposal by the High Qualification Commission of judges of Ukraine; 2) A personnel file and autobiography relating to the candidate; 3) Copies of diplomas; 4) A research paper on jurisprudence drafted by the candidate; 5) A [critical] review of the research paper; 6) A certificate from the tax authorities regarding [any] property and income obtained by the candidate during the previous year. [The assessment of the candidate's attributes takes place in the following manner]: The personnel file of a candidate shall be assessed by the [a] section of the High Council of Justice [on the basis of which] a member of the High Council of Justice shall report to [his or her colleagues]. The decision to recommend the appointment [of the candidate] to the President shall be taken by open ballot and shall require a majority vote. **Article 29-1. Appointment of court presidents and deputy presidents** The High Council of Justice appoints court presidents and deputy presidents in accordance with the procedure set out in the Law of Ukraine "On the courts and the status of judges" Candidates for the office of court president or deputy court president shall be recommended by a [local] council of judges. The candidates shall be interviewed by [members of] the High Council of Justice.

A decision on appointment shall be taken by open ballot and majority vote.

Article 29-2. Examination of appeals against decisions of the High Qualification Commission of judges of Ukraine relating to the appointment or reappointment of judges

The categories of decisions of the High Qualification Commission of judges of Ukraine against which appeals can be brought before the High Council of Justice are as follows:

1) Decisions on the results of candidates' qualification exams;
2) Decisions on refusals to recommend a life-term reappointment.

An appeal against a decision of the High Qualification Commission of judges of Ukraine shall be lodged with the High Council of Justice no later than one month from the day following its adoption.

An appeal against a decision referred to in paragraph 1 of the present Article shall be lodged by the candidate in question.

An appeal shall be examined by the High Council of Justice within one month from the day on which it was lodged. A member of the High Council of Justice shall verify [the facts and circumstances] surrounding the appeal.

The High Council of Justice [may adopt the following decisions]:

1) To allow an appeal, having quashed a decision of the High Qualification Commission of judges of Ukraine on the results of a qualification exam and having ordered the Commission to organise a fresh examination of the candidate concerned;
2) To allow an appeal, having quashed a decision of the High Qualification Commission of judges of Ukraine to refuse to recommend for a life-term appointment and having ordered the Commission to adopt a fresh decision;
3) To uphold a decision of the High Qualification Commission of judges of Ukraine.

The High Council of Justice shall invite both parties – the appellant and a representative of the High Qualification Commission of judges of Ukraine – to attend its meeting. Failure to appear at the meeting shall not necessarily result in the postponement of the meeting of the High Council of Justice.

Constitution of Ukraine

Article 126

The independence and immunity from prosecution of judges shall be guaranteed by the Constitution and the laws of Ukraine. Any interference with the work of judges shall be prohibited.

A judge shall not be detained or arrested pending a guilty verdict by a court without the approval of the Verkhovna Rada of Ukraine.

Dismissal and Disciplinary proceedings	Judges shall hold office for unlimited terms, except for judges of the Constitutional Court of Ukraine and newly-appointed judges. A judge shall be dismissed from office by the body responsible for his or her election or appointment upon: 1) expiration of the term for which he or she was elected or appointed; 2) attaining the age of sixty-five; 3) losing the ability to exercise [judicial office] for health reasons; 4) breach of the requirement not to act incompatibly with judicial office; 5) breach of oath; 6) conviction for a criminal offence; 7) termination of his or her citizenship; 8) declaring that he or she is missing or dead; 9) tendering his or her resignation. Judicial office shall terminate upon the death of a judge. The State shall ensure the personal security of judges and that of their families. **Law "On the High Council of Justice"** **Article 30**. **Parties entitled to lodge a request to dismiss a judge** A request may be lodged by: 1) The High Qualification Commission of judges of Ukraine; 2) Members of the High Council of Justice. **Article 31. Recommendation [by the High Council of Justice] to dismiss a judge on general grounds** Following a proposal of the High Qualification Commission of judges of Ukraine, or upon on its own motion, the High Council of Justice may recommend the dismissal of a judge. The recommendation shall be brought before the body responsible for the [respective] appointment or election. A decision to recommend dismissal on the grounds set out in Article 126, paragraph 5, points 1-3, 7-9 of the Constitution, shall be taken by the High Council of Justice by a majority vote of those who attended the relevant meeting. Where a judge submits a resignation request, the High Council of Justice shall verify whether such a request is based on his or her own free will before passing the request to the body responsible for the [relevant] appointment or election. **Article 32**. **Recommendation [by the High Council of Justice] to dismiss a judge on special grounds** The dismissal of a judge on the grounds set out in Article 126, paragraph 5, points 4-6 of the Constitution (failure to fulfil the requirement not to act incompatibly with judicial office, breach of oath, or conviction for a criminal offence) shall be considered by the High Council of Justice of its own motion, or on the motion of the High Qualification Commission of judges of Ukraine.

	[The following actions] constitute breach of oath: An act which compromises a judge and may raise doubts as to his or her objectivity, impartiality and independence, integrity or the incorruptibility of judicial institutions; The unlawful receipt of material benefits (fr.: *"biens"),* or the receipt of expenses exceeding the income of a judge and members of his or her family; Intentional delay of court proceedings [that is, beyond the time permitted by law]; Breach of moral or ethical principles regulating the behaviour of a judge; Breach of oath by a judge who holds an administrative position may constitute a failure to comply with his or her duties… A judge whose case is being examined, as well as his or her representative, shall be entitled to make submissions, pose questions, raise objections, lodge applications and make requests to have the case withdrawn [in respect of a member of the High Council of Justice]. The judge shall be invited to the meeting of the High Council of Justice. Where there is a valid reason for which he or she cannot attend, the judge may make his or her written submissions on the [accusation(s)]. [These submissions] shall be attached to the case file and shall be read out loud during the meeting. Repeated failure to attend the meeting shall constitute a ground for the judge's case to be examined *in absentia*. A decision to recommend dismissal of a judge on the grounds set out in Article 126, paragraph 5, points 4-6 of the Constitution shall be taken by majority vote. If the High Council of Justice finds no ground to dismiss a judge but finds that his or her action(s) may entail disciplinary liability, it may decide to commence disciplinary proceedings and forward the [relevant] materials to the High Qualification Commission of judges of Ukraine. **Article 32-1**. **Dismissal of court presidents and deputy presidents** The High Council of Justice shall dismiss court presidents and deputy presidents in accordance with the procedure established by the Law of Ukraine "On courts and judicial status". The High Council of Justice shall examine such issues upon the motion of [local] councils of judges. The judge in question shall be invited to a meeting. Where there is a valid reason for which he or she cannot attend, the judge may make written submissions which shall be attached to the case file. The written submissions shall be read out loud during the meeting. Repeated failure to attend the meeting shall constitute a ground for the case to be examined *in absentia*. A decision to recommend dismissal of a court president or a deputy of court president shall be taken by majority vote.

	Article 33. Examination of issues surrounding acts incompatible with judicial office The High Council of Justice shall examine issues of infringement by judges of requirements to refrain from pursuing activities prohibited by the Constitution and the Laws of Ukraine whilst holding judicial office. The High Council of Justice can decide: That an extracurricular activity of a judge is incompatible with his or her duties and suggest to him or her within a period specified by the High Council of Justice that he or she decides whether to continue in judicial office or to instead focus on the activity in question. He or she shall then be required to notify the High Council of Justice as to the decision; That a judge has breached the requirement not to combine judicial office with other activities and then advise to a competent body to dismiss the judge in question. **Article 34. Parties entitled to lodge applications for the examination of compatibility with judicial office** The following persons may apply to the High Council of Justice with a proposal to examine the issue of incompatibility of a judge's or a public prosecutor's activities with their official duties: • A Member of Parliament of Ukraine; • The Chairman of the Supreme Court of Ukraine, the chairmen of the highest specialized courts, the Minister of Justice of Ukraine; • The High Qualification Commission of Judges of Ukraine. The High Council of Justice may, on the basis of the materials at its disposal, consider issues of incompatibility of its own motion. **Article 35. Decisions on incompatibility of a judge's activities** … A decision as to the incompatibility of a judge's activities shall be taken by majority of vote and immediately bind the judge concerned, or constitute a ground for the dismissal of the judge concerned. **Article 43**. **Time limits for adopting a disciplinary measure** A disciplinary measure may be adopted in a respect of a judge within a period of 6 months following the discovery of a disciplinary offence but no later than a period of one year after the commission of the offence in question. Neither the judge's sick leave or annual leave shall be taken into account [when calculating these time limits]. **Article 44**. **Erasure of disciplinary record** If in the course of one year [starting] from the date a disciplinary measure was adopted, the judge has not been held liable for a new disciplinary offence, his or her [disciplinary] record shall be cleared. The High Council of Justice, upon the motion of the judge concerned, can clear his or her record earlier, but not earlier than 6 months [following the date of the disciplinary measure].

	Article 45. Powers of the High Council of Justice … The High Council of Justice shall examine appeals against decisions on the adoption of disciplinary measures …within one month from the date on which the appeals were lodged [and] within three months from the date when they were lodged where an additional verification of circumstances and the file materials is required. **Article 46. Examination of appeals against decisions on disciplinary measures with respect to judges** An appeal against a decision of the High Qualification Commission of judges of Ukraine to adopt a disciplinary measure may be lodged with the High Council of Justice within one month from the day following the day when such decision was handed over to a judge or to the official who requested the disciplinary proceedings be instituted, as appropriate. Where the person concerned fails, for good reason, to comply with the one-month time limit, the High Council of Justice may extend the period during which an appeal may be lodged. The High Council of Justice shall examine appeals against decisions on the adoption of disciplinary measures …within one month from the date when they were lodged [and] within two months from the date when they were lodged where additional verification of the circumstances and file material is required. The High Council of Justice shall take a decision after having received the report of a member of the disciplinary section of the High Council of Justice. The High Council of Justice [may adopt following decisions]: 1) To allow an appeal, quash the decision on the adoption of the disciplinary measure and discontinue the disciplinary proceedings; 2) To allow an appeal in full or in part and alter the decision of the High Qualification Commission of judges of Ukraine; 3) To uphold the decision of the High Qualification Commission of judges of Ukraine. The High Council of Justice shall hear the submissions of the judge concerned. Where the judge cannot, for good reason, take part in the meeting, he or she may lodge written submissions which shall be attached to a case file. The written submissions shall be read out loud during the meeting. Repeated failure to attend the meeting shall constitute a ground for examining the case *in absentia*.

Competence in the field of budgetary issues	**Law "On the Judicial System and Status of Judges"** **Article 128. Supporting Judicial Self-regulation Bodies** 1. Support for the operational work of the Congress of Judges of Ukraine, the Council of Judges of Ukraine, conferences of judges, and councils of judges shall be provided by the State Judicial Administration and its territorial offices. **Article 145**. **Status of the State Judicial Administration of Ukraine** 2. The State Judicial Administration of Ukraine shall report to the Congress of Judges of Ukraine. **Article 142**. **Funding of the Courts: Principles** 1. All courts in Ukraine shall be funded from the State Budget of Ukraine. Budget allocations for the maintenance of courts shall be protected items of expenditure. 2. The powers of the main distributors State Budget of Ukraine funds allocated to the courts shall be determined by: 1) The courts of general jurisdiction; 2) The Constitutional Court of Ukraine; and 3) The State Judicial Administration of Ukraine, as regards the funding of the High Qualifications Commission of Judges of Ukraine, the judicial self-regulation bodies, and the National School of Judges. 3. Separate provision shall be made within the State Budget of Ukraine for expenses relating to the maintenance of: 1) Each court of general jurisdiction; and 2) The Constitutional Court of Ukraine. 4. Allocations from the State Budget of Ukraine for the maintenance of courts may not be reduced in the current financial year. **Article 143**. **Funding of the Courts: Procedure** 1. The courts of general jurisdiction shall be funded on the basis of cost estimates and monthly lists of expenditure approved in accordance with the present law within the limits of the annual amount of expenditure set out in the State Budget of Ukraine for the current financial year and in the manner established by the Budget Code of Ukraine. **Article 146**. **Powers of the State Judicial Administration of Ukraine** 1. The State Judicial Administration of Ukraine shall: 1) Represent the courts in their relations with the Cabinet of Ministers and the Verkhovna Rada of Ukraine in the process of drafting the law relating to the State budget of Ukraine for the year in question;

	2) Ensure adequate conditions for the functioning of the courts of general jurisdiction, the High Qualifications Commission of Judges of Ukraine, the National School of Judges and judicial self-regulation bodies; 3) Study the practical aspects of the functioning of courts, and develop and submit, as provided by law, proposals on methods to improve court practice;

Judges' career

Selection	**Law "On the Judicial System and Status of Judges"** **Article 64. Requirements for Judicial Candidates** 1. To be eligible for recommendation for a judicial position, a candidate must be a citizen of Ukraine, be at least twenty-five years of age, possess an advanced legal education, have practised law for at least three years, have resided in Ukraine for at least ten years, and have a command of the state language. 2. Citizens shall not be eligible for recommendation for judicial office if they: 1) Have been found by court to have limited legal capacity or legal incapacity; 2) Are suffering from chronic psychological or other diseases preventing them from performing judicial duties; 3) Have been convicted (of a criminal offence). 3. Additional requirements for candidates for judicial positions the higher courts shall be specified by this Law. 4. For the purposes of this Article: 1) "Advanced legal education" shall mean a Specialist or Masters degree received in Ukraine, and shall include advanced legal education of a relevant educational level and level of qualification received in foreign countries and recognized in Ukraine by virtue of legislation; 2) "Practised law for at least three years" shall refer to a person's overall record of service in the legal profession post-higher legal education in positions requiring higher legal education to a specialist level. **Article 65. Selection of Judicial Candidates** 1. Judicial candidates shall be selected from among persons meeting the requirements set out in the Constitution of Ukraine and at Article 64 of this Law based on selection results, special training and a qualification exam, as required by this Law. 2. During the selection process, candidates shall be treated equally without distinction as to race, colour, political, religious or other convictions, sex, ethnic or social origin, wealth, domicile, or linguistic or other characteristics. 3. Anyone who meets the eligibility requirements shall be entitled to apply to the High Qualifications Commission of Judges of Ukraine for entry into the judicial selection process.

Appointment (procedure)	**Law "On the Judicial System and Status of Judges"** **Article 66. Procedure for Appointment to Judicial Office** 1. Persons appointed to judicial office for the first time shall be so appointed in accordance with the procedure defined by this Law which shall include the following stages: 1) Taking into account the estimated number of open judicial vacancies, the High Qualifications Commission of Judges of Ukraine shall post on its website an advertisement announcing the competition for judicial office and shall publish a notice to the same effect in the Holos Ukrainy and Uriadovyi Kurier newspapers; 2) Persons wishing to become judges shall submit to the High Qualifications Commission of Judges of Ukraine their application together with the supporting documents required by this Law; 3) On the basis of the documents submitted, the High Qualifications Commission of Judges of Ukraine shall review the eligibility of the candidate for judicial office and conduct a background check in the manner prescribed by law; 4) Persons who meet the requirements established for judicial candidacy shall sit an examination on general theoretical knowledge set by the High Qualifications Commission of Judges of Ukraine; 5) Candidates who pass the examination and the required inspections/checks shall be sent to take special training at a specialized higher law school of fourth level accreditation; 6) After successful training at a specialized higher law school of fourth level accreditation, the High Qualifications Commission of Judges of Ukraine shall send the candidate to take special training at the National School of Judges of Ukraine; 7) Candidates who successfully pass the special training shall be admitted to take a qualification examination by the High Qualifications Commission of Judges of Ukraine; 8) Taking into account the results of the qualification examination, the High Qualifications Commission of Judges of Ukraine shall rate candidates and put them on a reserve list in order to fill vacancies; 9) When vacancies become available, the High Qualifications Commission of Judges of Ukraine shall announce a competition for appointment between the candidates on the reserve list; 10) Taking into account the relative position of each candidate in the rating list and the number of vacancies, the High Qualifications Commission of Judges of Ukraine shall conduct select from the candidates who have taken part in the competition and forward to the High Council of Justice a recommendation to appoint a candidate to the vacant judicial position;

	11) Following the recommendation of the High Qualifications Commission of Judges of Ukraine, the High Council of Justice shall consider at its meeting whether to appoint the candidate to the vacant judicial position and where it decides to do so it shall consider the issue of submitting a motion to the President of Ukraine for the appointment of the candidate to the vacant judicial position; 12) The President of Ukraine shall decide whether to appoint the candidate to the vacant judicial position. **The following Articles of the Law regulate the:** - Submission of Documents to the High Qualifications Commission of Judges of Ukraine by the Applicant **(Article 67)** - Procedure for Selection of candidates for a Judicial Position **(Article 68)** - Special Training of Candidates for a Judicial Position **(Article 69)** - Qualification Examination **(Article 70)** - Holding of the Competition for appointment to a Judicial Position **(Article 71)** - Appointment to a Judicial Position **(Article 72)**
Term of office and Promotion	**Constitution of Ukraine** **Article 126** Judges shall hold office for unlimited terms, except for judges of the Constitutional Court of Ukraine and those appointed for the first time. **Please note:** it appears that the initial appointment is currently for a five-year term of office **Law "On the Judicial System and Status of Judges"** **Article 73**. **Transfer of a Judge to Another Court within the five-year Term of Appointment** 1. A judge within his or her five-year term of appointment may be transferred to a judicial position in another local court on his or her written application to the High Qualifications Commission of Judges of Ukraine for it to recommend him or her for a judicial position in the relevant court. … 5. A transfer of a judge within his or her five-year term of appointment to a judicial position in a the court in another jurisdiction shall be made in accordance with the results of the qualification examination to be taken by judges pursuant to this law. 6. Any transfer of a judge within his or her five-year term of appointment shall be ordered by the President of Ukraine. **Article 74**. **Procedure for Lifetime Election to a Judicial Position**. 1. The procedure for lifetime election to a judicial position shall be determined by this Law and by the Procedural Rules of the Verkhovna Rada of Ukraine.

	2. A judge whose tenure of judicial office has expired, may apply for recommendation by the High Qualifications Commission of Judges of Ukraine to be elected to a lifetime judicial position by the Verkhovna Rada of Ukraine provided there are no circumstances preventing this. 3. The procedure for lifetime election to a judicial position shall be as follows: 1) The candidate shall apply in writing to the High Qualifications Commission of Judges of Ukraine for a recommendation to be elected to a lifetime judicial position; 2) The High Qualifications Commission of Judges of Ukraine shall publish information on the preparation for the lifetime election of the candidate to a judicial position in local printed media and on its official website; 3) The High Qualifications Commission of Judges of Ukraine shall verify the information about the candidate, taking into account his or her case consideration rates; 4) The High Qualifications Commission of Judges of Ukraine shall decide whether to recommend or to refuse to recommend that the judicial candidate be elected to a lifetime judicial position and shall forward the resulting motion to the Verkhovna Rada of Ukraine; 5) The Verkhovna Rada of Ukraine, following the motion of the High Qualifications Commission of Judges of Ukraine, shall take a decision on electing the candidate in the manner prescribed by law. **Article 75. Application to the High Qualifications Commission of Ukraine for Lifetime Election** 1. A candidate for a lifetime judicial position shall apply to the High Qualifications Commission of Judges of Ukraine no later than six months before the expiry of his or her tenure of judicial office for a recommendation to be elected to a lifetime judicial position. 2. In addition, any candidate removed from judicial office due to expiry of tenure and who has not previously applied to the High Qualifications Commission of Judges of Ukraine for a recommendation to be elected to a lifetime judicial position, may apply to the High Qualifications Commission of Judges of Ukraine within three years of his dismissal for such a recommendation. 3. Any candidate removed from judicial office due to expiry of tenure and who has not made the relevant application within the time period set out in paragraph 2, above, may be recommended for election to a lifetime judicial position by the High Qualifications Commission of Judges of Ukraine after passing a qualification examination in accordance with requirements of this Law. 4. In order to apply for election to a lifetime judicial position, the candidate shall submit: 1) A written application; 2) A copy of his or her Ukrainian passport; 3) His or her personal data sheet and curriculum vitae; 4) A copy of his or her certificate/diploma as proof of his or her education, degree or academic rank; 5) An extract from his or her work record book certifying his or her record of service as a judge;

	6) A certificate demonstrating the applicant's health, issued by a medical institution (medical institutions authorized to issue such certificate and its form are defined by the High Qualifications Commission of Judges of Ukraine in conjunction with the authorized government body on healthcare issues); 7) Property declaration (financial disclosure statement); 8) [The applicant's] written consent to the collection, storage, and use of information about him or her for the purposes of evaluating his or her fitness to work as a lifetime judge. The form and content of the application on the recommendation of a judicial candidate for a lifetime appointment and of the related personal information form shall be approved by the High Qualifications Commission of Judges of Ukraine and published on its official website. 5. Any demand for documents not prescribed by this Article shall be prohibited except where clarifications and explanations relating to the information relating to his or her work as a judge are required. **Article 76. Procedure for Consideration of Applications for Lifetime Judicial Positions by the High Qualifications Commission of Ukraine** 1. The High Qualifications Commission of Judges of Ukraine shall publish information on preparations for the election of candidates for lifetime judicial positions on its official web portal and in the mass media. 2. The High Qualifications Commission of Judges of Ukraine shall consider issues relating to the election of candidates for lifetime judicial positions no later than two months before the expiry of his or her tenure of judicial office. 3. The High Qualifications Commission of Judges of Ukraine shall measure the compliance of the candidate for a lifetime judicial position against the requirements of Article 127 of the Constitution of Ukraine, Articles 53, 64 of the present Law and consider any petitions received from citizens, public organizations, enterprises, institutions, and/or central and local government bodies regarding his or her judicial performance. 4. Candidates whose application for recommendation for a lifetime judicial position is under consideration shall be entitled to acquaint themselves with the information relating to his or her performance, inquiries made by the High Qualifications Commission of Judges of Ukraine and any responses thereto. **Article 77. Decision on Recommendation or Refusal to Recommend Election to a Lifetime Judicial Position** 1. A decision concerning recommendation for the election of a candidate to a lifetime judicial position shall be made in his or her presence after interviewing the candidate at the meeting of the High Qualifications Commission of Judges of Ukraine and shall be announced immediately after it is taken. 2. A decision of the High Qualifications Commission of Ukraine to refuse to recommend a candidate for a lifetime judicial position may be appealed to the High Council of Justice in the manner prescribed by the law of Ukraine "On the High Council of Justice."

	3. If the High Council of Justice confirms the decision by the High Qualifications Commission of Ukraine on the refusal to recommend a candidate for a lifetime judicial position, the High Council of Justice shall submit to the President of Ukraine a motion for the removal of the candidate from his or her judicial position. **Article 78. Motion for the Election of a Candidate to a Lifetime Judicial Position** 1. A motion by the High Qualifications Commission of Judges of Ukraine on its decision approving the election of a candidate for a lifetime judicial position shall be sent to the Verkhovna Rada of Ukraine no later than one month prior to the expiry of the judge's tenure of judicial office. 2. The motion shall include the surname, first name, and traditional name of the candidate and the name and location of the court to which the candidate should be elected. **Article 79. Consideration of and Decision on Electing a Candidate to a Lifetime Judicial Position by the Verkhovna Rada of Ukraine** 1. The procedure to be followed by the Verkhovna Rada of Ukraine in considering and making its decision as to the election of a candidate to a lifetime judicial position shall be determined by this Law and the Procedural Rules of the Verkhovna Rada of Ukraine. 2. The election of a candidate to a lifetime judicial position shall be considered at a plenary meeting of the Verkhovna Rada without conclusions/opinions of committees of the Verkhovna Rada of Ukraine or any verification. 3. The consideration of the election of a candidate to a lifetime judicial position at a plenary meeting of the Verkhovna Rada of Ukraine shall begin with a report by the Head of the High Qualifications Commission of Judges of Ukraine or by a member of the High Qualifications Commission of Judges of Ukraine acting upon the instruction of the Head of the High Qualifications Commission of Judges. 4. The decision on electing a candidate to a lifetime judicial position shall be taken by a majority of the constitutional composition of the Verkhovna Rada of Ukraine and shall be recorded as a Resolution of Verkhovna Rada of Ukraine. 5. A person elected to a lifetime judicial position shall acquire the status of judge from the moment the relevant Resolution of the Verkhovna Rada of Ukraine comes into force. 6. Where a candidate for a lifetime judicial position fails to receive the amount of votes stipulated in part 4 of this article, further rounds of voting shall be conducted.
Remuneration and other social guarantees	**Law "On the Judicial System and Status of Judges"** **Article 129. Judicial Remuneration** 1. Judicial remuneration shall be regulated by this Law and the Law of Ukraine "On the Constitutional Court of Ukraine" and may not be determined by any other normative legal acts.

	2. Judicial remuneration shall be comprised of the fixed official salary and bonus payments for: 1) Length of service; 2) Holding an administrative position in a court; 3) Holding a scientific degree; and 4) Work involving access to state secrets. 3. The official salary of a judge of a local court shall be fixed at 15 times the minimum salary established by the law, which shall be introduced in stages: From January 1, 2011 – 6 minimum salaries From January 1, 2012 – 8 minimum salaries From January 1, 2013 – 10 minimum salaries From January 1, 2014 – 12 minimum salaries From January 1, 2015 – 15 minimum salaries 4. The official salaries of other judges shall be fixed in proportion to the fixed official salary in accordance with the following ratios: 1) Judge of an appellate court - 1.1; 2) Judge of a high specialized court - 1.2; 3) Justice of the Supreme Court of Ukraine and justice of the Constitutional Court of Ukraine - 1.3. 5. Judges shall be paid a monthly bonus for length of service at the following rates: for a service length of up to five years – 15%; for a service length of more than 5 years, 20 percent; more than 10 years, 30 percent; more than 15 years, 40 percent; more than 20 years, 50 percent; more than 25 years, 60 percent; more than 30 years, 70 percent; and more than 35 years, 80 percent of the fixed official salary. Constitutional Court Justices appointed for the first time shall receive additional payment for years of service in the amount of 5.5 % for each year of work. 6. Judges holding the positions of deputy chief judge/justice of a court, secretary of a judicial chamber, secretary of the Plenary Session of a high specialized court, and secretary of the Plenary Session of the Supreme Court of Ukraine shall be granted a monthly bonus payment of 5 percent of the fixed official salary of a judge of the court in question; for chief judge/justice - 10 percent of the fixed official salary of a judge of the court in question. 7. Judges shall be paid additional monthly bonuses in the amount of 15 or 20 per cent of the fixed official salary of a judge of the same court where they hold a scientific degree or science doctorate respectively. 8. Judges shall be given additional monthly payments for work involving access to state secrets in an amount depending on the degree of confidentiality of the information: data marked as “top secret” - 10 % of the fixed official salary of a judge of the relevant court; data a marked as “secret” – 5% of the fixed official salary of a judge of the relevant court.

	Article 130. **Vacation** 1. Judges shall be granted annual paid vacation of thirty calendar days; They shall be paid, in addition to their judicial remuneration/rewards, a healthcare allowance amounting to one fixed official salary. Judges whose length of service is more than 10 years shall be granted an additional paid vacation of fifteen calendar days. **Article 131**. **Judge's length of Service** 1. The length of a judge's term of service shall include work in the following positions: 1) A judge in courts of Ukraine, arbitrator (judge) of arbitration courts of Ukraine, a state arbitrator of the former State Arbitration Court of Ukraine, and arbitrator of departmental arbitration courts of Ukraine; 2) A member of the High Council of Justice, the High Qualifications Commission of Judges of Ukraine; 3) A judge in courts or arbitrator in the state and departmental arbitration courts of the former USSR and the former Soviet republics. 2. The length of service required before a Constitutional Court of Ukraine is entitled to retire and obtain retirement benefit (severance payment) shall included the length of time in which he or she has been engaged in other practical, scientific work and teaching experience *ex professo* and the length of public service. **Article 132**. **Judges' Housing** 1. No later than in six months following the appointment a judge of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, a high specialized court, an appellate court or a local court who requires to improve his or her housing conditions shall be provided with official accommodation in the area where his or her court is located. **Article 133**. **Support for Judges' Professional Needs** 1. Judges shall be provided with judicial robes and judges' breast badges at the expense of the State Budget of Ukraine. 2. Judges shall be provided with separate offices, workstations and office items as required for his or her work. **Article 134**. **State protection of judges and members of their families** 1. Judges, members of their families and their property are subject to special protection from the state. Offices of internal affairs must ensure the security/safety of a judge, members of his or her family and the protection of their property as required. 2. Attacks upon the life or health of a judge in the course of his or her official duties, destruction or damage to his or her property, threats of homicide, violence or damage to the property of a judge, insults or perjury, as well as attacks upon the life and health of a judge's close relatives (parents, wife, husband, children), and threats of homicide or damage to their property shall entail responsibility/liability a provided by law.

Article 135. **Social Insurance of Judges**

1. The life and health of judges shall be subject to mandatory state insurance to be paid for by the Fund for Social Insurance Against Industrial Accidents and Disease of Ukraine pursuant to the "Law on Compulsory Social Insurance Against Industrial Accidents and Disease".

Article 136. **Severance Payments Due to a Judge's Resignation or Retirement**

1. Upon resignation, a judge shall be paid a non-taxable retirement benefit of an amount equal to 10 times the monthly salary applicable to his or her most recent position.

2. Where a judge whose resignation was suspended due to reappointment to judicial office applies again for resignation, the retirement benefit shall not be awarded.

Article 137. **Medical Care and Treatment in Resorts for Judges and Members of their Families**

1. Judges and members of their families shall be entitled free of charge to medical care in state medical institutions. Members of a judge's family may be treated/served at the medical institution where the judge is served/treated.

Article 138. **Pension or Lifetime Allowance of a Retired Judge**

1. A retired judge who reached retirement age shall be entitled to choose to be paid either a pension on the terms provided by Article 37 of the Law of Ukraine "On Public Service" or a monthly lifetime allowance.

2. A retired judge who has not reached retirement age shall be paid a non-taxable monthly lifetime allowance. Once the judge reaches retirement age he shall be entitled to choose to be paid either a monthly lifetime allowance or a pension on the terms provided by Article 37 of the Law of Ukraine "On Public Service".

3. A monthly lifetime allowance shall be paid to a judge in the amount of 80 percent of the salary of an active judge holding a comparable position. For each full year of work in excess of 20 years in judicial office, the rate of the monthly lifetime allowance shall be increased by two percent of the relevant salary, provided that it does not exceed 90 percent of a judge's salary, there being no upper limit to the amount of the monthly lifetime allowance.

4. Where the salary of judges of the Constitutional Court changes, the monthly lifetime allowance payable shall be recalculated. Recalculation of the monthly lifetime allowance shall be done for the entire salary of sitting judges of the Constitutional Court of Ukraine from the day the right to the respective recalculation emerged.

5. The pension or monthly lifetime allowance of a judge shall be paid irrespective of the salary (income) received by the judge after retirement. Lifetime allowance shall be paid at rate payable at the judge's last place of work.

	Article 139. **Termination of a Judge's Retirement** 1. A judge's retirement shall be terminated upon: 1) His or her re-election to a judicial position; 2) Entry into legal force of his or her criminal conviction; 3) The termination of his or her citizenship; 4) A finding that he or she is missing or dead; or 5) His or her death. 2. Termination of retirement shall result in termination of payment of any lifetime allowance granted as a result of the judge's retirement. Where a judge's retirement terminates on the grounds specified in item 2, part one of this Article, a pension shall be granted on the same basis as that which applies to anyone else. 3. A decision to terminate a judge's retirement shall be made by the High Qualifications Commission of Judges of Ukraine.
Disciplinary proceedings	**Law "On the Judicial System and Status of Judges"** **Article 83. Grounds for Disciplinary Action against a Judge** 1. Disciplinary proceedings against a judge may be initiated on the following grounds: 1) Fundamental violation of norms of procedural law whilst administering justice, in particular denying a person's access to justice on grounds not provided by law, violation of requirements relating to case assignment and registration of cases in court, rules of jurisdiction, or unlawful steps taken to dispose of a case, etc.; 2) Failure to dispose of an application, complaint, or case within the time periods established by law; 3) Breach of requirements relating to bias, and in particular, breach of the rules relating to recusal (self-recusal); 4) Systematic or isolated gross violation of the rules of judicial ethics tending to undermines public confidence in the courts; 5) Disclosure of secret information protected by law, including confidential information exchanged in the deliberation room, or secrets the judge obtained *in camera*; 6) Non-submission or late submission of a publicized property status declaration (financial disclosure statement) or the inclusion of intentionally false information in the declaration. 2. The reversal or alteration of a court decision shall not constitute a ground for disciplinary action against the judge who participated or took that decision, unless it was arrived at via an intentional violation of legal norms or reckless breach of his or her duties.

Article 84. **Disciplinary Proceedings against a Judge**

1. Disciplinary proceedings shall be considered by a legally-competent body upon receipt of allegations as to a judge's violation of requirements regarding resulting from his or her status or official responsibilities or violation of the judicial oath of office.

2. Anyone who is aware of such facts shall be entitled to file a complaint (petition) regarding the conduct of a judge which may constitute a ground for disciplinary action against that judge. The High Qualifications Commission of Judges of Ukraine shall approve and post on its website a sample complaint form which can be used to inform the High Qualifications Commission of Judges of Ukraine of any violation by the judge of the requirements resulting from his or her status or official duties or breach of the judicial oath of office.

3. Abuse of the right of petition to the body authorized to conduct disciplinary proceedings, and in particular attempts to initiate disciplinary action against a judge without sufficient grounds and use of the right of petition as a means to pressurise a judge in connection with his or her administration of justice shall not be permitted.

4. A disciplinary case against a judge may not be founded upon an application or report containing no evidence of the elements of a disciplinary offence or on anonymous applications or reports.

Article 85. Bodies Conducting Disciplinary Proceedings

1. Disciplinary proceedings shall be conducted by:

1) The High Qualifications Commission of Judges of Ukraine, in relation to judges of local and appellate court;

2) The High Council of Justice, in relation to justices of the high specialized courts and of the Supreme Court of Ukraine.

Article 86. Procedure for Disciplinary Proceedings in Respect of a Judge

1. Disciplinary proceedings in respect of a judge shall involve the following steps: Verification as to the presence of grounds for disciplinary action, the opening of a disciplinary case, its consideration and the passing of a decision by the body conducting disciplinary proceedings.

2. Verification as to the presence of grounds for taking disciplinary action against a judge of a local or appellate court shall be conducted by a member of the High Qualifications Commission of Judges of Ukraine acting in accordance with this Law.

3. During the verification stage, a member of the High Qualifications Commission of Judges of Ukraine shall be entitled to study and make copies of materials relating to court cases, speak with judges and other persons aware of the circumstances of the disciplinary action, and demand all necessary information from State and local government bodies and their officers, the managers of businesses, institutions and organizations of any kind and in any jurisdiction, and/or citizens and their associations.

	4. Any state or local government body or its officers, any manager of a business, institution, organization or association, and any citizen of whom inquiries have been made by a member of the High Qualifications Commission of Judges of Ukraine shall be obliged to provide all necessary information within ten days of receiving the relevant inquiry. If necessary, this time limit may be extended to thirty days where authorised and made known immediately by a member of the High Qualifications Commission of Judges of Ukraine. 5. Failure to provide the required information or the provision of deliberately false information to the member of High Qualifications Commission of Judges of Ukraine shall result in the person responsible being held to account in accordance with the law. 6. Based on the results of the verification process, a member of the High Qualifications Commission of Judges of Ukraine shall issue a written opinion setting out all facts the and circumstances relating to the case and making a proposal either to open or to dismiss a disciplinary case. The opinion of the member of the High Qualifications Commission of Judges of Ukraine and the materials collected during the verification process shall be forwarded for consideration by the High Qualifications Commission of Judges of Ukraine. 7. The question of whether a disciplinary case should be opened shall be determined by the High Qualifications Commission of Judges of Ukraine. 8. A copy of the decision as to the opening of a disciplinary case by the High Qualifications Commission of Judges of Ukraine shall be sent to the judge against whom the case was initiated and to the person on whose application the case was initiated no later than three days after the decision is made. The conclusion of the member of the High Qualifications Commission of Judges of Ukraine shall be attached to the decision of the High Qualifications Commission of Judges of Ukraine as sent to the judge. 9. A disciplinary case shall be considered at a meeting of the High Qualifications Commission of Judges of Ukraine, to which the person on whose application the case was initiated, the judge against whom it was initiated, and any other interested persons, as necessary, shall be invited. 10. Where the judge against whom the case was initiated is, for a valid reason, unable to attend the meeting of the High Qualifications Commission of Judges of Ukraine he or she may submit written explanations as to the matters raised and this shall be attached to the case file. Such written explanations must be announced at the meeting of the High Qualifications Commission of Judges of Ukraine. A subsequent failure of the judge to attend the meeting of the High Qualifications Commission of Judges of Ukraine shall result in consideration of his case *in absentia*. 11. The hearing of a disciplinary case regarding a judge shall be adversarial in nature. The High Qualifications Commission of Judges of Ukraine shall hear a report by the member of High Qualifications Commission of Judges of Ukraine who conducted the verification process, an explanation from the judge concerned and/or from his or her representative, as well as reports from any other interested persons. 12. A judge subjected to disciplinary action or his representative shall be entitled to give explanations, pose questions to participants, express objections, file motions, and seek disqualification.

	13. The case consideration process and the announcement of the result shall be recorded by technological means. 14. The High Council of Justice shall conduct disciplinary proceedings in respect of justices of the Supreme Court of Ukraine and judges of the high specialized courts in the manner specified by the Law of Ukraine "On the High Council of Justice." **Article 87. Decisions in a Disciplinary Case against a Judge** 1. Judges subjected to disciplinary proceedings shall be absent from the deliberations of the High Qualifications Commission of Judges of Ukraine in relation to those proceedings. The disciplinary decision case shall be taken by majority vote of the total amount of members of the High Qualifications Commission of Judges of Ukraine. 2. When deciding upon a disciplinary sanction against a judge, the nature of the offence, its consequences, the judge's character, the extent of his or her culpability, and all other circumstances shall be taken into account. 3. Where the High Qualifications Commission of Judges of Ukraine rules that there are no grounds for disciplining a judge, the Commission shall terminate the disciplinary proceedings and notify the interested persons accordingly. 4. A disciplinary sanction may be applied no later than six months after the High Qualifications Commission of Judges of Ukraine opened the relevant disciplinary proceedings but no later than a year after the offence was committed, not including periods during which the judge is temporarily incapacitated or on vacation. 5. Based on the results of the disciplinary proceeding, the High Qualifications Commission of Judges of Ukraine may decide to recommend that the High Council of Justice submit a motion for the removal of the judge where there are grounds for doing so. 6. A decision of the High Qualifications Commission of Judges of Ukraine shall be set out in writing. The decision shall be signed by the chair of the meeting and by those commission members present and shall be announced at the meeting. The decision in a disciplinary case must specify: 1) The surname, first name, traditional name, and position of the judge subjected to disciplinary action; 2) The circumstances of the case as established by the body, with reference to evidence; 3) The reasons for the decision taken by the body; 4) A summary of the decision, indicating the type of disciplinary sanction, if one has been imposed; 5) The procedure and deadline for appealing the decision. 7. Where there is a dissenting opinion, it shall be set out in writing by the relevant member of the High Qualifications Commission of Judges of Ukraine, attached to the case file, and referred to by the chair at the meeting. The content of the dissenting opinion shall not be disclosed at the meeting.

	8. A copy of the decision of the High Qualifications Commission of Judges of Ukraine shall be issued to the judge subjected to the disciplinary action, and if he is not present at the announcement of the decision, it shall be sent to him within by post within a period of seven days. **Article 88. Judicial Disciplinary Sanctions and Erasure of Record** 1. A disciplinary sanction may be imposed on a judge by way of censure or reprimand. 2. Information as the imposition of a disciplinary sanction upon a judge shall be published on the official website of the High Qualifications Commission of Judges of Ukraine. This information shall include information about the disciplined judge, the sanction applied, and a copy of the decision of the High Qualifications commission of Judges of Ukraine. 3. If within the period of one year from the day the disciplinary sanction was applied, the judge has not been subjected to a subsequent disciplinary sanction, he or she shall be regarded as having had no disciplinary sanction. 4. A disciplinary penalty imposed upon a judge may be withdrawn by the High Qualification Commission of Judges of Ukraine before it has expired upon the recommendation of the relevant council of judges. **Article 89**. **Appeals against Decisions in Disciplinary Case against Judges** 1. A judge of a local or appellate court may appeal a decision of the High Qualifications Commission of Judges of Ukraine disciplining him or her to the High Council of Justice or the High Administrative Court of Ukraine but must do so no later than one month from the day on which a copy of the decision was handed to him or her or received by him or her by mail. 2. A complaint to the High Council of Justice shall be filed through the High Qualifications Commission of Judges of Ukraine. 3. Upon receiving the complaint, the High Qualifications Commission of Judges of Ukraine shall send it to the High Council of Justice, together with the case file materials. 4. Complaints shall be reviewed by the High Council of Justice pursuant to the Law of Ukraine "On the High Council of Justice." 5. Administrative complaints against decisions of the High Qualifications Commission of Judges of Ukraine on disciplining judges shall be considered in the manner prescribed by the procedural legislation. 6. The filing of a complaint as to the decision of the High Qualifications Commission of Judges of Ukraine regarding the disciplining a judge to the High Council of Justice or the filing of an administrative claim in the High Administrative Court of Ukraine shall have the effect of staying the imposition of the relevant disciplinary sanction.

Dismissal	**Constitution of Ukraine** **Article 126** … A judge shall be dismissed from office by the body which elected or appointed him or her in the event of: 1) Expiry of the term for which he or she was elected or appointed; 2) His or her attaining the age of sixty-five; 3) His or her inability for health reasons to exercise powers; 4) His or her breach of the incompatibility rules; 5) His or her breach of oath; 6) The entry into legal force of a guilty verdict following his or her conviction; 7) The termination of his or her citizenship; 8) A declaration that he or she is dead; 9) His or her resignation or voluntary dismissal from office. The authority of a judge shall terminate in the event of his or her death […]. **Law "On the Judicial System and Status of Judges"** **Article 100**. **General Conditions for the Dismissal of a Judge** 1. A judge of a court of general jurisdiction shall be removed from office by the body which appointed or elected him or her on the exhaustive grounds set forth in part five, Article 126 of the Constitution of Ukraine, following a motion by the High Council of Justice. **Article 101**. **Dismissal from Judicial Office owing to Expiry of Term of Appointment** 1. The High Council of Justice shall submit a motion to the President of Ukraine for the removal of a judge from office where the term of his or her appointment has expired if: 1) Following a report by the High Qualifications Commission of Judges of Ukraine, the judge has failed, for no good reason, to file in a timely manner an application for election to a lifetime position; 2) The High Qualifications Commission of Judges of Ukraine has adopted a decision not to recommend the judge to be elected to a lifetime position. 2. The High Council of Justice shall submit a motion for the removal of a judge from office due to expiry of the term of his or her appointment indicating the date on which the removal of the judge should take effect. 3. A judge shall be removed from office by the President of Ukraine. 4. If a judge in these circumstances has, for any reason, not been removed from office, he or she shall not be entitled to exercise his or her judicial powers as of the day following the expiry of the term of his or her appointment. **Article 102**. **Dismissal of a Judge on the Grounds of Age** 1. A judge shall be removed from office on the grounds of age on the day after his or her 65th birthday.

	2. The High Qualifications Commission of Judges of Ukraine shall, no later than one month before the day specified in part one of this Article, notify the High Council of Justice of the existence of a ground for the removal of the judge concerned. 3. The High Council of Justice shall, no later than fifteen days before the day specified in part one of this Article, submit a motion for the removal of a judge upon his or her reaching the age of sixty-five to the body which elected or appointed him or her. 4. If for any reason whatsoever a judge in the above circumstances has not been removed from office, he or she shall not be entitled to exercise his or her judicial powers as of the day after his or her 65th birthday. **Article 103**. **Dismissal of a Judge of Health Grounds** 1. A judge shall be removed from office where he or she is unable to discharge his or her duties for health reasons, provided that this fact is certified by a medical opinion issued by a medical commission formed by a specially authorized central executive body with responsibility for public health issues or upon a final court decision finding the judge to be only partially capable or legally incapable to carry out his or her duties. 2. Having concluded that his or her state of health shall prevent a judge from performing his or her duties for a considerable period or permanently, the High Council of Justice shall submit a motion for the removal of the judge to the body that elected or appointed him or her. **Article 104**. **Dismissal of a Judge for Breach of Incompatibility Requirements** 1. A judge shall be removed from office for breaching the incompatibility requirements upon a motion submitted by the High Council of Justice in the manner prescribed by law of Ukraine "On the High Council of Justice" to the body that elected or appointed the judge. **Article 105**. **Dismissal of a Judge for Violation of Oath** 1. In accordance with clause 5, part five of Article 126 of the Constitution of Ukraine, a judge may be removed from office for violating the oath of office. 2. Facts suggesting his or her violation of the oath of office must be established by the High Qualifications Commission of Judges of Ukraine or by the High Council of Justice of Ukraine. 3. A judge shall be removed from office for violating the oath of office upon a motion by the High Council of Justice after it has reviewed the matter at its meeting as required by the Law of Ukraine "On the High Council of Justice." 4. Upon a motion by the High Council of Justice the President of Ukraine shall issue a decree removing the judge from office. 5. Upon a motion by the High Council of Justice the Verkhovna Rada of Ukraine shall pass a resolution removing a judge from office.

	Article 106. **Dismissal of a Judge on the grounds of Criminal Conviction** 1. A court which has handed down a judgment convicting a judge shall immediately report this to the High Qualifications Commission of Judges of Ukraine. 2. Once such a judgment has entered into legal force, the High Qualifications Commission of Judges of Ukraine shall report this to the High Council of Justice, which shall submit a motion for the removal of the judge. 3. A convicted judge may no longer perform his or her duties, and shall lose the guaranties of judicial independence and immunity provided by the law as well as his or her rights to financial and other support. **Article 107**. **Dismissal of a Judge from Office Following Termination of Citizenship** 1. A judge shall be removed from office upon a motion by the High Council of Justice for termination of his or her citizenship pursuant to the Law of Ukraine "On the Citizenship of Ukraine." 2. A judge may no longer perform his or her duties from the moment of termination of his or her citizenship. **Article 108**. **Dismissal from Office of a Judge Declared Missing or Dead** 1. Any court that pronounces a judge missing or dead shall immediately report this to the High Qualifications Commission of Judges of Ukraine. When such a decision enters into legal force, the High Qualifications Commission of Judges of Ukraine shall report this to the High Council of Justice, which shall submit a motion for the removal of the judge from office. Article 109. Removal of a Judge upon his or her resignation or due to his or her voluntary termination of service 1. A judge whose record of judicial service is not less than twenty years, as specified by Article 131 of this Law, shall be entitled to request retirement. 2. A judge shall have the right at any time of his or her tenure of office to submit a request for any reason for voluntary termination of service. 3. A request for retirement or voluntary termination of service shall be submitted directly to the High Council of Justice, which shall, within one month of receiving the request, submit a motion for removal to the body that elected or appointed the judge. Where a judge is removed as a result of that motion, the High Council of Justice shall inform the High Qualifications Commission of Judges of Ukraine. 4. A judge shall continue to perform his or her duties until a decision is passed to remove him or her. 5. A judge removed due to his request for retirement shall preserve the title of a judge as well as guarantees of immunity, established for the judge before his retirement.

Article 110. **Requirements regarding a Motion for Removal of a Judge from Office**

1. A motion by the High Council of Justice for the removal of a judge shall indicate:

1) The date of submission of the motion;
2) The surname, first name and traditional name of the judge;
3) The date of birth of the judge;
4) Information on the judge's tenure of office;
5) The name of the court;
6) The ground for submitting the motion for the removal, established by part five, Article 126 of the Constitution of Ukraine;
7) The factual circumstances (where a motion for removal of a judge for special circumstances is submitted, as established by the Law of Ukraine "On High Council of Justice");
8) Other data and information provided by Law.

Article 111. **Consideration and Decision by the Verkhovna Rada of Ukraine on Removal of a Judge Elected for a Lifetime Position**

1. The procedure for considering the issues of and making a decision on the removal a judge elected to a lifetime position shall be set forth by this Law and the Procedural Rules of the Verkhovna Rada of Ukraine.

2. The issue of the removal of a judge elected to a lifetime position shall be considered at a plenary meeting of the Verkhovna Rada without any input from or verification by any committee of the Verkhovna Rada of Ukraine.

3. Discussion of the issue of the removal of a judge elected for a lifetime position at a plenary meeting of the Verkhovna Rada of Ukraine shall begin with a report by the Head of the High Council of Justice or a member of High Council of Justice acting under his instruction.

4. A decision to remove a judge elected for a lifetime position shall be taken by a majority of the constitutional composition of the Verkhovna Rada of Ukraine. The decision shall be formalized by a resolution of the Verkhovna Rada of Ukraine.

5. Where the number of votes as required by part 4 of this Article in order to remove a judge from a lifetime position is not received, re-voting shall be conducted.

6. The powers of a judge shall be terminated immediately upon the coming into force of the relevant resolution of the Verkhovna Rada of Ukraine.

Article 112. **Termination of the Powers of a Judge**

1. The powers of a judge shall be terminated in the event of his or her death.

2. The chief judge of the court in which the judge in question served shall report the existence of ground(s) for terminating his or her powers to the High Qualifications Commission of Judges of Ukraine. The report shall be appended with documents certifying the existence of the relevant ground(s).

Guarantees against undue pressure	**Constitution of Ukraine** **Article 126** **…** Any influence upon judges shall be prohibited. A judge shall not be detained or arrested until a guilty verdict is handed down by a court, and only then with the consent of the Verkhovna Rada of Ukraine … **Law "On the Judicial System and Status of Judges"** **Article 47**. **Judicial Independence** 1. In their professional capacity, judges shall be independent of any undue influence, pressure or interference. A judge shall administer justice in accordance with the Constitution and laws of Ukraine and in doing so shall be guided by the rule of law. Interfering with a judge's judicial functions shall be prohibited and shall be punishable in accordance with the law. 2. A judge shall not be obliged to provide any explanations as to the merits of cases under his or her consideration, except as required by the law. 3. A judge shall be entitled to report the existence of a threat to his or her independence to the Council of Judges of Ukraine, which shall be obliged to urgently verify and examine such a report and take necessary action to eliminate the threat. 4. The independence of a judge shall be ensured by: 1) Special procedures for his or her appointment, election, discipline and dismissal; 2) Judicial immunity; 3) Security of tenure; 4) Court proceedings prescribed by the procedural law and the confidentiality of judicial decision-making; 5) The prohibition of interference with the judicial function; 6) Liability under the law for contempt of court or of a judge; 7) Special procedures under the law for funding and providing organizational support to the operation of courts; 8) Adequate material and social assistance for judges; 9) Judicial self-regulation bodies; 10) Legal means to ensure the personal safety of judges and members of their families and preservation of their properties, as well as other means of legal protection; 11) A right to retire. 5. State organs, local self-regulation bodies, their officials and employees, and natural and legal persons and associations shall be obliged to respect the principle of judicial independence and not to infringe upon it. 6. When adopting new laws or amendments to current laws, the meaning and scope of guarantees of judicial independence already established by the Constitution of Ukraine may not be restricted.

	Article 48. Judicial Immunity 1. Judges shall be immune. Without the consent of the Verkhovna Rada of Ukraine, no judge may be detained or arrested prior to a guilty verdict being handed down by a court. 2. A judge detained on suspicion of having committed an offence entailing criminal or administrative liability must be released immediately once his or her identity has been established. No judge may be taken by force to any police or other institution or body except a court. 3. A criminal case against a judge may be opened only by the Prosecutor General of Ukraine or his or her deputy. 4. A judge found criminally liable shall be removed from office by the High Qualifications Commission of Judges of Ukraine following a reasoned Resolution of the General Prosecutor of Ukraine. 5. A court decision will be required in order to permit: - Any intrusion into the home or other estate or office of a judge or into his or her personal or official vehicle; - Any examination, search, or seizure therein; - The interception of his or her telephone conversations; - Any personal search of a judge; or - Any search or seizure of his or her correspondence, belongings, or documents. 6. The territorial jurisdiction of a case in which a judge is accused of committing a crime shall be determined by a Chief Justice of the Supreme Court of Ukraine. The case may not be heard by the court in which the accused holds or held a judicial position. 7. Liability for court-ordered damages shall be borne by the state on the basis of and in accordance with the procedure established by law. **Article 49**. **Liability for Contempt of a Judge or of the Court** 1. The display of contempt of court or of a judge by individuals taking part in the proceedings or attending a hearing shall result in legal liability in accordance with the law. **Article 50**. **Certificate of a Judge** 1. Judges, chief judges and their deputies, retired judges, people's assessors and jurors shall hold a certificate in an established form, approved by the Council of Judges of Ukraine. 2. The certificate of a judge, chief judge, deputy chief judge or retired judge shall be signed by the head of the body that appointed or elected him or her to his or her judicial position. 3. Any certificate of a Chief Justice of the Supreme Court or his Deputy shall be signed by the Secretary of the Plenary Session of the Supreme Court of Ukraine.

	4. Certificates of people's assessors and jurors shall be signed by the chief judge of the court in which the people's assessor or juror operates. 5. The certificates shall be submitted by the signatory or by a person authorised by the signatory. **Article 51**. **Status of a Judge** 1. A professional judge shall be a citizen of Ukraine who, pursuant to the Constitution of Ukraine and this Law, has been appointed or elected to a judicial position, holds a permanent judicial position in one of the courts, and administers justice on a professional basis. 2. Judges in Ukraine shall have the same status irrespective of the place of the court in the system of courts of general jurisdiction or of the administrative position being held by the judge in the court. **Article 52**. **Judicial Security of tenure** 1. A judge holding a lifetime position shall be guaranteed to remain a judge until he or she reaches the age of sixty-five except where removed from the office or having retired in accordance with this law. 2. No judge may be transferred to a different court without his or her consent. **Article 53. Incompatibility Requirements** 1. Holding a judicial position shall be incompatible with holding a position in any other body of state power or of local self-regulation or as a representative. 2. No judge shall be entitled to engage, alongside his or her work, in the business or practice of law, or undertake any other paid work (except for teaching, and scholarly or creative activities outside court hours), or be a member of a governing body or supervisory board for a commercial enterprise or organization. 3. No judge may be a member of or openly sympathize with a political party or trade union, or take part in political actions, rallies, or strikes. 4. Upon his or her application, a judge may be seconded to serve, whilst retaining his or her primary employment salary, on the High Council of Justice, High Qualifications Commission of Judges, or the National School of Judges of Ukraine. **Article 54. Rights and Responsibilities of a Judge** 1. A judge's rights relating to the administration of justice shall be determined by the Constitution and the procedural and other laws of Ukraine. 2. A judge shall be entitled to take part in judicial self-regulation in order to address matters relating to the internal operation of courts and in the manner determined by the law. Judges may form associations and participate in them as a means of protecting their rights and interests and to improve their professional standards. 3. A judge shall be entitled to improve his or her professional standards and, for that purpose, take appropriate training.

	4. A judge shall be obliged to: 1) Hear and adjudicate cases in a timely, fair, and impartial manner in accordance with the law, observing the principles and rules applicable to legal proceedings; 2) Comply with the rules on judicial ethics; 3) Show respect to participants in legal proceedings; 4) Comply with and keep the judge's oath; 5) Abstain from disclosing information which constitutes a legally-protected secret, in particular the secrecy of judges' deliberations or in camera sessions; 6) Comply with the incompatibility requirements; 7) Submit annually to the State Judicial Administration of Ukraine and no later than April 1, a property status declaration (a financial disclosure statement), to be made public through posting on the official website of the judiciary. 5. The property status declaration must contain information on: - The income, securities, immovable and valuable movable property, bank deposits, and financial obligations of the judge, members of his or her family and other persons who share a home with the judge; - The expenses of the judge (where these are one-off expenses, then those exceeding the judge's monthly salary must be disclosed). The form of the declaration and the procedure for completing it shall be determined by the Ministry of Finance of Ukraine. 6. A judge appointed to judicial office for the first time shall be required to take two-week annual training course in the National School of Judges. A judge holding a lifetime judicial position shall be required to take the two-week training not less than once every three years. 7. Until his or her retirement, a judge may be rewarded with state or other awards, decorations or letters of commendation by the state and by local self-regulation bodies except for state or any other awards, decorations, letters of commendation in connection with his or her own administration of justice. **Article 55**. **Judicial Oath of Office** 1. A person appointed to judicial office for the first time shall assume office after taking the following oath of office: "In assuming my duties as a judge, I, (name and surname), do solemnly swear to administer justice in an objective, fair, and unbiased manner guided only by the law and by the principle of the rule of law, to discharge my judicial duties honestly and conscientiously, to comply with moral and ethical principles of judicial conduct and not to commit any actions bringing the title of judge into disrepute or tending to undermine the authority of the judiciary." 2. A judge shall be sworn in at a solemn ceremony in the presence of the President of Ukraine. The text of the oath of office shall be signed by the judge and kept in his or her personnel file.

	Article 56. **Judicial Ethics** 1. Issues of judicial ethics shall be set out in the Code of Judicial Ethics, to be adopted by the Congress of Judges of Ukraine.

Appendix II : List of participants

Working Group on independent judicial systems (WG 1)

ARMENIA

Ms Margarita Hartenyan
Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts

Mr Edgar Sedrakyan
Association of Judges of Armenia

Ms Narine Solomonyan
Adviser at the Ministry of Justice of Armenia

Mr Vahe Yengibaryan
Association of Judges of Armenia
Executive Director

AZERBAIJAN

Mr Ilham Agayev
Judge, President of the Xazar district court of Baku
Member of the Judicial-Legal Council of Azerbaijan

Mr Ramin Gurbanov
Ministry of Justice of Azerbaijan
Chief of reforms division, Coordinator of Judicial Modernization Project
at General department of organization and supervision

GEORGIA

Mr Lasha Kalandadze
Judge of the Tbilisi Court Appeal
Member of the High Council of Justice of Georgia

Mr Lasha Maghradze
Head of the Bureau of the Chairman of the Supreme Court of Georgia
Rapporteur of the Working Group on Judiciary of the Criminal Justice Reform Council

Ms Babutsa Pataraia
Ministry of Justice of Georgia
Deputy Head of Public International Law Department

Ms Tamar Sulakvelidze
Staff Member with the High Council of Justice of Georgia

Ms Tamar Tomashvili
Ministry of Justice of Georgia
Head of Public International Law Department

MOLDOVA

Ms Svetlana Filincova
Supreme Court of Justice the Republic of Moldova
President of the College Qualification and Certification of Judges

Ms Lilia Ionita
Ministry of Justice of Moldova
Deputy Head of Law Drafting Department

Mr Timofti Nicolae
President of the Superior Council of Magistracy the Republic of Moldova

UKRAINE

Ms Inna Fesenko
Ministry of Justice of Ukraine
Director of the Department on anticorruption legislation and legislation on justice

Ms Polina Kazakevych
High qualification commission of judges of Ukraine
Head of International cooperation division

Ms Raisa Khanova
Senior Judge
Deputy Head of the Council of Judges of Ukraine

Ms Tetiana Kozyr
Judge of the High Arbitration Court of Ukraine
Secretary executive of the Council of Judges of Ukraine

Mr Viacheslav Panasyuk
Ministry of Justice of Ukraine
Head of the Division on Justice

Appendix III

Working Group
"Independent Judicial Systems"
June Session

Agenda

9 June 2011

9.30 – 9.35 Welcome by Ms *Tatiana Termacic, Acting Head of the Judiciary Division, Legal and Human Rights Capacity Building Department*

9.35 – 11.00 The notion of independence of judiciary and correlations between judicial independence and responsibility
by *Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania*

11.00 – 11.30 *Coffee break*

11.30 – 13.00 The case law of the European Court of Human Right on judicial independence
by *Ms Victoria Maslova,* Lawyer, Registry of the European Court of Human Rights

13.00 – 14.30 *Lunch*

14.30 – 16.00 The role and functions of judicial councils in the light of European standards
by Ms Maria Teresa Romer

16.00 – 16.30 *Coffee break*

16.30 – 17.00 First presentation by a participating country on role and functions of judicial councils
Armenia

17.00 – 17.30 Second presentation by a participating country
Georgia

17.35 Closure of the first day of the session

10 June 2011

9.30 – 10.00 Third presentation by a participating country
Azerbaijan

10.00 – 10.30 Fourth presentation by a participating country
Moldova

10.30 – 11.00 Fifth presentation by a participating country
Ukraine

11.00 – 11.30 *Coffee break*

11.30 – 13.00 Overview of the main challenges as regards judicial independence in the participating countries
by *Mr Carsten Mahnke*, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine

13.00 – 14.30 *Lunch*

14.30 – 15.30 Discussion of the presentations made by the experts and participants

15.30 – 16.00 *Coffee break*

16.00 -17.30 European standards on judges and media
by *Mr Carsten Mahnke*

17. 35 Closure of the second day of the session

Working Group
"Independent Judicial Systems"

July session

Agenda

11 July 2011

9.30 – 9.35 Welcome
by *Ms Tatiana Termacic, Acting Head of the Judiciary Division, Legal and Human Rights Capacity Building Department*
9.35 – 11.00 Stock-taking of the expert's findings on gaps between the relevant European standards and national legislation as regards judicial self-governing judicial bodies. Comments of the experts and comments of the national delegations

General Mandate of self-governing judicial bodies: Legal basis and Composition

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Azerbaijan
Mr Ilham Agayev, president of the Xazar district court of Baku, member of the Judicial-Legal Council of Azerbaijan
Mr Ramin Gurbanov, Chief of Reforms division, General Department of Organization and Supervision, Coordinator of Judicial Modernization Project, Ministry of Justice of Azerbaijan

Georgia
Ms Babutsa Pataraia, Ministry of Justice of Georgia
Ms Tamar Sulakvelidze, staff member of the High Council of Justice of Georgia
Mr Lasha Kalandadze, member of the High Council of Justice of Georgia, Judge of the Tbilisi Court Appeal

Moldova
Ms Svetlana Filincova, President of the College Qualification and Certification of Judges, Supreme Court of Justice the Republic of Moldova
Ms Lilia Ionita, Deputy Head of Law Drafting Department, Ministry of Justice of the Republic of Moldova

Ukraine
Ms Tetiana Kozyr, Secretary executive of the Council of Judges of Ukraine
Ms Ms Inna Fesenko, Director of the Department on anticorruption legislation and legislation on justice, Ministry of Justice of Ukraine
Ms Polina Kazakevych, Head of International cooperation division, High qualification commission of judges of Ukraine

Armenia
Ms Margarita Hartenyan, Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts, Association of Judges of the Republic of Armenia
Ms Narine Solomonyan, Adviser, Ministry of Justice of Armenia
Mr Narek Gabrielyan, Advisor to the Head of the Judicial Department of Armenia, Association of Judges of Armenia
11.00 – 11.30 Coffee break
11.30 – 12.45 Stock-taking: Continue

Concrete Mandate of self-governing judicial bodies: Selection, appointment and promotion, Budgetary issues, Other competencies

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Azerbaijan –
Mr Ilham Agayev, president of the Xazar district court of Baku city, member of the Judicial-Legal Council of Azerbaijan
Mr Ramin Gurbanov, Chief of Reforms division, General Department of Organization and Supervision, Coordinator of Judicial Modernization Project, Ministry of Justice of Azerbaijan

Georgia –
Ms Babutsa Pataraia, Ministry of Justice of Georgia
Ms Tamar Sulakvelidze, staff member of the High Council of Justice of Georgia
Mr Lasha Kalandadze, member of the High Council of Justice of Georgia, Judge of the Tbilisi Court Appeal
12.45 – 14.15 Lunch
14.15 – 15.30 Stock-taking: Continue

Concrete Mandate of self-governing judicial bodies: Selection, appointment and promotion, Budgetary issues, Other competencies

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Moldova
Ms Svetlana Filincova, President of the College Qualification and Certification of Judges, Supreme Court of Justice the Republic of Moldova
Ms Lilia Ionita, Deputy Head of Law Drafting Department, Ministry of Justice of the Republic of Moldova

Ukraine
Ms Tetiana Kozyr, Secretary executive of the Council of Judges of Ukraine
Ms Ms Inna Fesenko, Director of the Department on anticorruption legislation and legislation on justice, Ministry of Justice of Ukraine
Ms Polina Kazakevych, Head of International cooperation division, High qualification commission of judges of Ukraine

Armenia
Ms Margarita Hartenyan, Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts, Association of Judges of the Republic of Armenia
Ms Narine Solomonyan, Adviser, Ministry of Justice of the Republic of Armenia
Mr Narek Gabrielyan, Advisor to the Head of the Judicial Department of Armenia, Association of Judges of the Republic of Armenia
15.30 – 16.00 Discussion on any other issue to be included in the report
16.00 Wrap-up and end of the session.

Working Group
"Independent Judicial Systems"
August meeting

Agenda

29 August 2011

9.30 – 9.40 Welcome
by *Ms Tatiana Termacic, Acting Head of the Judiciary Division, Legal and Human Rights Capacity Building Department*

9.40 – 11.30 Stock-taking of the expert's findings on gaps between the relevant European standards and national legislation as regards the manner of appointment, promotion and career, duration of the office, remuneration and dismissal of judges. Comments of the experts and comments of the national delegations

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Armenia
Ms Margarita Hartenyan, Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts, Association of Judges of Armenia,
Ms Narine Solomonyan, Adviser, Ministry of Justice of Armenia

Azerbaijan
Dr Fuad Javadov, member of the Judges Selection Committee, Judicial-Legal Council of Azerbaijan,
Mr Ramin Gurbanov, Chief of Reforms division, General Department of Organization and Supervision, Coordinator of Judicial Modernization Project, Ministry of Justice of Azerbaijan

Georgia
Ms Tamar Sulakvelidze, staff member of the High Council of Justice of Georgia
Ms Tamar Tomashvili, Head of Public International Law Department, Ministry of Justice of Georgia,
Ms Babutsa Pataraia, Deputy Head of Public International Law Department, Ministry of Justice of Georgia

Moldova
Ms Svetlana Filincova, President of the College Qualification and Certification of Judges, Supreme Court of Justice the Republic of Moldova,
Ms Tatiana Filatova, Head of Law Drafting Department, Ministry of Justice of Moldova

Ukraine
Ms Tetiana Kozyr, Secretary executive of the Council of Judges of Ukraine,
Mr Viacheslav Panasyuk, Head of the Division on Justice, Ministry of Justice of Ukraine,
Ms Polina Kazakevych, Head of International Cooperation Division, High Qualification Commission of Judges of Ukraine

11.30 – 12.00 Coffee break

12.00 – 13.00 Stock-taking: Continue Guarantees against the outside pressure and within the judiciary, in particular from superiors and peer colleagues

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Armenia
Ms Margarita Hartenyan, Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts, Association of Judges of Armenia,
Ms Narine Solomonyan, Adviser, Ministry of Justice of Armenia

Azerbaijan
Dr Fuad Javadov, member of Judges Selection Committee, Judicial-Legal Council of Azerbaijan,
Mr Ramin Gurbanov, Chief of Reforms division, General Department of Organization and Supervision, Coordinator of Judicial Modernization Project, Ministry of Justice of Azerbaijan

Georgia
Ms Tamar Sulakvelidze, staff member of the High Council of Justice of Georgia
Ms Tamar Tomashvili, Head of Public International Law Department, Ministry of Justice of Georgia,
Ms Babutsa Pataraia, Deputy Head of Public International Law Department, Ministry of Justice of Georgia

Moldova
Ms Svetlana Filincova, President of the College Qualification and Certification of Judges, Supreme Court of Justice the Republic of Moldova,
Ms Tatiana Filatova, Head of Law Drafting Department, Ministry of Justice of Moldova

Ukraine
Ms Tetiana Kozyr, Secretary executive of the Council of Judges of Ukraine,
Mr Viacheslav Panasyuk, Head of the Division on Justice, Ministry of Justice of Ukraine,
Ms Polina Kazakevych, Head of International Cooperation Division, High Qualification Commission of Judges of Ukraine

12.45 – 14.15 Lunch

14.15 – 15.45 Stock-taking: Continue

Unethical behavior: delimitation from disciplinary liability
Disciplinary proceedings: basis, procedure to follow, decision

Experts:
Mr Carsten Mahnke, Lawyer, Long-Term Consultant under the CoE/EU Joint Programme on the Transparency and Efficiency of the Judicial System of Ukraine
Mr Virgilijus Valancius, Judge of the Supreme Administrative Court, Professor of Mykolas Romeris University, Lithuania

National delegations:

Armenia
Ms Margarita Hartenyan, Judge of the Court of General Jurisdiction of Ajapnyak and Davtashen Administrative Districts, Association of Judges of Armenia,
Ms Narine Solomonyan, Adviser, Ministry of Justice of Armenia

Azerbaijan
*Dr Fuad Javadov**,** member of Judges Selection Committee, Judicial-Legal Council of Azerbaijan,*
Mr Ramin Gurbanov, Chief of Reforms division, General Department of Organization and Supervision, Coordinator of Judicial Modernization Project, Ministry of Justice of Azerbaijan

Georgia
Ms Tamar Sulakvelidze, staff member of the High Council of Justice of Georgia
Ms Tamar Tomashvili, Head of Public International Law Department, Ministry of Justice of Georgia,
Ms Babutsa Pataraia, Deputy Head of Public International Law Department, Ministry of Justice of Georgia

Moldova
Ms Svetlana Filincova, President of the College Qualification and Certification of Judges, Supreme Court of Justice the Republic of Moldova,
Ms Tatiana Filatova, Head of Law Drafting Department, Ministry of Justice of Moldova

Ukraine
Ms Tetiana Kozyr, Secretary executive of the Council of Judges of Ukraine,
Mr Viacheslav Panasyuk, Head of the Division on Justice, Ministry of Justice of Ukraine,
Ms Polina Kazakevych, Head of International Cooperation Division, High Qualification Commission of Judges of Ukraine

15.45 – 16.15 Discussion on any other issue to be included in the report

16.15 – 16.30 Wrap-up and end of the session