

OPINION ON THE RULES OF PROFESSIONAL ETHICS FOR JUDGES OF THE CONSTITUTIONAL COURT OF UKRAINE

UKRAINE

This Opinion has benefited from contributions made by **Slavica Banić**, former Justice of the Constitutional Court, Croatia; **Vasil Vashchanka**, International Human Rights and Rule of Law Expert; and **Dr. Jessica Walsh**, Lecturer in Law, LL.M. Programme Director at the School of Law of the University of Buckingham.

Based on an unofficial English translation of the Rules commissioned by the OSCE Office for Democratic Institutions and Human Rights.



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine provide guidance for ethical conduct by the Constitutional Court judges, addressing various aspects of a judge's professional and private life. It is commendable for the Constitutional Court of Ukraine to have taken the initiative to adopt its own rules of professional ethics, which demonstrates the willingness of the institution to strengthen the integrity, professionalism and ethical behaviour among its judges. This step may encourage the institutionalization of standards of conduct, greater awareness of ethical principles among the Constitutional Court judges and in their social milieu, and promote proper judicial conduct. If disseminated widely among the public in general, they may also trigger a better understanding of the ethical rules that are applicable to Constitutional Court judges, which may ultimately contribute to enhancing public trust in the institution.

The Opinion aims to offer some additional considerations and recommendations with the aim of further strengthening the clarity, coherence, practical impact and effective implementation of the Rules of Professional Ethics, as well as inform the possible development of additional guidance documents.

At the outset, it should be emphasized that due to the specific status of the Constitutional Court of Ukraine as an institution separate from the common court system, the adoption of distinct ethical rules is justifiable, also to take into account the specificities of constitutional adjudication. At the same time, many of the ethical rules that are applicable to the wider judiciary would also be relevant to judges of the Constitutional Court.

Given the established obligation for Constitutional Court judges to comply with the Rules, its provisions should be supported by clear and objective criteria to guide their application, assessing whether in the view of a reasonable observer a judge's conduct may be considered inappropriate, improper, or unethical. It is also crucial that the Rules be worded in such a way that they focus on the individual judge's conduct and emphasize individual responsibility. Duties relating to the performance of judicial functions would be further enhanced by explicitly incorporating diligence, competence, and ongoing professional development. The elaboration of the principle of equality in the Rules (or in a guidance document) could also go further in terms of strong commitment towards equitable, non-discriminatory and harassment-free working environment, and treatment of all individuals in the courtroom and adjudicatory functions.

The provisions addressing informal relations with public authorities would benefit from more precise formulation, not only addressing situations where independence or impartiality is actually affected, but also those that may reasonably be perceived as doing so. The framework could usefully begin with a clearer articulation of the general expectation that judges should avoid inappropriate connections with other branches of power and thus maintain such separation both in appearance and in practice.

The provisions on freedom of expression of Constitutional Court judges do not fully reflect international guidance. The Rules should further expand and clarify the limitations to expressions to require Constitutional Court judges to exercise discretion cautiously with regard to cases with which they deal, in order to preserve

their image of impartiality. In addition, the Rules should also prohibit public or other statements that may affect the fairness or expected outcome of pending cases, or that may provide a substantive assessment of legal issues under consideration by the Court.

Freedom of expression of judges may be exercised in different contexts – in-court, out-of-court, academic, public, private, or online – and the Rules or other guidance document should clarify how each form of communication is treated. International standards and judicial practice also recognize that judges should not be entirely silent. They should enjoy a wider degree of freedom when expressing views on important legal issues in academic or professional settings. At the same time, their engagement in academic, social, or professional activities should avoid creating affiliations that may generate perceptions of partiality. Further, in some circumstances, judges may even have a duty to speak publicly in defence of judicial independence and the rule of law. In any case, whenever, from the perspective of an informed and reasonable observer, a judge's actions or comments may reasonably cast doubt on their impartiality or could expose them to public criticism or diminish the dignity of their position, the said judge should refrain from participating. The restrictions that may continue to apply with respect to former judges once they leave office would require clarifications and adjustments to ensure that they are strictly necessary and proportionate, acknowledging that once leaving office, they should be entitled to exercise the rights and freedoms available to all, whilst adhering and respecting confidentiality.

Judges' participation in out-of-the-court activities is permitted by the Rules, providing that they are not prohibited by law, but the current formulation of restrictions seems too narrow, focusing solely on the requirement not to interfere with the performance of duties. The restrictions should instead extend to any conduct that compromises, or may reasonably be perceived as compromising, the independence, impartiality, or compliance with other ethical obligations.

The Rules grant judges the right to inform the public about the Court's acts and its legal positions, and this could be broadened to include explanation of the Court's values and role within the justice system. Judges should also be able to express their views as to weaknesses in the application of the law and how the law can be improved, provided this does not unduly impact the perception of impartiality. They should also be able to participate in legislative reform processes, beyond reform of constitutional proceedings, provided that they do not express opinions on constitutionality or create an impression of presumed constitutionality of the legislation adopted as a result of the reform. In doing so, due regard should be had to the potential impact on the judges' own independence or impartiality, as well as on the Court's independence and authority, especially in view of the Constitutional Court's jurisdiction. It should also be mentioned that involvement of constitutional judges in legislative reforms may potentially lead to recusals if constitutionality of the legislation is challenged.

With respect to provisions regulating the conduct of judges during proceedings, it is observed that these appropriately highlight propriety, dignity, and courtesy. At the same time, these expectations should apply throughout all professional interactions, not only in the courtroom. The approach to dissenting opinions is constructive and recognizes their value in a constitutional system. Nonetheless, dissenting opinions should explicitly observe confidentiality of judicial deliberations

and maintain collegiality and civility to ensure they do not undermine institutional integrity.

The provisions addressing abuse of power should be broadened to cover situations involving benefits to entities beyond individuals, such as corporations or political parties, unless these are regulated elsewhere, in which case a reference would be useful. Additional provisions on commercial activities, gifts, and hospitality would also strengthen the ethical framework.

Finally, the Rules do not adequately provide for an independent ethics advisory mechanism. International standards stress the value of such bodies to ensure more effective implementation of ethical rules. Establishing a confidential, non-binding advisory ethics body, distinct from a body exercising disciplinary functions, would provide judges with reliable guidance. It is essential that such a body should not be interpreted as holding any disciplinary authority, which must instead be exercised by a distinct, independent, disciplinary body established by law.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance the Rules:

- A. With respect to the general principles and the objective parameters to assess the behaviour of Constitutional Court judges:
 1. rephrase paragraph 2 of the Rules so as to ensure, on the one hand, that the behaviour of the judge is assessed based on how an average, objective person would perceive or react to a particular conduct of a judge, and whether they would consider it inappropriate, improper, and/or unethical, and, on the other hand, underlining that judges should strive to strengthen the confidence of the public in the Constitutional Court; [para. 35]
 2. rephrase paragraph 3 of the Rules to include a reference to “affect or have the potential to affect” or may be perceived to affect, since the appearance of impartiality is also fundamental; [para. 37]
 3. narrow down in paragraph 3 the type of informal relations or refer to relations that may be inappropriate and affecting the independence or impartiality of a judge or creating such a perception; [para. 39]
- B. To further elaborate paragraph 4 of the Rules to underline that the duty should not be on the judge alone to ensure the quorum, but rather for the entire Constitutional Court, while ensuring that the legislation provides for mechanisms to ensure that a (self)recusal does not paralyze the Court due to a lack of a quorum; [para. 41]
- C. With respect to freedom of expression of judges to:
 1. clarify and expand paragraph 5 of the Rules to require judges to exercise discretion cautiously with regard to cases with which they deal, in order to preserve their image of impartiality, while also prohibiting public or other statements that may affect the fairness or expected outcome of pending cases, or that may provide a substantive assessment of legal issues under the consideration of the Court; [para. 45]
 2. To consider adjusting the wording of paragraph 14 of the Rules to clarify that judges are allowed to defend and promote the rule of law and the

independence of the court at any time, and not solely in circumstances where these fundamental values are threatened; [para. 53]

D. With respect to out-of-court activities to:

1. clarify the wording of paragraph 12 of the Rules to ensure that out-of-court activities may not interfere with a judge's compliance with the Rules of Professional Ethics, thereby also covering activities that may interfere with their independence or impartiality, and with additional judicial duties as established by law; [para. 63];
2. clarify in paragraph 15 that if judges participate in legislative reform processes, beyond reform of constitutional proceedings, they should do it with an extreme caution, they should not express opinions that create an impression of presumed constitutionality of the legislation adopted as a result of the reform, having due regard not only to the impact on their own independence or impartiality, but also to the Court's independence and authority, in particular due to the Constitutional Court's power to review and assess the constitutionality of legislative acts.; [para. 69]

E. To specify that dissenting opinions must respect the confidentiality of judicial deliberations and maintain collegiality and civility to ensure they do not undermine institutional integrity; [para. 72]

F. To clarify paragraph 17 to ensure that there should be no restriction on the freedom of expression of former Constitutional Court judges, except for confidential information acquired in the performance of their duties; [para. 92]

G. To envisage, in the Rules or separate commentary or guidance document the establishment of a confidential, non-binding advisory ethics body, distinct from a body exercising disciplinary functions, which would provide judges with reliable guidance on ethical matters; [para. 100]

H. To consider incorporating recent international guidance and good practice on the use of Artificial Intelligence (AI) by judges into the Rules. [para. 106]

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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ANNEX: Rules of Professional Ethics of Judges of the Constitutional Court of Ukraine

I. INTRODUCTION

1. On 1 August 2025, the Constitutional Court of Ukraine sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of the Rules of Professional Ethics of Judges of the Constitutional Court of Ukraine (hereinafter “the Rules”).
2. On 19 August 2025, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal review of the Rules analysing their compliance with relevant international human rights standards and recommendations, as well as OSCE human dimension commitments. The present Opinion should be read together with other legal reviews pertaining to the reform of the Rules of Procedure of the Constitutional Court of Ukraine, and especially with respect to the issue of recusals and self-recusals, as well as legal reviews pertaining to judicial integrity in Ukraine.¹
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.²

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Rules submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the Constitutional Court in Ukraine and judicial integrity in Ukraine.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Rules. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

¹ All the legal reviews pertaining to judicial reform in Ukraine are or will be available at: <Legal reviews | LEGISLATIONLINE>.

² ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments. Footnote: See especially OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area (2008), point 4, where the Ministerial Council “[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention [...]”.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*³ (hereinafter “CEDAW”) and the 2004 *OSCE Action Plan for the Promotion of Gender Equality*⁴ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
7. This Opinion is based on an unofficial English translation of the Rules commissioned by the OSCE/ODIHR, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.
8. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Ukraine in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The key role of constitutional courts or comparable institutions⁵ empowered with constitutional judicial review in ensuring that the principles of the rule of law, democracy and human rights are observed in all state institutions has been emphasized in the *OSCE Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (2008).⁶ While acknowledging the particular nature and specificities of constitutional adjudication, key principles pertaining to judicial independence have to be respected also when reforming legislation regulating constitutional courts. The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law.⁷ The principle of judicial independence is also crucial to respecting the principle of the separation of powers and upholding international human rights standards.⁸ Specifically, this independence means that both the judiciary as an institution, but also individual judges must be able to exercise their professional responsibilities without being subject to internal or external pressure when adjudicating

3 UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

4 See OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

5 It is noted that under Section XII of the Constitution of Ukraine, the status of the Constitutional Court of Ukraine is separate from courts governed by Section VIII; at the same time, it should be considered a court within the meaning of Article 6 of the ECHR and Article 14 of the ICCPR, and other international documents, to the extent that individuals may lodge constitutional complaints when considering that a Ukrainian law applied in the final court judgment in his/her case contradicts the Constitution of Ukraine and the outcome of the proceedings before the Constitutional Court is decisive for the determination of an individual’s civil rights and obligations; see as a comparison, European Court of Human Rights (ECtHR), *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, paras. 187-210.

6 See particular OSCE Ministerial Council Decision No. 7/08 “Further Strengthening the Rule of Law in the OSCE Area”, 8 December 2008, para. 4.

7 See Resolution on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers, United Nations, Human Rights Council, A/HRC/29/L.11, 30 June 2015. As stated in the OSCE Copenhagen Document 1990, para. 2, “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”.

8 See OSCE Ministerial Council Decision No. 12/05 on “Upholding Human Rights and the Rule of Law in Criminal Justice Systems”, 6 December 2005.

or influenced or fearful of arbitrary disciplinary investigations and/or sanctions by the executive or legislative branches or other external sources. Judicial independence is closely interlinked with judicial integrity, which is the foremost pre-condition for effective, efficient and impartial national justice systems.⁹ Judicial independence and judicial integrity are essential to engendering public trust and credibility in the justice system in general, in that everyone is treated equally before the law and seen as being treated equally, and that no one is above the law. Public confidence in the courts, especially constitutional courts, as being independent from political influence is vital in a democratic society that respects the rule of law.

10. The independence of constitutional courts should be assured and, as ultimate guarantors of the interpretation and observance of the constitution of a state, constitutional courts should protect the separation of powers and democracy and prevent undue restrictions of human rights. A constitutional review process is essential to guarantee the conformity of governmental action, including legislation, with the constitution, but also to ensure that constitutions, once adopted, remain relevant to people's daily life.
11. While acknowledging the political nature and specificities of constitutional adjudication, key principles pertaining to the independence and impartiality of the judiciary guaranteed by Article 14 of the *International Covenant on Civil and Political Rights*¹⁰ (hereinafter "the ICCPR") have to be respected. The institutional relationships and mechanisms required for establishing and maintaining an independent judiciary are outlined in the *UN Basic Principles on the Independence of the Judiciary*,¹¹ and have been further elaborated upon in the *Bangalore Principles of Judicial Conduct*, which establish standards for ethical conduct of judges and are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct.¹² In *General Comment No. 32 on Article 14 of the ICCPR*, the UN Human Rights Committee specifically provided that States should ensure "*the actual independence of the judiciary from political interference by the executive branch and legislature*" and "*take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws, and establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them*".¹³ Article 11 (1) of the United Nations Convention against Corruption (hereinafter. "UNCAC")¹⁴ is also relevant, as it requires State Parties, bearing in mind the independence of the judiciary and its crucial role in combating corruption, to "*take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary*".

9 See e.g., Council of Europe, Consultative Council of European Judges (CCJE), *Opinion No. 21 (2018) on Preventing corruption among judges*, 9 November 2018.

10 International Covenant on Civil and Political Rights, United Nations, General Assembly, resolution 2200A (XXI), adopted on 16 December 1966. Ukraine ratified the ICCPR in 1973.

11 United Nations, Basic Principles on the Independence of the Judiciary, General Assembly Resolution 40/32, adopted on 29 November 1985, and resolution 40/146, adopted on 13 December 1985.

12 The Bangalore Principles of Judicial Conduct were adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in resolution 2006/23 of 27 July 2006. See also Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, prepared by the Judicial Group on Strengthening Judicial Integrity, 2010.

13 General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, United Nations, Human Rights Committee, 23 August 2007, para. 19.

14 *United Nations Convention against Corruption* (hereinafter "UNCAC"), adopted on 31 October 2003 by UNGA Resolution 58/4. The UNCAC was ratified by Ukraine on 2 December 2009.

12. As a member of the Council of Europe (CoE), Ukraine is also bound by the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR),¹⁵ particularly its Article 6, which provides that everyone is entitled to a fair and public hearing “*by an independent and impartial tribunal established by law*”. In accordance with the case-law of the European Court of Human Rights (ECtHR), proceedings before a constitutional court can come within the scope of Article 6 (1) of the ECHR when the outcome is decisive for the determination of an applicant’s civil rights and obligations, even if they deal with question being referred for a preliminary ruling or following a constitutional appeal with respect to the protection of constitutional rights and freedoms, being lodged against judicial decisions, or when it concerns an appeal lodged against a law affecting a person’s rights as specified in the national legal system.¹⁶ In its caselaw, the ECtHR also underlined that “independence” is a prerequisite for impartiality and characterises not only the set of institutional and operational arrangements which must provide safeguards against undue influence and/or unfettered discretion of the other State powers but also “*a state of mind, which denotes a judge’s imperviousness to external pressure as a matter of moral integrity*”.¹⁷ In addition, the CoE Group of States against Corruption (GRECO)’s Fourth Evaluation Round addresses corruption prevention, including in respect of judges, making recommendations on issues like independence, conflict of interest, codes of conduct, and disciplinary procedures.¹⁸
13. Given the EU candidate status of Ukraine and the opening of ‘Cluster 1: Fundamentals’ of the EU accession negotiations, which focuses *inter alia* on the functioning of democratic institutions, rule-of-law and public administration reform, the need to ensure the judicial independence and impartiality and integrity within the judiciary at all levels is paramount.¹⁹ Article 47 of the EU Charter of Fundamental Rights guarantees the right to an effective remedy and to a fair trial by an independent and impartial tribunal previously established by law.²⁰
14. OSCE participating States have also committed to ensure “*the independence of judges and the impartial operation of the public judicial service*” as one of the elements of justice, “*which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings*” (1990 Copenhagen Document).²¹ In the 1991 Moscow Document,²² participating States further committed to “*respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service*” (para. 19.1) and to “*ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice*” (para. 19.2). Moreover, in its *Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (2008), the OSCE Ministerial Council also called upon OSCE participating States “*to honour their obligations under*

15 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), Council of Europe, signed on 4 November 1950, entered into force on 3 September 1953. Ukraine ratified the ECHR on 17 July 1997.

16 See European Court of Human Rights (ECtHR), *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, paras. 188-191, and ECtHR case-law referred therein.

17 See e.g., ECtHR, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020, paras. 220-221 and 234.

18 See CoE, GRECO, Fourth Evaluation Round on corruption prevention in respect of members of parliament, judges and prosecutors - Addendum to the Second Compliance Report - Ukraine, GrecoRC4(2024)15, 20 February 2025.

19 See European Commission, *Commission Staff Working Document – Ukraine 2025 Report*, SWD(2025) 759 final, 4 November 2025, pp. 5 and 32-33, which mentions the approval of the new rules on the professional ethics of judges of the Constitutional Court of Ukraine, noting that they will need to be effectively applied in practice.

20 *Charter of Fundamental Rights of the European Union* (EU), OJ C 326, 26 October 2012.

21 OSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 5 June-29 July 1990, paras. 5 and 5.12.

22 OSCE Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 10 September-4 October 1991.

international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary”, as a key element of strengthening the rule of law in the OSCE area.²³ More detailed guidance is also provided by the ODIHR Warsaw Recommendations on Judicial Independence and Accountability²⁴ and the ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.²⁵

15. Other soft law international and regional documents include provide further guidance that are relevant to the present Opinion, including:
 - the Global Judicial Integrity Network’s [Bangalore Principles of Judicial Conduct](#) (2006) and their Commentary,²⁶ as well as the Measures for the Effective Implementation of the Bangalore Principles (2010)²⁷ and Paper on Gender-related Judicial Integrity Issues (2019);²⁸
 - the UNODC UNCAC Implementation Guide and Evaluative Framework for Article 11 of the UNCAC;²⁹
 - the CoE Consultative Council of European Judges (CCJE) Opinions, in particular Opinion No. 2 (2002) on Principles and Rules governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality and Opinion No. 21 (2018) on preventing corruption among judges;³⁰
 - the legal opinions and Updated Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice of the European Commission for Democracy Through Law of the Council of Europe (Venice Commission).³¹
16. While the above-mentioned resource documents relate to judicial integrity and ethics with respect to judges in general, many of the ethical rules that are applicable to the wider judiciary would also be relevant to judges of the Constitutional Court. At the same time, since constitutional courts are usually not part of the common court system, they may not be subject to the same ethical framework that applies to judges, which may justify the adoption of separate ethical rules, also to take into account the specificities of constitutional adjudication. Moreover, the fact that a Constitutional Court is generally the ultimate judicial authority on constitutional matters, which often have sensitive political or other implications, and that the outcome of constitutional proceedings may entail significant constitutional and political consequences, renders such courts particularly exposed to external pressure. This heightened exposure may warrant the development of specific ethical rules and/or guidance, as compared to other parts of the

23 OSCE Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area, Helsinki, 4-5 December 2008.

24 Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023.

25 Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, ODIHR, 2010.

26 [Bangalore Principles of Judicial Conduct](#), adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006. See also the [Commentary on the Bangalore Principles of Judicial Conduct](#) (September 2007), and the [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles.

27 [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles.

28 [Paper on Gender-related Judicial Integrity Issues](#) (2019), prepared by the Judicial Group on Strengthening Judicial Integrity.

29 UNODC, [UNCAC Implementation Guide and Evaluative Framework for Article 11](#) (2015).

30 Available at: <[CCJE Opinions and Magna Carta - Consultative Council of European Judges](#)>.

31 See [legal opinions on constitutional justice](#), Venice Commission, as well as the (Updated) [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice](#), Venice Commission, CDL-PI(2022)050.

judiciary, adapted to the particular role of the Constitutional Court and the country context. The smaller number of Constitutional Court judges compared to other courts would also generally require special rules and/or criteria for potential recusals.

17. While the adoption of rules of professional ethics constitutes a welcome step in principle to supporting integrity, professionalism and ethical behaviour, in order to achieve their aim and ensure their effective application in practice, it is also important that such rules are widely disseminated to the public and that judges are made aware and trained on them, while ensuring an effective mechanism, formal or informal, to advise on the propriety of proposed conduct and provide detailed guidance on ethics.³² In addition, it is also important to provide for effective mechanism or procedure to receive and inquire into complaints of ethical misconduct.³³

2. BACKGROUND

18. Rules of professional ethics serve to provide judges with guidance on conducting themselves in a manner which befits their office. In turn, ethical behaviour strengthens public confidence in the judiciary and fosters respect for judicial authority. Judicial ethics is thus an important part of an environment that cultivates the rule of law. From this perspective, it is commendable for the Constitutional Court of Ukraine to have taken the initiative to adopt its own rules of professional ethics, which demonstrates the willingness of the institution to strengthen the integrity, professionalism and ethical behaviour among its judges. This step may encourage the institutionalization of standards of conduct, greater awareness of ethical principles among the Constitutional Court judges and in their social milieu, and promote proper judicial conduct. If disseminated widely among the public in general, they may also trigger a better understanding of the ethical rules that are applicable to these judges, which may ultimately contribute to enhancing public trust in the institution.
19. The need to establish separate rules of professional ethics for a Constitutional Court should be assessed in light of the country's legal framework and constitutional context. In countries without a Constitutional Court, high court judges may be covered by the same set of ethical guidelines as all other members of the judiciary. For example, in Sweden, guidelines on good judicial conduct, developed in 2011 and updated in 2023, apply to all judges.³⁴ In contrast, the Supreme Court of the United States adopted its own set of ethical rules in 2023.³⁵
20. The rationale for adopting separate rules of ethics for constitutional court judges would, at least formally, be stronger where the Constitutional Court is not established as part of the judicial branch of power. For example, Poland's Constitution places the Constitutional Tribunal in the chapter together with common courts (VIII. Courts and Tribunals), proclaiming that courts and tribunals shall constitute a separate power, independent of the other branches of power.³⁶ By contrast, the Constitution of Bulgaria

32 *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles, para. 2.1.

33 *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles, para. 2.2.

34 Good Judgeship 2023, available at https://www.domstol.se/globalassets/filer/domstol/domstolsakademin/god_domarsed_2023_webb.pdf.

35 Supreme Court of the United States, Statement of the Court regarding the Code of Conduct, November 2023, available at https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf.

36 Constitution of the Republic of Poland, Article 173, available at <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

establishes the Constitutional Court outside the judiciary.³⁷ The situation is similar in Ukraine, where the Constitutional Court is also given a distinct status, separate from the judiciary.³⁸ Given the specific status of the Constitutional Court of Ukraine as an institution separate from the common court system, adopting separate rules of professional ethics, distinct from those applicable to the wider judiciary, is justifiable, although as mentioned above, many of the ethical rules applicable to the wider judiciary would also be relevant to judges of the Constitutional Court.

21. The following comments are offered in a constructive spirit, with a view to further strengthen the clarity, coherence, practical impact and effective implementation of the Rules of Professional Ethics. Some of the below recommendations may also be useful for the purpose of developing other guidance document further elaborating the ethical rules while offering detailed, practical examples (see para. 23 *infra*).

3. GENERAL COMMENTS

22. As noted, there are several documents that regulate the conduct and obligations of judges of the Constitutional Court of Ukraine, and the Rules of Professional Ethics need to be read in conjunction with other laws, not least the Law of Ukraine “On the Constitutional Court of Ukraine”.³⁹ This is particularly important to recognize the multifaceted functions of the Rules on Judicial Ethics, which include an informational accountability role by providing transparency to the public as to both the role of a Constitutional Court judge and the standards to which the Court as an institution is held, which can aid trust-building. Other functions include institutionalizing standards of conduct and providing clear guidance to judges as to the manner in which they are expected to conduct themselves in their public role and private lives.
23. One of the consequences of having these multiple documents governing the judges’ conduct and obligations is that the Rules under review here is a rather short document that, whilst containing some detail, refers to many general principles. Some of these principles are stated abstractly without their application being clearly expressed or envisaged. Although judges do need to use their discretion to apply some generally accepted principles to a multitude of circumstances in their personal and professional lives, **it would be helpful if the aims of each principle or provision, or indeed of the Rules as a whole, would be more clearly expressed or further elaborated, either in the Rules themselves or in separate guidance document(s).** This would allow a judge to understand what each provision is trying to achieve. **With the aim to accomplish uniform understanding and interpretation of each rule, it is also important that the Rules are supplemented by written guidance or manual on practical implementation of the ethical rules offering more elaborated and detailed, practical examples⁴⁰ – in addition to the ability to seek (confidential) advisory services and professional awareness-raising training⁴¹** (see also Sub-Sections 6 and 7.4 *infra*).
24. It is also crucial that the provisions of the Rules be supported by clear and objective criteria to guide the application of these Rules. Importantly, judges should not be held

37 See Constitution of the Republic of Bulgaria, Chapter Eight, available at <<https://www.parliament.bg/en/const>>.

38 See Constitution of Ukraine, Chapter XII on the Constitutional Court of Ukraine, while Chapter VIII deals with other courts, available at <<https://www.president.gov.ua/documents/constitution>>.

39 See <Legal acts | Constitutional Court of Ukraine>..

40 *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 36.

41 See e.g., UNODC, *UNCAC Implementation Guide and Evaluative Framework for Article 11* (2015), pp. 16-18. See also CCJE, *Opinion No. 21 (2018) on Preventing corruption among judges*, 9 November 2018, paras. 32-33.

responsible for factors beyond their control, and the Rules should be worded in such a way that they focus on the individual judge's conduct and emphasize individual responsibility. For example, a judge cannot be held responsible for public confidence in the Court both because there are factors beyond the control of an individual judge and even of the institution itself, and it is too broad and vague in order to be used as a criteria. Instead, public trust can be further reinforced by allowing judges to engage in education activities that inform the public about the Court's role, values, and activities. There are provisions in these Rules in this regard, which could be further strengthened as set out below.

25. A Preamble is a useful tool to set out the aims of the Rules in establishing principles to be followed by judges for the protection of judicial independence and impartiality, and to fulfil international obligations to protect the right to a fair trial, to prevent and combat corruption, and to uphold the rule of law. At the same time, there is still room for it to be more expansive and clearer as to how judicial integrity and ethics connect to judicial independence, impartiality and the right to a fair trial, for example.⁴² Further, it may be helpful in the Preamble to refer to the authority of the Constitutional Court to adopt these Rules of Professional Ethics.
26. It should be noted that, as underlined by ODIHR in several Opinions, given the nature and purpose of rules of professional ethics (i.e., to provide overall principles and rules, recommendations or standards of good behaviour adopted by the judiciary in order to guide the actions of judges and enabling them to assess specific issues in order to preserve judicial independence and integrity⁴³), they are often drafted in general terms, which may not always fulfil the requirement of foreseeability. Hence, they should not be equated with a piece of legislation and should be clearly distinct from disciplinary rules, whose violation may lead to disciplinary sanctions that may impact the status of a judge.⁴⁴ In this respect, the CCJE has specifically underlined that “[e]thical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical

42 See e.g., Council of Europe, Consultative Council of European Judges (CCJE), *Opinion No. 21 (2018) on Preventing corruption among judges*, 9 November 2018, para. 2, which states: “Judicial integrity is the foremost pre-condition for effective, efficient and impartial national justice systems. It is closely interlinked with the concept of judicial independence: the latter enables integrity, and integrity reinforces independence. Judicial integrity has become all the more important nowadays in the context of numerous attacks on the judiciary”. See also e.g., ECtHR, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020, para. 234, which states: “Independence” refers, in this connection, to the necessary personal and institutional independence that is required for impartial decision-making, and it is thus a prerequisite for impartiality. It characterises both (i) a state of mind, which denotes a judge’s imperviousness to external pressure as a matter of moral integrity and (ii) a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit – which must provide safeguards against undue influence and/or unfettered discretion of the other State powers”.

43 For example, the Commentary to the Slovenian Code of Judicial Ethics states that ‘the aim of writing down ethical principles in the form of a code is to strengthen judges’ consciousness of belonging to the profession and is intended as guidance for judges to help them deal with ethical dilemmas encountered in their professional and private life’: Code of Judicial Ethics, Commentary, adopted by Ethics and Integrity Commission (Ljubljana April 2016, updated in 2017).

44 See e.g., ODIHR, *Opinion on the Law on the External Evaluation of Judges and Candidates for the Position of Judge of the Supreme Court of Justice of the Republic of Moldova*, 1 July 2024, para. 47; ODIHR Warsaw Recommendations on Judicial Independence (2023), para. 25; and ODIHR-Venice Commission, *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic* (2014), paras. 25-26. See also CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 30, which provides that “Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability”; and Recommendation 13 which provides: “Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions”; and *CCJE Opinion no. 3 on ethics and liability of judges* (2002), paras. 44 and 46-47. See also Judicial Integrity Group, Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (2010), Article 15; and Venice Commission, *Opinion of the Venice Commission on the Draft Code on Judicial Ethics of the Republic of Tajikistan*, CDL-AD(2013)035, para. 31.

*standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability. The 2023 ODIHR Warsaw Recommendations further emphasize that “[d]espite interplay between them, ethical rules should not be used as grounds for disciplinary proceedings, and the bodies that oversee breaches of ethical norms should be separate from those competent to hear a disciplinary case”.*⁴⁵

27. Finally, it must be underlined that, as a living instrument, a code of conduct or ethics should generally be periodically reviewed and should be updated as necessary to address new challenges.⁴⁶ When doing so, beyond the judges of the Constitutional Court, it is recommended to consult other stakeholders such as court users, judicial and bar associations, civil society and academia as this can be of great assistance in ensuring that the code provides meaningful and clear guidelines tailored to the specificities of the legal system in which the judiciary works.⁴⁷

4. GENERAL PRINCIPLES

4.1. Equality and Non-discrimination

28. The General Principles (paragraph 1, sub-paragraph 3) of the Rules prohibit judges from discriminating on the grounds of “race”⁴⁸ and other characteristics. This provision evidently speaks to the duty of equal treatment before the Constitutional Court.⁴⁹ However, the Rules are somewhat less explicit on the duty of judges to treat all parties equally and without discrimination, even taken together with paragraph 6, which deals with the duty to show courtesy towards parties to and participants in constitutional proceedings. **It is recommended to explain more clearly the duty of equal treatment of all parties to and participants in constitutional proceedings.**
29. In addition, it is recommended that ‘equality’ and ‘diligence’ are added to the ethical principles listed in paragraph 1, sub-paragraph 2. Equality is a particularly important value to be included given the function of the Constitutional Court to protect human rights and freedoms. Whilst the last two sentences of this paragraph do cover dignity and non-discrimination, there are some conceptual differences between the three terms and it is therefore still recommended that ‘equality’ is added as a core value (see also Sub-Section 4.12 further elaborating on gender- and diversity-related integrity issues).

⁴⁵ Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023, para. 25.

⁴⁶ *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 36.

⁴⁷ UNODC, *UNCAC Implementation Guide and Evaluative Framework for Article 11* (2015), para. 26.

⁴⁸ The use of the term “race” in this Opinion shall not imply endorsement by ODIHR of any theory based on the existence of different “races”. While recognizing that the term “race” is a purely social construct that has no basis as a scientific concept, for the purpose of the Opinion, the term “race” or “racial” may be used in reference to international instruments using such a term to ensure that all discriminatory actions based on a person’s (perceived or actual) alleged “race”, ancestry, ethnicity, colour or nationality are covered - while generally preferring the use of alternative terms such as “ancestry” or “national or ethnic origin” (see e.g., ODIHR, *Hate Crime Laws: A Practical Guide – Revised Edition* (2022) footnote 14). See also the footnote under the first paragraph of Council of Europe’s Commission on Intolerance and Racism (ECRI), General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, where it is stated that “[s]ince all human beings belong to the same species, ECRI rejects theories based on the existence of different ‘races’. However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to ‘another race’ are not excluded from the protection provided for by the legislation”. Except when part of a citation from a legal instrument or case law, the word “race” or “racial” is placed in quotation marks in this Opinion to indicate that underlying theories based on the alleged existence of different “races” are not accepted.

⁴⁹ United Nations, Basic Principles on the Independence of the Judiciary, General Assembly Resolution 40/32, adopted on 29 November 1985, Principle 5.

4.2. Personal Relationships

30. Part I of the Rules, on General Principles (paragraph 1) aims to regulate professional and private conduct, relationships and behaviour of Constitutional Court judges. It recognizes that judges should act in accordance with the ethical principles of judicial conduct in both their private and public life, which is a welcome statement that reflects international guidance.⁵⁰ As it stands, it is however an abstract statement referring to the adherence to “generally recognized ethical principles of judicial conduct” (identified in paragraph 1 as being: independence, impartiality, honesty, integrity (incorruptibility), competence and good faith that is not explicitly linked to the ethical principles further elaborated in the Rules. It would be helpful to amend this provision to note that these ethical principles of judicial conduct are not (only) those that are considered as ‘generally recognized’ but also those that are explicitly enshrined in these Rules. Given the established obligation for Constitutional Court judges to comply with the Rules (see also paragraph 31 *infra*), unless elaborated elsewhere, a lack of clarity as to what the “generally recognized ethical principles of judicial conduct” entail in practical terms may be problematic. Further, it is noted that the Rules are divided into Part I on General Principles and Part II on Out-of-Court Activities, although it is not really clear to what extent each part is applicable in a judge’s private and public life. **It is advisable to make this provision more practical by clarifying that a judge will adhere to the listed principles as enshrined in these Rules in both their private and public life.**
31. General Principles (paragraph 2) must be read in conjunction with Article 11 (2) of the Law on the Constitutional Court of Ukraine, which imposes an obligation on a judge to “*comply, both in and beyond his or her activities, with the established standards of professional ethics of a Constitutional Court Judge*”. This establishes the mandatory nature of the norms set out in these Rules, which is in line with international good practice.⁵¹ Due to this already established obligation to comply with the Rules, the function of paragraph 2 is rather to set the parameters within which such adherence is to be assessed. The paragraph uses ‘*responsibly and strictly*’ to set this parameter. The second sentence adds that the judge’s behaviour shall strengthen public confidence in the Court and constitutional justice.
32. However, the parameters set by this paragraph are vague, which may lead to discretionary implementation. As the Rules are mandatory for judges, **it is important that the standards to which judges are held accountable, including their aims and objectives, are clear and objective** – even if as stated above (paragraph 26), given the very nature of ethical rules, they should not be equated to a piece of legislation and should be clearly distinct from rules on discipline, which violation may lead to sanctions impacting the status of a judge.⁵²
33. Various approaches could be followed to address this matter, as also reflected in country practices. For example, Article 2.1 of the UK Supreme Court’s Guide to Judicial Conduct, which is centred instead around independence states that: “*[t]he Justices will take care that their conduct, official or private, does not undermine their institutional or individual independence or the public appearance of independence.*”⁵³ There is also a

50 [Commentary to the Bangalore Principles](#), para. 103.

51 For a discussion on this, see Global Judicial Integrity Network, [Guide on How to Develop and Implement Codes of Judicial Conduct](#) (UNODC 2019).

52 See e.g., ODIHR, [ODIHR Opinion on the Law on the External Evaluation of Judges and Candidates for the Position of Judge of the Supreme Court of Justice of the Republic of Moldova](#), 1 July 2024, para. 47.

53 UK Supreme Court, [Guide to Judicial Conduct](#), 2019.

provision in the UK Supreme Court’s Guide about public confidence in “*the impartiality of individual Justices and of the Court*”, and the obligation is “*to strive to ensure*”, rather than “*shall ensure*” (see Article 3.1 of the Guide). Similarly, the Preamble of the Code of Judicial Conduct of the Swiss Federal Administrative Court uses the wording “*strive to build and maintain trust in the judicial system*”. Article 1.1 of the Code of Conduct for the Justices of the Federal Constitutional Court of Germany uses the wording “*conduct themselves in a way that does not compromise the... confidence in their independence, impartiality, neutrality and integrity.*” The Code of Judicial Ethics of the International Criminal Court similarly states in Article 3 (2) that “*Judges shall not engage in any activity which is likely [...] to affect confidence in their independence*”.⁵⁴

34. Therefore, **it could be considered to use clearer and/or more objective parameters**, for instance requiring that the judge’s conduct is above reproach in the view of a reasonable observer.⁵⁵ The concept of the ‘*reasonable observer*’ is used to determine how an average, objective person would perceive or react to a particular conduct of a judge, and whether they would consider it inappropriate, improper, unethical conduct of a judge. This is very different from any reference to the public confidence in the Court and constitutional justice *as a whole* in the eyes of the public *en masse*. This distinction is important, not least due to the uncertainties in determining the opinion of the public. The ‘*reasonable observer*’ creates a more objective standard against which to measure conduct than ‘*public confidence*’. There is also an ‘alternative test’ set out in paragraph 106 of the Commentary to the Bangalore Principles, which is whether the conduct of the judge reflects upon central components of the judge’s ability to do their job, such as fairness, independence, respect for the public, and public perception of their fitness to be a judge. Another approach is to remove the imperative that the judge’s behaviour shall strengthen public confidence, as public confidence is largely beyond their control and cannot be objectively measured.
35. **It is therefore recommended to rephrase paragraph 2 of the Rules so as to ensure, on the one hand, that the behaviour of the judge is assessed based on how an average, objective person would perceive or react to a particular conduct of a judge, and whether they would consider it inappropriate, improper, and/or unethical, and, on the other hand, underlining that judges should strive to strengthen the confidence of the public in the Constitutional Court.**
36. The General Principles (paragraph 3 of the Rules) advise judges to refrain from informal relations with representatives of public authorities, if such relations affect, directly or indirectly, the independence or impartiality of judges of the Court. This rule speaks to the independence of judges from other branches of power, which is a key element of judicial independence. The emphasis on informal relations is understandable, as they may give rise to questionable situations. This paragraph must be read in conjunction with Article 11 (3) of the Law on the Constitutional Court, which states that a judge “*may not be affiliated with political parties or trade unions, or display his or her disposition towards them, or participate in any political activities*”, noting that a violation of this article constitutes a ground for the dismissal of a judge under Article 21 of the Law on the Constitutional Court. Paragraph 3 of the Rules relates to “informal relations” and has a broader scope than Article 11 (3) of the Law on the Constitutional Court, which relates to more formal “affiliations” or holding a political position/office. It is also broader than

⁵⁴ International Criminal Court, *Code of Judicial Ethics*, CC-BD/02-01-05.

⁵⁵ [Bangalore Principle 3.1.](#)

Article 11 (3) as it relates to “representatives of public authorities” generally.

37. However, the wording “*informal relations with representatives of public authorities*” is vague and may not necessarily help guide the conduct of a judge, potentially extending to any forms of social interactions – criteria which may be impossible to assess or monitor. **Therefore, it is advisable to narrow down the type of informal relations or refer to relations that may be inappropriate and affecting the independence or impartiality of a judge or creating such a perception.** At the same time, the application of the paragraph is narrowed by the use of the word “affect” as it suggests that the judge should only refrain from such relations where the relationship factually affects their independence or impartiality. **It is suggested that the sentence should read “affect or have the potential to affect” or may be perceived to affect, since the appearance of impartiality is also fundamental.**⁵⁶
38. In addition, it is suggested that the judge should also refrain from such relations where they cause “*reasonable doubts about the judge’s independence and impartiality*”, and not only the judge’s “objectivity”. Whilst often used interchangeably, these terms refer to different concepts. Objectivity relates to the way in which decisions are reached, based on facts, evidence, and clear rules. Impartiality is a lack of bias or opinion about those facts, evidence and rules. The Bangalore Principles stress the importance of maintaining the public confidence in the impartiality of the judge and of the judiciary (Principle 2.2). The wording of the last sentence of paragraph 3 stating that “[i]n the event of an attempt to exert such influence, the Judge shall immediately report it to the Meeting of Judges of the Court” is somewhat confusing as it refers to “such influence” which suggests that the first sentence only limits informal relations where there is an attempt to exert influence over the judge. This may narrow the meaning, scope and application of the first sentence and it is recommended that the word ‘such’ be removed.
39. **In general, the framework would be strengthened by a clearer articulation of the general expectation that judges should avoid inappropriate connections with, and influence by, the executive and legislative branches of government, and must also appear as such to a reasonable observer.**⁵⁷ The same idea is conveyed in a slightly different wording in Latvia’s Code of Judicial Ethics: “*The judge is free from the undue influence of the legislator and the executive and creates corresponding image of himself or herself*”.⁵⁸

⁵⁶ General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, UN Human Rights Committee, 23 August 2007, para. 21, which underlines that the requirement of impartiality has two aspects: “[f]irst, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other; [and] [s]econd, the tribunal must also appear to a reasonable observer to be impartial.” See also ECtHR, *Incal v. Turkey* [GC], no. 22678/93, 9 June 1998, para. 71, where the ECtHR held that “[e]ven appearances may be of a certain importance [since] [w]hat is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused (...)”.

⁵⁷ [Bangalore Principles of Judicial Conduct](#), paragraph 1.3.

⁵⁸ Latvia, [Code of Judicial Ethics](#), paragraph 1.3.

RECOMMENDATION A.

1. To rephrase paragraph 2 of the Rules so as to ensure, on the one hand, that the behaviour of the judge is assessed based on how an average, objective person would perceive or react to a particular conduct of a judge, and whether they would consider it inappropriate, improper, and/or unethical, and, on the other hand, underlining that judges should strive to strengthen the confidence of the public in the Constitutional Court.
2. To rephrase paragraph 3 of the Rules to include a reference to “affect or have the potential to affect” or may be perceived to affect, since the appearance of impartiality is also fundamental.
3. To narrow down in paragraph 3 the type of informal relations or refer to relations that may be inappropriate and affecting the independence or impartiality of a judge or creating such a perception.

4.3. Recusal

40. Paragraph 4 of the Rules deals with the issue of recusals of judges. At the outset, it is important to note that the Rules, while potentially offering useful guidance, shall not substitute legislation regulating recusals, including the grounds and procedure for recusals.
41. In particular, paragraph 4 concerns the situation where there is a risk of a lack of quorum in the Court, and provides guidance to judges to balance the needs of the Court with the grounds for recusal, if the grounds are not material and do not compromise the judge’s impartiality. This provision speaks to a particular situation – the “doctrine of necessity”,⁵⁹ which is rather an exception, without stating the more general principle. The need for a recusal could arise from a variety of circumstances that (may) put a judge’s impartiality into doubt, including conflict of interests. The paragraph tries to ensure that the exception is only applied where the consequences “*are not material and do not compromise the Judge’s impartiality*”. The paragraph could potentially undermine a decision by a judge to recuse him or herself and thus needs to be fine-tuned. **It is therefore recommended that this paragraph is further elaborated. In general, the duty should not be on the judge alone to ensure the quorum, but rather for the entire Constitutional Court. Therefore, the legislation should provide for the mechanisms and better guidance to ensure that (self)recusal does not paralyze the Court due to a lack of a quorum. This could be achieved through various means, including appointment of an ad hoc judge. At the same time, while allowing judge(s) to raise the request for recusal, it may be justified to deny it if the recusal leads to paralysis of the Court.**
42. In this regard reference is made to the Commentary to the Bangalore Principles, which notes that extraordinary circumstances may require departure from principles concerning recusals stating that “*[t]he doctrine of necessity enables a judge who is otherwise disqualified to hear and decide a case where failure to do so may result in an injustice. This may arise where there is no other judge reasonably available who is not similarly disqualified, or where an adjournment or mistrial will work extremely severe hardship, or where if the judge in question does not sit a court cannot be constituted to hear and determine the matter in issue. Such cases will, of course, be rare and special. However,*

⁵⁹ i.e., where in extraordinary circumstances may enable a judge who is otherwise disqualified to hear and decide a case where failure to do so may result in an injustice), as applicable and relevant, may only occur after an assessment of the impartiality has been considered; see ECtHR, *Harabin v. Slovakia*, no. 58688/11, 20 November 2012, para. 136.

they may arise from time to time in final courts of small numbers charged with important constitutional and appellate functions that cannot be delegated to other judges.”⁶⁰ The Rules could reflect this principle in a general manner, though without imposing on individual judges the obligation to take this rule into account when they consider submitting a recusal request, although if recusal leads to the inability of the Court to decide, given the particular nature of a constitutional court, it may be justified to deny the recusal (see also, for further elaboration on grounds for recusals, *ODIHR Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges*).⁶¹

RECOMMENDATION B.

To further elaborate paragraph 4 of the Rules to underline that the duty should not be on the judge alone to ensure the quorum, but rather for the entire Constitutional Court, while ensuring that the legislation provides for mechanisms to ensure that a (self)recusal does not paralyze the Court due to a lack of a quorum.

4.4. Freedom of Expression

43. The Rules also provide guidance regarding the freedom of expression of judges, both in their personal life as well as when they speak on matters before the Constitutional Court, which is regulated in the Law on the Constitutional Court. In this regard, the General Principles (paragraph 5) of the Rules oblige judges to respect the confidentiality of the deliberations and internal matters of the Court. It also states that “[t]he Judge may publicly express their opinion on the merits of only those cases, in which the constitutional proceedings have been completed”, thereby mirroring Article 18 (5) of the Law on the Constitutional Court which states that a judge “may express in public his or her view solely on the merits of those cases in which the Court has adopted decision or provided opinion”. Article 24 (2) of that Law also states that a judge “shall not provide any clarification on the merits of cases pending before the Court beyond the consideration of the case during the proceedings”. Paragraph 5 of the Rules does not fully reflect the principles set out in international soft law instruments.
44. By comparison, Principle 2.4 of the Bangalore Principles states that judges shall not “make any comment in public or otherwise” (emphasis added) that might affect the fairness or outcome of a case. The CCJE Opinion no. 25 notes that “...in the exercise of their adjudicatory function, judges must exercise maximum discretion with regard to cases with which they deal, in order to preserve their image of impartiality. Judges should behave in a manner that avoids creating the impression that they hold any personal prejudice or bias in a given case...” and that judges should “behave in a manner that avoids creating the impression that they hold any personal prejudice or bias in a given case. If a judge publicly implies that he/she has already formed an unfavourable view of the applicant’s case before sitting in the case, his/her statements objectively justify the accused person’s fears about his/her impartiality...”.⁶² ODIHR Warsaw

⁶⁰ See *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 100.

⁶¹ See *ODIHR Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges*, 15 December 2025

⁶² See CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, para. 37, with further references to ECtHR caselaw.

Recommendations also emphasize that “*Freedom of expression is an internationally guaranteed right of judges as individuals. This freedom may be circumscribed and subject to such restrictions as may be necessary to safeguard the honour and dignity of judicial office and the impartiality and independence of the judiciary*” providing that “*the restriction of this freedom is provided by law, has a legitimate aim, and is necessary and proportionate*”.⁶³

45. **It is recommended to clarify and expand the limitations to expressions envisaged in paragraph 5 of the Rules to require judges to exercise discretion cautiously with regard to cases with which they deal, in order to preserve their image of impartiality,⁶⁴ while also prohibiting public or other statements that may affect the fairness or expected outcome of pending cases, or that may provide a substantive assessment of legal issues under the consideration of the Court.**
46. The need for judges to exercise restraint in their expression when exercising their public function also needs to be made clear. While paragraphs 3, 6 and 8 of the Rules (all contained in the section entitled “General Principles” that appear to apply both in and out of court) touch upon the issue, it would be clearer if the limitations of freedom of expression in paragraph 14 were simply not limited to out-of-court activities. An example of this is Article 1.3 of the Code of Conduct for Justices of the Federal Constitutional Court of Germany which states that judges: “... *In their entire conduct, they are mindful of ensuring that no doubts arise concerning their neutrality in the exercise of their office with regard to social, political, religious or ideological groups...*”.
47. It is also noted that if the distinction is made between “in court” and “out-of-court”, then **it would be helpful to clarify whether “out-of-court” encompasses all communications expressed other than in a judicial decision, including other expressions made in an official capacity. It should also be made clear whether it refers only to expressions open to the public, including in the media and social media, or at academic conferences, or whether it may also encompass private communications.**
48. In this respect, ODIHR Warsaw Recommendations underline that “*Judges should be able to exercise this freedom to contribute to public discourse on issues affecting the rule of law and enjoyment of human rights, including, but not limited to, debates on legislation, policies that may affect judicial self-governance, and topics that raise fundamental questions in a democratic society. Judges also have a duty to speak out in defence of the rule of law and judicial independence in situations where these values are threatened. However, judges should show particular caution in the exercise of this right when using social media and dealing with the press, bearing in mind the aforementioned need to safeguard the honour and dignity of their office, as well as the need to abstain from comments which may prejudice the perception of judicial impartiality in the examination of cases in front of them.*”⁶⁵
49. By way of example, Article 5.20 of the UK Supreme Court’s Guide to Judicial Conduct states that: “*Justices are aware that their extra-judicial activities include their online presence; they will bear in mind that online discussions are not private, that comments may be copied and have an unintended readership and longevity; and that it is*

⁶³ Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023, para. 27.

⁶⁴ European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb) (Updated on 28 February 2025), citing: *Lavents v. Latvia* (2002) paragraph 118; and *Buscemi v. Italy* (1999) paragraph 67.

⁶⁵ Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023, paras. 28-29.

*increasingly easy to piece together information on a Justice from a variety of sources. They will be wary of publishing online any more personal information than is necessary and will exercise extreme caution in discussing both judicial and personal matters. This includes their participation in social media.”*⁶⁶

50. Paragraph 14 of the Rules provides that judges “... *shall refrain from public statements, in particular in the mass media and social media, as well as from other behaviour that may undermine the credibility of the Court or give rise to doubts about its impartiality, in particular due to favouritism towards political figures or parties*”. It concerns various aspects of a judge’s right to freedom of expression.⁶⁷ The CCJE recognizes that judges, like all individuals, have the right to freedom of expression. This includes sharing opinions related to their work, speaking publicly or privately, and taking part in public discussions. However, because judges represent a key institution of the state, their statements can influence how the judiciary is perceived. Since judges must uphold the rule of law and protect human rights and fundamental freedoms, public confidence in their independence and impartiality, and appearance thereof, is essential. Therefore, it is reasonable to expect judges to exercise restraint in expressing their views to protect the integrity and credibility of the justice system.⁶⁸
51. The Bangalore Principles emphasize two key considerations regarding judges’ public involvement. First, whether their actions might reasonably cast doubt on their impartiality, and second, whether such actions could expose them to political criticism or diminish the dignity of their position. If either concern arises, the judge should refrain from participating. Ultimately, the issue is whether, from the perspective of an informed and reasonable observer, the judge’s behavior could appear to compromise independence or impartiality. Factors such as the wording, context, and circumstances of the statement, as well as the judge’s role, are essential in this assessment.⁶⁹
52. Paragraph 14 sub-paragraph 2 of the Rules also refers to “other behaviour” and places some limitations on both. One limitation is to refrain from public statements that may “*give rise to doubts about [the Court’s] impartiality*”. **It is recommended that the word “reasonable” is inserted to read “reasonable doubts”**. It is reasonable that judges should be required to consider how their conduct may be viewed by the public as reflected in the Bangalore Principles, which emphasize that “...*propriety, and the appearance of propriety*” are essential to the performance of all of the activities of a judge. The Commentary on the Bangalore Principles also advises that in order to fulfil this requirement, judges should have regard to the question: “*how might this look in the eyes of the public?*”.⁷⁰ However, the adherence to this principle should be measured by an objective standard such as that of the “reasonable observer”.
53. It is welcomed that paragraph 14 sub-paragraph 3 of the Rules explicitly notes that there are no restrictions on a judge’s defence of the rule of law and independence of the Court. The CCJE goes further to assert that judges have “*an ethical and/or legal duty to preserve [their freedom of expression] and speak out in defence of the rule of law and judicial*

66 UK Supreme Court, Guide to Judicial Conduct, 2019, available at: [uksc_guide_to_judicial_conduct_a456af62f8.pdf](https://www.judiciary.uk/wp-content/uploads/2019/07/uksc_guide_to_judicial_conduct_a456af62f8.pdf).

67 Best practice from the CCJE states that expression by judges that does not undermine the independence and impartiality of the judiciary should not be subject to disciplinary sanctions: CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 35.

68 See CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, paras. 26-28.

69 See CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, para. 31.

70 See *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 111.

independence when those fundamental values come under threat".⁷¹ This mirrors the decision in *Baka v. Hungary* where the ECtHR observed that the applicant, a judge who was prematurely removed as the President of the Supreme Court following legal reforms, had expressed views and criticisms on constitutional and legislative reforms affecting the judiciary, on issues related to the functioning and reform of the judicial system, the independence and irremovability of judges, and the lowering of the retirement age for judges, all of which are questions of public interest and concluded that the judge's statements did not go beyond mere criticism from a strictly professional perspective.⁷² The ECtHR held that judges have the right to use their freedom of expression in this way both nationally and internationally to protect both internal and external judicial independence. **Therefore, judges are not only allowed to defend the rule of law and the independence of the court solely in circumstances where these fundamental values are threatened, but at any time and on an ongoing basis. The wording of paragraph 14 of the Rules could be adjusted to as to reflect this broader understanding.** As emphasized in the ODIHR Warsaw Recommendations, they even have "*a duty to speak out in defence of the rule of law and judicial independence in situations where these values are threatened.*"⁷³ **This could also be reflected in the Rules.**

54. There is potentially some overlap between paragraph 8, which provides that judges shall exercise their power regardless of public approval or criticism, and paragraph 14. Noting that Article 1.2 of the Bangalore Principles states that "*a judge shall be independent in relation to society in general*", it is clear that being independent of society requires a fine balancing act of the judge in his/her interactions with society in his/her private life.⁷⁴ There may however be some confusion in the application of paragraph 14 given the cross-over between paragraphs 8 and 14. It is acknowledged that both bind the judge and it appears that paragraph 14 applies in particular to a judge's statements and behaviour when they are not acting in their role as a judge, whereas paragraph 8 applies more broadly including to statements and behaviour in the exercise of the judicial office. This would explain why the limitation in paragraph 8 refers to "the impartiality and authority of the Court" with emphasis on neutrality, whereas the limitation in paragraph 14 refers to the "independence, impartiality and dignity" of the individual judge.
55. In this regard, the *Commentary on the Bangalore Principles* explains that "*within limits fixed by law, judges should not expect immunity from criticism of their decisions, reasons and conduct of a case*".⁷⁵ As underlined in paragraph 9.5 of the *Implementation Measures of the Bangalore Principles*,⁷⁶ judges should in general avoid using legal proceedings to

71 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 58; Report of the UN Special Rapporteur on the independence of judges and lawyers (2019), para. 102; European Network of Councils for the Judiciary, *Sofia Declaration on judicial independence and accountability* (2013), para. vii; Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 140; CCJE, *Magna Carta of Judges* (2010), para. 3.

72 ECtHR, *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016, paras. 170-173.

73 *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para. 28.

74 See *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), paras. 31 to 35.

75 Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 30. See also, for example, Article 4 of the Values of Magistrates prepared by the Superior Council of the Magistracy of France, which states: "*As the guardians of individual liberty, [Judges] apply the rules of law, as per the corresponding procedure, without yielding to the fear of displeasing or the desire to please the executive power, the legislative power, the judicial hierarchy, the media, public opinion or any other organisation.*" The original states: "Gardiens de la liberté individuelle, ils appliquent les règles de droit, en fonction des éléments de la procédure, sans céder à la crainte de déplaire ni au désir de plaire au pouvoir exécutif, au pouvoir législatif, à la hiérarchie judiciaire, aux médias, à l'opinion publique ou à toute autre organisation."

76 *Measures for the Effective Implementation Of The Bangalore Principles Of Judicial Conduct (Implementation Measures)*, 21-22 January 2010.

restrict legitimate public criticism of judicial performance, as it is a means of ensuring judicial accountability. **Paragraph 8 could be supplemented in this respect.**

RECOMMENDATION C.

1. To clarify and expand paragraph 5 of the Rules to require judges to exercise discretion cautiously with regard to cases with which they deal, in order to preserve their image of impartiality, while also prohibiting public or other statements that may affect the fairness or expected outcome of pending cases, or that may provide a substantive assessment of legal issues under the consideration of the Court.
2. To consider adjusting the wording of paragraph 14 of the Rules to clarify that judges are allowed to defend and promote the rule of law and the independence of the court at any time, and not solely in circumstances where these fundamental values are threatened.

4.5. Social Media

56. With the current technological developments, social media platforms could amplify the content of the message in a manner that is more impactful than when statements are disseminated using more traditional media. The use of social media represents an especially complex intersection of free expression and the responsibilities of judges. Whilst international guidance on judicial ethics were drafted before social media platforms existed or developed to the extent they are today, the same underlying principles apply to judicial expressions online as they apply offline.⁷⁷ In this respect, the Rules reflect the general international consensus that judges have the right to use social media subject to a duty of restraint to protect the dignity of the judiciary and the perception of independence and impartiality.⁷⁸
57. It is however important to note that the risks for judicial ethics inherent in using social media platforms and online messaging services are not all obvious.⁷⁹ The Rules are also silent on judge's use of social media to research aspects of a case online, including parties and witnesses, which judges should refrain from due to its potential impact on a judge's decision, or the perception of influence on a judge's decision.⁸⁰ If judges are to uphold their ethical duties when using social media, they need to be provided with clear guidance and regularly trained specifically on social media applications, technological

77 Preamble to and paragraph 15 of the Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019).

78 See e.g., CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, paras. 71-72, which states that: "...judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision... They should be cautious about the risk of misrepresentation of including statements in closed groups. They should be wary of creating a "profile" through their comments that gives the impression of lacking openness and objectivity regarding certain subject matters. The same holds for social platform groups that they enter or people they follow and comments they "like" or "retweet", since the more one-sided these are, the more people might perceive these judges not to be independent and impartial... When involved in a discussion on their work as a judge, the protection of the authority and dignity of the office should discourage judges from comments that call into question their propriety in performing their duties. Judges have to make sure that they maintain the authority, integrity, decorum and dignity of their judicial office." See also Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019).

79 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), Preamble, page 2.

80 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 20.

advancements, and the ethical implications of their personal and professional use.⁸¹ This training should include, for example, knowledge about the dangers of profiling, data protection, security, creating their own “echo chamber”, and when there is a need to disclose “friending” or “following” someone on social media. They should also be made aware of the risks of social media use by their family members, close friends and court personnel.⁸² Training on how to deal with harassment or online abuse without responding directly to it is also advised.⁸³

58. It should also be noted that judges may use various means of communication, including social media, “*to educate the public and the legal profession or engage in public commentary*”.⁸⁴ When it comes to educating the public about the role, values and activities of the Constitutional Court, an institutional approach also has value, including the institutional use of social media.⁸⁵ It is further of importance that judges are able to express views of the court or in individual capacity in a uniform manner.
59. By way of example, Article 2.6 of the UK Supreme Court’s Guide to Judicial Conduct states that: “[i]f a Justice is misquoted or misrepresented in the media, the matter will be handled by the Court’s communications officer in consultation with the Justice.”⁸⁶ A slightly different approach is taken by the Swiss Federal Administrative Court, as reflected in Article 11 of its Code of Judicial Conduct: “*Judges who express their personal views to the media shall do so in a moderated fashion being fully aware of their role in society. They shall use only the information channels established by the court. They shall not discuss internal affairs in public.*” These limitations should extend to situations where judges use pseudonyms or have a disclaimer in their social media profiles that all content or opinions are expressed in their personal capacity; neither of these remove the judge’s duty to exercise restraint.⁸⁷
60. In light of the foregoing, **the Rules or separate guidance documents should provide further guidance on the use of social media by judges, including by making it clear that judges should refrain from discussing, internal affairs, pending or likely cases on social media or messaging services, and should not use these platforms to obtain information about the persons or matters before them outside the established procedural framework.**

4.6. Activities Outside of the Court

61. Paragraph 12 of the Rules provides that judges can engage in out-of-court activities not prohibited by law. It is noted that Article 23 of the Law on the Constitutional Court entitles judges to “*take part in research and practice conferences, symposia, professional national, international and other events*” as well as “*teaching, research or creative activities*”.
62. Paragraph 12 sets a limitation on out-of-court activities where these interfere “*with the performance of the Judge’s duties*”. This wording may aim at keeping the notion of “duties” broad and all-encompassing. At the same time, given the lack of clarity as to

81 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), paras. 14 and 38-40; CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 77; and Article 4.4 of the Council of Europe, European Charter on the Statute of the Judge (1998).

82 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 4.

83 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 22.

84 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 8.

85 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 10.

86 UK Supreme Court, Guide to Judicial Conduct, 2019, available at: <uksc_guide_to_judicial_conduct_a456af62f8.pdf>.

87 Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), para. 13.

what the terms “performance” and “duties” encompass for the purpose of this paragraph, it can also be read narrowly to mean that out-of-court activities will not interfere with the time and availability of the judge to fulfil their role as set out in paragraph 11 of the Rules.

63. **It is therefore recommended to clarify the wording of paragraph 12 to ensure that out-of-court activities may not interfere with a judge’s compliance with these Rules of Professional Ethics, including activities that may interfere with their independence or impartiality as well as other judicial duties as established by law.**
64. As an example as to how these activities could affect independence, the UK Supreme Court’s Guide to Judicial Conduct states: *“In making such contributions, the Justices will take care to avoid associating themselves with a particular organisation, group or cause in such a way as to give rise to a perception of partiality towards that organisation (including a set of chambers or firms of solicitors), group or cause in the conduct of their judicial duties.”*⁸⁸ In connection with this, a judge’s participation in social activities could also be mentioned as they are in Articles 5.18 and 5.19 of the UK Supreme Court’s Guide.⁸⁹ The ECtHR has a provision in their Resolution on Judicial Ethics that states: *“Judges may not engage in any additional activity except insofar as this is compatible with independence, impartiality and the demands of their full-time office”* and that *“[Judges] shall declare any additional activity to the President of the Court”*.⁹⁰
65. Paragraph 13 establishes a “right to inform” the public, academic, research and professional legal community, at both the national and international levels, about the acts of the Court and its legal positions. The CCJE goes a step further and asserts that judges have an *ethical duty* to explain the justice system and its functioning and values to the public.⁹¹ This helps to promote and preserve public trust, and fosters *“an environment of open justice and closeness to the communities that judges serve”*.⁹² In this regard, this paragraph’s reference to *“acts of the Court and its legal positions”* may be read to be somewhat limiting, although it is noted that a more general freedom of expression is clarified in paragraph 14. Nonetheless, **a broadening of the scope of paragraph 13 to include information and education of the public with respect to the role, values and activities of the Constitutional Court, for example, could be considered.**
66. The use of the word “inform” in paragraph 13 is also limiting as the views and opinions of judges should be welcomed, including their *views* as to weaknesses in the application of the law and how the law can be improved.⁹³ This somewhat overlaps with a judge’s rights to contribute to relevant legislative improvements enshrined in paragraph 15 of the Rules. **In this regard, it could simply be made clear that expressions on the weaknesses in the application of the law and how the law can be improved are subject to the limitations set out in the remainder of the Rules** (notably paragraphs 14 and 8, as currently drafted). In particular, **such expressions should not unduly impact**

⁸⁸ UK Supreme Court, Guide to Judicial Conduct, 2019, para 3.5 available at: [uksc_guide_to_judicial_conduct_a456af62f8.pdf](#).

⁸⁹ These provisions provide that: *“Justices may give references for professional competence or character for people who are well known to them. A person should not be deprived of a reference because the person best able to give it is a Justice. Giving character evidence in court or otherwise is not excluded, particularly where it may seem unfair to deprive the person concerned of the benefit of such evidence, but this should be undertaken only exceptionally. Consultation with the President or Deputy President of the Court is advisable before taking a decision to give evidence”* and that *“Justices will assess social and other activities in the light of their duty to maintain the dignity of their office and not to permit associations which may affect adversely their ability to discharge their duties.”* UK Supreme Court, Guide to Judicial Conduct, 2019, available at: [uksc_guide_to_judicial_conduct_a456af62f8.pdf](#).

⁹⁰ ECtHR, *Resolution on Judicial Ethics*, 2021 (last amended 16 December 2024), provision VII.

⁹¹ CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, Recommendation 3.

⁹² Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of Social Media by Judges* (UNODC, Vienna 2019), Preamble, page 2.

⁹³ See CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 47; and Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139. See also UK Supreme Court, Guide to Judicial Conduct (2019), Article 3.4.

the perception of impartiality. An example of such a provision is Article 2.5 of the UK Supreme Court’s Guide to Judicial Conduct, which provides that “[t]he Justices accept their responsibility to promote public understanding of their work and of their decisions. But they will show appropriate caution and restraint when explaining or commenting publicly upon their decisions in individual cases.”⁹⁴

67. Paragraph 15 of the Rules provides that “[t]he Judge may contribute to the improvement of legislation on constitutional proceedings, unless this interferes with the performance of their duties and poses a threat to their independence or impartiality”. In the *Commentary on the Bangalore Principles*,⁹⁵ a broader right of the judge to point out weaknesses in the law (in general) and comment on draft legislation is reflected. Contrary to the Rules, the judges’ contribution to lawmaking processes is not exclusively limited to when “legislation on constitutional proceedings” is being developed or amended. At the same time, the *Commentary on the Bangalore Principles* also imposes more conditions on this right compared to the paragraph which limits this possibility if such expression of views would interfere with the performance of their duties and poses a threat to the judge’s independence and impartiality.⁹⁶ Thus, the *Commentary* notes that a judge commenting on draft legislation should avoid “offering informal interpretations or controversial opinions on constitutionality”.⁹⁷ It further notes that a judge’s contribution should ‘normally’ be limited to “practical implications or drafting deficiencies and should avoid issues of political controversy”.⁹⁸ As also underlined in the *Commentary*, judicial comments on draft legislation should generally be an institutionalized effort by the judiciary and not voiced by an individual judge.⁹⁹
68. As noted in the ODIHR Guidelines on Democratic Lawmaking for Better Laws, when addressing the role of the judiciary in the lawmaking process, “[i]n cases involving the review of adopted legislation, it is important to distinguish between constitutional courts and regular courts. Regular courts habitually review and interpret laws as part of their examination of individual cases and may determine whether secondary legislation complies with and implements the respective higher laws. [...] Constitutional courts, on the other hand, have the competence to determine whether a given law complies with the constitution, usually based on applications submitted by lower courts, constitutional organs, or individuals. Constitutional courts may identify gaps in legislation declare laws null and void, or remand them to parliament for revocation and revision, depending on their mandates.”¹⁰⁰ The Guidelines also note that “[j]udges, and in some countries even judicial governance bodies or higher courts, may also be involved in discussions on legislation pertaining to their rights and duties as judges (although in the case of courts, the extent of this is tempered by the principle of the separation of powers).”¹⁰¹
69. In light of the foregoing, if judges are to participate in legislative reform processes, beyond reform of constitutional proceedings, they should do it with an extreme caution, should not express opinions that create an impression of presumed constitutionality of the legislation adopted as a result of the reform. In doing so, due regard should be had to the potential impact on the judges’ own independence or impartiality as well as on the Court’s independence and authority, in particular due

94 UK Supreme Court, Guide to Judicial Conduct, 2019, para. 2.5, available at: <uksc_guide_to_judicial_conduct_a456af62f8.pdf>.

95 *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139.

96 *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139.

97 *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139.

98 *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139.

99 *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 139.

100 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2023, paras. 67-69.

101 OSCE/ODIHR, *Guidelines on Democratic Lawmaking for Better Laws*, 2023, paras. 67-69.

to the Constitutional Court's power to review and assess the constitutionality of legislative acts. It is recommended to amend paragraph 15 accordingly.

RECOMMENDATION D.

1. To clarify the wording of paragraph 12 to ensure that out-of-court activities may not interfere with a judge's compliance with the Rules of Professional Ethics, thereby also covering activities that may interfere with their independence or impartiality, as well as additional judicial duties as established by law.
2. To clarify in paragraph 15 that if judges participate in legislative reform processes, beyond reform of constitutional proceedings, they should do it with an extreme caution, they should not express opinions that create an impression of presumed constitutionality of the legislation adopted as a result of the reform, having due regard not only to the impact on their own independence or impartiality, but also on the Court's independence and authority, in particular due to the Constitutional Court's power to review and assess the constitutionality of legislative acts.

4.7. Conduct During Proceedings

70. Paragraph 6 of the Rules provides that judges shall not manifest improper behaviour during any activity; and they shall behave with dignity and courtesy towards parties to and participants in constitutional proceedings, as well as other persons present at the Court's sessions. The first part of paragraph 6 of the Rules can be read as incorporating the value of "propriety" included as a core value of the Bangalore Principles, although the application of the concept "improper behaviour" could be expanded on here. The fact that improper behaviour is not accepted '*during any activity*' reinforces the idea that this value applies across a judge's public and private life. The second part of the sentence however may be seen to narrow the application of this paragraph to court proceedings and in-court activities, which are of course very important. **Nonetheless, the principle could apply more broadly, for example when engaging in the permitted out-of-court activities, or in interactions with other judges, employees of the Court and the public more generally.**

4.8. Dissenting Opinions

71. Paragraph 7 of the Rules concerns dissenting opinions. Generally, dissenting and concurring opinions are not considered to weaken a constitutional court but rather have several benefits.¹⁰² They enable public, especially scientific, discussion of the judgments, strengthen the independence of the judges and ensure their effective participation in the review of the case in this respect. Separate opinions also improve the quality of judgments, because those delivering a dissenting or concurring opinion must explain why they do not agree with the majority. Therefore, this provision is positive and in line with international recommendations that judicial code of ethics should deal with separate

¹⁰² See [Urgent Opinion on the Draft Constitutional Law of the Republic of Kazakhstan on the Constitutional Court](#), ODIHR, 30 September 2022, paras. 82 and 83.

opinions – if they exist – and set out the parameters thereof.¹⁰³ It is essential that any arrangements on this matter should not impede on the independence of the individual judge, nor should they harm the institution. At the same time, it is important that dissenting opinions should be published even where they may appear to potentially breach this provision of the Rules, as the prevention of such publication would be problematic.¹⁰⁴

72. There are some additional requirements that could be imposed on the making of dissenting opinions. **In particular, the Rules could specify that dissenting opinions must respect the confidentiality of judicial deliberations.**¹⁰⁵ In line with the requirement “*not to harm the independence, impartiality and authority of the Court or the Judge*” set out in this paragraph, it could be further specified that dissenting opinions should follow the norms of “*civility, collegiality and respect*.”¹⁰⁶ This is particularly important from a gender and diversity perspective, noting that dissenting opinions should not personally attack other judges, use disrespectful language, or be inflammatory. Dissenting opinions should maintain collegiality and civility to ensure they do not undermine institutional integrity.
73. It is helpful that paragraph 7 includes the wording “*assess the content of the Court’s act and the extent of their reasoning*”, as this follows international good practice that dissenting opinions should be prepared specifically “*with respect to the majority decision*”,¹⁰⁷ thereby contributing to the development of the law by promoting alternative legal opinions.

RECOMMENDATION E.

To specify that dissenting opinions must respect the confidentiality of judicial deliberations and maintain collegiality and civility to ensure they do not undermine institutional integrity.

4.9. Abuse of Power

74. Paragraph 9 sets out that a judge should not abuse their position. The scope of the provision is however limited to situations involving a judge’s “*own private interest or the interests of other individuals*”. Thus, the provision does not on the face of it appear to include the interests of corporations, charities, political parties etc. **The provision should be broadened to cover situations involving benefits to entities beyond individuals, such as corporations or political parties, unless these are regulated elsewhere, in which case a reference would be useful.** Whilst it is welcomed that the paragraph also includes instances of perceived abuse of the judicial position, it is limited to cases where a “*reasonable outside observer*” in fact gains an impression that the judge or court is

103 See e.g., ODIHR Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024), para. 91. See also e.g., Venice Commission, CDL-AD(2018)030, *Report on Separate Opinions of Constitutional Courts* (2018). Many examples of national provisions in this regard are provided in this Venice Commission report.

104 Venice Commission, CDL-AD(2018)030, *Report on Separate Opinions of Constitutional Courts* (2018), para. 46.

105 Šimáčková, K, *Dissenting Opinions in Constitutional Courts: A Means of Protecting Judicial Independence and Legitimising Decisions* (ECHR), page 5.

106 Venice Commission, CDL-AD(2018)030, *Report on Separate Opinions of Constitutional Courts* (2018), para. 43.

107 Šimáčková, K, *Dissenting Opinions in Constitutional Courts: A Means of Protecting Judicial Independence and Legitimising Decisions* (ECHR), page 2.

under the influence of another person or provides them preferential treatment. It is important to underline that in fact, a judge should not engage in such behaviour where it would give a reasonable outside observer, *knowing the relevant facts*, this impression that the conduct is inappropriate. This is a subtle but important point given that a lot of influence peddling occurs ‘in the dark’.

75. In this respect, it is noted that Principle 4.8 of the Bangalore Principles provides that “[a] judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge”. Judges have a duty to avoid self-interest, meaning that “[a] judge who takes advantage of the judicial office for personal gain or retaliation abuses power. A judge must avoid all activity that suggests that his or her decisions are affected by self-interest or favouritism, since such abuse of power profoundly violates the public's trust in the judiciary.”¹⁰⁸
76. It is also noted that there is no provision in the Rules (although it may be prescribed elsewhere), regarding a judge's involvement in commercial activities, which should be subjected to proportionate restrictions. Further, there are no provisions about receiving gifts or hospitality and the Rules should be supplemented in this respect, unless it is prescribed elsewhere in law (see also Sub-Section 7.1).

4.10. Internal Conduct

77. Paragraph 10 of the Rules recognizes the importance of internal judicial independence stating that in exercising administrative power, the judge shall respect the independence and impartiality of the Court and that they should refrain from actions that may threaten the independence, impartiality and equality of judges. The inclusion of the word “equality” is important to protect the independence and impartiality of judges from a gender and diversity perspective. Should certain of the judges also exercise administrative functions, the Rules could further underline **the aim of ensuring gender balanced representation and diversity in the composition of the staff supporting the work of the Court – as well as non-discriminatory working conditions within the Court.**¹⁰⁹ **This could be explicitly noted in the Rules as one of the objectives that should guide decision-making when exercising administrative power/functions. In addition, judges should also be guided by gender and diversity considerations when adjudicating, in the court room, but also outside, to ensure adherence to the principles of equality and non-discrimination** (see also Sub-Section 4.12 *infra*).
78. The Code of Judicial Ethics of the International Criminal Court specifies in Article 5.5 that judges should act with independence, probity and integrity when participating in administrative decision-making, including for example electing their fellow judges to positions of administrative responsibility.¹¹⁰ The Swiss Federal Administrative Court notes in Article 14 of its Code of Judicial Conduct that ‘Judges shall treat each other with respect, dignity and tact.’ It also states in Article 17 that: ‘Judges shall treat all court staff with respect and appreciation.’¹¹¹
79. **It is important to strengthen paragraph 10 to note that each judge is responsible for their own actions.** In this regard, Article 2.3 of the UK Supreme Court Guide to Judicial

¹⁰⁸ *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 144.

¹⁰⁹ *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 66. See also ODIHR, *Gender, Diversity and Justice: Overview and Recommendations* (2019).

¹¹⁰ International Criminal Court, *Code of Judicial Ethics*, CC-BD/02-01-05.

¹¹¹ Federal Administrative Court of Switzerland, *Code of Judicial Conduct*. Available at: [Code of Judicial Conduct | FAC](#).

Conduct provides: “The Justices may consult with their colleagues when points of difficulty arise on matters of conduct. But they are solely responsible for the decisions that they take in the performance of their judicial duties.”¹¹² Similarly, the Code of Judicial Conduct of the Swiss Federal Administrative Court states in Article 1.1 that “Judges shall perform their duties independently”; Article 1.3 adds: “Judges shall perform their duties on their own and independently from their colleagues. They shall remain beholden only to the law and jurisprudence.”¹¹³

80. Paragraph 11 provides that the judge’s priority duty is to conduct constitutional proceedings. This paragraph is conceptually unproblematic, **although it may be advisable to expand the provision to establish not only a judge’s dedication to their duties, but also that they undertake these duties with diligence, competence, and integrity. The provision could be further supplemented by including a duty to undertake training to keep their competence and knowledge up to date.** By way of comparison, Article 7.1 of the UK Supreme Court’s Guide to Judicial Conduct states: “...It is a judge’s professional duty to do what he reasonably can to equip himself to discharge his judicial duties with a high degree of competence.” Plainly this requires the judge to take reasonable steps to maintain and enhance the judge’s knowledge and skills necessary for the proper performance of judicial duties, to devote the judge’s professional activity to judicial duties and not to engage in conduct incompatible with the diligent discharge of such duties.” Similarly, Article 8 and 9 of the [Swiss Federal Administrative Court’s Code of Judicial Conduct](#) provides: “...8. Judges shall perform their duties in a diligent, conscientious and efficient manner. 9. Judges shall pursue continuing education and training in specific areas.”

4.11. Disciplinary Liability

81. Paragraph 20 of the Rules states that a “violation of the Rules may not be a sole and independent ground for bringing the judge to disciplinary liability”. If this means that violation of the Rules may never be invoked as a ground in disciplinary proceedings against judges, this is welcomed and in keeping with international guidance that conduct giving rise to disciplinary sanctions is to be strictly distinguished from a breach of a Code of Judicial Ethics.¹¹⁴ As underlined in the ODIHR Warsaw Recommendations, “[d]espite interplay between them, ethical rules should not be used as grounds for disciplinary proceedings, and the bodies that oversee breaches of ethical norms should be separate from those competent to hear a disciplinary case”.¹¹⁵ Indeed, as noted above, the purpose

112 UK Supreme Court, Guide to Judicial Conduct, 2019, available at: [uksc_guide_to_judicial_conduct_a456af62f8.pdf](#).

113 Federal Administrative Court of Switzerland, Code of Judicial Conduct. Available at: [Code of Judicial Conduct | FAC](#).

114 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 30, which provides that “Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability”; and Recommendation 13 which provides: “Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions”. See also Judicial Integrity Group, *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), Article 15; see also ODIHR, *Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan* (2018), para. 12. See also ODIHR *Opinion on the Law on the External Evaluation of Judges and Candidates for the Position of Judge of the Supreme Court of Justice of the Republic of Moldova*, 1 July 2024, para. 47; ODIHR Warsaw Recommendations on Judicial Independence (2023), para. 25; and ODIHR-Venice Commission, *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic* (2014), paras. 25-26. See also CCJE *Opinion no. 3 on ethics and liability of judges* (2002), paras. 44-47; and Magna Carta of Judges (2010), para. 18. See also Venice Commission, *Opinion of the Venice Commission on the Draft Code on Judicial Ethics of the Republic of Tajikistan*, CDL-AD(2013)035, para. 31; and European Network of Councils for the Judiciary, *Minimum Judicial Standards V Disciplinary proceedings and liability of judges* (2014-2015), pp. 19-20.

115 Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023, para. 25.

of a code of ethics is very different from that achieved by a disciplinary procedure and given their aspirational nature, they may also be drafted in rather general vague terms, which may not always fulfil the requirement of foreseeability and shall not serve as a ground for imposing disciplinary liability. If paragraph 20 implies that a violation of the Rules in itself may not serve as a ground for disciplinary liability although it may be the case if combined with other misconduct constituting a disciplinary violation, this is not in line with the above-mentioned international recommendations. **To avoid ambiguity, unless a matter of mistranslation, the provision should be revised to clearly state that violation of the Rules may never be invoked as a ground for disciplinary liability.** This is particularly important, given that Article 11 (2) of the Law on the Constitutional Court imposes an obligation on a judge to “*comply, both in and beyond his or her activities, with the established standards of professional ethics of a Constitutional Court Judge*”.

82. Indeed, disciplinary liability should only arise in case of professional misconduct that are gross and inexcusable and that bring the judiciary into disrepute.¹¹⁶ Moreover, given the possible consequences on the status of a judge that disciplinary liability may trigger (e.g., a warning, reprimand, appropriate fine, reassignment, suspension from office, early (compulsory) retirement and dismissal), it is fundamental that the disciplinary grounds have to meet the criteria of legality, i.e., they must be clearly defined, precise and foreseeable in their application, so as to allow a judge to foresee to a reasonable degree the disciplinary consequences which a given action may entail.¹¹⁷ This is important not least as pending disciplinary investigations and sanctions can constitute a major threat to judicial independence.
83. Occasionally, a breach of ethical rules may be sufficiently serious that it may have been included in legislation as one of the grounds for disciplinary liability or may be interpreted as such, thereby warranting the conduct to be referred to the relevant (independent) specific investigatory body which will be in charge to assess whether or not there is a sufficient case against the judge to call for the initiation of disciplinary proceedings.¹¹⁸ As discussed below in paragraph 98, the body or person responsible for considering whether or not there is a sufficient case against a judge that may justify the referral to the relevant disciplinary authorities for potentially initiating a disciplinary investigation should be established by law.¹¹⁹

4.12. Gender- and Diversity-related Integrity Considerations

84. In order to ensure the Constitutional Court’s ability to provide substantive equality for all, it is important to ensure that clear and comprehensive guidance about gender- and diversity-related integrity considerations are integrated in rules of professional ethics for judges, providing clear guidance about the ethical standards to which judges are held and the behaviours that are incompatible with those standards.¹²⁰ **The Rules could be further elaborated in this respect with a view for judges to operate with integrity internally**

116 OSCE, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), para. 25. See also International Association of Judicial Independence and World Peace, *Bologna and Milan Global Code of Judicial Ethics* (2015), Article 1.2.

117 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, paras. 32, 39-40.

118 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 19.

119 Judicial Integrity Group, Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (2010), Article 15.3.

120 *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, pp. 6 and 47.

but to ensure they are better equipped to deliver on their mandates effectively and transparently to all, in their diversity.

85. It is noted that while the list of discriminatory grounds under General Principles (paragraph 1, sub-paragraph 3) of the Rules is non-exhaustive and overall mirrors those provided in Article 2 of the ICCPR and Article 14 of the ECHR, it does not refer to some of the protected grounds that are included in international and regional treaties,¹²¹ as well as EU legally binding instruments¹²² and evolving caselaw of the ECtHR,¹²³ such as birth, association with a national minority, disability, migrant or refugee, sexual orientation, gender identity. **It is recommended to expand the list by also expressly referring to these other protected grounds.** An explicit mention of the above features as protected grounds will help send out the message that discrimination on the basis of such characteristics is unacceptable and that these types of discrimination will be sanctioned,¹²⁴ including by the Constitutional Court of Ukraine. It is also generally acknowledged that explicitly sanctioning such forms of discrimination has had positive effects in practice.¹²⁵
86. Further, unless they already exist for the judiciary in general, in which case the Rules could potentially refer to them or they may be used in practice by the judges of the Constitutional Court of Ukraine, gender protocols, bench books, sexual harassment policies and other guidance can be effective tools for raising awareness about gender considerations and providing practical advice about good practices in addressing those issues in the courtroom and the courthouse.¹²⁶
87. **The elaboration of the principle of equality in the Rules (or in a guidance document) could also go further in terms of strong commitment towards equitable, non-discriminatory and violence/harassment-free Constitutional Court, working**

121 Especially Articles 2 and 6 of the ICCPR referring to “*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”; Article 14 of the ECHR and Protocol 12 to the ECHR mentioning “*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”; Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Moldova on 21 September 2010; Article 4(3) of the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by the Republic of Moldova on 18 July 2022, which refers to “*sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status*”. The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, par 2), UN Doc E/C.12/GC/20, 2009, para. 32).

122 Article 21 of the EU Charter of Fundamental Rights, which refers to “*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation*”; Employment Equality Directive (2000/78/EC), limited to the field of employment and occupation, covering the grounds of religion or belief, disability, age and sexual orientation.

123 The ECtHR has clarified that the prohibition of discrimination extends to “*sexual orientation*” and “*gender identity*”; see ECtHR in *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, “*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or “status” by which individuals or groups are distinguishable from one another*” (discrimination grounds), underlying that the list of discrimination grounds is “*an illustrative and not exhaustive*” (thus open) list and noting that the words “*other status*” have generally been given a wide meaning and their “*interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent*”; ECtHR, *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021, para. 73, which states that “*the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity*”. The ECtHR also held that “[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men [...] from the entitlement to parental leave” and that “*gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*” (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 143).

124 See also the *Yogyakarta Principles plus 10* (YP plus 10), *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017).

125 See e.g., in the context of the European Union, the *Report on Harassment* related to Sex and Sexual Harassment Law in 33 European Countries, prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012).

126 *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, pp. 7 and 48.

environment and treatment of all individuals in the courtroom and adjudicatory functions.¹²⁷ It is also important to address either in the Rules or in written guidance documents the many forms that gender- and diversity-related judicial integrity issues may take including sextortion, sexual and other forms of harassment, sexual and other discrimination, gender bias, unequal gender representation, gender stereotyping or inappropriate sexual conduct.¹²⁸ While some may argue that it may not be necessary to address violence against women, sexual or other forms of harassment or incitement to discrimination and hatred as an ethical issue as long as it is prohibited by other laws, it is important to reiterate that the boundaries of lawful conduct are not the same as the boundaries for ethical conduct.¹²⁹

4.13. Other Aspects

88. Paragraph 16 of the Rules provides that “*given that the defence of Ukraine, its independence and territorial integrity is the duty of every citizen and the cause for the entire Ukrainian people, the judge shall support the Defence Forces of Ukraine*”. Although this is an unusual provision to be contained in ethical rules, there is international recognition that differences between various national judicial codes of ethics is to be expected, as courts formulate standards that reflect their local challenges, context and traditions, with a view to provide meaningful and clear guidelines tailored to the specificities of the local system.¹³⁰
89. This paragraph is perhaps drafted from the perspective that the Defence Forces of Ukraine are currently playing a key role in protecting the independence and constitutional order of the State and institutions enshrined in the Constitution. This is understandable; **however the paragraph could be drafted with a focus on protecting these values rather than the Defence Forces as an institution.** It is noted that in cases where the Court is called to review constitutionality of norms regulating the Defence Forces, it would need to act independently and impartially to protect the Constitution and the rule of law. The inclusion of such provision in the Rules may question the impartiality of the Court.
90. With regard to the wording of this paragraph, the meaning of the word “support” is also unclear. Given that this paragraph is contained within Part 2 of the Rules that is entitled “Out-of-Court Activities”, the word “support” appears to refer to a judge’s private support and is not to be interpreted as meaning that the Defence Forces are beyond scrutiny by the Constitutional Court, which would be at odds with its independence and impartiality.

5. CONDUCT OF JUDGES AFTER DEPARTURE

91. It is important that Part III of the Rules are read and assessed in light of the fact that the tenure of a Constitutional Court Judge is of nine years without the right to reappointment.¹³¹ This not only means that there is a high turnover of judges who will be

127 See Parliamentary Assembly of the Council of Europe (PACE), *Parliaments free of sexism and sexual harassment*, p. 5.

128 *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 75.

129 *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 6.

130 This was also recognised in the ODIHR *Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan* (2018), at para. 20; and in the CoE, *Expert Report, Project on Strengthening Judicial Ethics in Turkey: Expert Review of relevant European Standards and Practices* (2016), page 8.

131 Article 16 of the Law on CCU.

impacted by this Part, but also that they frequently will need to make a living (and not simply retire) when they are no longer judges. This means that any restrictions on their rights and freedoms need to be very carefully considered and justified, and restrictions that might apply in other jurisdictions to retired judges may not be practical or justified here. The English translation of the title of this section appears to suggest that this Part only applies to judges who have been *dismissed*, and not to all former Constitutional Court judges. Unless the result of an error in translation, this Part should apply to all former Constitutional Court judges regardless of the reasons why or by which mechanism they are no longer judges.

92. In this respect, it is noted that the restrictions to freedom of expression contained in Parts 1 and 2 of these Rules would not appear justifiable in the case of former judges. Indeed, there is no legitimate reason to restrict the freedom of expression of former judges who no longer carry out any judicial functions, except for confidential information acquired in the performance of their duties. This is generally reflected in international good practice and recommendations.¹³² At the same time, because of a possible continuing association in the public mind with the Constitutional Court even after the end of their tenure, additional considerations may include the potential harm that certain post-judicial activities may have on the standing or reputation of the Court and the judiciary in general, or whether they might reflect adversely on the judiciary.¹³³ **Paragraph 17 should be reviewed and amended to clarify that there should be no restriction on the freedom of expression of former Constitutional Court judges, except for confidential information acquired in the performance of their duties.**¹³⁴
93. For some concrete examples of very specific limitations to the freedoms and conduct of former judges, Articles 13-15 of the Code of Conduct for the Justices of the Federal Constitutional Court of Germany,¹³⁵ and the rules applying to the Supreme Court of the United Kingdom and the Judicial Committee of the Privy Council Guide to Conduct for Retired Justices (2025) could be of relevance, while noting that each have their own context-dependent specificities, though yet recognizing “*as a general proposition, retired Justices are entitled to exercise the rights and freedoms available to all citizens*”.¹³⁶ Another example is Article XI of the Resolution on Judicial Ethics of the European Court of Human Rights (of 2021, as amended in 2024), which circumscribes the obligations that will continue to apply to former judges to the provision on secrecy of deliberations and discretion regarding secret or confidential information, and “*insofar as relevant*”, the provision on freedom of expression.

132 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 7.

133 See e.g., International Association of Judicial Independence and World Peace, *Bologna and Milan Global Code of Judicial Ethics* (2015), Section 9. See also e.g., UK Courts and Tribunal, *Guide to Judicial Conduct* (July 2023), which notes that because “*Retired judicial office holders may still be regarded by the general public as representatives of the judiciary [...], [t]hey should exercise caution [...] so as to avoid any activity that may tarnish the reputation of the judiciary*”.

134 Article 9 of the *Bologna and Milan Global Code of Judicial Ethics* (2015), that lays out ‘Post-Judicial Activities’ in some detail. See also for example: *ODIHR Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan* (2018), para. 72.

135 See: Bundesverfassungsgericht, Code of Conduct for the Justices of the Federal Constitutional Court. Section III on the Conduct after the end of the term of office provides: “13. *After their term of office ends, the Justices of the Federal Constitutional Court continue to exercise restraint and confidentiality in their statements and conduct with regard to matters of the Court. 14. After their term of office ends, the Justices of the Federal Constitutional Court do not become involved in legal matters that were the subject of proceedings before the Federal Constitutional Court during their term of office or are closely related to such proceedings. Regarding such matters, they refrain from submitting expert opinions, taking on responsibilities as lawyer or counsel, and appearing in court.*”

15. In the first year following departure, the Justices of the Federal Constitutional Court refrain from undertaking advisory activities that relate to the subject areas of their cabinet, from submitting expert opinions and from appearing in court. Thereafter, they continue to refrain from representing anyone before the Federal Constitutional Court. After leaving office, the Justices avoid the impression of inappropriately exploiting internal knowledge.”

136 UK Guide to Conduct for Retired Justices, Article 4

94. Paragraph 18 of the Rules provides that upon termination of office (dismissal), the judge shall continue to maintain confidentiality in respect of information with limited access that became known to them during the exercise of their powers, which as mentioned above is in principle unproblematic. It could perhaps be noted that as specified in Article 5, which sets out the duty of confidentiality with regard to current judges, that “*the Judge may publicly express their opinion on the merits of only those cases, in which the constitutional proceedings have been completed*”. **Former judges should also maintain the right to express their opinions in this way.** It is perhaps taken as granted that those who are no longer judges are not restricted in their expression by the provisions in Part 1 and 2 of these Rules. However, in light of the provisions of paragraph 17 of these Rules, **this may not necessarily be clear and should be clarified to avoid ambiguity.**
95. In terms of the wording of this provision, it is noted that the inclusion of the wording “*in respect of information with limited access*” could potentially restrict the definition of confidential information and may therefore be unnecessary. It is noted that this is perhaps intended to indicate that judges can discuss information which has since come into the public domain, but this could be stated as such to avoid misinterpretation.

RECOMMENDATION F.

To clarify paragraph 17 to ensure that there should be no restriction on the freedom of expression of former Constitutional Court judges, except for confidential information acquired in the performance of their duties.

6. ETHICS BODY

96. The Rules currently do not envision any interaction by judges with an advisory person or body, other than reporting attempts to exert influence (paragraph 3, sub-paragraph 2) and the right to initiate issues related to compliance with the Rules at the Meeting of Judges of the Court (paragraph 19). The Law on the Constitutional Court provides for a Standing Commission of the Court on Regulations and Ethics (Article 21) but this body is not mentioned in the Rules. Having in mind the particular formation and nature of the Constitutional Court, it would be beneficial to specify a body or a person who could provide confidential advice to judges on ethics issues, provided that this body or person does not take part in plenary sessions deciding on dismissal issues.
97. International standards place particular emphasis on the availability of advice and judges’ interaction with the ethics body. In this vein, the CoE Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities recommends that judges should be able to seek advice on ethics from a body within the judiciary.¹³⁷ The CCJE encourages the establishment of 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*”.¹³⁸ In the UNODC UNCAC Implementation Guide and Evaluative Framework for Article 11 of the

137 CoE Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, 17 November 2010, para. 74.

138 CCJE, Opinion no. 3 on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality, 19 November 2002, para 29.

UNCAC, the importance and effectiveness of such an ethical body is also underlined, to advise members of the judiciary on the propriety of their contemplated or proposed future conduct or to issue opinions on its own initiative.¹³⁹ Similarly, the ELI-Mount Scopus European Standards of Judicial Independence suggest that: *“In case of doubt as to the application of these standards to a given situation, judges may seek the advice of a body, such as a judicial ethics advisory committee, that should be established to assist in the implementation and interpretation of the standards. It should, upon enquiries from judges, advise them on ethical concerns and on the uniform application of ethical principles to everyday situations.”*¹⁴⁰

98. Judges should have an internal forum or mechanism for voicing professional and constructive criticism of colleagues, particularly if the issues touch on matters of great public interest, or if based on substantiated allegations. It is unclear whether paragraph 19 is intended to provide this internal forum, or whether it is intended to specify a mechanism for obtaining guidance on the implementation of the Rules of Professional Ethics. It is critical that judges have a body to turn to for advice should they need it on the propriety of contemplated or proposed future conduct.¹⁴¹ It is common to establish a body of sitting and/or retired judges to advise judges on such questions¹⁴² having due regard of the nature of the Constitutional Court. However, any advice should be of a “recommendatory nature” so as to not impinge on the independence and impartiality of the individual judge. Provisions regarding this advice could also be placed in a commentary to the Rules, the function of which is to advise judges on the implementation of the Rules.
99. By way of example, Article XII of the Resolution on Judicial Ethics of the European Court of Human Rights states: *“In case of doubt as to application of these principles in a given situation, a Judge may seek the advice of the President of the Court. When the President considers it necessary, in order to give guidance to a Judge seeking advice on compliance with the ethical standards in a given situation or to give guidance on ethical standards concerning the Court as an institution, he or she may consult the Ethics Council of the Court, composed of the most senior Vice-President of the Court, the most senior Section President and three most senior sitting Judges. The President shall report annually to the Plenary Court on the application of these principles.”*
100. In light of the foregoing, **the Rules or separate commentary or guidance document should envisage the establishment of a confidential, non-binding advisory ethics body, distinct from a body exercising disciplinary functions, which would provide judges with reliable guidance on ethical matters. It is essential that such a body should not be interpreted as holding any disciplinary authority, which must instead be exercised by a distinct, independent, disciplinary body established by law.**
101. Finally, it is important to clarify that paragraph 19 should not be read as conferring authority on the Meeting of Judges of the Court to receive complaints about alleged misconduct and decide whether to refer to disciplinary authorities. The (independent) specific investigatory body or person responsible for considering whether or not there is a sufficient case against a judge to justify the referral to the disciplinary authorities for initiation of disciplinary action is distinct and should be established by law which will be

139 UNODC, *UNCAC Implementation Guide and Evaluative Framework for Article 11* (2015), para. 31.

140 See <ELI-Mount_Scopus_European_Standards_of_Judicial_Independence.pdf>.

141 Article 2.1 of the Implementation Measures – “the judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct”.

142 UNODC, *UNCAC Implementation Guide and Evaluative Framework for Article 11* (2015), para. 31. See also Article 1.4 of the Bologna and Milan Global Code of Ethics.

in charge to assess whether or not there is a sufficient case against the judge to call for the initiation of disciplinary proceedings.¹⁴³ It should not be the Rules of Professional Ethics itself that confer this responsibility. This body or person established by law for that purpose should receive complaints about judges' conduct, and importantly also obtain a response from the judge in question before reaching a decision on referral for disciplinary investigation.¹⁴⁴

RECOMMENDATION G

To envisage, in the Rules or separate commentary or guidance document the establishment of a confidential, non-binding advisory ethics body, distinct from a body exercising disciplinary functions, which would provide judges with reliable guidance on ethical matters;

7. OTHER ISSUES RELEVANT FOR THE RULES OF PROCEDURE

7.1. Gifts and Hospitality

102. The Rules currently do not contain specific provisions on acceptance of gifts and of hospitality, although they may be regulated elsewhere. Tokens of gratitude and favours may also pose ethical issues, so there may be value in incorporating some guidance on this into the Rules. For example, the Bologna and Milan Global Code of Judicial Ethics suggest that acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances, and the same applies to invitations to lunches and dinners by legal and other professional and public bodies or officials. Caution should be exercised, however, with respect to participation in marketing or promotional activities, for example by barristers' chambers or solicitors' firms, or professional associations.¹⁴⁵
103. Bangalore Principle 4.1.4 provides in this regard that "[a] judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties." **It is recommended to add in the Rules a provision with an explicit prohibition to ask, seek, receive and accept gifts or hospitality or other favours. Alternatively, the Rules can refer to the relevant legislation where such practices are prohibited.**

7.2. Rights and Freedoms of Judges

104. As reflected above, the Rules extensively deals with the judges' right to freedom of expression. It is however notable that these Rules are silent with respect to other rights, such as the freedoms of association and of peaceful assembly. Article 11 of the Law on the Constitutional Court provides some limitations in this respect as it states that "[a] Judge may not be affiliated with political parties or trade unions, or display his or her disposition towards them, or participate in any political activities"; in addition, "[a]

¹⁴³ See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 19. See also Judicial Integrity Group, *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), Article 15.3.

¹⁴⁴ Judicial Integrity Group, *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), Article 15.3.

¹⁴⁵ International Association of Judicial Independence and World Peace, *Bologna and Milan Global Code of Judicial Ethics* (2015), paras. 7.8.2 – 7.8.4.

Constitutional Court Judge shall not be entitled to combine his or her office with any position in a government authority or local authority, a self-governed professional legal association, with the status of a People's Deputy of Ukraine, Deputy of the Verkhovna Rada of the Autonomous Republic of Crimea or of an oblast, district, city, city-district, village, or settlement council, other representative mandate, advocacy activities, entrepreneurial activities, to occupy any other paid office, to exercise any other paid work or to receive any other remuneration, except for teaching, research or creative activities with remuneration for it, as well as to be on a management or supervisory board of a profit-making legal entity.”

105. While it is noted that the Rules do not restrict these freedoms, Article 11 delineates some limits to certain freedoms for Constitutional Court judges. At the same time, while Constitutional Court judges also enjoy rights and freedoms as any individual, certain limitations to other rights may be justifiable with a view to conform with the dignity of their office and not conflict with the public duties and/or jeopardize the impartiality of Constitutional Court judges or the appearance thereof.¹⁴⁶ In any case, any restriction should comply with the strict test provided by international instruments, i.e., to be provided by law (requirement of legality), to be in pursuit of one or more of the legitimate aims listed exhaustively in the respective treaty/convention, to be necessary in a democratic society and to respect the principle of proportionality. While applicable legislation already envisage certain limitations, the Rules or separate documents could provide further guidance and practical examples of what such limitations may entail.

7.3. Use of Artificial Intelligence (AI) of Other Digital Technologies

106. The Rules do not contain any guidance on the use of Artificial Intelligence (AI) or other digital technologies by judges in the exercise of their judicial function, which is rather common. **In this regard, it is recommended to consider incorporating international guidance and good practice on the use of AI by judges into the Rules.**¹⁴⁷ Whilst the details of AI use by the Constitutional Court may need to be included in specific guidelines on AI, the responsibility of the judge for the content of decisions and communications they make in the exercise of the judicial office, regardless of AI use or support, is a question of ethics and could be included in these Rules. As an example, of such a provision from Brazil: *“The use of these tools shall be supportive and supplementary, serving as mechanisms to assist decision-making. Their use as autonomous instruments for judicial decision-making is strictly prohibited without proper guidance, interpretation, verification, and review by the judge, who shall remain fully responsible for the decision made and the information they contain.”*¹⁴⁸
107. The need to ensure the confidentiality of information may also be breached by a lack of caution in the use of publicly available AI and other technologies. There is also a need for Courts to be transparent about AI use.

¹⁴⁶ Warsaw Recommendations on Judicial Independence and Accountability, ODIHR, 2023, para. 30.

¹⁴⁷ See: European Commission for the Efficiency of Justice (CEPEJ), [European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment](#) (December 2018); UNESCO, [Draft Guidelines for the Use of AI Systems in Courts and Tribunals](#) (2024); the 1st Report of the CEPEJ Advisory Board on Artificial Intelligence on the Use of AI in the Judiciary based on the Information Contained in the Resource Centre on Cyber Justice and AI (28 February 2025). See also, CCJE Opinion no. 26, [Moving forward: the use of assistive technology in the judiciary](#), 1 December 2023.

¹⁴⁸ Chapter VI, Article 19, paragraph 3.III, Resolution No.615/2025 of the National Council of Justice of Brazil, 11 March 2025, which establishes guidelines for the development, use, and governance of artificial intelligence solutions with the Judiciary.

RECOMMENDATION H.

To consider incorporating recent international guidance and good practice on the use of AI by judges into the Rules.

7.4. Effective Application of the Rules on Professional Ethics

108. Lastly, it is important to note that if these Rules are to achieve their aims, it is critical that the Rules are widely disseminated, and that measures are taken by the State and the judiciary for its effective implementation. An important element of this is providing regular training on judicial ethics to all judges,¹⁴⁹ noting that training should normally be based on the voluntary participation of judges.¹⁵⁰ Given the dangers of social media use by judges, and the increasing use of AI by judges, such training should include training on social media, online communications, and the ethical use of AI systems. Whilst having in mind the particular role of the Constitutional Court, the Judicial Integrity Group has a ready-made *Judicial Ethics Training Package* available in many languages, that can be directly implemented by any judiciary.¹⁵¹ Finally, key principles as laid out in the CCJE Opinion no. 26 on the use of assistive technology in the judiciary, should guide any ethical rules established in this respect.¹⁵²

[END OF TEXT]

149 Note that the UN Basic Principles on the Independence of the Judiciary provide for the proper training of judges in Article 10. OSCE participating States have also undertaken to pay particular attention to these principles in ensuring the independence of the judiciary (see para. 19.2 (iv) of the OSCE, Document of the Moscow Meeting (1991)).

150 Article 7.5 of the Judicial Integrity Group, Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (2010).

151 For more information, see Judicial Ethics Training (unodc.org). The package includes an e-Learning course, a self-directed course, and a trainers' manual which all aim at providing judges with the necessary skills to effectively apply the Bangalore Principles of Judicial Conduct and its Commentary.

152 CCJE Opinion no. 26 - Moving forward: the use of assistive technology in the judiciary, 1 December 2023, Chapter VII.