

# Judicial Independence (2015)

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## Objective

The objective of this updated questionnaire is to collect factual information on structural guarantees for judicial independence, which cover certain guarantees for the independence of judges and for the independence of the judiciary.

The updated judicial independence questionnaire maintains almost all questions from the 2014 questionnaire and is already prefilled with the replies you have provided. If a reply was later adapted following clarifications you have provided, these replies are highlighted. Please review these modifications and feel free to adapt other 2014 replies, if the legislation or practice in your country has changed or if you believe the replies should be clarified. Please highlight any such additional changes red.

New or modified questions are highlighted. These mostly concern questions regarding the composition and powers of Councils (prefilled with your replies in 2014), and the appointment of judges. The questionnaire containing replies could later be published.

## Respondent's Information

<b>Member State</b>	<b>Council for the Judiciary</b>
Romania	Consiliul Superior al Magistraturii / Superior Council of Magistracy

## Additional Information

For additional information regarding the questionnaire, please contact the Directorate-General for Justice and Consumers of the European Commission.

# 1. AUTHORITIES WITH POWER TO DELIVER THE MAIN DECISIONS ON HUMAN AND FINANCIAL RESOURCES IN THE JUDICIARY<sup>1</sup>

Which authorities or bodies have the power to deliver the following decisions in the judiciary?

## 1.1. Selection, appointment and dismissal of judges and court presidents

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- x) decision establishing there is a vacant judicial position
- a) proposal of candidates for the appointment as first or second instance judges
- b) decision on the appointment of a first or second instance judge
- c) proposal for the dismissal of a first or second instance judge
- d) decision on the dismissal of a first or second instance judge
- e) proposal of candidates for the appointment as court presidents
- f) decision on the appointment of a court president
- g) proposal for the dismissal of a court president
- h) decision on the dismissal of a court president

	x)	a)	b)	c)	d)	e)	f)	g)	h)
<b>President of a court:</b>									
<b>Special chamber of a court:</b>									
<b>Higher court:</b>									
<b>Supreme Court:</b>									
<b>Council for the Judiciary<sup>2</sup>: FS (final selection)</b>	x	x		x			x	x	x
<b>Judicial inspection body:</b>									
<b>Other independent body (specify): General Assembly of the Court</b>								x	
<b>Ministry/Minister of justice:</b>									
<b>Other ministry than min. of justice (specify): ...</b>									
<b>Parliament:</b>									
<b>Head of state:</b>			x		x				
<b>Other (specify): ...</b>						N/A			

<sup>1</sup> Cf. European Network of Councils for the Judiciary, [Resolution of Budapest on Self-Governance for the Judiciary: Balancing Independence and Accountability](#), May 2008, at 2).

<sup>2</sup> Council for the Judiciary is a national institution that is independent of the executive and legislature, or which is autonomous, and that ensures the final responsibility for the support of the judiciary in the independent delivery of justice.

**NOTES:**

b) The initial appointment of a senior judge is formally made by the President of Romania, under the proposal of the Superior Council of Magistracy. The junior judges (*juges stagiaires*) are appointed by the Superior Council of Magistracy. There is no direct appointment at second instance, but only as a result of a promotion (see infra. 1.3.) or of the transfer of a judge upon his/her consent or transfer of a prosecutor to a position of judge, upon to his/her consent.

e) The appointment in leading positions in ordinary courts is done by the Superior Council of Magistracy following an objective and transparent examination on theoretical and practical skills. Consequently there is no proposal for the appointment in these positions as the appointment is done by the Council following a competition. Any judge that fulfils the necessary criteria may participate in the competition.

g) The dismissal of a court president is decided by the Superior Council of Magistracy ex officio or following the proposal of the general assembly of the court.

**1.1.1. If any other authority, body or agency is involved in the procedure for appointment of judges, please describe its involvement:**

The competition for accession at the National Institute of Magistracy or into magistracy is carried out by the Superior Council of Magistracy through the *National Institute of Magistracy*.

**1.1.2. What is the procedure for selecting candidates for becoming judges? [several answers possible]**

- Recruitment through a specific exam or a competition, which includes a specific exam for becoming a judge
- Recruitment through a vacancy notice without a specific exam
- Other (specify): ...

**1.1.3. If a candidate judge is not appointed, is the appointing authority/body required to provide him/her the reasons (e.g. a reasoned explanation)?**

- Yes
- No

**1.1.4. If a candidate judge is not appointed, can he/she appeal or request a review?**

- Yes
- No

**1.1.4.1. If yes, which authority or body decides on such an appeal/review?**

- Council for the Judiciary
- Other independent body (specify): National Institute of the Magistracy through the commission of the reviews.
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- Another court / President of another court
- Higher court / President of a higher court
- Administrative court / President of the Administrative Court
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Other (specify): ...

**1.1.4.2. What was the total number of appeals or requests for a review by unsuccessful candidate judges in 2014?**

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

All requests for appeal/review: 3 at the Superior Council of Magistracy, 0 in courts

If possible, specify this number for candidate judges in different areas (civil, administrative...):

... : :..... / N/A – It is not applicable  
 ... : :..... / N/A

**1.2. Selection, appointment and dismissal of Supreme Court judges and the President of the Supreme Court**

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the proposal to appoint or dismiss a judge.]

- a) proposal of candidates for the appointment as Supreme Court judges
- b) decision on the appointment of a Supreme Court judge
- c) proposal for the dismissal of a Supreme Court judge
- d) decision on the dismissal of a Supreme Court judge
- e) proposal of the candidate(s) for the appointment of the President of the Supreme Court
- f) decision on the appointment of the President of the Supreme Court
- g) proposal for the dismissal of the President of the Supreme Court
- h) decision on the dismissal of the President of the Supreme Court

	a)	b)	c)	d)	e)	f)	g)	h)
<b>President of a court:</b>								
<b>Special chamber of a court:</b>								
<b>Supreme Court:</b>								
<b>Council for the Judiciary:</b>		X	X		X		X	
<b>Judicial inspection body:</b>								
<b>Other independent body (specify): ...</b>								
<b>Ministry/Minister of justice:</b>								
<b>Other ministry than min. of justice (specify): ...</b>								
<b>Parliament:</b>								
<b>Head of state: if applicable- on advice of ...</b>				X		X		X
<b>Other (specify): ...</b>	N/A							

**NOTES:**

- a) The promotion to the High Court of Cassation and Justice is done only following a competition carried out by

the Superior Council of Magistracy through the National Institute of Magistracy. Consequently there is no proposal for the appointment in these positions as the appointment is done by the Council following a competition. Any judge or prosecutor at the level of Courts of appeal that fulfils the necessary criteria may participate in the competition.

- c) The dismissal of a High Court of Cassation and Justice judge follows the general rules of dismissal of an ordinary judge. The effect of dismissal is the exclusion of magistracy and **not** the loss of the professional level with the right to exert the function at an inferior level.
- g) The Superior Council of Magistracy can notify the President of Romania *ex officio* following the decision following the request of one third of its members or following the request of the General Assembly of the Court.

**1.2.1. If the procedures mentioned above are different for the judges and/or the President of the Supreme administrative court or the Council of State, please describe these differences:**

**In Romania, a Supreme administrative court and a Council of State do not exist. Sections for administrative law are functioning within the tribunals, courts of appeal and the High Court of Cassation and Justice, but the procedures mentioned above are applicable.**

**1.3. What was the total number of all judges that were dismissed in 2014 (e.g. as a consequence of disciplinary proceedings or criminal conviction; excluding other grounds such as incompatibility, illness, resignation, retirement)?**

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: : 0 / N/A

If possible, specify this number for judges in different areas (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

**1.4. Can a judge appeal if he/she is dismissed?**

Yes

No

**1.4.1. If yes, which authority or body decides on such an appeal?**

Council for the Judiciary

Other independent body (specify): ...

Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)

Another court / President of another court

Higher court / President of a higher court

Administrative court / President of the Administrative Court

Supreme Court / President of the Supreme Court

Constitutional Court / President of the Constitutional Court

Other (specify): ...

**1.4.2. What was the total number of appeals against dismissals of judges in 2014?**

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: : 0 / N/A

If possible, specify this number for judges in different areas (civil, administrative...):

... : :..... / N/A

... : :..... / N/A

### 1.5. Evaluation, promotion, disciplinary measures and training of judges

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) decision on the evaluation of a judge
- b) evaluation of the performance management of courts
- c) decision on the promotion of a judge
- d) adoption of ethical standards
- e) application of ethical standards
- f) proposal for the appointment of a member of the disciplinary body for judges
- g) decision on the appointment of a member of the disciplinary body for judges
- h) proposal for a disciplinary decision regarding a judge
- i) disciplinary decision regarding a judge (all bodies issuing disciplinary decisions)
- j) decision on the follow-up to a complaint against the judiciary/a judge
- k) decision on the program/content of training for judges

	a)	b)	c)	d)	e)	f)	g)	h)	i)	j)	k)
<b>President of a court: (Supreme Court)</b>								X			
<b>Special chamber of a court:</b>											
<b>Higher court:</b>											
<b>Supreme Court:</b>											
<b>Council for the Judiciary:</b>	X	X	X	X	X				X	X	X
<b>Judicial inspection body:</b>								X			
<b>Other independent body (specify): ...</b>											
<b>Ministry/Minister of justice:</b>								X			
<b>Other ministry than min. of justice</b>											
<b>Parliament:</b>											
<b>Head of state: if applicable- on advice of</b>											
<b>Other (specify): ...</b>						N/A	N/A				

#### NOTES:

f), g) Bearing in mind that the "disciplinary body for judges" is the Sections for judges of the Superior Council of Magistracy itself, there is no a proposal for appointment of their members, since the judges members of the SCM are elected by their peers, in the general assemblies of courts.

There is no a *stricto sensu* appointment, but only a validation by the Senate (the higher chamber of the Parliament of Romania).

h) The holders of the disciplinary action for judges are the President of the High Court of Cassation and Justice, the Minister of Justice and the Judicial Inspection.

## 1.6. Financial resources

### 1.6.1. Authorities and bodies responsible for financial resources

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations: "FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given]

- involvement in the preparation of the "budget allocated to courts"<sup>3</sup>
- formal proposal on the budget allocated to courts
- adoption of the budget allocated to courts
- management of the budget allocated to courts
- evaluation/audit of the budget allocated to courts
- definition of criteria for determining financial resources (see 1.6.2.)

	a)	b)	c)	d)	e)	f) <sup>4</sup>
<b>President of a court:</b>	X			X		
<b>Special chamber of a court:</b>						
<b>Higher court / President of the Higher court:</b>	X					
<b>Supreme Court / President of the Supreme Court:</b>	X			X	X	
<b>Council for the Judiciary:</b>						
<b>Judicial inspection body:</b>						
<b>Other independent body (specify):</b>						
<b>Ministry/Minister of justice:</b>	X			X	X	X
<b>Other ministry than min. of justice (specify): Ministry of Public Finances</b>	X	X				
<b>Parliament:</b>			X			
<b>Head of state: if applicable- on advice of ...</b>						
<b>Other (specify): Court of Accounts</b>					X	

#### NOTES:

a)-c)

The budgets of the High Court of Cassation and Justice, other ordinary courts and military courts are separate.

<sup>3</sup> General government total expenditure on COFOG (classification of the functions of government) group 03.30 'Law courts', which includes "financial resources allocated to the "administration, operation or support of civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole and probation systems; legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services. Includes: administrative tribunals, ombudsmen and the like. Excludes: prison administration." This is National Accounts data currently provided under the ESA95 framework.

<sup>4</sup> There is no objective and transparent criteria for determining financial resources.

The Budget of the High Court of Cassation and Justice is approved by the General Assembly of this Court with the consultative advice of the Ministry of Public Finances.

The Ordinary courts have budget managed by the Ministry of Justice. It is a “bottom-up” budgeting process to develop their budget proposals and initially draft a budget based on “needs” identified at lower levels. On yearly basis, the Courts of Appeal draft the budgets for the courts under their territorial circumscription, drafts that are being sent to the Ministry of Justice. The Superior Council of Magistracy issues a mandatory advice on these drafts.

The budget of the military courts is being drafted by a special directorate within the Ministry of Defence.

The budgets are being sent to the Ministry of Public Finances and then to the Parliamentary committees, which must approve it before the Parliament can vote it.

- d) The budget of the High Court of Cassation and Justice is managed by the president of this Court. The budget for lower courts is being managed by the Ministry of Justice through the minister of justice as primary spending agency. The presidents of courts of appeal and tribunals are executing the budgets for their courts and for the lower courts in their territorial circumscription as secondary and tertiary units.
- e) The internal control environment follows the Public Internal Financial Control framework, in compliance with EU requirements, having mandatory audits for all the main spending authorities which are monitored by the MOPF Central Harmonization Unit for Internal Audit. (Law 672/2002 on Public Internal Audit) Moreover, the Court of Accounts—the supreme audit institution—also audits each main spending authority annually.

**1.6.2. What are the prescribed methods or criteria for determining financial resources for the judiciary?** [several answers possible] [Please electronically tick the checkbox ("☑") next to the corresponding reply (by clicking on it in Microsoft Word for Windows), or (in case of difficulties with the checkboxes) by marking relevant reply in bold or highlighting it.]<sup>5</sup>

- amount based on historic and/or realised costs
- number of incoming cases: specify for which instance: 1<sup>st</sup> / 2<sup>nd</sup> / all / N/A
- number of resolved cases: specify for which instance: 1<sup>st</sup> / 2<sup>nd</sup> / all / N/A
- number of resolved cases - based on an evaluation of the cost for courts
- other (specify): Needs/requests of courts

**1.6.3. Where have these criteria been defined?** [several answers possible]

- In well-established practice
- In law
- Other (specify): ...

## 1.7. Governance of the Judiciary

[Please insert an “x” into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country;

if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) general management of a court
- b) adopting press guidelines for relations between courts and the media

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<sup>5</sup> There is no objective and transparent criteria for determining financial resources.



- c) communicating with the media (e.g. on questions regarding judgments, court functioning)
- d) decisions regarding the implementation and use of Information and Communication Technology in courts
- e) decisions regarding court buildings
- f) decisions regarding court security

	a)	b)	c)	d)	e)	f)
<b>President of a court:</b>	X			X	X	X
<b>Higher court / President of the Higher court:</b>	X				X	
<b>Supreme Court / President of the Supreme Court:</b>				X		X
<b>Court service governed by the Judiciary:</b>						
<b>Council for the Judiciary:</b>		X	X			
<b>Judicial inspection body:</b>						
<b>Other independent body (specify): Leading Board of the Court</b>	X					
<b>Court service governed by the Ministry of justice:</b>						
<b>Ministry/Minister of justice:</b>				X	X	X
<b>Other ministry than min. of justice (specify): Ministry of Justice, Ministry of Internal Affairs</b>						X
<b>Other (specify): ...</b>						
<b>Judge responsible for media relations</b>			X			
<b>Press officer at a court</b>			X			

**NOTES:**

- b) The court clerks in ordinary courts are being appointed, following a competition, by the presidents of the Courts of Appeal for the Courts of Appeal and for the lower courts in its territorial jurisdiction. The clerks at the High Court of Cassation and Justice are being appointed following a competition held by this court.
- d) The High Court of Cassation and Justice and the Courts of Appeal have departments of judicial IT. Similar departments may be established in all other lower level courts. The specialists in these departments are submitted administratively to the president of the court and professionally to a department within the Ministry of Justice.  
According to the law, in order to enhance the IT activities within the courts, the president of the High Court and the Minister of Justice shall take the necessary measures for the technical infrastructure. The number of specialists in informatics is established by the president of the court with the mandatory advice of the specialised department of the Ministry of Justice.  
The law also provides that the institutions within the judiciary are held to carry out all the measures provided for in the IT strategy for the judiciary proposed by the Ministry of Justice, in order to establish a unitary and functional IT system.

### 1.7.1. Authorities and bodies responsible for court staff (other than judges)

[Please insert an "x" into the box that corresponds to the situation in your country; several answers possible; insert "N/A" when the situation is not applicable in your country; if relevant, you can additionally insert the following explanations:

"FS" (final selection), "CA" (consultative advice – the body can provide its opinion), "MA" (mandatory advice – the body must provide its opinion, the content of which is either binding or not for the deciding authority), "D" (decision). Please insert "OF" (obligation to follow) if the deciding authority has an obligation, either by law or practice, to follow the opinion given.]

- a) decision regarding the total number of court staff (other than judges) at all courts
- b) decision regarding the number of court staff at particular courts
- c) appointment and dismissal of court staff
- d) decisions regarding the transfer of court staff from one court to another
- e) decisions regarding the promotion/disciplinary matters concerning court staff
- f) other human resource management decisions on court staff (e.g. holidays)

	a)	b)	c)	d)	e)	f)
<b>President of a court:</b>			x	x	x	x
<b>Higher court / President of the Higher court:</b>				x	x	
<b>Supreme Court / President of the Supreme Court:</b>						
<b>Court service governed by the Judiciary:</b>						
<b>Council for the Judiciary:</b>		X - CA				
<b>Judicial inspection body:</b>						
<b>Other independent body (specify): ...</b>						
<b>Court service governed by the Ministry of justice:</b>						
<b>Ministry/Minister of justice:</b>	x	X - FS	X <sup>6</sup>			
<b>Other ministry than min. of justice (specify): ...</b>						
<b>Other (specify): ...</b>						

<sup>6</sup> For IT specialists in courts.

1.8.1 Composition of the Councils for the Judiciary according to the nomination process

	Total	Court presidents (ex officio)	Judges (appointed or proposed by their peers)	Judges (elected by their peers)	Prosecutors (elected by their peers)	Prosecutor General (ex officio)	Appointed by associations of lawyers / legal practitioners	Elected/appointed by the Parliament	Appointed by the Head of State / Prime Minister / Government / Minister of justice	Minister of justice (ex officio)	Appointed/nominated by other bodies/authorities
BE	44			22				22			
BG	25	2		6	5	1		11			
DK	11		6				1				4
IE	18	5		5			2		3		3
ES	21	1	12					8			
FR	22	1		6	6	1	1	4	2		1
HR	11			7				2			2
IT CSM	27	1		12	4	1		8	1		
IT CPGA	15	1		10				4			
LV	15	2		7		1	3	1		1	
LT	23	3		20							
HU	15	1		14							
MT	10	1		4		1	1		2		1
NL	4		2						2		
PL	25	2		15				6	1	1	
PT	17	1		7				7	2		
RO	19	1		9	5	1		2		1	
SI	11			6				5			
SK	18			9				3	6		
UK (EN + WL)	29	9	19								1
UK (NI)	11		11								
UK (SC)	16	4	12								

### 1.8.2. Powers of the Councils for the Judiciary

	Providing opinion on draft laws relating to the judiciary	Training of judges (providing guidelines/supervising or deciding on the program/content)	Proposing candidates for appointment as judges (courts of first instance)	Appointing judges (1st instance courts)	Proposing dismissal of judges (courts of first instance)	Dismissing judges (courts of first instance)	Transferring judges (without their consent)	Taking disciplinary decisions on judges	Adopting ethical standards	Promoting a judge	Advisory body / court management	Deciding on evaluation of a judge	Decision regarding number of court staff at particular courts	Allocating budget to particular courts	Decisions on implementation & use of ICT in courts
BE	1	1	1						1						
BG	1	1		1	1	1	1	1	1	1		1	1	1	1
DK	1	1									1		1	1	1
IE	1										1		1		1
ES	1	1	1		1		1	1	1	1		1			1
FR	1		1	1	1	1	1	1	1	1					
HR	1	1		1		1	1	1		1		1			
IT	1	1	1	1	1	1	1	1		1	1	1			1
LV	1	1			1										
LT	1	1		1		1	1			1	1	1	1	1	1
HU	1	1	1						1	1					
MT	1				1				1			1			
NL	1	1							1	1				1	1
PL	1	1	1		1				1						
PT	1	1	1	1	1	1	1	1	1	1		1			
RO	1	1	1	1	1		1	1	1	1		1	1		
SI	1	1	1	1	1	1	1	1	1	1		1			
SK	1	1	1		1				1	1					
UK (EN+WL)										1	1				
UK (NI)											1				1
UK (SC)											1				

## 2. PROCEDURES AND SANCTIONS FOR PROTECTING JUDICIAL INDEPENDENCE<sup>7</sup>

**2.1. When a judge or an authority considers that independence of an individual judge or of the judiciary is threatened, are there any specific procedures, other remedies or sanctions<sup>8</sup> for protecting it?**

Yes

No

**2.1.1. If yes, who can launch such a request or a procedure?**

A judge who believes his/her independence is threatened

President of a court

Judicial inspection body

Council for the Judiciary

Other independent body (specify): ...

Public Prosecution Service

Minister of justice

Other (specify): ...

**2.1.2. What was the total number of such complaints in 2014?**

[If only an estimate is available, add "approx. ..." or "fewer than ...";

Please specify for each authority or body (please add more than two, if necessary)]

Complaints from judges: : 13 /  N/A

Complaints from the Council for the Judiciary: : 25 /  N/A

Complaints from prosecutors: : 16 /  N/A<sup>9</sup>

*The numbers above reflect the numbers of notifications for the defence of the independence and reputation of individual judges and prosecutors filed at the Judicial Inspection at the Directorate for judges (13 notifications) or at the Directorate for prosecutors (16 notifications) or notifications filed in relation to the independence of the whole Judiciary (25 notifications) which are usually made by the Superior Council of Magistracy.*

**2.1.3. If yes, which authority or body has the power to react to such complaints from judges or authorities for protecting judicial independence? [several answers possible]**

Council for the Judiciary

Other independent body (specify): ...

Judicial inspection body

Court

<sup>7</sup> [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 8, 13 and 14. See also European Network of Councils for the Judiciary, Distillation of ENCJ Guidelines, Recommendations and Principles, Report 2012-2-13, para. 7.

<sup>8</sup> "Sanctions against persons seeking to influence judges in an improper manner", Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 14.

<sup>9</sup> 13 request to defend the independence and good reputation of judges, 16 requests to defend the independence and good reputation of prosecutors and 25 other requests to defend the independence of the Judiciary.

- President of a court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Public Prosecution Service
- Other (specify): ...

**2.1.4. If yes, what are the measures that these authorities can take on the basis of a request in order to protect judicial independence?**

**What was the total number of such measures in 2014?**

[[several answers possible; if only an estimate is available, add "approx. ..." or "fewer than ...".]

- Notification to other authorities: National Council for Audio-visual
- Sanctions (criminal, administrative, at first instance)<sup>10</sup>: ....., from (specify): ...
- Press releases / formal declarations on judicial independence<sup>11</sup>: ....., from (specify): ...
- Other (specify): ....., from (specify): ...
- N/A

### 3. IMPARTIALITY – WITHDRAWAL AND RECUSAL<sup>12</sup>

**3.1. Is a judge obliged to withdraw from adjudicating a case if the judge believes that impartiality is in question or compromised or that there is a reasonable perception of bias?**

- Yes
- No

**3.1.1. If yes, what is the source of the obligation to withdraw from adjudicating a case?**

- A well-established practice of judges
- Set in an act adopted by a court
- Set in an act adopted by the Council for the Judiciary
- Set in an act adopted by the Minister of justice
- Set in law
- Other (specify): ...

**3.1.2. If a judge disrespects the obligation to withdraw from adjudicating a case, could the judge be subject to a sanction?**

- Yes (specify; e.g. type of disciplinary measure): All the disciplinary measures are applicable: caution, the reduction of the revenue with 20 % up to 6 months, disciplinary transfer up to an year, suspension from office up to 6 months, dismissal.
- No

<sup>10</sup> "Sanctions against persons seeking to influence judges in an improper manner", Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 14.

<sup>11</sup> The Plenum has admitted the request for defending the Judiciary in 15 cases and has published press releases.

<sup>12</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 59-61. See also European Network of Councils for the Judiciary, [London declaration on judicial ethics](#), June 2010; and European Network of Councils for the Judiciary, [Judicial Ethics Report](#) 2009-2010

**3.2. Which authority or body takes the first decision on a request for recusal by a party who considers that a judge is partial / biased? [several answers possible]**

- The single-judge who is adjudicating in the same case (when a recusal request is directed against this judge)
- The panel of judges adjudicating in the same case (when a recusal request is directed against a member of this panel or against the whole panel)
- Another judge at the same court (e.g. selected on seniority or appointed)
- A special chamber of the same court
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Council for the Judiciary
- Other independent body (specify): ...
- Ministry of justice / Minister of justice
- Other (specify): ...

**NOTA BENE:**

The decision is taken by another panel of the court, without the participation of the recused judge and when this panel cannot be constituted because of the recusal, the decision is taken by the higher court.

**3.2.1. In case a different authority or body decides in different types of proceedings (civil, administrative...), please describe the differences and specify for which proceedings the replies under 3.2. refer to:**

-

**3.3. If available what was the total number of successful recusal challenges by parties in 2014 in which a lack of impartiality or a reasonable perception of bias was established?**

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: : 6 / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

civil : : 5 / N/A

children and family: : 1 / N/A

contentious administrative and fiscal : 0 / N/A

**3.4. Is an appeal against a decision on a request for recusal possible?**

- Yes
- No

**NOTA BENE:**

An appeal against the decision of recusal is possible only when the request of recusal was rejected. If the request was allowed, such an appeal is not available anymore.

**3.4.1. If yes, which authority or body decides on such an appeal?**

- Another judge at the same court (e.g. selected on seniority or appointed)
- A special chamber of the same court
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Council for the Judiciary
- Other independent body (specify): ...
- Minister of justice
- Other (specify): ...

**3.4.2. What was the total number of appeals against decisions on recusal requests in 2014?**

[for example, when a party to the case requested a judge to be recused but this request was rejected, and then this party appealed against the rejection; if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts: : 1 / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

civil : : 1 / N/A

contentious administrative and fiscal : 0 / N/A

**4. IRREMOVABILITY - TRANSFER OF JUDGES WITHOUT THEIR CONSENT<sup>13</sup>**

**4.1. Can a judge be transferred (temporarily or permanently) to another judicial office (to other judicial duties, court or location) without his/her consent?**

- Yes
- No

**NOTA BENE:**

Only temporary transfer, up to a year, for disciplinary sanctions.

**4.1.1. If yes, which authority or body decides on a (temporary or permanent) transfer of a judge without his/her consent?** [if several authorities are responsible and have different powers depending on the ground for transfer, please write "for disciplinary reasons", "for organisational reasons" or "for other reasons" next to the relevant authority]

<sup>13</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 52. See also European Network of Councils for the Judiciary, Development of Minimal Judicial Standards III, Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012-2013, pp. 18-20, 23 (point 4.21.)



- Council for the Judiciary
- Other independent body (specify): ...
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Ministry of justice / Minister of justice
- Head of state
- Other (specify): ...

**4.2. For what reasons can a judge be transferred without his/her consent? [several answers possible]**

- For disciplinary reasons
- For organisational reasons (specify; e.g. closure of a court): ...
- For other reasons (specify): ...

**4.2.1. At what level are these reasons prescribed?**

- In law
- Other (specify): ...

**4.3. In case a judge is transferred without his/her consent is he/she guaranteed an equivalent post (in terms of a position, salary...)?**

- Yes
- No

**4.4. What was the total number of judges transferred without their consent in 2014?**

[if only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts:                    : 0 / N/A

If possible, specify this number depending on the reason for transfer without consent:

For disciplinary reasons: 0

For organisational reasons: 0

For other reasons: 0

If possible, specify this number for judges in different areas (civil, administrative...):

... :                    :..... / N/A

... :                    :..... / N/A

**4.5. Can a judge appeal if he/she is transferred without his/her consent?**

- Yes
- No

**4.5.1. If yes, which authority or body decides on such an appeal?**

- Council for the Judiciary
- Other independent body (specify): ...
- Court responsible for disciplinary measures for judges (e.g. disciplinary senate, civil service court...)
- President of the same court
- Another court / President of another court
- Higher court / President of a higher court
- Supreme Court / President of the Supreme Court
- Constitutional Court / President of the Constitutional Court
- Minister of justice
- Head of state
- Other (specify): ...

**4.5.2. What was the total number of appeals against transfers of judges without their consent in 2014?**

[If only an estimate is available, add "approx. ..." or "fewer than ...".]

In all courts:      0      :..... / N/A

If possible, specify the number of appeals depending on the reason for transfer without consent:

For disciplinary reasons: .....

For organisational reasons: .....

For other reasons: .....

If possible, specify the number of appeals by judges in different areas (civil, administrative...):

... :                    :..... / N/A

... :                    :..... / N/A

**5. ALLOCATION OF CASES<sup>14</sup>**

**5.1. Are the criteria for allocating cases within a court defined?**

Yes

No

**5.1.1. If yes, where have these criteria been defined? [several answers possible]**

In well-established practice of the court

In an act adopted by the court

In implementing regulations

In law

<sup>14</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 24.

Other (specify): ...

## 5.2. How are cases assigned to judges at the first instance courts?

- President of the court assigns cases
- A member of the court staff assigns cases (e.g. listing officer)
- A special chamber of the court assigns cases
- The cases are assigned randomly (e.g. through a computerized system)
- The cases are assigned according to a pre-defined order (e.g. alphabetic, subject matter)
- Other (specify): ...

## 5.3. Is the allocation of cases subject to supervision (e.g. regular checks of the practice of allocation)?

- Yes
- No

### 5.3.1. If yes, by whom? [several answers possible]

- By court staff
- By the President of the court
- By the Council for the Judiciary
- By another independent body (specify):
- By the Judicial inspection body
- Other (specify): ...

### 5.3.2. In the last five years, has the system for the allocation of cases been subject to a general review or assessment to check for any potential deficiencies?

- Yes
- No

#### 5.3.2.1. If yes, what was the follow-up to the findings of such a general review/assessment? [several answers possible]

- Changes to the system of allocation of cases
- Changes to the practices concerning the allocation of cases
- Other (specify): There is established a new supervising and administrative regulation over the electronic random distribution of cases.

## 6. INTERNAL INDEPENDENCE<sup>15</sup>

### 6.1. In your system, are there hierarchically superior courts/judges with the power to ensure on their own initiative the uniformity or consistency of judicial decisions delivered by the courts/judges under their supervision (outside of an appeal system, the precedent doctrine or a preliminary ruling system)?

- Yes
- No

#### 6.1.1. If yes, which courts/judges have such a power?

<sup>15</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 22.

- Division heads at particular courts
- Presidents of the courts
- Appeal courts / Presidents of appeal courts
- Supreme Court / President of the Supreme Court
- Other (specify): ...

**6.1.2. If yes, what kind of decisions can hierarchically superior courts/judges deliver on their own initiative to ensure the uniformity or consistency of judicial decisions outside of an appeal system or the precedent doctrine?**

- An advisory opinion of general application (for all courts/judges)
- An obligatory decision of general application (for all courts/judges)
- An advisory opinion of concrete application (to a specific judicial decision)
- An obligatory decision of concrete application (to a specific judicial decision)
- A practice statement or direction applicable to particular kinds of cases
- Other (specify): ...

**6.1.3. If yes, what was the total number of such decisions in 2014?**

[If only an estimate is available, add "approx. ..." or "fewer than ..."]

In all courts: :..... / N/A

If possible, specify this number for different types of proceedings (civil, administrative...):

... : :..... / N/A

... : :..... / N/A