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Judicial corruption: urgent need to implement the Assembly's proposals

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Kimmo SASI, Finland, Group of the European People's Party

Summary

The Committee on Legal Affairs and Human Rights reiterates that corruption among judges undermines the foundations of the rule of law, severely impedes the protection of human rights, flaws the principles of legality and legal certainty and jeopardises the very possibility of fighting corruption in other sectors of society.

The committee notes that public trust in the integrity of the judiciary continues to be very low in a number of member States, and that the judiciary is perceived as being among the most corrupt institution in Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Lithuania, the Republic of Moldova, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain and Ukraine. It also deplores the fact that crucial aspects in the fight against judicial corruption, most notably concerning the implementation of anti-corruption legislation and access to data, identified in earlier Parliamentary Assembly resolutions, are left unaddressed by member States.

Member States are invited to implement fully and in a timely manner all relevant recommendations of the organs and monitoring bodies of the Council of Europe, in particular those of the Group of States against Corruption (GRECO).

Lastly, the committee asks the Assembly to renew its call on the Committee of Ministers to elaborate a model code of conduct for judicial officials, and to gather figure-supported information on prosecutions and convictions of judges for corrupt conduct in member States.

1. Reference to committee: Doc. 13355, Reference 4017 of 27 January 2014.

Contents **Page**

A. Draft resolution[2]

1. The Parliamentary Assembly considers judicial corruption as a matter of great concern. It undermines the foundations of the rule of law and the very possibility of fighting corruption in other sectors of society.

2. Judicial corruption severely impedes the protection of human rights, in particular judicial independence and impartiality. It also undermines public trust in the judicial process and flaws the principles of legality and legal certainty.

3. While recognising that the perception of judicial corruption cannot serve as the sole indicator for the actual extent of this phenomenon, the Assembly is alarmed that public trust in the integrity of the judiciary continues to be very low in a number of member States, with the judiciary being perceived, according to Transparency International's 2013 Global corruption barometer, as being among the most corrupt institutions in Albania, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Lithuania, the Republic of Moldova, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain and Ukraine. In the case of Romania, this may be partly explained by the country's considerable efforts to increase transparency. It is important, however, that the existence of judicial corruption be assessed in the context of the relevant legal framework which exists in a given country and, more importantly, the effectiveness of tools used to combat corruption.

4. Judicial corruption takes complex forms and comprises both case-related and career-related corruption. Council of Europe Member States must canalise their efforts with regard to both of these aspects and provide effective mechanisms which allow for identification and investigation of, and adequate sanctions in cases of corrupt practices in the judiciary.

5. The Assembly deplores the fact that crucial aspects in the fight against judicial corruption, most notably concerning the implementation of anti-corruption legislation and access to data, identified in its Resolution 1703 (2010) and Recommendation 1896 (2010) on judicial corruption, are still left unaddressed by member States.

6. In order to fight judicial corruption, the Assembly invites member States to, in particular:

6.1. sign and ratify, if they have not yet done so, the relevant conventions of the Council of Europe, namely the Civil Law Convention on Corruption (ETS No. 174) and the Criminal Law Convention on Corruption (ETS No. 173) and its Additional Protocol (ETS No. 191);

6.2. implement fully and in a timely manner all relevant recommendations of the organs and monitoring bodies of the Council of Europe, especially:

6.2.1. the Assembly's resolutions and recommendations, most notably Resolution 1703 (2010) and Recommendation 1896 (2010) and Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law;

6.2.2. the recommendations issued by the Committee of Ministers, in particular Recommendation Rec(2000)10 on codes of conduct for public officials and Recommendation Rec(2010)12 on judges: independence, efficiency and responsibilities;

6.2.3. the recommendations adopted by the Group of States against Corruption (GRECO), in particular those emanating from its fourth evaluation round which focuses, *inter alia,* on corruption within the judiciary;

6.2.4. the recommendations contained in the opinions on national legislation issued by the European Commission for Democracy through Law (Venice Commission);

6.2.5. the guidelines and reports adopted by the European Commission for the Efficiency of Justice (CEPEJ) in its work on the evaluation of the judicial systems;

6.2.6. the recommendations issued by the Council of Europe Commissioner for Human Rights with regard to the administration of justice, the functioning of the judicial systems and the prevention of corrupt practices among the judiciary;

6.3. give full effect to the judgments of the European Court of Human Rights, especially those which impact on the prevention and eradication of judicial corruption;

2. Draft resolution adopted unanimously by the committee on 19 May 2015.

6.4. align their national legislation and practice with the standards developed in the relevant international instruments and monitoring bodies, especially with regard to the criminalisation of corruption, immunities of judges, organisation of disciplinary bodies, conflicts of interest, declaration of assets, as well as career-related aspects (recruitment, promotion, dismissal of judges);

6.5. strengthen legislation to sanction corruption and provide all necessary means and support for its proper implementation by effectively investigating and prosecuting cases of corruption in the judiciary;

6.6. adapt legislation and practice so as to allow an appropriate assessment of corrupt practices within the judiciary that are particularly difficult to decipher, such as those related to exchange of favours, hierarchical pressure or external interference;

6.7. enhance the quality, education and status of the judicial profession so as to ensure ethical behaviour of judges, and strictly scrutinise any career-related practices which pose a risk of corruption or affect the independence and impartiality of judges throughout their careers;

6.8. put into place appropriate procedures to eradicate political interference and undue influence in the judicial process;

6.9. keep track of, and follow up on, the implementation of anti-corruption measures by making available data pertaining to the number and nature of alleged and proven cases of judicial corruption, as well as on factors needed for a proper assessment of the phenomenon;

6.10. where perception of the existence of widespread judicial corruption persists, take all necessary measures to restore trust in the judicial system; monitor closely and consistently the evolution of perception indicators and develop a viable strategy to remedy the lack of public trust in the judiciary;

6.11. continue to collaborate closely with the Council of Europe monitoring bodies, especially GRECO, and provide them with all the information needed for their work, and engage actively in redressing the shortcomings identified;

6.12. guarantee an environment in which cases of (alleged) judicial corruption can be uncovered, so as to foster a climate in which the root causes of judicial corruption can be eradicated.

7. The Assembly notes that the Secretary General of the Council of Europe has explored, in his two annual reports on the “State of Democracy, Human Rights and the Rule of Law in Europe” published to date, the existence of corruption in member States, and urges him to indicate clearly, in future reports, the member States in which problems relating to, in particular, judicial corruption have been identified.

8. The Assembly will continue to monitor closely the progress made by member States in the implementation of the present resolution.

B. Draft recommendation[3]

1. The Parliamentary Assembly, recalling its Resolution … (2015) on judicial corruption: urgent need to implement the Assembly's proposals, reiterates its conviction that corruption within the judiciary erodes the credibility of the judicial system, threatens the rule of law and impedes the effective protection of human rights and fundamental freedoms.

2. The Assembly welcomes the fact that the fight against corruption has been among the Council of Europe's priorities for the 2014-2015 biennium. It underscores the importance of continued and concerted efforts in preventing and eradicating all forms of corrupt practices, especially within the judiciary.

3. The Assembly renews its call on the Committee of Ministers, made in Recommendation 1896 (2010) on judicial corruption, to:

3.1. 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;

3.2. gather and regularly update figure-supported information on prosecutions and convictions of judges for corrupt conduct in member States.

3. Draft recommendation adopted unanimously by the committee on 19 May 2015.

C. Explanatory report by Mr Sasi, rapporteur

1. Introduction

1. At the meeting held on 3 March 2014, the Committee on Human Rights and Legal Affairs appointed me as rapporteur on the issue of "Judicial corruption: urgent need to implement the Assembly's proposals". At the origin of this initiative was a motion[4] of 12 November 2013 which stressed the need to follow up the Assembly's Resolution 1703 (2010) on judicial corruption and to highlight the most flagrant cases of judicial corruption in the strive to remind Council of Europe member States of their commitment to ensure the independence and efficiency of their judiciary and restore trust in it.

2. In my introductory memorandum of March 2014, I proposed to look into the various aspects linked to judicial corruption and consider its implications for upholding the rule of law and individuals' enjoyment of their human rights. I intended to consider the various forms of judicial corruption, its possible presence in different stages of the judicial proceedings, as well as the actors involved. My analysis would also extend to exploring the link between judicial and other forms of corruption, for instance within the legislative or the executive bodies. On 7 April 2014, the committee considered my introductory memorandum and decided to hold a hearing at its meeting in Helsinki in May 2014.

3. A comparative study on the matter of "Judicial corruption in Europe: Extent and Impact" was prepared by the European Human Rights Association (EHRA),[5] which stands as background for the conclusions drawn in the present document and the recommendations proposed. The comparative study (the research report[6] together with the addendum[7] containing data related to the situation in member States) was presented to the committee at the hearing held in Helsinki, in the presence of two experts: Ms Monica Macovei (MEP, former Minister of Justice of Romania); and Sir Nicolas Bratza (former President of the European Court of Human Rights). The two experts gave their input based on their extensive experience in the judicial field and exchanged views with the members of the committee on the best approach to eradicate judicial corruption at national level. In this connection, Sir Nicolas Bratza also presented the main findings of the comparative study on behalf of EHRA.[8] As a conclusion to the discussion which ensued, I undertook to proceed with identifying the countries most affected by judicial corruption, based on the elements identified in the comparative study and the findings available from the relevant international institutional and non-governmental bodies.

2. Defining the notion of (judicial) corruption

4. Notwithstanding that there exists today a multitude of international instruments relating to the prevention and eradication of corruption, there is no generally accepted precise definition of this phenomenon. This suggests that there is a need for a flexible approach to be taken in framing corruption, especially given that its forms and manifestations are constantly evolving. The term "corruption" encompasses a wide range of acts and omissions and does not limit itself to bribery. The generally accepted description of the concept is "the abuse of entrusted power for private gain",[9] which allows for inclusion of the numerous practices related to corruption.

5. Criminalisation of corruption is one of the main pillars in the fight against these practices, and the Council of Europe has elaborated a specific instrument in this regard (the Criminal Convention on Corruption, ETS No. 173), setting out standards for the elements to be considered by member States when developing their relevant legal framework. Nevertheless, adequate provisions ensuring the legal framework for fighting corruption are only a prerequisite and remain ineffective without proper implementation. Various international bodies revealed scant implementation and generally few reported cases of convictions (for instance, the Organisation for Economic Co-operation and Development (OECD) in its reports concerning the implementation of its Anti-Bribery Convention). I will elaborate on this particular aspect below.

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4. Doc. 13355, tabled by Mr Kimmo Sasi and other members of the Assembly on 12 November 2013.
5. www.ehra.fr.
6. "Judicial corruption in Europe: Extent and Impact", background document prepared by EHRA, document AS/Jur (2014) 19.
7. "Judicial corruption in Europe: Extent and Impact", addendum to the background document prepared by EHRA, document AS/Jur (2014) 19 Add.
8. The extract of the minutes pertaining to the hearing held in Helsinki on 27 May 2014 (see document AS/Jur (2014) 25) was declassified by the committee on 23 June 2014.
9. Definition used by Transparency International.

6. In a judicial system context, corruption is conduct that undermines the effectiveness and confidence necessary to carry out the public purpose. It has been defined as "acts or omissions that constitute the use of public authority for the private benefit of court personnel and result in an improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain".[10]

7. A transparent and accountable judicial system is an essential pillar of the rule of law in a democratic State and the judiciary ought to be upstanding in order to act impartially, as a guarantee of its independence.

3. The international instruments related to corruption

8. The main instruments of the Council of Europe with regard to corruption are:

– the Criminal Law Convention on Corruption, opened for signature on 27 January 1999, entered into force on 1 July 2002;[11]

– the Civil Law Convention on Corruption (ETS No. 174), opened for signature on 4 November 1999, entered into force on 1 November 2003;[12]

– the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191), extending the scope of the convention to arbitrators in commercial, civil and other matters, as well as to jurors, opened for signature on 15 May 2003, entered into force on 1 February 2005.[13]

9. The Council of Europe has issued numerous other reference texts concerning corruption prevention in respect of judges, which form a solid framework of guidelines to be followed by member States:

– Resolution (97) 24 on the twenty guiding principles for the fight against corruption (see, in particular, guiding principles Nos. 1 and 3);

– Resolution 1703 (2010) and Recommendation 1896 (2010) of the Parliamentary Assembly on judicial corruption, as well as the explanatory report thereto (Doc. 12058), which I had prepared on behalf of the committee;

– Recommendation Rec No. R (2000) 10 on codes of conduct for public officials, including a Model code of conduct for public officials (in appendix), and the accompanying explanatory memorandum;

– Recommendation Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities and its explanatory memorandum;

– Magna Carta of Judges (Consultative Council of European Judges (CCJE), 2010);

– Report on European Standards as regards the Independence of the Judicial System: Part I – the Independence of Judges (2010), European Commission for Democracy through Law (Venice Commission);

– Venice Commission Report on Judicial Appointments (2007);

– Opinion No. 1 of the CCJE on standards concerning the independence of the judiciary and the irremovability of judges (2001);

– Opinion No. 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (2002);

– Opinion No. 10 of the CCJE on the Council for the Judiciary at the service of society (2007);

– European Charter on the Statute for Judges (1998).

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10. Definition used by Transparency International in its Global Corruption Report 2007: Corruption in Judicial Systems; for an overview of the different facets of corruption, see Magdalena Sepulveda Carmona and Julio Bacio-Terracino, in: Martine Boersma and Hans Nelen (eds), *Corruption and Human Rights: Making the Connection* (Antwerp: Intersentia, 2010), pp. 25-49.

11. The convention, which is open to non-member States, has been ratified or acceded to by all but three Council of Europe member States and by Belarus (Germany, Liechtenstein and San Marino, as well as Mexico and the United States, have signed, but not ratified it). See the chart of signatures and ratifications.

12. 34 member States have ratified or acceded to this convention, which is also open to non-member States. An additional seven member States have signed, but not ratified it. See the chart of signatures and ratifications.

13. This protocol (which is open for signature by all States signatories to the Criminal Law Convention) is binding on 37 Council of Europe member States (and Belarus), and has been signed (but not ratified) by an additional eight member States. See the chart of signatures and ratifications.

10. Lastly, other international instruments and reports are relevant and have been considered in the preparation of this document:

– the United Nations Convention against Corruption (UNCAC, 2003, 2349 U.N.T.S. 41) (and in particular its Article 11);

– the International Code for Public Officials, to be read in conjunction with Articles 8(1)-(3) and 2 of the UNCAC;

– the Legislative Guide for the Implementation of the United Nations Convention against Corruption (New York, 2006) (see in particular paragraphs 98-108);

– the Technical Guide to the United Nations Convention against Corruption (New York, 2009) (see in particular pages 18-27 and 46-53);

– the Bangalore Principles of Judicial Conduct (2002), as well as Resolution 2006/23 on "Strengthening Basic Principles of Judicial Conduct" of the United Nations Economic and Social Council (ECOSOC), E/RES/2006/23 (27 July 2006), calling on States to take into consideration these principles when adopting or reviewing rules pertaining to the professional and ethical conduct of members of the judiciary;

– the Draft implementation guidelines for the Bangalore Principles of Judicial Conduct, contained in the report of the 6th meeting of the Judicial Group on Strengthening Judicial Integrity (2010);

– the United Nations Office on Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct (2007);

– the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention, 1997);

– Transparency International's 2007 Global Corruption Report: Corruption in Judicial Systems.

4. Background – the work of the Council of Europe concerning the matter of judicial corruption[14]

4.1. The Parliamentary Assembly

11. The Parliamentary Assembly has issued a series of recommendations and resolutions on the fight against corruption, including within the judiciary. Most notably, as already mentioned above, on 27 January 2010, the Assembly adopted Resolution 1703 and Recommendation 1896 (2010) on judicial corruption, based on a report which I had prepared for the Committee on Legal Affairs and Human Rights[15] and in which I stressed the need to ensure the highest levels of professionalism and integrity and to restore public confidence in the judicial system. The Assembly called on member States to devise specific mechanisms to ensure the accountability (criminal accountability included) of judges, without impairing their independence and impartiality.

12. The Committee of Ministers subsequently adopted Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, which covers, *inter alia*, both internal and external independence, the status of judges and rules setting out judges' responsibilities. In its reply to Recommendation 1896 (2010), the Committee of Ministers furthermore stressed that judicial corruption engendered impunity and undermined the rule of law, a prerequisite for any pluralist democracy.

13. In its Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law, the Assembly urged national parliaments to contribute to the implementation of the recommendations made by the Group of States against Corruption (GRECO), in particular those emanating from its fourth evaluation round which has a focus on corruption within the judiciary. Appended to the explanatory memorandum[16] is Transparency International's 2012 Corruption Perceptions Index (CPI), illustrating the degrees to which corruption is perceived to exist in Council of Europe member States in the context of the global ranking. In its reply to Recommendation 2019 (2013), the Committee of Ministers endorsed, in particular, the emphasis in the Assembly's recommendation on the need to guarantee the independence of

14. The approach taken by the European Court of Human Rights, as well as by the Committee of Ministers, with regard to the implementation of the Court's judgments related to corruption matters, are considered in a separate section, dealing with the impact of corruption on the human rights protection system.
15. See Doc. 12058.
16. Doc. 13228 (rapporteur: Ms Mailis Reps, Estonia, ALDE).

the judiciary and to provide for appropriate incriminations of corruption offences. Various cases of corruption were highlighted as examples in the rapporteur's explanatory memorandum, namely relating to Azerbaijan, Bulgaria, the Russian Federation and Ukraine. The resolution provides clear indications as to what measures member States should take in order to eradicate corruption in general, and makes specific recommendations with regard to the judiciary, underscoring, most notably, the need to guarantee its independence (with regard to career-related as well as disciplinary procedures). It also stresses the importance of having regulating bodies which are free from influence and interference, as well as the role of the media and civil society in the evolution of a zero tolerance attitude towards bribe-taking and corruption and in tracking and denouncing such practices.

14. The explanatory memoranda to the above-mentioned texts suggest that judicial systems should adhere to high standards regarding independence, impartiality, integrity, accountability and transparency, in order to retain their responsiveness and reduce their vulnerability to corruption. The risks identified to the integrity of the judicial system and the corresponding recommendations made pertain to the status of judges (in relation to recruitment, promotion and dismissal, term of office, remuneration and appraisal); guarantees of independence from undue political interference (while ensuring accountability); transparency in case management and public access to information; the elaboration and monitored implementation of strict professional and ethical standards for judges; appropriate training and rules pertaining to conflicts of interest; effective investigation and prosecution and, ultimately, appropriate administrative as well as criminal punishment for acts of corruption.

15. Proper implementation of this comprehensive set of guidelines drawn up by the Assembly could contribute significantly to the fight against judicial corruption and improve both preventive and repressive action within the member States. Against this background, it is all the more disconcerting that the follow-up given to these texts by member States has been mediocre at best, as transpires from the analysis in section 5 below.

16. The Assembly members have on numerous occasions taken a stand in debating the issue of judicial corruption. The motion at the origin of my rapporteur mandate underlined that "corruption in the judiciary undermines the trust in the judicial system, denies access to justice, infringes the right to a fair trial and favours impunity". It also deplored that no guidelines on codes of conduct and ethics for judges had been adopted by the Committee of Ministers, despite the specific recommendation made to this effect in Recommendation 1896 (2010), and that some member States had yet to sign and/or ratify key anti-corruption conventions.

17. Along the same lines, our colleague Ms Reps, then the Assembly's rapporteur on "Corruption as a Threat to the Rule of Law", aptly qualified corruption as a "scourge" which must be eradicated, outlining, in a statement, the effects of corruption – including in the judicial sector – on the rule of law and the human rights protection system.

4.2. The Group of States against Corruption

18. In the preparation of my report, I have been able to draw extensively from the results of the ongoing monitoring work undertaken by the Group of States against Corruption (GRECO) in the course of its Fourth Evaluation Round, which focuses on corruption prevention in respect of members of parliament, judges and prosecutors in the member States. GRECO has to date published 23 evaluation reports,[17] with three more reports[18] still being confidential at the time of writing, as well as seven compliance reports.[19]

19. Throughout these reports, GRECO has highlighted various issues meriting member States' attention, mainly on the aspect of the legal framework relevant to the prevention of corruption in the judiciary. All countries monitored received recommendations on consolidating specific aspects and/or improving the relevant legislation or practice in order to reflect the standards imposed by international mechanisms in this regard. Some of the press releases issued by GRECO[20] following the publication of its reports unambiguously set out the matters requiring the attention of the member State concerned.

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17. On Albania, Azerbaijan, Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, the Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia" and the United Kingdom:
www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp.

18. On Bulgaria, Hungary and Malta, respectively.

19. In respect of Estonia, Finland, Iceland, Latvia, Poland, Slovenia and the United Kingdom, respectively.

4.3. The Commissioner for Human Rights

20. Both the current Commissioner for Human Rights and his predecessor have often addressed the issue of judicial corruption throughout their monitoring work, and their public statements in this regard have been referred to in various subsequent documents of other Council of Europe bodies. In this regard, countries like Albania, Armenia, Georgia, the Republic of Moldova, the Russian Federation, Turkey and Ukraine have been mentioned[21] by the Commissioner in his efforts to bring attention to the matter of judicial corruption and the independence of judiciary or the proper administration of justice. He has voiced direct concern with regard to the existence of corruption in respect of Albania, while issuing several statements on the matter of the independence of the judiciary with regard to Georgia (in 2011 and 2014[22]) and Ukraine (in 2012 and 2014[23]).

4.4. The Venice Commission

21. The Venice Commission has been actively involved in assisting member States in drafting legislation related to the prevention of corruption and, more generally, the independence of the judiciary. It has also issued country-specific opinions on draft legislation pertaining to the organisation of the judicial system submitted to it for review.[24] Armenia, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, Serbia and Ukraine are among the most recent countries in respect of which the Venice Commission has adopted relevant opinions.[25]

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20. See, for example, "Council of Europe anti-corruption body urges Spain to recast public trust in political and judicial institutions" (15 January 2014); "Council of Europe invites France to intensify reforms promoting integrity within parliament and the justice system" (27 January 2014); "GRECO urges continued action against corruption in Ukraine" (1 April 2014); "Council of Europe praises Norway for its commitment to preventing corruption among members of parliament, judges and prosecutors" (25 June 2014); "Corruption amongst members of parliament, judges and prosecutors: Belgium must step up its action regarding integrity and transparency" (28 August 2014); "Council of Europe warns Slovakia on risks of corruption amongst parliamentarians, judges and prosecutors" (6 November 2014); "Germany needs to improve tools for preventing corruption, according to Council of Europe anti-corruption group" (28 January 2015).

21. See, for instance, "Turkish judicial system should better protect human rights" (10 January 2012); Human Rights Comment: "Government leaders distort justice when they interfere in individual court cases" (20 March 2012); "Judicial reform needs to be accelerated in the Republic of Moldova" (30 September 2013); "Russia must strengthen the independence and the impartiality of the judiciary" (12 November 2013); "Corruption and political interference burden Albania's judicial system" (16 January 2014); "Ukraine: Fight against impunity and judicial reforms are necessary to improve human rights protection" (4 March 2014); "Georgia has to improve the administration of justice and promote tolerance" (12 May 2014); "Ukraine: Crucial to pursue police and judicial reforms and address needs of displaced persons" (20 June 2014); "Armenia should address gender inequality and enhance the independence of the judiciary" (9 October 2014); "Council of Europe's Anti-corruption group invites Lithuania to focus on a proper enforcement of the rules on corruption prevention among members of parliament, judges and prosecutors" (11 February 2015); "Eliminating undue influence and political interference are crucial for preventing corruption within the legislature and the judiciary in Azerbaijan" (2 April 2015).

22. See "Administration of justice and protection of human rights in the justice system in Georgia", Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, CommDH(2011)22 (30 June 2011); and "Georgia: greater efforts are needed to improve the administration of justice and promote tolerance" (27 January 2014).

23. See "Administration of justice and protection of human rights in the justice system in Ukraine", report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 19 to 26 November 2011, CommDH(2012)10 (23 February 2012); and "Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 4 to 10 February 2014", CommDH(2014)7 (7 March 2014).

24. See, for example, the joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the Draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, CDL-AD(2014)007-e (March 2014); Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008-e (March 2014); Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia, CDL-AD(2014)032-e (October 2014); Joint Opinion on the draft Law on disciplinary liability of Judges of the Republic of Moldova, CDL-AD(2014)006-e (March 2014); Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, CDL-AD(2014)038-e (December 2014); and Opinion on proposals amending the Draft Law on the amendments to the Constitution to strengthen the independence of Judges of Ukraine, CDL-AD(2013)034-e (December 2013).

25. For a complete overview of the Venice Commission's work in this regard, please refer to its website.

4.5. The European Commission for the Efficiency of Justice

22. Valuable data relevant to assessing the administration of justice in the member States of the Council of Europe is provided in the reports published by the European Commission for the Efficiency of Justice (CEPEJ). These reports also contain useful data for evaluating indicators relevant to the assessment of corruption risks (especially concerning judges' salaries, workload, case distribution, etc.) The CEPEJ's most recent report (of over 500 pages) on the Evaluation of European Judicial Systems, containing data from 2012, was published in October 2014.[26] It contains specific sections dedicated to judges and to the status and careers of judges and prosecutors, respectively, and valuable inspiration can be drawn from it as to how to preserve or reinforce the independence and impartiality of judges, to avoid corruption and to give more social recognition to the professions.

4.6. The Secretary General

23. In the introductory memorandum that I presented to the committee on 7 April 2014, I welcomed the fact that Thorbjørn Jagland, the Council of Europe's Secretary General, had made the prevention and eradication of corruption one of the Organisation's priority activities for the 2014-2015 biennium. In keeping with this agenda, he published, in April 2014, a report on the "State of Democracy, Human Rights and the Rule of Law in Europe" (document SG(2014)1), a whole chapter of which is devoted to corruption. Similarly, the second edition of his report (document SG(2015)1E), published in April 2015, identifies the lack of judicial independence in many countries as one of the biggest challenges to democratic security. I cannot but congratulate the Secretary General for his concern over the existence of corruption and for noting expressly that "[a] constant flow of corruption allegations and scandals has eroded institutional credibility in a number of member States".[27] At the same time, I am somewhat disappointed that both of his reports failed to identify those Council of Europe member States in which (judicial) corruption exists. I hope that the Secretary General will in the future take an even firmer stance on the matter and indicate clearly in which States problems have been identified.

4.7. Conclusions

24. Concerted efforts by all relevant Council of Europe bodies in the fight against corruption are to be welcomed, such as in the case of Albania, with respect to which both GRECO and the Commissioner for Human Rights have issued unequivocal statements and clear recommendations on the occasion of the publication of their respective reports on the country. Such a firm approach is likely to have a stronger impact and to consolidate the Council's position in ensuring its commitment to highlighting risks of corruption.

5. The main findings of the comparative study "Judicial corruption in Europe – Extent and Impact"

5.1. Purpose of the study

25. As mentioned above, I had entrusted the European Human Rights Association (EHRA) with preparing a comparative study on alleged judicial corruption in Council of Europe member States, aimed at providing a general overview of the extent and impact of judicial corruption. The comparative research focused on presenting the legal framework for preventing and combating corruption, selected aspects related to its implementation, as well as the perception of corruption and certain challenges and recommendations.

26. The impact of judicial corruption was considered in light of the principle of independence and impartiality of national courts, and examined in terms of its direct effect on the fair trial guarantees enshrined in the European Convention on Human Rights (ETS No. 5, "the Convention"). In support of these arguments, the study looked into the relevant case law of the European Court of Human Rights ("the Court"), as well as the execution of relevant judgments of the Court.

27. The study was intended to serve as a basis upon which the committee would engage in further debate, while providing, at the same time, the requisite background for identifying those countries where there are major problems to resolve in terms of tackling judicial corruption at national level.

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26. The appendices to the report, as well as the replies by country, can be found on the CEPEJ website.
27. "State of Democracy, Human Rights and the Rule of Law. A shared responsibility for democratic security in Europe", Report by the Secretary General of the Council of Europe, document SG(2014)1, p. 24.

5.2. Scope

28. The research focused on three main aspects, namely the general concept of corruption and the international legal framework covering the issue, the comparative research, as well as the impact of corruption on the human rights protection mechanism.

29. The comparative research took into consideration three elements:

– the national legal framework of the 47 member States;

– its implementation;

– the perception of judicial corruption, including the position of the media and civil society.

30. The study also analysed the data collected in light of the findings and recommendations issued by relevant international institutional bodies (such as the Council of Europe – more specifically GRECO, the Commissioner for Human Rights, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Venice Commission – as well as the OECD and the European Union), non-governmental organisations (most notably Transparency International and Freedom House) and national governments (for example pertinent Human Rights Reports of the U.S. Department of State).

31. The study focused on corruption in the judiciary, referring strictly to judges. It scrutinised the various facets of corruption (bribery, facilitation, influence, peddling), with a focus on case-related corruption, while also considering career-related corruption.

32. With regard to the first element, the legal framework related to corruption considered for the purpose of the study included national provisions expressly regulating the prevention and eradication of corruption (criminal liability, disciplinary measures), as well as adjacent legal provisions which are of relevance for the prevention of corruption (such as regulations on assignment of cases, recruitment, career advancement, declaration of assets, etc.). Following a brief overview of the main common and differing features of the legal frameworks in the countries examined, some particularities of each system were mentioned, meriting further consideration, as highlighted in various studies and assessments by specialised bodies (international organisations and civil society). Lastly, the study identified certain common challenges.

33. In relation to the second element, namely the implementation, the assessment focused on information available on investigated/prosecuted/convicted cases of corruption (typology, statistics, visibility etc.).

34. The third element, the perception of corruption, falling outside the strict scope of a legal research, was considered in light of the findings of a number of surveys conducted by specialised bodies.

35. Following the line of the comparative study, I am of the opinion that an adequate assessment of the corruption status of each member State could be best done by considering all these three elements (legal framework, implementation, perception) in an interrelated manner, in order to gain a realistic perspective on the situation of each member State concerned.

36. The following sections highlight, along with briefly presenting the main findings of the comparative study, only the issues considered to be problematic with respect to certain countries, as revealed by the many reports published by international organisations or NGOs working in the field of anti-corruption. A detailed overview on each topic, as well as the relevant data and sources, can be found by consulting the EHRA's report and its addendum, available on the website of the Committee on Legal Affairs and Human Rights.

5.2.1. The legal framework on combating corruption

37. I will note at the outset that most countries seem to have complied with the main international standards concerning the criminalisation of corruption.

38. With regard to the issues deserving particular attention, it is to be noted that, in some countries, there are no provisions on imposing confiscation of equivalent value (for instance in Andorra), or the pertinent provisions are found to be rarely applied (like in the case of Austria).

39. Monitoring bodies (GRECO) have moreover emphasised the need to avoid full discretion of a single political entity in the context of deciding whether or not the immunity of a member of the judiciary should be lifted in a given case.

40. As regards the protection of whistle-blowers who expose corrupt practices within the judiciary or elsewhere, enhanced measures have been recommended in several instances (notably with respect to Albania, Germany, the Republic of Moldova and Sweden). On other occasions, the existing legal frameworks were deemed limited, weak or ineffective (Albania, Armenia, Estonia, Georgia, the Republic of Moldova, Montenegro, the Slovak Republic, Spain), and some countries have no regulations in place setting out protection measures for whistle-blowers (the Czech Republic, Finland, Hungary).

41. Concerning the regulations on repentance, in some countries, like Georgia and the Republic of Moldova, the pertinent provisions apply automatically, which was considered, in different monitoring reports, to be problematic. In some countries, provisions allow for the return of the benefit to the repentant; in this regard, recommendations have been made to exclude this possibility from the legal framework.

42. Several issues arising from the system of statutes of limitations with regard to corruption offences have been highlighted as being potentially problematic by various international bodies (including GRECO, the OECD and the United Nations Convention against Corruption), such as limitation periods which appear to be disproportionately short in relation to the time required in practice to guarantee an effectively investigation and prosecution. Similarly, criticism has been voiced about very strict sets of grounds for suspension or interruption of statutory limitation periods, especially in countries where members of the judiciary enjoy immunities and where the time needed to lift these immunities does not constitute one of these grounds.

43. Criminalisation of corrupt practices needs to address the ever-changing and constant development of the forms it takes. Therefore, legislation and practice need to be routinely reviewed and, if necessary, adapted so as to permit an appropriate assessment of even those corrupt practices within the judiciary that are particularly difficult to decipher, including those related to exchange of favours, hierarchical pressure or external interference.

44. The national frameworks for disciplinary proceedings have sometimes been considered as necessitating improvement to comply with the standards developed by international bodies, especially with regard to the possible interference in the independence and impartiality of the disciplinary bodies, like in the case of “the former Yugoslav Republic of Macedonia”.[28]

45. In terms of adjacent legal provisions, I should like to highlight four issues that, in my opinion, merit closer attention.

46. Conflict of interest and impartiality: Most national provisions comprise regulations on conflicts of interest and provide for Codes of Ethics for the judiciary, while allowing parties to challenge judges deemed to be lacking impartiality. It is to be noted that such motions have been found to rarely or hardly ever be successful, for instance in Bulgaria, Luxembourg and Monaco. Other countries, like Poland, have been invited to consolidate their provisions on conflicts of interest.

47. Ancillary activities: The approach varies between the member States with regard to what type of ancillary activities judges are allowed to engage in. In countries in which political affiliation is permitted, monitoring reports have highlighted the political involvement of the judiciary (and subsequent support) as a challenge in the fight against corruption, like in the case of Austria.

48. Income, declaration of assets and regulations on gifts: Judges’ income varies considerably between Council of Europe member States and does not seem to have any direct effect on the existence of corruption. In countries like France, where judges’ income is not considered to be high in comparison to the average national revenue,[29] judicial corruption does not appear to be widespread, while in other countries like Romania, in which judges’ salaries are considerably above the national average, cases of corruption are numerous. The system of declaration of assets was considered as needing improvement with regard to the lack of liability in case of false declarations (Armenia, Poland) or with regard to verification of declarations (Hungary). With regard to the framework regulating the acceptance of gifts, “the former Yugoslav Republic of Macedonia” was invited to clarify the nature of such acts.

49. Recruitment/promotion/dismissal: Promotion or advancement is based either on merit or on seniority, with the competent authority in charge of taking the relevant decisions being, in most countries, the judicial body concerned. Some countries in which other authorities are in charge of recruitment, promotion and

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28. Several cases concerning dismissal proceedings in respect of judges have been communicated to the Government in recent years; for more details, please refer to EHRA’s report and to the Court’s case-law database HUDOC.

29. See, in this connection, Resolution 2040 (2015) “Threats to the rule of law in Council of Europe member States: asserting the Parliamentary Assembly’s authority”, paragraph 3.4, and Doc. 13713 (rapporteur: Ms Marieluise Beck, Germany, ALDE), footnote 56.

dismissal or play a significant role in these proceedings have been called upon in several monitoring reports to reduce outside interference in such matters – notably Albania with regard to the appointment of high-ranking judges. CEPEJ has observed that recruitment procedures for judges are becoming increasingly similar in member States, in that they are most often based on a competition and/or demonstrated experience.[30] While this increasing reconciliation of recruitment procedures is a welcome development, a case that recently caused a stir in Germany (a country where the judiciary is generally perceived to be free from corruption) demonstrates how the misbehaviour of one member of the judiciary can negatively affect the public's trust in the system. I am referring to an incident where a judge sold exam answers to law students. He was sentenced to five years imprisonment on account of duress, bribery and breaches of secrecy earlier this year.[31] When it comes to dismissal of judges, a noteworthy case that illustrates the danger of undue political interference with the judiciary, and which has gained attention in recent years, is the case of Ukrainian Supreme Court judge, Mr Oleksandr Volkov. In its judgment regarding the latter's application,[32] the European Court of Human Rights ordered Ukraine to "secure [his] reinstatement in the post of judge of the Supreme Court", for his dismissal had been unfair and thus in breach of Article 6.1 of the European Convention on Human Rights (guaranteeing the right to a fair trial by an impartial and independent tribunal). In accordance with the terms of a Decree of the Ukrainian Parliament of 25 December 2014, Mr Volkov was eventually reinstated on 2 February 2015.[33] Relatedly, I note that in April 2015, five judges were reportedly dismissed across Ukraine by the High Commission for Judges' Qualification, upon request from the Prosecutor-General, on suspicion of corruption.[34]

5.2.2. Implementation/practice

50. None of the international reports consulted for the purposes of preparing the EHRA's report, issued either by monitoring bodies or civil society, provide relevant and consolidated information on alleged and known cases of corruption in the judiciary. Various references to certain individual cases are made throughout reports, which do not, however, provide an accurate picture of the extent of corruption, its typology and the ratio of accountability.

51. Similarly, the lack of consolidated statistics, disaggregated according to all procedural stages of corruption cases, was highlighted in the EU Anti-corruption report.[35]

52. I note with concern the prevailing lack of information, or of access to information, capable of giving an accurate overview of the situation in Council of Europe member States with regard to investigating and punishing judicial corruption, despite the express recommendation in this regard made in Resolution 1703 and Recommendation 1896 (2010).

53. It is of utmost importance that member States undertake firm steps with regard to making such information available and easily searchable in their national databases. I would also stress the need for the Council of Europe monitoring bodies to insist on receiving from member States, on a systematic basis, both statistical and substantive information concerning cases of judicial corruption (at all stages of proceedings).

54. Turning to the identified cases of career-related corruption, the EHRA's report mentions examples of cases concerning recruitment and advancement (in Albania, Azerbaijan, the Republic of Moldova) on the one hand, and corrupt practices related to career competitions on the other (in Romania). With regard to case-related corruption, corrupt practices were identified in bankruptcy/liquidation proceedings (the Czech Republic, Hungary, Poland), criminal cases (France, Lithuania, Malta, the Republic of Moldova) and investment disputes (Ukraine).

55. Needless to add, these identified practices do not necessarily reflect the overall scale of the phenomenon. The cases referred to in the study might have been isolated cases on which information was available, and which could thus be included in this report, while other countries – including countries where

30. See CEPEJ Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", p. 484.
31. See, for example, *Zeit Online* (Germany): "Das System Jura auf der Anklagebank" (26 February 2015).
32. Oleksandr Volkov v. Ukraine, Application No. 21722/11, judgment of 9 January 2013.
33. See the relevant news item of 2 February 2015 on the website of the Supreme Court of Ukraine: "Mr Oleksandr Volkov Was Reinstated to his Post of a Judge of the Supreme Court of Ukraine."
34. See Radio Free Europe/Radio Liberty: "Ukrainian Judges Dismissed Over Corruption Allegations", 17 April 2015.
35. Report from the Commission to the Council and the European Parliament: EU Anti-corruption Report 2014, Brussels, 3 February 2014, document COM(2014)38final, p. 15.

corruption among judges might potentially be prevalent on an even larger scale – could not be mentioned because of the lack of transparency and information on existing cases of judicial corruption. As I have already noted in my first report on judicial corruption (at paragraph 70):

> *"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."*

56. In this connection, one should pay special attention to countries in which the judiciary is widely perceived to be prone to corruption or, in other words, where the majority of citizens do not have trust in the very institution on which they rely to combat corruption. According to Transparency International's 2013 Global corruption barometer, the judiciary is among the three least trusted institutions (out of a total of ten) in Albania (where 81% of respondents to the survey felt that the judiciary was corrupt or extremely corrupt, making it the least trusted institution), Armenia (69%, least trusted institution), Azerbaijan (42%, second least trusted institution), Bulgaria (86%, least trusted institution), Croatia (70%, second least trusted institution), Georgia (51%, least trusted institution), Lithuania (79%, second least trusted institution), the Republic of Moldova (80%, least trusted institution), Portugal (66%, second least trusted institution, on a par with parliament and the military), Romania (58%, third least trusted institution), Russia (84%, third least trusted institution), Serbia (82%, least trusted institution), the Slovak Republic (69%, least trusted institution), Slovenia (54%, third least trusted institution), Spain (51%, third least trusted institution) and Ukraine (87%, least trusted institution).

57. With respect to the forms of corruption identified, cases of judges offering favours in exchange of money or other benefits or favours are reported to exist, though no information is available with regard to those responsible being brought to justice. Most sources mention bribery as the most common practice (in respect of Armenia, Azerbaijan, the Czech Republic, Estonia, Greece, Italy, Latvia, Lithuania, the Republic of Moldova, Romania, Serbia, Slovenia, Turkey). There are reports of cases of speeding up a trial in order to benefit one of the parties to a proceeding (Croatia), as well as of delaying proceedings for the same purpose (Estonia). Other reports mention biased rulings (Italy, Malta, the Republic of Moldova, Romania, Turkey). In Armenia, the lack of cases brought before a court, despite the alleged existence of wide-spread bribery practices, was criticised by the national ombudsman.[36]

58. Another matter of concern pertains to the difficulty in obtaining information on the follow-up given to proven cases of judicial corruption. In particular, it would be helpful to have information on whether or not an opportunity is offered by national authorities to have those cases which had been decided by a judge subsequently convicted of corruption re-opened – a possibility that I strongly encourage member States to provide for.

59. It is crucial that reported cases, or situations which can be assimilated to corrupt practices and which are made public through the media or civil society, are effectively investigated by the national authorities and prosecuted if they are well-founded. Such reactivity will help (re)build trust in the authorities' commitment to fighting corruption, end the climate of impunity, and begin to change the perception of judicial corruption being widespread. This is particularly vital in cases which suggest the existence of corruption of a considerable magnitude. By way of example, I took note with concern of recent reports about the alleged embezzlement of €5.6 million (300 million roubles) by the Moscow court system, and I hope that the competent authorities will ensure a swift and effective investigation into the allegations while protecting from retaliation those who have made the allegations public.[37] Relatedly, making the results of such investigations known, and keeping a public record of judges convicted of corruption public, will contribute to establishing a firm stand in the fight against corruption. This would also have a deterrent effect.

60. As regards specialised national structures dedicated to tackling corruption, it is worth mentioning that the countries which have set up anti-corruption agencies have seen positive developments relating to the implementation of anti-corruption laws. The EU Anti-corruption report refers to positive examples found in Croatia, Latvia, Romania, Slovenia and Spain. In Romania, although the country is still considered as one of the most corrupt among all EU member States, the work of the anti-corruption directorate was praised in international reports as a significant effort in line with the country's commitment to eradicate the phenomenon.[38]

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36. See Radio Free Europe (Armenia): "Armenia's Ombudsman Highlights Court Graft With Bribery 'Price List'", 11 December 2013.
37. See *The Moscow Times* (Russia): "Moscow Court System Suspected of $4.8 Million Embezzlement", 3 March 2015.
38. EU Anti-corruption Report 2014, p. 14.

61. Lastly, some reports express concern over lack of judicial determination and capacity to tackle complex or sensitive corruption cases, as well as over limited dissuasiveness of sanctions, which are either imposed by courts too rarely, suspended too often or generally too weak.[39] Together with the limited overall number of cases of corruption reaching the stage of judicial proceedings, this trend is of particular concern.

5.2.3. The perception of judicial corruption

62. The perception of corruption in the judiciary has been researched and monitored by specialised international organisations, such as Transparency International, which regularly publish perception indices based on complex surveys undertaken at national level. The trends thus identified with regard to specific countries serve as an indicator of the effectiveness of the efforts undertaken by the relevant authorities to tackle the problem.

63. According to Transparency International, the perception of corruption among members of the judiciary varies from one State to another, with the latter being considered the most corrupt institution in some States (Albania, Bulgaria, Croatia, Georgia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine), and the least corrupt among national institutions in others (Denmark, Norway). In some countries, the perception of corruption has not changed, despite clear indications that the system has been improved (Czech Republic, Georgia). This stands as a testament to the need to re-establish the trust of the population in the judiciary.

64. It transpires from the EU Anti-corruption report that corruption continues to be perceived as being wide-spread in many EU countries. In Bulgaria, Croatia, the Czech Republic, Lithuania, Romania and Greece, between 84%-99% of respondents considered that corruption was widespread in their country. Similarly, one in 12 Europeans (an average of 8%) stated that they had experienced or witnessed a case of corruption (although not necessarily within the judiciary) in the past 12 months.[40]

65. On a positive note, there are examples where the growing concern of the population over corruption, as revealed in Transparency International's perception surveys, translated into the inclusion of the fight against (judicial) corruption in the political agenda and corresponding concrete policies, as in the case of Romania and Ukraine.[41]

66. In this connection, it is equally important to note that the perception of the judiciary as being one of the most corrupt sectors is sometimes clearly in line with certain findings of the Council of Europe monitoring bodies following their reports or visits (as in the case of Albania and Ukraine).

67. The media is generally acknowledged to be one of the key actors in exposing corruption cases, although in some countries it is considered as influenced (Belgium, Bosnia and Herzegovina, Cyprus, Romania), under self-censorship (Bulgaria, Greece, the Republic of Moldova, Serbia, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine), not entirely free to publish on the matter (Albania, Azerbaijan) or at risk of defamation proceedings (Austria, Poland). In some countries, like the Czech Republic, the climate has seen positive developments, with the media now being less restricted in exposing individual cases. Then again, reports suggest that there have been situations in which the media was seen to have exerted undue pressure on judges by way of overexposure of ongoing cases and thus possibly influencing their outcome (such as in Romania).

68. Media throughout the 47 member States have addressed, on various occasions, the matter of judicial corruption, highlighting either specific cases or general matters related to the system in place at national level to tackle judicial corruption. Numerous critical articles[42] have been published, especially in France, Turkey and Ukraine, on matters relating to judicial corruption. In some countries (for example Romania), the media

39. Ibid., p. 16.
40. Ibid., p. 6.
41. See, for example, the most recent presidential campaign in Romania, in which the winning candidate has made anti-corruption his top priority, along with strengthening the independence of the judiciary (see BBC News Europe (United Kingdom): "Romania elects president to replace Basescu" (16 November 2014)); as well as the Ukrainian President's pledge to end the "rampant corruption" persisting in the country (see BBC News Europe (United Kingdom): "Ukraine in anti-corruption pledge as parliament meets" (27 November 2014)).
42. *Le Monde* (France): "La justice a un besoin impérieux de modernisation" (11 January 2014); *Today's Zaman* (Turkey): "Top judicial body says Turkish government's planned changes unconstitutional" (11 January 2014); *Hürriyet Daily News* (Turkey): "HSYK bill represents regression of judicial independence in Turkey: CoE human rights commissioner" (18 February 2014); *Hürriyet Daily News* (Turkey): "Turkish president intervenes in corruption, tapping scandals" (5 March 2014); Radio Free Europe/Radio Liberty (Armenia): "Armenia's Ombudsman Highlights Court Graft With Bribery 'Price List'" (11 December 2013); *KyivPost* (Ukraine): "Justice Ministry initiates performance and lustration

closely follow any ongoing investigations into alleged judicial corruption, and the many convictions make the headlines of most national newspapers and television channels. Despite the persistence of corruption, this transparency has ensured the gradual disappearance of the climate of impunity. It has also contributed to raising awareness on the matter, leading to civic involvement.[43]

69. Civil society is mostly active in the fields of awareness-raising and policy-making activities. In some countries, individuals set up platforms for exposing corruption (like in Georgia). NGOs monitor the investigation of corruption cases and publish reports, which often also comprise information on the framework for preventing and combating judicial corruption.

70. To conclude on this point, the perception of widespread judicial corruption directly reflects individuals' trust in the national judicial system, and as such, it is a matter of great concern. Member States should take all necessary measures to restore trust in the system at national level, monitor closely and systematically the evolution of perception indicators, and develop a viable strategy to remedy the lack of public trust in the judiciary including, first and foremost, by striving for greater transparency. Independent reporting on alleged corruption is also of great importance, and is likely to have a deterrent effect. I can only urge member States to (continue to) pursue policies that create an environment conducive to promoting media freedom. Moreover, I invite member States to review and revise, if necessary, their legislation and practice concerning the protection of whistle-blowers, in line with Resolution 1729 (2010) and Recommendation 1916 (2010) on the protection of "whistle-blowers", as well as the recommendations made in our committee's report on "Improving the protection of whiste-blowers",[44] which will be debated by the Assembly at its June 2015 part-session.

5.3. General findings of and conclusions drawn from the comparative study

71. One of the major obstacles in the fight against corruption, which emerged with respect to a considerable number countries is the political influence or pressure exerted over the judicial process, either related to the organisation of the profession (for example appointments, promotion, removal from office), or to interference in the outcome of cases. This has been identified as a matter of concern, by various reports, in Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Croatia, France, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, the Republic of Moldova, Montenegro, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

72. It is clear that a judicial system free from corruption must be based on the key principles of the independence of the judiciary and the impartiality of judges, which constitute the pillars in any State governed by the rule of law. Indeed, the danger of undue influence and political interference in the independent functioning of the judiciary can hardly be overestimated, for it subverts institutional checks and balances and makes the system prone to political favouritism and corruption. Such influence seems to be growing in some member States. I note with concern, for example, the claims by the former President of the Constitutional Court of Turkey, Mr Haşim Kılıç, that the members of the court had come under intense pressure from the government.[45] Moreover, Turkey's Supreme Board of Judges and Prosecutors (HSYK) has apparently reassigned hundreds of judges and prosecutors since January 2014, in what has reportedly been a retaliatory measure for a major graft investigation involving high-ranking politicians initiated in December 2013.[46] Such a "reshuffling" of the judiciary is, at best, likely to be seen as an attempt by the authorities to exert influence over the judiciary – with potential harmful effects on the public's trust in the latter's independence – and may even be evidence that the institutional set-up allows for arbitrary and undue political interference in the administration of justice.

73. This point was also raised during the committee's discussion on my preliminary draft report in March 2015, and one colleague considered that, in countries where the judiciary is placed under the direct administration of the Ministry of Justice, there was a potential conflict of interest and risk of maladministration

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reviews for judges" (5 March 2014); *KyivPost* (Ukraine): "Ukraine risks losing IMF support over stalled anti-corruption laws" (19 August 2014); *SpiegelOnline* (Germany): "Korruptionsvorwürfe gegen Richter: 2000 Jura-Examen werden überprüft" (2 April 2014); STA (Slovenia): "Reporter Rants about Wrongdoings of the Judiciary" (28 July 2014).

43. By way of illustration, reference can be made to a recent statement of the Chief of the Romanian Anti-Corruption Directorate, who pointed out that more than 80% of the cases stemmed from individual complaints, the rest being initiated *ex officio* based on information gathered from the media or information services.

44. Doc. 13791 (rapporteur: Mr Pieter Omtzigt, Netherlands, EPP/CD).

45. See *Today's Zaman* (Turkey): "Head of top court says judiciary under pressure" (2 January 2015); *Today's Zaman* (Turkey): "Top judges blast intervention in judiciary as they leave posts" (10 February 2015); *Hürriyet Daily News* (Turkey): "Departing top Turkish judge slams politicians' 'interest' in judiciary" (10 February 2015).

46. See, for example, *Today's Zaman* (Turkey): "Court acquits 62 coup suspects in Balyoz case amid judiciary reshuffle" (7 April 2015).

in cases of individuals challenging executive acts. Concern was also expressed that political appointments of judges could create doubts as to the latter's independence and impartiality. While I personally agree that merit-based judicial self-administration should be strengthened, not least since it is preferable to political appointments of (Supreme Court) judges, I am reluctant to recommend the setting up, in all countries, of an independent high judicial council. The reason for this is essentially two-fold: first, a number of examples suggest that there exist conflicting views regarding the notion of "independence" when it comes to the composition of judicial councils – who should be entitled to sit on such a panel (judges, prosecutors, other legal professionals?)?; which of these groups should have the majority?; and, maybe most importantly, by whom should the members be appointed (by their peers, by parliament, by the government?)? It appears to me that these questions, which have been addressed in quite some detail in a number of opinions by the Venice Commission, go beyond the scope of the present report. In this connection, I have it to understand that my colleague Mr Bernd Fabritius (Germany, EPP/CD) will explore matters relating to the institutional set up of the judiciary (with a particular focus on prosecutors) as well as the danger of "vertical interference" in the independence of judges, in his forthcoming report on "Strengthening the rule of law in South-East European countries through targeted reform of the legal system".[47] Second, and as a correlate of my first argument, I am not convinced that the involvement of the Ministry of Justice in the administration of the judiciary is of itself problematic, The case of Germany can be seen as exemplifying this. There, the fact that responsibility for the recruitment and promotion of judges rests with the Ministers of Justice (at the *Länder* and Federal levels) does not appear to lead to a situation where the executive exerts inappropriate political control over the judiciary. What I will highlight, however, is that wherever the appointment of judges is left in the hands of the executive, these decisions should be preceded by a transparent and objective selection process involving a number of actors, including high-ranking judges and other members of the judiciary.

74. This leads me to another area of concern which is closely linked to the appointment of judges, namely the latter's promotion. Here again, more should be done to increase judicial independence and public confidence, by putting in place strongly merit-based promotion procedures.

75. During the committee's discussion on my preliminary draft report, emphasis was moreover put on the importance of ensuring that transparency rules are fully applicable to the judiciary. While I support this call, especially against the background of the corresponding recommendations made by the GRECO (see paragraph 48 above), I should like to add that the existence of adequate legal provisions on asset disclosure (and also on accessory activities) is a necessary, albeit insufficient condition for minimising corruption risks; there must also be effective monitoring of compliance with these rules.

76. Another issue is related to the extent of judicial corruption: from the legal point of view, the existence of corruption can only be established through effective prosecution and punishment of the perpetrators. In a judicial system which benefits from the credit of being generally functional, only proven and convicted corruption can serve as a basis for establishing the actual corruption level in a given country.

77. On a related note, the assessment of the general framework related to corruption can only serve as an indicator of potential causes, setbacks or loopholes in the system, which might stand as premises for corruption cases. Seen in conjunction with the perception of corruption within the system, it can, however, provide a clear indication of the credibility of corruption allegations.

78. The inaccessibility or lack of information concerning the implementation of the provisions on combating corruption make it difficult to establish the effectiveness of the system and can lead to assumptive inferences with regard to the viability of the provisions, as they can only be assessed *in abstracto*. Transparency in exposing cases of judicial corruption by making information available about the investigations and convictions is beneficial to the member States, as it contributes to strengthening people's trust in the judicial system. The fact that the research on the basis of which I have prepared the present report was severely impeded by the lack of information is particularly lamentable because I highlighted the need to collect reliable information and statistics, especially on prosecutions and convictions, already five years ago, in my first report on judicial corruption on the basis of which the Assembly adopted Resolution 1703 (2010).[48] Against this background, I chose to include a corresponding recommendation in the draft resolution.

47. See the motion for a resolution, Doc. 13614, tabled by Mr Bernd Fabritius (Germany, EPP/CD) and other members of the Assembly.
48. See paragraph 70 of the explanatory memorandum (Doc. 12058).

6. The consequences of corruption on the human rights protection system

79. In the preamble to the Council of Europe Criminal Law Convention on Corruption, it is emphasised that "[c]orruption 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".

80. Fair trial guarantees can be undermined in various ways through corruption, which can impede the administration of justice (if related to career steps, for instance), the rights of the parties involved (by unbalancing the equality of arms, for instance) and the efficiency of the procedure (by corrupting judges into delaying proceedings, for instance in order to secure impunity by reaching time limits in criminal cases).

81. While case-related corruption can sometimes consist in isolated situations and might not affect the overall career-long conduct of the respective judges involved, career-related corruption can have more extended effects: there is reason to believe that judges who entered the profession or who were promoted through corrupt practices are prone to partiality (especially towards the parties having supported them) and vulnerable to blackmail and pressure. Questions could also be raised as to their professional competences and the quality of their work, even with regard to situations in which they are formally impartial and independent.

82. In cases in which the European Court of Human Rights has found a violation of Article 6 of the Convention with regard to the independence and impartiality of domestic courts, certain shortcomings have been expressly identified,[49] opening the possibility for both the respondent States concerned, as well as other Contracting Parties which might face similar problems, to tackle the issues in the process of executing these judgments, in particular by adopting general measures in order to improve the system and prevent further similar violations. The process of implementation of these judgments is often complex and lengthy, not only because it may necessitate intricate reforms at national level,[50] but also because of the large backlog of cases pending before the Committee of Ministers.

83. I would like to stress yet again, in line with the many other reports and positions taken by the Council of Europe's various bodies, the pivotal importance of implementing in a timely and effective manner the Court's judgments. It is a matter of grave concern that cases which have been concluded by a final judgment of the Court are left unaddressed at national level for years, especially with regard to the general measures identified at the execution stage. As outlined above, this has a direct impact on the fight against corruption and on upholding the principle of independence and impartiality of the judiciary, a fundamental requirement for a functional democratic society and respect for the rule of law.

84. The struggle to improve the general framework for preventing corruption and upholding the principle of independence and impartiality of national courts as a guarantee for fair trials needs to be a concerted effort. Standard-setting and monitoring bodies need to co-operate closely with national authorities to identify and tackle possible issues arising, just as they need to rely on each other's findings and efforts, by creating synergies in their approach to this scourge.

7. What is to be done

85. The judiciary, as one of the three pillars of State power, alongside the legislative and the executive, is the regulating body of any democratic system. It applies and interprets the law, delivering justice to the people. In the absence of a functional and efficient judiciary, the legal framework setting out individuals' rights and freedoms fails to achieve its purpose. The conclusions drawn from the comparative study undertaken upon request of the committee leave no doubt that member States must pursue and intensify their efforts to

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49. See, for example, the current state of execution of the Court's judgment of 9 November 2006 in the case of Belukha v. Ukraine, Application No. 33949/02, accessible via the website of the Department on the Execution of Judgments of the European Court of Human Rights:
www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=belukha&StateCode=&SectionCode=.

50. See, for example, the general measures adopted by respondent State to execute the Court's judgment of 10 April 2003 in the case of Sigurdsson v. Iceland, accessible via the website of the Department on the Execution of Judgments of the European Court of Human Rights:
www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=sigurdsson&StateCode=&SectionCode=.

develop a comprehensive legal and institutional framework to prevent and eliminate corruption among judges, to ensure that existing legal norms are properly enforced (which requires that they be well understood), and that justice is not only done, but is also seen to be done.

86. But the independence of the judiciary is not only key to preserving the integrity of the justice system and guaranteeing individuals' effective enjoyment of their human rights; it is also a crucial factor in the fight against corruption in other sectors, as well as in the fight against organised crime.[51] It is for the judiciary to review cases of alleged corruption, given that it is the only authority capable of establishing the existence thereof and of sanctioning corrupt conduct. It is thus all the more important that the very entity which is tasked with deciding on allegations of corruption is free from such practices.

87. Moreover, a trustworthy judicial system needs to be free from undue interference and pressure from outside if it is to function in compliance with relevant international standards. As part of a complex institutional structure, it cannot function properly if impeded, just as it impedes the proper functioning of the other parts if its functioning is inadequate. It is thus crucial that the struggle to improve the overall system is a concerted effort, led in a constructive manner.

88. The judiciary needs to pursue and intensify its efforts to address the lack of public confidence, with particular attention to be paid to education and training, so as to improve the drafting of judicial decisions, as well as the need – in many instances – to provide for institutional discussions on ethical issues. The procedures for the appointment, promotion and dismissal of judges are another area of concern which must be addressed in order to increase judicial independence and public confidence therein.

89. Another aspect of particular importance is making the fight against corruption (including judicial corruption) a transparent process, and ensuring that civil society and the media are free to report on and monitor such cases, thus helping to put an end to impunity. Such active engagement and support has seen beneficial results in tackling corruption in other sectors, such as public procurement; this good practice should thus be promoted.[52]

90. I would also like to stress the support given to civil society to participate in the monitoring process concerning corruption prevention in member States. An accurate perspective can only be acquired by the Council of Europe monitoring bodies by consultation with all relevant stakeholders implicated in the prevention process. To date, the only input provided by civil society representatives which is taken into account by monitoring bodies are some of their reports and surveys on the perception on corruption. Informal consultations are of course taking place, but it may be beneficial to more systematically involve civil society, for example by means of formal requests for information.

91. I should therefore like to recall Resolution 1943 (2013) and Recommendation 2019 (2013) on corruption as a threat to the rule of law, and urge member States to give priority to implementing the Assembly's call on them to recognise the role of NGOs and the media in the fight against corruption and strengthen collaboration with them and the support given to them. The fight against judicial corruption needs as many allies as it can get, and excluding valuable partners cannot but prejudice the intended result.

92. As a general concluding remark on the approach to be taken, I would like to emphasise the need to collect centralised data on detected corruption within the judiciary, based on which a comprehensive risk assessment should be carried out. Only then can and should targeted measures be taken and tailored policies implemented in order to tackle the most recurrent irregularities in the system. There is no one-size-fits-all solution for all member States, as issues identified as risk factors vary considerably from one country to another. Therefore, anti-corruption strategies must be developed with due consideration to the specificities of each system and the particular problem areas identified.

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51. The latest "International Narcotics Control Strategy Report" of the U.S. Department of State notes, for example, that corruption in the judicial system of Ukraine enables transnational organised crime syndicates to operate in the country; see Volume II, Money Laundering and Financial Crimes, March 2015, p. 208.
52. See EU Anti-Corruption Report, Chapter IV on "Public Procurement".