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## OPINION ON THE CODE OF JUDICIAL ETHICS OF UKRAINE

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### Ukraine

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Based on an unofficial English translation of the Code provided by the Council of Judges of Ukraine.

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## **EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

The Code of Judicial Ethics of Ukraine provides guidance on ethical conduct by judges and addresses a wide range of issues related to judicial independence, impartiality, integrity and professional behaviour, including public communication, use of artificial intelligence (AI) technologies, social media and extrajudicial activities.

The adoption of a new Code by the Congress of Judges of Ukraine is a welcome step, which may contribute to strengthening the principles of judicial conduct, promoting awareness of ethical principles among judges and enhancing public trust in and transparency of the administration of justice, particularly if supported by a comprehensive Commentary providing more detailed and practical guidance that is planned to be developed. In order to ensure effective application in practice, it is also important that such rules are widely disseminated among judges who should also be regularly trained on them.

The Opinion aims to offer some additional considerations and recommendations with the intention of further strengthening the clarity, coherence, practical impact and effective implementation of the Code of Judicial Ethics, as well as inform the development of the Commentary.

Notably, there are a number of aspects that should be clarified or further elaborated in the Code or in the Commentary. Importantly, the Code does not expressly clarify its personal and temporal scope, which may give rise to uncertainty as to whether certain obligations, notably those relating to public statements and confidentiality, extend beyond active judicial service.

The provisions on judicial independence contain important statements of principle and operational duties, including the requirement to resist pressure and interference, which are absolutely unacceptable and should also be responded with effective and dissuasive sanctions. At the same time, the framework would benefit from greater coherence, in particular where overlapping provisions may create redundancy and where the principle of judicial independence, impartiality, integrity and propriety could be articulated more clearly as a cross-cutting standard informing all aspects of judicial conduct. Moreover, pressures affecting judicial independence may arise not only from external actors but also from within the judiciary itself, and the ethical framework would benefit from providing clearer guidance in this respect.

The Code contains provisions regulating the exercise of freedom of expression by judges, including public statements and confidentiality requirement, which reflects the importance of safeguarding impartiality, judicial authority and public confidence in the administration of justice. At the same time, it would be beneficial to ensure that these provisions are applied in a manner consistent with international standards, including by clearly distinguishing between restrictions necessary to protect the fairness of pending proceedings and legitimate professional discourse on decided case law. International standards further

recognize that judges may, and in certain circumstances should, engage in defence of the rule of law and judicial independence, provided that such expression remains compatible with the dignity, impartiality and propriety of judicial office.

Moreover, the Code could also go further in terms of strong commitment towards equitable, non-discriminatory and violence/harassment-free courts, working environment and treatment of all individuals in the courtroom and adjudicatory functions, as well as more generally.

Finally, the Opinion notes that the Code does not provide for a mechanism through which judges may seek confidential, non-binding advice on ethical matters. International recommendations emphasize the preventive value of ethics advisory arrangements within the judiciary, clearly distinguished from disciplinary bodies.

In addition, the framework would benefit from clearer guidance on conduct after resignation or retirement, as well as from the inclusion of basic ethical standards on gifts and hospitality. Addressing these issues would contribute to strengthening the preventive function of the Code and support its consistent, credible and effective application in practice.

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

A. With respect to general provisions:

1. To consider revising Article 1 so that it reflects a duty, rather than merely an entitlement, for judges to speak out in defense of the rule of law and judicial independence; [para. 27]
2. To clarify, preferably in Article 2 or in the Commentary, that the duty to resist pressure applies equally to interference originating both from outside and from within the judiciary and that judges should conduct themselves in a manner that also preserves the appearance of resistance to such pressures. [para. 28]

B. To strengthen the principle of equality and non-discrimination, revise Article 9 to:

- (i) expand the list of protected characteristics to expressly refer to, inter alia, birth, association with a national minority, national origin, marital status, disability, and migrant or refugee status, while retaining the general clause “any other characteristics”; [para. 32]
- (ii) clarify, either in the text of the Article or in the Commentary, that the duty of non-discrimination applies to all persons with whom judges interact in their professional capacity, including parties, witnesses, lawyers, court staff and judicial colleagues, and that it encompasses not only the prohibition of discriminatory conduct but also not to tolerate or knowingly permit discriminatory treatment by persons subject to their influence, direction or control and a positive ethical duty to be aware of diversity and to reflect on how words and conduct may be

perceived as manifesting bias or prejudice, with a view to promoting an equitable, non-discriminatory and harassment-free judicial environment; [paras. 34-35]

C. With respect to freedom of expression of judges:

1. To reinforce the protection of impartiality and public confidence in the judiciary, amend Article 12 so that the prohibition on comments applies to statements made publicly outside of a court room on the merits or expressing position with regard to the case under consideration while clarifying that this does not prevent judges from providing necessary information about procedural aspects of a case, nor from engaging in permissible professional and/or academic discussion of case law or specific decisions that have entered into force, provided that such discussion does not give rise to reasonable doubts as to their impartiality; [para. 36-37]

2. To ensure a balanced approach to judges' freedom of expression, clarify, in the Code and/or its Commentary, that the obligation to exercise "restraint, balance, caution and prudence" and the prohibition on statements that might compromise judicial office do not preclude judges from speaking out, in a well-reasoned, professional and dignified manner, on matters of systemic importance such as the rule of law, judicial independence and the proper functioning of the justice system, provided that their interventions remain compatible with impartiality, dignity and propriety. [paras. 37-38]

D. To reflect the objective nature of the recusal duty in line with international standards, amend Article 15 so that a judge is not only entitled, but required, to withdraw from proceedings where he or she is unable to decide the matter impartially, while maintaining reference to applicable procedural legislation on grounds and procedure, providing that recusals are not required in exceptional situations when other tribunal cannot be constituted to deal with the case resulting into a denial of justice; [para. 42]

E. To safeguard confidentiality and data protection in the use of AI tools, clarify that judges should not disclose non-public case materials, personal data or other sensitive information to unsecured or non-approved AI systems, and ensuring oversight and conducting proper checks on the outputs produced by the technology used in order to independently verify and ensure the accuracy and appropriateness of any AI-generated output, while providing regular training and internal guidance on the safe and ethical use of AI in judicial work; [paras. 46-47]

F. To clarify the scope of Article 18, specify that the prohibition on "affiliation" is directed at partisan political organizations, while preserving judges' ability to form and join professional judicial associations and other non-partisan bodies that are compatible with judicial independence and impartiality, and clarify in the Commentary that judges should assess both paid and unpaid external

activities in light of their potential impact on independence, impartiality and the appearance thereof, as well as neutrality and propriety; [paras. 50-51]

- G. To strengthen the safeguards set out in Article 21, the Code and/or its Commentary should be supplemented to make clear that judges should neither discuss pending or likely cases nor research parties or witnesses via social media or similar platforms outside established procedural channels, and that regular training should be provided on the ethical, security and data-protection risks associated with social media use by judges and, where relevant, by their close environment; [para. 54]
- H. To complement the Code with a clear reference to an ethics advisory mechanism within the judiciary, such as a committee composed of sitting and/or retired judges, mandated to provide confidential, non-binding guidance on the interpretation and application of the Code and on the propriety of contemplated conduct, clearly distinguished from disciplinary authorities; [paras. 57-58]
- I. To distinguish clearly between ethical obligations that are inherently linked to the exercise of judicial functions and those that may legitimately extend beyond departure from office, clarifying in particular that duties of confidentiality may continue after service, as well as temporal scope of the obligation, while providing that restrictions on expression and conduct linked to the adjudicative role, statements of public nature, interaction on social media, etc., should, as a rule, be limited to sitting judges. [para. 61]
- J. To introduce explicit ethical guidance on gifts and hospitality, either in the Code or in the Commentary, clarifying that judges and members of their families should neither ask for nor accept gifts, benefits or hospitality in connection with the performance of judicial duties, and underlining that even modest gifts or hospitality may raise ethical concerns depending on their source, context and perception, in line with internationally recognized standards. [para. 62-63]

***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:** Code of Judicial Ethics of Ukraine

## I. INTRODUCTION

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1. On 23 September 2025, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) received a letter dated 10 September 2025 from the Chair of the Council of Judges of Ukraine requesting a legal review of the Code of Judicial Ethics (hereinafter “the Code”).
2. On 30 September 2025, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal review of the Code analysing its 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 judicial reform in Ukraine, in particular the *ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine*, as well as other ODIHR legal reviews related to judicial integrity in Ukraine.<sup>1</sup>
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.<sup>2</sup>

## II. SCOPE OF THE OPINION

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4. The scope of this Opinion covers only the Code submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating judicial ethics 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 Code. 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.
6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>3</sup> (hereinafter “CEDAW”) and the *2004 OSCE Action*

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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, 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 [...]”.

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.

*Plan for the Promotion of Gender Equality*<sup>4</sup> 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 Code provided by the Council of Judges of Ukraine, 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

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

9. The judiciary plays a central role in safeguarding the rule of law, democracy and ensuring the protection of human rights for all individuals.<sup>5</sup> The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law.<sup>6</sup> This principle demands that the judiciary as an institution, and every judge individually, be able to carry out their professional duties free from undue influence, pressure or interference from any source, including the executive and legislative branches or other external actors. Independence likewise presupposes that judges are protected from arbitrary disciplinary action or retaliation, and that they can decide cases solely on the basis of law and evidence. Judicial integrity complements independence by requiring judges to uphold the highest standards of ethical and professional conduct, thereby safeguarding both the appearance of impartiality and the public's confidence in the fair administration of justice.<sup>7</sup>
10. At the international level, the right of every individual to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed by Article 14 of the *International Covenant on Civil and Political Rights*<sup>8</sup> (hereinafter "the ICCPR"). The institutional and procedural safeguards required to secure such independence are elaborated in the *UN Basic Principles on the Independence of the Judiciary*,<sup>9</sup> which set out foundational requirements concerning judicial appointment, tenure, conditions of service, and protection from undue influence. Further guidance is

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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 OSCE Ministerial Council Decision No. 7/08 "Further Strengthening the Rule of Law in the OSCE Area", 8 December 2008, para. 4.

6 United Nations Human Rights Council, Resolution on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers, 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".

7 See e.g., Council of Europe, Consultative Council of European Judges (CCJE), *Opinion No. 3 (2002) on the Principles and Rules Governing Judges' Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality*, 19 November 2002; CCJE, *Opinion No. 21 (2018) on Preventing corruption among judges*, 9 November 2018.

8 UN International Covenant on Civil and Political Rights (ICCPR), General Assembly, resolution 2200A (XXI), adopted on 16 December 1966. Ukraine ratified the ICCPR on 12 November 1973.

9 UN, 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.

provided in the *Bangalore Principles of Judicial Conduct*,<sup>10</sup> which articulate the core values expected of judges and establish a framework for ethical conduct aimed at ensuring independence, impartiality and integrity. In its *General Comment No. 32 on Article 14 of the ICCPR*, the UN Human Rights Committee has emphasized that States should guarantee the *actual* independence of the judiciary from political interference, and adopt clear, objective and transparent procedures governing judicial appointment, remuneration, promotion, suspension and dismissal, as well as disciplinary measures.<sup>11</sup> In addition, Article 11 (1) of the UN Convention against Corruption (hereinafter, “UNCAC”) requires States Parties 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*”.<sup>12</sup> Together, these instruments affirm that judicial independence and integrity are indispensable to ensuring fair trial rights and maintaining public confidence in the proper administration of justice.

11. 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),<sup>13</sup> 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 its case law, the European Court of Human Rights (ECtHR) 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*”.<sup>14</sup> 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.<sup>15</sup>
12. 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.<sup>16</sup> In a context where public trust in the judiciary remains very low,<sup>17</sup> with a history of judicial integrity shortcomings,<sup>18</sup> the challenges in the consistent application of ethical and integrity standards underscore the importance of a clear and coherent framework of judicial ethics. Further, 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 established by law.<sup>19</sup>

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10 The Bangalore Principles of Judicial Conduct were adopted by the Judicial Group on Strengthening Judicial Integrity and revised at the Round Table Meeting of Chief Justices held at The Hague (25–26 November 2002). They were subsequently endorsed by the United Nations 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.

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

12 *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.

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

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

15 See CoE, Group of States against Corruption (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.

16 See European Commission, *Commission Staff Working Document – Ukraine 2025 Report*, SWD(2025) 759 final, 4 November 2025, pp. 29-30.

17 See e.g., European Commission, *Commission Staff Working Document – Ukraine 2025 Report*, SWD(2025) 759 final, 4 November 2025, p. 29.

18 See e.g., *OECD Integrity and Anti-Corruption Review of Ukraine* (2025), Section 4.2.

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

13. 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).<sup>20</sup> In the 1991 Moscow Document,<sup>21</sup> 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 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.<sup>22</sup> More detailed guidance is also provided by the *ODIHR Warsaw Recommendations on Judicial Independence and Accountability*<sup>23</sup> and the *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*.<sup>24</sup>
14. Other soft law international and regional documents 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,<sup>25</sup> as well as the Measures for the Effective Implementation of the Bangalore Principles (2010)<sup>26</sup> and Paper on Gender-related Judicial Integrity Issues (2019);<sup>27</sup>
  - the UNODC UNCAC Implementation Guide and Evaluative Framework for Article 11 of the UNCAC;<sup>28</sup>
  - 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;<sup>29</sup>
  - relevant legal opinions of ODIHR<sup>30</sup> and of the European Commission for Democracy Through Law of the Council of Europe (Venice Commission).<sup>31</sup>

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20 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.

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

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

23 ODIHR, *Warsaw Recommendations on Judicial Independence and Accountability*, 2023.

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

25 [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.

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

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

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

30 See e.g., ODIHR, [Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan](#) (2018).

31 See e.g., [legal opinions on judiciary](#), Venice Commission, as well as the (Updated) [Compilation of Venice Commission Opinions and Reports concerning Judges](#), Venice Commission, CDL-PI(2025)003.

## 2. BACKGROUND

15. Codes of judicial ethics play an essential role in shaping the professional environment within which judges carry out their duties. By articulating the core values of the judicial office such as independence, impartiality, integrity, diligence, propriety, equality and competence, they assist judges in resolving ethical questions that may arise in the course of their work and support principled, autonomous decision-making free from undue influence. At the same time, such codes communicate to the public the principles of conduct that can be expected from judges, which should contribute to reinforcing transparency and strengthening confidence that justice is administered fairly and impartially.
16. In this context, the adoption of the new Code of Judicial Ethics on 18 September 2024 by the Congress of Judges of Ukraine, upon the proposal of the Council of Judges of Ukraine,<sup>32</sup> constitutes a welcome step, which demonstrates the willingness to strengthen ethical principles and guidance for judges. The adoption of the Code as a decision taken by the highest body of judicial self-governance of Ukraine,<sup>33</sup> forms part of broader efforts to strengthen professionalism, ensure integrity, and enhance public confidence in the courts in Ukraine.
17. The Council of Judges has also initiated the development of a Commentary to the Code, intended to support “adequate understanding and practical application” of its provisions, which is welcome and aligned with good practices in this field.<sup>34</sup> In this respect, it is important that the interpretation of the provisions of the Code reflects the commonly held views and professional values of judges.<sup>35</sup> Therefore, in order to foster support and a sense of ownership, it is advisable to develop and adopt the Commentary through an inclusive and pluralist consultation process, involving judges throughout.
18. The following comments are offered in a constructive spirit, with the aim of further strengthening the clarity, coherence, practical impact and effective implementation of the Code of Judicial Ethics. Some of the below recommendations may also be relevant to the development of the Commentary.

## 3. GENERAL COMMENTS

19. While the adoption of a new Code is an important step toward strengthening judicial integrity, its impact will depend on effective implementation. Several overarching structural and interpretative issues warrant further scrutiny to ensure the Code’s coherence and effective application in line with international standards and good practices.
20. The Preamble of the Code refers generally to international instruments and the “high standards of behavior” expected from judges. The primary function of a code of judicial ethics, however, is not only to regulate specific conduct but also to affirm the core judicial values such as independence, impartiality, integrity, propriety and diligence that underpin

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32 Article 58 of the Law of Ukraine on the Judiciary and the Status of Judges, available: [On the Judiciary and the ... | on June 2, 2016 № 1402-VIII](#).

33 Article 129 of the Law of Ukraine on the Judiciary and the Status of Judges, available: [On the Judiciary and the ... | on June 2, 2016 № 1402-VIII](#).

34 See e.g., although with respect of code of ethics for parliamentarians, 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, paras. 43 and 46. See also e.g., [Paper on Gender-related Judicial Integrity Issues](#) (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 36; and Venice Commission, CDL-AD(2024)004 - Bulgaria - Joint Opinion on the Code of Ethical Conduct for Judges, para. 52.

35 ODIHR, [Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan](#) (2018), para. 26.

all ethical obligations.<sup>36</sup> While some of these values appear throughout Articles 1–4 of the Code, they are not explicitly stated as overarching principles and also do not function as a consolidated statement of aims. Given the essential role of judges in the protection of human rights and fundamental freedoms,<sup>37</sup> it would also be advisable to expressly refer to this key role of judges in the Code. Furthermore, the Preamble does not explicitly recognize the judiciary’s crucial role in combating corruption and strengthening integrity, nor does it acknowledge the preventive function of a code of judicial ethics as a tool for reducing corruption risks and promoting ethical standards within the judiciary, (see Article 11 (1) of the UNCAC). Explicitly incorporating these foundational aims would aid judicial interpretation and reinforce the commitment to international anti-corruption standards. **It would therefore be advisable to clarify these foundational aims and key roles of judges in the Preamble or an introductory clause to support the coherent interpretation of the Code.**

21. As observed by ODIHR in several of its Opinions, given the nature and purpose of rules of professional ethics (i.e., to incorporate 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 integrity<sup>38</sup>), they are not intended to function as prescriptive regulatory norms. Rather, they are designed as a framework for ethical reflection, guidance and self-regulation. For this reason, they should not primarily be equated with disciplinary rules, the violation of which may lead to disciplinary sanctions that may impact the status of a judge.<sup>39</sup> While a code of ethics may contain both provisions establish binding duties and aspirational ethical standards, the coexistence of voluntariness in the Preamble and prescriptive language in the text may create ambiguity as to the normative force of the Code, which reinforces the importance in the interpretation and application of it in a uniform manner, ensuring that violation of mandatory nature of certain ethical standards is not equated with a violation of the disciplinary norms.
22. Article 4 of the Code provides that “[a] violation of ethical rules set forth by this Code, in itself, may not serve as a basis for holding a judge disciplinary liable”. The provision seems to imply that a violation of the Code if combined with other misconduct constituting a disciplinary violation, could potentially lead to disciplinary liability. International recommendations underline that conduct giving rise to disciplinary sanctions is to be strictly distinguished from a breach of a Code of Judicial Ethics.<sup>40</sup> As

36 *Bangalore Principles of Judicial Conduct (2002)*, adopted by the Judicial Group on Strengthening Judicial Integrity, values 1-6.

37 *Bangalore Principles of Judicial Conduct (2002)*, adopted by the Judicial Group on Strengthening Judicial Integrity, Preamble; CoE Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, 17 November 2010, Preamble.

38 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).

39 *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para.25. See also: 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.

40 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

underlined in the ODIHR Warsaw Recommendations, “*Despite 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*”.<sup>41</sup> Indeed, as noted above, the purpose 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. **To avoid ambiguity, unless a matter of mistranslation, the provision should be revised to clearly state that violation of the Code shall not constitute a legal ground for disciplinary liability.** Should there be certain overlap between the ethical principles and certain conduct which may constitute disciplinary violations, the relevant grounds for initiating disciplinary proceedings should be the legal framework governing disciplinary liability and not a potential violation of the Code.

23. A further issue concerns the lack of clarity regarding the scope of application of the Code. The text does not specify whether its provisions apply solely to sitting judges or whether certain obligations such as those relating to confidentiality (Article 12 (4) of the Code), the use of official information, or restraints on public commentary also extend to former or retired judges or to lay judges, where relevant. This should be clarified. International good practices suggest that certain restrictions on judges’ fundamental freedoms, such as freedom of expression and to impart information, might apply only during active service meaning that retired judges should in principle be able to exercise their rights and freedoms without restrictions, unless it concerns or relates to confidential information acquired in the performance of their duties.<sup>42</sup> At the same time, because of a possible continuing association in the public mind with the judiciary, additional considerations could be made bearing potential harm that certain post-judicial activities may have on the standing or reputation of the judiciary, or whether they might reflect adversely on the judiciary.<sup>43</sup>
24. Moreover, it must be underlined that, as a living instrument, a code of judicial conduct or ethics should generally be periodically reviewed and should be updated as necessary to address new challenges.<sup>44</sup> When doing so, it is recommended to consult not only judges, but also 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.<sup>45</sup>
25. Finally, in order to ensure effective application in practice, the Code should be broadly disseminated, and judges should receive regular training and practical guidance on its

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*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.*

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

42 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, para. 7.

43 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”.

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

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

provisions, including on conflicts of interest, public communication and the use of AI and other digital technologies.<sup>46</sup> These measures will help raise awareness among judges about the ethical rules, ensure consistent application of the Code and reinforce public confidence in the judiciary.

## 4. GENERAL PROVISIONS

### 4.1. Defending Judicial Independence

26. Article 1 of the Code recognizes the importance of propriety and public confidence in the independence of the judiciary, as well as the role of judges in upholding the rule of law. It also provides that judges are “entitled” to act to protect the independence and authority of the judiciary, including at the international level, “*in situations where independence and authority of the judiciary are at jeopardy*”. International standards underline that judges not only may, but in some circumstances have a duty to use their freedom of expression to speak out in defense of the rule of law and judicial independence when those fundamental values come under threat. In this respect, the Consultative Council of European Judges has stressed that judges “*have a duty to speak out in defence of the rule of law and judicial independence when those values come under threat*”. This approach is echoed in the case law of the ECtHR.<sup>47</sup> The ODIHR Warsaw Recommendations underline that judges “*have a duty to speak out in defence of the rule of law and judicial independence in situations where these values are threatened.*”<sup>48</sup>
27. In light of these standards, **it would be advisable to consider rephrasing Article 1 so that it reflects a professional duty, rather than merely an entitlement, to speak or act in defense of the rule of law and judicial independence.**

### 4.2. Independent Decision-Making

28. Article 2 of the Code imposes a mandatory duty on judges to be “*resistant to any pressure or intervention*” in activities related to the administration of justice. In the context of ongoing judicial reforms, safeguarding judges from interference is essential. While the reference to “any” pressure is welcome, international practice suggests that codes of ethics should be explicit as to the possible sources of such pressure. Experience in the OSCE region shows that judicial independence may be threatened not only by external actors (such as the executive, legislature, general public or parties to a dispute), but also by internal actors, including court presidents and higher courts, particularly where they exercise administrative powers or use instruments such as case allocation or transfers in a way that may influence adjudication.<sup>49</sup> **To provide judges with clearer guidance and a stronger shield against peer or hierarchical pressure, it would be advisable to clarify in Article 2 or in the Commentary, that the duty to resist pressure applies equally to interference originating from outside and from within the judiciary.**

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46 *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.

47 CoE, CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, paragraph 58; ECtHR, *Żurek v. Poland*, no. 39650/18, judgment of 10 October 2022, para. 222; Report of the UN Special Rapporteur on the independence of judges and lawyers, *Report on the rights to freedom of expression, association and peaceful assembly by judges and prosecutors, both offline and online*, A/HRC/41/48, 29 April 2019, para. 102.

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

49 *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia – Judicial Administration, Selection and Accountability* (2010), ODIHR, paras. 11 and 35; ODIHR, *Warsaw Recommendations on Judicial Independence and Accountability*, 2023, para. 32.

## RECOMMENDATION A.

1. To consider revising Article 1 so that it reflects a *duty*, rather than merely an entitlement, for judges to speak out in defense of the rule of law and judicial independence.
2. To clarify, preferably in Article 2 or in the Commentary, that the duty to resist pressure applies equally to interference originating both from outside and from within the judiciary and that judges should conduct themselves in a manner that also preserves the appearance of resistance to such pressures.

## 5. BEHAVIOUR IN THE PROCESS OF DISCHARGING JUDICIAL PROFESSIONAL DUTIES

### 5.1. Independence in the Administration of Justice

29. Articles 5 and 6 both address the fundamental principle of judicial independence in the administration of justice. Article 5 states that the independence of a judge is a precondition for the rule of law and a component of a fair trial, while Article 6 elaborates on the duty to administer justice independently, guided by the rule of law and the judge's internal conviction. Given this significant overlap, with Article 5 operating mainly as a declaratory statement of principle and Article 6 as its operational expression, it may be advisable to streamline these provisions, for instance by consolidating them, in order to enhance clarity and avoid redundancy.
30. At the same time, the principle of judicial independence is not limited to the exercise of adjudicative functions in court but constitutes an overarching guarantee that informs all aspects of judicial conduct, including extrajudicial behaviour and personal relationships. To reflect its foundational character, the general statement on judicial independence currently contained in Article 5 could be more appropriately placed under Section I (General Provisions), thus setting it out as a guiding principle applicable to the entirety of the Code.
31. Furthermore, Article 6 requires judges to administer justice independently "*despite any external interventions, influences, stimuli, threats or public criticism*". While this formulation is broadly consistent with the need to protect judges from external pressure, international standards and recommendations, including the UN Basic Principles on the Independence of the Judiciary, underline: "*the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*"<sup>50</sup> **It would perhaps be useful and better reflect the wide array of potential threats and pressures (whether direct or indirect) that judges are under to expand the wording of Article 6 so that it refers not only to external interventions, influences or stimuli, but also to interferences from within the judiciary.**

### 5.2. Equality and Non-discrimination

32. Article 9 recognizes that judges "*must respect human dignity*" and "*must not engage in any discrimination*", which is a welcome inclusion. While the provision concludes with

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<sup>50</sup> 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, para. 2.

a catch-all phrase referring to discrimination based on “*any other characteristics*”, it does not mention some of the protected grounds that are expressly included in international and regional treaties,<sup>51</sup> and evolving caselaw of the ECtHR,<sup>52</sup> such as birth, association with a national minority, national origin, marital status, disability, migrant or refugee status. **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 under judicial ethical standards.<sup>53</sup> Therefore, aligning the text more with the international standards might remove any interpretive doubt and signal more comprehensive commitment to equality.

33. Furthermore, the Bangalore Principles of Judicial Conduct (Value 5 on Equality) link the prohibition of discrimination to the broader objective of ensuring equality of treatment for all before the courts. They emphasize that it is not sufficient for judges merely to refrain from overtly discriminatory conduct; judges are also expected to “*be aware of, and understand, diversity in society and difference arising from various sources*” and to recognize how their own words and behaviour may be perceived as manifesting bias or prejudice.<sup>54</sup> While Article 9 primarily sets out a prohibition of discriminatory acts, it does not explicitly reflect this positive dimension of awareness and self-reflection. It may therefore be advisable to underline that the ethical duty of non-discrimination includes cultivating such awareness, with a view to promoting not only formal but also substantive equality in judicial proceedings.
34. In order to ensure that the duty of non-discrimination is understood in a comprehensive manner, it would be advisable to state explicitly that **Article 9 applies to all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, as well as the public in general.**<sup>55</sup> Any unequal or prejudicial treatment of individuals involved in the court process may affect the fairness, or at least the perceived fairness, of proceedings, while bias or prejudice displayed towards other persons inside or outside the courtroom may raise doubts about the judge’s ability to ensure equality of treatment before the courts.

51 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). See also: 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.

52 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 “[*the 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).

53 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).

54 *Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, 2002, value 5.1-5.2.

55 Ibid at value 5.3

35. The elaboration of the principle of equality in the Code could also go further in terms of strong commitment towards equitable, non-discriminatory and violence/harassment-free courts, working environment and treatment of all individuals in the courtroom and adjudicatory functions, as well as more generally.<sup>56</sup> In this regard, it would be useful to clarify that judges are expected to treat all persons appearing before them — including parties, witnesses, lawyers, court staff and judicial colleagues — with equal consideration, and not knowingly permit discriminatory conduct by persons subject to their direction or control.<sup>57</sup> It is also important **to address either in the Code or in written commentary 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.**<sup>58</sup> 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.<sup>59</sup>

#### RECOMMENDATION B.

To strengthen the principle of equality and non-discrimination, revise Article 9 to:

(i) expand the list of protected characteristics to expressly refer to, inter alia, birth, association with a national minority, disability, and migrant or refugee status, while retaining the general clause “any other characteristics”; and

(ii) clarify, either in the text of the Article or in the Commentary, that the duty of non-discrimination applies to all persons with whom judges interact in their professional capacity, including parties, witnesses, lawyers, court staff and judicial colleagues, and that it encompasses not only the prohibition of discriminatory conduct but also not to tolerate or knowingly permit discriminatory treatment by persons subject to their influence, direction or control and a positive ethical duty to be aware of diversity and to reflect on how words and conduct may be perceived as manifesting bias or prejudice, with a view to promoting an equitable, non-discriminatory and harassment-free judicial environment.

### 5.3. Public Statements

36. Article 12 of the Code regulates public statements and the protection of confidential information. The duty to “*not make public statement and/or comments*” on a case being considered is in line with international standards. 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. 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*”

<sup>56</sup> See Parliamentary Assembly of the Council of Europe (PACE), *Parliaments free of sexism and sexual harassment*, p. 5.

<sup>57</sup> *Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, 2002, value 5.3-5.4

<sup>58</sup> *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 75.

<sup>59</sup> *Paper on Gender-related Judicial Integrity Issues* (2019), prepared by the Judicial Group on Strengthening Judicial Integrity, p. 6.

*impartiality... ”.*<sup>60</sup> However, Article 12 makes specific reference to “public statements” while Article 2.4 of the Bangalore Principles, by contrast, 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 latter reflects the duty that judges have to exercise “*maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges*”.<sup>61</sup> It is **therefore recommended to amend Article 12, requiring judges not to make comments on pending cases whether in public or outside of a court room on the merits or expressing position with regard to the case under consideration while clarifying that this does not prevent judges from providing necessary information about procedural aspects of a case..**

37. Further, Article 12 (3) provides that judges should not question court decisions that have entered into force. While the need to refrain from statements that may cast doubt on a judge’s impartiality or on the authority of final decisions is clear, international standards also recognize that engagement with decided case law forms part of legitimate judicial discourse. In its Opinion No. 25 (2022) on the freedom of expression of judges, the CCJE underlines that: “*Judges’ comments on decided cases, other than their own, do not necessarily raise an issue on their impartiality. Commenting on case law is directly connected to their professional activity. In their professional activities, judges have the right to make constructive and respectful comments on decided cases.*”<sup>62</sup> Hence, it is recommended to **consider refining Article 12 (3) so as to distinguish more clearly between comments that may reasonably affect the fairness or perceived impartiality in pending or future cases, and permissible professional and/or academic discussion of a case law or of specific decisions that entered into force.**
38. It should also be emphasized that the obligations to exercise “*restraint, balance, caution and prudence*” when expressing views, as well as the prohibition on public comments or statements that might compromise judicial office, as envisaged under Article 12, should not be interpreted as unduly restricting expression, since such limitations are *a priori* aimed at safeguarding judicial independence and impartiality. Article 10 (2) of the ECHR explicitly refers to the legitimate aim of “*maintaining the authority and impartiality of the judiciary*” for restricting freedom of expression. At the same time, as noted above, judges also have a duty to speak or act in defense of the rule of law and judicial independence (para. 26 *supra*). ODIHR Warsaw Recommendations underline that “*Judges should be able to exercise this freedom [of expression] 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.*”<sup>63</sup> 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 independence when those fundamental values come under threat*”.<sup>64</sup> This mirrors ECtHR’s judgment in the case of *Baka v. Hungary* where the court observed that the applicant, a judge who was prematurely removed as the President of the Supreme Court following legal reforms, had expressed

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

61 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.

62 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, 2 December 2022, para. 40

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

64 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 58; Special Rapporteur on the independence of judges and lawyers, *Report on the rights to freedom of expression, association and peaceful assembly by judges and prosecutors, both offline and online*, A/HRC/41/48, 29 April 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* (2007), para. 140; CCJE, *Magna Carta of Judges* (2010), para. 3.

his 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 his statements did not go beyond mere criticism from a strictly professional perspective.<sup>65</sup> **It may therefore be advisable to clarify, at least in the Commentary, that the requirement of restraint does not preclude measured and well-reasoned public interventions by judges on systemic issues pertaining to the rule of law and judicial reform, provided that these remain compatible with their duties of impartiality, dignity and propriety.**

39. Finally, from a structural perspective, it may be noted that Article 12 is currently placed in Section II of the Code, which regulates conduct in the exercise of judicial functions, whereas its content – public statements and the protection of confidential information – also clearly extends to situations arising outside the courtroom and beyond the performance of adjudicative duties. In order to reflect more accurately its dual relevance to both in-court and out-of-court conduct, the relocation of Article 12 to the section on General Provisions should be considered or to otherwise clarify in the text or Commentary that the obligations it contains apply to judges’ professional and public communication more broadly.

#### **RECOMMENDATION C.**

1. To reinforce the protection of impartiality and public confidence in the judiciary, amend Article 12 so that the prohibition on comments applies to statements made publicly outside of a court room on the merits or expressing position with regard to the case under consideration while clarifying that this does not prevent judges from providing necessary information about procedural aspects of a case, nor from engaging in permissible professional and/or academic discussion of case law or specific decisions that have entered into force, provided that such discussion does not give rise to reasonable doubts as to their impartiality;
2. To ensure a balanced approach to judges’ freedom of expression, clarify, in the Code and/or its Commentary, that the obligation to exercise “restraint, balance, caution and prudence” and the prohibition on statements that might compromise judicial office do not preclude judges from speaking out, in a well-reasoned, professional and dignified manner, on matters of systemic importance such as the rule of law, judicial independence and the proper functioning of the justice system, provided that their interventions remain compatible with impartiality, dignity and propriety.

#### **5.4. Impartiality and Recusal**

40. Article 10 of the Code articulates the duty of judges to be “*impartial and unbiased*” when discharging their judicial duties. It is also positive that the provision refers to how judges are *perceived*, by requiring them to abstain from conduct or statements that may cause doubts about equality of judges and jurors in the administration of justice. This is broadly consistent with international standards, which underline that impartiality has both a subjective and an objective dimension and that judges should ensure that their conduct “*both in and out of court*” promotes public confidence in their impartiality and that of the

<sup>65</sup> ECtHR, *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016, paras. 170-173.

judiciary, and appearance thereof.<sup>66</sup> At the same time, Article 10 is placed in Section II of the Code, which is presented as governing behavior “*in the process of discharging judicial professional duties*”. This structure may inadvertently suggest that the duty to avoid conduct that could create doubts as to impartiality applies only while performing judicial functions in court. Given that statements or behaviour outside the courtroom may likewise affect how a judge’s impartiality is perceived in proceedings, it is advisable to reposition or cross-reference the relevant part of Article 10 of the Code under Section I (General Provisions).

41. Article 15 regulates recusals and provides that that a judge shall recuse in cases envisaged by procedural law and contains an explicit recognition that judges have the right to self-recuse where they have doubts about their impartiality in a given case. In this respect, the Code correctly anchors the obligation to recuse in the applicable procedural legislation, which defines the relevant grounds and procedures, and therefore reflects that recusal constitutes first and foremost a legal requirement where such grounds are met. At the same time, international instruments relating to the prevention of corruption in the judiciary generally formulate recusal in terms of an obligation rather than only a right. The ECtHR applies both (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge and (ii) an objective test – i.e., by ascertaining whether the tribunal itself (and, among other aspects, its composition) offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality determining whether, apart from the judge’s conduct, there are ascertainable facts, such as hierarchical or other links between the judge and other protagonists in the proceedings, which may raise doubts as to his or her impartiality. In the case of [Micallef v. Malta](#), the ECtHR further elaborated the elements to be considered in order to assess the impartiality of a tribunal and of individual judges, noting the ECtHR’s primary focus on the objective test in cases raising impartiality issues and potential prejudice or bias, also noting that the subjective and objective tests are not necessarily mutually exclusive.<sup>67</sup> The Court also emphasized that “*any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw*”.<sup>68</sup>
42. Under the Bangalore Principles of Judicial Conduct (Value 2, para. 2.5), a judge is expected to “*disqualify himself or herself from participating in any proceedings*” where he or she is unable to decide the matter impartially, or where it may appear to a reasonable observer that this is the case; the Bologna and Milan Global Code of Judicial Ethics adopts a similar approach.<sup>69</sup> Further elaboration of recusals is provided in the *ODIHR Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges*.<sup>70</sup> While the Code cannot expand or modify the legally defined grounds for recusal set out in procedural legislation, it may appropriately reflect, within its ethical framework, the objective dimension of impartiality developed in international jurisprudence, including the perspective of a “reasonable observer.” Hence, the drafters could consider **reformulating Article 15 to also include a reference to “a reasonable observer” and to reflect that, in such circumstances, judges are under a duty to withdraw from the case, while maintaining the reference to the grounds and procedures set out in procedural legislation.**

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66 *Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices, The Hague, November 2002, Value 2 (Impartiality), paras. 2.1–2.2. See also UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, para. 21; and ECtHR, [Micallef v. Malta](#) [GC], 15 October 2009, paras. 96–99.

67 See e.g., ECtHR, [Micallef v. Malta](#) [GC], 15 October 2009, para. 93.

68 See e.g., ECtHR, [Micallef v. Malta](#) [GC], 15 October 2009, para. 98.

69 *Bologna and Milan Global Code of Judicial Ethics*, approved at the International Conference of Judicial independence held at the University of Bologna and at Bocconi University of Milano, June 2015, para. 3.8.

70 See ODIHR, [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges](#), 15 December 2025..

43. At the same time, the concern that an overly rigid formulation might encourage unnecessary self-recusals is legitimate and is acknowledged in the Bangalore Principles, which state that “*disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice*”.<sup>71</sup> Article 15 (3) of the Code provides that “[a] judge must not abuse the right of self-recusal”. The Code could further address this balance more clearly by emphasizing, for example, in the Commentary, that: (i) impartiality is a core professional quality expected of every judge; and (ii) judges have a parallel ethical duty, “*so far as is reasonable, to conduct themselves so as to minimise the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases*”.<sup>72</sup>
44. In this regard, several other provisions of the Code already point in the same direction, by encouraging judges to avoid conflicts of interest (Article 2), to exercise restraint and prudence in the expression of their views (Article 12) and to avoid relationships that raise doubts about their independence and impartiality (Article 19). It may be useful to make this connection even more explicit, for instance by clarifying in the Commentary to Article 15 that these obligations are also intended to reduce the risk of situations in which self-recusal may be necessary. Finally, the indication in Article 15 (3) of the Code that the right to self-recusal shall not be abused is a welcome addition, as it helps to ensure that recusal is used as a safeguard of impartiality rather than as a mechanism to avoid difficult or sensitive cases.

#### **RECOMMENDATION D.**

To reflect the objective nature of the recusal duty in line with international standards, amend Article 15 so that a judge is not only entitled, but required, to withdraw from proceedings where he or she is unable to decide the matter impartially, while maintaining reference to applicable procedural legislation on grounds and procedure, providing that recusals are not required in exceptional situations when other tribunal cannot be constituted to deal with the case resulting into a denial of justice

### **5.5. Ethical Use of Artificial Intelligence**

45. The inclusion of a dedicated provision on the ethical use of artificial intelligence (AI) in Article 16 of the Code acknowledges that the use of assistive technologies may affect how judges perform their functions. The Article acknowledges that the use of AI technologies is permissible “*as long as it does not affect his/her independence or impartiality, does not concern assessment of evidence and decision-making process, and does not violate statutory requirement*”. This is broadly consistent with emerging international standards and recommendations, which underline that the adjudicative function must remain under the control of a human judge. The CEPEJ European Ethical Charter on the Use of AI in Judicial Systems, for instance, stresses the principle of “*user control*”, according to which AI may assist, but not replace, human decision makers.<sup>73</sup> Similarly, the CCJE emphasizes that when relying on technology, judges should apply the necessary decision-making oversight to the outputs produced by the technology used

<sup>71</sup> *Bangalore Principles of Judicial Conduct*, Value 2 (Impartiality), para. 2.5.

<sup>72</sup> *Bangalore Principles of Judicial Conduct*, Value 2 (Impartiality), para. 2.3.

<sup>73</sup> CEPEJ, *European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment* (2018), Principle 5 (“Under user control”).

and conduct proper checks to identify potential AI-generated inaccurate, misleading, or non-verifiable outputs they may contain.<sup>74</sup>

46. At the same time, international discussions around the ethical use of AI warn that the main risks to judicial independence and autonomy often arise not from formal delegation of decision-making to AI, but from “**automation bias**” – the tendency of users to defer to or over-trust algorithmic outputs, particularly when they are presented as neutral or data-driven.<sup>75</sup> Where AI is used to support legal research, summarize materials or assist in drafting, there is a risk that judges may rely on such tools without sufficient critical scrutiny. To safeguard both independence and accountability, it would be advisable for Article 16 or its Commentary to state expressly that **the individual judge retains full and personal responsibility for the content, reasoning and outcome of any judicial decision, irrespective of any technological assistance used in its preparation and should always apply the necessary decision-making oversight to and conduct proper checks on the outputs produced by the technology used in order to independently verify and ensure the accuracy and appropriateness of any AI-generated output before relying on it.**
47. Furthermore, the use of AI tools and in particular publicly available generative AI systems raises important concerns regarding confidentiality, data protection and the security of judicial information.<sup>76</sup> In parallel, the UN Special Rapporteur has cautioned that utilizing external AI systems, particularly those developed by private actors, poses significant risks regarding the exposure, monetization, and loss of control over sensitive judicial data.<sup>77</sup> In light of these risks, it would be advisable to clarify, either within Article 16 or by cross-reference to Article 12 on confidentiality, that judges should **not disclose non-public case materials, personal data or other sensitive information to unsecured or non-approved AI tools**, and that any AI deployed in judicial work should comply with applicable data-protection and information-security standards.
48. Finally, effective implementation of Article 16 will depend on an adequate level of digital literacy within the judiciary. International guidance emphasizes that judges should receive regular training on the capabilities and limitations of AI tools, including the risks of bias, opacity, AI-generated inaccurate, misleading, or non-verifiable outputs, data-protection breaches and undue dependence on automated outputs, as well as on ways to preserve human control and accountability when using such tools.<sup>78</sup> It may therefore be useful for the Commentary to Article 16 to underline the need for continuous training and institutional policies on the safe and ethical use of AI in judicial work, so that the safeguards envisaged by the Code can be meaningfully applied in practice.

#### RECOMMENDATION E.

To safeguard confidentiality and data protection in the use of AI tools, clarify that judges should not disclose non-public case materials, personal data or other sensitive information to unsecured or non-approved AI systems, and underline the need for ensuring oversight and conducting proper checks on the outputs produced by the technology used in order to independently verify and ensure the accuracy

<sup>74</sup> See e.g., CCJE, *Opinion No. 28 (2025) on the importance of judicial well-being for the delivery of justice*, para. 19.

<sup>75</sup> UN Special Rapporteur on the independence of judges and lawyers, *Artificial intelligence in judicial systems: promises and pitfalls*, UN Doc. A/80/169, para. 12.

<sup>76</sup> UN Special Rapporteur on the independence of judges and lawyers, *Artificial intelligence in judicial systems: promises and pitfalls*, UN Doc. A/80/169, paras. 61 and 69(b) (warning against the exposure and monetization of private judicial data); CCJE, *Opinion n° 26 (2023) "Moving forward: the use of assistive technology in the judiciary"*, para. 92(xi)(xii);

<sup>77</sup> UN Special Rapporteur, *Artificial intelligence in judicial systems: promises and pitfalls*, paras. 45, 61, 69.

<sup>78</sup> *Ibid.* at paras. 62-63.

and appropriateness of any AI-generated output, while providing regular training and internal guidance on the safe and ethical use of AI in judicial work.

## 6. EXTRAJUDICIAL BEHAVIOUR AND ACTIVITIES OF A JUDGE

### 6.1. Freedom of Association and Political Neutrality

49. Article 18 of the Code prohibits judges from being affiliated with a political party or trade union, from showing loyalty to such entities, and from taking part in political events, rallies or strikes. It also restricts judges from holding any other paid positions or engaging in other paid activities, except for academic, teaching or creative work, and requires judges to prioritize the administration of justice over all other activities. These restrictions aim to safeguard the independence and political neutrality of the judiciary and to prevent situations in which a judge's external activities could call into question their impartiality.
50. At the same time, the UN Basic Principles provide that “...members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.” Absolute or broadly worded prohibitions on “affiliation” with trade unions may, in practice, restrict legitimate forms of association that do not necessarily undermine judicial independence. As underlined in the Warsaw Recommendations, judges have the right “to form and join associations of judges and other organizations, including trades unions, to promote their interests and the principles of judicial independence and accountability. Judges may also exercise this right to form and join civil society and non-profit organizations such as charities, provided their objectives are not of a political nature. However, this right may be circumscribed and subject to such restrictions as may be necessary where forming or joining an association would conflict with the public duties and/or jeopardize the impartiality of judges or the appearance thereof.”<sup>79</sup> In particular, judges should be free to form and join associations of judges or other organizations “to represent their interests, promote their professional training and protect their judicial independence.”<sup>80</sup> To avoid such misunderstanding, **it should be clarified within Article 18 that the restriction targets partisan political organizations, while preserving judges’ ability to participate in professional judicial associations and other non-partisan bodies that do not undermine their impartiality and independence and the proper functioning of the judiciary.**
51. Finally, Article 18 does not explicitly address unpaid voluntary activities. While many forms of voluntary or charitable work will be compatible with judicial office, international standards caution that freedom of association may be limited where participation in a body would conflict with judicial duties or jeopardize the appearance of impartiality.<sup>81</sup> In practice, certain non-governmental organizations, foundations or charities may be closely linked to political parties or individual politicians. **It would therefore be advisable to underline, at least in the Commentary, that judges should carefully assess any prospective unpaid role to ensure that it does not amount to**

<sup>79</sup> *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para. 30.

<sup>80</sup> UN Basic Principles on the Independence of the Judiciary, Principles 8–9. See also *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para. 30.

<sup>81</sup> *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para. 30.

**indirect political engagement, does not create conflicts of interest, does unduly impact the perception of impartiality and does not risk undermining the neutrality and propriety required by the Code.**

#### **RECOMMENDATION F.**

To clarify the scope of Article 18, specify that the prohibition on “affiliation” is directed at partisan political organizations, while preserving judges’ ability to form and join professional judicial associations and other non-partisan bodies that are compatible with judicial independence and impartiality, and clarify in the Commentary that judges should assess both paid and unpaid external activities in light of their potential impact on independence, impartiality and the appearance thereof, as well as neutrality and propriety.

### **6.2. Social Media and Internet Communication**

52. With the current technological developments, social media platforms could amplify the content of the message in a manner that is more impactful than when a statement is disseminated using more traditional media. The use of social media represents an especially complex intersection of free expression and the responsibilities of judges.
53. Article 21 of the Code permits judges to use social media, internet forums, and other online communication platforms but requires them to exercise “restraint, caution, and prudence”. This provision reflects a modern understanding that judges, as citizens, have a right to participate in public life and that digital literacy is increasingly essential for the judicial role. The CCJE notes in this respect 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.”<sup>82</sup>
54. It is therefore important to note that the ethical risks associated with social media and online messaging are not always obvious.<sup>83</sup> Online interactions with parties, their representatives or other persons with an interest in pending or potential cases may amount to, or be perceived as, prohibited *ex parte* communications. Similarly, using social media or other online tools to research parties, witnesses or aspects of a case may influence, or appear to influence, a judge’s assessment of the evidence and thereby affect both the reality and perception of a fair hearing.<sup>84</sup> **It would therefore be advisable for Article 21 or the Commentary to the Code to additionally make clear that judges should refrain from discussing pending or likely cases on social media or messaging**

<sup>82</sup> See CCJE Opinion no. 25 (2022) on freedom of expression of judges, 2 December 2022, paras 71-72 ; the Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of social media by Judges* (UNODC, Vienna 2019).

<sup>83</sup> Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of social media by Judges* (UNODC, Vienna 2019), Preamble , page 2.

<sup>84</sup> Global Judicial Integrity Network, *Non-Binding Guidelines on the Use of social media by Judges* (UNODC, Vienna 2019), para. 20.

**services, and should not use these platforms to obtain information about the persons or matters before them outside the established procedural framework.**

55. Furthermore, judges' broader online presence can, over time, create a "profile" through the accounts they follow, the groups they join, or the content they "like", "share" or "repost", which may be perceived as signaling bias on particular political or social issues.<sup>85</sup> In addition, personal security and data-protection concerns may also arise where judges share information about their private life, including their home address, or fail to restrict access to their profiles appropriately. Judges should therefore be encouraged to review the terms and conditions of the platforms they use, to understand who owns and can further process the data they post, and to limit the amount of personal information made publicly accessible. The Commentary could usefully underline that judges should assume that online content, including material in "closed" groups, may ultimately become public, and should continuously assess whether their online activity may reasonably be seen as compromising their independence, impartiality or propriety.
56. Finally, the effective implementation of Article 21 presupposes an adequate level of digital literacy. Regular training is recommended to ensure that judges understand the specific risks associated with social media, including profiling, data harvesting, security vulnerabilities, the creation of "echo chambers", and the ethical implications of "friending" or "following" particular accounts.<sup>86</sup> Such training should also address how to handle online harassment or abuse without responding directly, and should raise awareness of risks stemming from the social media use of family members, close friends and court staff.

#### **RECOMMENDATION G.**

To strengthen the safeguards set out in Article 21, the Code and/or its Commentary should be supplemented to make clear that judges should neither discuss pending or likely cases nor research parties or witnesses via social media or similar platforms outside established procedural channels, and that regular training should be provided on the ethical, security and data-protection risks associated with social media use by judges and, where relevant, by their close environment.

## **7. OTHER ISSUES RELEVANT FOR THE CODE OF ETHICS**

### **7.1. Ethics Body**

57. The Code does not currently foresee a mechanism for judges to seek advice on ethical matters. International recommendations 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.<sup>87</sup> 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*

<sup>85</sup> See CCJE Opinion no. 25 (2022) on freedom of expression of judges, 2 December 2022, paras. 71-72.

<sup>86</sup> 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 on the freedom of expression of judges (2022), para. 77; and Article 4.4 of the Council of Europe, European Charter on the Statute of the Judge (1998).

<sup>87</sup> 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.

*their status of judge*".<sup>88</sup> In the UNODC UNCAC Implementation Guide and Evaluative Framework for Article 11 of the 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.<sup>89</sup> 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.*"<sup>90</sup>

58. In light of these recommendations, it would be beneficial to complement the Code with a clear reference to an ethics advisory mechanism for instance, a committee composed of sitting and/or retired judges mandated to provide confidential, non-binding guidance on the interpretation of the Code and on the propriety of contemplated conduct.<sup>91</sup> Any such body should be clearly distinguished from disciplinary authorities, with its advisory opinions having a recommendatory character only, so as not to encroach upon the independence and personal responsibility of individual judges.

#### **RECOMMENDATION H.**

To complement the Code with a clear reference to an ethics advisory mechanism within the judiciary, such as a committee composed of sitting and/or retired judges, mandated to provide confidential, non-binding guidance on the interpretation and application of the Code and on the propriety of contemplated conduct, clearly distinguished from disciplinary authorities.

### **7.2. Conduct of Judges after the End of Judicial Office**

59. Clear standards on the conduct of judges after resignation or retirement are important to protect both public confidence in the judiciary and the individual rights of former judges. Where a code of ethics is silent or ambiguous as to its temporal scope, there is a risk of inconsistent application: either former judges are subjected, in practice, to continuing restraints that are difficult to justify under international human rights standards, or legitimate integrity safeguards (most notably confidentiality) are treated as ceasing automatically upon departure. The Code does not contain an explicit provision defining its personal and temporal scope. In particular, it does not clarify whether and to what extent certain of its ethical obligations may continue to apply to judges after they leave office. This gap is especially relevant because several provisions – by their nature – could be read as having effects beyond active service, while others would be difficult to justify once a judge is no longer exercising judicial power (and no longer benefiting from the institutional authority and constraints attached to office).
60. Article 12 is particularly relevant in the post-departure context, as it combines broad language requiring judges to exercise "*restraint, balance, caution and prudence*" in

88 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.

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

90 See <ELI-Mount\_Scopus\_European\_Standards\_of\_Judicial\_Independence.pdf>.

91 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.

expressing views, with more specific prohibitions on public comments that may undermine the authority of justice, on commenting on pending cases, and on using or disclosing confidential information obtained in the discharge of duties. Where a code does not expressly delineate its temporal scope, such a provision may generate interpretative uncertainty: rules that are functionally linked to the adjudicative role of a sitting judge (notably, restrictions aimed at preserving the appearance of impartiality in relation to pending proceedings) risk being read as continuing to constrain former judges' expression, even though former judges no longer exercise judicial power and should, as a rule, enjoy the full scope of their rights.<sup>92</sup>

61. At the same time, certain duties most notably confidentiality may legitimately continue after departure to protect the proper administration of justice and the rights of others.<sup>93</sup> In line with international guidance, it would therefore be **advisable to distinguish more clearly in the Code between those elements of Article 12 that are inherently tied to active judicial service and those that may reasonably extend beyond it, and ensuring that any continuing restraint is narrowly framed and respects confidentiality.**

#### RECOMMENDATION I.

To distinguish clearly between ethical obligations that are inherently linked to the exercise of judicial functions and those that may legitimately extend beyond departure from office, clarifying in particular that duties of confidentiality may continue after service, as well as temporal scope of the obligation, while providing that restrictions on expression and conduct linked to the adjudicative role, statements of public nature, interaction on social media, etc., should, as a rule, be limited to sitting judges

### 7.3. Gifts and Hospitality

62. The Code does not contain any explicit provision regulating the acceptance of gifts, benefits or hospitality by judges. While Article 2 requires judges to avoid conflicts of interest and to refrain from using their position in personal or third-party interests, and Article 20 obliges judges to be aware of their own and their family members' property interests, these provisions do not address situations involving gifts or hospitality as such, nor do they provide guidance on how judges should assess offers of advantages that may arise in professional or social contexts. The absence of a specific rule creates a gap in the ethical framework, given that gifts and hospitality may pose integrity risks even where no actual influence is exercised. **It is recommended to add in the Code a provision with an explicit prohibition to ask, seek, receive and accept gifts or hospitality or other favours. Alternatively, the Code can refer to the relevant legislation where such practices are prohibited.**
63. International standards emphasize that gifts and hospitality raise ethical concerns not only where influence is intended or exerted, but also where a reasonable observer might perceive a risk to independence or impartiality. In this respect, the Bologna and Milan Global Code of Judicial Ethics recognizes that acceptance of gifts or hospitality of modest value, such as tokens of appreciation or invitations by legal, professional or public bodies, may be unobjectionable depending on the circumstances, while stressing

<sup>92</sup> Council of Europe, Consultative Council of European Judges (CCJE), *Opinion No. 25 (2022) On freedom of expression of Judges*, 2 December 2022, para.7

<sup>93</sup> ODIHR, *Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine*, para.92 ; European Commission for Democracy through Law (Venice Commission), *Opinion on the Code of Ethical Conduct for Judges (Bulgaria)*, CDL-AD(2024)004, 15 March 2024, para.30;

the need for particular caution in relation to promotional or marketing activities by legal professionals or entities likely to appear before the courts.<sup>94</sup> 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.”

64. Including explicit ethical guidance on gifts and hospitality would strengthen the coherence of the Code and support its preventive function, without conflating ethical standards with disciplinary or criminal liability. Clear reference to gifts and hospitality would assist judges in navigating situations that may fall below the threshold of illegality but nevertheless carry ethical significance, and would align the Code more closely with internationally recognized standards on judicial integrity and anti-corruption.

#### **RECOMMENDATION J.**

To introduce explicit ethical guidance on gifts and hospitality, either in the Code or in the Commentary, clarifying that judges and members of their families should neither ask for nor accept gifts, benefits or hospitality in connection with the performance of judicial duties, and underlining that even modest gifts or hospitality may raise ethical concerns depending on their source, context and perception, in line with internationally recognised standards.

#### **7.4. Effective Application of the Code of Judicial Ethics**

65. Lastly, it is important that measures are taken to ensure the effective implementation of the Code. An important element of this is providing regular training on judicial ethics to all judges,<sup>95</sup> noting that training should normally be based on the voluntary participation of judges.<sup>96</sup>

[END OF TEXT]

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94 *Bologna and Milan Global Code of Judicial Ethics*, Approved at the International Conference of Judicial independence held at the University of Bologna and at Bocconi University of Milano June 2015, paras. 5.2.14 and 5.2.15

95 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 Paragraph 19.2 (iv) of the OSCE, Document of the Moscow Meeting (1991)).

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