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Consultative Council of European Judges (CCJE)

Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality

1. The Consultative Council of European Judges (CCJE) drafted this opinion on the basis of replies by the Member States to a questionnaire and texts drawn up by the CCJE Working Party and the specialist of the CCJE on this topic, Mr Denis SALAS (France).

2. The present opinion makes reference to CCJE Opinion No. 1 (2001) (www.coe.int/legalprof, CCJE(2001) 43) on standards concerning the independence of the judiciary and the irremovability of judges, particularly paragraphs 13, 59, 60 and 71.

3. In preparing this opinion, the CCJE took into account a number of other documents, in particular:

- the United Nations "Basic principles on the independence of the judiciary" (1985);

- Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges;

- the European Charter on the Statute for Judges (1998) (DAJ/DOC(98) 23);

- the Code of judicial conduct, the Bangalore draft[1].

4. The present opinion covers two main areas:

- the principles and rules governing judges' professional conduct, based on determination of ethical principles, which must meet very high standards and may be incorporated in a statement of standards of professional conduct drawn up by the judges themselves (A);

- the principles and procedures governing criminal, civil and disciplinary liability of judges (B).

5. The CCJE questioned, in this context, whether existing rules and principles were in all respects consistent with the independence and impartiality of tribunals required by the European Convention on Human Rights.

6. The CCJE therefore sought to answer the following questions:

- What standards of conduct should apply to judges?

- How should standards of conduct be formulated?

- What if any criminal, civil and disciplinary liability should apply to judges?

7. The CCJE believes that answers to these questions will contribute to the implementation of the framework global action plan for judges in Europe, especially the priorities relating to the rights and responsibilities of judges, professional conduct and ethics (see doc. CCJE (2001) 24, Appendix A, part III B), and refers in this context its conclusions in paragraphs 49, 50, 75, 76 and 77 below.

A. STANDARDS OF JUDICIAL CONDUCT

8. The ethical aspects of judges' conduct need to be discussed for various reasons. The methods used in the settlement of disputes should always inspire confidence. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice.

9. Confidence in the justice system is all the more important in view of the increasing globalisation of disputes and the wide circulation of judgments. Further, in a State governed by the rule of law, the public is entitled to expect general principles, compatible with the notion of a fair trial and guaranteeing fundamental rights, to be set out. The obligations incumbent on judges have been put in place in order to guarantee their impartiality and the effectiveness of their action.

1°) What standards of conduct should apply to judges?

10. Any analysis of the rules governing the professional demands applicable to judges should include consideration of the underlying principles and the objectives pursued.

11. Whatever methods are used to recruit and train them and however broad their mandate, judges are entrusted with powers and operate in spheres which affect the very fabric of people's lives. A recent research report points out that, of all the public authorities, it is probably the judiciary which has changed the most in the European countries[2]. In recent years, democratic societies have been placing increasing demands on their judicial systems. The increasing pluralism of our societies leads each group to seek recognition or protection which it does not always receive. Whilst the architecture of democracies has been profoundly affected, national variations remain marked. It is a truism that the East European countries that are emerging from authoritarian regimes see law and justice as providing the legitimacy essential for the reconstruction of democracy. There more than elsewhere, the judicial system is asserting itself in relation to other public authorities through its function of judicial supervision.

12. The powers entrusted to judges are subject not only to domestic law, an expression of the will of the nation, but also to the principles of international law and justice as recognised in modern democratic societies.

13. The purpose for which these powers are entrusted to judges is to enable them to administer justice, by applying the law, and ensuring that every person enjoys the rights and/or assets that are legally theirs and of which they have been or may be unfairly deprived.

14. This aim is expressed in Article 6 of the European Convention on Human Rights which, speaking purely from the point of view of users of the judicial system, states that *"everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*". Far from suggesting that judges are all-powerful, the Convention highlights the safeguards that are in place for persons on trial and sets out the principles on which the judge's duties are founded: independence and impartiality.

15. In recent years, there has been some recognition of the need for increased assurances of judicial independence and impartiality; independent bodies have been set up to protect the judiciary from partisan interference; the significance of the European Convention on Human Rights has been developed and felt through the case-law of the European Court in Strasbourg and national courts.

16. Independence of the judge is an essential principle and is the right of the citizens of each State, including its judges. It has both an institutional and an individual aspect. The modern democratic State should be founded on the separation of powers. Each individual judge should do everything to uphold judicial independence at both the institutional and the individual level. The rationale of such independence has been discussed in detail in the Opinion N° 1 (2001) of the CCJE, paragraphs 10-13. It is, as there stated, inextricably complemented by and the pre-condition of the impartiality of the judge, which is essential to the credibility of the judicial system and the confidence that it should inspire in a democratic society.

17. Article 2 of the "Basic principles on the independence of the judiciary" drawn up by the United Nations in 1985 stipulates that "the judiciary shall decide matters before them impartially, on the basis

of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". Under Article 8, judges "shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".

18. In its Recommendation N° R (94) 12 on the independence, efficiency and role of judges (Principle I.2.d), the Committee of Ministers of the Council of Europe stated that "judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law".

19. The European Charter on the Statute for Judges indicates that the statute for judges should ensure the impartiality which all members of the public are entitled to expect of the courts (paragraph 1.1). The CCJE fully endorses this provision of the Charter.

20. Impartiality is determined by the European Court both according to a *subjective* approach, which takes into account the personal conviction or interest of a particular judge in a given case, and according to an *objective* test, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect[3].

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

a. Impartiality and conduct of judges in the exercise of their judicial functions

22. Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts.

23. Judges should therefore discharge their duties without any favouritism, display of prejudice or bias. They should not reach their decisions by taking into consideration anything which falls outside the application of the rules of law. As long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute or which could influence the fairness of the proceedings. They should show the consideration due to all persons (parties, witnesses, counsel, for example) with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties.

24. Judges should also discharge their functions with due respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each receives a fair hearing.

25. The effectiveness of the judicial system also requires judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications.

26. Judges must also fulfil their functions with diligence and reasonable despatch. For this, it is of course necessary that they should be provided with proper facilities, equipment and assistance. So provided, judges should both be mindful of and be able to perform their obligations under Article 6.1 of the European Convention on Human Rights to deliver judgment within a reasonable time.

b. Impartiality and extra-judicial conduct of judges

27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (freedom of opinion, religious freedom, etc). They should therefore remain generally free to engage in the extra-professional activities of their choice.

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

29. Judges should conduct themselves in a respectable way in their private life. In view of the cultural diversity of the member states of the Council of Europe and the constant evolution in moral values, the standards applying to judges' behaviour in their private lives cannot be laid down too precisely. The CCJE encourages the establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge. The presence of such bodies or persons could encourage discussion within the judiciary on the content and significance of ethical rules. To take just two possibilities, such bodies or persons could be established under the aegis of the Supreme Court or judges' associations. They should in any event be separate from and pursue different objectives to existing bodies responsible for imposing disciplinary sanctions.

30. Judges' participation in political activities poses some major problems. Of course, judges remain citizens and should be allowed to exercise the political rights enjoyed by all citizens. However, in view of the right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity. Some States have included this principle in their disciplinary rules and sanction any conduct which conflicts with the obligation of judges to exercise reserve. They have also expressly stated that a judge's duties are incompatible with certain political mandates (in the national parliament, European Parliament or local council), sometimes even prohibiting judges' spouses from taking up such positions.

31. More generally, it is necessary to consider the participation of judges in public debates of a political nature. In order to preserve public confidence in the judicial system, judges should not expose themselves to political attacks that are incompatible with the neutrality required by the judiciary.

32. From reading the replies to the questionnaire, it seems that in some States a restrictive view is taken of judges' involvement in politics.

33. The discussions within the CCJE have shown the need to strike a balance between the judges' freedom of opinion and expression and the requirement of neutrality. It is therefore necessary for judges, even though their membership of a political party or their participation in public debate on the major problems of society cannot be proscribed, to refrain at least from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

34. However, judges should be allowed to participate in certain debates concerning national judicial policy. They should be able to be consulted and play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system. This subject also raises the question of whether judges should be allowed to join trade unions. Under their freedom of expression and opinion, judges may exercise the right to join trade unions (freedom of association), although restrictions may be placed on the right to strike.

35. Working in a different field offers judges an opportunity to broaden their horizons and gives them an awareness of problems in society which supplements the knowledge acquired from the exercise of their profession. In contrast, it entails some not inconsiderable risks: it could be viewed as contrary to the separation of powers, and could also weaken the public view of the independence and impartiality of judges.

36. The question of judges' involvement in a certain governmental activities, such as service in the private offices of a minister (*cabinet ministériel*), poses particular problems. There is nothing to prevent a judge from exercising functions in an administrative department of a ministry (for example a civil or criminal legislation department in the Ministry of Justice); however, the matter is more delicate with regard to a judge who becomes part of the staff of a minister's private office. Ministers are perfectly entitled to appoint whomsoever they wish to work in their private office but, as the minister's close collaborators, such staff participate to a certain extent in the minister's political activities. In such circumstances, before a judge enters into service in a minister's private office, an opinion should ideally be obtained from the independent organ responsible for the appointment of judges, so that this body could set out the rules of conduct applicable in each individual case.

c. Impartiality and other professional activities of judges [4]

37. The specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power. This requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner. In some States, incompatibilities with the function of judge are clearly defined by the judges' statute and members of the judiciary are forbidden from carrying out any professional or paid activity. Exceptions are made for educational, research, scientific, literary or artistic activities.

38. Different countries have dealt with incompatible activities to varying effects (a brief summary is annexed) and by various procedures, though in each case with the general objective of avoiding erecting any insurmountable barrier between judges and society.

39. The CCJE considers that rules of professional conduct should require judges to avoid any activities liable to compromise the dignity of their office and to maintain public confidence in the judicial system by minimising the risk of conflicts of interest. To this end, they should refrain from any supplementary professional activity that would restrict their independence and jeopardise their impartiality. In this context, the CCJE endorses the provision of the European Charter on the Statute for Judges under which judges' freedom to carry out activities outside their judicial mandate "may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her" (para. 4.2). The European Charter also recognises the right of judges to join professional organisations and a right of expression (para. 1.7) in order to avoid "excessive rigidity" which might set up barriers between society and the judges themselves (para. 4.3). It is however essential that judges continue to devote the most of their working time to their role as judges, including associated activities, and not be tempted to devote excessive attention to extra-judicial activities. There is obviously a heightened risk of excessive attention being devoted to such activities, if they are permitted for reward. The precise line between what is permitted and not permitted has however to be drawn on a country by country basis, and there is a role here also for such a body or person as recommended in paragraph 29 above.

d. Impartiality and judges' relations with the media

40. There has been a general trend towards greater media attention focused on judicial matters, especially in the criminal law field, and in particular in certain west European countries. Bearing in mind the links which may be forged between judges and the media, there is a danger that the way judges conduct themselves could be influenced by journalists. The CCJE points out in this connection that in its Opinion No. 1 (2001) it stated that, while the freedom of the press was a pre-eminent principle, the judicial process had to be protected from undue external influence. Accordingly, judges have to show circumspection in their relations with the press and be able to maintain their independence and impartiality, refraining from any personal exploitation of any relations with journalists and any unjustified comments on the cases they are dealing with. The right of the public to information is nevertheless a fundamental principle resulting from Article 10 of the European Convention on Human Rights. It implies that the judge answers the legitimate expectations of the citizens by clearly motivated decisions. Judges should also be free to prepare a summary or communiqué setting up the tenor or clarifying the significance of their judgements for the public. Besides, for the countries where the judges are involved in criminal investigations, it is advisable for them to reconcile the necessary restraint relating to the cases they are dealing with, with the right to information. Only under such conditions can judges freely fulfil their role, without fear of media pressure. The CCJE has noted with interest the practice in force in certain countries of appointing a judge with communication responsibilities or a spokesperson to deal with the press on subjects of interest to the public.

2°) How should standards of conduct be formulated?

41. Continental judicial tradition strongly supports the idea of codification. Several countries have already established codes of conduct in the public sector (police), in regulated professions (solicitors, doctors) and in the private sector (press). Codes of ethics have also recently been introduced for judges, particularly in East European countries, following the example of the United States.

42. The oldest is the Italian "Ethical Code" adopted on 7 May 1994 by the Italian Judges' Association, a professional organisation of the judiciary. The word “code” is inappropriate, since it consists of 14 articles which cover the conduct of judges (including presidents of courts) in its entirety and includes public prosecutors[5]. It is clear that the code does not consist of disciplinary or criminal rules, but is a self-regulatory instrument generated by the judiciary itself. Article 1 sets out the general principle: "In social life, the judge must behave with dignity and propriety and remain attentive to the public interest. Within the framework of his functions and in each professional act he must be inspired by the values of personal disinterest, independence and impartiality".

43. Other countries, such as Estonia, Lithuania, Ukraine, Moldova, Slovenia, the Czech Republic and Slovakia, have a “judicial code of ethics” or “principles of conduct” adopted by representative assemblies of judges and distinct from disciplinary rules.

44. Codes of conduct have some important benefits: firstly, they help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence from other authorities. Secondly, they inform the public about the standards of conduct it is entitled to expect from judges. Thirdly, they contribute to give the public assurance that justice is administrated independently and impartially.

45. However, the CCJE points out that independence and impartiality cannot be protected solely by principles of conduct and that numerous statutory and procedural rules should also play a part. Standards of professional conduct are different from statutory and disciplinary rules. They express the profession’s ability to reflect its function in values matching public expectations by way of counterpart to the powers conferred on it. These are self-regulatory standards which involve recognising that the application of the law is not a mechanical exercise, involves real discretionary power and places judges in a relationship of responsibility to themselves and to citizens.

46. Codes of professional conduct also create a number of problems. For example, they can give the impression that they contain all the rules and that anything not prohibited must be admissible. They tend to oversimplify situations and, finally, they create the impression that standards of conduct are fixed for a certain period of time, whereas in fact they are constantly evolving. The CCJE suggests that it is desirable to prepare and speak of a "statement of standards of professional conduct", rather than a code.

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

- appropriate basic and further training should play a part in the preparation and dissemination of rules of professional conduct[6];
- in States where they exist, judicial inspectorates, on the basis of their observations of judges' behaviour, could contribute to the development of ethical thinking; their views could be made known through their annual reports;
- through its decisions, the independent authority described in the European Charter on the Statute for Judges, if it is involved in disciplinary proceedings, outlines judges' duties and obligations; if these decisions were published in an appropriate form, awareness of the values underlying them could be raised more effectively;
- high-level groups, consisting of representatives of different interests involved in the administration of justice, could be set up to consider ethical issues and their conclusions disseminated;
- professional associations should act as forums for the discussion of judges' responsibilities and deontology; they should provide wide dissemination of rules of conduct within judicial circles.

48. The CCJE would like to stress that, in order to provide the necessary protection of judges' independence, any statement of standards of professional conduct should be based on two fundamental principles:

i) firstly, it should address basic principles of professional conduct. It should recognise the general impossibility of compiling complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities. Further, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence;

ii) secondly, principles of professional conduct should be drawn up by the judges themselves. They should be self-regulatory instruments generated by the judiciary itself, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. Broad consultation should be organised, possibly under the aegis of a person or body as stated in paragraph 29, which could also be responsible for explaining and interpreting the statement of standards of professional conduct.

3°) Conclusions on the standards of conduct

49. The CCJE is of the opinion that:

i) judges should be guided in their activities by principles of professional conduct,
ii) such principles should offer judges guidelines on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality,
iii) the said principles should be drawn up by the judges themselves and be totally separate from the judges' disciplinary system,

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

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

i) each individual judge should do everything to uphold judicial independence at both the institutional and the individual level,

ii) judges should behave with integrity in office and in their private lives,

iii) they should at all times adopt an approach which both is and appears impartial,

iv) they should discharge their duties without favouritism and without actual or apparent prejudice or bias,

v) their decisions should be reached by taking into account all considerations material to the application of the relevant rules of law, and excluding from account all immaterial considerations,

vi) they should show the consideration due to all persons taking part in the judicial proceedings or affected by these proceedings,

vii) they should discharge their duties with due respect for the equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring each a fair hearing,

viii) they should show circumspection in their relations with the media, maintain their independence and impartiality by refraining from any personal exploitation of any relations with the media and from making any unjustified comments on the cases they are dealing with,

ix) they should ensure they maintain a high degree of professional competence,

x) they should have a high degree of professional awareness and be subject to an obligation of diligence in order to comply with the requirement to deliver their judgments in a reasonable time,

xi) they should devote the most of their working time to their judicial functions, including associated activities,

xii) they should refrain from any political activity which could compromise their independence and cause detriment to their image of impartiality.

B. CRIMINAL, CIVIL ANDDISCIPLINARY LIABILITY OF JUDGES

4°) What criminal, civil and disciplinary liability should apply to judges?

51. The corollary of the powers and the trust conferred by society upon judges is that there should be some means of holding judges responsible, and even removing them from office, in cases of misbehaviour so gross as to justify such a course. The need for caution in the recognition of any such liability arises from the need to maintain judicial independence and freedom from undue pressure. Against this background, the CCJE considers in turn the topics of criminal, civil and disciplinary liability. In practice, it is the potential disciplinary liability of judges which is most important.

a. Criminal liability

52. Judges who in the conduct of their office commit what would in any circumstances be regarded as crimes (e.g. accept bribes) cannot claim immunity from ordinary criminal process. The answers to questionnaire show that in some countries even well-intentioned judicial failings could constitute crimes. Thus, in Sweden and Austria judges (being assimilated to other public functionaries) can be punished (e.g. by fine) in some cases of gross negligence (e.g. involving putting or keeping someone in prison for too long).

53. Nevertheless, while current practice does not therefore entirely exclude criminal liability on the part of judges for unintentional failings in the exercise of their functions, the CCJE does not regard the introduction of such liability as either generally acceptable or to be encouraged. A judge should not have to operate under the threat of a financial penalty, still less imprisonment, the presence of which may, however sub-consciously, affect his judgment.

54. The vexatious pursuit of criminal proceedings against a judge whom a litigant dislikes has became common in some European states. The CCJE considers that in countries where a criminal investigation or proceedings can be started at the instigation of a private individual, there should be a mechanism for preventing or stopping such investigation or proceedings against a judge relating to the purported performance of his or her office where there is no proper case for suggesting that any criminal liability exists on the part of the judge.

b. Civil liability

55. Similar considerations to those identified in paragraph 53 apply to the imposition on judges personally of civil liability for the consequences of their wrong decisions or for other failings (e.g. excessive delay). As a general principle, judges personally should enjoy absolute freedom from liability in respect of claims made directly against them relating to their exercise in good faith of their functions. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal; other judicial failings which cannot be rectified in this way (including e.g. excessive delay) should, at most, lead to a claim by the dissatisfied litigant against the State. That the state may, in some circumstances, be liable under the European Convention of Human Rights, to compensate a litigant, is a different matter, with which this opinion is not directly concerned.

56. There are however European countries, in which judges may incur civil liability for grossly wrong decisions or other gross failings[7], particularly at the instance of the state, after the dissatisfied litigant has established a right to compensation against the state. Thus, for example, in the Czech Republic the state may be held liable for damages caused by a judge's illegal decision or incorrect judicial action, but may claim recourse from the judge if and after the judge's misconduct has been established in criminal or disciplinary proceedings. In Italy, the state may, under certain conditions, claim to be reimbursed by a judge who has rendered it liable by either wilful deceit or "gross negligence", subject in the latter case to a potential limitation of liability.

57. The European Charter on the statute for judges contemplates the possibility of recourse proceedings of this nature in paragraph 5.2 of its text - with the safeguard that prior agreement should obtained from an independent authority with substantial judicial representation, such as that commended in paragraph 43 of the CCJE's opinion no. 1 (2001). The commentary to the Charter emphasises in its paragraph 5.2 the need to restrict judges' civil liability to (a) reimbursing the state for (b) "gross and inexcusable negligence" by way of (c) legal proceedings (d) requiring the prior agreement of such an independent authority. The CCJE endorses all these points, and goes further. The application of concepts such as gross or inexcusable negligence is often difficult. If there was any potential for a recourse action by the state, the judge would be bound to have to become closely concerned at the stage when a claim was made against the state. The CCJE's conclusion is that it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

c. Disciplinary liability

58. All legal systems need some form of disciplinary system, although it is evident from the answers given by different member states to the questionnaires that the need is much more directly felt in some, as opposed to other, member states. There is in this connection a basic distinction

between common-law countries, with smaller professional judiciaries appointed from the ranks of experienced practitioners, and civil law countries with larger and on average younger, career judiciaries.

59. The questions which arise are:

i) What conduct is it that should render a judge liable to disciplinary proceedings?

ii) By whom and how should such proceedings be initiated?

iii) By whom and how should they be determined?

iv) What sanctions should be available for misconduct established in disciplinary proceedings?

60. As to question (i), the first point which the CCJE identifies (repeating in substance a point made earlier in this opinion) is that it is incorrect to correlate breaches of proper professional standards with misconduct giving rise potentially to disciplinary sanctions. Professional standards, which have been the subject of the first part of this opinion, represent best practice, which all judges should aim to develop and towards which all judges should aspire. It would discourage the future development of such standards and misunderstand their purpose to equate them with misconduct justifying disciplinary proceedings. In order to justify disciplinary proceedings, misconduct must be serious and flagrant, in a way which cannot be posited simply because there has been a failure to observe professional standards set out in guidelines such as those discussed in the first part of this opinion.[8]

61. This is not to say that breach of the professional standards identified in this opinion may not be of considerable relevance, where it is alleged that there has been misconduct sufficient to justify and require disciplinary sanction. Some of the answers to questionnaires recognise this explicitly: for example, professional standards are described as having "a certain authority" in disciplinary proceedings in Lithuania and as constituting a way "of helping the judge hearing disciplinary proceedings by illuminating the provisions of the law on judges" in Estonia. They have also been used in disciplinary proceedings in Moldova. (On the other hand, the Ukrainian and Slovakian answers deny that there is any relationship between the two).

62. In some countries, separate systems have even been established to try to regulate or enforce professional standards. In Slovenia, failure to observe such standards may attract a sanction before a "Court of Honour" within the Judges' Association, and not before the judges' disciplinary body. In the Czech Republic, in a particularly serious situation of non-observance of the rules of professional conduct, a judge may be excluded from the "Judges' Union", which is the source of these principles.

63. The second point which the CCJE identifies is that it is for each State to specify by law what conduct may give rise to disciplinary action. The CCJE notes that in some countries attempts have been made to specify in detail all conduct that might give grounds for disciplinary proceedings leading to some form of sanction. Thus, the Turkish law on Judges and Prosecutors specifies gradations of offence (including for example staying away from work without excuse for various lengths of period) with matching gradations of sanction, ranging from a warning, through condemnation [i.e. reprimand], various effects on promotion to transfer and finally dismissal. Similarly, a recent 2002 law in Slovenia seeks to give effect to the general principle nulla poena sine lege by specifying 27 categories of disciplinary offence. It is, however, very noticeable in all such attempts that, ultimately, they all resort to general "catch-all" formulations which raise questions of judgment and degree. The CCJE does not itself consider that it is necessary (either by virtue of the principle nulla poena sine lege or on any other basis) or even possible to seek to

specify in precise or detailed terms at a European level the nature of all misconduct that could lead to disciplinary proceedings and sanctions. The essence of disciplinary proceedings lies in conduct fundamentally contrary to that to be expected of a professional in the position of the person who has allegedly misconducted him or herself.

64. At first sight, Principle VI.2 of Recommendation No. R (94) 12 might be thought to suggest that precise grounds for disciplinary proceedings should always “be defined” in advance “in precise terms by the law”. The CCJE fully accepts that precise reasons must be given for any disciplinary action, as and when it is proposed to be or is brought. But, as it has said, it does not conceive it to be necessary or even possible at the European level to seek to define all such potential reasons in advance in other terms than the general formulations currently adopted in most European countries. In that respect therefore, the CCJE has concluded that the aim stated in pragraph 60 c) of its Opinion No. 1 (2001) cannot be pursued at a European level.

65. Further definition by individual member States by law of the precise reasons for disciplinary action as recommended by Recommended No. R (94) 12 appears, however, to be desirable. At present, the grounds for disciplinary action are usually stated in terms of great generality.

66. The CCJE next considers question (ii): by whom and how should disciplinary proceedings be initiated? Disciplinary proceedings are in some countries brought by the Ministry of Justice, in others they are instigated by or in conjunction with certain judges or councils of judges or prosecutors, such as the First President of the Court of Appeal in France or the General Public Prosecutor in Italy. In England, the initiator is the Lord Chancellor, but he has agreed only to initiate disciplinary action with the concurrence of the Lord Chief Justice.

67. An important question is what if any steps can be taken by persons alleging that they have suffered by reason of a judge's professional error. Such persons must have the right to bring any complaint they have to the person or body responsible for initiating disciplinary action. But they cannot have a right themselves to initiate or insist upon disciplinary action. There must be a filter, or judges could often find themselves facing disciplinary proceedings, brought at the instance of disappointed litigants.

68. The CCJE considers that the procedures leading to the initiation of disciplinary action need greater formalisation. It proposes that countries should envisage introducing a specific body or person in each country with responsibility for receiving complaints, for obtaining the representations of the judge concerned upon them and for deciding in their light whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action, in which case it would pass the matter to the disciplinary authority.

69. The next question (iii) is: by whom and how should disciplinary proceedings be determined? A whole section of the United Nations Basic Principles is devoted to discipline, suspension and removal. Article 17 recognises judges' "right to a fair hearing". Under Article 19, "all disciplinary (…) proceedings shall be determined in accordance with established standards of judicial conduct". Finally, Article 20 sets out the principle that "decisions in disciplinary, suspension or removal proceedings should be subject to an independent review". At the European level, guidance is provided in Principle VI of Recommendation No. R (94) 12, which recommends that disciplinary measures should be dealt with by "a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself" and that judges should in this connection benefit, at the least, by protections equivalent to those afforded under Article 6.1 of the Convention on Human Rights. Further, the CCJE emphasises in this context that disciplinary measures include any measures adversely affecting a judge’s status or career, including transfer of court, loss of promotion rights or pay.

70. The replies to the questionnaire show that, in some countries, discipline is ensured by courts specialising in cases of this type: the disciplinary committee of the Supreme Court (Estonia, Slovenia - where each level is represented). In Ukraine, there is a committee including judges of the same level of jurisdiction as the judge concerned. In Slovakia, there are now two tiers of committee, one of three judges, the second of five Supreme Court judges. In Lithuania, there is a committee of judges from the various tiers of general jurisdiction and administrative courts. In some countries, judgment is given by a Judicial Council, sitting as a disciplinary court (Moldova, France, Portugal).[9]

71. The CCJE has already expressed the view that disciplinary proceedings against any judge should only be determined by an independent authority (or "tribunal") operating procedures which guarantee full rights of defence - see para. 60(b) of CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges. It also considers that the body responsible for appointing such a tribunal can and should be the independent body (with substantial judicial representation chosen democratically by other judges) which, as the CCJE advocated in paragraph 46 of its first Opinion, should generally be responsible for appointing judges. That in no way excludes the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of the legislature, government or administration.

72. In some countries, the initial disciplinary body is the highest judicial body (the Supreme Court). The CCJE considers that the arrangements regarding disciplinary proceedings in each country should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court.

73. The final question (iv) is: what sanctions should be available for misconduct established in disciplinary proceedings? The answers to questionnaire reveal wide differences, no doubt reflecting the different legal systems and exigencies. In common law systems, with small, homogeneous judiciaries composed of senior and experienced practitioners, the only formal sanction evidently found to be necessary (and then only as a remote back-up possibility) is the extreme measure of removal, but informal warnings or contact can prove very effective. In other countries, with larger, much more disparate and in some cases less experienced judiciaries, a gradation of formally expressed sanctions is found appropriate, sometimes even including financial penalties.

74. The European Charter on the Statute for Judges (Article 5.1) states that "the scale of sanctions which may be imposed is set out in the statute and must be subject to the principle of proportionality". Some examples of possible sanctions appear in Recommendation No. R (94) 12 (Principle VI.1). The CCJE endorses the need for each jurisdiction to identify the sanctions permissible under its own disciplinary system, and for such sanctions to be, both in principle and in application, proportionate. But it does not consider that any definitive list can or should be attempted at the European level.

5°) Conclusions on liability

75. As regards criminal liability, the CCJE considers that:

i) judges should be criminally liable in ordinary law for offences committed outside their judicial office;

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

76. As regards civil liability, the CCJE considers that, bearing in mind the principle of independence:

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

ii) any remedy for other failings in the administration of justice (including for example excessive delay) lies only against the state;

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

77. As regards disciplinary liability, the CCJE considers that:

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

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

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

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

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

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

A P P E N D I X

SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE

ON THE CONDUCT, ETHICS

AND RESPONSIBILITY OF JUDGES

	What are the obligations by which judges are bound ?				
	Source	Date	In relation to the law	In relation to the office	Personal qualities
ANDORRA	Qualified Justice Act	1993		professional secrecy	Duty to act with reservation

AZERBAIJAN			loyalty to the law	honesty, objectivity, incorruptibility	
BELGIUM	Judicial code	1967, an Act of 1999 was to reform the system, but the implementing decree was never adopted and now Parliament is seeking to repeal the Act	obligation to adjudicate under pain of a denial of justice	obligation under the Constitution to state the reasons for decisions, to deal with cases within a specified time	
CYPRUS	Courts of justice law		oath of loyalty to the Republic and to the Constitution	judicial oath to exercise his duties without favoritism, without allowing himself to be impressed, without allowing himself to be influenced by his passions	
CZECH REP	New Act on courts and judges	Entered into force on 1 April 2002	must interpret the law to the best of his abilities, according to his knowledge and his convictions	impartiality, reasonable time, loyalty in carrying out duties, must do nothing which would compromise the dignity of the judicial system and the confidence which it must inspire	no right to strike, no right to take part in a public demonstration prejudicial to his activities, must not be a member of a political party.
ESTONIA	Status of Judges Act	a new Act is being debated in 2002			
FINLAND	Constitution, oath, Code of Procedure, Act on Civil Servants		obey the law	impartiality, efficiency, reasonable time, secrecy of deliberations	behaviour in accordance with the office
FRANCE			judges are required to adjudicate, even when the law is silent, under	not to infringe the principle of the secrecy of the deliberations,	refrain from any political deliberation, from any display of hostility to the

			pain of a denial of justice	duty of reserve, no right to strike	powers of the Republic
GERMANY	German Judiciary Act			principle of moderation in expressing views, keeping the deliberations secret, not compromising confidence in the independence of the judicial system in his work	… and outside his duties
ICELAND	Constitution and European Act on the Judiciary	1998		must carry out their duties with complete independence, without ever being subject to the authority of anyone whomsoever, within a reasonable time	must maintain their level of legal knowledge and be attentive to their extra-judicial activities
IRELAND	Oath provided for in the Constitution	1937	comply with the Constitution and the law	Carry out his duties as a judge faithfully and to the best of his abilities, without fear or favour	
ITALY	Law on the judges' discipline	1946			
JAPAN	Constitution, Court Organisation Law	1947 (both)	compliance with the Constitution and with law	independence in the exercise of their conscience, impartiality and fairness	requirements of devotion to duty and secrecy; must refrain from any conduct casting doubt on their integrity
LIECHTENSTEIN	Constitution and Court Organisation Act	1921 and 1922, Bill on judiciary currently being examined	duties of officials in general, Civil Servants Act 1938		
LITHUANIA	Courts Act	2002	obey the Constitution and the law	satisfy the requirements of judicial ethics, impartiality, deal	

				with cases within a reasonable time, stand down if necessary, disclose that members of his family are to appear before the court in which he works	
LUXEMBOURG	No law defining judges' duties				
MALTA	First oath of allegiance before the President provided for in the Constitution, second oath in the Code of Judicial Organisation and Procedure		adjudicate in accordance with the law and Maltese custom, to the honour of God and the Maltese Republic	act honestly and fairly, must not communicate with the parties or advise them except in public, in court or with the leave of the President, provide reasons for his decisions, explain the reasons for delays	
MOLDOVA	Law on the status of the judiciary		strict observance of the requirements of the law in the interests of justice, protector of individual freedoms	safeguard the honour and dignity of citizens, the high culture of the judiciary, be impartial and human, not discredit justice, compromise the honour or dignity of the judiciary, cause doubts as to their objectivity	
NETHERLANDS	Art. 29 of the "Organisation of the Judiciary Act"	1827	They will be loyal to the King, they will maintain and obey the Constitution	They will carry out their duties impartially, honestly and conscientiously	
NORWAY	Constitution, oath of obedience and loyalty to the Constitution and the King,			must give an undertaking in writing to carry out the duties of his post conscientiously	

	Court of Justice Act				
POLAND	Constitution, laws, codes and rules of procedure – oath before the President, internal rules of the courts	Acts of 1984, 1995 and 1997 updated in October 2001	loyalty to the nation, guardian of the law	Meticulously observe the obligations associated with his work, comply with the oath, loyalty, impartiality, dignity and honesty in the administration of justice, secrecy of the deliberations	obligation to declare assets and resources, avoid any conflict of interests
PORTUGAL	The status of judges			Common duties to all the public function, duty of reservation, must wear gown	must reside in the place in which they sit; judges of the lower courts must not be absent from that place except at weekends and during holidays; other judges must not be absent for more than three consecutive days and not more than 10 days in a year, declared to the Judicial Service Board; political activities prohibited
ROMANIA	Article 24 of the Constitution Articles 82-87 of the Judicial Organization 92/92 Act	1991 1992	Oath of loyalty to the constitution and law	must not do anything which would compromise the dignity of the profession	must not do anything which would compromise their personal dignity

SLOVAK REP	Act on judges and lay judges	2000		Impartiality, reasonable time, loyalty in carrying out duties, must do nothing which would compromise the dignity of judicial system and the confidence which it must inspire, must refuse gifts, not allow himself to be influenced by his relationships, including by the media	must have reached the age of 30 years, have completed higher studies in law, be capable of being a judge, in particular as regards his health and his integrity, must reside permanently in Slovakia, must have been through a selection procedure
SLOVENIA	Judicial Service Act	1994, 1996 et 1998		conduct himself in his professional life in such a way as not to call in question his impartiality, his independence or the reputation of the judicial system.	In the exercise of his personal freedoms and rights, a judge must always take into account his duty to protect the independence and impartiality of justice and must not compromise the reputation of justice.
SWEDEN	Constitution, Codes of Procedure (oath) and Public Employment Act		must observe the law, must not manipulate it	an honest and upright judge: impartial, must administer justice to the best of his abilities and his conscience, must not be involved in corruption or personal, family or friendly favours, must not find the innocent guilty or vice versa, must observe the	

				secrecy of the deliberations	
SWITZERLAND					
TURKEY	Constitution of the Republic of Turkey and Law on the Judges and Public Prosecutors.	Both in 1982	loyalty to the Constitution, to the law and to his convictions provided they are compatible with the law	protect their independence, even though they may be linked to the Ministry in their administrative duties	no official functions, unless prescribed by law
UKRAINE	Law on the status of judges		Loyalty to the law and to the Constitution, objectivity, must deal fully and conscientiously with the cases brought before him	must submit himself to the discipline and to the organisation of work in the court; professional secrecy	
UNITED KINGDOM	Common law		Oath of loyalty and allegiance to the Crown while observing the law	apply the law independently and impartially	

	Is there a judge's code of conduct?				
	Drafted by...	Adopted by...	Date	Obligations	Sanction
ANDORRA	NO				
AZERBAIJAN	YES, prepared and adopted by all the judges and by the Judicial Council			Same as the provisions of the Statutes	Disciplinary proceedings
BELGIUM	NO				
CYPRUS	NO, but standards exist on recruitment in order to ensure the high moral quality of the future judge noted in his practice as a lawyer				
CZECH REP	YES AND NO, but 7 brief principles have been drawn up by the Judges' Union (an organisation representing 50% of judges) and could be made into a Code	Approved by a representative assemble of judges	2000	7 principles setting out the duties and conduct of the judge in his professional life	No cases
ESTONIA	YES, Association of Estonian Judges	Delegation by Parliament in the Judges Act for adoption by the Judges' Conference	1994	35 basic rules on professional conduct (conscience and diligence in work, professional relations, independence and impartiality) and restriction of personal freedoms (extra-judicial activities, private relations)	No actual sanction but may help to judge in disciplinary proceedings by shedding light on the provisions of the Judges Act

FINLAND	NO				
FRANCE	NO				
GERMANY	NO				
ICELAND	NO, some unwritten rules				
IRELAND	NO, but a report on the ethics and professional conduct of judges in 1999 recommended that an ethics and professional conduct committee draw up a Code which would be given to all new judges when taking up their posts. Such a committee does not yet exist. The law is in the course of being reformed.				
ITALY	YES, National Association of Judges	National Association of Judges, with the authority of the government and the legislature	1994	Dignity and correctness in private life, sense of public duty, disinterested exercise of the judicial function, independence, impartiality, attention given to relations with citizens, professional conscience, continuous training, procedures for using the resources of the administration, professional secrecy, discipline of relations with the media, no protection from conflicts of political or financial interests, concern to examine his impartiality,	It is primarily a means of self-regulation. A sanction may be available if the breach is one covered by the disciplinary provisions or the general law.

				relations with his peers and judicial personnel	
JAPAN	YES, stipulated in certain laws, although there is no independent code of conduct				
LIECHTENSTEIN	NO				
LITHUANIA	YES, National Judges' Association	National Congress of all judges	1998	Independence, conduct and duties of the judge, then outside his judicial duties, etc.	NO, but authority in disciplinary proceedings
LUXEMBOURG	NO, a Committee which examined the question concluded that it was preferable to stick to general unwritten rules.				
MALTA	YES, drafted by the judiciary	All except 1 judge, presented to the President at the head of the Justice Administration Committee, which accepted the Code with few amendments	2000	28 paragraphs reflecting agreement on good practice, confirming the values to which judges have adhered when taking the oath, image of justice for those subject to it who must also be effectively sanctioned if necessary	"The Code itself" is nto accompanied by sanctions
MOLDOVA	YES, by the CSM	Judges' Conference	2000	Confidentiality, correctness, punctuality, temperance, must be sober, polite, formal, calm, tolerant, must listen, must sanction those who do show contempt of court, , must not discuss the case with the parties other then during the	YES, disciplinary

				proceedings, respect human rights, no discrimination	
NETHERLANDS	NO				
NORWAY	No code, despite an attempt in 1999 by the Norwegian Law Court Commission, which is now pending before Parliament				
POLAND	NO, but the National Council on the Judiciary is authorised to draft such a code, and has since July 2001 been working on a collection of principles relating to judges' ethics				
PORTUGAL	NO				
ROMANIA	NO, but there are some general rules in the Judicial Organisation Act	Romanian Parliament	1992	Magistrates shall refrain from any acts or deeds able to compromise their dignity in function and in society. Magistrates shall be forbidden to be affiliated to political parties or to be engaged in public activities with a political character. Magistrature is incompatible with any other public a private office, except that of an academic professional activity. Magistrates shall be forbidden the exercise of trading activities, participation in the management	Penal and disciplinary proceedings.

				of trading, civil companies or of autonomous companies, either directly or through interposed persons. They shall also be forbidden the participation in the administration of such companies or autonomous companies. Other obligations for judges are considered conditions for being judge: ex. Good reputation or characteristic for judge's activity: ex. independence, impartiality, secret of deliberation	
SLOVAK REP	YES	President of the Council of the Judiciary and the Minister for Justice	2001	Private life, professional life and professional duties	NO, only the Judges Act
SLOVENIA	YES (it has just replaced a former Code of Professional Responsibility dating from 1972), by a group of judges from the Judges' Association	Association	2001	9 principles : independence, impartiality and neutrality, ability, diligence, incompatibilities/compatibilities, discretion, professional relations, reputation.	No, but there is a Court of Honour which may deal with an infringement without any sanction being imposed.
SWEDEN	No specific code, but there is an historical model which serves to inspire judges' conduct, namely the General Code of Law (1734), which includes an old code which is not binding on judges	Olaus Petri in the sixteenth century; a judges' association has recently been working on a draft code which has not been completed, in the face of numerous critics	1540		By another system, the law empowers the Ombudsman and the Justice Chancellor to criticise a judge publicly for his conduct
SWITZERLAND	There are practically no written rules at federal				

	level or to a large extent at local level				
TURKEY	Law on the Judges and the Public Prosecutors and rules of conduct	Parliament, Supreme Council of Judges and Public Prosecutors	1982	Same as the provisions of the Statutes	Disciplinary proceedings
UKRAINE	YES, taken up by a Congress of Judges in 1999 on the basis of experiences in Canada, America and Russia, in particular, together and amendments and proposals by Ukrainian judges	Council of Judges	2002	Obedience of the law, impartiality, maintenance of legitimate expectations, loyalty, justice and equity, sincerity, conduct faithful to the oath	NO, in accordance with the wishes of the Congress of Judges
UNITED KINGDOM	NO, but there are some informal guides which some (Judicial Studies Board, Scottish Justice Minister and a doctrine in Northern Ireland) would wish to see placed on a formal basis without constituting statutory duties	Established by the Lord Chancellor by agreement with the Lord Chief Justice		Before being appointed, judges are informed of what is expected of them in terms of conduct	

	Incompatibilities		
	Source	Type of incompatibility	Exceptions
ANDORRA	Law on Justice (L.Q.J.)	Any other public office; commercial, industrial or professional activities; work as a lawyer or legal aid work	
AZERBAIJAN	"this question is unclear for us"		
BELGIUM		A judge may not, at the same time, be a public prosecutor, elected representative, solicitor, bailiff, barrister, soldier or religious officer, or hold paid political or administrative office of any kind	
CYPRUS		Any other post or profession	Lectures and legal writings
CZECH REPUBLIC		No political office (eg President of the Republic or member of parliament), no government department or business activity. Scientific work, teaching and literary and artistic activities are allowed, as is work as a political adviser, if they do not undermine the dignity of the judiciary and the confidence it should inspire.	
ESTONIA		No political mandate or activity, no other posts except teaching or research; may not sit on the boards of public or private companies	
FINLAND	Act on Civil Servants	any public office, any civil, commercial and salaried profession or activity	permission may be obtained from the court or a higher court
FRANCE		Incompatibility with all types of public office, any civilian, commercial or salaried profession and work as an arbitrator	
GERMANY	German Judiciary Act	Idea of the separation of powers: no administrative activity (except in the court, research and teaching); may belong to a political party and stand for election as member of parliament: if elected, is suspended from duties as a	The government may authorise a judge to sit as an arbitrator or be heard as an expert by an arbitration tribunal

		judge; advisory and conciliation activities prohibited	
ICELAND	1998 Act on the Judiciary	May not accept a post or have a holding in a company if this is incompatible with his/her office or likely to impair the quality of his or her work.	Teaching, chairing committees, lectures writings, etc. Permission to engage in non-judicial activities must be requested from the Judicial Office Committee
IRELAND	Constitution of 1937	No judge shall be eligible. to be a member of either house of parliament or to hold "any other office or position of emolument".	
ITALY	Royal decree of 30 January 1941	No job or public or private office except as member of parliament or of a charitable organisation, no commercial, industrial or professional activity. The High Council for the Judiciary may authorize "tasks of any other kind".	Teaching and scientific activities possible with authorisation - under strict conditions - from High Council. Arbitration is only exceptionally authorised.
JAPAN	Court Organisation Law	Prohibition of political and commercial activities and of receiving remuneration other than for holding judicial office.	Permission may be obtained from the Supreme Court for receiving remuneration other than for holding judicial office
LIECHTENSTEIN	Article 6, 1938 Civil Servants Act	No other remunerated or particularly time-consuming activity without authorisation from the government, which considers whether it is compatible with the work of a judge, which is generally the case for part-time research and teaching	
LITHUANIA	2002 Judicial Act	No political activity, may not be called up for military service, no lucrative private activity, though compensation is allowed in the case of teaching, no work in an association if it impairs the judge's independence	Lecturing and legal writings
LUXEMBOURG	Constitution and Judicial Organisation Act	No paid employment	
MALTA	Code of Organisation and Civil Procedure, Code of Ethics	No personal involvement or involvement as counsel in a case that has already been opened or is probably within the judge's remit, no other activity, even	With the consent of the President of the Republic

		temporary, except in an international judicial body or the university	
MOLDOVA	Status of Judges Act	No other public or private office or post as member of parliament or local authority adviser; may not belong to political parties or other socio-political organisations; may not engage in business or in written or oral consultation except for close relatives. Publications and media appearances possible if they do not concern domestic policy issues.	
NETHERLANDS	Art. 44 "Organisation of the Judiciary Act (1827/2001)"; Act concerning incompatibilities national and European parliaments (1994)	Judges may not be (the Dutch equivalent of) barrister, solicitor, notary-public; they may not act in other professions that entail the giving of legal aid or advice; judges of the Supreme Court may not be a member of the Dutch or the European Parliament.	
NORWAY	Courts of Justice Act and State Basic Agreement	Judges are relatively free; only Supreme Court judges are subject to specific provisions. Generally speaking, however, they may be barristers, mediators or jurors without having to resign.	The law before parliament, which is to replace tolerant case law, contains strict provisions on the prohibition, authorisation and declaration of ancillary activities and makes the incompatibility rules stricter.
POLAND	Constitution and Statute	No other work except scientific publications and part-time teaching, provided these do not affect the judge's work; no activity or lucrative position that could tarnish the image of the judiciary; no political activity	The application must be forwarded to the hierarchical superior (president of the court or supreme court or the minister)
PORTUGAL		No public or private professional post; incompatibilities applicable to civil servants in general	Teaching and legal research may be authorised by the Judicial Service Commission, but may not be remunerated

ROMANIA		No political activity, no post other than collaboration with scientific publications and teaching	
SLOVAK REPUBLIC	2000 Act	No political posts in the broad sense of the term, including government departments and the army, no lucrative private activity except scientific, teaching or artistic activity, and then on condition that it does not undermine the dignity of the post of judge.	
SLOVENIA	Constitution and Judicial Organisation Act	Any administrative or political post, any commercial or professional activity, lucrative activity or involvement in the management of companies, and anything that might tarnish the reputation of the judiciary. Teaching and research are authorised subject to this condition.	
SWEDEN	Laws and constitution	No judge is subordinate to another judge or public official	
SWITZERLAND		No other public office or post, no other career or profession, no post as director, manager or member of a body running a lucrative establishment, no post assigned or title or declaration awarded by foreign authorities	The court may authorise work as an expert or arbitrator and other ancillary activities and lay down the relevant conditions provided the independence and prestige of the judiciary are not impaired
TURKEY	Law on the Judges and Public Prosecutors	No public activity unless authorised by law, no profit bringing activity.	
UKRAINE	No incompatibilities formally provided for		
UNITED KINGDOM	Guidelines	May not sit as an arbitrator or engage in any lucrative professional activity (save writing or editing) or any professional activity (save writing or editing) or any	

		political activity; substantial restrictions also apply when a judge has left office	

	Circumstances in which impartiality may be called into question	
	Source	Circumstances
ANDORRA	Law on Justice (L.Q.J.)	Family proximity, to have been lawyer or representative; commercial or economic legal relationship. To have had a litigation with a Party or his lawyer, interest in the object of the litigation, hierarchical or friendly relationship.
AZERBAIJAN	Question brought to the discussion by the Attorney General's Department in a situation referred to by law	
BELGIUM	Case-law based on the provisions of the Code and the legislation on standing down and on incompatibilities	
CYPRUS	Case-law of the Supreme Court	Conflict of family or personal interests, knowing the case or the parties
CZECH REP	Codes of Civil and Criminal Procedure, mechanism for … seeking damages from a judge who has misused his authority	
ESTONIA		Conflict of interests, any relationship which might adversely affect the credibility of the judicial system, bias
FINLAND	Code or Procedure	Family connections, conflict of interest, bias, involvement in the case and other reasons, which bring the judge's impartiality under reasonable suspicion
FRANCE		A judge may be challenged and must refrain from hearing a case in various circumstances which call his objective and subjective impartiality into question: family or friendly relations, conflict of financial interests, where he has already taken a decision or delivered an delivered in the same case, where there is a link of subordination
GERMANY	Code of Civil Procedure	Family connections, a case in which the judge has given evidence or been examined as an expert, or in which he has already taken a decision, doubts in respect of his impartiality may thus be revealed by a conflict of financial or friendly interests or a stated preference for one of the parties
ICELAND	Law on Civil Procedure and Law on Criminal Procedure	Party to the dispute, has given advice to a party to a case, having a family, friendly or professional relationship with one of the parties; is a witness in a case or has a close relation to a witness.
IRELAND	*Nemo judex in causa sua* rule of law	No conflict of personal, family or financial interests, no bias or prejudice, otherwise the judge must stand down

ITALY	Codes of Civil and Criminal Procedure	Conflict of family, personal or professional interests, knowledge of the case or of the parties, bias and prejudice.
JAPAN	Constitution and Codes of Civil and Criminal Procedure such as the party of a case being his/her relative	Apart from compliance with the rules on incompatibilities, judges may be challenged and/or are required to withdraw from proceedings in certain circumstances
LIECHTENSTEIN		Conflicts of personal or family interests, bias, raised by the Court of its own motion or by the parties
LITHUANIA	Code of civil procedure	Conflict of personal or family interests, bias, involvement in the case as a witness
LUXEMBOURG	Article 521 of the New Code of Civil Procedure, Article 542 of the Code of Criminal Investigation, Article 6 of the European Convention on Human Rights	Where the judge's impartiality is challenged or where there is a reasonable doubt as to the fairness of the proceedings
MALTA	A comprehensive list of circumstances in which the judge must stand down or the parties refuse to allow him to deal with the case is set out in the code of Judicial Organisation and Civil Procedure	Conflict of personal or family interests, bias, involvement in the case as a witness
MOLDOVA	Codes of Civil Procedure and Criminal Procedure	Must stand down where he has a direct or indirect interest in the case or where there is a family connection with the parties
NETHERLANDS	Civil Procedure Act, Criminal Procedure Act, Administrative Procedure Act	"Facts or circumstances that could call the impartiality of the judge into question" (The law does not go into detail, jurisprudence conforms to the guidelines set by the European Court of Justice)
NORWAY	Courts of Justice Act	Family connections with the parties or their legal advisers, provided that confidence in the judge may be affected, the judge must stand down (conflict of interests in the majority of cases)
POLAND	Laws on Criminal and Civil Procedure	Where the judge knows the parties or is familiar with the case because he has already taken part in it (close involvement with one of the parties or with the case in a personal or professional capacity); two categories of case: *iudex inhabilis* and *iudex suspectus*
PORTUGAL	Statute on the Judiciary, Code of Civil Procedure, Code of Criminal Procedure	A judge may not sit in a court in which a member of his family works, where there is a reasonable doubt as to the fairness of the proceedings or where he asks to be relieved of the case in the event of a conflict of personal, economic or family interests, he cannot have been involved in the case or have taken part in it in a different capacity
ROMANIA	Legislation	Close connection with one of the parties, political influence, media pressure, friendly relations

SLOVAK REP		Any circumstances in which, in the performance of his duties, in his private life or after he has left office, the judge brings the dignity of his office into disrepute or jeopardises the necessary confidence in the judicial system.
SLOVENIA	Codes of Civil and Criminal Procedure, ECHR	Where the judge is a party to the proceedings or is involved in the case, or has a connection with such a person, if he has given evidence or been involved in the case as an expert witness, if he has taken part in a decision taken or delivered in the case, if there is a reasonable doubt as to his impartiality.
SWEDEN	Codes of Procedure	Family connection, conflict of personal, financial or political interests, bias, professional or personal involvement in the case
SWITZERLAND	Legislation and case-law	...consistent with the case-law of the European Court of Human Rights
TURKEY	Codes of Criminal and Civil Procedure	Bias, conflict of interests, personal involvement in an offence as victim, witness, counsel, arbitrator or through a family connection
UKRAINE	Codes of Procedure	Close connection with one of the parties, personal interest in the case, or where the performance of the judge's duties would in any way call his impartiality into question
UNITED KINGDOM	ECHR	

	Criminal or civil liability of judges			
	Criminal liability		Civil liability	Procedures
	Offences	Sanctions		
ANDORRA	Criminal code, Article 114, corruption, corrupt practices		Judges bear civil liability in the event of fraud in the performance of their duties	In criminal matters, a judge can be arrested only where is caught in the act of committing an offence; temporary suspension from duties is automatic, with the consent of the Supreme Judicial Council
AZERBAIJAN	Where a judge knowingly convicts an innocent party, for example	Prison or damages	A higher court rehearing a case may find that the judge who dealt with the case at first instance is liable	The President and the Council of Judges decide to proceed by referring the matter to the Attorney General's department, the judge will be tried by an ordinary court
BELGIUM	Offences against the general law on the occasion or in the exercise of his duties	Penalties prescribed under the general law	Mechanism for seeking damages from a judge who has misused his authority which allows a judge to be held personally liable in the event of fraudulent intent or fraud on the part of the judge, the State may also be held liable for misconduct by a judge	In criminal matters, the action is in the hands of the Public Prosecutor attached to the Court of Appeal, in civil matters the proceedings are held before the Court of Cassation
CYPRUS	The Constitution guarantees immunity for the judges of the Supreme Constitutional Court and of the High Court (now combined into the Supreme Court).. Common law and equity ensure that judges of the lower courts also enjoy immunity			

CZECH REP	In connection with the exercise of duties		Where there has been an unlawful decision or a harmful activity, the damage is made good by the State, which is entitled to bring an action for indemnity if the judge has been found guilty of a disciplinary offence	Criminal proceedings against a judge must be authorised by the President of the Republic; jurisdiction lies with the ordinary courts, according to the procedures of the general law
ESTONIA	Where the judge has deliberately delivered an illegal decision	Removal from office	No personal liability on the part of the judge, State liability	The representative of the Attorney General's department addresses the Supreme Court, which ascertains that the prosecution may be brought under the Criminal Code and the Code of Criminal Procedure, with the consent of the President of the Republic.
FINLAND	Offences described in the Criminal Code committed in the course of duties	Penalties prescribed by general law, including removal from office	Liability for damage caused in the exercise of the judge's duties. The compensation is as a rule paid by the State, which in certain cases may be reimbursed by the judge.	Ordinary procedures, which, according to the Constitution, may be instituted by anyone whose rights have been offended (exceptions and special procedure for members of the Supreme Courts).
FRANCE	Offences defined by law	Penalties prescribed by the general law	Civil liability only where the judge is personally at fault	Normal criminal procedure, a civil action is available only against the State, which has a right to bring an action for indemnity

GERMANY	Breaches of the Criminal Code involving misuse of their judicial office and corruption.	Penalties prescribed under the general law	Personal civil liability limited by Article 839(2) of the Civil Code, where the act giving rise to the damage is a criminal offence. State liability is incurred in other cases, and the State can bring an action for indemnity whenever it is ordered to pay damages	Normal criminal and civil procedures
ICELAND	Where the judge has deliberately delivered an unjust decision, where he uses illegal procedures to obtain admissions or where he orders illegal arrests or investigations	Aggravated penalties prescribed by the general law	The State bears civil liability but may recover from the judge if the fault was deliberate	Procedures laid down by the general law
IRELAND	Complete immunity for judicial office is recognised at common law			
ITALY	Prescribed in the Criminal Code and aimed particularly at the judge in the performance of his judicial duties, such as corruption	Penalties prescribed by the general law	Civil liability for gross negligence or a denial of justice was provided for in a Law of 1988 which marked a break from the relative immunity from liability denounced in a referendum. The State acts as guarantor and can bring an action for indemnity against the judge, the amount of damages is limited if the damage was caused unintentionally.	Specific rules on jurisdiction in order to ensure that the case is dealt with in a different area, examination of the admissibility of applications (can a problem raised by corrected by a remedy? does the complaint relate to the interpretation of the law?). Cases are heard by the ordinary courts
JAPAN	Ordinary criminal liability		Under a precedent established by the Supreme Court in 1955, judges have no personal, civil liability for damage caused to parties in	

			the performance of duty	
LIECHTENSTEIN	Offences under the general law, plus certain particular offences such as malfeasance in office or corruption	Penalties prescribed by the general law, a judge who is sentenced to a term of imprisonment of more than one year is removed from his post	General rules on the civil liability of the State, which may bring an action for indemnity	Ordinary courts and procedures in criminal matters and in civil matters; the Supreme Court has jurisdictions to hear appeals
LITHUANIA	Breaches of the Criminal Code involving misuse of their judicial office and corruption	Penalties prescribed under the general law	The State alone is liable, but has a right to bring an action for indemnity against the judge	Any criminal prosecution or detention must be approved by Parliament; the judge is then suspended from office pending the outcome of the proceedings.
LUXEMBOURG	Article 4 of the Civil Code, abuse of powers and denial of justice	Fines, prohibition on exercising duties or from occupying public posts or office	Only State liability can be incurred (procedure under the general law, Law of 1 September 1988)	Article 639 of the New Code of Civil Procedure for seeking damages from a judge who has misused his authority
MALTA	The Criminal Code makes express provision for cases in which a judge dismisses or refuses to hear a lawfully submitted application for habeas corpus; like any holder of public authority: misuse of powers or malfeasance, corruption, financial misappropriation	Penalties prescribed by the general law	No special rules; there is no known case of an attempt to render a judge civilly liable	The ordinary procedures of the ordinary criminal courts
MOLDOVA	The general law, under the principle that all are equal before the law		No civil liability for judges	Criminal prosecution authorised by the CSM and the President of the Republic or Parliament, depending on circumstances,

				and heard before the higher courts.
NETHERLANDS	General law applies		Only State liability can be incurred	General law applies, no special procedures
NORWAY	Offences against the general law		An action to establish civil liability on the part of the judge is available only if the decision has been set aside and if the judge committed an offence when taking it	The charges against a judge are defined by the King's Council and the judge is always tried by a higher court than the one in which he sits
POLAND	Offences connected with judicial activities and duties		The judge may be held personally liable in accordance with the general law, the State may be held liable in a case of unintentional fault or misconduct in office (an action for indemnity is limited to three months' salary, is unlimited in a case of serious breach), there is no liability for the consequences of a judgment	Criminal proceedings and custodial measures must be authorised by the Disciplinary Court (except where the person is caught in the act of committing the offence): the Disciplinary Court may also suspend the judge from office; an appeal lies to a higher court
PORTUGAL	Offences against the general law committed on the occasion or in the exercise of the judge's duties, special offences of misuse of powers, abuse of authority, misappropriation of public funds, denial of justice, breach of secrecy	Penalties prescribed by the general law	A judge incurs civil liability only where the facts causing the damage have lead to a criminal conviction for bribery, misappropriation of public funds or prevarication, the judge is required to reimburse the compensation paid by the State or to indemnify the State	Ordinary criminal procedure before a higher court than that in which the judge sits in criminal matters, and before the court where the facts arose in civil matters

ROMANIA	General law	General law	General law	Ordinary procedures and courts in civil matters; in criminal matters, prior opinion of the Minister or the President, then ordinary procedures and courts (higher courts for judges at a certain level in the hierarchy)
SLOVAK REP	Offences committed in the course of the judge's duties	Imprisonment, loss of professional and honorary qualifications, prohibition on practising, fines		In criminal matters, proceedings must be authorised by the body which appointed or elected the judge and are brought at the initiative of the President of the court concerned or the Minister for Justice
SLOVENIA	Malfeasance having given rise to a deliberate offence	Penalties prescribed by the general law, which may have the consequence of removal from office		In criminal matters, any proceedings or detention must be authorised by Parliament
SWEDEN	Offence committed in the exercise of duties set out in the Criminal Code: breach of duty, corruption, breach of professional secrecy	Penalties prescribed by the general law (fines, prison) and possibly disciplinary consequences, including removal from office	Damage caused in the exercise of the judge's duties, the State is generally liable for the negligence of a public servant, the judge may be personally liable where there are aggravating circumstances	In criminal matters, if the judge is a judge of the Supreme Court on the Ombudsman and the Justice Chancellor can bring proceedings
SWITZERLAND	Offences connected with the judge's activities or official position		Only the State can bear civil liability, the direct civil liability of the judge is precluded	In criminal matters, only Parliament can authorise proceedings; it may also provisionally suspend the judge

				from office; the case falls within the jurisdiction of the ordinary courrts
TURKEY	Code of Criminal Procedure: misuse or abuse of office, corruption, favouritism	Imprisonment	Code of Civil Procedure: civil consequences of a criminal offence, arbitrary decisions, illegal decisions, decisions dictated by personal considerations or by considerations extraneous to the case	Criminal proceedings require the consent of the Supreme Council of Judges and Public Prosecutors, which who appoints the investigators and the prosecutor, decides if a matter is disciplinary and forwards the documents to the competent authorities – special procedure in cases of treachery (felony)
UKRAINE		Penalties prescribed by the general law, plus removal from office.	No civil liability for judges	Ordinary criminal procedure, however any preventive detention of a judge must be exceptional and authorise by the Supreme Council. The judge is suspended from office immediately an action is initiated. The competent court is a Court of Appeal designated for the purpose, where the judge has never worked
UNITED KINGDOM	Immunity at common law in the exercise of judicial duties, otherwise immunity only if the judge has acted in good faith			

	Disciplinary proceedings			
	Circumstances	Procedure	Authority	Sanction
ANDORRA	Serious or very serious breaches set out in Articles 83 and 84 of L.Q.J.	The Supreme Judicial Council takes the initiative for an investigation upon application by an injured person, a citizen who was aware of the facts, the Attorney General's department or the president of the court concerned	Supreme Judicial Council	Article 85 of L.Q.J., reprimand, fine, suspension of post, removal from office
AZERBAIJAN		In the even of minor offences	The Minister requests the Judges' Council to deal with the case	Warning or dismissal
BELGIUM	Breach of the rules of conduct laid down by law or deriving from case-law, i.e. confidence in the judicial institution		The judge appears before his President, the First President of the Court of Appeal or before the General disciplinary Assembly of either the Court of Appal or the Court of Cassation, depending on his grade and the gravity of the breach or of the penalty available	Warning, simple censure, censure with a reprimand, suspension for between 15 days and 1 year, dismissal
CYPRUS	Mental or physical incapacity preventing the judge from carrying out his duties, breach of his ethical duties	The Supreme Court appoints an investigating judge and then decides to send the judge before the disciplinary body	Supreme Council of the Judicature	Reprimand or removal from office
CZECH REP	Breach of the disciplinary rules laid down in a Law of 2002	The Minister for Justice or the President of the Court concerned or the President of the Supreme Court decide to	Disciplinary Court composed of five judges appointed by a President of a Court appointed by agreement with the Judicial Council for	Reprimand, temporary reduction in salary, suspension from duties as president, suspension from duties as a judge

		bring proceedings within two months of becoming aware of the facts, which must not have happened more than two years previously	a period of three years, an appeal lies to the Supreme Court.	
ESTONIA	Failure to follow procedures and any breach or conduct that jeopardises confidence in the judicial system	Proceedings initiated by the President of the Supreme Court or the Minister for Justice	Disciplinary Committee of the Supreme Court	Warning, reprimand, fine, removal from office (can only be ordered by the Supreme Court in plenary assembly)
FINLAND	No disciplinary proceedings: also minor offences (breach of duty) may result in criminal proceedings			
FRANCE	Breach of the duties associated with his post, dishonourable unscrupulous or undignified conduct		Supreme Council of the Judiciary, under the presidency of the First President of the Court of Cassation	From a simple reprimand recorded in the file to removal from office
GERMANY	Breach of the duties defined in the Statutes, proceedings are very rarely brought	Procedure administered by a special department	The Federal Service Court, a Division of the Federal Court of Justice composed of professional judges appointed for life and other career judges	Reprimand, fine, reduction in salary, transfer to another post, removal from office
ICELAND	A breach in discharge of judicial functions.	A complaint in writing may be lodged before the Committee on Judicial Functions by any person who has suffered harm owing to the conduct of a judge. If found valid, the judge is invited to comment before the Committee rules.	a) Committee on Judicial Functions composed of three members appointed by the Minister for Justice (one proposed by the Assembly of Icelandic Judges and one proposed by the Faculty of Law) b) President of Court	Admonition, personal opinion (removal from office only by conclusions of court proceedings in a more serious matters)

IRELAND	There is only a procedure before Parliament for removal from office; it resembles the impeachment procedure deriving from common law and is rarely used.			
ITALY	Any breach of the duties associated with his post, public or private conduct adversely affecting the confidence and prestige that a judge and the judicial institution must inspire (cases determined by the case-law)	Proceedings initiated by the Attorney General's representative at the Court of Cassation or on application by the Minister for Justice. The procedure is judicial in nature, with all the guarantees provided by such a procedure	Disciplinary court composed of nine judges who are members of the Supreme Council of the Judiciary elected by their peers; two of them must have been nominated by Parliament	
JAPAN	Court Organisation Law, Law for Impeachment of Judges and Law on Disciplinary Actions against Judges	Stipulated in the Law on Disciplinary Actions against Judges and Law for Impeachment of Judges	Hearing by a court of a level higher than that to which the judge concerned belongs in the impeachment procedure in which the most serious cases are handled, hearing by the Court of Impeachment made up of Diet members.	The disciplinary procedure: Caution or fines / the impeachment procedure: Dismissal
LIECHTENSTEIN	Those laid down in the Statutes of Officials of the State	No specific procedure, similar to criminal procedure	Higher court in the case of ordinary judges and Supreme Court in the case of higher judges	Reprimand, temporary reduction in salary, dismissal
LITHUANIA	Breach of judge's duties, flagrant breach of the law, failure to observe rules on incompatibility	The Judicial Council or the President of the Court may initiate disciplinary proceedings	Ethical and Disciplinary Committee of the Judicial Council (composed of judges – elected or appointed – and of representatives of the other Powers), which refers the case to a Court of Honour, which, where it decides that a judge is to be dismissed, proposes that sanction to the President or to Parliament	Reprimand or removal from office
LUXEMBOURG	Article 155 of the Law on the Judicial	Article 157 *et seq.*		Article 156

	Organisation, wide definition			
MALTA	Constitution. Inability (physical or mental) to carry out his duties or particularly serious misconduct	S. 971 of the Constitution S. 8 of Act No. 41 of 1944	Removal from office by the President on an address from Parliament (approved by two thirds of the votes). Before this steps is taken the case is investigated by the Commission for the Administration of Justice when it is found that the judge has a case to answer	Removal from office
MOLDOVA	Premeditated breach of the law in administering justice, disciplinary offence, public activity of a political nature, breach of the rules on incompatibilities, systematic or serious breach of the Code of Conduct	Disciplinary proceedings may be brought by: the President of the Supreme Court, the President of the Supreme Council of the Judiciary, any member of the Supreme Council of the Judiciary	Disciplinary Board of the supreme council of the Judiciary	Observation, warning, dismissal
NETHERLANDS	In case of minor breaches of duties or rules of conduct by the judge, the president of the court can issue a warning. It the judge is convicted or committing a crime and/or is sentenced to a prison sentence, if he is declared bankrupt or legally unfit and, more generally, if he acts in such a way that justice or the confidence of the judiciary is seriously impaired, the Supreme Court can suspend or dismiss the judge.			

NORWAY	A current Bill seeks to put an end to the practice whereby judges, like all senior officials, are not subject to disciplinary proceedings	A party, a witness or a lawyer with a complaint about the conduct of a judge in the exercise of his duties may bring the matter before the Disciplinary Committee – the Committee's decision may be reviewed by an ordinary court composed of lay judges	A committee composed of two judges, one lawyer and two outsiders, all appointed by the Government	Warning and reprimand only; removal from office, as provided for in the Constitution, for grave and repeated offences involves a special procedure provided for in the Constitution
POLAND	Breach of the dignity of his office, flagrant breach of the rules of law, minor offences	Closely resembles criminal proceedings; proceedings are administered by judges elected for the purpose, on application by the Minister, the Supreme Court or any head of court, the National Council of the Judiciary or Prosecutor elected himself; the proceedings are held in public and the judge is defended by counsel	Different disciplinary courts deal with matters arising in the ordinary courts, the administrative courts, the military courts and the Supreme Court: there are three judges at first instance and seven judges hear appeals	Warning, reprimand, removal from post – whether definitive or merely be way of transfer – removal from office
PORTUGAL	Breach of professional duties, acts or omissions in the capacity of judge which are incompatible with the dignity essential to the exercise of judicial functions (in varying degrees, which determine the sanction)	Provided for in the Statutes of Judges	Supreme Council of the Judiciary; and appeal lies to the Supreme Court	Fine of between 5 days' and 90 days' remuneration, transfer, suspension for between 20 days and 240 days, compulsory retirement, removal from office

ROMANIA	Professional misconduct and conduct contrary to the interests of the service or to the prestige of the judicial system (delays in dealing with cases, absence, acting in the judge's personal interest, interference in the work of judges, breach of secrecy)	Proceedings initiated by the Ministry, investigation carried out by judges of the same rank, defense provided by a judge	Supreme Council of the Judiciary, then at last resort before the Supreme Court	Reprimand, warning, reduction in salary, block on promotion, transfer, suspension, removal from office
SLOVAK REP	Breach of the disciplinary rules laid down in a Law of 2000 or the consequences of a criminal conviction	The Minister of Justice or the President of the Court concerned are competent to initiate proceedings	Disciplinary Courts	Admonition, temporary reduction in salary, suspension, removal from office
SLOVENIA	Very strict cases provided for by the Law on the Judicial Organisation	Proceedings on the initiative of the President of the Court, then application of the ordinary criminal procedure	Disciplinary Court composed of one judge of the Supreme Court as President and four judges representing the different levels of courts	Transfer, suspension of all promotion, reduction in salary, removal from office
SWITZERLAND	Switzerland is not concerned			
TURKEY	Failure to carry out duties, misconduct, insulting behaviour in the course of work, absence, delays, time-wasting, bringing the image of justice into disrepute, malfeasance, failure to fulfil administrative and ministerial duties	Depending on the hierarchical level, inspectors appointed by the Minister, who takes the initiative for proceedings, observance of the rights of defence	Supreme Council of the Judges and Prosecutors (which is also competent for appointments and career management)	Warning, reprimand, delay in and block on promotion, withholding of salary, compulsory transfer, dismissal
UKRAINE	Flagrant breach of the law, failure to fulfil duties as judge and those duties which that post imposes in the judge's private life		Disciplinary Committees	Reprimand or recommandation to the High Council on Justice that the judge be removed from office

UNITED KINGDOM	Particular serious misconduct	On the initiative of the Lord Chancellor and the Lord Chief Justice	By the Queen on address of both Houses of Parliament in the case of the senior judiciary and by the Lord Chancellor in the case of the rest of the judiciary (but in each case, no such steps would be taken without obtaining an independent judicial report and without the concurrence of the Lord Chief Justice)	Removal from office (extremely rare)

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[1] This has since been revised in November 2002, to become The Bangalore Principles of Judicial Conduct. The CCJE did not have these Principles before it. The Explanatory Note to them acknowledges the input of the CCJE' s Working Party in June 2002.

[2] *Les mutations de la justice. Comparaisons européennes*, Ph. Robert and A. Cottino (ed.), Harmattan, 2001.

[3] See for exemple Piersack case, judgment of 1 October 1982, Series A 53, para. 30, De Cubber case, judgment of 26 October 1984, Series A 86, para. 24, Demicoli case, judgment of 27 August 1991, Series A 210, para. 40, Sainte-Marie case, judgment of 16 December 1992, Series A 253-A, para. 34.

[4]For a detailed analysis of incompatibilities, see the Communication by Jean-Pierre Atthenont, presented at the seminar organised by the Council of Europe on the statute for judges (Bucharest, 19-21 March 1997) and the Communication by Pierre Cornu presented at a seminar organised by the Council of Europe on the statute for judges (Chisinau, 18-19 September 1997).

[5] It covers relations with individuals, the duty of competence, the use of public resources, the use of professional information, relations with the press, membership of associations, the image of impartiality and independence, the obligation to act correctly with collaborators, conduct in office and outside and the duties of presiding judges.

[6]In his summary report, presented following the first meeting of the Lisbon Network, Daniel Ludet stressed that training should offer a link and encourage discussion of judges' professional practices and the ethical principles on which they are based (see *Training of judges and prosecutors in matters relating to their professional obligations and ethics*. 1st meeting of the members of the network for the exchange of information on the training of judges and prosecutors, Council of Europe Publishing).

[7] Merely because the State has been held liable for excessive delay, it by no means follows, of course, that any individual judge is at fault. The CCJE repeats what it said in paragraph 27 above.

[8]It was for these reasons that the CCJE Working Party, during and after its meeting with the United Nations Commissioner for Human Rights on 18th June 2002, qualified its otherwise substantially positive attitude to the Bangalore Code in its present draft form by disagreeing with the direct link

which it drew between the principles of conduct which it stated and the subjects of complaints and discipline (see paragraph 2(iii) of Appendix V, doc. CCJE-GT (2002) 7): see the CCJE-GT's comments No. 1 (2002) on the Bangalore draft.

[9] In England, the Lord Chancellor is responsible for initiating and deciding disciplinary action. By agreement disciplinary action is initiated only with the concurrence of the Lord Chief Justice, and thereafter (unless the judge concerned waives this) another judge of appropriate standing, nominated by the Lord Chief Justice, is appointed to investigate the facts and to report, with recommendations. If the Lord Chief Justice concurs the Lord Chancellor may then refer the matter to Parliament (in the case of higher tier judges) or remove a lower tier judge from office, or take or authorise any other disciplinary action.