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# ELI-Mount Scopus European Standards of Judicial Independence

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ISBN: 978-3-9505495-2-2  
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Project Number: P-2021-24  
Approved by the ELI Council on 9 October 2024 and by the ELI Membership on 27 November 2024.  
Published on 2 December 2024.

This publication was co-funded by the European Union's Justice Programme. Acknowledgement is also due to the University of Vienna, which has generously hosted the ELI Secretariat under successive Framework Cooperation Agreements since 2011. Views and opinions expressed are those of ELI 's only and do not necessarily reflect those of the European Union, the University of Vienna or others. Neither the European Union nor others can be held responsible for them.



This project is co-funded by  
the European Union



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## Thank you note from the Reporters

This Report concludes a long process, throughout which a large debt of gratitude has accumulated. Members of the Project Team, Advisory Committee and the Consultative Committee read numerous drafts and offered feedback, guidance and assistance throughout. Their comments improved the draft Report greatly and the Reporters thank them warmly. The Reporters would also like to thank members of the European Law Institute Executive Committee, Pascal Pichonnaz, Anne Birgitte Gammeljord, Sir Geoffrey Vos and Pietro Sirena, and its Scientific Director, Christiane Wendehorst, for their most valuable comments.

The Report benefited significantly from the input of many individuals and institutions, whose contribution we gratefully acknowledge: Professor Despina Anagnostopoulou, Professor Henrik Andersen, Judge Alexander Arabadjiev, Professor Alexander Balthasar, Judge Jana Baricová, Tirana Blerina Bulica, Professor Rafael Bustos Gisbert, Professor Roberto Caranta, Judge Marc Clément, Professor Athina Contogianni, Professor Alessandro Corbino, Professor Henri Culot, Judge Carlos de Melo Marinho, Professor Eloise Ellis, Professor Aleš Ferčič, Professor Maria Filatova, Dr Edo Groenewald, Eric L Hirschhorn, Judge Stephanie Kass-Danno, Judge Matthias Keller, Judge Georg Kodek, Professor Dulce Lopes, Dr Javier López Sánchez, Professor Jason Mazzone, Professor Marjolaine Monot-Fouletier, Dr Athina Moraiti, Judge Pierre Nihoul, Professor Angelika Nußberger, Professor Jasna Omejec, Professor Sabela Oubiña Barbolla, Judge Evgenia Papadopoulou, Professor Paolo Passaglia,

Professor Jelena Perović, Professor Vera Lúcia Raposo, Professor David Renders, Professor Ricardo Rodrigues de Oliveira, Professor Jonathan Rogers, Professor Domenico Rosani, Professor Claudia Seitz, Ms Dory Reiling, Professor Anna Simonati, Dr Marta Sjeničić, Professor Jonathan Soeharno, Professor Kees Sterk, Professor Stacie Strong, Professor Grega Strban, Professor Ditlev Tamm, Judge Christiaan Timmermans, Teresa Tourinan, and Professor Konstantinos Tsimaras. Institutions that commented on the draft Report are the Association of European Administrative Judges (AEAJ), the Austrian Bar (*Österreichischer Rechtsanwaltskammertag*, ÖRAK), the *Centro de Estudos Avançados em Direito Francisco Suarez* (CEAD Francisco Suarez), the Constitutional Court of Belgium, the Constitutional Court of Latvia, the *Cour de cassation*, the *Curia* of Hungary, the European Land Registry Association (ELRA), the *Instituto Jurídico Portucalense* (IJP), the International Association of Judges (IAJ), the International Association of Judicial independence and World Peace (JIWP), the International Association of Legal Science (IALS), the International Union of Judicial Officers (UIHJ), the Italian Supreme Court of Cassation, the Law Society of England and Wales, and the Supreme Court of Lithuania.

The Reporters also wish to thank Advocate Nikhil Purohit for his research assistance, and the European Law Institute Secretariat for their continuous assistance, especially Tomasz Dudek, Senior Project Officer, and Vanessa Wilcox, Secretary General of the European Law Institute.



## List of Abbreviations

AI	Artificial Intelligence
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ELI	European Law Institute
ENCJ	European Network of Councils of the Judiciary
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union
GRECO	Group of States against Corruption (GRECO),
JIWP	International Association of Judicial Independence
Mt Scopus Standards	Mount Scopus International Standards of Judicial Independence
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
OSCE ODIHR	OSCE Office for Democratic Institutions and Human Rights
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
Venice Commission	European Commission for Democracy through Law

## Fundamental premises

- An independent judiciary is vital to maintaining the rule of law, democracy, and human rights. The ELI-Mount Scopus European Standards on Judicial Independence ('The Standards') articulate principles and practices safeguarding judicial independence in European liberal democratic states.
- European judicial systems are not immune to state capture, political interference, nepotism, or undue pressure from members of the judiciary themselves. The Standards are directed at the pressing challenges faced by some European judiciaries.
- The Standards draw upon and adapt European and international standards for the independence and accountability of the judiciary to the needs of the European judiciaries.
- Judicial independence is not a personal privilege of judges and is enjoyed as a protection against improper influence. The ELI-Mount Scopus European Standards seek to ensure the proper exercise of judicial responsibilities and judicial accountability.
- Judicial independence is a principle of universal value. The ELI-Mount Scopus European Standards are designed for adaptation to different legal and constitutional traditions within and beyond Europe.

# Introduction

**Purpose.** The ELI-Mount Scopus European Standards on Judicial Independence provide standards against which to measure judicial independence in a particular country and are intended to be relied upon by judges, civil society, and public authorities in European states. They build upon well-considered rules and practices commonly found in the constitutions and case law of liberal democracies and in international law to describe the fundamental components of judicial independence as understood and expected in European liberal democracies.

The Standards are directed toward the pressing and contemporary needs of European judiciaries. The Standards both describe and prescribe how to protect judicial independence and to ensure access to impartial courts. They seek to foster open and transparent discussion among stakeholders and encourage the adoption of practices protecting judicial independence.

**Relevance of project.** The rights to a fair and impartial trial and effective judicial protection depend upon judicial independence.<sup>1</sup> Judicial independence is recognised as key to important substantive outcomes ranging from the protection of human rights to regime stability, economic development, and establishment of a level playing field for business. Nonetheless, the independence of judges and courts around the world has been under increasing threat from governments and others willing to undermine separation of powers and seeking to bend courts to their will. European

judicial systems are not immune to state capture, political interference, or nepotism,<sup>2</sup> and since 2018, CJEU and ECtHR decisions have had to address troubling trends.<sup>3</sup>

These Standards seek to promote not only a formal legal framework for judicial independence but also a robust political and legal culture supporting European judicial independence. They aim to support European judges whose work preserves liberal democracy and the rule of law.

The Standards are intended to apply beyond the European Union and throughout Europe: to stable and well-established democracies, countries on the path to democratic maturity, and countries where democracy has eroded.

**Scope of project.** The Standards are rooted in the model of liberal democracy enshrined in the ECHR and the EU Treaties, namely the values of the rule of law, democracy, and human rights. The Standards are intended to align fully with the principles stated in the *ELI Charter of Fundamental Constitutional Principles of a European Democracy*. They also draw upon the ELI Innovation Paper on *Guiding Principles for Automated Decision-Making in the EU*.<sup>4</sup>

Standards, by their nature, provide a framework for reference rather than fixed rules. The Standards seek to shield judicial decisions from political control by requiring systems pre-established by law rather than subject to political discretion.

<sup>1</sup> See Article 47 EUCFR, Articles 2 and 19 TEU and Article 6 ECHR; *Commission v Poland* (Independence of the ordinary courts), EU:C:2019:924, para 106.

<sup>2</sup> European Parliament resolution of 28 February 2024, report on the Commission's 2023 Rule of Law report ([2023/2113\(INI\)](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0108_EN.html)), para 1. Available <[https://www.europarl.europa.eu/doceo/document/TA-9-2024-0108\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0108_EN.html)> accessed 13 November 2024.

<sup>3</sup> 2023 WJP Rule of Law Index® - see Civil Justice and Criminal Justice insights, with factors including civil justice free of improper government influence, free of corruption, and not subject to unreasonable delay. See also their index on 'Constraints on Government Powers', measuring whether 'Government powers are effectively limited by the judiciary'. See also European Commission, 'EU Justice Scoreboard 2023', and '2023 Rule of Law Report'.

<sup>4</sup> See ELI, *Charter of Fundamental Constitutional Principles of a European Democracy* (22 July 2024), and the ELI Innovation Paper on *Guiding Principles for Automated Decision-Making in the EU* (2023), especially Guiding Principles 8 (No limitations to the exercise of rights and access to justice), 9 (Human oversight/action), 10 (Human review of significant decisions) and 12 (Risk-based approach to Automated Decision-Making) available <[https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Charter\\_of\\_Fundamental\\_Constitutional\\_Principles\\_of\\_a\\_European\\_Democracy.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Charter_of_Fundamental_Constitutional_Principles_of_a_European_Democracy.pdf)> and <[https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Guiding\\_Principles\\_for\\_Automated\\_Decision-Making\\_in\\_the\\_EU.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Guiding_Principles_for_Automated_Decision-Making_in_the_EU.pdf)>, respectively, accessed 13 November 2024.

## Scope of application

Judicial independence is not a personal privilege of judges. It exists to serve the social ends of the right to a fair trial, respect for human rights and fundamental freedoms, and an efficient and fair legal system. Hence, the Standards must also be directed to judicial accountability. Judicial accountability keeps judicial systems open and ensures their integrity; it works in tandem with judicial independence to serve the end of achieving impartial and effective justice.

These Standards seek to ensure the proper exercise of judicial responsibilities, duties, and powers aimed at protecting the interests of all persons. They are concerned with checks and balances regarding the judiciary. The Standards recognise that measures to support values such as an efficient and transparent justice system may conflict with judicial independence. The Standards acknowledge that the balance between judicial accountability and judicial independence is understood differently among jurisdictions. The Standards seek to establish critical lines that are so fundamental to judicial independence that they must not be crossed.

**Rationale.** The Standards are premised on legal pluralism. They recognise diversity in judicial traditions, constitutional conceptions regarding separation of powers, and differing arrangements of checks and balances among the legislature, the executive, and the judiciary. They presuppose a degree of national discretion in constitutional and institutional paths to judicial independence and the rule of law. This flexibility allows for legitimate differences among legal systems with separate national identities but remains subject to fundamental boundaries whose violation threatens the rule of law and liberal democracy.

All states are obliged to implement and achieve safeguards to judicial independence. The Standards establish basic protections of separation of powers

as well as the fundamental and minimum guarantees of judicial independence in a liberal democracy. They provide guidance on lively issues such as the use of technology to support judicial decision-making and address ‘pathological’ situations<sup>5</sup> by marking when red lines protecting liberal democratic values are crossed. This occurs when rules and practices alone are not sufficient to guarantee compliance with judicial independence or because they constitute a regression from the guarantees of judicial independence that existed at the time of a given Member State's accession to the EU and/or to the CoE.

The Standards address substantive as well as formal independence. Formal or procedural independence must not be allowed to entrench pre-existing or underlying improper influences upon the judiciary or individual judges. In such circumstances, the appearance of compliance with international or domestic guarantees of judicial independence should not be permitted to conceal or obscure illegitimate processes and the possible detrimental treatment of judges in practice. Following the lead of the ECtHR and the CJEU, the Standards invite scrutiny of the reasons behind the adoption of rules on judicial organisation and how they are enforced.

**Organisation.** The first group of Standards deal with the foundations of judicial independence. The second group offers standards on judicial governance. The third concerns judicial selection, appointment, professional evaluation, and promotion. The fourth addresses ethical standards of conduct. The fifth concerns disciplinary proceedings applicable to judges. The sixth considers the monitoring of judicial independence.

**Sources.** The ELI-Mount Scopus Standards build on the Mount Scopus International Standards of Judicial Independence (‘the Mt Scopus Standards’), which were first formulated in 1981 under the aegis of the

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<sup>5</sup> M Safjan, ‘Politics—and Constitutional Courts (Judge's Personal Perspective)’ (2009) 165 (1) Polish Sociological Review 3, 4. See also F Zoll and L Wortham, *Judicial Independence and Accountability: Withstanding Political Stress in Poland*, 42 Fordham Int'l L J 875 (2019), and *ibid*, *Weaponizing judicial discipline: Poland*, in *Disciplining Judges: Contemporary Challenges and Controversies* 278 (R Devlin & S Wildeman eds, 2021).

International Association of Judicial Independence (JIWP).<sup>6</sup> The partnership between ELI and JIWP creates a synergy between two organisations committed to promoting the rule of law, democracy, and liberty.

The Mt Scopus International Standards were based on common law standards of judicial independence<sup>7</sup> and were gradually integrated various European and international sources, most noticeably the Bangalore Principles of Judicial Conduct developed between 2000 and 2002 and adopted in 2006 by a resolution of the UN Economic and Social Council, in complement to the UN Basic Principles on the Independence of the Judiciary 1985.

Although the Mt Scopus International Standards have been revised regularly since 2008, our task for the ELI-Mount Scopus Standards was to: (1) review, update, and adjust the Mt Scopus Standards to the challenges faced by European judiciaries today; and (2) consider their application to the career judiciary common to most European legal systems. These Standards integrate perspectives from both civil law and common law systems and aspire to be relied upon as transnational standards for judicial independence and accountability. References to ECtHR and CJEU case law highlight recent problem areas, but the Standards are not limited to the European case law on judicial independence.

The sources of the ELI-Mount Scopus Standards are numerous. The Standards rely, for primary sources, on the ECHR and the EU Treaties as interpreted by the ECtHR and the CJEU. The Standards draw upon the laws and practice of European states and the work of specialised international and European bodies such as the United Nations Special Rapporteur on the

independence of judges and lawyers; the European Commission's annual Rule of Law reports and Justice Scoreboard; the OSCE Office for Democratic Institutions and Human Rights; and the European Network of Councils of the Judiciary (ENCJ). Particular attention has been paid to the work of Council of Europe bodies, including the Venice Commission's opinions and ad-hoc analyses for the Partnership for Good Governance and Horizontal Facility Programmes; the Consultative Council of European Judges (CCJE); the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ), including the European Judicial Systems Reports, the CEPEJ Study for the EU Justice Scoreboard, and the Justice Dashboards reports for Eastern Partnership and Western Balkan countries; and the work of the Group of States against Corruption (GRECO), the Council of Europe's anti-corruption monitoring body. Comparative legal materials and other soft law recommendations have also been considered and are cited within the Standards.

**Methodology.** The aim of this project was not to 'restate' or articulate common practices, nor to devise standards based on the predominance of approaches across European jurisdictions. Rather, the aim was to devise well-considered Standards for the safeguarding and promotion of judicial independence and accountability in Europe. The Reporters and Project Team started with current issues requiring urgent attention in Europe. They expanded from those to a more general framework, but the Standards are not exhaustive. The Reporters considered differing approaches to judicial independence among European legal traditions and built on existing national and European sources. Comments and a list of sources are provided to facilitate the practical use of the Standards.

<sup>6</sup> The Mount Scopus Standards were first adopted in Jerusalem in 1981 and formed the basis of the New Delhi Code of Minimum Standards of Judicial Independence adopted at the IBA 1982 Conference in New Delhi. Following further revision by scholars, jurists, and judges, they became known as the Mt Scopus International Standards 2008. They are drafted under the auspices of the International Association of Judicial Independence and World Peace. For further details on the activities of the IAJIWP, see <<https://www.jiwp.org/>> accessed on 13 November 2024. Publications include S Shetreet and J Deschenes, *Judicial Independence: The Contemporary Debate* (1985 Martinus Nijhoff); S Shetreet and W McCormack (ed), *The Culture of Judicial Independence in a Globalised World* (Martinus Nijhoff Publishers, 2016); S Shetreet (ed), *The Culture of Judicial Independence: Rule of Law and World Peace* (Martinus Nijhoff Publishers, 2014); S Shetreet and C Forsyth (eds.), *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges* (Martinus Nijhoff Publishers, 2012); S Shetreet, H Chodosh, E Helland, (eds) *Challenged Justice: In Pursuit of Judicial Independence* (Brill Nijhoff, 2021); S Shetreet and H Chodosh, (eds), *Judicial Independence, Cornerstone of Democracy* (Brill Nijhoff 2024). Since 2008, the Mount Scopus Standards of Judicial Independence have been amended and updated by scholars, jurists, and judges in regular meetings around the world. They have been cited in ECtHR judgments as well.

<sup>7</sup> See, eg. S Shetreet and S Turenne, *Judges on Trial. The Independence and Accountability of the English Judiciary* (CUP, 2013).

## Scope of application

The Reporters were supported by the Project Team and Advisory Committee Members, the Members Consultative Committee, and institutional Observers. Members and Observers are listed in the Acknowledgements. From 2021 to 2024, the Reporters convened meetings open to all interested ELI members; accounted for their work at ELI Council meetings; and presented their work at ELI Annual Conferences. Drafts were circulated to judges and members of judges' associations, lawyers, members of regional and European institutions, and academics from across and outside Europe for consultation.

**Added value.** The Standards are intended as a tool for a variety of actors who might decide to assess the need and consistency of judicial reform with judicial independence. Well-established components of judicial independence are separated into concrete elements in the comments that accompany each Standard. This approach aims to provide for a concrete analysis of the problems encountered in practice by judiciaries in Europe.

The Standards particularly focus on areas where threats and tensions have crystallised in recent years in Europe: judicial self-governance; the need for appropriate and protected remuneration; judicial selection, appointments, and promotion; security of tenure and irremovability; judicial discipline; and the need for the adoption of standards of ethical conduct. The use of technology, including artificial intelligence, is also considered. The Standards seek to address features of the judicial system, such as judicial appointment, evaluation, and promotion, that have not been addressed comprehensively in previous standards and are central to judicial independence and judicial accountability. Other points considered in the Standards are covered in greater detail elsewhere.<sup>8</sup>

The Standards are directed not simply at clarifying legal safeguards to judicial independence but also at the proper implementation of those safeguards. Comments are intended to enable an objective, transparent, and equal assessment of the situation at

issue. Comments also stress the necessary connections among Standards so that national rules and practices are considered in combination when assessing their consistency with judicial independence. For example, in the career judiciaries that dominate in Europe, the systems of evaluation and promotion may work as *de facto* disciplinary processes. The proper grounds for disciplinary proceedings must also be considered in light of the principle of security of tenure and irremovability, and in relation to ethical standards of conduct that should guide judicial behaviour but should not, in themselves, be the basis for judicial discipline.

The Standards and comments emphasise the legal situation in Europe, as expressed in particular in the case law of the ECtHR and the CJEU. The Standards contribute to the adoption of good practices and facilitates the attainment of a common European culture of judicial independence. Judicial independence is, however, a universal principle. This document, accordingly, has application beyond Europe, and the dissemination of the Standards ultimately aims to improve understanding among different legal systems and to reinforce mutual trust and judicial cooperation.

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<sup>8</sup> Eg standards of judicial freedom of expression are detailed in the *CCJE Opinion No 25 (2022) on freedom of expression of judges*, CCJE (2022) 4.

## Scope of application

These Standards apply to national courts, including administrative courts. In general, they apply to national courts with constitutional jurisdiction, that is, the jurisdiction to interpret and apply the country's constitution. In some European countries, the institutional organisation of courts with constitutional jurisdiction differs significantly from the rest of the court system. Consequently, the specifics of these Standards might not apply in at least some respects to those constitutional courts with significant differences in

formation and operation from the general court system. The delimitation of the Standards' specific application to such courts goes beyond the bounds of this project.

The Standards apply to professional judicial office holders. They may apply to others, such as lay judges (understood as non-professional judges) and public prosecutors, but institutional arrangements vary widely, and the delimitation of their specific application goes beyond the bounds of this project.

# I. Foundations of judicial independence

## Standard 1: Judicial independence

1. Judicial independence is an essential pillar of democracy and the rule of law. It is fundamental to guaranteeing a fair trial and effective judicial protection for every person.
2. Judges must be free from external interference with the discharge of their duties, in particular from the executive and legislative branches of government.
3. Judges must also be free from undue directives or pressure from their fellow judges, including senior judges, to influence their judicial decision-making.

### Comment

- a. **Judicial independence as a cornerstone of democracy.** An independent judiciary is a cornerstone of government in a democratic society. It acts as a safeguard of the rights and freedoms of the citizen under the rule of law and guarantees respect for the values common to EU Member States set out in Article 2 of the TEU.
- b. **Freedom from external interference.** Judges must take no instructions in the exercise of their judicial decision-making. External interference refers to undue influence, direct or indirect, on judicial decision-making from actors external to the judiciary, such as the government, the legislature, or the media. Insulation from undue influence creates the most favourable conditions under which a judge may decide impartially. Those who appear before the courts, as well as the wider public, can then have confidence that their cases will be decided based solely on the relevant evidence and in accordance with the law.

The right to an independent and impartial judge is enshrined in Article 6 ECHR and Article 47 EUCFR.

- c. **Internal independence.** Internal independence refers to the ability of judges to withstand undue pressure from other members of the judiciary in relation to their decisions in individual cases.

The principle of internal independence applies not only to the relationship among judges themselves, for example between a member of a judicial panel and its chairperson, but also to the relationship between a judge and those judges with administrative responsibilities within the judiciary, such as the court president, a court division president, or judicial council members. Thus, any hierarchical organisation of the judiciary and difference in grade or rank must not interfere with the right of judges to unimpeded deliberation, pronouncing their judgments freely, or expressing their opinions on matters relating to judicial work and organisation.

Any supervision of the work of judges involves a risk to their internal independence. Powers conferred on those with administrative responsibilities can have 'chilling' effects on the internal independence of judges whom they supervise. Chilling effects occur when judges with administrative powers can exercise direct or latent pressures resulting in judges' subservience to senior judges or, at least, make individual judges hesitant to contradict senior judges' wishes.

The powers to allocate cases, promote judges, and impose disciplinary sanctions can be abused to exert undue influence on judicial independence (see *Standard 20. Case allocation; Standard 24. Fundamental role of selection, appointment, evaluation and promotion; Standard 27. Evaluation and promotion; and Part V. Judicial discipline (Standards 33–37)*, for guidelines on the prevention of such abuse and preservation of judicial independence).

- d. **Independence as an ethical standard.** Judges must ensure that their conduct, whether in exercising their judicial function or in their private life, does not undermine their collective or individual independence.



Judges may consult with judicial colleagues upon points of difficulty in relation to judicial independence, and they may seek advice from a body set up to assist in the interpretation of the ethical standards of conduct (see *Standard 30. Adoption and purpose of ethical standards*). Nonetheless, they remain responsible for their own decisions.

## Standard 2: Collective and individual judicial independence

1. The judiciary as a whole must enjoy collective independence and autonomy from the executive and the legislature.
2. Each judge must enjoy both personal independence and substantive independence.
3. Personal independence means that the terms and conditions of judicial office are adequately secured by law to ensure that individual judges are not subject to control by others.
4. Substantive independence means that, in the discharge of their judicial function, judges are subject only to the law and the commands of their conscience.

### Comment

- a. **Terminology.** Judicial independence requires institutional independence (also sometimes referred to as functional independence) for both the judiciary as a whole and for the individual judge. This, in turn, enables substantive independence, which refers to the independence of judges to arrive at their judicial decisions without submitting to any improper influence.
- b. **Independence of the judiciary as a whole.** Collective independence and autonomy mean that the judiciary as a whole must enjoy institutional independence and autonomy in court administration as it relates to the exercise of judicial functions (see *Standard 19. Court*

*administration*). The judiciary must be provided with sufficient financial resources for the proper administration of justice (see *Standard 18. Financial autonomy*).

- c. **Personal independence.** The independence of the judiciary as a whole might not be sufficient if judges lack personal institutional independence. Personal independence means that individual judges must not be institutionally dependent on the executive or the legislature in any way that might influence their decision-making process. Personal independence thus refers to terms, conditions, and tenure of judicial office being adequately secured by law (see *Standard 7. Guarantees of judicial office*). It is rooted in judicial appointment extending through to a retirement age pre-determined by law (see *Standard 8. Security of tenure and irremovability*) and safeguarding an appropriate judicial remuneration against the executive's discretion (see *Standard 10. Appropriate and protected remuneration*. See also *Standard 30. Adoption and purpose of ethical standards*, and *Standard 31. Core ethical standards*).

**Substantive independence in judicial decision-making.** For their decisions, individual judges are subject to no other authority than the law and the commands of their conscience. Such independence gives judges the freedom to maintain impartiality and ensures that judges decide matters before them based on the facts and in accordance with the law (see *Standard 1. Judicial independence*, *Standard 6. The impartiality of the judge*, and *Standard 5. The role of the judiciary*).

## Standard 3: Fundamental values of the justice system

1. The basic values of the justice system are independence of the judicial process; independence and impartiality of the judiciary; high quality of the adjudicative process; efficiency of judicial process and administration; accessibility of courts and judicial services; public confidence in the courts; accountability of the judiciary; and transparency of the judicial system.
2. Each state must ensure that the justice system respects and implements the fundamental values underlying the operation of the court system and the administration of justice.
3. Judicial reform must seek a proper balance among the basic values of the justice system, especially the proper balance between efficiency and quality of judicial decision-making.

### Comment

- a. **Independence and impartiality.** The ELI-Mt Scopus European Standards of Judicial independence consider judicial independence in recognition of its role in guaranteeing judicial impartiality and the other values of the justice system. The Standards set parameters for a balance among these values.
- b. **Quality and efficiency of justice.** An effective justice system requires quality and efficiency to safeguard the right to a fair trial and seeks to ensure justice and fairness for all involved. A high quality of the adjudicative process requires high standards of judicial ethics and integrity, and adequate training of judges and court staff (see *Standard 21. Quality of Justice, point d. Judicial training*). It also requires ensuring a right of appeal consistent with the principle of finality of litigation, correcting errors in individual cases, and developing and maintaining sound rules of law.

Efficiency in judicial process and administration

includes exercising careful oversight to keep the cost of litigation reasonable, for caseload management, to ensure trials without unjustified delays, and reduce court delays and backlogs (see also *Standard 22. Efficiency of justice*).

- c. **Accessibility of courts and judicial services.** Access to justice requires that the system ensures full access to the courts. This includes economic, geographic, procedural, and substantive access:
  - Economic access means providing legal aid to those in need and reducing the cost of services and judicial fees.
  - Geographical access means providing judicial services in rural and remote areas as well as in urban centres.
  - Procedural access means, inter alia, that procedural rules allow full opportunity to hear and present evidence; provide small claims courts to adjudicate small cases at modest cost; and authorise class actions and public interest litigation in proper situations.
  - Substantive access means that the legislature provides substantive causes of action to ensure that law prevails, and rights are protected.
- d. **Public confidence.** Public confidence in the courts includes ensuring publicity of trials and decisions and carefully defining the protection of judges from legal suits.
- e. **Accountability of judges.** Judicial accountability maintains public confidence in the judiciary. It allows the public to monitor and scrutinise the activities of the judiciary by various means including through public media. Thus, the content of judicial decisions must, in general, be freely reported so that decisions are subject to public scrutiny. Bodies discharging judicial governance have a special responsibility to report to the public, the executive, and the legislature about the conduct of judicial activity. Judges must be accountable for their conduct, respect ethical standards of conduct and be subject to proper and adequate disciplinary

measures when necessary (see also *Part IV. Ethical standards (Standards 30–32)*, and *Part V. Judicial discipline (Standards 33–37)*).

- f. **Transparency.** Courts and judges must give the public and the academic community and legal profession full transparency, subject to privacy considerations.

## Standard 4: Separation of powers

1. Separation of powers among the judiciary, executive, and legislature reflects their complementary roles in preserving democracy and the rule of law.
2. Mutual respect among the judiciary, the executive, and the legislature is necessary to support each other in their proper constitutional roles.
3. The legislature must not enact provisions that interfere with judicial independence or other basic values of the rule of law and democracy.

### Comment

- a. **Judicial independence and separation of powers.** The legal foundations of judicial independence are deeply rooted in the principle of the separation of the judicial, executive, and legislative institutions. The separation of powers prevents abuse of public power through the undue concentration of power.

The judiciary must exercise its constitutional role free of direction from other branches of government (see *Standard 1. Judicial independence*, and *Standard 2. Collective and individual judicial independence*). A state must specify the role and functions of the judicial branch of government at the constitutional level or at the highest level of legislation. Guarantees of judicial independence, including security of tenure (see *Standard 8. Security of tenure and irremovability*), protection from suit (see *Standard 9. Limits to liability*), and adequate remuneration

(see *Standard 10. Appropriate and protected remuneration*) must be secured constitutionally or at the highest level of legislation (see *Standard 7. Guarantees of judicial office*).

- b. **Mutual respect.** The concept of separation of powers assumes that each branch of government is equipped to exercise the functions assigned to it and respects the functions of the other branches. The judiciary supports the legislature by giving effect to legislation according to national or European constitutional principles. Thus, the judiciary upholds and develops the law within the proper scope and limits of its role. It must refrain from interfering with the proper political decision-making capacity of the other branches of government. Proper boundaries among government branches must be finely tuned so that each branch plays their appropriate role and without substantial disruption to the relationship among the branches.
- c. **Limits on the executive.** The executive must not have control over judicial function. Thus, no executive act may change the composition of the court to affect its decision-making or reverse specific court decisions. The executive must refrain from any act or omission that pre-empts the judicial resolution of a dispute (except to engage in alternative dispute resolution of a dispute in which the government is a party) or that frustrates the proper execution of a court judgment (See also *Standard 5. The role of the judiciary, point d. Implementation of judicial decisions*).

The executive should not make statements that adversely affect the independence or the public perception of independence of individual judges or of the judiciary as a whole.

- d. **Duties of the other branches of government.** All government branches have a duty to support the execution of court judgments (see *Standard 5. The role of the judiciary, point d. Implementation of judicial decisions*).
- e. **Relevant interactions.** The executive or legislature may interact with the judiciary in areas such as judicial appointment and promotion, judicial remuneration, and court

administration provided that the intention or effect is not to compromise independent and impartial judicial decision-making, and subject to other limitations set in the Standards. The scope of these interactions is defined in particular in *Standard 10. Appropriate and protected remuneration*, *Standard 18. Financial autonomy*, *Standard 19. Court administration*, and *Part III. Judicial appointments and promotion (Standards 24-29)*.

## Standard 5: The role of the judiciary

1. The judiciary must resolve disputes by interpreting and applying the law impartially.
2. The judiciary's maintenance and development of the law through individual decisions should keep the law abreast of current social conditions and expectations.
3. Judicial decisions must promote the observance and attainment of the rule of law, democracy, and human rights.
4. The judiciary should play a leading role in reviewing the legality of executive action and in giving effect to legislation according to national, constitutional, European, and international principles.

### Comment

- a. **Resolving disputes impartially.** Parties in litigation must be treated impartially and be able to rely on past decisions in comparable cases to predict the legal effects of their actions or omissions. Hence, courts must seek to ensure equal and uniform interpretation and application of the law to provide for legal certainty and predictability. Divergences in interpretation may nonetheless exist as part of any judicial system that is based on a network of courts. In situations of profound and long-standing differences in interpreting national case law, there must be mechanisms to overcome those inconsistencies, consistent with the individual's right to a fair

trial, for example by enabling an appeal or a referral to higher courts.

- b. **Development of law.** Failure to develop and adapt case law might risk hindering reform or improvement of the law, for example because changes in society create a pressing need for a new interpretation of the law. In this situation, considerations of legal certainty and predictability require persuasive reasons for departing from uniformly settled case law but seeking equal and uniform interpretation and application of the law should not lead to undue rigidity. In all cases, as noted in *Standard 4. Separation of powers, point b. Mutual respect*, the judiciary must uphold and develop the law within the proper scope and limits of its role.
- c. **Rule of law, democracy, and human rights.** The constitutional role of the judiciary is to uphold the rule of law and to decide cases according to the legal framework designed by the national constitution and legislature. Such legal framework is rooted in the model of liberal democracy and human rights enshrined in the ECHR and the EU Treaties. The Standards recognise that courts are the ultimate guardians of national constitutional, European, and international principles, without prejudice to European states' specific national framework for enforcement of European and international law.
- d. **Implementation of judicial decisions.** The implementation of judicial decisions is essential to maintaining the proper role of the judiciary and an effective right to a fair trial. The essence of an independent court is the power to give a binding decision, which is not subject to approval or ratification nor undermined by extraneous intervention from a non-judicial authority, including the executive.

Implementation must therefore be fair, swift, effective, and proportionate with no interference from other state powers to change the judgment's terms, with the sole exceptions of amnesties (commonly granted by the legislative branch) and pardons (commonly exercised by the executive). Grants of amnesties and pardons must be exercised cautiously to avoid their use as an interference with judicial decision-making.

It is not appropriate for parliament to overturn criminal convictions through primary legislation when judicial consideration and exoneration remain possible.

States must implement judicial decisions delivered against public bodies without delay and require the claimant to seek enforcement procedures. Clear legal regulations should specify the resources available for enforcement, the responsible authorities, and the applicable procedures.

Judges must not be liable to disciplinary proceedings or in any other way sanctioned for their efforts to obtain the proper implementation of a judicial decision.

Judicial governance bodies should regularly publish information on the effectiveness of implementation of judicial decisions including those against public bodies.

## Standard 6: The impartiality of the judge

1. Judges must decide cases impartially and avoid any course of conduct or action, in or out of court, that could reasonably give rise to a perception of bias.
2. Judges must not sit in a case in which they have a personal interest or where a reasonable appearance of bias may arise from their activities, expressions of opinion, or associations.

### Comment

**a. Definition.** Judicial impartiality is both an ethical standard of conduct and a legal principle. Judges must strive to ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in their impartiality. This includes the following:

- Judges must show an open mind to and not prejudge claims that might be made by present or future litigants; judges must be amenable to persuasion within the law.
- Judges should act and appear to act in all matters without favour, bias, or prejudice.
- Judges must decide cases without influence from any party who is not involved in the proceedings.
- Judges must hear parties on equal terms and refrain from discrimination in rendering judgments.

Judicial impartiality contributes to adversarial justice and ensures that dispute resolution is based on the merits of the case only. Judicial impartiality bolsters acceptance of judicial decisions and court authority.

The subjective or personal impartiality of the judge is presumed unless there is evidence to the contrary.

**b. Disqualification for bias.** A finding of bias or a perception of bias requires a judge to be disqualified from hearing and deciding a case. Such a finding should be made when, given the relevant circumstances, there is a reasonable apprehension that a fair-minded lay observer would believe that the judge would not be impartial in resolving the dispute.

The question whether an appearance of bias is sufficient to disqualify a judge from hearing a case is the subject of extensive jurisprudence in the case law of domestic courts as well as by the ECtHR and CJEU.

**d. Recusal.** Judges should recuse themselves when it is necessary to ensure that justice is, and appears to be, independent and impartial given concerns regarding circumstances in a judge's public, private, or professional life. Judges should seek to minimise the situations in which they may be called upon to recuse themselves.

**e. Impartiality supported by fair procedures.**

Judicial impartiality focuses on the relationship between the individual judge and a party. It must be supported with fair procedures guaranteeing that each party is afforded a reasonable opportunity to present their case with no disadvantage vis-à-vis their opponent(s).

## Standard 7: Guarantees of judicial office

1. Conditions of judicial office, including appropriate working conditions, are important for the independence of, the effective functioning of, and public confidence in the judiciary.
2. Judicial independence, security of tenure, and appropriate remuneration must be entrenched constitutionally or otherwise secured by law. Pre-established law must cover remuneration; term length; procedures for selection, promotion, and performance evaluation; and the process for considering the transfer, discipline, suspension, and removal of judges.
3. Legislation introducing changes in the terms and conditions of judicial service/office must not be applied to judges already holding office, unless the changes are a part of a general and commensurate measure applying to all sectors of public service not specifically aimed at judges or unless the changes have an undisputed effect of improving the conditions of judicial service.

### Comment

- a. **Conditions of judicial office.** Conditions of judicial office must provide not only material and personal resources needed to perform judicial duties but also, a safe and fair working environment (see also, on fair working environment, *Standard 20. Case allocation*; *Standard 21. Quality of justice*).
- b. **Guarantees secured by law.** Judicial organisation should, at its core, be entrenched

constitutionally or by law emanating from parliament. Independence secured by law also requires that judges have a right of review of the lawfulness of any decision related to conditions and tenure before an independent and impartial court. Guarantees in this Standard are specifically considered in *Standard 8. Security of tenure and irremovability*; *Standard 10. Appropriate and protected remuneration*; *Part III. Judicial appointments and promotion (Standards 24–29)*, and *Part V. Judicial discipline (Standards 33–37)*.

## Standard 8: Security of tenure and irremovability

1. Judicial appointment, in principle, must be until retirement at an age fixed by law at the date of appointment, subject only to removal for cause.
2. Removal for cause must be limited to incapacity or serious misconduct that renders the judge unfit to discharge judicial duties.
3. Removal grounds and procedure must be expressly established by law, based on objective and verifiable criteria, and the removal procedure must meet fair trial requirements.

### Comment

- a. **Security of tenure until compulsory retirement age.** Security of tenure acts as a bulwark against external pressure and aims to ensure that judges do not face actual or perceived conflicts of interest arising from the uncertainty of renewal. The retirement age should be secured by law and not subject to change with retroactive effect because lowering the retirement age for sitting judges can serve as a means of removing judges. A reduction in retirement age cannot apply to a judge who is already in office without the consent of that judge.
- b. **Probationary periods.** Probationary periods for judges in office must be avoided where possible as they can be employed to undermine judicial

independence. Where a probationary period exists, it must be short. Retention with permanent tenure must also follow a fair and transparent procedure pre-established by law. Refusal to confirm the probationary judge in office should take place according to objective criteria and with the same procedural safeguards that apply when a judge is to be removed from office (see below, *point f. Irremovability and transfer*).

Probationary periods for judges in office should be distinguished from probationary periods for candidate judges acting as trainees assisting in the preparation of judgments but not yet authorised to take judicial decisions that are reserved for permanent judges. A probationary period for candidate judges to assess their fitness for permanent appointment is permissible.

See also *Part V. Judicial discipline (Standards 33–37)*, see also *Standard 38, point c. Non-regression*.

- c. **Fixed-term appointments.** Fixed-term appointments may be acceptable if they are for a long period, preferably not renewable, and used moderately to provide flexibility in numbers. They should be strictly limited to situations of exceptional and temporary demand for personnel where regular personnel planning and management cannot solve the issue. The duration of their term of office must also be specified in relation to the projected duration of the exceptional demand for personnel.

If, however, judicial appointment is made for a fixed term capable of renewal, the decision on renewal, confirmation, or removal from office must be based on merit and follow a fair and transparent procedure pre-established by law to ensure that the independence of the judiciary is fully respected.

Merit and a fair and transparent procedure pre-established by law are respectively considered in *Standard 25. Merit* and *Standard 26. Fair and transparent procedure*.

Fixed-term judges must be subject to the same safeguards as permanent judges, both in appointment and the criteria and procedure for removal.

- d. **Irremovability and exceptions.** Irremovability as a core guarantee of external and internal independence requires that judges remain in post for terms of office predetermined by law. Removal must be only based on public interest, resulting from disciplinary sanction or incapacity that renders judges unfit to discharge their duties. The same procedural safeguards apply in both cases, see *Standard 35. Disciplinary measures, point e. Removal for serious misconduct*.

The principle of irremovability and its exceptions apply to all judges including court presidents.

- e. **Removal for incapacity.** A removal for incapacity should not be termed as disciplinary. Proceedings regarding the purported incapacity of a judge, eg regarding health, however, may raise the same concerns for the administration of justice and public confidence as disciplinary violations. Incapacity proceedings also can be misused to exert influence over the judiciary. Hence, the same procedural safeguards must apply to incapacity decisions as to discipline. Standards applicable to the disciplinary process are considered in *Part V. Judicial discipline (Standards 33–37)*.

Incapacity assessments may require consideration of reasonable accommodation for a known disability.

- f. **Irremovability and transfer.** A judge normally may not be transferred to a different post, be given different judicial duties, or moved to another location without consent. Transfer without consent may be possible in exceptional circumstances. Exceptional circumstances for transfer without consent are those raising systemic and legitimate needs of the justice system, such as increased efficiency, improved procedures, or enhanced access to court, eg a lawful alteration of the court system or a temporary assignment to support a neighbouring court. They must avoid even the appearance of acting as a sanction and must not be intended nor likely to influence judicial decisions nor to have a chilling effect on judicial independence or impartiality. For the exceptional circumstance of transfer as a disciplinary sanction of last resort, see *Standard 35. Disciplinary measures*.

## Standard 9: Limits to liability

Judges must enjoy protection from civil suit and/or prosecution for omissions or acts committed in good faith while in the exercise of their judicial function.

### Comment

- a. Purpose.** Protection from suit enables judges to proceed without being intimidated or hindered by threat or fear of future litigation for carrying out their lawful duties. Protection from suit thus empowers judges to reach independent decisions by protecting them from retaliation or coercive measures through vexatious civil claims or arbitrary prosecution.

This assumes that there exist adequate rights of appeal against, and rehearing and review of, the original judicial decision itself (as opposed to proceedings against the person taking the decision). The reopening of decided cases should as a rule occur only on appeal. Judicial failings that cannot be rectified by appeal might lead to a claim against the state (see comment below, *point f. State compensation and civil liability of the judge*).

The principle of protection from suit may also extend to the activities of court staff performing judicial functions or acting on behalf of the judge or on the instructions of the judge.

- b. Scope and limitations.** Protection from suit must preserve the independence of the individual judge without shielding judges from abiding by the law. This protection must not be conflated with impunity, and protection from suit does not apply to judges acting in breach of civil law or criminal law outside their judicial office.

The scope of protection and liability of the judge in the exercise of their judicial office varies greatly in Europe. In some states, no criminal prosecution is permitted for acts or omissions in the exercise of judicial functions. In other states, the prosecution bar is limited to certain types

of acts or omissions in the exercise of judicial functions, while still barring liability for the contents of judicial decisions. Alternatively, or additionally, some states have special procedural rules regarding actions against judges, such as requiring authorisation from an independent judicial authority to prosecute them.

Against this background, these Standards adopt the view that judges who, in the exercise of their functions, commit what would in other circumstances be regarded as crimes cannot claim protection from the criminal process. Special criminal law mechanisms should be considered to protect judges against vexatious criminal claims when there is a real danger that unjustified charges could be brought against judges. With regard to civil liability, these Standards endorse the view that judges should be protected from civil suits for monetary damages for improper omissions or acts committed in good faith exercise of their functions.

- c. Activities in the exercise of judicial functions.** Judicial protection extends to the administrative actions of judges when such non-judicial actions are reasonably related to the independent and impartial administration of justice. Examples include the organisation of hearing schedules and deployment of judges and case allocation that bear directly and immediately on the exercise of the judicial function. The performance of those day-to-day functions, particularly by those with leadership responsibilities, should fall within the scope of protection.

If protection from suit is not absolute, unprotected judicial acts should be limited to instances of wilful default in which judges abuse their powers or neglect their duties, act knowingly beyond their powers or inconsistently with their duties, or act corruptly in decision-making.

- d. Clear and objective procedures.** When protection is not absolute, it must be possible to objectively identify when judges lack protection so that judges cannot abusively be threatened with removal of protection. The standard of evidence for proving violations



must also be clearly established. When a judge claims protection from suit in accordance with domestic law, the matter should be determined by an independent body with substantial judicial representation but also including such lay representation as may be deemed appropriate to secure public confidence in the finding. It must also be possible for the judge to appeal or seek judicial review of a decision to remove protection.

**e. Disciplinary proceedings.** Protection from suit does not preclude disciplinary processes where misbehaviour is alleged. Even if a judge's misbehaviour may be protected from civil or criminal proceedings, the judge may still be accountable in other forums. Protection from suit should be combined with a fair and transparent mechanism to deal with complaints of judicial misconduct. Such mechanism should permit an individual to submit a complaint regarding miscarriage of justice with a process simple enough for a lay person to execute. Disciplinary proceedings are considered in *Part V. Judicial discipline (Standards 33–37)*.

**f. State compensation and civil liability of the judge.** A remedy might lie against the state for failings in a judge's conduct other than in cases of appealable judicial errors. The state should not claim reimbursement from the judge who rendered the state liable except in the case of wilful default in the exercise of judicial functions and by prior agreement from an independent authority with substantial judicial membership. Such strict conditions should ensure that recourse proceedings are not abused.

## Standard 10: Appropriate and protected remuneration

1. Judicial remuneration must be appropriate to ensure the material security of judges and act as a shield from undue pressures.
2. Judicial remuneration must be commensurate with the responsibilities attached to the judicial function and must be based on objective and transparent criteria.
3. Judicial remuneration must be set at a sufficient level to attract and retain capable judges for the judicial post involved. Rules must ensure the proper evolution of judges' remuneration over time with a guarantee of a regular indexation of judicial salaries and pensions to the cost of living.
4. The primary rules regarding judicial remuneration must be fixed and guaranteed by law at constitutional level or the highest level of legislation.
5. Judicial remuneration, which includes judicial pension entitlements, cannot be reduced during or after the judge's term of office except in the case of a serious economic crisis in the judge's country, and then only as a temporary measure.

### Comment

- a. **Components of judicial remuneration.** Judicial remuneration comprises a core salary and a pension. The core salary is a permanent component and must be independent of judicial performance. A salary supplement may be added to the core salary in remuneration for administrative or leadership responsibilities such as being court president. A salary bonus linked to judicial performance, ie a variable remuneration scheme, may be provided by an independent judicial authority only on the basis of equitable, objective, and pre-determined criteria and a transparent procedure. Any discretionary element in their distribution must be avoided.

b. **Remuneration criteria.** Objective and transparent criteria must be established by law to determine the level of remuneration corresponding to the scope of the judicial duties. Appropriate criteria include remuneration scaled to the different types of posts within the judiciary and using the salaries of certain high-level public officials for comparison. Remuneration factors may include the judicial post, court level, seniority, or other reasons clearly prescribed by law but must exclude any discretionary assessment. A reasonable remuneration must be maintained in the case of illness and parental or carer's leave. The judge's retirement pension should be as close as possible to their final salary as a judge.

Professional evaluation cannot determine a judge's core remuneration or pension (see *Standard 27. Evaluation and promotion, point b. Uses of evaluation: self-improvement and promotion*). Bonus criteria based on judicial performance should not depend solely on productivity, but they must instead be based on a reasonable balance between qualitative and quantitative indicators in the evaluation of judicial performance (see also *Standard 27. Evaluation and promotion, point d. Criteria, procedures, and consequences of professional evaluation*).

Criteria should also include a periodic review of remuneration independent from executive branch control and the guarantee of a regular indexation of judicial salaries and pensions to the cost of living. Discussions and negotiations relating to judicial remuneration must involve the judiciary.

c. **Appropriate remuneration.** An appropriate level of remuneration ensures that judges do not need to seek other income, thus safeguarding against the potential for corrupting the judicial decision-making process. A reduction of state-funded judicial remuneration may be permissible in the case of a serious economic crisis in the judge's country provided that such reductions are not directed against judges collectively or against specific judges. In these exceptional circumstances, judicial remuneration may only decrease as a general and commensurate

measure of public policy applying in the same terms to all sectors of public service. The reduction of remuneration must also be limited and temporary in nature.

d. **Constitutional or equivalent protection.** Judicial salaries and pensions must be guaranteed at constitutional level or at the highest level of legislation. Specific legal provisions may be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

## Standard 11: Role of legal profession in protecting judicial independence

1. Lawyers have an individual professional responsibility to uphold the independence of the judiciary.
2. Lawyers' professional associations have a duty to defend the independence of the judiciary.

### Comment

a. **'Lawyer' and 'Professional association':** 'Lawyer' means a person qualified and authorised to practise before a court or to advise and represent clients in legal matters.

'Professional association' means a representative body of lawyers to which some or all lawyers belong or are enrolled, which has some responsibility for organising or regulating their profession in national law or otherwise speaks for lawyers on public issues.

b. **Role of lawyers in protecting judicial independence.** Lawyers play an essential role in protecting the right to a fair trial and effective judicial protection under Article 6 ECHR and Article 47 EUCFR. They have an ethical responsibility to act in the best interests of the administration of justice and the rule of law as well as in the interests of their clients. When judicial independence is attacked, lawyers also

are at risk from the assault on this fundamental pillar of the justice system. To properly fulfil their duties to clients, lawyers need an independent and impartial judiciary. Professional associations of lawyers should act to vindicate their members' commitment to the rule of law and judicial independence. They should have procedures in place to scrutinise developments that might threaten that independence, and they should speak out whenever judicial independence is threatened or undermined. Professional associations should also be willing to support judges who come under undue pressure. Conversely, they should identify and publicly criticise judges whose conduct reflects a failure to respect judicial independence.

The professional associations' duty to speak out extends to legislation or proposed legislation that undermines judicial independence or curtails the proper scope of the judicial role in litigation. Attacks on judicial independence in another European state should also be condemned, particularly when they arise in a state in which freedom of expression is restricted.

Professional associations should also support the judiciary in the face of unfair media criticism. They should consider action when the unfair criticism is serious and will likely have more than a passing or *de minimis* negative effect; when the criticism displays a lack of understanding of the legal system or the role of the judge and is based at least partially on such misunderstanding; or when the criticism is materially inaccurate. Their intervention is necessary to maintain public confidence in the judicial process, except when the criticism will adequately be addressed by other appropriate sources such as by the judiciary itself or when continuing discussion would lower public confidence in the judiciary.

The professional associations' actions may take the form of public statements, formal complaints, letters to the authorities concerned, and using the media, including social media. They should also offer their public support and resources to individual lawyers who defend judicial independence.

## Standard 12: Building and maintaining a culture of judicial independence

All European bodies including courts should endeavour to build and maintain a culture of judicial independence. This includes institutional structures, constitutional infrastructures, legislative provisions, constitutional safeguards, adjudicative arrangements and jurisprudence, and ethical traditions and standards of judicial conduct. All of these are essential for democracy, liberty, rule of law, and human rights in Europe and in national systems of government. They are a necessary foundation for international peace, trade, investment, and the right to a clean, healthy, and sustainable environment.

### Comment

- a. A Culture of judicial independence.** Judges play a fundamental role in supporting the social and economic development of a country. They should be able to perform their functions without intimidation, harassment, fear of violence or threats to their personal safety or to that of their family and associates. They secure the continued preservation and development of democratic societies. In essence, the culture of judicial independence ensures proper standards of conduct for all branches of the government.

The culture of judicial independence can only thrive in a system based on the principle of separation of powers because it requires the commitment of the executive and legislature, in collaboration with the judiciary, to maintain democracy and the rule of law.

Courts must also contribute to a culture of judicial independence in their interpretation of law concerning the operation of the judicial branch. Ethical standards of judicial conduct and judicial training further support the culture of judicial independence (see *Part IV. Ethical standards (Standards 30–32) and Standard 21. Quality of justice, point d. Judicial training*).

## II. Judicial governance

### Standard 13: Purpose and scope of judicial governance

1. Proper judicial governance supports and protects the operation of an effective and independent justice system.
2. Judicial governance covers areas of responsibilities essential to guarantee the independence of individual judges within an independent judiciary. These areas include judicial appointment, training, evaluation, and promotion; court administration including case allocation and court composition; deployment and transfer of judges; financing of the judiciary and the court system; providing the public with transparent and useful information about the court system and its decisions; development and adoption of ethical standards of judicial conduct; judicial discipline; employing technology that supports access to the courts and more efficient administration of justice; and the examination of proposals for judicial reform.

#### Comment

- a. **Purpose and scope of judicial governance.** Judicial governance consists of the rules, practices, and processes that manage and control the operation of the judiciary and the court system. It sets the structure of responsibility and accountability for the regulation of the judiciary and the court system. The purpose of judicial governance is to guarantee the proper functioning of an independent, impartial, and effective justice system within a democratic state.
- b. **Scope of judicial governance.** Judicial governance comprises many responsibilities. These responsibilities may be shared among bodies (see *Standard 14. Autonomy and independence of judicial governance bodies* and *Standard 16. Judicial self-governance*). These responsibilities are considered in *Standard*

18. *Financial autonomy*; *Standard 19. Court administration*; *Standard 21. Quality of justice*; *Standard 22. Efficiency of justice*; *Standard 23. Technology*; *Part III. Judicial appointments and promotion (Standards 24–29)*; *Part IV. Ethical standards (Standards 30–32)*; and *Part V. Judicial discipline (Standards 33–37)*.

### Standard 14: Autonomy and independence of judicial governance bodies

The body responsible for judicial governance must be autonomous and independent, in particular from the executive and the legislature.

#### Comment

- a. **Autonomy or independence from the executive and legislature.** A substantial degree of organisational autonomy and independence is necessary to protect the independence of both the judiciary and the court system.

This autonomy is necessary regardless of the domestic institutional arrangements on judicial governance. European states vary in whether the responsibility for the functioning of the justice system lies with the executive, an independent court administration agency, and/or self-governing judicial bodies. Specific bodies may have single competence, eg on judicial appointment, promotion, or disciplinary matters or responsibilities may be shared among multiple bodies. Responsibilities may also be allocated to a single figure, such as court presidents. Wherever responsibility is lodged, the body or person in office must be autonomous and independent from the executive and legislature.

See, on the composition of judicial governance bodies in respect of decisions affecting the selection, appointment, career progress, or termination of office of a judge, *Standard 27. Evaluation and promotion, point e. Composition of evaluating body*; *Standard 28. Membership of selecting body for appointment and promotion*; and *Standard 37. Disciplinary body*.

- b. **Independence and autonomy of court presidents.** Court presidents must ensure the delivery of high quality and efficient justice by their courts consistently with the independence and impartiality of individual judges and of the court as a whole. Court presidents also represent the courts and judges before other bodies, such as judicial self-governance bodies; the ministry of justice; or the legal profession. See also *Standard 19. Court administration, point b. Role of court presidents*.
- c. **Administrative support functions.** Administrative support functions that may affect the independence of the judiciary should also be performed by a body or bodies independent of, and with autonomy from, the executive or legislature. The executive may perform some specific administrative functions connected to the daily operation of the judiciary, but judicial involvement and oversight are required.

## Standard 15: Accountability for judicial governance

The body or bodies entrusted with judicial governance must explain their actions as required by law.

- a. **Accountability mechanisms.** To ensure and enhance public confidence in the judiciary, bodies discharging judicial governance must report to judges and demonstrate to the public that they have properly fulfilled their responsibilities. Policies and standards must protect an independent judiciary; provide a timely administration of justice; and ensure the highest standards of impartiality, proficiency,

quality, and efficiency in delivering justice (see *Standard 21. Quality of justice* and *Standard 22. Efficiency of justice*). Judicial governance must require high ethical standards (see *Part IV. Ethical standards (Standards 30–32)*) and provide for the investigation and adjudication of possible corruption or other judicial misconduct (see *Part V. Judicial discipline (Standards 33–37)*).

In this regard, accountability can be achieved by such means as annually published reports available to the public; online publication of decisions; reports to parliament or/and the ministry of justice; and participation in parliamentary hearings.

Bodies entrusted with judicial governance should also develop a culture of accountability beyond the requirements of law, unless doing so may undermine or be seen as undermining judicial independence.

## Standard 16: Judicial self-governance

Judicial self-governing bodies must be accountable in proportion to the extent of their decision-making autonomy.

### Comment

- a. **Definition of judicial self-governance.** Judicial self-governance refers to judicial self-governing bodies wielding decisive influence on decisions about judicial governance. It includes judges, not only taking exclusive and final responsibility on governance matters but also, exerting decisive influence in sharing competences with others or having a veto power over decisions taken by others. Considering the varied responsibilities falling within judicial governance (see *Standard 13. Purpose and scope of judicial governance*), decision-making may be divided among multiple judicial self-governing bodies. Such divisions may prevent the concentration of power and provide checks and balances.

**b. Commensurate levels of accountability.** Self-governance imposes a commensurately strict duty of accountability upon the judiciary. The greater the competences given to self-governing judicial bodies, the greater the need to demonstrate that they are properly carrying out their responsibilities. Transparency in operations of self-governance is essential to ensure judicial accountability and public confidence in the judiciary. The acts of self-governance bodies must be subject to an adequate system of review.

## Standard 17: Composition and balance of judicial self- governance bodies

1. Judicial self-governing bodies such as judicial councils for the judiciary should normally include a majority of judicial members democratically chosen by their peers. If judges do not constitute a majority, then the number of judicial members must be substantial and, in any event, no fewer than the number of lay members. In the event of a tied vote on any matter, the senior judicial member of the body must have the decisive vote.
2. Judicial membership requires representation of all levels of the judiciary.
3. Lay members, when included, must enjoy a high reputation for integrity within their profession and have experience in law or in areas relevant to the work of a judicial governance body.
4. The composition of the bodies, including *ex officio* members, must be clearly defined in law by the legislature or in the constitution such that that no particular group has disproportionate influence.

### Comment

**a. Regulation by law.** In view of the utmost importance of self-governance bodies,

such as judicial councils, in protecting the independence and impartiality of the judiciary, the composition of self-governing bodies must be clearly established in the constitution or in legislation.

**b. Judicial pluralism in composition.** Judicial pluralism in the composition of judicial self-governance bodies requires representation from different courts and courts levels, including sufficient representation of lower courts. The composition of judicial self-governance bodies must be structured so that no particular subset within the judiciary can have disproportionate influence. Membership must include judges whose expertise and seniority are appropriate to the level of the tasks under consideration. Except for *ex officio* members, the judicial members must be chosen democratically, without undue pressure from judicial hierarchies. Gender balance and regional balance should also be ensured as far as possible.

See *Standard 28. Membership of selecting body for appointment and promotion, point h. Judges' involvement.*

**c. Lay membership.** Involving only judges in self-governing bodies risks triggering the public perception of self-protection, self-interest, and cronyism. Lay membership, understood broadly as membership of individuals who are not judges, counterbalances these risks. In addition, the delivery of an effective and independent justice system reaches beyond the interests of judges. Involving lay members is justified by the societal functions of self-governing bodies and by the need for the public to monitor and scrutinise the governance activities of the judiciary.

In Europe, the participation of judges in self-governing bodies varies from judges being the only members or majority members, to parity between judges and lay members.

- Lay members must be experienced persons who have no personal interest in the outcome of the decisions they make and who are not susceptible to political influence.

- In order to insulate self-governance bodies from politics, lay members should not be active politicians or members of the legislature.
- Lay members should include legal professionals such as members of the legal profession and legal academics and should have adequate knowledge of the justice system.
- Independent lay members representing civil society and of high standing may also be included for the purpose of a diverse reflection of society. The inclusion of lay members with non-legal expertise reduces the perception that judicial self-governance is a lawyers' monopoly.

Lay membership does not exclude having an all-judicial panel for specific tasks such as those regarding judicial selection.

See also *Standard 28. Membership of selecting body for appointment and promotion, point i. Lay members.*

- d. Integrity and competence.** The personal integrity and competence of members ensures public confidence in the actions of self-governance bodies. The law must provide for a detailed mechanism to check the integrity and professional reputation of lay members as well as their sufficient availability to do the work required. Lay members should also demonstrate sufficient knowledge of the justice system and their commitment to the independence of the judiciary and quality of justice.
- e. Selection and appointment of lay members by the legislature.** Legislative involvement in the selection or appointment of lay persons brings democratic legitimacy but must not pose threats of undue pressure on self-governance bodies. A clear pre-determined process for nomination or filtering (or pre-selection) of candidates for lay positions must be in place to safeguard against such threats and pressures. For instance, where lay members are elected by the legislature, their selection should preferably be entrusted to non-political authorities or expert bodies not under

governmental control such as university law faculties or professional associations of lawyers. Such bodies should propose only one candidate per vacant position, so the legislature only has a right of veto.

Lay members elected by the legislature should also be elected by a high or qualified majority to ensure that the political opposition has a significant influence on the election of lay members to self-governance bodies. A high or qualified majority requirement aims to ensure broad agreement in parliament.

- f. Avoiding politicisation.** The presence of the members of the executive in judicial self-governance bodies does not necessarily impair the independence of these bodies. Executive presence may be appropriate in some circumstances.

On the other hand, a general right for the executive to participate in the work of judicial self-governance bodies may constitute a form of undue pressure, especially when this work concerns disciplinary or career matters. The presence of the executive should therefore be limited to specific issues or excluded from issues such as judicial discipline, transfer, and selection and promotion. See also *Standard 28. Membership of selecting body for appointment and promotion, point e. Separation of powers.*

- g. Ex officio members.** A fair balance should be struck between members of the judiciary and non-judicial *ex officio* members so that including *ex officio* members does not increase the risk of domination by the executive or the legislature. If the executive is represented with *ex officio* members, such members should not vote or participate in decisions concerning discipline or the transfer of judges. See also *Standard 28. Membership of selecting body for appointment and promotion, point e. Separation of powers.*
- h. Staggered renewal.** The terms of office must be staggered to ensure the institutional memory and continuity of judicial self-governance bodies. Asynchronous terms of office are a common feature in judicial self-governance bodies in Europe.

## Standard 18: Financial autonomy

1. The legislature must provide sufficient financial resources for the proper administration of justice.
2. The allocation of financial resources must be based on stable, objective, and transparent criteria.
3. To ensure the separation of powers, the judiciary must be closely involved in budget determination.
4. The judiciary must be accountable for the financial management of the funds allocated to them.

### Comment

- a. **Sufficient financial resources based on objective criteria.** Sufficient financial resources enable the judiciary to perform their duties independently of state institutions and private parties. They ensure good governance and the efficient and proper administration of justice. Funding must be based upon stable, transparent, and objective criteria determined by law. The decided budget must be realistic and sustainable to enable courts to fulfil their functions, including managing their caseloads in a timely manner.

Relevant criteria include the guarantee that funding will match the actual costs of the court system (eg number of judges and court staff), and the workload of courts, for example by appointing a sufficient number of judges in relation to caseloads. Further funding criteria include providing courts with sufficient and qualified court staff and equipment, including technology; maintaining court facilities in good condition; adequately training judges and court staff so that their knowledge and skills are up to date; and offering judges appropriate and protected remuneration (see *Standard 10. Appropriate and protected remuneration*).

- b. **Judicial involvement in the determination and allocation of budgets.** This Standard applies regardless of the court administration or funding arrangements in place.

The judiciary should preferably have a leading role in the assessment of their financial needs, preparation of budgets, and in the formal budget proposal. When a state's ability to fully meet the budgetary needs of the justice system are constrained, the judiciary should be part of the consultation process and dialogue between the judiciary, executive, and legislature about the provision of sufficient financial resources for the administration of justice. Budgetary priorities must be defined according to transparent criteria, and they must not dictate the court procedures to be followed. To promote transparency and accountability, parliamentary oversight should include the views of the judiciary. A process must be established to resolve disagreements about budgets before parliamentary adoption of the budget.

The judiciary must have adequate financial and administrative resources to properly carry out their governance functions. Judiciaries and judges should also be involved in any necessary judicial reforms. Investment in the reform of the administration of justice should be encouraged to make the judiciary more resilient to future challenges.

- c. **Financial autonomy and accountability of the judiciary.** Autonomy implies control of financial resources. When budgets have been determined, the judiciary should have autonomy from the legislature and the executive. The judiciary should preferably have a leading role in the management of budgets, and in the evaluation/audit of the budgets allocated to courts. The judiciary must also take legal responsibility wholly or partly for the financial management of courts individually and as a whole and within the budgets allocated to them. Annual financial reports on court activities should be publicly available and independently audited, and proper legal mechanisms must be available to address mismanagement of public funds.



## Standard 19: Court administration

1. Court administration that relates directly to the exercise of judicial functions should be exclusively within the responsibility of the judiciary, both in central judicial administration and in court level judicial administration.
2. The central responsibility for court administration must be vested jointly in the judiciary and the executive, or, preferably, in the judiciary only.

### Comment

- a. **Court administration.** Court administration includes judicial matters and non-judicial matters. Judicial matters, such as case allocation (see *Standard 20. Case allocation*) and deployment of judges, relate directly to the exercise of judicial functions and must primarily be vested in the judiciary or in a body subject to its direction and control. Non-judicial matters include management and administrative matters relating to courts, such as administrative planning; budget; human resources; implementation and use of technology in courts; court buildings; court security; and judicial support functions. Non-judicial matters, such as technology, can directly affect the functioning of the judiciary. Accordingly, responsibility for the overall administration of the court should be shared between the court president and the court administrator.

In some jurisdictions, court administration is undertaken by the judiciary or court presidents or a body answerable to the judiciary. In others, court administration falls under an independent agency. In some countries, court administration is the responsibility of the ministry of justice. Regardless of court administration arrangements, courts at all levels should have the power to manage material and human resources autonomously, independent of external interferences.

- b. **Role of court presidents.** Court presidents are responsible for managing the operation of their court and have jurisdictional functions.

They must have the necessary powers and resources to maintain the delivery of high quality and efficient justice, but a concentration of powers in the hands of court presidents should be avoided. Their managerial role must be exercised transparently and consistently with judicial independence and impartiality. See also *Standard 14. Autonomy and independence of judicial governance bodies, point b. Independence and autonomy of court presidents.*

These principles extend to presidents of the highest courts because they exercise the role of court president in addition to other responsibilities attached to the specific role of these courts.

## Standard 20: Case allocation

1. The system and practice of case allocation must ensure the fair and efficient administration of justice.
2. The judiciary must be autonomous in deciding the allocation of cases.
3. The allocation of cases must be based on pre-established objective and transparent criteria.

### Comment

- a. **Scope of application and safeguards against manipulation.** This Standard and comments apply to all methods of allocation, including electronic or automated allocation. When automated, the allocation system must provide safeguards against manipulation, and the results of the automated system must be open and comprehensible to the public so that any pattern showing possible abuse can be detected.

This Standard and comments apply regardless of whether the judge is sitting alone or in a panel or chamber. When a case is allocated to a panel or adjudicating chamber, it is the combined composition of the panel that should comply with the principles and criteria.

- b. **Judicial oversight of pre-established criteria and methods.** Case allocation must be the responsibility of judges with court leadership responsibilities with effective oversight by judicial self-governing bodies. The practical arrangements for the allocation of cases can be delegated to either another judge or to a civil servant authorised to allocate cases.

The allocation of cases must follow objective criteria and methods governed by legislation, regulation, or judicial or administrative practice, consistent with the right to an independent and impartial judge. The allocation of cases should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case. Case allocation among judges should ordinarily follow a predetermined plan.

Allocation must be determined based on general criteria (eg case type or category; random-based allocation; deployment needs; balanced caseload; a judge's experience or specialisation; alphabetical order; order of case arrival). The method of allocation should be applied uniformly, subject to differences in application due to the nature of the jurisdiction, the size and level of the court, and the judicial district where the case is heard. A court may have criteria for judicial recusal that provides exceptions to the allocation system. Rules relating to the allocation of cases should be defined and adopted for a fixed time in a process regulated by law. Procedural rules concerning modification of the case allocation scheme must themselves provide sufficient safeguards against inappropriate change to the scheme, eg a fixed term for the allocation scheme should not be easily removed.

- c. **Exceptions and changes.** Exceptions or changes to the case allocation system should be clearly defined, justifiable, and transparent.
- d. **Transparency.** The case allocation scheme must be transparent so that the public and parties to a case can verify whether undue discretion has been applied. Transparency also ensures that, as far as possible, the allocation of work to each judge is equal in both quantitative and qualitative terms.

## Standard 21: Quality of justice

1. Quality of justice must ensure equal access to justice, fair process, and transparency and accountability of the judicial system.
2. Promoting the quality of justice must not interfere with judicial independence and impartiality.
3. Quality of justice must be monitored and evaluated by reasonable and measurable standards.

### Comment

- a. **Quality of justice requirements and expectations.** Quality of justice refers to objective and measurable requirements and expectations regarding judicial organisation and performance. Such requirements and expectations include full access to justice and fair treatment of court users; judicial training; and sufficient court funding. They also include requirements and expectations set by the European courts regarding judicial organisation and performance, eg publicising the content of decisions, and must take account, in their definition, of the allocation of human, financial, and material resources to the judicial infrastructure. See also *Standard 23. Technology* and, regarding the sufficiency of court system resources/court funding, see *Standard 18. Financial autonomy*.
- b. **Accessibility of the justice system.** The justice system must ensure full access to the courts, including economic, geographic, procedural, and substantive access as well as access for people with disabilities.
- c. **Open justice.** Judicial proceedings must generally be open to the public and freely reported, and the content of judicial decisions, ie the operative part and the reasoning behind them, must be written and accessible to the public, subject to a proper balance, with considerations of data protection, privacy,

and confidentiality, based on clear and cogent evidence. Oral judgments (if permitted) must be recorded and made available to parties, and decisions of lower courts generally should not be excluded from publication. Judicial decisions must be clearly reasoned, and their material substance must be intelligible to the parties and the general public.

- d. **Judicial training.** High quality training of judges and court staff enhances the quality and efficiency of the judicial decision-making process, and adequate funding for training should be provided by the state. Training should be available throughout a judge's professional career with arrangements in place, such as working time waivers, to make it accessible and effective. It should extend beyond the scope of the judge's immediate practice. The body responsible for judicial training, if not a judicial self-governing body, should be autonomous from the executive and the legislature and have its own budget. This body should work under the supervision of the judiciary, which must bear overall responsibility for judicial training.

## Standard 22: Efficiency of justice

1. In addition to sufficient funding, efficiency of justice requires a foreseeable and reasonable length of judicial proceedings.
2. The operation of the justice system must be monitored and evaluated according to reasonable, transparent, and measurable standards.
3. Such standards must ensure a proper balance between the values of efficiency and quality of justice, so that efficiency promotes quality of justice.

### Comment

- a. **Principle of efficiency.** Economy in time, quantity, and costs in the administration of

justice must safeguard the principle of a fair trial and quality of justice.

- b. **Involvement of judges and court managers in setting targets.** To ensure its continuous improvement, an efficient justice system requires commitment and cooperation from stakeholders at different levels (state, court, judge). Judges and court managers from each tier of the judiciary must actively set, or participate in setting, standards and targets for their own tier with the support of court presidents. Consultations with other stakeholders, such as members of the legal profession or consumers associations, are also recommended.

- c. **The timeliness of judicial proceedings.** The timeliness of judicial proceedings must rely upon clearly defined, reasonable, and measurable timeframes. Targets may be set by judges and court managers at national and regional levels or at individual court and judge level, but targets should take into account different kinds of procedure, eg civil, administrative, or criminal procedure, in the planning and collection of data. Local resources and the specific local features of the court system should also be taken into account.

- d. **Timeliness indicators.** Standards and targets for the timeliness of judicial proceedings may be set by judges and court administrators based on indicators such as the number of judges, the estimated length of proceedings (disposition time of cases), the clearance rate, and the number of pending cases. Established targets for timeliness must be achievable, published, and subject to periodic re-evaluation. Targets may be referred to in the evaluation of the court performance.

- e. **Timeliness evaluation criteria.** The timeliness of judicial proceedings in a specific case must be assessed, for the purpose of ensuring a fair trial, considering the circumstances of the case. These may include complexity, party conduct, the actions of the court in question and other government authorities, if any, involved in the

process, and the importance of the case for the parties.

**f. Consultation with court users.** Court users should, when appropriate, be consulted regarding the time management of the judicial process in different types of proceedings.

**g. Departures from standards and targets.** Foreseen or existing departures from standards and targets for timeliness must lead to prompt actions from those in charge of the administration of justice to remedy the causes of such departures. Such causes may include an insufficient number of judges and/or court staff.

**h. Monitoring efficiency of justice.** Reliable systems must be in place to generate information and statistics on important steps in the judicial process, based on reasonable and measurable indicators. Such indicators should be measured consistently across the justice system and with nationwide data collection across specific justice areas. This information must inform the work of court administrators, judges, and others involved in the administration of justice. Information about actions taken consequently must be made public in an appropriate form.

Every national jurisdiction should prepare and make public periodic reports with detailed relevant data and analyses as regards the timeliness of judicial proceedings and the administration of justice.

## Standard 23: Technology

1. Technology, including Artificial Intelligence (AI), must be guided by and aligned with the principles of judicial independence, impartiality, and the right to a fair trial. Human oversight of AI must, so far as practicable, ensure compliance with these principles.
2. The proper use of technology is essential to support efficiency, quality, and consistency of judicial decisions, access to justice, and transparency of justice.
3. The use of technology may support judicial decision-making. Judges must always retain oversight of the judicial process, even when that process is facilitated by technology. Automated decision-making and judicial uses of technology must not vitiate judicial independence.
4. The judiciary must, so far as practicable, oversee the development and implementation of technology and be able to determine how it should be used.
5. The judiciary must be properly trained in the use of technology to facilitate effective human oversight and the continuous improvement of new court processes.

### Comment

- a. **Use of technology in procedural actions.** This Standard understands technology as Information Technology, including AI, to support courts and judiciaries in the determination of judicial proceedings.

Technology, thus broadly understood, should be proven and up-to-date technology that meets judicial needs. Technology is essential to courts and judiciaries in relation to document management, workload planning for courts, and legal analytics. With human oversight of the system, technology can guide procedural actions or provide automated processing

of procedural actions in the management and determination of judicial proceedings. The use of technology to support decision-making on the substantive determination of judicial proceedings must also remain subject to human oversight so that the element of human flexibility inherent in the judicial process remains.

This Standard concentrates on the incorporation of AI in justice systems.

- b. **AI definitional issues.** Varying AI definitions reflect different assumptions about technology and the use of AI and its regulation. Notable definitions include the definition of AI systems by the OECD and the CoE Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law:

*An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.*

- c. **Benefits of incorporating AI in justice systems.**

AI has great potential to support courts and the judiciary in case management, legal research, and judicial decision-making. Incorporating AI in justice systems can achieve greater efficiency, quality, and consistency in judicial decisions, as well as improve access to justice and transparency of the justice system.

- **Efficiency, quality and consistency of judicial decisions.** Incorporating AI in the operation of the justice system can improve its efficiency and reduce the workload of judges and court staff. It can streamline the administration of justice and facilitate the judicial decision-making process, but efficiency resulting from using technology must promote quality of justice (see *Standard 22. Efficiency of justice*).

- **Access to justice and transparency of justice.** Effective and practical access to justice should also be improved with AI. The use of AI must not prevent, limit, or render unfeasible access to justice. Support or some appropriate human-based alternative route must be available to access justice.

- d. **Independence, fairness and impartiality of judicial proceedings.** The use of data and algorithms in justice systems can carry substantial risks for judicial independence, impartiality, and the right to a fair trial. These include risks of biases, such as gender, racial, and identity-based bias in legal analytics; disclosure of sensitive data; false, inaccurate, or irrelevant information; over-reliance on technology; and disinformation, censorship, and control.

In light of these risks, judiciaries have a duty generally to bring their judicial expertise into the use of AI and identify risks to the rule of law and right to a fair trial, such as whether the judge's ability to scrutinise evidence and witness testimony presented through AI remains intact. This duty is essential to maintaining the integrity of the judicial decision-making process.

Hence, the use of AI in justice systems is a judicial matter that requires formal rules to define its scope, functions, and users. Judiciaries must have effective control as well as oversight of the design, development, and implementation of technology to maintain the integrity of the judicial decision-making process. This applies regardless of the type of judicial governance preferred in any jurisdiction (see *Standard 14. Autonomy and independence of judicial governance bodies*). In particular, case allocation and hearing schedules must remain under judicial control.

- e. **Human oversight.** AI performs tasks automatically and supports the execution of proceedings. Human oversight by the judiciary must aim to critically evaluate the interactions between AI and the judicial decision-making process, protect the right to a fair trial and equality of access to justice, and eliminate opportunities for corruption within AI platforms.

Automated decision-making remains subject to the same safeguards that would apply if the decision in question had been taken through human intervention.

AI design must also be user-centred with strong collaboration between users and stakeholders in the design and piloting of technology. Judges also play a key role in identifying the needs of court users, particularly those of vulnerable users.

- f. **Transparency and intelligibility.** The reasoning behind created or adopted AI algorithms should be transparent and understandable to users and society at large. Their understanding of how AI works, what and how information is used by AI, and ascertaining the proper execution of proceedings is essential to maintaining public confidence in the justice system.
- g. **Traceability.** Appropriate accountability mechanisms must enable scrutiny of technology by its users; the state, including legislative scrutiny; and society at large. AI tools and solutions must be auditable and explicable to ensure that AI systems are operated in accordance with legal and ethical standards.
- h. **Privacy and data protection.** AI provides substantial datasets as well as judicial analytics on procedures and actors of judicial systems. This can increase transparency and judicial accountability for court performance, based on key performance indicators (see *Standard 22. Efficiency of justice, point h. Monitoring efficiency of justice*). The use of AI also requires the adoption by judicial governance bodies of proper data governance and strategy concerning how the data will be collected, stored, processed, and disseminated. This includes effective data security and protection measures that are compliant with privacy and data protection legislation.

Case-related data can only be used by the judiciary to monitor court performance, not that of individual judges (see *Standard 27. Evaluation and promotion*).

- i. **Training for new skills and competences.** Although judges might not have primary responsibility for technical aspects, the development of expertise within the judiciary supports continuity of knowledge within the judiciary. Comprehensive training must help judges and court staff to build the relevant skills and keep abreast of technology. Individual judges and court staff must be provided with full information about who provides the technology and how it works. Training should equip judges and court staff with a reasonable understanding of AI and the vocabulary and capacity to identify how the use of AI affects the fairness of judicial proceedings. Further, training is required to keep judges and court staff up to date with AI developments.
- j. **Continuous improvement of AI.** The judiciary must adopt AI that allows for the continuous updating and supervision of AI tools considering evolving legal and ethical standards ('governable AI'). Governable AI also requires judiciaries to evaluate the use of AI through prototypes and/or pilots before committing to its full implementation. AI systems should not be fully implemented unless they have been stringently tested, evaluated, and proven to work fairly and effectively. Once implemented, mechanisms should continue to provide for effective user feedback, including from court users, for the purpose of continuous improvement. Humans must supervise AI systems.
- k. **Security safeguards.** Judiciaries need to safeguard the design and operation of the technology they use, as well as the integrity of their data. Safeguards includes legislation and rules of court tailored to the needs of proceedings. Such safeguards must meet state-of-the-art-standards regarding information and cyber security.

AI requires the collaboration of the judiciary with qualified public and private service providers who provide the technical infrastructure, functionalities, and skilled personnel to operate AI in the justice system. These providers should be overseen by independent state bodies and independent certification authorities, which attest to the proper functioning of AI.

**I. *Appropriate and guaranteed financing.***

There must be appropriate and guaranteed financing for the effective design, introduction, implementation, and use of AI by the court administration and judges, as well as for the

maintenance, updating, and development of AI. Training for judges and staff regarding AI must be adequately funded (see also *Standard 21. Quality of Justice, point d. Judicial training*).

## III. Judicial appointments and promotion

### Standard 24: Fundamental role of selection, appointments, professional evaluation, and promotion

1. The criteria and methods of judicial selection, appointments, professional evaluation, and promotion must promote the independence, impartiality, and quality of the judiciary and enhance public confidence in the judiciary.
2. Such criteria and methods must safeguard against selection and appointments that might be perceived as biased or directed towards undermining the independence and impartiality of the judiciary or the quality of justice.

#### Comment

- a. **Fundamental role of selection, appointments, professional evaluation, and promotion.** The manner of appointment is central to the fundamental principle of a court established by law. Under this principle, the criteria and methods of judicial selection, appointment, composition of the court, professional evaluation, and promotion must be prescribed by law, and such legal requirements must be followed in the functioning of the court. This is to ensure that judicial organisation does not depend on the discretion of the executive but rather is regulated by law.

Substantive criteria and methods must support independence and impartiality and guard against features that could raise reasonable doubts about their capacity for manipulation by external or internal actors. Manipulation of the selection and/or appointment criteria and methods will taint the legitimacy of appointed judges and undermine public confidence in the judiciary's impartiality.

- b. **Court established by law.** The close connection between the principle of a court 'established by law' and the fundamental principle of the rule of law requires that the criteria and methods for judicial selection and appointment be strictly and transparently observed. The appearance of formal compliance with the relevant selection and appointment rules should not conceal or obscure illegitimate processes. Hence, adherence to the principle of a court established by law requires strict scrutiny of the manner of selection and appointment of judges, including court presidents.

European states all recognise the principle of a court previously established by law, in contrast to an *ad hoc* tribunal, although the terminology and the methods of recognition of the former differ. For instance, some states employ instead the concept of a 'lawful' or 'natural' judge or court.

- c. **Independence, impartiality, and quality of justice as well as relevant factors supporting them.** This Standard focuses on the goals to be served by the criteria and methods relating to judicial selection, appointments, professional evaluation, and promotion in Europe. European states employ varying methods to fulfil these functions, and more than one method sometimes exists within the same legal system. Most European legal systems provide for a public competition for judicial vacancies with candidates reviewed by a committee of judges and non-judges, but system specifics vary. In some European states, successful selection leads to direct access to the judiciary, subject to the completion of a period of initial training. In others, selection could instead be made after training preceding the choice of a judicial career. In still others, the competition gives access to a judicial training institution. This Standard is not concerned with the extent of similarity or difference in domestic laws governing judicial selection, appointments, professional evaluation, and promotion. Instead, the Standard focuses on



goals related to independence and impartiality of the judiciary and the quality of justice, as well as factors that can affect the achievement of these goals.

## Standard 25: Merit

1. Judicial selection, appointments, professional evaluation, and promotion must be based on merit.
2. Merit must be defined by adequate, objective, and published criteria, having regard to high standards of professional qualifications, integrity, ability, efficiency, and the objective needs of the court.

### Comment

- a. **Merit-based judicial selection, appointments, professional evaluation, and promotion.** Selection and appointments based on merit are fundamental to the notion of a court in a state governed by the rule of law. In a democratic state, judicial legitimacy is grounded in public confidence in the judge's independence, qualities, and impartiality. Merit-based selection, appointments, professional evaluation, and promotion aim to support a culture of judicial independence and quality of justice. They aim not only to eliminate the risk of incompetence, corruption, and invidious discrimination, but also to promote public confidence in the quality of the judiciary. Merit-based criteria also support equality of opportunity for candidates, regardless of gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Competence, independence, and impartiality of a court are not subject to any exception. Merit-based processes and criteria serve as a supplementary guarantee of the personal independence of judges.

- b. **Adequate, objective and published criteria.** Merit must be defined by adequate, objective, and published criteria designed to measure the abilities, knowledge, and skills appropriate for the judicial post. Adequate, objective, and published criteria are necessary to ensure procedural fairness (also considered in *Standard 26. Fair and transparent procedure*). Objective criteria decrease the likelihood of discrimination and other impediments to the selection of women and minorities. Public notice of clearly defined criteria promotes procedural fairness and public confidence in the judiciary.
- c. **Substantive criteria.** The substantive criteria must be objective and focus upon high standards of professional qualifications, integrity (see *Standard 31. Core ethical standards*), ability, efficiency (see *Standard 22. Efficiency of justice*), personal qualities, and the objective needs of the court.

- **High standards of professional qualifications.** High standards of professional qualifications are required to ensure a demonstrable knowledge of the law and legal processes, including what constitutes a fair hearing. Focusing on objective professional qualifications minimises the influence of political criteria or connections.
- **Abilities and evidence of abilities.** Judges should have an outstanding capacity to synthesise, distinguish, compare, and contrast a range of legal sources, including European legal materials such as EU law and the ECHR; determine the legal materials that are relevant to a specific legal or factual question; and analyse questions of fact and law to determine the answer to a particular legal question. Judges must resolve legal problems with clear and reasoned decisions. Such decisions require clarity, precision, command of the law, persuasiveness, and balance. Evidence of ability may be provided in various ways: by demonstrated specialised legal training or study, professional practice, scholarly legal writing, and/or prior judicial experience.

- **Legal specialisation.** Legal specialisation may be needed for some judicial posts. It requires candidates to demonstrate theoretical and practical proficiency in one or more areas of the law or the ability to master the relevant areas.
  - **Personal qualities.** Important personal qualities include the following:
    - Compliance with standards of judicial conduct; personal and professional integrity; mental and moral fortitude appropriate to a culture of judicial independence; and discretion.
    - Resilience and calmness under pressure; ability to work under significant time pressures.
    - Interpersonal skills: respect, patience and courtesy in dealing with others including judges, lawyers, litigants, witnesses, and victims.
    - Strong oral and written communication skills; being an attentive listener and a clear communicator.
    - Ability to keep an open mind and treat different individuals, communities, and groups fairly: empathy and understanding for persons from backgrounds different from that of the judge.
    - Awareness of the social context in which legal disputes arise where this may help to explain a law's purpose, its typical function, and its effects on people or society as a whole.
    - Working effectively and diligently to dispatch judicial business.
    - Being a 'team player' who can work collaboratively with fellow judges and other members of the court staff.
  - **Evidence of personal qualities.** To avoid subjective interpretations and ensure a consistent and equal treatment of candidates in their evaluation, the law must specify the type of information and sources that may or may not be used as evidence of these personal qualities.
- d. **Court presidents.** This Standard extends to the selection and appointment of court presidents. Their selection and appointment must follow a merit-based process as well as adequate, objective, and published criteria. Candidates must at the minimum be eligible for appointment to judicial office in that court and have the requisite managerial abilities for the role.

## Standard 26: Fair and transparent procedure

Judicial selection, appointment, professional evaluation, and promotion must follow a fair and transparent procedure pre-established by law.

### Comment

- a. **Court established by law.** The legal procedure for the selection, appointment, professional evaluation, and promotion in accordance with the eligibility criteria goes to the essence of the right to a court previously established by law. For a court to be established by law, it is necessary to protect the manner of selecting and appointing judges, including court presidents, from illegitimate influence by the executive, the legislature, or the judiciary itself.
- b. **Two-stage process.** Merit-based appointments require two procedural stages: judicial selection followed by judicial appointment. The selecting body reviews applications and selects candidates for recommendation to appointment. The two-stage process prohibits unilateral appointment and limits opportunities for patronage by restricting the discretion of the selecting and appointing bodies.

**c. Procedural fairness.** The criteria and procedure for judicial application, selection, appointment, professional evaluation, and promotion must be regulated by law in unequivocal and detailed terms. Regulation by law includes specifying the legal basis for the procedure as well as having processes in place to fill vacancies in a timely manner.

**d. Transparency: criteria, methods and vacancies.** Transparency provides openness and accountability to judges and society at large regarding the criteria and methods of selection, appointment, professional evaluation, and promotion. Criteria must be set forth in primary or secondary legislation.

The application, selection, appointment, and promotion processes must be clearly explained, open to public scrutiny, and fully and properly documented. Information about the appointment, evaluation, and promotion process can be provided in various ways, including by publication of the agenda and minutes of the selecting body, and by publication of the decisions of the appointment body.

Standards regarding what information is publicly available and how, when, and where it is communicated should be established. This should include at least brief information about the members of decision-making bodies, such as their names.

Judicial vacancies must be advertised publicly and promptly. The eligibility and merit criteria for any specific vacancy must be clear and detailed.

**e. Number of judges.** The number of judges, including that of judges in the highest courts, must be either fixed by law or clearly regulated by law. If the legal system permits an increase in numbers, the increase must be pursuant to a fair and transparent procedure pre-established by law and be justified by, and proportionate to, the judicial needs of the court. The judicial needs of the court(s) in question must be objectively and verifiably assessed by reference to the workload of the court(s).

**f. A competitive process.** A merit-based system requires a competitive process with equal opportunity to apply for selection for initial appointment and promotion. Applicants must compete for the position, which usually includes a written application, a selection interview, and some associated written and oral testing. The application process may be open to any person with high standards of professional legal qualification, subject to the conditions established by domestic law, or to persons who not only have some professional qualification but also relevant legal specialisation or practical legal experience.

**g. Access to information.** The selecting body must have access to all information relevant to the exercise of their function. Information considered for the purpose of candidates' assessment must be based on sufficiently varied and verifiable sources.

**h. Confidentiality.** To ensure an open and free exchange of views and a full, honest, and fair assessment of the candidates, the selection discussion following the assessment process must remain confidential.

**i. Structured discretion for appointment.** If the constitutional or other legal provisions authorise the appointing body to decide who is to be appointed or promoted, the selecting body must nominate only one candidate. The selecting body's recommendations or express opinions must be followed in practice. If, however, the appointing body declines the selecting body's nomination, the appointing body must set out adequate reasons and request reconsideration of the matter by the selecting body in light of the reasons provided.

**j. Importance of providing reasons.** Written decisions regarding selection, appointment, professional evaluation, and promotion must explain in concrete and substantive terms, subject to merit-based criteria and the objective needs of the court, why a candidate has been rejected, selected, or nominated for appointment or promotion. Applicants must be provided with reasons for selection decisions based on qualifications, integrity, ability, efficiency,

and the objective needs of the court. Such information allows interested parties to monitor the process and criteria for judicial selection. A balance should also be struck between the need for an open and transparent process and the privacy of the applicant.

The demonstration of a sufficient assessment of the candidates on merit criteria set by law constitutes an important safeguard to prevent the selecting body from acting out of political or other improper motives. It is also a necessary safeguard in a jurisdiction when the appointing body is left with a choice among multiple candidates for appointment. Strict adherence to eligibility criteria and assessment on the merit criteria established for the judicial post is therefore fundamental to the right to an established court by law and the right of a judge to an effective legal remedy against decisions on selection and promotion. Stating the reasons for the decision taken by a selecting body provides evidence of the criteria that were applied and promotes public confidence in the decision.

Failure to provide a reasoned decision for selection may engender a perception that the appointment was based on a criterion (eg connection to a member of government or to some other interest group) other than merit. Such irregularity is sufficiently grave that it undermines the integrity of the appointment, and, in respect of those tried by irregularly appointed judges, the right to a trial conducted in a court established in accordance with the law.

**k. Reasons and right of review.** Consistent with Article 6 ECHR and Article 47 EUCFR, applicants have a right of review of the lawfulness of judicial selection before an independent and impartial court. The lawfulness of the selection must be reviewed considering the fundamental role played by the judiciary in a state governed by the rule of law. A reasoned decision provides a record sufficient to examine an unsuccessful candidate's challenge to the decision's legality.

## Standard 27: Evaluation and promotion

1. The criteria, procedures, and consequences of the professional evaluation of judges, as well as the composition of the evaluating body, must be objective, clear, and pre-established by law.
2. Promotion to higher judicial offices and to managerial positions within the judiciary is subject to the same requirements. Criteria and procedures must be exhaustively pre-established by law and readily accessible to the public.

### Comment

**a. Purposes.** The evaluation of individual judges seeks to enhance professionalism and the quality of justice. It provides an opportunity for self-evaluation and feedback, which judges can use to improve their skills as well as the quality of their judicial work and that of the courts. Programmes of individual judicial evaluation can also enhance public confidence in the judiciary because they demonstrate that the judiciary is accountable for its work and reflects upon its practices in a way that would be expected in other professions.

This Standard also applies to the evaluation of the work of court presidents.

**b. Uses of evaluation: self-improvement and promotion.** Many methods of judicial professional evaluation exist with differences regarding who conducts the evaluation, as well as the frequency, timing, and depth of scrutiny of the judge's work. When professional evaluation is used for judicial self-improvement only, it may be informal, and evaluators need not purport to give overall evaluations or ratings nor make any other comments that might be used for other purposes, such as promotion. Alternatively, professional evaluation may formally provide information on the suitability of a judge for promotion.

Where professional evaluation provides information relevant to promotion or any other aspect of the judicial career, safeguards must be in place to avoid the risk that judges under evaluation might decide cases to meet the expectations of the evaluators rather than their own understanding of the law and the facts of the case before them. Appropriate safeguards are detailed in comments below, *points c-l*.

Whether formal or informal, any evaluation of individual judges must respect judicial independence while seeking proper accountability for judicial performance. Professional evaluation cannot determine a judge's core remuneration or pension.

**c. Evaluation to improve judicial organisation.**

Individual evaluations may be used without identification of the judge to determine areas where judicial organisation, including working conditions, can or must improve. They may also be used to identify areas where judicial training or education would strengthen judicial organisation. It is also relevant, in aggregate form only, to create benchmarks for the evaluation of judges.

**d. Criteria, procedures, and consequences of professional evaluation.**

The criteria, procedures, and consequences of professional evaluation, as well as the composition of the evaluating body and the timing and frequency of evaluation, must be objective, clear, and pre-established by law. These professional evaluation factors must be defined by judges, preferably in consultation with such other stakeholders in the judiciary as members of the legal professions and legal academics. The evaluation process, whether formal or informal, must preserve the independence of the judicial system and the autonomy of the individual judge's decision-making.

Individual professional evaluation must also rely on a reasonable balance between qualitative and quantitative criteria or indicators with a focus on both the judge's legal abilities and the judge's manner of working, such as communication skills, diligence, efficiency, and integrity (see *Standard 25. Merit*).

**e. Composition of evaluating body.** The evaluating body must consist of judges or a majority of judges who are among the most qualified and experienced in the relevant judicial field. When professional evaluation provides information relevant to promotion or any other aspect of the judicial career, safeguards must be in place following those detailed under *Standard 28. Membership of selecting body for appointment and promotion*.

Court presidents should not have an exclusive competence to evaluate judges and should be complemented by other members of that court or another court.

Non-judicial members, if any, should be legal professionals with sufficient knowledge and experience of the judicial system to be capable of properly evaluating the work of judges. Legal professionals must not appear in the court of those judges whom they will be assessing. Their opinion must not be decisive in the professional evaluation.

Because undue influence may come from external or internal sources, evaluators must demonstrate integrity and impartiality in their conclusions, follow clear criteria, consider evidence from multiple sources, and base their assessments on rigorous evidence and reasoned arguments.

There must be transparent and objective criteria for avoiding conflicts of interests on the part of the evaluators.

**f. Evaluation of the content of judgments.** The integrity and autonomy of judicial decision-making require evaluators to exclude from professional evaluation the substantive quality of judgments in individual cases. Evaluators must therefore concentrate their analysis on the manner in which the judge exercises their decision-making.

This means that the content, meaning, or direction of a judgment cannot be raised or commented on by evaluators because these are all formative of the substantive quality of a judgment. Appeal is the only legitimate way to challenge the substantive quality of a judgment.

Insufficient reasoning in judgments, a much higher number of reversals on appeal than for colleagues within the same jurisdiction, or a lack of the necessary knowledge of law and procedure are points which can be raised during the professional evaluation provided that such points are raised solely for the purpose of improving judicial skills.

Notwithstanding the above, quantitative criteria, such as the number of reversals, must be avoided as the primary basis for the professional evaluation of the individual judge. Any reversal on appeal cannot be considered without also scrutinising the reason for reversal.

**g. Procedural fairness.** Where professional evaluation provides information relevant to promotion or any other aspect of the judicial career, individual judges must be able to express their views on the process and the proposed conclusions of an evaluation and have a right to challenge the factual and legal bases of the evaluation. Any such challenges should first be heard by a senior judge or an ad hoc review body that was not involved in making the evaluation. That judge's or review body's decision should then be reviewable before a court.

The evaluation criteria for individual judges should follow a graduated system of measurement, such as a point scale distinguishing between levels of performance, eg exemplary, laudable, good, or satisfactory, and failure to meet the evaluation criteria. Evaluation results must be presented in objective summaries, along with an explanation of how to interpret the results.

If professional evaluation provides information relevant to promotion or any other aspect of the judicial career, the evaluation must be based on sufficient, reliable, comprehensive and fairly presented data and sufficiently reasoned representations by the court or judge under evaluation.

**h. Funding.** Judicial evaluation programmes must be adequately and securely funded.

**i. Disciplinary proceedings and sanctions.** Because professional evaluation involves different purposes and principles from

disciplinary proceedings, it must remain distinct from disciplinary proceedings with differentiated procedures conducted by separate bodies. The principle of security of tenure excludes dismissal or removal of a judge on the basis that the judge fails to sufficiently meet professional evaluation criteria, unless the evaluation process demonstrates incapacity or misconduct that renders the judge unfit to discharge their duties. More generally, when disciplinary breaches result from failing to meet the professional evaluation criteria, the situation must then be analysed in terms of disciplinary liability with the associated procedural safeguards (see *Standard 34. Disciplinary grounds, point c. Disciplinary process and professional evaluation*).

**j. Confidentiality.** In order to preserve the independence of the judicial system and the autonomy of individual judges' decision-making, the detailed results of a judge's professional evaluation must remain confidential. Data from individual evaluations may form part of aggregate data about court performance.

**k. Criteria and procedures for promotion.** Promotion to higher judicial offices or to managerial positions within the judiciary must be based on objective criteria and procedures that are clearly and exhaustively pre-established by law and easily accessible to the public. Like selection and appointment, professional evaluation, and promotion must be based on merit, and follow the same standards as selection and appointment (see generally *Part III. Judicial appointments and promotion (Standards 24–29)*). The promotion process, its outcome, and the reasons for decisions must be transparent.

**l. Role of seniority in promotion.** Although relevant professional experience is an important condition for promotion, seniority must not be the primary consideration for promotion. When promotion is primarily associated with length of service, choosing among candidates who are all formally equally qualified can too easily rely on loyalty to other judges or politicians. Instead, it is important to base promotion, like initial selection and appointment, on qualifications, integrity, ability, efficiency, and the objective needs of the court.

## Standard 28: Membership of selecting body for appointment and promotion

1. The selecting body must seek to identify the best candidate or candidates for the positions concerned, based on merit and the need to uphold the independence and impartiality of the judiciary and the quality of justice.
2. The membership of the selecting body for appointment as a judge or for promotion within the judiciary must be properly qualified, diverse, balanced, and composed in a manner that avoids bias, perception of bias, or any other improper motive.

### Comment

- a. *Selecting body and guarantees of independence and impartiality.*** The selection for appointment as a judge and promotion within the judiciary based on merit is a crucial task. Its processes have great influence on judges' independence and impartiality. Those rules cannot give rise to reasonable doubts in individuals as to the selecting body's imperviousness to external factors and their impartiality with respect to the applications before them. The composition and processes of selecting bodies must inspire public confidence in the justice system.

'Selecting body' means the body that selects and recommends candidates for appointment to any court.

- b. *Manner of appointment to selecting body.*** There is no single appropriate model in setting up a selecting body provided that the manner in which members are appointed and its composition guarantee the body's independence and enable it to function effectively. The 'manner' of appointment to the selecting body refers to the substantive conditions and procedural rules governing appointments to the selecting body. Relevant factors are who the appointing authorities are, and the role of the judicial community in that

process; how decisions to appoint members of the judiciary are made; and the guarantees of independence in relation to both.

- c. *Anti-deadlock mechanisms.*** An anti-deadlock mechanism must be in place by law or in the constitution to guarantee against the blocking of the election procedure of members of judicial self-governing bodies because of the failure to achieve a majority in parliament. The primary function of the anti-deadlock mechanism is to compel the majority and the opposition to find an agreement. Anti-deadlock mechanisms include extending the tenure of incumbent judges to mitigate the consequences of a deadlock. Consideration should also be given to enforce an alternative appointment mechanism based on a broad participation of stakeholders in the judiciary when the normally competent body or bodies fails to nominate or appoint in time.

- d. *Independence of selecting body.*** The selecting body must carry out its work and decision-making independently from other branches of power, such as the legislature, the executive, or other authority to which it submits an assessment of candidates for a judicial post. Decisions on appointment or promotion of judges must not depend on loyalty to politicians or other judges. Accordingly, the drafting and application of the rules regarding the composition and functioning of the selecting body must protect members from external intervention or pressure that may jeopardise their independence. These rules must preclude indirect as well as direct influence that could affect the decisions of the selecting body.

- e. *Separation of powers.*** Safeguards are necessary to ensure the separation of powers that characterise the operation of the rule of law and preclude undue political influence in the composition and functioning of the selecting body. The executive's appointment of some members of the selecting body does not, in itself, give rise to a presumption of the selecting body's subordination to the executive or doubts as to the legitimacy of their decisions if, once appointed to the selecting body, members are free from influence or pressure when carrying out their role. Executive and legislative powers may also be represented in the membership of

the selecting body if they are in the minority and otherwise cannot have decisive influence. Such composition of membership may enhance the institutional emphasis on a meritocratic and non-partisan selection process. See also *Standard 17. Composition and balance of judicial self-governance bodies, point e. Selection and appointment of lay members by the legislature, and point f. Avoiding politicisation.*

**f. Eligibility criteria.** The body making selection and promotion decisions must be properly qualified and trained. Members of the selecting body, whether judges or not, must be appointed based on their competence, experience, understanding of judicial life and integrity, and dedication to judicial independence and impartiality.

**g. Diversity in composition.** To ensure a diversity of viewpoints, the composition of the body must fairly reflect the diversity of society.

**h. Judges' involvement.** The membership of the selecting body must normally include a majority of judges chosen democratically by other judges, without undue pressure from judicial hierarchies. Judicial membership should include representation from different courts and levels of the judiciary and representatives of the main judicial associations. The composition of the selecting body must be structured so that no subset within the judiciary can have disproportionate influence. Membership must also include judges whose expertise and seniority are appropriate to the level of the post under consideration. See also *Standard 17. Composition and balance of judicial self-governance bodies, point b. Judicial pluralism in composition.*

*Ex officio* membership may be permissible in a small number of cases, such as the participation by the president of the supreme court for supreme court appointments.

The chairperson should be a judge with the decisive vote in the process.

**i. Lay members.** Lay members, understood broadly as non-judicial members, should include legal professionals such as lawyers (provided that they are not involved in litigation before the relevant

courts) and legal academics. Independent lay members representing civil society and of high standing may also be included for the purpose of reflecting the diversity of society. The membership of non-judges does not exclude an all-judicial panel for specific selection tasks. Non-judicial members should not be active politicians or members of the executive or the legislature.

The appointment of non-judicial members should be entrusted to non-political authorities. If such members are elected by parliament, they should not be active politicians or members of the executive or legislature and should be elected by a high or qualified majority, thus necessitating significant support from the opposition. Their membership should contribute to reflecting the diversity of society in selecting the body's overall composition.

See also *Standard 17. Composition and balance of judicial self-governance bodies, point c. Lay membership, and point e. Selection and appointment of lay members by the legislature.*

**j. Conflict of interests.** There must be transparent and objective criteria for avoiding conflicts of interests on the part of members of the selecting body (see also *Standard 17. Composition and balance of judicial self-governance bodies, point d. Integrity and competence.*)

**k. Accountability.** Information about the candidates for the selecting body, including their names, must be made publicly available within a reasonable time before appointments to that body are made. Reasons must be provided for the selecting decisions taken (see *Standard 26. Fair and transparent procedure, point j. Importance of providing reasons, and point k. Reasons and right of review*)

**l. Duration of mandate.** Members must be appointed for a fixed term with renewal of membership limited to the temporary need to ensure sufficient continuity of membership within the body as a whole.

**m. Funding.** The selecting body must be adequately and securely funded.



## Standard 29: Fair reflection of society

The composition of the judiciary should fairly reflect the diversity of society to maintain public confidence in the appointment process and in the administration of justice.

### Comment

**a. Fair reflection of society in the judiciary.** The judiciary must fairly reflect diversity within its society. The composition of the judiciary in all its tiers must not reflect patterns of exclusions that may or may not be otherwise commonplace in society, in particular in relation to women and to ethnic minorities. Equal opportunities in the recruitment and promotion of judges, as well as equality in judicial decision-making, must be ensured regardless of an individual's characteristics including gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

A judiciary that fairly reflects the diversity of society helps to ensure that the judiciary can benefit from a range of experiences, viewpoints, and perspectives, thus enabling the courts to better serve the society they reflect. A fairly reflective judiciary also promotes public confidence in the appointment and promotion process and in the administration of justice.

**b. Public policies.** European states and the national body (or national bodies) in charge of judicial training, selection, promotion, and administration, as well as the representative bodies of judges, must take adequate and effective measures to acknowledge the importance of, and ensure the development of, a judiciary that fairly reflects diversity within their society, subject to merit. They must take measures to ensure an inclusive working environment, respectful of the principle of non-discrimination and equality. These measures must apply from the moment of applying to initial training programmes for the profession of judge (where applicable), selection criteria and

procedures, and judicial promotion.

**c. Monitoring diversity.** Diversity in the composition of the judiciary should be monitored and regularly reviewed. The body/bodies responsible for judicial recruitment and promotion should provide for the systematic monitoring of, and reporting on, reliable data and statistics regarding diversity, which allow for comparison over time. The body/bodies in charge of recruiting or promoting judges should also regularly identify diversity and inclusion issues that require attention. They must encourage equal opportunities and respect for diversity and inclusion. The same applies to gender equality.

**d. Gender equality.** Appointments to all levels of the judiciary should aim to achieve gender equality. Gender equality in the selection and promotion of judges aims to ensure equal visibility, empowerment, responsibility, and participation of different genders at all levels of the judiciary. Gender inequality in the judiciary is often characterised by a 'glass ceiling', ie women being underrepresented at higher court levels and in senior managerial positions. Adequate and effective public policies must give appropriate consideration to the need for the attainment of gender equality, for example through monitoring gender representation in higher courts in particular, and the removal of historic factors of discrimination.

European states should adopt clear selection and promotion policies stating the principle of gender equality. Gender policies should also reflect the commitment that conscious or unconscious gender bias will not determine judicial selection and promotion decisions. For example, women should be equally involved in the decision-making process of judicial selection and promotion, as this contributes to greater confidence in the judicial selection and promotion procedure.

Gender equality and non-discrimination should also be included in any professional training programmes. Gender equality should be further strengthened with the adoption and implementation of measures to promote

work and family life balance for all judges. This entails measures such as introducing flexible working arrangements that are allowed by law; introducing paid and accessible paternity leave, and parental leave; and special working conditions for new parents and judges with young children.

## IV. Ethical standards

### Standard 30: Adoption and purpose of ethical standards

1. Judges must at all times have regard for the necessary confidence of the public in the independence and impartiality of the judicial branch.
2. Judges must be guided by appropriate standards of conduct drafted to foster a culture of independence, impartiality, and integrity and maintain public confidence in the administration of justice.
3. Ethical standards should state the founding values guiding judicial work and judicial behaviour.
4. Consistent with the principle of judicial independence and separation of powers, judges must lead the adoption, revision, and enforcement of standards of judicial conduct.

#### Comment

- a. Purpose and scope of ethical standards.** Ethical standards of judicial conduct articulate ethical rules and standards of judicial behaviour to foster a culture of independence, impartiality, and integrity in the judiciary. Such standards are among the highest and most rigorous standards for any profession and need to be maintained to sustain public confidence in the administration of justice. Judicial ethical standards coexist with the rules developed by the legislature and the courts to protect judicial independence, impartiality, and integrity. Ethical standards are self-imposed on judges upon taking the judicial oath or affirming office because the oath or affirmation declares the individual judge's commitment to judicial independence, impartiality, and integrity.

Ethical standards apply to serving judges and other professionals, such as lay or substitute

judges who perform judicial functions, unless otherwise specified.

- b. Ethical standards set by judges.** Judicial independence, impartiality, and integrity are essential. Hence, the initiative to develop and update ethical standards must be judge-led whether the initiative comes from judges, judicial associations, judicial councils, and/or courts with the highest authority. The decision-making process on setting standards of judicial conduct should be entrusted to a broad working group with representatives of judges from all types of courts and different levels of experience, as well as representatives of judicial associations. Court users including legal professionals, civil society, and those in academia may be legitimately invited to contribute as well. The approval of standards must be entrusted to the judiciary and, insofar as possible, the judges themselves, following consultation with the same broad range of stakeholders.

- c. Distinction from discipline.** Standards of judicial behaviour state ethical duties and responsibilities and are not legally binding. The scope of the restraints that come with the acceptance of judicial office may give rise to some reasonable and diverging interpretations such that the primary responsibility of deciding a course of action rests with the individual judge.

The legal instrument(s) regarding judicial discipline must be independent from ethical standards. A breach of an ethical standard ought not per se lead to disciplinary proceedings, but the relevant conduct may constitute a disciplinary offence subject to the disciplinary process. The body responsible for drafting the code must be different from the body with disciplinary functions.

- d. Clear, transparent and responsive standards.** Standards must provide sufficient clarity to judges, the legal profession, litigants, and the wider community about how to manage potential conflicts and perceptions of partiality.

Standards should be included in judicial training and widely disseminated to make transparent the standards of conduct to which the public can hold the judiciary accountable. Standards should be periodically reviewed, revised, and updated considering emerging ethical challenges and the efficacy of the standards in addressing such challenges.

**e. Ethics advisory body.** In case of doubt as to the application of these standards to a given situation, judges may seek the advice of a body, such as a judicial ethics advisory committee, that should be established to assist in the implementation and interpretation of the standards. It should, upon enquiries from judges, advise them on ethical concerns and on the uniform application of ethical principles to everyday situations. This body should further support a culture of ethical commitment among judges with the development of guidelines or commentaries and other measures aiming to foster ethical behaviour. If no such advisory body exists, consultation with colleagues, and preferably with the court president, is recommended.

The body or bodies charged with setting and interpreting ethical standards should be different from the body responsible for judicial disciplinary proceedings, and should not involve the same people in both processes.

**f. Support.** Judges must also be adequately supported to address challenges they face in the judicial process and supported to uphold appropriate standards.

**g. Contextual standards on impartiality.** Ethical standards on judicial impartiality must provide guidance on maintaining judicial impartiality and the appearance of impartiality by helping judges to identify and address particular issues that may threaten impartiality. They should set out common understandings of judicial practice to maintain the confidence of the public, the legal profession, and litigants in the judge's impartiality and that of the judiciary.

Ethical standards would ordinarily need to address issues such as the following:

- how bias can manifest itself and impinge decision-making, and the types of influences that may not amount to bias;
- the restrictions on outside activities of sitting judges, such as commercial, professional, or political activities, in order to insulate judges from threats to impartiality;
- the extent to which judges may comment publicly on issues that they may be called on to determine as part of their role as a judge; and
- circumstances in which judges should recuse themselves.

### Standard 31: Core ethical standards

1. Judges must show the discretion and reserve necessary for the proper exercise of their judicial duties. They must respect the secrecy of deliberations.
2. Integrity is essential to the proper discharge of the judicial office. Judges must follow high standards of honesty, loyalty, dignity, and discretion inherent in the authority and dignity of judicial office. They must not use the prestige of their judicial office for their own or others' personal gain.
3. Judges must treat equally and respectfully all persons who appear before them. They must be aware of, and respect diversity in society, including such differences among people as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### Comment

- a. Core ethical standards set by judges.** The core ethical standards in this Standard are recognised by European and international judicial associations as fundamental ethical standards.

- b. Reserve and discretion.** A judge's reserve and discretion involve a balance between the rights of judges as individuals and constraints linked to their function. A judge should limit activities that reduce the judge's capacity to discharge judicial office, particularly if those activities are compensated.
- c. Integrity.** Integrity depends on the judge resisting corruption and upholding high ethical standards of conduct, such as honesty, loyalty, dignity, and discretion inherent in the authority and dignity of judicial office.
- d. Equality.** Equality of treatment of all who appear before the courts is an essential principle of judicial behaviour. A judge must not, in the performance of judicial duties, by words or conduct, manifest prejudice towards any person or group. Judges must exercise their judicial duties with respect for all persons, including the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any grounds that are immaterial to the proper performance of such duties.

## Standard 32: Judicial freedom of expression

- Judges enjoy the fundamental right to freedom of expression. They must, however, exercise that freedom to avoid situations where the impartiality and independence of the judiciary are likely to be called into question.
- The protection of judicial independence may require current members of the judiciary to speak publicly regarding issues related to the functioning of the justice system.

### Comment

- a. Freedom of expression and participation in debates of public interest.** Pluralistic liberal democracies protect the freedom to participate in debates on matters of public interest, and judges are included within that protection.

Judges also have a responsibility to dispel public misconceptions about the administration of justice, to promote access to justice, and inform the public on legal matters of public interest. Such participation helps civil society discuss the justice system on an informed basis and contributes to public confidence in the judiciary. Some questions, such as those relating to the separation of powers, may have political implications but, nonetheless, involve important matters about which the public has a legitimate interest in being informed. Therefore, judges may comment on matters concerning the rule of law, judicial appointment or promotion, or the proper functioning of the administration of justice.

- b. Balance between freedom of expression and restraint.** Judges' right to freedom of expression reflects that judges are involved in the society they serve. A balance must nonetheless be struck between a judge's enjoyment of freedom of expression and the need to be, and be seen as, independent and impartial in the discharge of their judicial duties. This balance is justified by the special role of judges as guarantors of the rule of law and justice: judges need public confidence in their independence and impartiality to be successful in carrying out their duties, and they must affirm their independence and impartiality through their conduct. Hence, judges must show restraint in exercising their freedom of expression in cases where the authority and impartiality of the judiciary are likely to be called into question.

The duty of restraint applies to any circumstance when, in the eyes of a reasonable observer, a judge's statement could objectively compromise the independence or impartiality of the judiciary. Possible dangers are that the public may perceive personal opinions as being objective facts or assessments and that the tenure of judicial office might be seen as a vehicle for promoting personal views, particular organisations, or causes. Judges must also avoid speech that gives the appearance of pre-judgment or bias on a particular issue. Opinions must be expressed in a considerate and respectful manner in order for the judge to stay within the remit of freedom of expression without appearing biased to a reasonable observer.

This duty of restraint may be superseded by a duty to speak publicly in situations where democracy and the rule of law are under threat.

- c. **Duty to defend judicial independence.** Every judge has a duty to promote and protect judicial independence. In situations where democracy and the rule of law come under threat, the protection of judicial independence may require judges to speak publicly with a view to defending the rule of law, judicial independence, or other similar values falling within the debate on issues of public interest. Self-judicial governance bodies, judges' associations, or judges in leadership positions may be best placed to speak out on behalf of the judiciary.
- d. **Communication on behalf of the judiciary.** Communication to the media about issues of public interest should be made by courts' spokespersons or press and communication services under the responsibility of the independent body or bodies discharging duties of judicial governance.
- e. **Statements in relation to political activities (active or former political mandate).** Direct involvement in partisan party politics will raise doubts as to the separation of powers and the independence or impartiality of a judge.
- f. **Commenting on cases.** Decided cases, other than those they decided, may be commented on by judges in a professional or academic environment. In their professional activities, judges have the right to make constructive and respectful comments on decided cases. By contrast, individual judges must not comment publicly on their own or other judges' pending or ongoing proceedings, so as not to affect, or appear to affect, the rights of any person whose proceedings are pending or ongoing before the courts.
- g. **Judicial involvement in setting ethical standards on freedom of expression.** Ethical standards and any restraints on the exercise of a judge's freedom of expression should be prescribed by judges or by another independent body with majority membership of judges, in consultation with the judiciary as a whole.
- h. **Freedom of expression on social media.** The above standards and principles apply to online forms of expression and association, including social media. Specific social media guidelines and training should also be provided by judges or judicial self-governing bodies.

Therefore, judges must not state their views on political matters when they are unrelated to the functioning of the justice system.

## V. Judicial discipline

### Standard 33: Purpose of disciplinary proceedings

1. The fair and impartial administration of justice requires a system to review complaints about the court system, including complaints against individual judges, as well as a mechanism to consider if disciplinary action against judges is warranted.
2. The entire disciplinary process, including receiving, investigating, hearing, and adjudicating disciplinary complaints, as well as provisions for appeal, must follow fair trial guarantees, and balance public accountability and transparency with safeguards against external and internal attempts to exert improper influence on judicial decision-making.

#### Comment

- a. Scope and purpose of disciplinary process.** To maintain public confidence in the judiciary, the law must provide a mechanism to receive, consider, and act upon complaints about individual judges. These Standards define the process for investigating, adjudicating, and addressing misconduct. The Standards apply to all judges, including court presidents.
- b. Safeguards.** These Standards provide a framework for judicial discipline in a system that has sufficient safeguards to protect judges and the judicial system from the weaponisation of discipline to exert political pressure on, or otherwise improperly influence, judicial decision-making. Such a system requires guarantees against improper influences both external to the judicial system, eg from the executive and legislative branches, and internally, within the judiciary. The system must provide adequate protections to safeguard against a chilling effect in which judges feel pressure to decide cases on a basis other than facts and law. It must also safeguard against punishing judges who have raised questions about threats to rule

of law (see also *Standard 32. Judicial freedom of expression*). The entire disciplinary process must fulfil fair trial standards under Article 6 (1) ECHR and Article 47 EUCFR.

- c. Transparency.** Some transparency is needed to maintain public confidence in the disciplinary system. Transparency in dealing with complaints is particularly important when public confidence in courts is low. Transparency might be pursued through a variety of actions including accessible websites with information on disciplinary proceedings; making hearings open to the public; the publication of annual reports with relevant statistics; and anonymised case reports.

### Standard 34: Disciplinary grounds

1. Misconduct must be described by law and with sufficient precision to enable judges to determine what conduct is proscribed.
2. The law that outlines the misconduct that may result in disciplinary action must be enacted by a body authorised by law to define disciplinary offences.
3. Grounds for finding misconduct must have been properly enacted when the relevant conduct was alleged to have taken place.
4. The content of judicial decisions, including differences in legal interpretation among courts and judicial error, cannot amount to misconduct nor be treated as constituting any other disciplinary offence, except in cases where a judge has unequivocally acted in bad faith.

#### Comment

- a. Grounds by law and in specific terms.** The law proscribing the conduct must be enacted by a body authorised by law to define judicial

disciplinary grounds. The authority to set standards for judicial conduct should ensure that the enacting body's definition of disciplinary grounds promotes integrity and effectiveness in the judicial system, independence and impartiality of judges, and public confidence rather than furthering political motives. Judges may be disciplined only on account of misconduct enacted by law at the time of the alleged misconduct.

Grounds for finding misconduct must provide judges with sufficient guidance to know what is proscribed. Adequate specificity also guards against the weaponisation of judicial discipline and its discriminatory application. Proscribed conduct must be determinable by objective and verifiable criteria and limit the decision-makers' discretion for arbitrary or politicised application.

See also *Standard 30. Adoption and purpose of ethical standards, point c. Distinction from discipline.*

**b. Content of judgments.** The possibility that the content of judges' decisions could be attacked in disciplinary proceedings is generally incompatible with judicial independence. A finding of judicial error must be addressed instead by appeal of the judicial decision under the appeal process of the judicial system. This promotes consistency and coherence in the operation of the law while guarding against abuse of the disciplinary system.

Judicial decisions ruled to be made in unequivocally bad faith, whether in respect of jurisdiction or procedure, in ascertaining or applying the law, or in evaluating evidence, can be the basis for disciplinary actions. Generally, disciplinary action in such instances should come after a finding of judicial error in the underlying matter within the jurisdiction's legal system.

A 'judicial decision' refers to the assessment of facts, evaluation of evidence, and the interpretation and application of relevant law.

See also *Standard 27. Evaluation and promotion, point f. Evaluation of the content of judgments.*

**c. Disciplinary process and professional evaluation.** As noted in *Standard 27. Evaluation and promotion (see point i. Disciplinary proceedings and sanctions)*, professional evaluation follows different purposes and principles from the disciplinary process. Professional evaluation and disciplinary proceedings must remain distinct and be conducted by separate bodies. Professional evaluation should not be used to sanction or remove judges.

## Standard 35: Disciplinary measures

1. Sanctions may be imposed based only on misconduct described by law and with sufficient precision to determine what conduct is proscribed.
2. Sanctions must be exhaustively specified and proportionate.
3. Temporary suspension pending resolution of a complaint is justified only in extraordinary circumstances and, when it arises, must be with full pay and only for a fixed term limited to the period necessary for the resolution of proceedings. The suspension decision must be made by an independent and impartial decision-maker.
4. Transfer without consent may be possible as a disciplinary sanction only in exceptional circumstances and in connection with disciplinary proceedings complying with these Standards.
5. Where impeachment is permitted, the defendant judge is entitled to fair trial standards complying with these Standards, with necessary adaptations considering the role of the legislative branch in the process.

### Comment

**a. Sanctions by law and in specific terms.** An appropriate range of sanctions for a particular disciplinary ground must be described specifically



and exhaustively within enacted law to ensure that it is clear, precise and unambiguous, and that its legal implications are foreseeable.

**b. Proportionality of sanctions.** The imposition of sanctions must be subject to the principle of proportionality. Proportionality applies when determining such factors as the nature and seriousness of a disciplinary breach; consequences for the administration of justice; and the personal circumstances of the defendant judge, including the judge's apparent motivation and any previous disciplinary sanction. Having a reasonable range of sanctions (ranging from mandatory training to a warning; reprimand; suspension; fines; and removal) better complies with proportionality.

**c. Temporary suspension.** Suspension as an interim measure is justified only in extraordinary circumstances and, even when it is justified, only with full pay. Extraordinary circumstances include strong evidence of serious misconduct, including the commission of a crime. A temporary suspension decision must be made by an independent and impartial decision-maker. An officer of the court in which the judge sits, eg the court president or vice-president, may present information to the decision-maker, but the person making the decision must not be an officer of the defendant judge's own court, must be independent and impartial, and must appear to the public to be so. Reasons must be provided to demonstrate that it would be improper for an office holder to continue to carry out judicial duties during an investigation.

**d. Transfer without consent as a disciplinary sanction.** A judge may not normally be transferred to a different post, different judicial duties, or to another location without consent. Transfer without consent may nonetheless be possible as a disciplinary sanction of last resort, and in disciplinary proceedings complying with these Standards.

Other permitted circumstances for transfer without consent are the systemic and legitimate needs of the justice system (see *Standard 8. Security of tenure and irremovability, point f. Irremovability and transfer*).

The criteria and procedures for transfer without consent should safeguard against the use of transfer as a disguised disciplinary sanction.

**e. Removal for serious misconduct.** Removal as a disciplinary sanction is an exception to the principle of irremovability of judges, considered in *Standard 8. Security of tenure and irremovability*. Removal must be warranted by serious misconduct, such as commission of a serious criminal act or gross or repeated negligence. The ground of serious misconduct must be expressly established by law, based on objective and verifiable criteria, and subject to the procedural safeguards of a fair trial.

Removal for serious misconduct must be distinguished from removal for incapacity, considered in *Standard 8. Security of tenure and irremovability, point e. Removal for incapacity*.

**f. Removal for serious misconduct by impeachment.** An impeachment process for at least some segment of the judiciary is part of the legal system in many countries and is not, in itself, inconsistent with these Standards. Nonetheless, because impeachment is initiated, conducted, and decided by a political branch, it brings a heightened risk of threat to judicial independence and weaponisation for political purposes. Hence, an impeachment process must meet the general standards of a fair trial, with possible adaptations considering differences resulting from the legislative role.

## Standard 36: Disciplinary process

1. The procedure for reviewing and deciding whether a complaint against judges should be filed, and the subsequent hearing and decision-making process, must be established by law.
2. The defendant judge in disciplinary proceedings must enjoy the guarantee of a fair trial.
3. Disciplinary proceedings must be fair and expeditious so that defendant judges are subject neither to interminable pending charges nor to an unreasonably short time to prepare their defence.
4. The procedure must specify who has the authority to investigate and gather evidence relevant to complaints about judges. This investigation must balance responsibilities to the public in the disciplinary process with fairness to the judge under investigation.
5. The individuals or bodies who decide whether to file a complaint, adjudicate complaints, and decide on sanctions must all give clear and precise reasons for their decisions, including an adequate factual basis.
6. The defendant judge must have the right to challenge the disciplinary outcome before a court with full jurisdiction. A state's law on impeachment may provide that a first instance decision in an impeachment proceeding is final.

### Comment

- a. **Disciplinary procedure established by law.** The disciplinary procedure must be established in the constitution, legislation, or both. Disciplinary proceedings against judges follow four main stages: receipt and screening of complaints; preliminary investigation; specification of alleged misconduct, defence, hearing leading to the disciplinary decision; and a right to review the disciplinary outcome.

- b. **Screening complaints.** The complaint review process should permit the summary dismissal of complaints for alleging conduct that, even if proven, would not constitute a disciplinary matter. Likewise, the complaint review process should permit dismissal of complaints when a proper initial investigation determines there would not be adequate credible evidence to prove any allegation of misconduct.
- c. **Who can make a complaint.** These Standards permit anyone affected by the acts or by the behaviour of the judge involved in their case or anyone having a legal interest in the matter to make a complaint. Nevertheless, the Standards aim to provide safeguards for screening out or fairly adjudicating complaints that are politically motivated or directed towards influencing judicial decisions or intimidating or punishing judges.

Generally, these Standards disfavour anonymous complaints and recommend that notice to the judge should include the identity of the complainant. However, the question remains whether the screening body might properly withhold the complainant's name from the judge when notifying the judge of a dismissal of a complaint. A state's general legal position on anonymous complaints and identification of complainants' identities should be considered in light of factors including the overall state of the judicial system, as well as the state's history and current political situation.

- d. **Information about the complaint review and preliminary investigation.** Those reviewing complaints may decide not to notify the judge about whom a complaint is brought, eg because a claim can be dismissed on its face for failing to constitute a disciplinary matter even if proven or because of fear that a judge might destroy evidence if aware of a complaint review. A judge may also be contacted in the complaint review and preliminary investigation stages to provide more information. Investigation should be limited to materials within the scope of the complaint. Judges must provide requested information that is pertinent to a complaint, subject to the privilege against self-incrimination.

If contacted at the complaint review stage, judges must have a right to representation, including to challenge what information is sought and an effective opportunity to respond to a complaint.

If a complaint is filed and dismissed, the judge must be notified generally of the nature of the complaint and reasons for its dismissal. A dismissal generally should not be in the public record identifying the judge, although aggregate and anonymised results should be revealed in public reports.

The complainant must be notified of the outcome of the complaint review and the preliminary investigation.

- e. **Fair trial guarantees.** Disciplinary proceedings against judges at first instance and on review or appeal must satisfy fair trial standards under Article 6 (1) ECHR and Article 47 EUCFR. Simplified proceedings may apply to minor misconduct leading to low-level sanctions, such as a warning or reprimand.

This Standard reflects the view that disciplinary proceedings against judges express the punitive powers of the state and that, regardless of whether an individual sanction comes within the scope of Article 6 (1) ECHR, any disciplinary sanction may nevertheless entail serious consequences for the lives and careers of judges.

- f. **The right of defence and to be heard.** The right to be heard in all proceedings is fundamental under Articles 41 (right to good administration), 47 (right to an effective remedy and to a fair trial) and 48 (right to fair legal process in all judicial proceedings) EUCFR. It guarantees the defendant judge the opportunity to make known their views effectively before any individual measure liable to adversely affect them is taken.

This right also requires the disciplinary body to pay due attention to the observations submitted by the defendant judge, examining carefully and impartially all the relevant aspects of the individual case. The disciplinary body must state sufficiently specific and concrete reasons for their decision. A detailed answer to every

argument put forward by a defendant judge is not required, provided that the disciplinary body, during the proceedings, gives specific and express replies to the submissions that are decisive for the outcome of the proceedings in question. Final decisions with explanations should be published.

Judicial disciplinary hearings must meet the following requirements, regardless of whether disciplinary actions fall within the national civil, administrative law, or otherwise:

- Prompt notification to the defendant judge when, following the review and preliminary investigation stages, a decision has been made to refer a complaint to the disciplinary body.
- Full access to the particulars of the allegation of misconduct and supporting evidence must be provided prior to trial, in sufficient time for the adequate preparation of a defence.
- Investigation for the hearing and the hearing itself must proceed expeditiously but with reasonable time for the judge to prepare a defence.
- Equality of arms, which is a feature of the wider concept of a fair trial, implies that the defendant judge must be afforded reasonable opportunity to present their case without being placed at a substantial disadvantage vis-à-vis the authorities bringing those disciplinary proceedings against them.
- The defendant judge must have the right to present evidence in a public hearing unless exceptional circumstances justify dispensing with such a hearing.

- g. **Challenging the disciplinary body's decision.** If the first instance disciplinary body deciding liability does not satisfy the requirements of judicial independence and impartiality under Article 6 ECHR, their decision must be subject to review by a court having full jurisdiction and the attributes of an independent and impartial

court under Article 6 ECHR. The review of the disciplinary body's decision may be sufficient to remedy the shortcomings of that body's decision under Article 6 ECHR.

The review carried out must be appropriate to the disciplinary nature of the disciplinary body's decision under challenge.

Thus, the reviewing court must properly identify what is contested by the applicant and must avoid any discrepancy between what the court considers the applicant had or had not contested and the actual grounds of the challenge made by the applicant. In the context of disciplinary proceedings against judges, the establishment of facts may be especially important. The reviewing court in such a case must be able to determine all aspects of the matter, including the establishment of the facts, the assessment of the evidence and the assessment of the proportionality between the misconduct and the sanction.

A review of fairness of the proceedings in their entirety includes the way in which the evidence is obtained and submitted.

## Standard 37: Disciplinary body

1. The membership of the disciplinary body or bodies that investigates, hears, and initially adjudicates the complaint must be appointed following an independent and impartial procedure. At least half of the members of the disciplinary body or bodies must normally be judges.
2. Different decision-makers must: (a) initiate, receive, and review a complaint against a judge or court and conduct any preliminary investigation necessary to determine whether a disciplinary action should be filed; and (b) hear and decide the complaint and, if established, whether (and if so, then which) sanctions should follow. Those taking part in (a) cannot take part in (b).

### Comment

- a. **Composition of disciplinary body.** Decision-makers must be selected and appointed based upon transparent and objective criteria, and subject to procedural guarantees of impartiality and independence from the executive and legislature. The disciplinary panel or body adjudicating the complaint must not include anyone who initiated or investigated a complaint.

Subject to the specific structure and number of judges in the disciplinary body, additional relevant factors to determine the composition of the disciplinary body may be whether some lay members of the disciplinary body continue to work and receive a salary outside that body because this inevitably involves their material, hierarchical, and administrative dependence on their primary employers and may call into question both their independence and impartiality.

European sources recommend that the disciplinary decision-makers should be judges or bodies the membership of which is comprised of a majority of judges appointed following an independent and impartial procedure. This position asserts the judicial majority as necessary to ensure judicial independence and benefit from judges' special awareness of the proper judicial role and conduct. Others contend that combating corporatism and public accountability militate for inclusion of at least some lay members, broadly understood as non-judicial members, with a demonstrated record of fostering judicial independence and accountability. Such inclusion then raises the question from what groups non-judicial decision-makers should be selected and on what criteria, eg how to define civil society groups and appropriate representatives from that sector. A state's history and culture of judicial independence may be legitimate factors in determining this matter.

The rules regarding the composition of disciplinary bodies and the selection and appointment of their members should also be designed to ensure gender balance and fairly reflect the diversity of society.

## VI. Assessing consistency with the ELI-Mount Scopus Standards

### Standard 38: Assessing consistency with the ELI-Mount Scopus Standards

1. Consistency with the Standards is assessed, not only based on a state's formal independence but also by evaluating how such guarantees operate in practice, issues that potentially threaten judicial independence, and whether formal guarantees have been misused on an ad hoc or systemic basis.
2. Current and proposed state actions must be assessed to determine whether they are intended to undermine judicial independence or other fundamental values of the justice system.
3. Interactions among the branches of government or with private interests may be taken into account to consider whether a state's actions are consistent with these Standards.

#### Comment

- a. Assessment.** The Standards are intended as a tool for actors who assess the need and consistency of judicial reform and practices with judicial independence. The Standards address the core elements of judicial independence, and comments in the Standards identify more concrete requirements to be fulfilled so that an assessment can consider which parameters are or are not met.
- b. De facto judicial independence.** Consistency with the Standards cannot be determined solely by reference to the wording of the formal guarantees of judicial independence. It must be assessed by reference also to the specific national legal and factual context of the measure at issue. A single measure, which on its face may be permissible, may fall

short of the Standards when considered in conjunction with changes elsewhere; hence, the need for an assessment of the situation in its broader context. The overall assessment concerns the way in which domestic rules are drafted, the reasons and intentions behind their adoption, and the manner in which they are enforced. Thus, measures taken by governments in countries that change their system of government must meet the test of predominantly valid or proper aims against the values in Article 2 TEU.

It also follows that for judicial independence to be established as a matter of fact, the textual constitutional, or legislative safeguards of the independence and impartiality of the judiciary do not suffice. They must be effectively incorporated into everyday administrative attitudes and practices. This further implies that not only any direct influence, in the form of instructions, is precluded, but also types of influence that are more indirect and liable to affect the decisions of the judges concerned, such as the close monitoring by the executive of ongoing judicial proceedings. Undue pressure on judges in the exercise of their functions may come from within or outside the judiciary.

- c. Non-regression and promotion of standards in Europe.** European states are committed, upon accession to the CoE and/or EU, to protecting and promoting judicial independence. This precludes national provisions that engender the weakening or reduction of the guarantees of judicial independence that existed at the time of a Member State's EU accession. Regression can be identified by the comparison between the principles accepted upon accession and those in operation. This comparison takes into account the state's constitutional and legal structure, the legislation in force, existing case law, and the intentions of those taking the measures at issue. The comparison is made against the Standards

and comments, which concretise values set in the ECHR Preamble and Article 2 TEU.

The principle of non-regression also entails the obligation upon states to use the maximum available resources for the protection of judicial independence. Protection in this context refers to a duty to remedy deficiencies that could jeopardise the level of protection required under the EU Treaties.

**c. Monitoring independence.** Material changes concerning judicial independence should be monitored towards an effective and sustained improvement over time. A state's formal compliance with remedial measures is not enough and implementation of remedial measures must be monitored over a sustained period.

**d. Verification and evidence.** Verification and evidence must be based on dialogue with states, stakeholders, in particular judicial networks and national and international judicial associations, and all other relevant sources. Information must be objective, reliable, specific, and properly updated. Sources of assessment include, in particular:

- Case law of the CJEU and the ECtHR;
- Contacts with stakeholders, in particular judicial networks, national human rights institutions, judicial associations, civil society, and academics;
- Contributions from EU Member States and other stakeholders in the context of the European Rule of Law Mechanism;
- CoE reports: in particular, from the Venice Commission, Group of States against Corruption (GRECO); Consultative Council of Judges (CCJE), Department for the execution of judgments of the ECHR; Committee for the efficiency of justice (CEPEJ) annual study for EU Justice Scoreboard; Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL);

- Country-specific assessment in the European Semester and the Cooperation and Verification Mechanism;
- Country-specific assessment of the implementation of relevant milestones and targets in EU Member States' Recovery and Resilience Plans;
- EU Justice Scoreboard;
- Eurobarometer survey on perceived judicial independence;
- Guidelines, reports, and surveys from relevant international organisations, in particular, the OSCE Office for Democratic Institutions and Human Rights (ODHIR) reports and guidelines, and UN reports;
- Relevant materials by the EU Agency for Fundamental Rights (FRA), eg EU Fundamental Rights Information System (EFRIS);

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- Opinion No 18 (2015): The position of the judiciary and its relation with other powers of state in a modern democracy
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