



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Judicial Seminar 2018

The Authority of the Judiciary

Background Document

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Introductory Session

The authority of the judiciary is maintained through a number of separate but interconnected factors which are touched upon in the case-law of the European Court of Human Rights (hereinafter “the Court”). The authority of the judiciary is therefore a transversal notion, which is approached through the prism of a number of Articles of the European Convention on Human Rights (hereinafter “the Convention”), such as Articles 6, 8, 10 and 11, and through a diverse group of applicants before the Court sometimes judges themselves, sometimes the parties to the domestic judicial proceedings, lawyers or the press.

The special and fundamental role of the judiciary as an independent branch of State power, in accordance with the principles of the separation of powers and the rule of law is recognized within the Court’s case-law, both implicitly and explicitly.

This background paper aims to highlight the key case-law of the Court dealing with the following themes: (1) Separation of powers, (2) Responsibility and accountability of courts and judges, and (3) Counter-action by the judiciary. A fourth section which deals with Communication strategies aims to provide some relevant non-jurisprudential information. Each theme begins with a reference to the most recent Council of Europe or other International law texts on the topic, and is then divided into a number of sub-themes, according to the Court’s case-law.

A. Separation of powers

[Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#)

[Consultative Council of European Judges \(CCEJ\) Opinion no. 18 on "The position of the judiciary and its relation with the other powers of state in a modern democracy", 16 October 2015](#)

[European Commission for Democracy through Law \(Venice Commission\), Rule of Law Check-list, adopted by the Venice Commission at its 106th Plenary Session \(Venice, 11-12 March 2016\)](#)

[“Challenges for judicial independence and impartiality in the member states of the Council of Europe” Report prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe, 24 March 2016](#)

[State of Democracy, Human Rights and the Rule of Law: “Populism – How strong are Europe’s checks and balances” Report by the Secretary General of the Council of Europe, 2017](#)

[PACE Resolution and Report “New threats to the rule of law in Council of Europe member States: selected examples”, 25 September 2017](#)

1. The notion of the separation of powers is relevant for judicial appointments

Judges must be independent from other organs of the state; this is crucial in any democracy. As the Court itself has stated, “*the notion of separation of powers between the executive and the judiciary has assumed growing importance in the case-law of the Court*” (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 78, ECHR 2002-IV). The notion of the separation of powers is also important for judicial appointments and selection. Perceptions of judicial independence by the public are influenced by the way in which judges are appointed. The executive and the legislative branches can be involved in judicial appointments as long as the appointed judges are free from influence and pressure.

According to the Court's case-law, the object of the term "established by law" in Article 6 § 1 is to ensure "that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament", and it covers the legal basis not only for the existence of a "tribunal" but also for the composition of the bench in each case. In *Gurov v. Moldova*, no. 36455/02, §§ 34-38, 11 July 2006, the applicant alleged a breach of the right to a fair trial by a "tribunal established by law" as the term of office of one of the judges who heard her case had expired. The Government did not dispute the expiry of the judge's term of office but argued that he was not dismissed and that at the time there was a practice of allowing judges to continue to exercise their judicial functions for an undetermined period until the question of their tenure had been decided by the President. The applicant argued that this practice was not prescribed by law. The Court concluded that there were no legal grounds for the involvement of the said judge and therefore the applicant's case had not been heard by a "tribunal established by law". Moreover, tacitly prolonging the term of office of judges was in contradiction with the principle that the judicial organisation in a democratic society should not depend on the discretion of the executive. Consequently, there had been a violation of Article 6.

In *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013, both applicants were convicted by the Court of Bosnia and Herzegovina ("the State Court") of war crimes committed against civilians during the 1992-1995 war. The first applicant complained that the State Court was not independent for the purposes of Article 6 § 1, notably because two of its members had been appointed by the Office of the High Representative in Bosnia and Herzegovina for a renewable period of two years. The Court found no reasons to doubt that the international judges of the State Court were independent of the political organs of Bosnia and Herzegovina, of the parties to the case and of the institution of the High Representative. Their appointment had precisely been motivated by a desire to reinforce the independence of the State Court's war crimes chambers and to restore public confidence in the judicial system. The fact that the judges in question had been seconded from amongst professional judges in their respective countries represented an additional guarantee against outside pressure. Although their term of office was relatively short, this was understandable given the provisional nature of the international presence at the State Court and the mechanics of international secondments. The Court therefore found that the complaint was manifestly ill-founded.

2. Interference in, pressures on and threats against the judiciary

Intervention by the executive in ongoing judicial proceedings may reveal a lack of respect for judicial office and undermine the guarantees of a fair trial under Article 6 of the European Convention on Human Rights. Article 6 of the Convention requires domestic courts to be independent and impartial. The existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, and also according to an objective test, that is, ascertaining whether the tribunal offered guarantees sufficient to exclude any legitimate doubt in this respect. What is at stake is the confidence which the courts in a democratic society must inspire in the public. In *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII, the applicant company claimed that in attempting to obtain the correct level of compensation through the courts, they were denied a fair hearing by an independent and impartial tribunal. They complained of strong political pressure and the permanent monitoring of the proceedings by the Ukrainian authorities, including the President of Ukraine. Several politicians, including the President of Ukraine, urged the courts to "defend the interests of Ukrainian nationals". The Court found that there had been a violation of Article 6 § 1, having regard, *inter alia*, to interventions by the executive branch of the State in the court proceedings. It stated as follows: "... the Ukrainian authorities acting at the highest level intervened in the proceedings on a number of occasions. Whatever the reasons advanced by the Government to justify such interventions, the Court considers that, in view of their content and the

manner in which they were made ..., they were ipso facto incompatible with the notion of an 'independent and impartial tribunal' within the meaning of Article 6 § 1 of the Convention."

Kinský v. the Czech Republic, no. 42856/06, 9 February 2012 concerned the attempts by an Austrian citizen to recover, before the civil courts in the Czech Republic, property confiscated after the Second World War. He complained that Government Ministers had intervened in the proceedings in an unacceptable manner. Several politicians had made strong negative statements regarding decisions in the type of cases brought by the applicant, including the applicant's own cases, and also about the judges deciding them. They unequivocally expressed the opinion that the courts' decisions upholding the applicant's claims were wrong and undesirable. The Court was particularly worried by the fact that a high-ranking politician attended the District Court's hearing in the present case and made a public statement afterwards linking the applicant to the Nazis and stating that he would do "anything within [his] power" in order that the action of the applicant and those in a similar position should not succeed. Moreover, the Court agreed with the Czech Constitutional Court that "*the activities of certain politicians referred to by the applicant, be they verbal expressions to the media or other, aimed at creating a negative atmosphere around the legal actions of the applicant or constituting direct attempts to interfere in these proceedings, [were] unacceptable in a system based on the rule of law.*" The Court accordingly found that the doubts of the applicant about the impartiality of the judges were not simply subjective and unjustified.

In *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, 21 January 2016, the applicant was President of the Constitutional Court when he was dismissed from public office as a result of lustration proceedings brought against him. During the proceedings the Prime Minister published an open letter accusing the applicant of having been a collaborator of the secret police of the former regime. The applicant complained, under Article 6, that the overall lustration proceedings were unfair and that the Supreme Court and the Lustration Commission were not impartial or independent. The Court attached particular importance to the open letter, but saw no reason to speculate on what effect the Prime Minister's statement might have had on the course of the proceedings. The Court stated that in light of the content and manner of the letter, it was *ipso facto* incompatible with the notion of an "independent and impartial tribunal". What was at stake was not actual proof of influence or pressure on judges but the importance of the appearance of impartiality. Accordingly, there had been a violation of Article 6 § 1.

3. Maintaining the authority of judicial proceedings: comments from the executive on pending procedures

In *Toni Kostadinov v. Bulgaria*, no. 37124/10, 27 January 2015, the Minister of the Interior had commented that the applicant was guilty before he had been brought before a court on a charge of burglary. The applicant complained that such comments constituted a violation of his rights under Article 6 § 2 of the Convention. The Court indicated that the infringement of the presumption of innocence could arise not just from statements made by a judge but from other public officials and authorities as well, including the President of Parliament, the public prosecutor, the Minister of the Interior, or police officers. An infringement could also arise in the absence of an intention to prejudice the presumption of innocence. However the Court observed that a distinction must be drawn between decisions or statements made by public officials that reflect a state of suspicion and those that reflect a belief or perception that the person concerned is guilty. Regard must be had to the particular circumstances in which they were made including the choice and meaning of terms used by the public officials. The Court found there had been a violation of Article 6 § 2 as the comments were made at a press conference the day before the applicant appeared in court. The comments identified the applicant by name and suggested he was an influential member of a criminal gang responsible for a number of burglaries.

4. Shortcomings in the enforcement of judicial decisions may undermine judicial authority

In *Broniowski v. Poland* [GC], no. 31443/96, § 176, ECHR 2004-V the applicant had been entitled to compensatory land in respect of property abandoned as a result of border changes following the Second World War; however the introduction of new legislation by the government prevented his claim from being satisfied. Despite a judgment of the Constitutional Court declaring this new legislation unconstitutional, various government agencies and ministries failed to implement or comply with the judgment and continued to obstruct the applicant (and others) from receiving just compensation. The Court found there had been a violation of Article 1 of Protocol no. 1 and stated that, “*such conduct by State agencies, which involves a deliberate attempt to prevent the implementation of a final and enforceable judgment and which is, in addition, tolerated, if not tacitly approved, by the executive and legislative branch of the State, cannot be explained in terms of any legitimate public interest or the interests of the community as a whole. On the contrary, it is capable of undermining the credibility and authority of the judiciary and of jeopardising its effectiveness, factors which are of the utmost importance from the point of view of the fundamental principles underlying the Convention*”.

5. Infringement of the security of tenure of judges

International standards affirm that a necessary condition of an independent judiciary is that judges enjoy security of tenure and are not subject to arbitrary removal from office. Accordingly, the Court must scrutinize very carefully allegations that mandates have been prematurely terminated because of views and criticisms publicly expressed in a judge’s professional capacity. In *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016, the applicant was elected President of the Hungarian Supreme Court for a six-year term. Under new legislation the Hungarian government terminated the applicant’s judicial mandate three and a half years early. The applicant alleged that he had been denied access to a tribunal to contest the premature termination of his mandate as President of the Supreme Court. He also complained that his mandate had been terminated as a result of the views and positions that he had expressed publicly in his official, concerning legislative reforms affecting the judiciary. He relied on Articles 6 § 1 and 10 of the Convention. As a result of legislation, the compatibility of which with the requirements of the rule of law was doubtful, the premature termination of the applicant’s mandate was neither reviewed, nor open to review, by any bodies exercising judicial powers. Noting the growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies, attach to procedural fairness in cases involving the removal or dismissal of judges, the Court considered that the respondent State had impaired the very essence of the applicant’s right of access to a court. The conclusions of the Grand Chamber under Article 10 will be dealt with below.

6. Disciplinary proceedings brought against judges following public expression of views

Judges, like all human beings, enjoy the right to freedom of expression. However, it may be legitimate for a State to impose a duty of discretion on account of their judicial status. The Court has stressed that having regard to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge calls for close scrutiny on the part of the Court. In certain circumstances, judges may also play an important role in speaking on matters which concern the judiciary, the

courts, or the administration of justice. Fear of sanctions for speaking out in defence of judicial independence and impartiality might have a “chilling effect” (see also ‘Counter-action’ section).

In *Wille v. Liechtenstein* [GC], no. 28396/95, § 70, ECHR 1999-VII, the Court found that a letter sent to the applicant, who was the President of the Liechtenstein Administrative Court, by the Prince of Liechtenstein announcing his intention not to reappoint him to a public post constituted a “reprimand for the previous exercise by the applicant of his right to freedom of expression”. The Court observed that, in that letter, the Prince had criticised the content of the applicant’s public lecture on the powers of the Constitutional Court and announced the intention to sanction him because of his opinion on certain questions of constitutional law. The Court therefore concluded that Article 10 was applicable and that there had been an infringement of the applicant’s right to freedom of expression.

In *Albayrak v. Turkey*, no. 38406/97, 31 January 2008, the applicant was working as a judge when in 1995 the authorities brought disciplinary proceedings against him for, among other things, reading PKK legal publications and watching a PKK-controlled television channel. The applicant denied all accusations, arguing that he believed in the fundamental principles of the State and served it faithfully. The Supreme Council of Judges and Public Prosecutors (“the Supreme Council”) found the allegations against the applicant well-founded and, as a sanction, transferred him to another court. The Supreme Council subsequently repeatedly refused to promote the applicant, given his previous disciplinary sanction. As to the proportionality of the interference, the Court found no reference to any known incident to suggest that the applicant’s impugned conduct, including looking at PKK-related media, had had a bearing on his performance as a judge. Nor was there any evidence to demonstrate that he had associated himself with the PKK or behaved in a way which could call into question his capacity to deal impartially with related cases coming before him. Consequently, the Court concluded that, in deciding to discipline the applicant, the authorities had attached decisive weight to the fact that he looked at PKK-related media. Their decision in this respect was therefore not based on sufficient reasons that showed that the interference complained of was “necessary in a democratic society”.

In *Kudeshkina v. Russia*, no. 29492/05, 26 February 2009 the applicant complained that her dismissal from judicial office following her statements in the media constituted a violation of her right to freedom of expression. The Court reiterated that Article 10 applied to the workplace but was mindful that employees owe to their employer a duty of loyalty, reserve and discretion, particularly so in the case of civil servants. The Court held that there had been a violation of Article 10. It found that the manner in which the disciplinary sanction was imposed on the applicant fell short of securing important procedural guarantees. Additionally, the penalty imposed on the applicant (being the most severe one available) was disproportionately severe and was, moreover, capable of having a “chilling effect” on judges wishing to participate in public debate on the effectiveness of the judicial institutions.

In *Harabin v. Slovakia*, no. 58688/11, §§ 150-153, 20 November 2012, it was the applicant’s professional behaviour in the context of the administration of justice which was at issue. The disciplinary proceedings against him (after refusing to allow an audit by Ministry of Finance staff that he considered should have been conducted by the Supreme Audit Office) related to the discharge of his duties as President of the Supreme Court, and therefore lay within the sphere of his employment in the civil service. Furthermore, the disciplinary offence of which he had been found guilty did not involve any statements or views expressed by him in the context of a public debate. The Court accordingly concluded that the disputed measure did not constitute an interference with Article 10 rights and declared the complaint inadmissible as being manifestly ill-founded.

In *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016 the applicant, in his professional capacity as President of the Supreme Court and the National Council of Justice, publicly expressed his views on various legislative reforms affecting the judiciary. The premature termination of the applicant’s

mandate undoubtedly had a “chilling effect” in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary. A violation of Article 10 was found by the Grand Chamber¹.

7. Applicability of Article 6 § 1 to employment disputes involving judges – judges themselves can rely on fair trial guarantees

In *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-II, the Grand Chamber established criteria for the application of the civil aspect of Article 6 § 1 to employment disputes concerning employees of the State or public officers. It held that, in order for the protection of Article 6 § 1 to be excluded in such cases, not only must national law have expressly excluded access to a court for the position or category of staff concerned, but such exclusion must also be justified on objective grounds in the State’s interest.

In *Olujić v. Croatia*, no. 22330/05, 5 February 2009, the applicant was President of the Supreme Court when the National Judicial Council (NJC) brought disciplinary proceedings against him and removed him from office. The NJC decisions were (after initially being quashed and remitted for fresh consideration) confirmed by the Parliament and then the Constitutional Court. The applicant made several complaints under Article 6 § 1 of the Convention but the Croatian government contended that Article 6 did not apply to a dispute involving the removal of a Supreme Court judge due to the public servant nature of his role. In this case, while national legislation had excluded access to a court, the scope of this exclusion was not absolute. Consequently, the Court found that Article 6 was applicable, and that the applicant’s role as President of the Supreme Court was irrelevant to applicability, as he had already been dismissed both from his post as a judge on the Supreme Court, and as its President. The Court went on to find that there had been a violation of Article 6 § 1 of the Convention on account of four factors, namely, the lack of impartiality of the President and two other members of the National Judicial Council, the exclusion of the public from the disciplinary proceedings against the applicant, a violation of the principle of equality of arms and the length of proceedings.

In *Paluda v. Slovakia*, no. 33392/12, 23 May 2017, disciplinary proceedings were brought against the applicant, who was a Supreme Court Judge, by the Judicial Council and he was temporarily suspended from his duties with immediate effect. The decision to suspend him entailed a 50% reduction in his salary for the duration of the disciplinary proceedings, which could last up to two years. The applicant made several appeals against the suspension, but all were unsuccessful so he made a complaint under Article 6 citing his inability to access court to challenge the suspension decision. The Court found that there had been a violation. Specifically, the applicant did not have access to proceedings before a tribunal within the meaning of Article 6 § 1 (as the Judicial Council was not a body of judicial character and did not provide the institutional and procedural guarantees required by Article 6 § 1. The Government had not provided any conclusive reason for depriving the applicant of such judicial protection.

8. Disciplinary proceedings or proceedings to remove a judge must comply with fair trial guarantees

The mission of the judiciary in a democratic state is to guarantee the very existence of the rule of law. When a Government initiates disciplinary proceedings against a judge, public confidence in the

1. Further analysis of this case is to be found later in the Background document.

functioning of the judiciary is at stake. It is therefore particularly important that the guarantees of Article 6 are complied with.

In *Mitrinovski v. the former Yugoslav Republic of Macedonia*, no. 6899/12, 30 April 2015, the applicant judge complained that the State Judicial Council (SJC) plenary, which dismissed him for professional misconduct, was not an independent and impartial tribunal since the judge who initiated the proceedings also took part in the SJC's decision to dismiss the applicant. The Court considered that the judge's dual role in initiating proceedings and taking part in the decision to dismiss the applicant failed both the subjective and objective tests of impartiality. Accordingly, there had been a violation of Article 6.

In *Gerovska Popčevska v. the former Yugoslav Republic of Macedonia* (Application No. 48783/07), 7 January 2016,² the applicant was removed from judicial office for professional misconduct in 2007. The applicant complained that the SJC was not "an independent and impartial" tribunal because two of its members, Judge D.I. and the then Minister of Justice, had participated in the preliminary stages of the proceedings against her and had therefore had a preconceived idea about her dismissal. Moreover, the Minister's participation in the SJC's decision constituted interference by the executive in judicial affairs. In its decision to remove the applicant from office, the SJC relied on two opinions of the Supreme Court finding that there were grounds for establishing professional misconduct. The Court noted that it was not contested that Judge D.I., a member of the plenary of the SJC that decided the applicant's case, had also been a member of the division and plenary of the Supreme Court that had adopted the two opinions. It further appeared that Judge D.I. had voted in favour of the plenary's opinion although he must have been aware that it would be used in the pending SJC proceedings against the applicant. In such circumstances, the applicant had legitimate grounds for fearing that Judge D.I. was already personally convinced that she should be dismissed for professional misconduct before that issue came before the SJC. His participation in the professional misconduct proceedings before the SJC was thus incompatible with the requirement of impartiality under Article 6 § 1 of the Convention. The same applied to the participation of the then Minister of Justice in the SJC's decision to remove the applicant from office, since he had previously requested, in his former capacity as President of the State Anti-Corruption Commission, that the SJC review the case adjudicated by her. Moreover, his presence on that body as a member of the executive had impaired its independence in this particular case. Accordingly, the applicant's case had not been decided by "an independent and impartial" tribunal as required by Article 6 § 1 of the Convention.

In *Oleksandr Volkov v. Ukraine*, no. 21722/11, ECHR 2013 the applicant brought a claim under Article 6 regarding his dismissal from the post of judge of the Supreme Court by the High Council of Justice (HCJ). The Court found a number of serious issues with both the proceedings before the HCJ and the appearance of personal bias on the part of certain members of the HCJ determining the applicant's case. Additionally, they found that the absence of a limitation period for imposing a disciplinary penalty in cases involving the judiciary posed a serious threat to the principle of legal certainty. So too did the voting system at the plenary meeting of Parliament which had involved many MPs deliberately and unlawfully casting multiple votes belonging to their absent peers. The findings in respect of Article 6 were applied in *Kulykov and others v. Ukraine* (Applications nos. 5114/09 and 17 others), 19 January 2017 where 18 Ukrainian judges had been dismissed for breach of oath under the disciplinary regime in place before the 2016.

² See also *Jakšovski and Trifunovski v. the former Yugoslav Republic of Macedonia* (Applications nos. 56381/09 and 58738/09), 7 January 2016, *Poposki and Duma v. the former Yugoslav Republic of Macedonia* (Applications nos. 69916/10 and 36531/11), 7 January 2016.

B Responsibility and accountability of courts and judges

[The Bangalore Principles of Judicial Conduct, 2002](#)

The [European Court of Human Rights' Resolution on Judicial Ethics 2008](#)

[The Magna Carta of Judges, CCJE, CCJE \(2010\)3 Final, 17 November 2010](#)

[Consultative Council of European Judges \(CCJE\) Opinion no. 17 \(2014\) on the evaluation of Judges' work, the quality of justice, and respect for judicial independence, 24 October 2014](#)

["Corruption Prevention: Members of Parliament, Judges and Prosecutors", GRECO, Group of States against Corruption, Anti-corruption body of the Council of Europe, 4th Evaluation Round, October 2017](#)

1. Accountability: criticism expressed by media and lawyers

The judges' duty of discretion pursues a specific aim: the speech of judges, unlike that of lawyers, is received as the expression of an objective assessment which commits not only the person expressing himself or herself, but also, the entire justice system. As the guarantor of justice, the judiciary must enjoy public confidence to be successful in carrying out its duties.

While it may prove necessary to protect the judiciary against gravely damaging attacks that are essentially unfounded, bearing in mind that judges are prevented from reacting by their duty of discretion (*Wingerter v. Germany* (dec.), no. 43718/98, 21 March 2002), this cannot have the effect of prohibiting individuals from expressing their views, through value judgments with a sufficient factual basis, on matters of public interest related to the functioning of the justice system, or of banning any criticism of the latter (*De Haes and Gijssels v. Belgium*, 24 February 1997, *Reports of Judgments and Decisions* 1997-I and *Morice v. France* [GC], no. 29369/10, ECHR 2015).

In *Morice v. France* [GC], no. 29369/10, ECHR 2015, the applicant was convicted of making defamatory comments about two of the judges in a high profile case in which he was acting as a lawyer. The comments had been published in a national French newspaper. The Court reiterated that the phrase "authority of the judiciary" includes the concept that the courts are the correct forum for the resolution of legal disputes and that there is public confidence in their ability to carry out that function. However, the Court emphasised that lawyers should be able to highlight to the public any potential shortcomings in the justice system, and that while it was necessary to maintain the authority of the judiciary and protect them from certain criticism, this should not prevent individuals from expressing "value judgements with a sufficient factual basis, on matters of public interest". The Court found that the judgment against the applicant for complicity in defamation could be regarded as a disproportionate interference with his right to freedom of expression, and was not therefore "necessary in a democratic society" within the meaning of Article 10 of the Convention.

In *Peruzzi v. Italy*, no. 39294/09, 30 June 2015, the applicant, a lawyer, complained of his criminal conviction (with a 400 EUR fine) and an order to pay 15, 000 EUR damages for having defamed an investigating judge in the context of proceedings regarding the division of an estate in which he had been acting for two clients. The applicant sent a circular letter to the judge and other judges of the Lucca District Court containing the text of a previous letter he had written to the Supreme Council of the Judiciary (SCJ) complaining namely that the judge had adopted unjust and arbitrary decisions and that that his conduct included "wilfully committing errors with malice or gross negligence or through lack of commitment". While the circular letter did not refer to the judge by name, it contained elements allowing for him to be identified by his fellow judges. The Court found that the criticism about unjust and arbitrary decisions, was not excessive since the remarks constituted value

judgments that had some factual basis, given that the applicant had represented one of the parties in the case. However, the second criticism implied that the judge had disregarded his ethical obligations or had even committed a criminal offence (abuse of official authority). The applicant had not produced any evidence demonstrating an element of malice in the decisions of which he complained. Furthermore, the applicant had circulated the letter without awaiting the outcome of the case he had brought against judge before the SCJ, so that this had been bound to undermine the judge's reputation and professional image. The Court concluded that the applicant's conviction, the small fine and the amount of compensation for the defamatory remarks could reasonably be considered "necessary in a democratic society" in order to protect the reputation of others and maintain the authority and impartiality of the judiciary. There had been no violation of Article 10 of the Convention.

In *Wingerter v. Germany (dec.)*, 43718/98, 21/03/2002, an earlier case, the applicant lawyer complained under Article 10 that the disciplinary reprimand he received for violating professional rules amounted to a violation of his right to freedom of expression. The applicant made remarks in written appeal submissions against a bill of costs. The appeal arose from criminal proceedings against the applicant's client, Mr K., during which various legal errors had been committed by the Mannheim judge and public prosecutor. However, the domestic courts considered the allegation disparaging and made without good cause, and the Court agreed. It found that, when read in its context, the statement was of a general rather than specific nature, and as such regarded all Mannheim judges, public prosecutors and lawyers as incompetent in legal matters. Even the obvious legal errors committed in the criminal proceedings against Mr K. could not justify disparaging whole groups of professionals. The Court also noted that the applicant was merely reprimanded (the most lenient punishment available) and considered that this was not disproportionate to the legitimate aim pursued by the courts. As such, the reasons advanced by the domestic courts were sufficient and relevant to justify such interference with the applicant's Article 10 rights.

In *Radobuljac v. Croatia*, no. 51000/11, 28 June 2016, the applicant, a lawyer, was convicted of contempt of court towards a judge for comments he made (about that judge) in an appeal against a decision of a local court. The applicant complained that the conviction violated his freedom of expression. The Court applied the case of *Morice* [GC], stating that Article 10 is applicable to lawyers as well as the judiciary and protects both the form and substance of any ideas and information expressed. The Court added that lawyers, in the pursuit of their clients' interests, may sometimes be required to object to or complain about the conduct of the court, but a clear distinction must be made between criticism and insult. The Court reiterated the precedents in its case-law as regards personal insults, which include calling into question the professional competence of a judge, attributing blameworthy conduct to a judge such as lying, wilfully distorting reality or issuing an untruthful report, or describing a judge specifically in derogatory terms. In this case, the applicant's remarks concerned how the judge was conducting the proceedings and the judge's performance in his client's case; they were not a personal attack on the character or general qualities of the judge. As such the interference with the applicant's Article 10 rights was unjustified.

2. Responsibility requires a duty of discretion and restraint

a. Judges have to show restraint in expressing criticism in the press regarding their cases

In *Buscemi v. Italy*, no. 29569/95, § 67, ECHR 1999-VI, the applicant asked for the presiding judge of the Youth Court to be replaced. He alleged that the judge was biased since he had had a heated exchange of views with him in the press on the courts' welfare role. The applicant's challenge was dismissed and the investigation of the complaint concluded that the judge had not disclosed any

confidential information and that there had therefore been no injury to the applicant's reputation or honour. In this judgment, the Court stressed that judges are required to exercise maximum discretion with regard to the cases they deal with, in order to preserve their image of impartiality. Such discretion should dissuade them from making use of the press, even when provoked. The higher demands of justice and the elevated nature of judicial office imposes this duty. The fact that the President of the Youth Court publicly used expressions with unfavourable overtones before presiding, objectively justified the applicant's fears as to the judge's impartiality. Accordingly, there had been a violation of Article 6 § 1 of the Convention.

In *Lavents v. Latvia*, no. 58442/00, §§ 118 and 119, 28 November 2002, the applicant – a high-profile businessman charged with fraudulent acts related to a bank liquidation – unsuccessfully challenged the President of the Criminal Regional Court of Riga who engaged in public criticism in the press of him and his defense. The Court noted that in the press the judge had criticised the attitude of the defence in the court proceedings, made predictions about the outcome of the trial and expressed surprise that the applicant was persisting in pleading not guilty, calling on him to prove his innocence. In the Court's opinion, those statements amounted to the adoption of a definite position as to the outcome of the trial, with a distinct preference for a guilty verdict against the applicant. The statements were incompatible with the requirements of Article 6 § 1 and had caused the applicant to fear that the judge in question lacked impartiality. The Court also noted that it appeared from the judge's statements to the press that she was persuaded of the applicant's guilt. She had even suggested that he had to prove that he was not guilty, which was at variance with the very principle of the presumption of innocence, one of the fundamental principles governing a democratic State. The Court also held that there had been a violation of Article 6 § 2 of the Convention.

b. Judges have to manifest restraint in expressing criticism towards fellow public officers and, in particular, other judges

In *Di Giovanni v. Italy*, no. 51160/06, 9 July 2013, the applicant – president of a Naples court – stated in a newspaper interview that a member of an examining body had used his influence to help a relative in a public competition to recruit judges and public prosecutors. At that time, a criminal investigation had been opened against a member of the board of examiners, suspected of having falsified the results of the competition to favour a particular candidate. Other articles were published connecting the name of a judge from Naples with the alleged tampering with the recruitment process. The disciplinary board of the National Council of the Judiciary (CSM) found the applicant partly guilty for having failed in her duty of respect and discretion *vis-à-vis* members of the CSM and one of her colleagues who could be identified in the newspaper interview, and gave her a warning. The Court recalled the judge's duty of discretion and found the interference with the applicant's freedom of expression to be proportionate, observing that the serious rumors that the applicant had repeated about an identifiable fellow judge, without the benefit of the doubt, in the published interview proved to be totally unfounded and that the sanction was a simple warning. Therefore, the Court found no violation of Article 10.

In *Simić v. Bosnia-Herzegovina*, no. 75255/10, 15 November 2016, the applicant complained under Articles 6 § 1 and 10 of the Convention about his dismissal from office as judge of the Constitutional Court. The reasons for his dismissal were a letter sent to high public officials and a media interview (as well as an unauthorised press conference) in which he discussed the work of the Constitutional Court, accusing it of corruption. As regards the alleged violation of the applicant's right to freedom of expression, the Court observed that the dismissal decision had essentially related to his actions damaging the authority of the Constitutional Court and the reputation of a judge. The Court

concluded that the applicant's complaint under Article 10 was manifestly ill-founded and rejected the whole application as inadmissible.

In contrast, in *Kudeshkina v. Russia* (cited above), the applicant complained that her dismissal from judicial office following her statements in the media, during her electoral campaign constituted a violation of her right to freedom of expression. The Court found that the applicant lacked important procedural guarantees in the disciplinary proceedings and that the penalty imposed on her was disproportionately severe and capable of having a "chilling effect" on judges wishing to engage in public debate on the effectiveness of the judicial institutions.

c. Dismissal from the post of judge - interference with private and professional life under Article 8

In *Özpinar v. Turkey*, no. 20999/04, 19 October 2010, the applicant was dismissed from her function as a judge, not merely for professional reasons, but also because of allegations about her private life. The Court concluded that the investigation into her professional and personal life, as well as her resulting dismissal, could be seen as an interference with her right to respect for private life. The Court acknowledged that a judge's duty to observe professional ethics may impinge to a certain extent upon his or her private life. This may occur, for example, where his or her conduct impairs the image or reputation of the judicial institution. However, in this case the Court found that the applicant's dismissal and the significant incidence on her career was disproportionate to the legitimate aim pursued, also taking into account the lack of guarantees in the relevant procedure and the reasoning relied upon in the domestic decisions.

In a number of subsequent cases, the Court found that the applicants' dismissal from their post of judges for professional fault constituted an interference with their right to respect for "private life", given the impact on their career, reputation and social and professional relationships, as well as on their material well-being (*Oleksandr Volkov v. Ukraine*, no. 21722/11, ECHR 2013, *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, § 138, 19 January 2017; *Erményi v. Hungary*, no. 22254/14, 22 November 2016). A similar case is pending before the Grand Chamber (*Denisov v. Ukraine* [GC], application no. 76639/11).

d. Judges should not let their personal religious views get in the way of their impartial judicial role (Article 9 of the Convention)

In *Pitkevich v Russia* (dec.), no. 47936/99, 8 February 2001, the applicant judge was a member of the Living Faith Church and was dismissed from her post for professional misconduct. Under Articles 9, 10 and 14 of the Convention the applicant complained that her dismissal amounted to an unjustified and discriminatory interference with the exercise of her freedoms of religion and expression. The Court rejected the applicant's complaints as manifestly ill-founded. The applicant's alleged inappropriate conduct while performing her judicial functions was precisely defined. The factual basis for her dismissal related exclusively to her official activities (intimidating parties to proceedings in court, and promoting the Church to the detriment of the State interest to protect the rule of law), and did not concern an expression of her views in private. Such facts were therefore "relevant" to establishing the applicant's suitability as a judge and called into question her impartiality as well as the authority of the judiciary. Allowing for a certain margin of appreciation in this respect, the Court found that the reasons adduced by the authorities in this case were "sufficient" for the interference with the applicant's rights under Article 10 of the Convention.

e. Judges may be subject to a duty of restraint in their enjoyment of the freedom of assembly and association

In *Maestri v. Italy* [GC], no. 39748/98, ECHR 2004-I, disciplinary proceedings, resulting in a reprimand, were brought against the applicant judge for having been a member of a Masonic lodge from 1981 until 1993. The domestic authorities stated that it was contrary to disciplinary rules for a judge to be a Freemason, on account of the incompatibility between the Masonic and judicial oaths and the particularly strong bonds of hierarchy and solidarity amount Freemasons. The Court concluded that the condition of foreseeability of the relevant provisions had not been satisfied and therefore the interference had not been prescribed by law. Accordingly, the Court found a violation of Article 11 of the Convention, however, without ruling on the compatibility of being a Freemason and a judge.

3. Judicial immunity from civil liability for actions taken in professional capacity and right of access to a court under Article 6 § 1 of the Convention

The case of *Sergey Zubarev v. Russia*, no. 5682/06, 5 February 2015, concerned the national courts' refusal to accept his defamation claim against a judge on grounds of judicial immunity. Mr Zubarev, a lawyer, brought a defamation claim against a judge who had asked the Bar Association in April 2005 to institute disciplinary proceedings against him for his conduct in civil proceedings. The judge notably alleged that Mr Zubarev had caused delays in a set of civil proceedings in which he was one of the representatives due to absence without good reason. In May 2005 the courts refused to accept his claim for consideration because of the judge's judicial immunity from liability in her professional capacity as presiding judge of the civil case. That decision was upheld in June 2005 on appeal. Relying in particular on Article 6 § 1, the applicant alleged that the national courts' refusal to examine his defamation claim on the merits had denied him access to a court. The Court concluded that a reasonable relationship of proportionality could be said to have existed between the judicial immunity in the course of the administration of justice and the legitimate aim pursued in the public interest and found no violation of Article 6 § 1.

4. Whistle-blowing

Concerning public prosecutors, in *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008, the Court found a violation of Article 10 as a result of the dismissal of a member of the Prosecutor General's Office for leaking evidence of apparent governmental interference in the administration of criminal justice to the press. Various factors had to be considered in determining the proportionality of an interference with a civil servant's freedom of expression in such cases: firstly, the existence of laws or internal regulations governing the reporting of irregularities; secondly, the public interest in disclosure; and thirdly whether the information disclosed was authentic. As to the question of what damage would be suffered by the public authority concerned, the Court found that despite the negative effects the disclosure had undoubtedly had on the Prosecutor's Office, the public interest in the provision of information about undue pressure and wrongdoing within that institution was so important as to outweigh the interest in maintaining public confidence in its independence. After weighing up all the interests involved, the Court concluded that the interference with the applicant's right to freedom of expression, in particular his freedom to impart information had not been "necessary in a democratic society".

C Counter action by the judiciary

1. Reaction from the judiciary when faced with excessive attacks to their reputation from press campaigns or individuals

While judges and the courts may react to what is perceived as particularly excessive attacks, and may take measures to defend the reputation of the judiciary, they should act in a proportionate manner.

In *De Haes and Gijssels v. Belgium*, the applicant journalists published five articles in which they criticised judges of the Antwerp Court of Appeal at length and in virulent terms for having, in a divorce suit, awarded custody of the children to the father, a Belgian notary. In 1984 the notary's wife and parents-in-law had lodged a criminal complaint accusing him of incest and of abusing the children, but it had been ruled that there was no case to answer. The judges took the unusual step of bringing a claim for damages against the journalists, and their claim was upheld by the Brussels *tribunal de première instance* and Court of Appeal. The applicants alleged that the judgments against them entailed a breach of Article 10 of the Convention. The Court held *inter alia* that “*the courts - the guarantors of justice, whose role is fundamental in a State based on the rule of law - must enjoy public confidence. They must accordingly be protected from destructive attacks that are unfounded, especially in view of the fact that judges are subject to a duty of discretion that precludes them from replying to criticism*”. Nevertheless, on the facts of the case, the Court found a breach of Article 10. The comments made by the journalists were without doubt severely critical; however they nevertheless appeared proportionate to the stir and indignation caused by the matters alleged in their articles.

In *Obukhova v. Russia*, no. 34736/03, 8 January 2009, the applicant (a journalist) complained that the restriction on her right to publish materials concerning a traffic accident involving a judge or about the pending court proceedings relating to that accident was incompatible with Article 10 of the Convention. That restriction had been ordered in defamation proceedings lodged by the judge against the applicant, who had published an article reproducing a letter from the defendants in the traffic accident, a letter in which it was claimed that the judge had taken advantage of her office and connections in the judiciary in pending proceedings involving her as a private individual. The Court accepted that the allegation could indeed be damaging to the judge's reputation and to the authority of the judicial system. Nevertheless, although the injunction corresponded to the legitimate aim it sought to achieve, in the Court's view, its scope was excessively broad. The injunction, which restrained the newspaper and the applicant from publishing anything relating to the traffic accident or the court proceedings pending its judgment in the defamation proceedings, had an excessively broad and disproportionate scope. Such an injunction had done a disservice to the authority of the judiciary by reducing transparency and raising doubts about the court's impartiality. The Court found a violation of Article 10.

In *Poyraz v. Turkey*, no. 15966/06, 7 December 2010 the applicant, a chief inspector of the Ministry of Justice, was responsible for conducting an inquiry into the alleged professional misconduct on the part of a judge. In the report he co-authored, the professional conduct of the judge – who had in the meantime been appointed to the Court of Cassation – was severely criticised through witness accounts of, *inter alia*, acts of sexual harassment. The report was leaked to the press and received widespread television coverage, featuring interviews with the applicant, the judge and witnesses. In response to accusations that he was involved in a political conspiracy against the judge, the applicant issued a written statement to the press in which he asserted that the judge was currently the subject of fifteen separate inquiries and that he had not named the harassment victims in order to prevent deaths from occurring. The judge brought an action for damages against the applicant. The applicant was ordered to pay damages and was unsuccessful in his appeal to the Court of Cassation. The Court found no violation of Article 10. The judgment clarifies certain issues

concerning the right to freedom of expression of persons who exercise public authority. The Court considered that such persons must exercise restraint in order not to create situations of inequality when they make public statements concerning ordinary citizens, who have more limited access to the media. They must be particularly vigilant when directing investigations which contain information covered by an official secrecy clause designed to ensure the proper administration of justice.

2. Reactions from the judiciary when the Government initiates legal reforms

a. Judges are entitled to speak out in a proportionate way in relation to reforms impacting the judiciary (freedom of expression)

In *Previti v Italy* (dec), no 45291/06, 8 December 2009, the Court considered that judges, in their capacity as legal experts, may express their views, including criticism, about legal reforms initiated by the Government. Such a position, expressed in an appropriate manner, does not bring the authority of the judiciary into disrepute or compromise their impartiality in a given case. As the Court stated, *“the fact that, in application of the principles of democracy and pluralism, certain judges or groups of judges may, in their capacity as legal experts, express reservations or criticism regarding the Government’s legislative proposals do not undermine the fairness of the judicial proceedings to which these proposals might apply”*.

The applicant in that case was a lawyer and a prominent figure in national politics. In 1995, in the context of a widely-publicised case concerning the corporate control of a major chemicals group, IMI/SIR, the applicant was charged with judicial bribery. In November 1999 he and seven co-accused were committed to stand trial before the Criminal Court. In May 2006 the Court of Cassation sentenced him to six years’ imprisonment. The Court took note of the statements made to the press by a number of members of the national legal service and of articles published in a magazine, and also of the paper published by the National Association of Judges and Prosecutors. These documents criticised the political climate in which the trial had taken place, the legislative reforms proposed by the Government and the applicant’s defence strategy. But they did not make any statements as to the applicant’s guilt. The Association of Judges and Prosecutors, again without discussing whether or not the applicant had committed the offences in question, had also expressed opposition to the idea that an accused should have access to a list of members of the national legal service espousing particular views. The fact that, in accordance with the principles of democracy and pluralism, some individuals or groups within the national legal service, in their capacity as legal experts, expressed reservations or criticism concerning draft Government legislation was not capable of adversely affecting the fairness of the judicial proceedings to which that legislation might apply. Moreover, the courts hearing the applicant’s case had been made up entirely of professional judges whose experience and training enabled them to rise above external influences. It had also been legitimate for judges not involved in hearing the case to comment on the defence strategy of a leading public figure which had been widely reported on and discussed in the media. Accordingly, the Court was unable to find that the comments made in the context of the IMI/SIR proceedings had reduced the applicant’s chances of receiving a fair trial. His complaints were rejected as being manifestly ill-founded.

In the case of *Baka v Hungary* ([GC], no. 20261/12, ECHR 2016, the applicant complained that his mandate as President of the Supreme Court had been terminated as a result of the views he had expressed publicly in his capacity as President of the Supreme Court and the National Council of Justice. He expressed critical views 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 the Court

deemed were questions of public interest. His statements did not go beyond mere criticism from a strictly professional perspective. In the Court's view, having regard to the sequence of events in their entirety, rather than as separate and distinct incidents, there was *prima facie* evidence of a causal link between the applicant's exercise of his freedom of expression and the termination of his mandate. The Court concluded that there had been an interference with the exercise of his right to freedom of expression. It proceeded on the assumption that the interference was "prescribed by law", but could not accept that it pursued the legitimate aim invoked by the Government. Although the Court this would have been sufficient to find a violation of the Convention, the Court went on to examine whether the interference was necessary in a democratic society. On the question of the freedom of expression of judges, the Court stated that "*questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10. Even if an issue under debate has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter. Issues relating to the separation of powers can involve very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate.*" According to the Court, it was not only the applicant's right but also his duty as President of the National Council of Justice to express his opinion on legislative reforms affecting the judiciary, after having gathered and summarised the opinions of lower courts. He also used his power to challenge some of the relevant legislation before the Constitutional Court, and used the possibility to express his opinion directly before Parliament on two occasions, in accordance with parliamentary rules. Furthermore, the premature termination of the applicant's mandate undoubtedly had a "chilling effect" in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary. The interference complained of was not "necessary in a democratic society", notwithstanding the margin of appreciation available to the national authorities and accordingly there had been a violation of the applicant's right to freedom of expression under Article 10.

D Communication strategies

[Opinion no. 7 of the CCJE on Justice and Security, 25 November 2005](#)

See in particular the sections on the relations of the courts with the public with special reference to the role of courts in a democracy (Section A) and the relation of the courts with the media (Section C), whose main points are presented below.

1. Relations of the courts with the public with special reference to the role of courts in a democracy

Adequate information about the functions of the judiciary and its role, in full independence from other state powers, can therefore effectively contribute toward an increased understanding of the courts as the cornerstone of democratic constitutional systems, as well as of the limits of their activity. Integrating justice into society requires the judicial system to open up and learn to make itself known. The idea is not to turn the courts into a media circus but to contribute to the transparency of the judicial process. The first way to make judicial institutions more accessible is to introduce general measures to inform the public about courts' activities.

In this connection, the CCJE refers to its recommendations in Opinion No. 6 (2004) regarding the educative work of courts and the need to organise visits for schoolchildren and students or any other group with an interest in judicial activities. This does not alter the fact that it is also the state's important

duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system. Courts themselves should participate in disseminating information concerning access to justice (by way of periodic reports, printed citizen's guides, Internet facilities, information offices, etc.) ; the CCJE recommended the developing of educational programmes aiming at providing specific information (e.g., as to the nature of proceedings available; average length of proceedings in the various courts; court costs; alternative means of settling disputes offered to parties; landmark decisions delivered by the courts).

Publicity of hearings in the sense enshrined in Article 6 of the European Convention on Human Rights has been traditionally viewed as the only contact between courts and the general public, making the mass media the sole interlocutors for courts. Such an attitude is rapidly changing. The duties of impartiality and discretion which are the responsibility of judges are not to be considered today as an obstacle to courts playing an active role in informing the public, since this role is a genuine guarantee of judicial independence. The CCJE considers that member states should encourage the judiciaries to take such an active role along these lines, by widening and improving the scope of their "educative role". This is no longer to be limited to delivering decisions; courts should act as "communicators" and "facilitators". The CCJE considers that, while courts have to date simply agreed to participate in educational programmes when invited, it is now necessary that courts also become promoters of such programmes.

2. The relation of the courts with the media

The media have access to judicial information and hearings, according to modalities and within the limitations established by national law. There should be no attempt to prevent the media from criticising the organisation or the functioning of the justice system. The justice system should accept the role of the media which, as outside observers, can highlight shortcomings and make a constructive contribution to improving courts' methods and the quality of the services they offer to users.

Judges express themselves above all through their decisions and should not explain them in the press or more generally make public statements in the press on cases of which they are in charge. Nevertheless it would be useful to improve contacts between the courts and the media: to strengthen understanding of their respective roles; to inform the public of the nature, the scope, the limitations and the complexities of judicial work; to rectify possible factual errors in reports on certain cases.

Schools of journalism should be encouraged to set up courses on judicial institutions and procedures.

The CCJE considers that each profession (judges and journalists) should draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases.

The CCJE recommends that an efficient mechanism, which could take the form of an independent body, be set up to deal with problems caused by media accounts of a court case, or difficulties encountered by a journalist in the accomplishment of his/her information task. This mechanism would make general recommendations intended to prevent the recurrence of any problems observed.

It is also necessary to encourage the setting up of reception and information services in courts, not only, as mentioned above, to welcome the public and assist users of judicial services, but also to help the media to get to understand the workings of the justice system better. These services, over which judges should have a supervisory role, could pursue the following aims: to communicate summaries of court decisions to the media; to provide the media with factual information about court decisions; to liaise with the media in relation to hearings in cases of particular public interest; to provide factual clarification or correction with regard to cases reported in the media (via a spokesperson).

The principle of public proceedings implies that citizens and media professionals should be allowed access to the courtrooms in which trials take place, but the latest audio-visual reporting equipment gives the events related such a broad impact that they entirely transform the notion of public hearings. This

may have advantages in terms of raising public awareness of how judicial proceedings are conducted and improving the image of the justice system, but there is also a risk that the presence of TV cameras in court may disturb the proceedings and alter the behaviour of those involved in the trial (judges, prosecutors, lawyers, parties, witnesses, etc.).

While the media plays a crucial role in securing the public's right to information, and acts, in the words of the European Court of Human Rights, as "democracy's watchdog", the media can sometimes intrude on people's privacy, damaging their reputation or undermining the presumption of their innocence, acts for which individuals can legitimately seek redress in court. The quest for sensational stories and commercial competition between the media carry a risk of excess and error. In criminal cases, defendants are sometimes publicly described or assumed by the media as guilty of offences before the court has established their guilt. In the event of a subsequent acquittal, the media reports may already have caused irremediable harm to their reputation, and this will not be erased by the judgment.

Courts need therefore to accomplish their duty, according to the case-law of the European Court of Human Rights, to strike a balance between conflicting values of protection of human dignity, privacy, reputation and the presumption of innocence on the one hand, and freedom of information on the other

When a judge or a court is challenged or attacked by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice, the CCJE considers that, in view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

3. How does the European Court of Human Rights communicate about the ECHR and its case-law?

a. The Internet site and social media

The focal point of the Court's communication policy is its website (www.echr.coe.int). The architecture of the site includes access to Court documents in [40 languages](#). The website provides a wide range of information on all aspects of the Court's work, including the latest news on its activities and cases; details of the Court's composition, organisation and procedure; Court publications and core Convention materials; statistical and other reports; and information for potential applicants and visitors.

Court news can be followed on [Twitter](#). In addition, a separate [Twitter account](#) provides updates on the latest publications in various languages, translations added to the HUDOC case-law database and other developments in the area of case-law information and publications.

With the help of a voluntary contribution from Ireland, all the Court's [hearings](#) are filmed in their entirety and distributed on the Court's Internet site and are permanently available.

b. Communicating to the Press

The Court's Press Unit has press officers who are available to help journalists with specific requests and to answer their questions in a number of different languages. [Press releases](#) include summaries of the Court's judgments and decisions as well as information about pending cases and the Court's activities in general. Press releases are available in both English and French and are available on HUDOC. Some press releases for high-profile cases are translated into non-official languages. Press

releases can be received systematically by following the Court on Twitter, by subscribing to RSS feeds or by subscribing to its mailing list.

The [press conference](#) of the Court is held annually in January. On this occasion, the President presents the statistics of the past year and the major events that occurred during this period. He also responds to questions of journalists. The President and other members of the Court also give interviews to the Press from time to time.

c. The HUDOC case-law database

The [HUDOC database](#) provides access to Grand Chamber, Chamber and Committee judgments, decisions, communicated cases, advisory opinions, legal summaries and press releases of the European Court of Human Rights, Decisions and reports of the former European Commission of Human Rights, and Resolutions of the Committee of Ministers. The HUDOC interface currently exists in English, French, Russian, Spanish and Turkish. Plans are under way to develop Bulgarian, Georgian and Ukrainian versions. The translations programme has been an important catalyst for setting up a network of partners ensuring the translation of cases and publications into such languages.

d. Other publications and information tools

The Registry of the Court publishes a number of materials to assist in understanding the Court's case-law and the official texts. [Case-law information notes](#) every month provide summaries of cases considered to be of particular interest. The Information Notes are now being translated *in extenso* into Italian, Russian and Turkish, while certain summaries of particularly important cases are also being translated into other languages. There is also an [Admissibility Guide](#) which sets out the Court's case-law on the admissibility criteria, as well as [case-law guides](#) on various Articles of the Convention and [research reports](#) on transversal themes. The Jurisconsult's Overview provides valuable insight into the most important judgments and decisions delivered by the Court each year, setting out the salient aspects of the Court's findings and their relevance to the evolution of its case-law. The overview comes out twice a year and the annual version of the Overview can be consulted in each [Annual Report](#) ("Overview of the Court's case-law"). [European law handbooks](#) are published jointly by the Court, the European Union Agency for Fundamental Rights (FRA) and the Council of Europe. There is also a [joint publication](#) by the ECHR and Inter-American Court of Human Rights.

The Court's Press Unit provides [factsheets](#) on case-law and pending cases on a variety of transversal issues. Sixty Factsheets are now available in English and French, many of which have been translated into German, Greek, Italian, Polish, Romanian, Russian, Spanish and Turkish with the support of, among others, the States concerned and national human-rights institutions. These Factsheets provide the reader with a rapid overview of the most relevant cases concerning a particular topic and are regularly updated to reflect the development of the case-law. The Press Unit has also prepared [Country Profiles](#) covering each of the forty-seven Council of Europe member States. These profiles, which are updated regularly, provide general and statistical information on each State as well as summaries of the most noteworthy cases.

A [film](#) presenting the European Court of Human Rights has been designed, made and produced by the Public Relations Unit. Aimed at a wide audience, this video describes how the Court works, the challenges it faces and the range of its activities through examples taken from the case-law. The Court has also launched training videos on its case-law. The COURTalks-disCOURs [videos](#) provide judges, lawyers and other legal professionals, as well as civil society representatives, with an overview of various topics such as the admissibility criteria, asylum and terrorism, available in a number of Council of Europe languages.

e. Visitors

Information visits for professionals and law students are regularly organized. Visitors may also attend public hearings. In 2016 the Visitors' Unit received 17, 872 visitors.

Annex

The Authority of the Judiciary List of Cases

Albayrak v. Turkey, no. 38406/97, 31 January 2008
Baka v. Hungary [GC], no. 20261/12, ECHR 2016
Broniowski v. Poland [GC], no. 31443/96, § 176, ECHR 2004-V
Buscemi v. Italy, no. 29569/95, § 67, ECHR 1999-VI
De Haes and Gijssels v. Belgium, 24 February 1997, *Reports of Judgments and Decisions* 1997-I
Denisov v. Ukraine [GC], application no. 76639/11
Di Giovanni v. Italy, no. 51160/06, 9 July 2013
Erményi v. Hungary, no. 22254/14, 22 November 2016
Gerovska Popčevska v. the former Yugoslav Republic of Macedonia, no. 48783/07, 7 January 2016
Gurov v. Moldova, no. 36455/02, §§ 34-38, 11 July 2006
Guja v. Moldova [GC], no. 14277/04, ECHR 2008
Harabin v. Slovakia, no. 58688/11, §§ 150-153, 20 November 2012
Ivanovski v. the former Yugoslav Republic of Macedonia, no. 29908/11, 21 January 2016
Jakšovski and Trifunovski v. the former Yugoslav Republic of Macedonia, nos. 56381/09 and 58738/09, 7 January 2016
Kinský v. the Czech Republic, no. 42856/06, 9 February 2012
Kudeshkina v. Russia, no. 29492/05, 26 February 2009
Kulykov and others v. Ukraine, nos. 5114/09 and 17 others, 19 January 2017
Lavents v. Latvia, no. 58442/00, §§ 118 and 119, 28 November 2002
Maestri v. Italy [GC], no. 39748/98, ECHR 2004-I
Maktouf and Damjanović v. Bosnia and Herzegovina [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013
Mitrinovski v. the former Yugoslav Republic of Macedonia, no. 6899/12, 30 April 2015
Morice v. France [GC], no. 29369/10, ECHR 2015
Obukhova v. Russia, no. 34736/03, 8 January 2009
Oleksandr Volkov v. Ukraine, no. 21722/11, ECHR 2013
Olujić v. Croatia, no. 22330/05, 5 February 2009
Özpınar v. Turkey, no. 20999/04, 19 October 2010
Paluda v. Slovakia, no. 33392/12, 23 May 2017
Peruzzi v. Italy, no. 39294/09, 30 June 2015

Pitkevich v. Russia (dec.), no. 47936/99, 8 February 2001

Poposki and Duma v. the former Yugoslav Republic of Macedonia, nos. 69916/10 and 36531/11, 7 January 2016

Poyraz v. Turkey, no. 15966/06, 7 December 2010

Previti v. Italy (dec), no. 45291/06, 8 December 2009

Radobuljac v. Croatia, no. 51000/11, 28 June 2016

Sergey Zubarev v. Russia, no. 5682/06, 5 February 2015

Simić v. Bosnia-Herzegovina, no. 75255/10, 15 November 2016

Sovtransavto Holding v. Ukraine, no. 48553/99, ECHR 2002-VII

Stafford v. the United Kingdom [GC], no. 46295/99, § 78, ECHR 2002-IV

Toni Kostadinov v. Bulgaria, no. 37124/10, 27 January 2015

Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, ECHR 2007-II

Wille v. Liechtenstein [GC], no. 28396/95, § 70, ECHR 1999-VII

Wingerter v. Germany (dec.), no. 43718/98, 21 March 2002