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Horizontal Facility for Western Balkans and Türkiye

HF 7 „Strengthening accountability of the judicial system and enhancing protection of victims` rights in Montenegro”

Reference material:

“International and European standards concerning salaries and other rights related to the exercise of Judicial and Constitutional Court functions”

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Expert contribution to the process of drafting the Law on

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1. Introduction

Under the auspices of the joint European Union and the Council of Europe Horizontal Facility Framework, the action HF 7 „Strengthening accountability of the judicial system and enhancing protection of victims` rights in Montenegro“ is providing support to the Ministry of Justice and judicial institutions in advancing the legal framework for strengthening judicial independence and accountability, in line with European standards and best practices.

In pursuit of this objective, Mr Djuro Sessa has been engaged to provide an overview of relevant international standards and comparative practices and thus support the work of Working group which has been established by the Minister of Justice in December 2024, to draft the Law on Salaries and Other Rights Related to the Exercise of Judicial and Constitutional Court Functions.¹

The purpose of this material is to facilitate the alignment with European standards and best practices and to equip Working Group members with the essential references and insights needed to make informed decisions. In turn, this will support the authorities in establishing a robust and equitable remuneration system for judges, including Constitutional Court judges and state prosecutors.

At its core, this document tackles the essential question of how judicial remuneration should be defined. The approaches to answering this pivotal issue differ markedly among European States. In answering this question, one must take in mind that there is difficult to find a definition that would serve all, because judges can be entitled to different payments, benefits, allowances and items that are provided to judges.

The most important and undisputed component of judicial remuneration is a salary. It is not, however, the only component of judges` remuneration. Judges may receive many other pecuniary or non-pecuniary benefits – whether it is bonus pay, pension, clothing allowance or a right to have rehabilitation expenses reimbursed.

The term `remuneration` thus encompasses much more than just salary and is much broader. Salary obviously always falls `in` the scope of judicial remuneration, because it is a direct compensation for the work performed by a judge. However, apart from salary, it less evident what should be included in the scope, but it has to be always predetermined, controllable and regulated in the Law.

Additionally, based on domestic legislation and circumstances in each Council of Europe Member State, judicial salaries should be benchmarked against those of officials in other branches of government and safeguarded from arbitrary changes not driven by considerations for the judges` well-being. This approach acknowledges the unique and essential role that judges and state prosecutors play in a society.

¹ The overview of standards, presented herein, has been prepared under the auspices of the action **Strengthening accountability of the judicial system and enhancing protection of victims` rights in Montenegro**, in the context of providing support to the development of the Law on Salaries and Other Rights Related to the Exercise of Judicial and Constitutional Court Functions.

2. Standards for judges

2.1. Council of Europe Standards

2.1.1. European Commission for Democracy through Law (Venice Commission²)

The Venice Commission has consistently emphasized that adequate remuneration is essential to safeguarding judicial independence. In its various documents, the Commission argues that judges' salaries must be structured to guarantee financial autonomy and remain immune to arbitrary reductions, thereby reinforcing the separation of powers. These principles should serve as a key reference in harmonizing domestic judicial remuneration practices with European standards, ultimately strengthening judicial independence and integrity.

In its Report on the independence of the judicial system part i: the independence of judges, the Venice Commission reiterated the following:

“44. Recommendation (94) 12³ provides that judges’ remuneration should be guaranteed by law (Principle: I.2b.ii) and “commensurate with the dignity of their profession and burden of responsibilities” (Principle III.1.b). The Charter, supported by the CCJE, extends this principle to guaranteed sickness pay and retirement pension.

45. The CCJE adds in Opinion No. 1:

“62. While some systems (e.g. in the Nordic countries) cater for the situation by traditional mechanisms without formal legal provisions, the CCJE considered that it was generally important (and especially so in relation to the new democracies) to make specific legal provision guaranteeing judicial salaries against reduction and to ensure at least de facto provision for salary increases in line with the cost of living.”

46. The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. The example of the Polish Constitution, which guarantees to judges remuneration consistent with the dignity of their office and the scope of their duties is a commendable approach. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses which include an element of discretion should be excluded.

47. In a number of mainly post-socialist countries judges receive also non-financial benefits such as apartments, cars, etc. Such non-monetary remuneration of judges has two main origins: the first lies in the previous socialist system of distribution of goods, which depended on central planning. Some groups, including judges, were privileged in obtaining specific goods, including dwellings. This was a considerable advantage of being a judge.

48. The second origin of this practice lies in the post-socialist period of transition to a market economy. The prices for real property increased exponentially and this made it impossible for State officials, including judges, to purchase adequate housing. Again, one of the advantages

² Venice Commission, Report on the independence of the judicial system part i: the independence of judges, CDL-AD(2010)004, 16 March 2010,

https://www.venice.coe.int/Newsletter/NEWSLETTER_2010_02/4_Judges_EN.html

³ **Nota bene:** Recommendation (94)12 has been replaced by the Council of Ministers Recommendation (2010)12.

of being a judge was the attribution of apartments. Young judges in particular may not easily be able to purchase real estate and, consequently, the system of allocation of housing persists. 49. While the allocation of property is a source of concern, it is not easy to resolve the problem of providing the judiciary with an appropriate living standard, including housing. An argument advanced in favour of such non-financial allocations is that they can be attributed according to individual need whereas salaries are set at the same level for all judges in a given category without the possibility of supporting those in special need. However, this assessment of social need and the differentiation between judges could too easily permit abuse and the application of subjective criteria.

50. Even if such benefits are defined by law, there will always be scope for discretion when distributing them. They are therefore a potential threat to judicial independence. While it may be difficult immediately abolish such non-financial benefits in some countries since they correspond to a perceived need to achieve social justice, the Venice Commission recommends the phasing out of such benefits and replacing them by an adequate level of financial remuneration.

51. To sum up, the Venice Commission is of the opinion that for judges a level of remuneration should be guaranteed by law in conformity with the dignity of their office and the scope of their duties. Bonuses and non-financial benefits, the distribution of which involves a discretionary element, should be phased out.”

Furthermore, the Venice Commission indicated that, in order to maintain the independence of the court system in the long and short run, it will be necessary to provide the courts with resources appropriate to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and in national constitutions and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law.⁴

2.1.2. Committee of Ministers of the Council of Europe

[Recommendation CM/ Rec \(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities:](#)⁵

“4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.

53. The principal rules of the system of remuneration for professional judges should be laid down by law.

54. Judges’ remuneration should be commensurate with their profession and responsibilities and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

⁴ *Supra*, para.52.

⁵ Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies,

55. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges."

2.1.3. Standards of the Consultative Council of European Judges (CCJE)

2.1.3.1 CCJE Opinions

The CCJE also mentioned sufficient remuneration of judges among basic safeguards of judicial independence (CCJE Opinion No. 18 (2015) on the position of the judiciary and its relations with the other powers of state in a modern democracy, para 35)⁶:

"35. The full recognition of the basic safeguards of judicial independence, such as security of tenure, no change of function or location without a judge's consent, appointment and promotion free from political influence, sufficient remuneration, and safety of life and property, is a prerequisite for any satisfactory discussions between the three powers of the state. If such basic safeguards are respected, judicial independence will not suffer but, on the contrary, will benefit from an increased legitimacy earned through a combination of the satisfactory exercise of the judiciary's constitutional function and the judges' participation in exchanges. Continuance of both judicial independence and judicial legitimacy are not automatic: both have to be constantly earned. The judiciary's legitimacy and its independence are safeguarded best by excellent performance. To achieve this and earn the respect of the public, an independent and accountable judiciary is open to justified criticism, learns from its mistakes and thereby continually improves its work. This way, independence and accountability do not contradict but, rather, enhance each other. However, it is important to emphasise that a judge is not responsible for the politics of a previous government or regime. Judges must not be subjected to criticism or a disciplinary process simply because they applied the law as laid down by a previous regime, unless they misapplied the law in bad faith."

Moreover, adequate salaries, retirement pensions and other social benefits, a manageable workload, a proper working infrastructure and job security for both judges and court staff are vital for the legitimacy and good reputation of a judicial system. These are also important safeguards against corruption in the judiciary in CCJE Opinion No. 21 (2018) on preventing corruption among judges, Chapter V. Conclusions and recommendations, clause (g):⁷

"g. The competent authorities should always provide the judicial branch with adequate funds for the dignified and proper accomplishment of its mission. Adequate salaries, retirement pensions and other social benefits, a manageable workload, a proper working infrastructure and job security for both judges and court staff are vital for the legitimacy and good reputation of a judicial system. These are also important safeguards against corruption in the judiciary."

Furthermore, and as mentioned previously, CCJE considered that it was generally important to make specific legal provision guaranteeing judicial salaries against reduction and to ensure at least de facto provision for salary increases in line with the cost of living (CCJE Opinion No. 1 (2001) on the standards concerning the independence of the judiciary and the irremovability of judges, para 62):⁸

⁶ <https://www.coe.int/en/web/ccje/opinion-n-18-on-the-position-of-the-judiciary-and-its-relation-with-the-other-powers-of-state-in-a-modern-democracy>

⁷ <https://www.coe.int/en/web/ccje/judicial-integrity-and-corruption>

⁸ <https://www.coe.int/en/web/ccje/opinion-n-1-on-independence-of-judges-and-opinion-n-2-on-funding-of-courts>

“While some systems (e.g. in the Nordic countries) cater for the situation by traditional mechanisms without formal legal provisions, the CCJE considered that it was generally important (and especially so in relation to the new democracies) to make specific legal provision guaranteeing judicial salaries against reduction and to ensure at least de facto provision for salary increases in line with the cost of living.”

In the Bordeaux Declaration, CCJE emphasized that adequate organisational, financial, material and human resources should be put at the disposal of justice (Section 4)⁹:

“4. Adequate organisational, financial, material and human resources should be put at the disposal of justice.”

The proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration as it has been stated in the said Declaration (para 37).¹⁰

As regards the funding of courts, which is, however, not the prime focus of this paper, the CCJE agreed that although it is part of the state budget presented to the legislator by the executive power, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.

2.1.3.2. Magna Carta for Judges¹¹

Magna Carta for Judges, delivered on the 10th anniversary of CCJE, also gives significant importance to remuneration of judges as one of the pillars of independence of judges, as stated in para 7.

“7. Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. To avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.”

2.2. European Charter on the Statute for Judges

The European Charter on the Statute for Judges also stressed that judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.¹²

⁹ CCJE and the Consultative Council of European Prosecutors (CCPE) adopted their Joint Opinion (No. 12 (2009) for the CCJE and No. 4 (2009) for the CCPE) on relations between judges and prosecutors in a democratic society. This Opinion included the Bordeaux Declaration and an Explanatory Note, <https://rm.coe.int/1680747391>

¹⁰ *Ibid*, para 37.

¹¹ Strasbourg, 17 November 2010, CCJE (2010)3 Final, <https://rm.coe.int/16807482db>

¹² The European Charter on the Statute for Judges was adopted by participants from European countries and two judges' international associations meeting in Strasbourg on 8-10 July 1998, supported by the meeting of the Presidents of the Supreme Courts of Central and Eastern European countries in Kyiv on 12-14 October 1998, and again by judges and representatives from Ministries of Justice from 25 European countries meeting in Lisbon on 8-10 April 1999. See para 6.1,

The Charter also provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death. It particularly ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge (para 6.1.- 6.4.).

“6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.

6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

6.4. In particular, the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.”

2.3. European Commission for the Efficiency of Justice (CEPEJ)

The CEPEJ referred to the Council of Europe’s Committee of Ministers standards¹³ and underlined that the issue of judges’ remuneration requires a comprehensive approach which, beyond the purely economic aspect, takes account of the impact that it can have on the efficiency of justice as well as on its independence in connection with the fight against corruption within and outside the judicial system.¹⁴

25. CEPEJ also provided relevant information on the salaries of judges in Europe and mentioned that there was no general trend showing that judges’ and prosecutors’ salaries had increased compared to the average salaries. In a considerable number of member states, for example, the ratio of judges’ and/or prosecutors’ salaries to average salaries has fallen.¹⁵ This was often not due to a decrease in the gross salary of judges or prosecutors, but to the fact that average incomes had increased more than judges’ or prosecutors’ salaries. The development of average salaries must therefore be carefully monitored if one wants to ensure that the salaries of judges and prosecutors are maintained in relative terms.

2.4. Standards of the Group of States against Corruption (GRECO)

GRECO also stressed the importance of adequate judicial remuneration, having recommended that adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168068510f>

¹³Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, paras 53-54, <https://www.coe.int/en/web/ccje/reference-documents>

¹⁴ CEPEJ Evaluation Report of European judicial systems, 2024 evaluation cycle (2022 data), Part 1: tables, graphs and analyses, page 76, <https://www.coe.int/en/web/cepej/special-file>

¹⁵ *Ibid*, page 81 (data about salaries in Montenegro can be found in the Country Report: page 123)

safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions. It accordingly invited the authorities to support those improvements by making necessary changes which fall within their competence.¹⁶

3. Standards of the Court of Justice of the European Union (CJEU)

Court of Justice of the European Union (CJEU) mentioned, inter alia, that the protection against removal from office of judges and the receipt by them of a level of remuneration commensurate with the importance of their functions constitute guarantees essential to judicial independence.¹⁷

4. International Association of Judges- Universal Charter of a Judge

The Charter, which presents the minimal guarantees required, was unanimously adopted on November 14th, 2017.

The issues related to remuneration, social security and retirement are regulated in Article 8, setting up the following standards:

“Article 8 – 1 – Remuneration

The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence.

The remuneration must not depend on the results of the judge’s work, or on his/her performances, and must not be reduced during his or her judicial service.

Rules on remuneration must be enshrined in legislative texts at the highest possible level.

Article 8-2 – Social protection

The statute provides a guarantee for judges acting in a professional capacity against social risks related to illness, maternity, invalidity, age and death.

Article 8-3 – Retirement

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement, the judge may exercise another legal professional activity, if it is not ethically inconsistent with its former legal activity.

It cannot be deprived of his pension on the sole ground that it exercises another professional activity. “

5. United Nations

The UN Basic Principles on the Independence of the Judiciary underlined that the term of office of judges, their independence, security, adequate remuneration, and conditions of service, pensions and the age of retirement shall be adequately secured by law:

¹⁶ See GRECO Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Austria, adopted by GRECO at its 94th plenary meeting (Strasbourg, 5-9 June 2023), para 51, <https://www.coe.int/en/web/greco/evaluations/round-4>

¹⁷ Court of Justice of the European Union (CJEU), judgment of 27 February 2018, C-64/16, Associação Sindical dos Juizes Portugueses, para 45, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

“The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.”¹⁸

The UN Special Rapporteur on the independence of judges and lawyers also stressed that international and regional standards require that the remuneration of judges be guaranteed by law. The UN Special Rapporteur found that reality on the ground was far from being consistent with this principle. In this connection, the Special Rapporteur, in several of his country mission reports, noted the low level of judicial salaries, in some instances constituting remuneration well below the average national income or not even providing for a decent livelihood. The Special Rapporteur also highlighted the problem that, despite the existence of pertinent legal provisions, salaries effectively paid to the judges are not adequate.¹⁹

The Special Rapporteur expressed concern that low salaries and salary arrears are a major factor contributing to the endemic corruption within several judicial systems, having called for judges to be remunerated with due regard for the responsibilities and the nature of their office, as also recommended by the Human Rights Committee.²⁰

At this place, it is also important to refer to [Report of the Special Rapporteur on the independence of judges and lawyers](#), Margaret Satterthwaite, on her visit to Montenegro.²¹

In her report prof. Satterthwaite stresses that the Law on Salaries of Employees in the Public Sector, which applies to judges and public prosecutors, defines salary coefficients, which vary depending on the years of experience of the judge and the rank of the court that he or she belongs to (art. 22) and acknowledge that salaries of judges are not commensurate with the status of their profession nor sufficient to guarantee an adequate standard of living. This is especially true for judges who do not own an apartment in their place of work and are required to pay for additional accommodations.

It is also important to mention that UN Special Rapporteur recognised an additional challenge to the system of salaries of judge specifically those dealing with corruption, organized crime and politically sensitive cases who are facing significant security risks that do not appear to be taken sufficiently into account by the responsible national authorities, such as the Ministry of the Interior and the Police.

The Special Rapporteur recalls that adequate remuneration and conditions of work are essential preconditions for judicial independence. The level of remuneration for judges should be in conformity with the dignity of their office and the scope of their duties and commensurate with the judge’s burden of responsibility. Judicial salaries should be sufficient to guarantee an adequate standard of living, to ensure that judges are not incentivized to earn an additional income in an inappropriate manner.

¹⁸ UN Basic Principles on the Independence of the Judiciary adopted on 6 September 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, para 11, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

¹⁹Report of the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, 24 March 2009, paras 73-74, <https://digitallibrary.un.org/record/652385?v=pdf>

²⁰ *Ibid*, para 75.

²¹<https://www.ohchr.org/en/documents/country-reports/ahrc5662add1-visit-montenegro-report-special-rapporteur-independence>

3. Standards for prosecutors

All above mentioned standards in principle should apply to prosecutors. Naturally, status of prosecutors in respected state depends on their legal and constitutional status their level of independence and consequently guarantees of independence as tenure, appointment, promotion, freedom of association and remuneration.

If prosecutors and prosecution in the state enjoy same or very similar level of independence in comparison to judges in relation to other powers of the states, they should enjoy equal level of social protection including salaries as judge (i.e. Croatia, Slovenia, Italy).²²

Underneath standards which are specific to prosecutors will be listed and explained because in principle all principles already listed for judges' *mutas mutandis* apply to prosecutors as well.

In other words, the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration.

3.1. Standards of the Council of Europe

3.1.1. Standards of the European Commission for Democracy through Law (Venice Commission)

The Venice Commission stressed that in relation to prosecutors, similarly to judges, remuneration in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors.²³

The Venice Commission specifically referred about the remuneration of judges. According to the Venice Commission, salaries should be guaranteed by law in conformity with the dignity of their office and the scope of their duties and adequate remuneration is indispensable to protect judges from undue outside interference. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants.²⁴

²² Consultative Council of European Prosecutors (CCPE), [Opinion of the CCPE Burro CCPE-BU\(2024\)1 Strasbourg](#), 18 March 2024:

„ The CCPE Bureau welcomes the determination on an equal basis of salaries of both prosecutors and judges in Slovenia. As the CCPE Bureau underlined recently, based on the numerous advisory opinions and instruments, the level of remuneration of prosecutors must be analogous or at least comparable to that of judges, since both professional groups are key actors in any justice system and they both contribute essentially and extensively to the rule of law”.

²³ Venice Commission Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 69

²⁴ Venice Commission Report on the Independence of the Judicial System. Part I: The Independence of Judges (Venice, 12-13 March 2010), para 51.

3.1.2. Standards of the Committee of Ministers of the Council of Europe

The Committee of Ministers of the Council of Europe underlined that member states should take measures to ensure that public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law.²⁵

The Committee of Ministers also pointed out that the status of public prosecutors and their rates of remuneration and pension must take account of the need to maintain a certain balance between members of the judiciary and the prosecution service, as both - despite the different nature of their duties - play a part in the criminal justice system. The material conditions of service should also reflect the importance and dignity of the office. Lastly, improving the situation of public prosecutors in certain member states, particularly in central and eastern Europe, should curb the tendency for them to desert to private sector posts.²⁶

3.1.3. Standards of Consultative Council of European Prosecutors (CCPE)

In 2009, the CCPE and the CCJE adopted a Joint Opinion on relations between judges and prosecutors in a democratic society, which included the Bordeaux Declaration and an Explanatory Note.

It was emphasised in the Bordeaux Declaration that for an independent status of public prosecutors, some minimal requirements are necessary, in particular that their recruitment, career development, security of tenure as well as remuneration be safeguarded through guarantees provided by law.²⁷

The same Opinion went on to underline that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, including remuneration.²⁸

The CCPE went on to further stress in its Opinion No. 9 (2014) on European norms and principles concerning prosecutors, including the Rome Charter, that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary²⁹, and that states should take measures to ensure that prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement.³⁰

²⁵ Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, para 5(d), <https://rm.coe.int/16804be55a>

²⁶ *Ibid*, para 5.

²⁷ Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Section 8, <https://rm.coe.int/1680747391>

²⁸ Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Explanatory Note, para 37.

²⁹ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Section IV, <https://rm.coe.int/168074738b>

³⁰ Opinion No. 9 (2014) of CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 75.

Moreover, the conditions of service should reflect the importance and dignity of the prosecution office, and respect attached to it. The appropriate remuneration of prosecutors also implies recognition of their important function and role and can also reduce the risk of corruption.³¹

The CCPE also emphasised this issue in its Opinion No. 13 (2018) on independence, accountability and ethics of prosecutors, where it outlined the main aspects of the prosecutorial independence. It mentioned the issue of proper remuneration of prosecutors several times in the text of this Opinion and finally specified it in the set of Recommendations provided at the end of the Opinion. It recommended that the status, remuneration and treatment of prosecutors as well as the provision of financial, human and other resources for prosecution services should correspond, in a way comparable to those of judges, to the eminent nature of the mission and the particular duties of prosecutors.³²

Finally, the CCPE emphasised the issue of prosecutorial remuneration in its Opinion No. 16 (2021) on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. In this respect, it reiterated the standards and Recommendations contained in above-mentioned Opinion No. 13 (2018).³³

3.1.4. Standards of the Group of States against Corruption (GRECO)

GRECO stressed the importance of adequate remuneration for prosecutors by encouraging that such remuneration be based on transparent and objective criteria.³⁴

As regards the judicial remuneration, it recommended that adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions. It accordingly invited the authorities to support those improvements by making the necessary changes which fall within their competence.³⁵

³¹ *Ibid*, para 76.

³² Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, Recommendation XI, <https://rm.coe.int/opinion-13-ccpe-2018-2e-independence-accountability-and-ethics-of-pros/1680907e9d>

³³ Opinion No. 16 (2021) of the CCPE on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, Conclusions, Section A(1), <https://rm.coe.int/opinion-no-16-2021-en/1680a4bd26>

³⁴ GRECO's Fourth Evaluation Round: Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors, Evaluation Report concerning Estonia adopted by GRECO at its 58th plenary meeting (Strasbourg, 3-7 December 2012), para 172, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c32b5>

³⁵ GRECO Fourth Evaluation Round: corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Austria, adopted by GRECO at its 94th plenary meeting (Strasbourg, 5-9 June 2023), para 51, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ad495a>

3.2. Standards of the United Nations (UN)

The UN Guidelines on the role of the public prosecutor underlined that prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession. The Guidelines went on to mention that reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.³⁶

Un Special Rapporteur in its Report³⁷ stressed that concerns expressed about judges' adequate standard of living also apply to the prosecution service.

3.3. Standards of the International Association of Prosecutors (IAP)

The International Association of Prosecutors (IAP) pointed out in its Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors that in order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, they should be protected against arbitrary action by governments. In general, they should be entitled, among other guarantees, to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished.³⁸

4. Concluding remarks

Taking into consideration all the above-mentioned standards, it could be concluded that the following safeguards and principles are to be applied by domestic authorities in regulating the issue of remuneration of judges and prosecutors on the following common grounds:

- Salaries and other material rights of judges are important part of judges' independence protection and should be regulated by law. Similarly, legal regulation of salaries and other material rights of state prosecutors are considered an integral part of prosecutors' autonomy.
- Remuneration of judges does not include only salaries during the service at the bench, but also other social rights (i.e. in case of illness, maternity or paternity leave, invalidity, death) and pension after end of the service.
- Salaries of judges and other holders of judicial functions should reflect and correspond to their profession and responsibilities.
- Salaries of judges and other holders of judicial functions should shield them from inducements aimed at influencing their decision-making.
- Pensions of judges and other holders of judicial functions should be in a reasonable relationship to their level of remuneration during service.
- Remuneration of judges should be protected of real reduction.

³⁶ UN Guidelines on the Role of Prosecutors adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, paras 3 and 6, <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

³⁷ Please see footnote 21.

³⁸ [IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors](#), adopted by the IAP on 23 April 1999, Article 6(3),

- Salaries of judges should be free of any kind of discrimination, and should be, in each society, regulated without prejudice to holders of other official duties, considering the specific position of judges and other holders of judicial functions towards other holders of state powers and economic circumstances in any society.
- Level of remuneration of prosecutors must be analogous or at least comparable to that of judges, since both professional groups are key actors in any justice system and they both contribute essentially and extensively to the rule of law.

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