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Judicial corruption

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Kimmo SASI, Finland, Group of the European People's Party

Summary

Judicial corruption undermines the rule of law, allows impunity to flourish, leads to unfair trials and makes fighting general corruption much harder – yet it is "deeply embedded" in many Council of Europe member states, according to the Committee on Legal Affairs and Human Rights. Alarmingly, in some member states – Armenia, Bulgaria, Croatia, Georgia and "the former Yugoslav Republic of Macedonia", as well as in Kosovo[1] (which is not a member state of the Council of Europe) – justice itself is seen by the public as the most corrupt institution.

The authorities concerned are expected to take "stringent exceptional measures" to deal with the problem, but there is a wide range of measures that all member states can do to try to keep their court system clean: judges, prosecutors and police should be paid a reasonable wage and should be provided with adequate staff and resources. Judges and prosecutors should develop and enforce ethical standards of their own and instil a culture of respect for them. Finally, the procedures for recruiting, promoting and dismissing judges should be clear and transparent, based solely on merit. Specialist units should be set up to investigate and prosecute those judges who take bribes or issue skewed judgments to order, yet without impairing their independence.

For its part, the Committee of Ministers could draw up a model code of conduct for judicial officials, defining professional and ethical behaviour clearly, and gather statistics on the numbers of judicial officials prosecuted for corruption in the different member states.

1. This reference is to be construed in full conformity with United Nations Security Council Resolution 1244.

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A. Draft resolution

1. The Parliamentary Assembly observes that a corrupt judicial system undermines the rule of law, which is the backbone of a pluralistic democracy; it calls into question equal treatment before the law and the right to a fair trial, and erodes the legitimacy of all the public authorities.

2. Judicial corruption favours the impunity whose eradication the Assembly demanded as a priority in its Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity.

3. Judicial corruption and corruption of the other public institutions, and of the private sector, nurture and reinforce each other. Eradication of corruption, once it becomes entrenched, is much harder than its prevention, hence the importance of combating the first signs of corruption, especially in the countries unaffected by this evil.

4. Corruption in general is to be fought by eradicating it, specifically in the courts. These are responsible for punishing all corrupt individuals equally and objectively, and for protecting the "whistle-blowers" who are indispensable for an effective drive against all forms of corruption.

5. The Assembly stresses the importance of a real political resolve, to be expressed by tangible, energetic measures and not just by speeches and largely token laws. An unsullied, independent justice system fosters a political climate in which corruption and cronyism become less frequent because they are riskier for everyone involved.

6. The Assembly deplores the fact that judicial corruption is deeply embedded in many Council of Europe member states, also beset with serious problems of corruption in other public and private institutions. According to the 2009 Global Corruption Barometer published by Transparency International, some of them – Armenia, Bulgaria, Croatia, Georgia and "the former Yugoslav Republic of Macedonia" – distinguish themselves very alarmingly in that justice itself is perceived by their population as the most corrupt institution. This also applies to Kosovo,[2] which is not a member state of the Council of Europe.

7. The Assembly urges the authorities of all the states mentioned above to take stringent exceptional measures to restore the public's confidence in the judicial system.

8. The Assembly is preoccupied by a tendency in some states to deny outright that any judicial corruption exists within them. As no state is fully immune from corruption, particularly at the present time of economic crisis, the Assembly invites all Council of Europe member states to be self-critical and to undertake – as in Germany – an in-depth study of the level of corruption in their judicial systems and to take preventive and remedial measures at the first sign of danger.

9. With respect to prevention, the Assembly encourages all member states to establish a framework minimising the risks of judicial corruption by the following means:

9.1. ensuring that judges, prosecutors and all agents of the justice process – especially the representatives of the law enforcement agencies – are aware of the importance and dignity of their role, by guaranteeing commensurate remuneration and by providing them with adequate human and material resources;

9.2. developing professional and ethical standards for judges and prosecutors, together with effective monitoring machinery;

9.3. subjecting the pecuniary position of judges and prosecutors to a review mechanism which is suited to the situation in each country and must honour the independence and dignity of justice officials;

9.4. ensuring that the procedures for recruiting, promoting and dismissing judges and prosecutors are clear and transparent, founded solely on qualification and merit, having regard to the European Charter on the Statute for Judges and the Venice Commission's recommendation that all member states should have independent judicial councils comprising members elected principally by the members of the judiciary;

9.5. ensuring that judges' and prosecutors' terms of office are of sufficient length and are not linked with an external appraisal of their decisions;

9.6. giving all judges and prosecutors specific training in matters of corruption and ethics;

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2. This reference is to be construed in full conformity with United Nations Security Council Resolution 1244.

9.7. conducting public campaigns and/or programmes aimed at increasing general respect for the judiciary and improving citizens' understanding of the importance and implications of judicial independence and the separation of powers.

10. In order to be effective the fight against corruption must comprise investigations, prosecution and ultimately convictions. Accordingly, the Assembly invites the member states to:

10.1. devise specific machinery for enforcing the accountability of judges and prosecutors – to include criminal responsibility – without impairing their independence and impartiality;

10.2. ensure that the immunities of members of the judiciary do not impede effective proceedings against them;

10.3. provide specialised investigators with proper training and adequate resources.

11. By way of a preventive as well as a punitive measure, the Assembly invites all member states to sign and ratify, as appropriate, the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) and to co-operate effectively with the supervisory and advisory mechanisms prescribed by these instruments.

12. The Council of Europe has a duty to participate actively in the fight against judicial corruption in all its forms, including politically motivated abuses of the judicial system. The Assembly particularly encourages its Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee) either to draw up thematic reports on the subject or at least to dedicate a substantial chapter to this issue in its country reports for all countries undergoing a monitoring procedure and in the context of the post-monitoring dialogue.

B. Draft recommendation

1. The Parliamentary Assembly, recalling its Resolution … (2009) on judicial corruption, regards the eradication of judicial corruption as a priority for the action of the Council of Europe, in that it threatens the rule of law, which is the backbone of a pluralistic democracy, and favours impunity.

2. It congratulates the Committees of Ministers for having issued terms of reference to a Group of Specialists on the Judiciary (CJ-S-JUD) to revise Committee of Ministers Recommendation No. R (94) 12 on the independence, efficiency and role of judges, focusing on national courts. It suggests that the group of specialists take into account the conclusions of the Assembly's Resolutions … (2009) and 1685 (2009) respectively concerning judicial corruption and allegations of politically motivated abuses of the criminal justice system in Council of Europe member states, and make explicit reference to the fight against corruption of judges in the explanatory report to the revised draft recommendation.

3. It encourages the Consultative Committee of European Prosecutors (CCPE) to persevere in its role as guardian of the due application of Committee of Ministers Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, bearing in mind especially the independence of prosecutors and having regard to the reforms which have taken place in the member states since the recommendation was adopted. The Assembly encourages the CCPE to review this recommendation in a similar way to the current revision of Recommendation No. R (94) 12.

4. The Assembly invites the Committee of Ministers to elaborate a model code of conduct directed at judicial officials, along the lines of the model code of conduct for public officials appended to Committee of Ministers Recommendation No. R (2000) 10 on codes of conduct for public officials. In this context, it would be expedient to refer to Opinion No. 3 of the Consultative Council of European Judges of Europe (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.

5. Noting that the Communication from the European Commission to the European Parliament and the Council of the European Union of 10 June 2009 concerning the Stockholm Programme advocates periodical evaluation of the efforts made by the European Union and the member states to combat corruption, and considering that such an initiative is liable to duplicate the work of the Group of States against Corruption (GRECO), the Assembly invites the Committee of Ministers to strive for closer co-operation between GRECO and the relevant institutions of the European Union, *inter alia,* through European Union participation in GRECO, as foreseen by the GRECO Statute, in order to guard against duplications and promote synergies.

6. The Assembly invites the Committee of Ministers to gather figure-supported information on prosecutions and convictions of judicial officials in the Council of Europe member states. To guarantee its utility, a study of this kind should be updated regularly.

7. Lastly, the Assembly invites the Committee of Ministers to give the European Charter on the Status of Judges wider publicity; albeit of a purely declarative character, it should be a de facto reference for the member states.

C. Explanatory memorandum by Mr Kimmo Sasi, rapporteur

"No system of government and administration is immune from corruption by those intent on the abuse of power".[3]

1. Introduction

1. On 2 October 2007, I was appointed rapporteur by the Committee on Legal Affairs and Human Rights to prepare a report on judicial corruption (Doc. 11330).

2. At its meeting in Moscow on 10 and 11 November 2008, the committee held a hearing on this subject, with the participation of the following experts: Mr Piercamillo Davigo, Judge at the Supreme Court of Cassation (Rome), Mr Dragos Kos, chair of the Group of States against Corruption (GRECO), and Ms Elena A. Panfilova, Director General, Centre for Anti-Corruption Research and Initiative, Transparency International (Moscow). I shall be making several references to their contributions in this report.

3. The preamble to the Criminal Law Convention on Corruption (ETS No. 173) states that "corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society", and stresses that "an effective fight against corruption requires increased, rapid and well-functioning international co-operation in criminal matters".

2. Terminology

4. As the guest experts explained to the committee, no universal definition of the word "corruption" has ever been adopted. All attempts to agree on a definition at international level have failed.

5. While the Criminal Law Convention on Corruption provides no definition of corruption at all, the Civil Law Convention on Corruption (ETS No. 174) defines it as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof" (Article 2).

6. Transparency International (TI) defines corruption as "the misuse of entrusted power for private gain". TI adds that in addition to material or financial interests it can also involve intangible advantages such as the pursuit of political or professional ambitions. More specifically, TI defines judicial corruption as "any undue influence exerted on the impartiality of the judicial process by any operator in the judicial system".

7. I do not intend to use the term judicial/judiciary in its strictest sense, that is, as referring solely to judges and prosecutors. In this report, the word covers all players in the judicial process (including the police).[4]

8. TI identifies two main types of judicial corruption: political interference by the executive[5] or the legislature in judicial proceedings, and the use of bribery.

9. As TI points out, political interference may involve manipulation of judicial appointments, salaries and conditions of employment, but it can also take the form of threats against and intimidation of judges. TI mentions Russia as an example of a country where the political authorities have recently increased their influence over the judiciary.

3. Fact: visible corruption is only the tip of the iceberg

10. In its 2007 global report on corruption, focusing on justice and the fight against corruption, TI noted that "corruption is undermining justice in many parts of the world, denying victims and the accused the basic human right to a fair and impartial trial".[6] There is increasing evidence of widespread corruption within the

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3. Programme of Action against Corruption (adopted by the Committee of Ministers of the Council of Europe), Multidisciplinary Group on Corruption (GMC), GMC (96) 95.
4. Mr Davigo explained that in Italy judicial corruption is deemed to concern all individuals involved in prosecutions, including witnesses.
5. On this point see also Mrs Leutheusser-Schnarrenberger's report on "Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states", Doc. 11993.
6. www.transparency.org/publications/gcr/gcr_2007.

judicial systems in many parts of the world. The Council of Europe Commissioner for Human Rights points out that "there is a widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts", and "even worse, there are indications to show that people's suspicions are in some cases well justified".[7]

11. No democratic society can function if its judicial system is affected by systemic corruption, often accompanied by systemic corruption in all government departments. Judicial corruption undermines the rule of law and the legitimacy of the public authorities, is detrimental to society as a whole and poses an imminent threat to the founding principle of democracy, namely equality of treatment before the law.

12. Indeed, according to the Programme of Action against Corruption adopted by the Committee of Ministers in November 1996: "The legal profession plays an important role in the fight against corruption. It is of paramount importance for the trust of the public in public functions that, for instance, judges are independent and impartial and should in no way become involved in corruption or be seen as representing special interests".[8]

13. A corrupt judicial system, in practice, prevents any efforts to combat corruption in other fields and thus provides a fertile breeding ground for organised crime and even terrorism.

14. In some member states the Group of States against Corruption (GRECO) has noted low public trust in the judiciary accompanied by a perception that judicial corruption is very widespread. The group has clearly stated that restoring public trust in judges and the whole legal process necessitates determined institutional reforms and reinforced protection of the judiciary from any kind of improper influence.

15. The fact that national legislations generally provide for sanctions against judicial operators who, in the course of their duties, solicit or receive remuneration for performing a specific act is apparently insufficient to prevent this problem.

16. As Mr Davigo quite rightly pointed out in his statement to the committee in November 2008, it is extremely difficult to sanction corruption, primarily because of the difficulty of obtaining information on its existence.[9]

17. He added that there was a major unknown in the statistics on corruption, namely the discrepancy between the offences committed and the offences actually detected. In his view, this is chiefly due to the fact that the offence of corruption has no specific victim, is not usually perpetrated before witnesses and is known only to the corrupting and corrupted individuals (whose common interest is manifestly to remain discreet). Furthermore, the police is primarily organised with a view to dealing with visible offences.

18. Mr Davigo highlighted one specific feature of judicial corruption, namely the fact that it frequently occurs in complex legal cases. This means that judicial corruption cases are dealt with by courts of a lower level than those involved in the cases in question (he mentioned the example of a Court of First Instance examining a case of alleged corruption in proceedings before the Court of Cassation).

19. This peculiarity causes certain difficulties for the person responsible for prosecuting. As an example of the problems encountered, he outlined a case of alleged corruption of a member of the Italian Court of Cassation suspected of having links with a Mafia-type group. The Court of Cassation decided that it would be illegal to ask a judge who had taken part in in camera proceedings to testify on the decision-making process in question concerning the opinions and votes of individual members of the bench.[10] This prevented the Court responsible for prosecuting the alleged case of corruption from hearing statements from essential witnesses.

4. The main relevant international legal instruments

20. Article 6 of the European Convention on Human Rights secures the right to a fair hearing "by an independent and impartial tribunal".

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7. See Viewpoint of the Commissioner for Human Rights, 24 June 2008, www.coe.int/t/commissioner/Viewpoints/080624_en.asp.
8. Multidisciplinary Group on Corruption (GMC), GMC (96) 95.
9. The Committee of Ministers has reached the same conclusion: "The chief problem with all forms of corruption is that it thrives on secrecy and silence", see the above-mentioned Programme of Action against Corruption, document GMC (96) 95.
10. Decision No. 22327 of 30 October 2002 (Dep. 21 May 2003, rv 224182).

21. Article 2 of the Criminal Law Convention on Corruption (ETS No. 173) provides that "each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions", while Article 3 contains similar provisions for cases of passive bribery of domestic public officials.

22. Article 11 of the United Nations Convention against Corruption (UNCC) reads as follows: "Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. …".

23. Resolution (97) 24 of the Committee of Ministers on the twenty guiding principles for the fight against corruption includes two principles which are particularly relevant to the fight against judicial corruption. Guiding principle No. 3 is intended "to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations". Guiding principle No. 6 aims "to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society". In its first evaluation cycle (2000-2002), GRECO evaluated the measures taken by member states to implement these principles.

24. A model code of conduct for public officials is appended to Recommendation No. R (2000) 10 of the Committee of Ministers to member states on codes of conduct for public officials, although Article 1 of this code stipulates that "the provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office". It might be conceivable to devise a model code of conduct for members of the judiciary. In this context, reference could usefully be made to Opinion 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.[11]

25. At the same time, the Committee of Ministers has instructed a group of specialists on the judiciary (CJ-S-JUD) to "draw up a recommendation with an explanatory memorandum, which would, *inter alia*, update the Recommendation No. R (94) 12 on the independence, efficiency and role of judges, focusing on national courts, in the light of the developments which have taken place since the adoption of this recommendation and to strengthen and enrich the scope of the recommendation".[12] I suggest that this group of specialists take account of the conclusions of the present report and of Sabine Leutheusser-Schnarrenberger's above-mentioned report on "Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states" and perhaps make a specific reference to the fight against judicial corruption in the explanatory report to the draft revised recommendation. The CJ-S-JUD is expected to complete its work in December 2009.

26. All the measures recommended in this report to ensure courts' complete independence from the political authorities apply equally to the fight against judicial corruption: the pernicious mechanisms used to influence judicial proceedings for political purposes can also be, and are perhaps even more often, used to commit outright corruption.

27. It might also be worth looking at the independence and role of prosecutors, including those of prosecutors general. In her report, Sabine Leutheusser-Schnarrenberger notes that in the English criminal justice system, for example, "there is another possible avenue for possible political influence on individual cases: the role of the Attorney General".[13]

28. There is already a Committee of Ministers recommendation – Recommendation Rec(2000)19[14]– on the role of public prosecution in the criminal justice system. The Consultative Council of European Prosecutors (CCPE), set up in July 2005 by the Committee of Ministers, is tasked with preparing opinions for the attention of the European Committee on Crime Problems (CDPC) on the difficulties involved in implementing this recommendation and with promoting its implementation, as well as with collecting information about the

11. See www.coe.int/t/dghl/cooperation/ccje/default_EN.asp?.
12. See the terms of reference of the CJ-S-JUD under www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/CJ-S-JUD%20_2009_%202_E_terms%20of%20ref.pdf.
13. See the above-mentioned Doc. 11993, paragraph 15.

functioning of prosecution services in Europe. I wonder whether this recommendation, which will soon be ten years old, is still sufficiently up-to-date to encompass the many reforms that have been introduced in member states. I would therefore encourage the CCPE to continue keeping a close watch to ensure that Recommendation Rec(2000)19 is properly implemented, bearing in mind the independence of prosecutors and having regard to the reforms that have taken place since the recommendation was adopted. If and when it sees fit, I would urge the CCPE to revise this recommendation in a manner similar to the revision of Recommendation No. R (94) 12, which is currently under way.

29. The recommendation in the Assembly's aforementioned report[15] aimed at cutting the "umbilical cord" of the right of justice ministers to give the prosecution instructions concerning individual cases would also reduce the risk of such instructions being used for the purposes of corruption.

30. Lastly, I would draw attention to the European Charter on the Statute for Judges,[16] which, although only a declaration, should serve as a reference for member states. As stated in its explanatory report, the charter "endeavours to define the content of the statute for judges on the basis of the objectives to be attained: ensuring the competence, independence and impartiality which all members of the public are entitled to expect of the courts and judges". More publicity should be given to this text, which sets out all the principles of the statute for judges, in particular as regards recruitment, appointment, career development (promotion), liability, remuneration and termination of office.

31. Another way of combating corruption, including that in the judicial sphere, might be to provide protection for whistle-blowers. Proper protection from reprisals by their employers or others for individuals who have the courage to report corruption would make corruption more "risky" for would-be perpetrators, as it would be more likely to be exposed. My colleague Pieter Omtzigt (Netherlands, EPP/CD) has prepared a report on this subject, approved by the Committee on Legal Affairs and Human Rights in June 2009,[17] which proposes specific measures to protect whistle-blowers at national and European level.

32. The Council of Europe has already introduced a battery of standard-setting instruments to combat corruption. However, merely ratifying the relevant conventions is insufficient to eradicate corruption: what is needed is a genuine political will backed up by practical action to fight it.

5. The situation in specific member states[18]

33. According to the 2009 Global Corruption Barometer[19] published by TI, the judiciary is the institution perceived to be most affected by corruption in Armenia, Bulgaria, Croatia, Georgia, Kosovo[20] and "the former Yugoslav Republic of Macedonia". There is, therefore, a worrying distinction between these countries and those – even more numerous – where corruption is generally seen as a problem that afflicts all public institutions: since it is the justice system that is responsible for prosecuting the corrupt and protecting "whistle-blowers", it is deeply discouraging for the public if the justice system itself is seen as being even more corrupt than other institutions.

34. At the same time, a Eurobarometer report prepared in 2008 on Europeans' attitudes towards corruption[21] contains some interesting facts about how the public perceives corruption in various sectors in European Union member states. It is striking to observe that, on average, 45% of the people interviewed in the 12 new European Union member states thought that giving or taking bribes was widespread among those working in the judicial system and 52% thought that it was widespread among those working in the police service, whereas in the 15-member European Union, the average was 22% and 25% respectively, in answer to the same questions. For instance, 65% of Slovaks and 60% of Latvians interviewed believed that such practices existed in the judiciary, as compared with 8% in Finland, 12% in Denmark and 14% in the United

14. https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)19&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.
15. Doc. 11993.
16. DAJ/DOC (98) 23.
17. See Doc. 12006.
18. The examples are presented in alphabetical order in English. The rapporteur has chosen to mention these countries because the relevant information is the most recent available. The fact that certain countries are not mentioned does not mean there are no problems.
19. www.transparency.org/news_room/in_focus/2009/gcb2009#dnld.
20. This reference is to be construed in full conformity with Resolution 1244 of the United Nations Security Council.
21. http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf, April 2008.

Kingdom; 77% of respondents in Estonia and 98% in Romania thought that such practices existed in the police, as compared with 7% in Finland and 16% in Germany. These figures are mitigated by the fact that, on average, only 8% of those interviewed said they had been asked to pay a bribe in the past twelve months.

35. The Council of Europe Commissioner for Human Rights (hereafter "the Commissioner") noted that "the politicised climate in which the judiciary is operating" in Albania "appears to have impacted negatively on the system of justice". He heard "complaints that political pressure prevented the judiciary from functioning independently and efficiently".[22] The co-rapporteurs of the Assembly's Monitoring Committee are concerned about "a weak, badly remunerated and partly corrupt judiciary".[23] The government has adopted an anti-corruption strategy for 2007 to 2013. This has led to a considerable increase in the number of corruption cases against middle- and high-ranking officials. However, the Commissioner notes that corruption remains very widespread in the judicial system, stressing that "both international and national studies indicate a high perception level of corruption in the justice system, seriously impeding its proper functioning and undermining public trust in institutions". According to a number of international observers, much remains to be done in this field, as the reforms geared to reinforcing the judicial system have been held up.

36. Where Armenia is concerned, the Commissioner noted that "the judiciary is still far from being independent", particularly because of pressure and intimidation of members of the judiciary "including from central and local authorities and prosecutors", exerting "improper" influence.[24] While some measures have been taken to facilitate "the proper exercise of the functions of a judge", the Commissioner stresses that "much still needs to be done to ensure adequate implementation of the new legislation and improve the public trust in the judiciary". The Commissioner considers the decisive role in selecting judges which the revised constitution assigns to the Council of the Judiciary, most of whose members are judges elected by their peers rather than by the president, as "a positive step on the way to a real independence of the judiciary". The Commissioner encourages the adoption of measures to make the process of selecting judges more transparent and fairer, to increase their remuneration (the low level of which exposes them to corruption) and to introduce mechanisms to promote and train judges in deontology (particularly on the basis of the Code of Judicial Ethics which came into force in December 2005).

37. During his visit to Azerbaijan, the Commissioner noted that "there is a general perception in Azerbaijan that corruption infiltrates most strata of society", but that "it would appear that the legislative framework to secure the independence of judges is in place".[25] Moreover, in order to strengthen the independence of judges and make them less vulnerable to corruption, their salaries increased by a factor of 25 between 2000 and the end of 2007. The Commissioner does, however, point out that "in spite of all these recent improvements – more judges, better selected and qualified, more aware of international human rights standards – the actual independence of the judiciary unfortunately still appears as far from being secured, in minds and deeds …". "The judiciary appears to be particularly exposed to and affected by corruption. Despite the efforts to reform the judiciary … much of the administration of justice seems to be influenced by pecuniary interests. As in many countries in fast transition from the former Soviet system, problems of corruption and dependence on the executive mar the Azerbaijani justice".

38. The authorities have adopted measures which demonstrate their will to combat corruption (notably by investigating and punishing more and more cases of corruption), but the Commissioner "would like to guard against the risk of partisan politics in the bringing of charges, the timing of charges or the severity of sentences".[26] In its report, TI also notes that despite the legislative improvements, no radical change has come about and that there is a discrepancy between the letter of the law and its implementation.

39. In their report, the co-rapporteurs of the Assembly's Monitoring Committee on Bosnia and Herzegovinanoted that "corruption is rife throughout the country".[27] A complete restructuring of the national court system was recommended as early as 2002. Many reforms have been undertaken since, but the functioning of the judicial system is still open to severe criticism.

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22. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Albania (27 October to 2 November 2007), CommDH(2008)8, 18 June 2008.
23. AS/Mon (2008) 30 rev., 20 November 2008, co-rapporteurs: Mr J. Laakso and Mr D. Wilshire.
24. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Armenia from 7 to 11 October 2007, CommDH(2008)4, 30 April 2008. The Assembly's Monitoring Committee shares this view; see Doc. 11628, 9 June 2008.
25. This impression is confirmed by the studies conducted by major international organisations and such specialist bodies as the OECD (Organisation for Economic Co-operation and Development) and GRECO (Council of Europe Group of States against Corruption).
26. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Azerbaijan from 3 to 7 September 2007, CommDH(2008)2, 20 February 2008.

40. After his visit to Bulgaria, the chair of the Assembly's Monitoring Committee described it as "a country with endemic corruption that has gained the ranks of the administration and the judiciary".[28] The Borilski case is considered as a clear illustration of this corruption. In this case, which involved the murder of a Bulgarian in France, the presumed murderers were acquitted despite the forensic evidence gathered by the French police and transmitted to the Bulgarian courts. One of the two defendants was none other than the son a former senior officer in the Bulgarian criminal investigation department, who has since become a highly influential lawyer.[29]

41. According to the European Commission, corruption has reached such a pitch in this country that it is influencing and distorting the whole political and democratic process. It is reported that a mere 20% of the Bulgarian population trust the judiciary, perceiving it as corrupt and ineffective (as compared with an average of 48% in European Union countries).[30] It is also reported that in 2007, before Bulgarian accession to the European Union, efforts had been made to curb corruption, such as that for example, in the tax department and the traffic police, but that the government had, conversely, tolerated a gradual increase in corruption in the judiciary.[31] Following European Union accession, work had been initiated to reinforce the judicial system and combat corruption, involving close co-operation between the European Commission, the member states and Bulgaria.[32] In November 2008 the European Commission blocked Bulgaria's access to nearly €500 million in European funding for its failure to fight corruption and organised crime. The chair of the Assembly's Monitoring Committee notes that the reform of the judiciary has led to many "cosmetic changes"[33] which have pushed the reforms in an "undesired direction". The independence of the judiciary is not yet guaranteed, particularly because the Minister of Justice presides over the Supreme Judicial Council, where he has a right to propose legislation.[34] In his note, the chair of the Monitoring Committee also suggests that within the Supreme Judicial Council, judges, prosecutors and investigating magistrates interfere in matters which do not concern them. He also notes that the new five-year probation period for new judges "raises serious difficulties for judicial independence". Lastly, he mentions his surprise "to find out that judges are trained only after their appointment and that there is no system of evaluation of their competences; … this, added to the widespread perception of corruption, gives rise to … mistrust towards the judiciary". Furthermore, lawyers, judges, prosecutors and examining magistrates are all represented on the Supreme Judicial Council, which means that the prosecutors on the Supreme Council also vote on judicial appointments and promotions.

42. In order to tackle these serious problems, Bulgaria has adopted two national anti-corruption strategies and two additional strategies (adopted in 2004 and 2009) to combat judicial corruption. However, these measures are deemed more declaratory than effective.[35] In 2008, a new agency was set up to investigate organised crime and high-level corruption (the State Agency for National Security). A section specialising in high-level corruption cases has been introduced within the Public Prosecutor's Office. Lastly, a new inspectorate working under the Supreme Judicial Council is responsible for high-profile criminal cases and for analysing the reasons for procedural delays before the courts. These innovations would suggest that the Bulgarian authorities have now realised the need to put an end to high-level corruption, including judicial corruption, and that the requisite political will exists. However, only practical results will prove that this is the case, and so far there are none. For example, prosecutions leading to criminal convictions should be brought against judges and prosecutors tainted by serious allegations of corruption. According to Freedom House, the problems were still there at the beginning of 2009.[36] I would suggest that the Assembly's Monitoring Committee keep a close watch on developments in this field, possibly devoting a specific thematic note to the subject.

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27. Doc. 11700, 15 September 2008.
28. AS/Mon (2008) 35 rev, 7 April 2009, Information note on the fact-finding visit to Sofia by the chair of the committee, Serhiy Holovaty, (5 to 7 November 2008).
29. "Une imposture bulgare? La justice est minée par la criminalisation rampante de l'Etat et la corruption" (A Bulgarian deception? Justice undermined by insidious State criminalisation and corruption), Le Monde, 15/16 February 2009.
30. "Safeguarding the Rule of Law in an Enlarged EU – The cases of Bulgaria and Romania", CEPS Special Report, April 2009, Susi Alegre, Ivanka Ivanova and Dana Denis-Smith, see: http://shop.ceps.eu/BookDetail.php?item_id=1833.
31. Ibid.
32. Co-operation and Verification Mechanism (CVM); see the latest report from February 2009, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0069:FIN:EN:PDF.
33. For instance, although the broad immunity enjoyed by judges in the past has been reduced to a merely functional one, this has not solved the problem of judicial corruption.
34. CDL-AD(2008)009.
35. "Safeguarding the Rule of Law in an Enlarged EU – The cases of Bulgaria and Romania", CEPS Special Report, April 2009, Susi Alegre, Ivanka Ivanova and Dana Denis-Smith, see: http://shop.ceps.eu/BookDetail.php?item_id=1833.
36. Freedom House, "Nations in Transit Report 2008", www.freedomhouse.org/template.cfm?page=17&year=2008.

43. Where Croatia is concerned, TI notes that the judicial system lacks transparency and that there have been cases of corruption. The European Commission considers the state of the judiciary as one of the main obstacles to the country's accession to the European Union. According to opinion polls, the general public consider the Croatian judiciary as one of the most corrupt sectors in the country. Very few members of the judiciary have been convicted of corruption to date.[37]

44. Although it acknowledges that it has difficulty assessing judicial corruption in the Czech Republic (due to lack of accurate data), TI considers that the Czech judicial system is not sufficiently independent, coherent or efficient. TI also notes that the political authorities are not averse to interfering in the judicial system.

45. The co-rapporteurs of the Assembly's Monitoring Committee on Georgia recently noted that "the authorities have initiated a comprehensive package of reforms of the judiciary and justice system, with the overall aim of strengthening the independence of the judiciary …", adding that they "intended [subsequently] to provide a detailed analysis of these reforms".[38] I would encourage them to analyse the specific issue of judicial corruption, and note with interest that in their previous report the co-rapporteurs had pointed out that major progress had been made "in moving from a corrupt judicial bureaucracy to a modern European judiciary system", and that the reform of the judiciary in Georgia had "advanced at a quicker pace and with clearer objectives than in many other transformation societies of central and eastern Europe".[39] Several measures have been adopted in Georgia since 2004 to tackle the sources of judicial corruption, particularly by substantially increasing the remuneration of judges and reinforcing controls on bribery (several judges have been dismissed for accepting bribes). Nevertheless, while bribery has decreased, TI points out that the judiciary is still influenced by the executive. The current reform of the judiciary provides an opportunity for reinforcing its independence.

46. Despite the virtually systematic denial of the existence of any form of judicial corruption in western European courts, the countries in question are not immune from the problem. Judicial transparency in the broad sense requires reinforcement in these countries too. In Germany the "Pirate Bay" case concerned alleged corruption on the grounds of judicial partiality. The case, which concerned copyright, was examined by a judge who is an active member of several associations and foundations advocating the reinforcement of copyright (he is even a member of the governing board of one of them). In this case, which involved millions of euros in damages, the prison sentence served on the defendants surprised all the observers at the proceedings. Although judges must have the right to participate in activities of society, such as labour union activities for example, one has to guarantee that there is no bias in the decision making.

47. The fact that only a few German *Länder* have judicial self-governance bodies along the lines of the judicial service commissions found in nearly all European countries, together with the fact that justice ministers in most *Länder* and at federal level are allowed to give the prosecution instructions concerning individual cases, prompted Mrs Leutheusser-Schnarrenberger, when writing her aforementioned report, to suggest a number of, in my view very sensible, reforms. Germany should set an example and introduce participatory bodies to protect the judiciary as far as possible from any political interference which, as we have seen in other countries, can open the door to corruption.

48. On a positive note, I note that unlike most western European states, Germany was not afraid of infringing the taboo, and in 2000 the *Bundeskriminalamt* (BKA) conducted an extensive survey to assess the extent of corruption in the police, the judiciary and the customs offices.[40] This is an example to follow, and I would encourage all member states to conduct similar surveys.

49. Italy has seen politico-judicial scandals (which the Italian press call the "wars of the official gowns") involving clear suspicions that certain judges were being bribed to protect certain entrepreneurs and politicians. During the hearing before the committee in Moscow in November 2008, one of the guest experts, Mr Davigo, pointed out that the Italian justice system had been very severe with corruption in the judiciary. He added that it was nevertheless problematical that, even though Article 319 of the Penal Code punishes judicial corruption, there was no offence of influence peddling in Italy. While cases of judicial corruption were very rare in Italy, when they did occur they were very serious. He outlined one example involving a politician (a former minister) who had argued that his obligations as a parliamentarian prevented him from appearing in court.

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37. Only one at the time of finalisation of the TI report.
38. AS/Mon (2009) 16 rev, 30 April 2009, co-rapporteurs: Mr M. Eörsi and Mr K. Islami.
39. Doc. 11502 rev., 23 January 2008.
40. www.bka.de/kriminalwissenschaften/veroeff/inh/forschungsreihe_pdf/2_46_einschaetzungen_zur_korruption_in_polizei_justiz_und_zoll.pdf.

After having obtained a large number of adjournments, he had finally been convicted. This case had led to conflict between the judicial and political authorities, the Italian Senate having criticised the judges' decision in 2001.

50. Another recent case also led to heated debate. It involved the transfer to another court of the Catanzaro prosecutor, Luigi de Magistris, at the request of his superiors and the then Minster of Justice, Clemente Mastella. Mr de Magistris filed a complaint against this transfer, and the judges dealing with his complaint suspected that the transfer had been geared to damaging his reputation and removing him from an investigation which had to be hampered (the inquiry led by Mr de Magistris had highlighted links between local entrepreneurs, both left- and right-wing politicians, a number of judges and the former Minister of Justice himself).

51. In Italy, some political acts to prevent prosecution through "made-to-measure" legislation are barely concealed. In 2006, the Milan Public Prosecutor's Office applied to initiate proceedings against Silvio Berlusconi and his lawyer David Mills for corruption in relation to legal documents (notably for presumed perjury by the lawyers). On 23 July 2008 a law was adopted granting judicial immunity to the President of the Council (Prime Minister) in the exercise of his functions. David Mills was sentenced to four-and-a-half years' imprisonment for "perjury intended to secure impunity for Silvio Berlusconi and his Fininvest group or, at least, to preserve the considerable profits made" (according to a Milan court). Sabine Leutheusser-Schnarrenberger's 2004 report on the Italian Law on Legitimate Suspicion is likewise of relevance here.[41] In it, she found that the law unduly slowed down the course of justice in certain cases, undermined trust in judges as a whole and was inimical to the principle of equality before the law.

52. The Assembly's Monitoring Committee has also expressed its concern about judicial corruption in Moldova (where some judges allegedly grant political favours for money), and has recommended "guaranteeing the independence of the judiciary and increasing the effectiveness and professionalism of the courts".[42] The Monitoring Committee co-rapporteurs note that a number of high-profile cases "could easily be interpreted as politics interfering with justice". The national anti-corruption strategy for Moldova is currently being implemented under a 2007-2009 action plan.

53. During his visit to Montenegro in 2008, the Commissioner noted that "corruption is a cross-cutting issue affecting all spheres of public life and is the main obstacle for any effective implementation of human rights standards".[43] He even mentions a "widespread public perception that corruption infiltrates the political sphere, legal system and public administration in Montenegro".[44] Despite the adoption of a law on the prevention of conflicts of interest, geared to limiting incompatible or multiple functions by requiring civil servants to declare their income, functions and allowances, its implementation leaves much to be desired. The Commissioner does, however, note that major changes made under the new constitution to the organisation of the judiciary, including transferring the power to appoint and dismiss judges from the parliament to the High Judicial Council. He considers that "the perceived lack of independence of the judiciary has been partially addressed with the new constitution that vested the right of both appointment and dismissal of judges in the reformed High Judicial Council instead of parliament. The exception to this rule is the Supreme Court President who remains elected by parliament". However, some concerns have been raised about the membership of the High Judicial Council, which apparently fails to ensure its full independence and autonomy or safeguard adequately against political influence.[45]

54. Romania has similar problems to those encountered in Bulgaria and the same mechanism for monitoring progress was introduced by the European Commission after the country's accession.[46] Public trust in the judiciary has continued to decline in recent years.[47] The Supreme Judicial Council reportedly acts as a syndicate attempting to obviate the requirements vis-à-vis transparency.[48] Since the second half of 2008,

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41. Doc. 10124, 2 April 2004.
42. Doc. 11374, 14 September 2007.
43. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Montenegro from 2 to 6 June 2008, CommDH(2008)25, 8 October 2008.
44. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Montenegro from 2 to 6 June 2008, CommDH(2008)25, 8 October 2008, paragraph 28.
45. "Only four members of the ten-member High Judicial Council are judges elected by their peers, the other members being the Supreme Court President, two members of parliament, the Minister of Justice as well as two lawyers proposed by the President of State. Another concern is that the *ex officio* chairing of the High Judicial Council by the Supreme Court President may endanger the body's supervisory role over the Supreme Court". CommDH(2008)25.
46. See the latest report, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0070:FIN:EN:PDF.
47. "Safeguarding the Rule of Law in an Enlarged EU – The cases of Bulgaria and Romania", CEPS Special Report, April 2009, Susi Alegre, Ivanka Ivanova and Dana Denis-Smith, see: http://shop.ceps.eu/BookDetail.php?item_id=1833.

efforts have been made to reinforce the transparency of the judiciary, but they have been limited to technical aspects (publication of case law). The procedures for recruiting and promoting judges and judicial staff have been made more transparent in order to reinforce the independence of the judiciary.

55. I am alarmed to note that although the law prohibits this, judges, indeed whole benches, are often replaced for no apparent reason.[49] This raises the question of the random assignment of cases to courts and suggests that the latter are subject to certain types of influence.[50]

56. It is vital not only that the instruments for combating corruption exist, but above all that the political will to combat corruption is genuine and determined. This political determination must be affirmed and backed up with actions. In this context, it is interesting to note that a former Minister of Justice, Ms Monica Macovei left her office partly because of the break-up of the governing coalition but also because of her strong anti-corruption rhetoric.[51]

57. Where Russia is concerned, I note that the Monitoring Committee co-rapporteurs "intend to address the issue of the fight against corruption … as one of the key topics of [their] next visit".[52] This is an excellent idea. TI considers Russia as an example of a country in which the political authorities have recently increased their influence over the judiciary.[53] In the execution of civil sentences and in tax matters, politics also has a great influence. The rapporteur refers to the report prepared by Sabine Leutheusser-Schnarrenberger on the "The circumstances surrounding the arrest and prosecution of leading Yukos executives"[54]and to Resolution 1418 (2005) adopted on the basis of that report. In this resolution, the Assembly said that the prosecutions of Mikhail Khodorkovsky and two other former Yukos executives went beyond the mere pursuit of justice to include such elements as "the weakening of an outspoken political opponent, the intimidation of other wealthy individuals and the regaining of control of strategic economic assets" and that they were "arbitrarily singled out by the authorities". The Yukos case is another example of the close relationship between "political" motives and corruption in the strict sense: the circumstances surrounding the sale at auction and resale of Yuganskneftegaz, Yukos's main production unit, as described in the aforementioned report, have raised doubts in this respect. Moreover, like Mrs Leutheusser-Schnarrenberger, the rapporteur notes with much concern "the fact that the two men are again being tried for facts which appear to be essentially the same as those for which they were condemned in 2005".[55] It seems that the new process has only been initiated in order to stop the release of the former Yukos executives, whose original sentences are due to expire shortly.

58. In the case of *Kudeshkina v. Russia,*[56] the European Court of Human Rights noted that the applicant's dismissal from the judiciary for having publicly criticised senior magistrates constituted a violation of the European Convention on Human Rights. In this case the applicant had publicly accused senior magistrates of exerting pressure on her over a major corruption case in which a police investigator was suspected of abuse of powers. In her statements, she also suggested that this was not the first time the Russian courts had been used for the purposes of commercial, political or personal manipulation. The Court noted in this context that the penalty applied, namely the applicant's dismissal, was liable to have a "chilling effect" on judges wishing to take part in the public debate on the effectiveness of the judicial institutions.

59. In her new report, Mrs Leutheusser-Schnarrenberger talks about the considerable pressure put on judges to convict.[57] The case of Judge V.P. Savelyuk seems to show that the fight against judicial corruption can itself give rise to infringements of judicial independence. It is clear from this example that great sensitivity

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48. Ibid.
49. Ibid.
50. Allocating cases to judges according to objective, quasi-automatic procedures is also recommended in Sabine Leutheusser-Schnarrenberger's aforementioned report as a way of preventing the judicial process from being used for political purposes.
51. "Safeguarding the Rule of Law in an Enlarged EU – The cases of Bulgaria and Romania", CEPS Special Report, April 2009, Susi Alegre, Ivanka Ivanova and Dana Denis-Smith, see http://shop.ceps.eu/BookDetail.php?item_id=1833: "the replacement of Monica Macovei in 2007 with an inexperienced lawyer, Tudor Chiuariu, was widely viewed as a political decision resulting from the break-up of the governing coalition, but also because of Macovei's strong anti-corruption rhetoric."
52. AS/Mon (2009) 09 rev., 30 March 2009, co-rapporteurs: Mr L. van den Brande and Mr T. Pangalos.
53. A tendency that was criticised in GRECO's 2008 report on the Russian Federation, paragraphs 147 and 149, www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2008)2_RussianFederation_EN.pdf.
54. Doc 10368, 29 November 2004.
55. http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4531.
56. Application No. 29492/05, 26 February 2009; appeal judgment pending before the Grand Chamber.
57. See Doc. 11993, paragraph 69 ff.

and scrupulous respect for the rights of the defence are required when prosecuting judges accused of corruption. A highly publicised but procedurally dubious conviction of a judge who may very well be innocent is unlikely to restore public confidence in any lasting way, let alone resolve the problem of judicial corruption.

60. The HSBC/Hermitage case, which is described in detail in the aforementioned report,[58] provides a striking example of the dramatic consequences, even for major foreign investors, of the alleged collusion between various law enforcement and tax officials and various courts, which is also said to have involved intimidation of lawyers.[59] Such cases demonstrate the vital importance of having an honest, effective justice system, one that is capable of protecting the victims of criminal machinations and prosecuting those responsible, and not the other way round.

61. In his 2009 report on Serbia, the Commissioner notes that "the appointment of judges and prosecutors must be more transparent and free of political influence in order to start rebuilding public confidence in the judiciary and prosecution".[60] The Venice Commission had already denounced "a recipe for politicisation of the judiciary" owing to the role played by the National Assembly in the election of judges.[61] A law on the Anti-Corruption Agency was adopted in October 2008, but it remains to be seen whether this agency will receive the requisite human and financial resources.

62. In connection with "the former Yugoslav Republic of Macedonia", the Commissioner noted during his visit in 2008 that "the country's judiciary was frequently described by both national and international stakeholders as weak and inefficient, with widespread perceptions of political influence and corruption".[62] The Commissioner adds that "to come to terms with shortcomings in the judicial sphere, the government in 2004 adopted both a strategy and an action plan for the reform of the judiciary. The aim was to strengthen the independence and efficiency of the judiciary". A number of reforms ensued (clarification of disciplinary procedures, training and appointment of judges, etc.). These reforms were described as "substantial progress"[63] by the chair of the Assembly's Monitoring Committee, and as "important steps" by the Commissioner, although the latter notes that "public confidence in the judiciary remains very low".[64]

63. The chair of the Assembly's Monitoring Committee has noted a number of questions surrounding the independence of the judiciary in Turkey. The High Council of Judges "cannot initiate the prosecution of a judge or prosecutor without the consent of the Minister of Justice".[65] This presents the risk that where political interests are at issue, no prosecution will be initiated. Furthermore, a recent survey conducted by TESEV[66] concludes that the judiciary is not objective and often decides in favour of the state. TI notes that public mistrust of the judicial system has increased over the past few years. Judges are disproportionately protected by immunity, which even protects them when they have demonstrably accepted bribes, and it is hardly ever lifted. TI also denounces the frequent use of reports by private experts, who are open to bribery by parties to proceedings. Judges' decisions are often based on such reports. For a number of years, however, efforts have been made to combat corruption in the judiciary. Judges and prosecutors have been imprisoned or dismissed for accepting bribes. TI suggests that the membership of the High Council of Judges should be modified by abolishing the seats of the Minister of Justice and his under-secretary. This would considerably reduce governmental influence over the judicial appointment and promotion procedures.

64. In their latest information note, the co-rapporteurs of the Monitoring Committee on Ukraine mentioned their concern about plans which jeopardised the independence of the judiciary, notably concerning the Minister of Justice's intention to subordinate the State Judicial Administration and Academy of Judges to his

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58. Idem, paragraphs 87-91 and 108-112.
59. Idem, paragraphs 87 ff. and 108 ff.
60. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Serbia from 13 to 17 October 2008, CommDH(2009)8, 11 March 2009, paragraph 65.
61. CDL-AD(2008)006 ; see also Doc. 11701 Addendum.
62. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to "the former Yugoslav Republic of Macedonia" from 25 to 29 February 2008, CommDH(2008) 21, 11 September 2008, paragraph 30.
63. AS/Mon (2008) 31 rev., 20 November 2008, Information note on the fact-finding visit by the chair of the committee, Serhiy Holovaty (2 to 5 November 2008).
64. Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to "the former Yugoslav Republic of Macedonia" from 25 to 29 February 2008, CommDH(2008)21, 11 September 2008; "Surveys by Transparency International showed that it is one of the countries in Europe most affected by petty bribery. The lack of confidence in the judiciary constitutes a serious problem. About 85% of the population have described their legal system and the judiciary as corrupt".
65. AS/Mon (2009) 10 rev., 7 April 2009, Information note on the fact-finding visit to Turkey by the chair of the Monitoring Committee, Serhiy Holovaty (24 to 26 November 2008) as part of the post-monitoring dialogue with Turkey.
66. Turkish Economic and Social Studies Foundation, "'Justice can be Bypassed Sometimes': Judges and Prosecutors in the Democratisation Process", May 2009.

ministry.[67] In such a position of subordination judges would naturally be more exposed to any pressure the government might wish to exert. In the same note, the co-rapporteurs added that "the majority of the population believe that the judiciary is the most corrupt institution in Ukraine" (according to the 2007 study by Transparency International).

65. The Serious Organised Crime Agency in the United Kingdom has noted that organised crime has recourse to corruption in its activities, and that on several occasions law enforcement officers have been bribed and have collaborated with criminals.[68] In recent years the judicial system has undergone a major overhaul in order formally to guarantee its independence from the executive, including a reform of the appointment procedures in all British courts. Indeed, according to our colleague, Sabine Leutheusser-Schnarrenberger, "the creation, in 2006, of the Judicial Appointments Commission (JAC) […] further strengthens the principle of independence of the judiciary from political influence". The role of the Attorney General, however, which has given rise to heated debate, notably in connection with the British Aerospace (BAE) and "cash for honours"[69] cases, still remains to be clarified.

6. Requisite measures to combat judicial corruption effectively

6.1. Prevention

66. My first recommendation would be to introduce measures to prevent corruption among members of the judiciary, including in member states where it is not yet a major problem. This is because it is easier to prevent judicial corruption from emerging in the first place than to cure it once it has spread through the system.

67. Drawing up codes of ethics for those involved in the administration of justice, as well as mechanisms to ensure their application, would help to develop this preventive aspect. As pointed out by the CCJE in its Opinion No. 3 (mentioned above), "Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts". This opinion should serve as a reference when drafting codes of ethics.

6.2. The need to collect reliable information

68. It is also important to have a clearer picture of judicial corruption in order to be able to combat it more effectively. I believe there is a need to obtain reliable information through detailed statistics.

69. There are, of course, numerous statistics already, including those collected every year by Transparency International for its Global Corruption Barometer. These statistics tend to be fairly general, however. They provide a measure merely of the impressions and perceptions of the persons interviewed and are not of an official nature.

70. It would be helpful to have statistical information on prosecutions and convictions of members of the judiciary in Council of Europe member states. When correlated with the other statistics referred to above, they would give an idea of how vigorously (or otherwise) member states are tackling the root of the problem. It needs to be clearly understood from the outset, therefore, that the countries which have made the most progress in terms of transparency are the ones that will have the "worst" statistics. Any policy-based assessment of these countries must make allowance for this, so as not to penalise the very countries that have done the most to combat corruption in the judiciary.

71. Perhaps an existing Council of Europe body could carry out a study to this effect. In order to be of value, it would need to be updated every two years. Such information would certainly be of use to the Group of States against Corruption (GRECO), which, in its first and second evaluation rounds, attaches particular importance to the independence of the judiciary from the political authorities and other sources of influence.

72. I am somewhat concerned here by an initiative under way at the European Commission. Following the European Council decision in 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption (2008/801/EC), the Communication from the Commission to the European Parliament and the Council of 10 June 2009 concerning the Stockholm Programme calls for "a

67. AS/Mon (2008) 06 rev, 18 March 2008, co-rapporteurs: Ms H. Severinsen and Ms R. Wohlwend.
68. www.soca.gov.uk/.
69. See Doc. 11993, paragraphs 16-34.

periodic evaluation of the efforts made by the Union and the member states" to combat corruption. I believe that, were it to win the support of European Union member states, such an initiative would inevitably lead to duplication of the work that is already being done by GRECO.

73. I would ask the Committee of Ministers to encourage closer co-operation between GRECO and the relevant European Union institutions, including through "participation of the European Community" in the work of GRECO, as envisaged in the GRECO Statute, in order to avoid overlap and promote synergies.

74. The preventive measures should also include effective protection for whistle-blowers, who are a risk factor and hence a deterrent for anyone tempted to engage in corruption. Our colleague, Pieter Omtzigt (Netherlands, EPP/CD) has made some proposals along these lines which I fully endorse.

6.3. Prosecutions

75. According to the 2008 Eurobarometer report on the attitudes of Europeans towards corruption,[70] the majority of European Union citizens do not consider that there are enough successful prosecutions in their country to deter people from giving or taking bribes (58%). In Finland, 49% of those interviewed thought that there were enough, compared with just 17% in Slovenia.

76. As pointed out by GRECO in some of its reports, "justice is not only to be done in a correct way, it must also be seen to be done in such a way in order to change the public perception …",[71] particularly in countries where the public has no confidence in the justice system.

6.4. Concrete proposals

77. GRECO has highlighted several fields of major importance for judicial independence and therefore for possible judicial corruption:

– procedures for selecting and appointing judges;

– systems for promoting or assessing judges;

– deficient working conditions (including insufficient remuneration);[72]

– procedures for selecting and appointing prosecutors;

– systems for promoting or assessing prosecutors;

– procedures for dismissing prosecutors.

78. The TI report singles out four recurrent problems in the countries surveyed: 1. appointment of members of the judiciary; 2. terms of office and working and salary conditions; 3. responsibility and disciplinary measures; and 4. transparency.

79. TI also notes that insufficient account has been taken of these elements in the various judicial reforms over the last two decades, which have mainly concentrated on the administrative aspects of courts.

80. During the hearing before the committee, the chair of GRECO, Mr Drago Kos, outlined the following measures which should be introduced to effectively combat judicial corruption:

– members of the judiciary should receive remuneration appropriate to their work in order to minimise the risk of being tempted to secure additional income;

– recruitment, promotion and dismissal procedures for judges and prosecutors must be clear, transparent, apolitical and non-partisan – in this respect, the European Charter on the Statute for Judges envisages the intervention of an authority independent of the executive and legislative powers for every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge;

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70. http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf, April 2008.

71. See, in particular, the 2008 GRECO report on the Russian Federation, paragraph 148, www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2008)2_RussianFederation_EN.pdf and the GRECO report on Ukraine, paragraph 88, www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_en.pdf.

72. The study by the European Commission for the Efficiency of Justice (CEPEJ) is an excellent tool for evaluating judges' remuneration, a commensurate level of which helps to guarantee their independence (CEPEJ Report entitled "European Judicial Systems – Edition 2008", published in September 2008).

– judges' and prosecutors' terms of office must be sufficiently long and not subject to any external evaluation of their work;

– the absolute independence of judges' and prosecutors' activities from any undue interference must be guaranteed;

– impartial supervisory mechanisms must be introduced to ensure appropriate management of courts and public prosecutor's offices;

– specific objective mechanisms for ensuring responsibility on the part of judges and prosecutors must be developed without undue interference in their independence or impartiality, while guaranteeing protection for plaintiffs from reprisals and providing for effective sanctions;

– professional and ethical standards for judges and prosecutors must be devised, accompanied by effective monitoring mechanisms;

– judicial immunities must not constitute excessive obstacles to the effective prosecution of corrupt members of the judiciary;

– the judicial authorities must have sufficient human and material resources;

– some degree of judicial specialisation is required;

– it is vital to provide the judiciary with specific training in corruption and ethics;

– the judicial authorities must have ready access to the expert knowledge they need;

– judges and prosecutors must remain aware at all times of the importance of their role in a modern society.

81. In order to be effective, the fight against corruption must comprise investigations, prosecutions and, ultimately, convictions. Criminals must always be punished in accordance with the law.

82. Accordingly, the European Charter on the Statute for Judges enshrines judges' "right of appeal". Any judge who considers that his or her independence, or that of the legal process, is threatened must be able to refer the matter to an independent body.

83. Traditions also play a very important role. In a culture where corruption is not accepted at all, deviating behaviour becomes more difficult. Such behaviour also carries with it a higher risk, and is therefore less common, when whistle-blowers are accorded due respect and protection.

84. It is necessary to have specialised police forces, examining magistrates and experts, all receiving appropriate training and having sufficient resources to ensure that effective inquiries be conducted.

85. However, while the legislation exists to prosecute criminals, there also has to be a political will to implement it. Where corruption is concerned, especially corruption of the judiciary, this political will must be at the highest possible level.

7. Conclusions

86. It is absolutely vital to eradicate the phenomenon of judicial corruption as a fertile breeding ground for impunity.[73]

87. The key to such eradication is a genuine political will. We have had enough of meaningless action plans and declarative promises: judicial and political corruption nurture and reinforce one another. Where the judicial system is corrupt, it is unlikely that politicians using threats and bribery to escape justice will ever be convicted. Such a system excludes de facto the honest candidates who might wish to tackle the real roots of the problem. Whereas if one is proud of one's profession and its high standards, there is less temptation to fraud.

88. We must face the facts, the damning reports: judicial corruption is deeply rooted in several Council of Europe member states, with the approval of prominent players in the executive bodies of these states (who benefit from the situation).

73. See the report by Mrs Herta Däubler-Gmelin on "The state of human rights in Europe: the need to eradicate impunity", Doc. 11934.

89. The Council of Europe can, and must, play a role in stepping up the supervision of the phenomenon in its member states, and the Parliamentary Assembly in particular must exert the requisite political pressure on the political organs of the countries in question. The Assembly must step up its monitoring activities in this field because the known cases of corruption are by definition only the tip of the iceberg.

90. Nor can we turn a blind eye to judicial corruption in member countries which do not, on the face of it, feel concerned by this problem. Corruption can take a wide variety of forms which appear quite harmless and banal but are in fact highly pernicious. I would urge all Council of Europe member states to engage in self-criticism and overcome their taboos by initiating comprehensive surveys of corruption within their own judicial systems.

91. Lastly, when a judicial system is corrupt, the whole democratic system rots with it. As Transparency International concludes in its report, "it is difficult to exaggerate the negative consequences of a corrupt judicial system", so overwhelming is its capacity for eroding an entire state.

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Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc. 11330, Reference 3368 of 1 October 2007

Draft resolution and draft recommendation adopted unanimously by the committee on 11 September 2009

Members of the Committee: Mrs Herta **Däubler-Gmelin** (Chairperson), Mr Christos **Pourgourides**, Mr Pietro **Marcenaro**, Mr Rafael Huseynov (Vice-Chairpersons), Mr José Luis **Arnaut**, Mrs Meritxell **Batet Lamaña**, Mrs Marie-Louise Bemelmans-Videc, Mrs Anna Benaki-Psarouda, Mr Petru Călian, Mr Erol Aslan Cebeci (alternate: Mr Mevlüt **Çavuşoğlu**), Mrs Ingrida **Circene**, Mrs Ann **Clwyd**, Mrs Alma Čolo, Mr Joe Costello, Mrs Lydie Err, Mr Renato **Farina**, Mr Valeriy **Fedorov**, MrJoseph Fenech Adami, Mrs Mirjana Ferić-Vac, Mr György **Frunda**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mrs Svetlana Goryacheva, Mrs Carina Hägg, Mr Holger Haibach, Mrs Gultakin Hajibayli, Mr Serhiy **Holovaty**, Mr Johannes Hübner, Mr Michel Hunault, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Željko Ivanji, Mrs Iglica Ivanova, Mrs Kateřina Jacques, Mr András Kelemen, Mrs Kateřina Konečná, Mr Franz Eduard **Kühnel**, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Aleksei Lotman, Mr Humfrey Malins, Mr Andrija Mandić, Mr Alberto Martins, Mr Dick **Marty**, Mrs Ermira Mehmeti, Mr Morten Messerschmidt, Mr Akaki **Minashvili**, Mr Philippe Monfils, Mr Alejandro **Muñoz Alonso**, Mr Felix **Müri**, Mr Philippe Nachbar, Mr Adrian **Năstase**, Ms Steinunn Valdís Óskarsdóttir, Mrs Elsa Papadimitriou, Mr Valery Parfenov, Mr Peter Pelegrini, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Valeriy Pysarenko (alternate: Mr Hryhoriy **Omelchenko**), Mr Janusz **Rachoń**, Mrs Marie-Line Reynaud, Mr François Rochebloine, Mr Paul **Rowen**, Mr Armen **Rustamyan**, Mr Kimmo **Sasi**, Mr Fiorenzo Stolfi, Mr Christoph Strässer, Lord John Tomlinson, Mr Joan Torres Puig, Mr Tuğrul **Türkeş**, Mrs Özlem **Türköne**, Mr Viktor Tykhonov (alternate: Mr Ivan **Popescu**), Mr Øyvind **Vaksdal**, Mr Giuseppe Valentino, Mr Hugo **Vandenberghe**, Mr Egidijus Vareikis, Mr Luigi **Vitali**, Mr Klaas de Vries,Mrs Nataša **Vučković**,Mr Dimitry **Vyatkin**, Mrs Renate Wohlwend, Mr Jordi **Xuclà i Costa**

NB.: the names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Szklanna, Ms Heurtin