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PROFESSIONAL STANDARDS OF INTERACTION OF LAWYERS AND JUDGES IN COURTS IN ARMENIA, BELARUS, GEORGIA, REPUBLIC OF MOLDOVA AND UKRAINE

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LIST OF ABREVIATIONS

CCBE	Council of Bars and Law Societies of Europe
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
CCTV	Closed Circuit Television
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
EU	European Union
GBA	Georgian Bar Association
ICT	Information and communication technologies
GRECO	Group of States against Corruption
LA	Law on Advocacy
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNBA	Ukrainian National Bar Association
USAID	U.S. Agency for International Development

I. EXECUTIVE SUMMARY

This comparative review has been prepared in the framework of the regional project on "Strengthening the profession of lawyer in line with European standards" (hereafter called “the Project”), which is funded by the European Union and the Council of Europe and implemented by the Council of Europe. The Project is being implemented under the “European Union/Council of Europe Partnership for Good Governance” Phase II (PGGII) programme.

There are five EaP countries covered by the Project: Armenia, Belarus, Georgia, Republic of Moldova and Ukraine.

Lawyers are essential actors in the administration of justice. Judges shall acknowledge the role of lawyers, and both, lawyers and judges need to understand each other’s role in the justice system, as independent actors. They need to show respect for each other, and while occupying different positions at the trial, they have to work towards ensuring that the justice system works in a fair and efficient way.

The way the interactions between lawyers and courts is structured and works in practice will not only ensure the protection of the parties’ rights and respect for the procedural safeguards, but are aimed also at preventing abuses and miscarriages, providing the adequate environment to adjudicate cases. The trial is also the public staging of the justice in action, and thus the image of the citizens and their trust in the justice system, will be strongly influenced by the way lawyers and judges interact in court. Mutual understanding, mutual respect and professionalism together with compliance with ethical standards will contribute that such interactions are smooth, which will have a positive impact in the promotion of the fairness of the trial as well as the efficiency of the whole justice system.

The present study analyses the professional standards that govern the interactions of lawyers and judges in courts in the context of five countries, namely Armenia, Georgia, Belarus, Republic of Moldova and Ukraine.[1] The domestic legal framework and its practical implementation have been studied with the aim of first identifying in which way the current rules and practices are in compliance with CoE standards. The main standards are identified in the CCJE Opinion (2013)16, which states that judges and lawyers are independent and must be seen as independent, and this independence *is affirmed by the statute and ethical principles adopted by each profession* (para. 7 CCJE Opinion (2013)16); relations between lawyers and judges must always seek mutual understanding (para. 21 CCJE Opinion (2013)16); preserve the court’s impartiality and image of impartiality (para. 24), and while both, judges and lawyers enjoy the right to freedom of expression under Article 10 ECHR, this right can be subject to limits to maintain the authority and impartiality of the judiciary. The CCJE also considers that “*It is necessary to establish proper communication between courts and lawyers to ensure the speed and efficiency of proceedings* (para. 18 CCJE Opinion (2013)16), and “*states should introduce systems facilitating computer communication between the courts and*

[1] The country reviews of the Republic of Moldova and Ukraine have been written by Prof. Dr. Lorena Bachmaier (Professor of Law, Complutense University Madrid, Spain); the country reviews of Armenia, Georgia and Belarus by Mr Alexander Surzhin.

lawyers, in order to improve the service for lawyers and to enable them to consult easily the procedural status of cases" (para. 18 CCJE Opinion (2013)16.

Once the legal framework has been described and analysed, the study seeks to determine how are the rules implemented in practice, detect shortcomings and best practices that might be undermining the independence of the legal professionals or the rights or the parties involved in the court proceedings.

The outcome of the study of the five countries shows a positive trend towards a better understanding by the judges of the lawyer's tasks in defending their clients and their role in a more adversarial procedural setting, and grave situations of disrespect in court are seen now as rather exceptional. However, there is general agreement that the situation still needs to be improved. The most repeatedly complain on the side of the lawyers is that judges still haven't interiorised the adversarial principle that shall lead the confrontation at trial. Many judges still see themselves as the actor responsible for finding the truth, and thus take over tasks that are attributed to the prosecution. This generates conflicts at trial, for some judges often tend to treat defence and prosecution completely different and thus distorting the principle of equality as well as the image of impartiality.

All stakeholders affirm that the relationship between judges and lawyers is far from being one of mutual understanding, but rather of mutual distrust, where cultural elements are still negatively impacting their relationships: while judges complain that lawyers tend to abuse process for their own strategical procrastination, lawyers complain that judges do not take into account their agenda nor grant them enough time to present adequately their arguments. Case-management issues are hampering such relations in many cases, but also actions on the side of lawyers for unjustified non-shows, and actions of discrediting the judges outside the courts. Videorecording of hearings has proofed to be beneficial to prevent unlawful behaviours and clashes in courts.

The studies show that most of the actors are not satisfied with the way the disciplinary proceedings on the side of the Bar are handled, as they hardly react sanctioning lawyers in cases of severe infringements of the ethical rules. It is surprising to see that in some countries the situation has changed from a strong authoritarian position of the judge who would sanction too often lawyers for contempt of court, towards the opposite: abolition of contempt of court proceedings, but no tools to react against misconduct of lawyers towards judges.

In sum, besides certain legal amendments in the procedural laws, to prevent or reduce conducts of abuse of process, mutual understanding needs to be further developed. Practice shows that those actors that have been working on both sides –as lawyers and as judges–, are best positioned to understand each other's role and needs. Joint training programmes and common rules of ethics –save the differences of the different duties and roles– are mentioned as ways to improve the current shortcomings.

II. CROSS-COUNTRY REVIEW: METHODOLOGY AND THE STRUCTURE

Introduction

"Judges and lawyers have different roles to play in the legal process, but the contribution of both professions is necessary in order to arrive at a fair and efficient solution to all legal processes according to law" (para. 4 CCJE Opinion (2013)16)[2], and "the relations which result from the professional conduct of judges and lawyers, and which require mutual respect for the roles played by each side and a constructive dialogue between judges and lawyers" (para.9.II CCJE (2013)16).

To provide guidance and define the methodological approach for the development of a country-specific analysis on professional standards of interaction of lawyers and judges in courts, as a preliminary step a concept paper was prepared by Prof. Dr. Lorena Bachmaier.

Following the concept paper, the country-specific analysis should provide:

- An overview on the legal framework, reflecting the existing national laws, secondary and regulatory framework, as well as best practices in the five countries regulating ethical principles of interactions of judges and lawyers;[3]
- A description of the practical implementation of the mentioned legal frameworks;
- An overview of specific cases in the five countries, including best practices and possible deficits with regard to the interactions of judges and lawyers (behaviour, consequences of misconduct etc).
- Recommendations as to the improvement of existing legal frameworks in line with the European standards.

Methodology

The cross-country analysis adheres to the general methodological principles of impartiality, objectivity, and confidentiality. The experts carrying out the analysis committed to provide truthful and accurate information, preserve the confidentiality of the data and make a declaration of non-conflict of interest.[4]

The methodology of the cross-country analysis includes:

- Desk research of the consultants.
- Interviews with key stakeholders of the four participating countries (in case of Belarus the interviews will not be conducted).

The **desk research** within the country-specific analysis should focus on the applicable legal framework: the Constitution, laws and rulebooks on the topic. Each country-specific

[2] CCJE Opinion (2013)16 "On the relations between judges and lawyers, adopted at the 14th Plenary meeting of the CCJE, 13-15 November 2013.

[3] The countries here and further in the document include Armenia, Belarus, Georgia, Republic of Moldova, Ukraine.

[4] Basic principles on human rights monitoring

analysis identify the relevant case-law, studies on the legal profession and policy papers and analyse those sources with regard to the professional standards both for lawyers and judges in their interaction in court. These include the relevant national legislation, the case-law of the European Court of Human Rights (if existing on the topic), various policy papers and recommendations of the bodies of the Council of Europe, relevant opinions prepared by the CoE Directorate General of Human Rights and Rule of Law, as well as studies of various civil society organisations in so far, the latter might be useful.

The desk research is completed and validated by **interviews with the main stakeholders** and institutions in the four participating countries defined (except of Belarus). Ideally these interviews should have been carried out face-to-face organising the meetings on site. However, due to the travel restrictions caused by the Covid-19 pandemic, the country missions were e substituted by on-line interviews.

The sources for the cross-country analysis take into account the international instruments applicable to the exercise of the profession of lawyer, *inter alia*:

- The European Convention on Human Rights, in particular, Article 6 and the related case law.
- Recommendation Rec (2000) 21 of the Committee of Ministers of the Council of Europe to the Member States "On the freedom of exercise of the profession of lawyer."
- Opinion no. 16 (2013) of the Consultative Council of European Judges "On the relations between judges and lawyers"
- Recommendation of the Parliamentary Assembly of the Council of Europe no. 2085 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States."
- Recommendation of the Parliamentary Assembly of the Council of Europe no. 2121 (2018) "The case for drafting a European Convention on the profession of lawyer."
- Council of Bars and Law Societies in Europe, Charter of Core Principles of the European Legal Profession (2006) and Code of Conduct for European Lawyers
- International Association of Lawyers' "Turin Principles of Professional Conduct for the Legal Profession in the 21st Century".[5]

Some of country reviews include also the issues not addressed in this concept paper, but that are important in the context of a precise country and the interaction between lawyers and judges in court. Such topics are provided or highlight separately.

[5] Turin Principles See specifically the principles on: Relations with judges"Lawyers are entitled to recognition by Judges of the importance of their role in judicial proceedings, for they are actors in those proceedings whose presence ensures a fair trial. Lawyers have the duty to act in an honourable and dignified manner towards Judges and to fight to ensure the independence of the judiciary."

Structure and topics of the country-specific analysis

1. The country-specific reviews consist of the following sections:
    - Introduction
    - Professional standards of interaction of lawyers and judges in courts
        - Legal and institutional framework
        - Current situation, problems and challenges concerning the interaction between lawyers and judges in court
        - Concluding remarks and recommendations

Within each of the country reports following topics, if applicable are addressed:

codes of conduct, professional guidelines (including these pertaining to the professional liability)

- practice on the conduct of lawyers in court, towards the judges and all other parties and staff, including problematic areas as well as good practices
- practice on the conduct of judges towards the lawyers in court, including problematic areas as well as good practices
- relevant transversal or cross-cutting issues (gender, youth, racial, etc.)
- actions by Bar associations to protect lawyers and actions by Council of Judiciary to protect judges against the misconduct of or attacks from lawyers
- national instruments for the protection of the lawyers against actions taken by judges
- national instruments for the protection of judges and the judiciary as a whole against the actions taken by lawyers in court

III. PROFESSIONAL STANDARDS OF INTERACTION OF LAWYERS AND JUDGES IN COURTS

Regarding the interaction of lawyers and judges, the standards set out in the CoE Recommendation (2000)21 On the freedom of exercise of the profession of lawyer, expressly mention that

- "Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards,"[6] and "judges should show the proper consideration due to all persons (for example, parties, witnesses, counsel) and no distinction should be made based on unlawful grounds or which would be incompatible with the appropriate discharge of their functions."[7]

And, on the other hand,

- "Lawyers should respect the judiciary and carry out their duties towards the court in a manner consistent with the domestic legal and other professional standards."[8]
- The CCBE Code of Conduct for European Lawyers sets out following principles:

  "a lawyer who appears, or takes part in a case, before a court must comply with the rules of conduct applied before that court or tribunal. A lawyer must always have due regard for the fair conduct of the proceedings. A lawyer shall, while maintaining due respect and courtesy towards the court, defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person. A lawyer shall never knowingly give false or misleading information to the court.[9]

In the relations between lawyers and judges in court several problems have been identified. Quite often, lawyers claim that judges do not allow them to present their case properly, cut their time, or even threat them with contempt of court if they insist on filing a recusal against the judge or defending a certain case. Such a behaviour would undermine the right to a fair trial and the defence rights.

On the other side, there are also many cases where lawyers behave in a disrespectful way towards the judges in court, insulting, threatening, or using excessive language. These misconducts lead in many countries to expulsion of the courtroom, administrative or criminal sanctions for contempt of court, and/or disciplinary actions by the bar association. Judges also complain about lawyers abusing of process by not appearing to the hearings or filing completely ungrounded remedies and appeals, with the solely aim of delaying the outcome of the proceedings.

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[6] See Principle I, para. 4; and para. 8 under the same principle states: "All lawyers acting in the same case should be accorded equal respect by the court".

[7] CCJE Opinion (2002) 3, para. 23.

[8] See Principle III, para.4. Disciplinary actions should be available in case lawyers do not act in accordance with their professional standards (Principle VI).

[9] CCBE Code of Conduct for European Lawyers, paras. 4.1, 4.2, 4.3 and 4.4

It goes without saying that the judges need to be provided with tools to protect the processes of orderly trial and the dignity of the court.[10] Following the CCJE Opinion (2013)16, "lawyers should maintain constructive work relations also with the court as this will improve the "quality and efficiency of proceedings (para. 10). As the Venice Commission has recognised "in principle, fining lawyers for causing deliberate delay of court proceedings is acceptable as long as standards of fair trial are respected. No automatic sanction can be foreseen and the circumstances in each case need to be examined individually."[11]

However, holding lawyers in contempt of court, cannot only infringe the right to counsel of own choice, and the right to access to court, but has led to revising compliance with Art. 6.1 ECHR, the right to an impartial judge.

Striking the proper balance between the court's authority and powers to direct the trial in an efficient and adequate way and react before misconducts of lawyers, and the protection of lawyers against abuses that might affect their independence, the right to a fair trial and the right to defence, is not easy.[12] But relations between lawyers and judges must always seek mutual understanding (para. 21 CCJE Opinion (2013)16); preserve the court's impartiality and image of impartiality (para. 24), and while both, judges and lawyers enjoy the right to freedom of expression under Article 10 ECHR, this right can be subject to limits in order to maintain the authority and impartiality of the judiciary.[13]

It is also important to highlight whether there are specific issues regarding the gender/age/racial perspective, whether certain patterns of conduct are worse or better depending on those factors.[14]

Specific problems related to holding lawyers in contempt of court: limits and impact upon the principle of impartiality.

Indeed, it can be questioned whether the cases of contempt of court, where the same court can impose the sanction for disorderly behaviour in the courtroom –and thus there is no other prosecuting authority–, the absence of a prosecuting authority also meets the functional objective test of impartiality of such court.

The ECtHR addresses this issue in the case of *Kyprianou v. Cyprus*[15], but stating beforehand that the Court does not consider it necessary nxeither desirable "to review generally the law on contempt and the practice of summary proceedings in Cyprus and

[10] Para.12 CCJE Opinion (2013)16: "(…) legislation should provide judges with effective procedural tools to implement the principles of a fair trial and to prevent undue delays or illegitimate delaying tactics. Such legislation should be sufficiently firm and should provide for clear and fair time-limits, while also permitting the necessary flexibility".

[11] CDL-AD(2014)016, Opinion on the draft amendments to the criminal procedure and civil procedure codes of Albania, §16

[12] See, for example, *Alenka Pečnik v. Slovenia*, Appl. no. 44901/05, of 29 September 2012; *Mariusz Lewandowski v. Poland*, Appl.no. 66484/09), of 3 July 2012.

[13] See, for example, *Nikula v. Finland*, Appl. no. 31611/96, of 21 March 2002 (only exceptionally can defence lawyers be subject to restrictions of their right to freedom of expression).

[14] On gender issues, see, e.g., *Tuncer Gunes v. Turkey*, *Appl. no. 26268/08*, of 3 September 2013; and *Unal Tekeli v. Turkey*, Appl. no. *29865/96,* of 16 November 2004; *Alonso Saura v. Spain,* Appl. no. 18326/19, communicated on 9 October 2020.

[15] *Kyprianou v. Cyprus*, [GC], Appl. no. 73797/01, of 15 December 2005.

other common-law systems. Its task is to determine whether the use of summary proceedings to deal with Mr Kyprianou's contempt in the face of the court gave rise to a violation of Article 6 § 1 of the Convention".[16]

In assessing whether in the precise circumstances of the instant case, there are grounds to doubt about the objective impartiality of the national court, the ECtHR finds that:

> *"The present case relates to contempt in the face of the court, aimed at the judges personally. They had been the direct object of the applicant's criticisms as to the manner in which they had been conducting the proceedings. The same judges then took the decision to prosecute, tried the issues arising from the applicant's conduct, determined his guilt and imposed the sanction, in this case a term of imprisonment. In such a situation the confusion of roles between complainant, witness, prosecutor and judge could self-evidently prompt objectively justified fears as to the conformity of the proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench" (para. 127).*

Upon this argument, the Court finds that "the functional defect" of the court, can raise doubts on the impartiality of the court. By circumscribing the issue of the case to a "personal" conflict of the lawyer and the judges in the courtroom, the Court avoids making a general statement on the flaws of the common law proceedings of contempt of court, where it is evident that the same judges that "charge" also impose the sanction.

In the judgment *Mykhailova v. Ukraine*, the Court finds a violation of the right to an impartial judge as enshrined in Article 6.1 ECHR, but in this case, due to the absence of a prosecuting authority in an administrative offence procedure, stemming from a decision on contempt of court against the lawyer. In proceedings before a court in a civil case, the adjudicating judge considered that the defendant was in contempt of court, for making false statements against the judge's honour and dignity and insulting him. The case of contempt of court was referred to a second judge who sentenced the applicant to an administrative detention for five days. In the absence of a prosecuting authority, the Court recognized that the judge had assumed functions of prosecutor, by reading out the charges and also participating actively in the presentation of evidence.

It is a well-established principle in the case-law of the ECtHR that to safeguard the right to an impartial judge, the role of judge and prosecutor shall never be or appear to be confused, because such confusion can raise legitimate doubts on the impartiality of the adjudicating court. In the cases of contempt of court, the defect is even more complicated, because it is a type of procedure where it is not even foreseen that there should be a prosecuting authority, thus there can be a structural defect of the proceedings in ensuring the right to an impartial judge. The possibility that the same judge acts as "promoter of the action of contempt of court and imposes the sanction", is justified in common law legal systems upon the need of the court to act immediately to keep the order in the courtroom. However, when contempt of court entails also sanctions in form of detention or a fine, being an administrative sanctioning procedure with a punitive nature, the

[16] See para. 125. On problems related to decisions holding lawyer in contempt of court, see e.g., *Gurepka v. Ukraine*, Appl. no. 61406/00, of 6 September 2005; *Hammerton v. The United Kingdom*, Appl. no. 6287/10, of 17 March 2016.

principles of the criminal procedure shall be respected. The adversarial principle and the right to an impartial judge, require that there is a prosecuting body acting in such proceedings different from the judge.

In other cases of contempt of court, the Court found also doubts as impartiality to be objectively justified where there is some confusion between the functions of prosecutor and judge,[17] and has reiterated that the confusion between the functions of prosecutor and judge may prompt objectively justified doubts as to the impartiality of the persons concerned.[18]

[17] *Daktaras v. Lithuania*, Appl. no. 42095/98, of 10 October 2000.

[18] *Kamenos v. Cyprus*, Appl. no. 147/07, of 31 October 2017, para 104.

IV. COMPARATIVE ANALYSIS AND CONCLUSIONS

Comparative analysis

All the studied countries base the relationship between lawyers and courts on the principle of independence of their respective professions. However, in this regard Belarus represents an outlier, as the legal profession is under the supervision of the Ministry of Justice, not having a self-governing body.

All interviewees agree that there is still a generalised difficult relationship between judges and lawyers. In some countries, as Ukraine, there are strong tensions between advocates and judges, and that this is worse in the Anti-corruption court. In general, in Ukraine the lack of mutual understanding between the judges and the advocates is viewed as a systemic issue, aggravated in the anticorruption court.

Precise problems identified are: conflicts in organising the agenda for the hearings; excessive workload in certain courts, which causes the judges to adopt harsh measures to speed up proceedings and be less flexible in changing the date for hearings to adapt to the needs of the relevant lawyer; lack of adequate implementation of the disciplinary proceedings; lack of professionalism, which can be traced back to the university education, the initial training of advocates and judges and also to practices of the past still present; the interaction between lawyers and judges is also affected by the attitude of judges towards prosecutors, who are still seen as the most powerful party in the proceedings; and finally, corruption obviously is still behind many of the conflicting situations identified, and the reason for undermining the mutual trust and mutual respect.

The different grounds for such bad interaction appear to lie in different grounds: lack of understanding of each other's' role, lack of professionalism, authoritarian modes inherited from the past soviet practices, inefficient disciplinary proceedings, procedural shortcomings, lack of legal culture, corruption, deficit in the case management, and excessive workload, lack of electronic system for communications. These are some of the reasons mentioned which appear to be negatively impacting the interactions between lawyers and judges.

It appears that there are shortcomings on both sides, thus many of the conflicting situations being not attributable to one of them, as it seems that lawyers often forget their role in the justice administration and try to abuse process, and even show disrespect in their manners; while it seems that there are judges that sometimes forget that the lawyers have an important role to play in defending their clients in front of the courts. Judges complain that lawyers take every chance to abuse of continuances, thus delaying proceedings and influencing negatively on the proper advancement of the proceedings. For example, in the Republic of Moldova by provoking the self-recusal of the judge by taking cases before judges who are relatives of them. In all countries the major complaint is the abuse of filing completely ill-founded requests, and intentionally and unjustified non-appearance at the scheduled hearing. Advocates still complain against judges for their authoritarian soviet-style approach (e.g., Ukraine), and also their lack of skills in management as well as in addressing properly the facts and assessing the evidence. This seems to be particularly common in criminal proceedings in Ukraine where the leading actor used to be the public prosecutor, and advocates complain that the judge is only a sitting puppet who follows the stance of the prosecution.

Communications

A starting point for smooth interaction between lawyers and judges in courts is that the system provides adequate and effective systems to communicate. All countries state that the communications are not as fluent as they could be, and IT communications and electronic communications between the courts and the lawyers are only diversely implemented, and are not available in all proceedings, being especially problematic in criminal proceedings. An outlier in this aspect is Georgia, where communications between the judge and the lawyer are specifically prohibited during the proceedings to protect the image of impartiality of the judge and also to prevent being accused of corruption. An adequate balance needs to the provided in this regard to allow communications which do not damage the image of the judge's independence and impartiality, while also allowing to coordinate agendas.

While e-management is active in all countries, there is still no practice in discussing the agenda with the lawyers to plan the hearings and thus avoid overlaps. This is a salient problem in all the studied jurisdictions, together with the excessive workload of judges, who claim that disruptions caused by lawyers for non-shows causes additional stress for them. The general recommendation in this regard is to continue the digitalization of the court agenda, and the e-communications with lawyers.

Improper behaviour and consequences

It is interesting to highlight that despite acknowledging that the situation is not satisfactory and that the interactions between judges and lawyers are far from being good, all interviews state that nevertheless there is a positive trend in that regard, and some even describe it as a huge progress (e.g., Georgia, Armenia). In the five legal systems studied, there are rules to prevent improper behaviour by lawyers in court, usually in the Law on the Advocacy, the professional Code of ethics and also in the procedural codes. They require generally respectful behaviour, and only in some countries lawyers need to use the formula "your honour" (Ukraine). Dress code requires generally "adequate business etiquette" or proper dressing, and only the Republic of Moldova provides that the lawyers shall wear robes in court. Although not a salient problem, inadequate dress by the lawyer causes incidents from time to time, thus several stakeholders support the idea of making the lawyers' robe mandatory. This is explained in Ukraine also on the basis that this would promote equality of parts, as the public prosecutor appears in court with uniform.

The stakeholders were interviewed about the conduct of lawyers towards judges, whether disrespectful behaviour in court was frequent or rather exceptional in practice, and it was confirmed that insults or rude words against judges in court are exceptional in all five countries, although there are still single incidents. The same applies to the use of mobiles or interrupting the judges, not being signalled as a systemic problem. The judges have powers in all systems to request the lawyers to switch off the sound of the mobiles, which usually does not cause major problems.

Not being punctual is considered in all countries as disrespectful behaviour towards the court, although it usually does not entail any consequences. Nevertheless, it causes in practice additional tensions.

A major problem seems to lie in the way some lawyers discredit or directly insult the judges in the media or by way of social networks, which causes a conflicting atmosphere among the two professions (e.g., Armenia, Georgia, Ukraine). Disinformation campaigns

against judges or even presenting them all as corrupt does not help in promoting mutual understanding and a cooperative approach towards case management.

While these misbehaviours are seen as single incidents, judges complain that the problem lies in the implementation, many of the disciplinary complaints filed to the Bar Disciplinary Commission being rejected systematically (e.g., Republic of Moldova or Ukraine), usually covering up for the lawyers. The case of the Republic of Moldova presents a specific feature: the lawyer will only be sanctioned if his misbehaviour has caused additional costs. Not being specified who has the burden of proof of such additional costs, the cases of non-show remain without further consequences. In general, all stakeholders declare that the response on the side of the Bar upon complaints of the judges is not adequate (e.g., Republic of Moldova, Ukraine, Armenia, and Georgia). The defective implementation is caused in some cases, as mentioned above, by the legal provisions, but in general the replies do not express that a legal reform in this sense is required. This is an aspect to be further researched.

On the side of the judges, most of the studied countries (Georgia and Belarus seem to be the outliers), have derogated the rules on contempt of court against lawyers. This is seen as a major step towards protecting the lawyer's functions and allowing them to act more freely in defence of their clients. However, when asked about possible negative consequences (or fear of them) when representing clients in sensitive or high-profile cases, after recognising that there is also a positive trend in this regard, there is still fear of retaliation, mainly indirectly. Lawyers are also uncomfortable if they have to file a recusal against a judge, as judges still see this as a personal attack, rather than a way of safeguarding the right to an impartial judge. The problem with recusals –in the studied countries, but also in most European countries–, is to find the right balance to prevent ill-founded and abusive recusals (e.g., apparently often filed in Armenia), and on the other side, to avoid negative consequences in the case because having challenged the impartiality of the judge. Problems have been identified, for example, in Georgia, where the challenged judge decides him/herself about the own recusal.

With regard to the lawyers being treated differently because of their age or the size of the law firm, younger lawyers feel they are treated with less respect as their older colleagues and elderly judges tend to be more authoritarian; differences are rather found between good and bad and experienced/unexperienced lawyers, but not based on the age or the size of the firm, or the importance of the client. All lawyers, however, complain that they are not treated equally vis á vis the public prosecutor, claiming that the judges have still not understood what an adversarial procedure means. There is a tendency to provide more time and even show more respect to the allegations of the public prosecutor, as well as to give more credibility to the evidence the prosecution presents, than any of the actions of the defence lawyer. This is obviously a specific problem in the interactions of lawyers and judges in criminal proceedings, and it is more relevant with regard to elderly judges. Younger judges tend to feel more independent and open, as the interlocutors interviewed state.

In the field of gender equality, there is agreement that it has improved significantly. Gender issues are not identified as a salient problem by any of the interviewed professionals, except one lady representative of a women association, who claimed that they might not even be aware of discriminating attitudes. Numerous programmes have been developed towards implementing gender equality, also in the legal profession. A

high number of judges are female and the stakeholders in general do not find a different approach towards female judges and lawyers than to male. There are still single incidents, but this is not seen as a systemic problem.

Conclusions

It can be concluded that many of the principles set out in the Opinion CCJE (2013)16 "On the relations between judges and lawyers" of November 2013, are not complied with. More dialogue among judges and lawyers should be promoted, possibly through joint training programmes on themes of common interest, as recommended in the CCJE Opinion (2013)16, recommendation VII. But also addressing certain procedural reforms and implementation of disciplinary proceedings, should be considered.

For example, at the procedural level might be needed in overcoming some problems detected, which show that the interactions are not in compliance with CCJE Opinion (2013)16.[19] For example, in the Republic of Moldova the rule that imposes the holding of the criminal trial when the lawyer of one of the parties leaves the courtroom in the Republic of Moldova –and is abused in practice to procrastinate the criminal proceedings–, should be revised: the right to a fair trial and legal assistance is not infringed if the lack of such effective legal defence is caused by the lawyer, sometimes in agreement with the defendant.

In general, there is also the possibility to organise in a more effective way the swift appointment of the duty lawyer, to prevent an absolute lack of legal assistance when the defence lawyer fails to appear at the trial hearing.

Introducing mechanisms to prevent abusive recusals and ill-founded appeals should also be considered, as well as promoting a system where after filing a recusal the judge would not fear adverse consequences for his client's case.

Videorecording of hearings has proved to help in preventing disrespectful conducts in court. An automated system, which can only be stopped in a transparent and public way, could also help in improving the behaviour of all parties in court, and provide evidence for eventual disciplinary proceedings. However, disciplinary proceedings, have to be effective, not so much for sanctioning purposes, but precisely for preventing infringements. A general drawback seems to be existing in the implementation of disciplinary proceedings, mainly on the side of the bar

[19] Precisely Points 11: "However, the quality and efficiency of judicial proceedings depend in the first place on adequate procedural legislation and rules on the principal aspects of procedure for civil, criminal and administrative cases. States should establish such provisions in accordance with Article 6 of the Convention. The drafting process for these provisions should involve the consultation of judges and lawyers, not in the interests of the two professions, but in the interest of the fair administration of justice. Consultation of court users is also important. It is also essential that these procedural frameworks are regularly evaluated and updated, where necessary, and that judges, lawyers and court users are involved in this process. "

and

12: "The CCJE considers that such legislation should provide judges with effective procedural tools to implement the principles of a fair trial and to prevent undue delays or illegitimate delaying tactics. Such legislation should be sufficiently firm and should provide for clear and fair time-limits, while also permitting the necessary flexibility."

Corruption has also been an ongoing problem in judicial history in most of the studied countries, and still most conflicts in the relationship between judges and lawyers seem to exist in anti-corruption courts. But also, a lack of respect for the judiciary is caused by cases of corruption, even if the majority of judges abide by the rules, the bad image prejudices all of them. This is again a source of discomfort on both sides.

Finally, another issue that should be further explored, but which was not directly addressed in this review –focused on the interactions in court between judges and lawyers–, would be the impact of comments and messages posted in the social media, and also statements made by lawyers in the media regarding the judges. In which way public statements and disrespectful opinions spread around the public opinion are affecting negatively the interaction in court between lawyers and judges, might also be studied.

V. ARMENIA

1. INTRODUCTION

The instant country review focused on the professional standards of interaction between lawyers and judges in the courts of Armenia, taking into account the relevant international standards as set out at the beginning of this cross-country review.

In order to have a better vision on the issue in question, some related general data will be provided. Thus, the population of Armenia is 2 962 000 inhabitants, there are 16 courts[20] and 241 judges[21]. As it stems from the official information, recently the Government of Armenia approved the proposal submitted by the Supreme Judicial Council, to increase the number of judges.[22]

The relations pertaining to formation and organization of activities of the judiciary, except for issues pertaining to formation and organization of activities of the Constitutional Court in Armenia are set in the Judicial Code of the Republic of Armenia. Courts of first instance are:

- Courts of general jurisdiction;
- specialized courts, including the Administrative Court and the Court of Insolvency.

The courts of appeal:

- Criminal Court of Appeal;
- Civil Court of Appeal;
- Administrative Court of Appeal.

There are 2352 advocates in the Republic of Armenia according to the statistics on 6 September 2021. Female advocates are 45 percent of the total number of advocates.[23] Following the data from the CEPEJ Evaluation Report, Armenia[24] there are around 70 lawyers per 100.00 inhabitants in 2018. Armenia became the 42-nd member State of the Council of Europe on 25 January 2001.[25]

As to the hierarchy of the legal norms in the legislation of Armenia, Article 5(3) of the Constitution stipulates that:

[20] See, CEPEJ Evaluation Report of the Judicial Systems Report, Evaluation Cycle 2018-2020, Armenia of 24.09.2020 (hereinafter, the CEPEJ Evaluation Report, Armenia) pp. 17-18

[21] The actual data are found in the CEPEJ Evaluation Report, Armenia. It has to be noted that the 2019-2023 Strategy of Judicial and Legal Reforms envisages the increase of the number of judges and their staff. Also, as of 27.12.2019 the number of judges has increased up to 241.

[22] Thus, the first-instance court of general jurisdiction in Yerevan will be staffed with 8 new judges with criminal specialization; the number of judges with criminal specialization at the first-instance court of general jurisdiction in each province shall be increased by one judge, and the judges of the Criminal Court of Appeal – by 3 judges.

[23] Website of the Chamber of Advocates

[24] See: CEPEJ Evaluation Report, Armenia.

[25] Website of the Council of Europe and ECHR

In case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply.[26]

And Article 61(2) of the Constitution:

> *Everyone shall, in accordance with the international treaties of the Republic of Armenia, have the right to apply to international bodies for the protection of human rights and freedoms with regard to the protection of his or her rights and freedoms.*[27]

Furthermore, Article 81 of the Constitution states:

1. *The practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution.*
2. *Restrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia.*[28]

Thus, as it has been pointed out:

> *Armenia supports the monist approach, which means international law and domestic law are part of the same system of law. Like many other constitutions, the Constitution of the Republic of Armenia (2005) does not explicitly mention the status of the European Convention. Rather, the position of this Convention is based on the status of international treaties in general… By virtue of Article 5 the supremacy of Armenia's international obligations in the field of human rights over domestic law is clear. This constitutional principle has a great influence on the direct effect of the ECHR on the Armenian legal system.*[29]

The Judicial Code of Armenia (2018),[30] regulates the full spectrum of the functioning of the judiciary. In Article 6(2) states that:

> *While administering justice, the practice of the bodies operating on the basis of international human rights treaties ratified by the Republic of Armenia shall be taken into account when interpreting the provisions on fundamental rights and freedoms enshrined by the Constitution.*[31]

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The relationship between lawyers and judges in the courts of Armenia are mainly set in:

[26] Regional lawyers' network

[27] Article 61 of the Constitution, *Right to Judicial Protection and the Right to Apply to International Bodies for the Protection of Human Rights. Ibidem.*

[28] Article 81 of the Constitution, Basic Rights and Freedoms and International Legal Practice

[29] See: Judge Prof. *Alvina Gyulumyan* and Prof. *Davit Melkonyan*, "The supremacy of the European Convention on Human Rights: Armenia's path", in "The Impact of the ECHR on Democratic Change in Central and Eastern Europe. Judicial perspectives", edited by *Iulia Motoc* and *Ineta Ziemele*, 2016, Political Science, p.40-41.

[30] The Judicial Code of Armenia of 7 February 2018

[31] *Ibidem.*

- Law of Armenia on the Profession on Advocates of 2004 (Law on Advocates);[32]
- the Judicial Code of Armenia (2018), just cited above;
- the Criminal Procedure Code of Armenia (1998);[33]
- the Civil Procedure Code of Armenia (1998);[34]
- the Administrative Procedure Code of Armenia (2013).[35]

Besides, there are the documents and instruments introduced by the self-regulated bodies. Respectively, the Chamber of Advocates, which was established under the provisions of the Law on Advocates, as an independent association for lawyers.[36] From the side of judiciary it is the Supreme Judicial Council[37] - established under a separate article of the Constitution–[38] is an independent state authority that guarantees the independence of the courts and judges.

- The Code of Conduct of Advocates[39] including its appendix pertained to the Regulations on Disciplinary Proceedings against Advocates;[40]
- The rules of ethics for the judiciary are primarily enshrined at the respective provisions of the Judicial Code.

Chapter 4 of the Code of Conduct of Advocates is devoted to the relationships with the courts. Namely, Article 4.4 is titled precisely "Contacts with Judges" and stipulates that:

> *An advocate may interact with a judge for reasons of having professional discussions, except when such judge is trying a case in which such advocate participates, and the discussion concerns that case or may leave such impression.*[41]

And also, an important issue of nowadays:

> *The mere fact that an advocate is a social media "friend" of the judge or is in the same interest group cannot serve as evidence (basis) of their mutual dependency.*

Article 4.2 of the Chapter 4 of the Code of Conducts of Advocates is dealing and promoting a concept of the fair trial:

> *When representing his client's interests, an advocate shall benefit from access to fair trial and in turn facilitate the fair conduct of the trial.*

The same provisions on the fair trial proceedings are enshrined in Article 8 of the Judicial Code "Ensuring the right to judicial protection and to fair trial". Which stipulates that:

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[32] "The Law of the Republic of Armenia on the profession Advocates" of 14 December 2004,

[33] The Criminal Procedure Code of Armenia of 1 September 1998

[34] The Civil Procedure Code of Armenia of 17 June 1998

[35] Administrative Procedure Code of the Republic of Armenia of 28 December 2013 No. ZR-139 (as amended on 05-08-2021)

[36] For more information see https://advocates.am

[37] https://court.am/index.php/hy/about-council

[38] Article 173 of the Constitution. *The Supreme Judicial Council: The Supreme Judicial Council shall be an independent state body that guarantees the independence of courts and judges.*

[39] In several sources also called as "the Code of (Advocate) Ethics".

[40] Code of Conduct of Advocates

[41] Regional lawyers' network

The activities of courts must be organised in such a way as to ensure effective judicial protection of everyone's rights and freedoms through a fair and public hearing of their case within a reasonable time limit by an independent and impartial court established by law.

Independence of Judiciary and Lawyers

Bearing in mind the importance of an "independent and impartial tribunal" as the core element of the concept of a fair trial, which would be illusory without an independent and impartial judge from one side and important for an unimpeded exercise of the professional duties by the lawyers, the provisions of the Constitution of Armenia guarantee the independence, self-governance and legal equality within the members of the legal profession.[42]

The independence of judges is enshrined in Article 164 and further provisions the Constitution[43]. Similar provisions are set and developed in the Judicial Code, namely Article 7 is devoted to the independence of courts[44]. According to the following provisions, the Supreme Judicial Council is the body safeguarding the judges' independency. Article 8 of the Judicial Code is devoted to the ensuring the right to judicial protection and to a fair trial.

The activities of courts must be organized in such a way as to ensure effective judicial protection of everyone's rights and freedoms through a fair and public hearing of their case within a reasonable time limit by an independent and impartial court established by law.

As it was stressed in the conclusion, para. 61 of the Report "On the amendments to the Judicial Code and some other laws", adopted by the Venice Commission at its 120th Plenary Session (11 - 12 October 2019): *The Judicial Reform Package, developed by the Ministry of Justice, generally deserves praise. In the process of preparation of the Package the Government of Armenia acted in a responsible and thoughtful manner and demonstrated openness to dialogue with all interlocutors, within and outside the country.*[45]

The Venice Commission has stressed, *inter alia*, that:

- *The new pluralist composition of the Ethics and Disciplinary Commission (including judges and non-judicial members) is welcome, but the legislator might consider including there a representative of the Court of Cassation;*
- *It is necessary to develop – probably, at the constitutional level – a mechanism of appealing decisions of the Supreme Judicial Council in disciplinary matters…*

[42] Article 64.2 of the core national Act: Advocacy based on independence, self-governance and legal equality of advocates shall be guaranteed with a view of ensuring legal aid. The status, rights and responsibilities of advocates shall be prescribed by law.

[43] Article 164 of the Constitution: When administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and laws.

[44] See Article 7 of the Judicial Code.

[45] The Venice Commission in para.62 of the Report, has stressed also that:*The large majority of proposals contained in the (Judicial Reform) Package are in line with European standards and contribute to combatting corruption without, at the same time, encroaching on the independence of the judiciary. Nonetheless, clarifications and, in places, improvements are called for…*

However, as the independence of judges and judiciary is not the main element of thi is country review, given its importance in practice of the lawyers-judges interaction, enshrined also in the provisions of the CCJE Opinion (2013) 16, (paras.5 and 6) - it should be noted that the questions related to the status and functioning of judges and judiciary are to be taken into account.

Given the recent Compliance Report of the Group of States against Corruption GRECO RC4 (2021)15,[46] GRECO recommended reforming the procedures for the recruitment, promotion and dismissal of judges, including by:

i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions, and

ii) ensuring that any decisions in those procedures can be appealed to a court.[47]

The lawyers' independence is highlighted also in Article 2.1 of the Code of Conducts of Advocates:

> *In the performance of professional activities, an advocate shall be independent, i.e., free from influences, especially influences that may arise out of the advocate's personal interests or external pressure and may negatively affect the client's case. An advocate shall avoid weakening of his independence and be attentive to the professional standards, so as not to adapt them in order to please the court or third parties.…*

Article 21 of the Law on Advocates outlines the main guarantees for the unhindered performing of the lawyers' duties:

> *2. Interference of national or local self-governing authorities, the officials thereof, legal and physical entities (including the mass media) with the activity of an advocate shall be prohibited.…*
>
> *4. An advocate cannot be prosecuted, incur liability or be taken to police, arrested or be subject to restriction of rights with regard to the performance of his/her professional duties, including expressing his or her opinion or position before the body in charge of the proceedings and other bodies…*
> *6. An advocate's apartment, transportation means and office…cannot be searched with regard to divulging such circumstances that are related to advocate's activity.*

The Judicial Code of Armenia regulates also the core fair trial rights, such as the right to a public hearing within a reasonable time,[48] to be conducted and based on the principle

[46] Fourth Evaluation Round "Corruption prevention in respect of Members of Parliament, Judges and Public Prosecutors, Compliance Report GrecoRC4(2021)15, Strasbourg, 22 September 2021.

[47] See, recommendation VII. GRECO welcomed in the Second Compliance Report that, with the adoption in 2018 of the new Judicial Code, Supreme Judicial Council decisions to refuse an application to a qualification examination for judges or to a judges' promotion list, could be appealed before an administrative court. Further amendments to the Judicial Code to fully address this part of the recommendation were in the process of preparation.

[48] See, the Judiciary Code, *Article 9. Examination and disposition of a case within a reasonable time limit.*

of the equality of arms, etc.[49] Article 11 of the Judiciary Code envisages also the possibility of an airing of a court session by the media.[50]

Institutional framework

As it was already mentioned above, there are several self-regulating institutions whose functions are related to the interaction between lawyers and judges. Even the institutional framework of the lawyers' and judiciary self-regulating institutions falls out of scope of the instant review, the brief information will be provided:

- **The Chamber of Advocates of the Republic of Armenia** is an independent, professional, self–governed, non-profit association, which was established under the respective provisions of the Constitution (Article 64.2) and the Law on Advocates.
- **The Supreme Judicial Council** - established and governed under the separate articles of the Constitution[51]and functioning under the special Chapter 14 of the Judicial Code of Armenia - an independent state authority that guarantees the independence of the courts and judges;[52]
- **The General Assembly of Judges** - a self-government body of judges, composed of all judges of the Republic of Armenia (including commissions such as the **Ethics and Disciplinary Commission of the General Assembly**);[53]
- **Professional NGOs**: "The Republic of Armenia Association of Judges" NGO;[54] "Europe in Law Association" NGO;[55] "The Armenian Lawyers' Association" NGO;[56] "The Armenian Young Lawyers' Association";[57] "The Protection of Rights without Borders";[58] etc.

Besides, there are several self-governed bodies affiliated with the Chamber of Advocates, whose activity related to the performing of interaction between the lawyers and judges. There are:

- **The Public Defender's Office** - a structural unit of the Chamber of Advocates[59], which provides a free legal aid in the cases stipulated by the respective law, to

[49] *Ibidem, Article 10. Equality before the law and the court.*

[50] *Ibidem, Article 11. Publicity of judicial proceedings.*

[51] Article 173 of the Constitution, *the Supreme Judicial Council; Article 175. Powers of the Supreme Judicial Council.*

[52] The amendments to the Constitution of the Republic of Armenia adopted by referendum on 6 December 2015 outlined the establishment of a new independent state body - the Supreme Judicial Council.

[53] Regular meetings of the General Assembly shall be convened once a year by the Chairperson of the Court of Cassation. Article 74 of the Judicial Code.

[54] The NGO Association of Judges was founded in 1997.The members of the Association are the judges of Armenian Courts of all instances

[55] The Europe in Law Association (ELA) is a human rights non-governmental organization founded in 2011.

[56] The Armenian Lawyers' Association (ALA), the NGO was founded in 1995.

[57] The Armenian Young Lawyers' Association

[58] The Protection of Rights without Borders, NGO was established in 2009.

[59]https://advocates.am

the applicants affected and carries out the public defence. The advocates working in the Office – Public Defenders, providing such the legal aid[60];

- **The Rapid Response Committee of the Chamber of Advocates**, one of the joint committees with various state agencies, which aims at responding to calls from lawyers who feel their rights are being violated to record and document those violations.
- **The Advocates' Rights Protection Committee of the Chamber of Advocates**, one more example of the joint committee, which discusses the cases of violation of advocates' rights and disseminates announcements and analyses.

Training of lawyers is carried out within the framework of the Chamber of Advocates as **the School of Advocate**s, a non-profit organization, which is founded and affiliated with the Chamber of Advocates, represented by the Board of the Chamber of Advocates.[61]

In respect of participation of judges in the trainings for lawyers, align with the provisions of the CCJE Opinion (2013)16 and the CCJE Opinion No.11(2008),[62] Article 59 of the Judicial Code stipulates the right of a judge to participate in educational programmes and other professional gatherings of lawyers.

3. CURRENT SITUATION, PROBLEMS AND CHALLENGES CONCERNING THE INTERACTION BETWEEN LAWYERS AND JUDGES IN COURT

Following the methodology and the questionnaire for the country specific analysis a number of on-line interviews have been performed with the project stakeholders and relevant authorities and institutions, to take stock of the actual problems in the interaction between judges and lawyers.

At the outset it should be noted that as it was highlighted in the number of times during the interviews by the various stakeholders and stems from the international consultant's personal experience as a practicing lawyer dealing with cases of various nature within the Eastern European environment – one of the key issues in the countries in the transition period quite often is the significant difference between the provisions enshrined in law (so-called "a paper format law") and its practical application.

i Existence of the procedural instruments for facilitating the interaction between the judges and lawyers during the proceedings.

The general norms of interactions between lawyers and judges as described above are enshrined in the applicable procedural codes and provisions of the Charter Four of the Code of Conducts of Advocates devoted especially to the relationships between the lawyers and judiciary. These rules include the complying with the procedural rules

[60] When providing legal aid, the Public Defenders exclusively abide by universal requirements on advocate's ethics and by the Office's inner disciplinary rules. The Head of the Office (Deputy Head) does supervision over the activity of Public Defenders and the Chairman of the Chamber of Advocates (Deputy Chairman) does supervision over the activity of Public Defender's Office.

[61] Website of the Chamber of Advocates

[62] The CCJE Opinion No.11(2008) "On the quality of Judicial Decisions", para.16: *The quality of judicial decision depends among other factors on the legal training of all the legal professionals involved in the proceedings. Therefore, the CCJE wishes to emphasize the role of legal education and training in general.*

regulating the activity of a court and respect for the judge and other participants of the proceedings.

It is important to mention that there is a digital e-justice system introduced in Armenia[63] – the "DataLex" which affords for the possibility to submit documents to a court, file lawsuits, follow case proceedings, get notifications and other functions, which are electronically available 24/7 (in civil cases). [64] Besides, the special web site was introduced by the Ministry of Justice for a public and open discussion of the drafts of new legislation.[65] Given the information from the CEPEJ Evaluation Report (2018) there are ICTs actively used in the judiciary. The average figures are higher than 5 points on the 0-10 scale. However, there is no ICT employed for the electronic communication between the courts and lawyers and/or parties,[66] as recommended in para.18 of the CCJE Opinion (2013)16. Thus a wider digitalization of the judiciary, including the various digital tools in the legal sphere could be further developed.[67]

Therefore, the system of such communication should be elaborated further.

ii **Existence of the legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution.**

According to the information from the lawyers, the judges delayed the hearings by ordering insufficient time for preparing defence and delivering the short time notice for the hearings.

On the other hand, given the information from judiciary, the lawyers often employ various tactics in order to delay the hearings, e.g.:

- submitting the ill-substantiated requests for delaying the hearings. Moreover, such requests are primarily based on the formal grounds not on the substance of the case;
- non-appearance at the hearings without filing a preliminary request, etc.

iii **Rules for preventing improper behaviour from lawyers towards the judges in court.**

As mentioned above there are several legal instruments dealing with behaviour of lawyers in the courts. Primarily, they are enshrined in the Code of Conducts of Advocates, namely "The Regulation on Conducting Disciplinary Proceedings in Respect of an Advocate," which is an Appendix to this Code; the Law on Advocates and the Charter of the Chamber of Advocates. Though, according to the persons

[63] Within the framework of the "Digitalization of Judicial Documents and Implementation of Electronic Court System in Armenia", electronic e-justice system in Armenia has been introduced.

[64] Datalex; Armlex

[65] Within the "Open Government Partnership" initiative, the Government of Armenia, under the Action Plan for 2014-2016, assumed a commitment to develop and introduce an open public portal for legal acts, enabling Armenian citizens to participate in the legislative process. The creation of this website has developed a new level of a legal culture in Armenia

[66] The CEPEJ Evaluation Report, Armenia, p.39

[67] Following Compliance Report Greco RC4(2021)15, Strasbourg, 22 September 2021, para. 10 the Armenian authorities state that draft laws and related amendments debated by the parliament are as a rule published on the "www.e-draft.am" online platform and on the National Assembly's website. The authorities also report that between 1 January 2020 and 1 July 2021, a total of 855 laws were adopted by the National Assembly - of which 27% by means of an urgent procedure.

interviewed, the practical application and enforcement are the key issues. They have underlined deficits in the practical implementation, and the application of the legal sanctions envisaged for the improper behaviour. Given the provisions of the Article 16.1 the Board is: *"…the executive body of the Chamber of Advocates, as well as the body responsible for the disciplinary procedure*" etc.[68]

iv Formal rules to address the court (e.g., "Your honour", etc.)

There is no specific way to address the court, save for the general ethics and the due behaviour standards'. The improper behaviour is a rare case, this is not a systematic problem in the courts of Armenia. However, there are the single cases of abuse of the rights and an inappropriate behaviour. Therefore, given the information from the stakeholders, the formalities in addressing the judges do not form a problem.

v Existence of a certain dress code for the lawyers. Punctuality during the court hearings.

There is no special dress code introduced under the law, save for the general approach of a correct dress for the court hearings.

As for the punctuality, the stakeholders have pointed out the problems of overlapping of agendas and the hearings' schedules. This in turn, may raise the tensions between the judiciary and the lawyers. The general provisions under Chapter 4 of Code of Conduct of Advocates applies, concerning the general respect for the judge and/or other participants in the proceedings.[69] In case of liability, the provisions of the "Regulation on Conducting Disciplinary Proceedings in Respect of an Advocate" applies.

vi Cases of improper behaviour during the court hearings.

As explained by the interviewed persons, in case of interrupting the judge, a lawyer directly interferes with the rules of due conduct of the court hearings and in such a way is being disrespectful towards to the court. Therefore, sanctions might be imposed, although none of the professionals interviewed considered that this was an actual problem in Armenia or that sanctions were imposed because of it.

In respect of the use of mobile phones, the general ethics and due behaviour are generally respected. However, a presiding judge may call upon all the attendees to turn off their mobile phones or to put them in silent mode, in order to safeguard the due court hearings.

vii Respect to the authority of the judges by lawyers in court.

It is important to highlight that all stakeholders interviewed have pointed out a significant progress achieved since the series of the rule of law reforms have been adopted.

However, the judges have pointed out that the problem of unsubstantiated critics and disrespectful statements against the judiciary by the lawyers is still actual,

[68] Article 16.26 of the Charter: *"The Board of the Chamber of Advocates, as the responsible entity for disciplinary procedures, may bring advocates to responsibility and apply disciplinary sanctions."*

[69] Article 4.1 of the Code of Conduct of Advocates.

especially disseminated via digital media and social networks. Given, the judges' status and limits for a timely reaction by the courts' press-centres, they are not in a position to safeguard their immunity. There is no specific mechanism available in order to have these lawyers liable for such posts and commentaries.

viii Consequences for breach of order during the court hearings. Disciplinary/administrative and/or criminal sanctions.

According the provisions of the Law on Advocacy, Charter of the Chamber and Code of Conduct of Advocates, disciplinary proceedings could be opened on the basis of written communications received by the Chamber of Advocates or publications of mass media[70]. There are various levels of disciplinary actions against a lawyer when found guilty of a violation of her/his duties and responsibilities. These sanctions include: reprimand (valid for three months); severe reprimand (valid for 6 months); a fine (not more than 100 times the minimum wage in the country).[71]

A lawyer can appeal a decision establishing his/her liability in court within a month of that decision rendered.[72]

The list of decisions on the disciplinary cases in the chronological order is published on-line on the Chamber's website on a special page "Board decisions on disciplinary cases".[73] Save for the data provided below there is no statistics on the salient cases.

ix The disciplinary procedures at the Bar in case of misconduct of lawyers in court. Their implementation in practice.

The current legal framework appears to be balanced and effective. However, given the results of the interviews the practical implementation could raise some problems and there might be need for improvement. For instance, a representative of the lawyers' community, stated that in case of imposing sanctions, the lawyers could challenge them only after they had been imposed. As for the legal framework, the Chamber of Advocates is the main authority for supervising the lawyers' behaviour and dealing with the disciplinary procedures. Given the provisions of the Law on Advocacy and the Charter of the Chamber,[74] the Board of Chamber has the power to investigate disciplinary infringements after receiving a duly verified complaint.[75] Besides, given the provisions of Article 13 of the Law on Advocacy, the Chairman of the Chamber of Advocates could also initiate such proceedings against an

[70] See Article 39 of the Law on Advocates

[71] Article 40 of the Law on Profession of Advocate and the Regulation on Disciplinary Proceedings against Advocates. Such measures as participation in additional training courses and termination of the license have been envisaged by the previous version of the Law.

[72] Article 40 of the Law on Profession of Advocate and Article 7.2.8 of the Regulation on Disciplinary Proceedings against Advocates. See also, the CCBE Recommendations on disciplinary proceedings for the legal profession of 17.09.2007,

[73] Board decisions

[74] Article 16.1. Charter of the Chamber: *The Board is the executive body of the Chamber of Advocates, as well as the body responsible for the disciplinary procedure.*

[75] Article 10(1) of the Law on Advocates.Article 10 (5) para.14 of the Law on Advocates:

14) (The Board of the Chamber of Advocates) *resolves the issue of disciplining the advocate and imposing a disciplinary sanction;*

advocate.[76] Articles 39-40[77] of the Law on Advocacy outlines the disciplinary liability as well as the types of disciplinary sanctions that could be taken in case a lawyer is found in violation of her/his obligations. The procedures with respect of the lawyers in case of alleged violations are also set in the Regulation on Disciplinary Proceedings against Advocates.[78] The latter describes in detail the cases when disciplinary action can be initiated against a lawyer, as well as the procedural rights of a lawyer during those disciplinary proceedings.

According to Article 2.1.1. of the Regulation on Disciplinary Proceedings against Advocates, ways for initiating disciplinary proceedings against a lawyer are:

1. *applications (complaints) of state, local self-government and non-state bodies, as well as other persons (applicants), and the media publications;*
2. *a court sanction on making submission to the Chamber for bringing the advocate to liability;*
3. *a certificate submitted by the Accountant of the Chamber on non-payment by the advocate of membership fee within the established period;*
4. *a note by the Director of the School of Advocates on the advocate's failure to pass a training within the set period;*
5. *a motion of the head of the Public Defender's Office to initiate disciplinary proceedings against the Public Defender.*

All complaints on disciplinary matters have to be filed before the Board of the Chamber. Until a decision is delivered, the lawyer under investigation is presumed innocent.[79] When it comes to receiving complaints and initiating disciplinary proceedings the Regulation on Disciplinary Proceedings against Advocates describes precisely the initiation of proceedings making sure that the accused lawyer is informed in a timely manner.[80]

Given the statistics for 2019 provided by the Board of the Chamber of Advocates, there were 208 disciplinary actions examined by the Board in the material time; 49% of these proceedings ended with a disciplinary penalty; 58% of these proceedings were terminated on the ground of a compliant;106 (from 208) of the cases in question, related to the non-payment of membership fee;64 of cases (from 208) pertained to the non-participation in the trainings;

There were 273 complains received by the Board against lawyers in 2019. These including: 227 of complaints filed by "lawyers' litigants and private persons' complaints" (including these from the adverse party). As a result, 29 disciplinary

[76] *"The Chairman of the Chamber of Advocates: …9) files a disciplinary proceedings against an advocate...*

[77] Article 39 of the Law on Advocates, stipulates that:

Advocates shall be subject to disciplinary liability for violating the requirements of this Law, the Code of Conduct for Advocates, the Charter of the Chamber of Advocates, and for failing to perform or improperly performing their professional duties. Disciplinary proceedings shall be opened on the basis of written communications received by the Chamber of Advocates or of publications of mass media...

[78] The Regulation on Disciplinary Proceedings against Advocates, Article 1.7.

[79] *Ibidem.* Article 1.7 of the Regulation on Disciplinary Proceedings against Advocates.

[80] Article 2 of the Regulation on Disciplinary Proceedings against Advocates.

actions have been initiated; 11 complaints filed by the lawyers against lawyers. As a result, 7 disciplinary actions have been initiated; 34 complaints filed by Prosecutor's Office, police, investigative bodies, the courts and the judges. As a result, 10 disciplinary actions have been initiated, 1 case of imposing a judicial sanction. Which led to the initiation of the proceedings based on the judicial sanction.

x **Contempt of court.**

After the legal reforms of the judiciary adopted in 2018, contempt of court is not applicable anymore in Armenia against lawyers' misconduct in the courts and the judges can only report to the Board of the Chamber against the alleged misconduct and disrespect from the lawyers.

It is interesting here to recall the case *Zakaryan v. Armenia,*[81] where the ECtHR addressed a decision on contempt of court against the lawyer-applicant who was engaged in 2002 as a defence counsel in a criminal case. At the court hearing the applicant made an oral challenge to the presiding judge, who ordered him to sit down, explaining that the stage for making challenges was already over. The applicant disagreed and insisted on making a declaration concerning the grounds for the challenge. The judge ordered the applicant to sit down again, stating that the Code of Criminal Procedure did not envisage making such declarations. When the applicant tried to disagree again, the judge decided to impose on him a fine under Article 206.1 of the Code of Administrative Offences[82] for contempt of court in the amount of 1,000 Armenian drams (approx. 1.7 euros at the material time). The decision was not subject to appeal. Therefore, Mr Ara Zakaryan complained before the ECtHR under Article 6 and 13 ECHR.[83]

xi **Possible adverse consequences in sensitive cases.**

The lawyers interviewed have admitted there have been adverse consequences suffered by lawyers especially in high-profile cases with political elements. However, as it was disclosed by the stakeholders, such practice is attributed mainly to the preceding periods and currently it should be exceptional.

However, the representatives of the Public Defender's Office interviewed have specified that it is a common practice, when the POs represented their clients in the sensitive cases (such as the cases of the migrants-former combatants in Syria etc.).

xii **Procedure of recusal against the sitting judge.**

Given the information form the stakeholders it is a common and regular practice for the lawyers to file a recusal against a sitting judge, and even the lawyers confirm that there are often abuses of this right in practice.

However, the interviewees have highlighted that the problem is with the quality of the law regulating the recusal, because it allows that the same judge can decide on

[81] See, *Zakaryan v.Armenia*, no.17849/03, 29 November 2007.

[82] As in force at the material time.

[83] However, later the applicant and his representative asked the Court to strike the application out of the list of cases, since the applicant feared that the authorities would use the case to impose disciplinary sanctions against judge O. who, in his opinion, was a truly independent judge.

his/her own recusal. Hence, in such a case there would be a clear breach of the fair trial principles, precisely of the right to an impartial judge.

Regarding the procedure to examine the recusal filed against a sitting judge under the previous version of the CPC, the recent cases of the ECtHR *Jhangiryan v. Armenia*, 8 October 2020,[84] (submitted by Mr Gagik Jhangiryan - the Deputy General Prosecutor at the material time who was dismissed on the next day after the events he was complaining about), and *Smbat Ayvazyan v. Armenia*[85] (a former member of the Armenian Parliament who also served at the different posts in the Government), where the applicants complained under Article 6 ECHR – about the breach of their right to a fair trial, because the judge who tried the case lacked impartiality, on the grounds that his son had been a member of the investigative team dealing with the main criminal case concerning the protest movement. The recusal was dismissed upon the grounds that it had not been justified and contradicted the domestic law, including Article 90 of the CPC (as in force at the material time).[86] The Court found, *inter alia,* violation of Article 6.1 and Article 11 in both cases.[87]

***xiii* Possibility for discrimination given the size/relevance of the law firm or the lawyers' connections or status of their clients.**

Given the information from the stakeholders, a different approach/treatment towards the lawyers from the judiciary in some instances may be caused primarily by the various level of experience and (sometimes) the status of the law firm. However, it seems that the more serious concern from the lawyers' community is caused by the fact that in view of interviewees some judges (especially elderly generation) have not fully understood the adversarial principle of and the role of advocates in the proceedings according to the right to a fair trial.

***xiv* Legal instruments (substantive or procedural) which potentially could be used by judges to disregard claim or arguments of the lawyers.**

The lawyers indicated that in some cases their time for presenting their arguments and evidence was excessively restricted by the judges. In view of some lawyers, judges decide on the eligibility of arguments and evidence without a due reasoning. However, from the point of view of the judges interviewed, there is always a possibility for lodging an appeal on this matter and/or challenge such action of judges. Moreover, as the representatives of the judiciary have stated, the CCTV, which is affordable during the hearings, could be always helpful.

Furthermore, the lawyers pointed out that the court hearings in the pre-trial stage of the criminal proceedings are not of an adversarial character. Therefore, in view of some lawyers, there is an evident lack of equality of arms principle in these proceedings.

[84] See: *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, 8 October 2020.

[85] See: *Smbat Ayvazyan v. Armenia*, no.49021/08, 8 October 2020.

[86] Article 90 § 1(3) of the CPC (2003), at the material time dealt with the grounds of the recusal of judge.

[87] The Court also found a violation of Article 5 § 1 (c) in the case of Mr Jhangiryan; violation of Article 5 § 3 in both cases; violation of Article 5 § 4 in the case of Mr Ayvazyan.

xv Mutual understanding of the judges – lawyers' role and work

It is a common view of the stakeholders that the mutual understanding between the lawyers and judiciary need to be improved. As it was pointed out above, the lawyers sometimes faced lack of understanding of their role in the adversarial proceedings. However, the shared opinion is that the development is following a positive trend.

There are a number of common events –trainings, workshops etc., including those organised by the Chamber of Advocates–, which facilitate the strengthening of the mutual understanding between the judiciary and the lawyers and thus prevents undesired misconducts in court. Members of judicial community confirmed their respectful attitude towards the lawyers and their appreciation of lawyers' independence. However, the judges expressed also their vision that in order to avoid a conflict of interests, complying with professional ethics, etc., such relations with lawyers have to be performed along with the due procedural and ethical standards.

xvi Communication between the judges and lawyers and ICTs.

Despite the efforts from the side of Chamber of Advocates and the Supreme Judicial Council, and the number of reforms introduced by the authorities,[88] there is still room for improvement. Joint training programmes, bench-bars, workshops on exchanging experience, promoting open dialogue on problematic areas, etc, is seen as a good way to improve the relations. For instance, the School of Advocates within the Chamber actively collaborated with the judges, who gave courses at the School and the Public Defender Office is actively promoting and performing joint training programmes with the judges' involvement.

In respect to the computerised system for communications between the judiciary and lawyers, it is still under construction at the instant moment. According, the Strategy of the Armenian authorities[89] it should be introduced soon. As it is stipulated by the provisions of para 18 of CCJE Opinion (2016) 16, both parties, judges and lawyers have reaffirmed their interest in continuing building up constructive, professional relations based on mutual respect and understanding.[90]

> *It is necessary to establish proper communication between courts and lawyers to ensure the speed and efficiency of proceedings. The CCJE considers that states should introduce systems facilitating computer communication between*

[88] For instance, in 2019 the Government of Armenia adopted the 2019-2023 Strategy for Judicial and Legal Reforms of the Republic of Armenia which was developed taking account the imperative of drastic changes in the judicial and legal sector, the necessity of planning, monitoring, accountability and regular evaluation of the progress of strategic reforms. The ultimate purpose of this Strategy and the Action Plans deriving the reform will be the restructuring of courts and state institutions linked to the justice system based on the criteria of independence and accountability, which is necessary for the development of the democratic state. See: The CEPEJ Evaluation Report, Armenia, p.105

[89] For instance, since 2017, www.e-draft.am a unified website for publication of legal acts has been operating in Armenia creating a wide opportunity for citizens and multisectoral professionals to actively participate and get involved in legislative activities and a broad discussion on the legislative drafts. See: the National Report before the OHCHR Human Rights Council, Working Group on the Universal Periodic Review, Thirty-fifth session, 20–31 January 2020. Armenia.

[90] In its Opinion No. 14 (2011) on "Justice and Information Technologies", the CCJE notes that information technologies play a central role in the provision of information to judges, lawyers, and other stakeholders in the justice system as well as to the public and the media.

the courts and lawyers, in order to improve the service for lawyers and to enable them to consult easily the procedural status of cases.[91]

xvii Gender issues.

It seems that the gender aspects do not have a serious impact on the interaction between judges and lawyers, although several incidents mentioned by the stakeholders. For instance, one of the lawyers who was unhappy with the outcome of the hearings, publicly insulted the presiding judge, having stated that: "…*it's better to stay at home with the kids, instead of ruling the case*". The professionals interviewed agreed that this is not a structural problem, but rather single incidents.

Moreover, as it was mentioned above, 45% of the advocates-members of the Chamber are women. Furthermore, if for instance in 2018 all the 15 heads of the courts were men, nowadays this would be impossible, after the special provisions safeguarding the gender equality were introduced into the Armenian legislation. Namely, Article 76 (3) of the Judicial Code, which stipulates that:

For the purpose of gender representation of judge members within the Supreme Judicial Council, the number of representatives of the same gender must be as restricted as possible to maximum three members…

Furthermore, given the CEPEJ Studies No. 26 on the efficiency and quality of justice, Armenia was among the few states which recognized the existence of a specific gender justice programme. Since 2014 in Armenia, a special document has been introduced in order to promote parity in candidatures for judiciary.[92] As it was stressed above, in September 2019, the Armenian authorities approved the Strategy on the gender policy implementation for 2019-2023, whereby five priorities were defined: equal participation of women and men in administration and decision making, overcoming gender discrimination in the social and economic sectors, expansion of the full and effective participation of and opportunities for women and men in education, science and healthcare, prevention of gender discrimination. For instance, the actual Head and all the deputies-heads of the Public Defender Office are women.[93] The most part of notaries and the courts' registry are women either.[94]

xviii Patterns/problems linked to the age of the lawyer or judge.

The lawyers interviewed have pointed out that the representatives of the new generation of judges quite often are more open when dealing with the various types of cases (for example, intellectual property cases), case-management, introducing new measures for facilitating justice, the new technologies, etc. Despite the possible insufficient practical experience in some issues, quite often they seem to be more professional and accurate in perfroming the judicial work.

As in some other countries, there are a number of active human rights'-oriented NGOs, representing mainly the younger generations, which are promoting the

[91] CCJE Opinion (2013) 16. Para.18.

[92] European judicial systems. Efficiency and quality of justice CEPEJ Studies No. 26, p.185.

[93] Website of the Chamber of Advocates

[94] The CEPEJ Evaluation Report, Armenia.

dialogue between the lawyers and judiciary, pursuing the initiatives for the new legislative reforms (given the ECtHR case-law development, etc.).

xix **The current relationship between the judges and lawyers in Armenia.**

As it was disclosed above, a common view of the stakeholders interviewed is that the interaction between judges and lawyers is not without complications and that there is a room for improvement (e.g., please see the sub.para. no.VII).

xx **Assessment of the causes of misconduct in court**

The persons interviewed were asked about the causes for the misconduct, precisely, the question was: do you consider that misconducts in court are due to 1) lack of knowledge or the rules; 2) lack of human and/or professional respect towards each other's profession; 3) lack of implementation of the sanctions in case of infringements; 4) cultural elements. "Cultural elements" was the most often invoked reason for such misconducts.

xxi **Possibility for joint training programmes.**

It is a common opinion by the stakeholders that improvement of the relationship between judiciary and lawyers would be most effective by various kinds of trainings. It was pointed out by interviewees that such way of interaction could significantly facilitate structuring mutual understanding and mutual respect, better understanding of the roles of judges and lawyers in a conception of a fair trial and fostering the effectiveness of justice. As it was mentioned above, the Chamber, the School of advocates, the PDO, various NGOs have actively involved the judiciary in their trainings. Promoting an open dialogue on problematic areas and other ways of interaction could be most productive for improving mutual understanding and respect.

On the other hand, there were also some critics from several stakeholders that some of these joint trainings had been delivered by the same judges who had been previously criticized for the unfair and biased trials, even some of them had a bad reputation among human rights' defenders (e.g., one of the judges delivering these trainings was openly against the acceptance of the Istanbul Convention, etc.). Besides, one of the interviewees has highlighted the monopoly for such trainings delivered only by the School of advocates. However, there are different opinions in this respect, and it is recognized that the School of advocates has all the necessary means and resources, etc.

xxii **Other factors relevant for understanding and assessing the interaction between lawyers and judges in the courts (e.g. a corruption potential, etc.)**

The questions related to the professional ethics seem to be actual. For instance, there were cases when the advocate had promised to the clients the precise outcome on the case, etc. However, the stakeholders confirmed that the dynamics is very positive, the huge progress achieved in the strengthening the RoL including improving the relations between the lawyers and the judiciary.

As for corruption, several important legislative amendments have been recently introduced.[95] Such institutions as the Commission for the Prevention of Corruption were established with involvement of the CoE's Venice Commission and the other CoE specialised bodies.[96] While some stakeholders have confirmed the existence of non-transparent elements in the cases concerning a high amount of assets, the judicial reforms have provided improvements in this area.[97] For instance, special provisions were introduced on restrictions of judges' accepting gifts;[98] or on the reasons on initiating disciplinary proceedings against a judge on the grounds of the investigative publications by the independent media.[99] On the other hand, according to the information presented by GRECO during the Human Rights Council, held in January 2020: "…*more was expected to be done with respect to safeguards against the use of disciplinary proceedings to influence or retaliate against judges. Effective rules against undue interference still had to be put in place…".*[100] Similar provisions have been developed later in the Compliance Report GRECO RC4 (2020)9,[101] "Recommendation viii. (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court.", the GRECO recommendation remains partly implemented.[102]

4. CONCLUDING REMARKS AND RECOMMENDATIONS

Conclusions

The actual legal framework on the relations between lawyers and judges in Armenia, appears to be deeply elaborated and covers the majority of the areas of such professional interaction. Moreover, several effective legislative reforms have been performed relatively recently (introducing of the Judicial Code and some other laws in 2018, their following amendments, with fostering the independence of the judiciary

[95] In 2019 the Armenian authorities requested the Venice Commission to prepare an opinion on the "Judicial Reform Package" developed by the Ministry of Justice and proposing amendments to the Judicial Code, the law on the Constitutional Court, the law on Public Service, the law on the Commission for the Prevention of Corruption, and some other laws.

[96] *Ibidem*

[97] The Transparency International Corruption Perceptions Index for 2020, a rank was 60/180, the 2020 score was 49/100. 19% is a percentage of public service users paid a bribe in the previous 12 months.

[98] *See Article 73. Judicial Code. The Restrictions on judges' accepting gifts*

[99] *Article 146 Judicial Code. Reasons for instituting disciplinary proceedings against a judge*

[100] Para. 53 The Human Rights Council, Working Group on the Universal Periodic Review. Thirty-fifth session, 20–31 January 2020. A/HRC/WG.6/35/ARM/1. The Human Rights Defender of Armenia stated that serious reforms were needed in the judicial system, particularly related to the independence of the courts, the lack of trust in the judiciary, the lack of mechanisms to guarantee a fair trial, and court hearing delays. Para.10. *Ibidem.*

[101] Fourth Evaluation Round Compliance Report GrecoRC4(2021)15, Strasbourg, 22 September 2021, At the present moment, the following bodies have powers to initiate disciplinary procedures against judges: the Minister of Justice, the Ethics and Disciplinary Commission under the Assembly of Judges and the Commission for the Prevention of Corruption.

[102] *Ibidem.*

and developing it align with the European standards, etc.) [103] These measures have ameliorated also the relations between the legal professionals.[104]

All the stakeholders agree that the mutual understanding between the lawyers and judiciary has room for improvement. On the other hand, the overwhelming majority of the interviewees shared the opinion that the development is definitely positive.

Members of the judiciary claim that there is need for an effective mechanism to prevent unsubstantiated procrastination of hearings and abusing of procedural rights by the lawyers.

The problem of unsubstantiated critics and disrespectful statements against judges disseminated via the social media, is seen as a negative factor impacting the fair, open and respectful interactions.

Representatives of the lawyers' community have stressed that the actual judicial system lacks transparency; it should be more open and affordable for public accountability. That during the court hearings they face the lack of understanding of their role in the adversarial proceedings by some judges.

Recommendations

1. To include in the Code of Ethics of the Lawyers rules on proper behaviour towards the judges in the social media. Critics should be expressed in a respectful way.
2. To develop further the system of digital communications between the courts and lawyers.
3. To continue developing joint training programmes and other events for judges and lawyers that could foster their mutual understanding. E.g, to design a common platform for performing the training programmes and for discussing the current legal issues that are relevant in the recent or future court practice.
4. To apply effectively the disciplinary sanctions provided in the law, for judges as well as for lawyers, to reinforce a culture of mutual respect, and fairness of the court proceedings.
5. To address effectively the single cases of corruption within the judiciary, which damage the whole image of the judiciary and thus causes mutual distrust and lack of respect.
6. To include procedural mechanisms to correct abuses in filing recusals or actions that only seek to hinder the ordinary development of the court proceedings.

[103] As it was stressed in the Report of the Venice Commission 2019,
[104] See also, the CEPEJ Evaluation Report, Armenia, p.105,

VII. BELARUS

1. INTRODUCTION

While dealing with the professional standards of interaction between lawyers and judges in the courts of the Republic of Belarus, it has to be highlighted that it is the only state in Europe, which is not yet a member of the Council of Europe[105] and not a party to the ECHR. Nevertheless, Belarus has signed and ratified 12 CoE treaties and protocols.[106] The population of the country is 9.349,6 million inhabitants,[107] there are 8 courts, including the courts of universal jurisdiction and the Supreme Court of Belarus.[108]

Considering the suspension of several joint projects between the CoE and the Belarusian authorities, this country review is based solely on the desk-research performed by the international consultant, as no interviews were carried out with the stakeholders, save for the consultant's personal sources. Moreover, given the overall current human rights and rule of law situation in Belarus; the gross violations of the basic democratic rights and freedoms as highlighted by the international community[109], which have affected also the topics of the present report.[110] Thus, the CCBE has expressed "*its serious concern over the worrying current situation of lawyers in Belarus*",[111] and the situation with the law enforcement and a practical application of the core rights raises concerns.[112]

Following the current provisions of the legislation regulating the advocacy in Belarus, which is *de-facto* under the overall control of the Ministry of Justice, as will be explained below and considering the observations of the practising Belarusian lawyers contacted by the international consultant while working on this report, it is difficult to discuss about the particularities of relations between the lawyers, as the independent actors and the judiciary in the country given the current situation.

Still, a number of important achievements have been reached before the events of August 2020. The Belarusian authorities and the Council of Europe were cooperating in the field of Human Rights, *inter alia* in capacity building for judges, prosecutors and lawyers on specific themes relating to the ECHR and the European Social Charter (ESC); [113] and also raising awareness of the European human rights standards among students, academics, civil society and the general public.[114]

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[105] Candidate for Membership in the Council of Europe since 12 March 1993.

[106] See: The Council of Europe Information Point in Minsk

[107] On 1 January 2021.

[108] This includes the Supreme Court; regional (including the city of Minsk) courts; economic courts of regions and the district (city) courts.

[109] Belarus: joint statement by the Committee of Ministers Presidency, PACE President and Secretary General. On 26 August 2020 and later.

[110] Commissioner for Human Rights: Human rights violations in Belarus must stop immediately. 21.09.2020

[111] CCBE statement :

[112] The HRW, 29.09.2021. Belarus: Authorities Target Top Human Rights Group Justice Ministry Suing to Liquidate Belarusian Helsinki Committee.

[113] See also, the CoE Action Plan for Belarus for the period 2019-2021 in respect to the independence and efficiency of justice and the strengthening the profession of lawyer in line with European standards, etc.

[114] See: CoE Factsheet See also: PGG website

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The professional standards related to the interaction between lawyers and judges in the courts of Belarus are regulated by following legal acts:

- The Law of the Republic of Belarus on the Bar and Advocacy Activity in the Republic of Belarus of 2011 (the Law on the Bar);[115]
- Code of the Republic of Belarus on Judicial System and Status of Judges of 2006 (Judicial Code);[116]
- Code of criminal procedure of the Republic of Belarus; [117]
- Code of civil procedure of the Republic of Belarus (1999)[118];
- Procedural and executive Code of the Republic of Belarus about administrative offenses.[119]

Along with it, there are several legal acts regulating functioning of the advocacy and the judiciary. Furthermore, the Belarus Bar issued the "Rules of professional ethics of advocates" (the Rules of Ethics, 2018),[120] although the Ministry of Justice has performed the actual development of these Rules. Even from the formal standpoint, the Bar issues it. In fact, the latter could only agree or disagree with the document in question. Which is indeed contrary to the provisions of the Recommendation No. R (2000) 21.

Under Chapter 6 of the Constitution of the Republic of Belarus,[121] the judicial power in the country is represented by the Constitutional Court and the courts of universal jurisdiction. However, as stated on the website of the official national legal database:

> "*the process of forming the legal system of any democratic state requires a transformation period. A great number of economic, political and historical factors hamper this evolution process. For Belarus these are the prolonged domination of an anti-democratic regime, the uniqueness of the character of Belarusian society and the breach of former economic relations that were formed during the soviet period."*[122]

Formally, Article 61 of the Constitution sets the guarantees of a fair trial and stipulates that:

> *Everyone shall have the right in accordance with the international instruments ratified by the Republic of Belarus to appeal to international organizations to*

[115] The Law of the Republic of Belarus on the Bar and Advocacy Activity in the Republic of Belarus 334-Z dated 30 December 2011 (with the due amendedments)

[116] Code of the Republic of Belarus on Judicial System and Status of Judges of 29 June 2006 No. 139-Z (as amended on 10-12-2020)

[117] Code of criminal procedure of the Republic of Belarus of July 16, 1999 No. 295-Z (as amended on 26.05.2021) https://cis-legislation.com/document.fwx?rgn=2002

[118] Code of civil procedure of the Republic of Belarus of January 11, 1999 No. 238-Z (as amended on 06.01.2021)

[119] Procedural and executive Code of the Republic of Belarus about administrative offenses of January 6, 2021 No. 92-Z

[120] Rules of pro fessional ethics of advocates (as amended by the Regulation of the Ministry of Justice 227 dated 28.12.2018)

[121] The Constitution of the Republic of Belarus, 1994.

[122] See: Legal System in Belarus

defend their rights and liberties, provided all available interstate means of legal defence have been exhausted.

However, as in many post-soviet states, balancing the existing legal framework and the mechanisms for its effective enforcement, seems to be problematic, especially in case of Belarus.

Independence of Lawyers and Judiciary

In 2015, Belarus carried out a significant judicial reform, in order to advance towards the separation of judicial power from the legislative and executive branches. As a result, many of the competences in judicial matters that belonged to the Ministry of Justice were transferred to the Supreme Court.[123]

However, as the UN OHCHR Special Rapporteur on human rights situation in Belarus has recently been reported:

> *"For almost three decades, Belarus has failed to ensure the independence of its judiciary, implying that the rule of law remains unguaranteed, and human rights unprotected."*[124]

As for the independence of lawyers, the relevant legal framework can be found in Clause 16 of the Law on the Bar, "Guarantees of advocacy activity", which stipulates that:

1. *An advocate is independent in his/her activity and obeys only the law.*
2. *It is forbidden to interfere with the professional activity of an advocate, which is carried out in accordance with the law, or to impede this activity in any way, as well as to require the advocate to report any information constituting an advocate-client privilege, or to require such information from interns and assistants' advocates.*

The Chapter 1.6 of the Ethics Rules says that:

> *An advocate is absolutely independent in course of his professional activity. An advocate should perform his obligations to defend the client's rights and interests with ease and independence, politely, honestly and following the principles, conscientiously and confidentially, free of any interruption or external pressure.*

However, in fact the Ministry of Justice of the Republic of Belarus regulates the appointment, activity and disbarment of the legal professionals, as provide under Clause 38 of the Law on the Bar–"the Bar and the Ministry of Justice of the Republic of Belarus":

> *"1. The powers of the Ministry of Justice of the Republic of Belarus in the field of advocacy activity are:*
>
> *- adoption of normative legal acts regulating the activities of the bar, within the powers provided for by this Law;*
>
> *- creation of the Qualification Commission and organisation of its activities;*

[123] See: the CoE Action Plan for Belarus 2019-2021, p.16

[124] *Ms Anaïs Marin,* Special Rapporteur on the human rights situation in Belarus, reported during the presentation of her second thematic report to the UN General Assembly.

- state registration of bar associations, advocates bureaus, amendments and (or) additions to the charters of bar associations and advocates bureaus, registration of individual advocates;

- establishment, upon agreement with the Belarusian Republican Bar Association, of the minimum number of advocates in legal consultations in the territory of administrative divisions or territorial units;

- development of the Rules of Professional Ethics of an Advocate on the proposals of advocates and advocate formations and their approval, upon agreement with the Belarusian Republican Bar Association;

- maintenance of the Register of Advocates, determination of the procedure of inclusion in the Register of Advocates of the advocates of foreign states acting in accordance with international treaties of the Republic of Belarus;

- making submissions to the bar association on bringing advocates to disciplinary responsibility, on holding a general meeting (conference) of members of the territorial bar association, as well as making submissions to the Qualification Commission on holding an extraordinary certification of an advocate to determine the possibility of performance of advocate's professional duties in cases when facts indicating advocate's insufficient qualification are revealed;

- determination of the procedure for certification of advocates;

- obtainment of information related to the advocacy activity from state authorities and other organisations that are obliged to submit it within fifteen business days from the date of receipt of the request;

- obtainment from the bar associations, legal consultations, advocates bureaus, lawyers of information and documents necessary for the exercise of statutory powers, subject to the observance of advocate-client privilege;

- removal of the advocate from performance of professional duties for the period of disciplinary proceedings in the event of their initiation by the Minister of Justice of the Republic of Belarus;

- submission of proposals to the governing bodies of the bar associations on candidates for election to the positions of chairmen of bar associations;

- approval of candidates for the positions of chairmen of bar associations and heads of legal consultations;

- making a submission for consideration of the general meeting (conference) of the territorial Bar Association (council of the Belarusian Republican Bar Association) on early withdrawal of the chairman of the territorial bar association (chairman of the Belarusian Republican Bar Association) who systematically violates the requirements of the law, taking other measures to eliminate the identified violations;

- early termination of the powers of the chairman of the bar association based on the Qualification Commission's conclusion in case of unjustified refusal to satisfy the submission of the Ministry of Justice of the Republic of Belarus on

early withdrawal of the chairman of the bar association for systematic violation of the requirements of the law;

- control, as prescribed by law, over the compliance of lawyers, bar associations, legal consultations and advocates bureaus with the law;

- suspension of decisions of bar associations governing bodies, bar associations chairmen (deputy chairmen) which do not correspond to the law or are adopted in violation of the established procedure and making submissions to these bodies (officials) to abolish such decisions, as well as approaching the court with applications to abolish these decisions in case of unjustified refusal to satisfy the relevant submission;

- exercise of other powers related to the regulation of advocacy activity in accordance with the legal acts.

2. For the purposes of proper organisation of the provision of legal assistance and the activities of Bar associations the Ministry of Justice of Belarus:

- summarises data on the activities of advocates, examines and distributes the positive experience of their work;

-takes measures to protect the interests of advocates from illegal and unjustified interference in their professional activities, to ensure the protection of the professional rights of advocates;

-provides bar associations with informational and legal support of their activities, capacity building activities for advocates."

3. CURRENT SITUATION, PROBLEMS AND CHALLENGES CONCERNING THE INTERACTION BETWEEN LAWYERS AND JUDGES IN COURT

As it was highlighted in the introduction of the present document, the country-specific review of the interaction between lawyers and judges in Belarus was delivered based only on desk research, while another major component envisaged in the methodology – organisation of on-line interviews with the project stakeholders and relevant authorities/ institutions – was not performed, thus it was impossible to observe the actual problems in the interaction between judges and lawyers. Likewise, it was impossible examine the conformity of formal legal and statutory provisions, governing the relation between judges and lawyer, to their practical application.

In this context it shall be mentioned, that given the current legislative regulation and its practical application, the executive authorities control all the core functions of the Bar and the lawyers, which has been criticized widely by the leading human rights organisations. The Report prepared in 2019 by the Helsinki Foundation for Human Rights – in partnership with the World Organisation Against Torture on the independence of the legal profession in Belarus – highlighted that:

"The Bar of Belarus does not represent an independent self-governing organisation, neither de jure nor de facto. The Bar and the lawyers are controlled by the Ministry of Justice".[125]

And recommends to:

- *Bring the Belarus legislation regulating the legal profession in line with international standards.*
- *Abolish provisions in the country legislation on the legal profession concerning the responsibilities of the Ministry of Justice to govern the legal profession and transfer the duties of the Ministry of Justice to lawyers' self-governing bodies.*
- *Abolish licensing of lawyers by the Ministry of Justice by transferring the duties to regulate lawyers' admission to the profession to lawyers' self-governing bodies.*
- *Exclude representatives of executive authorities from the Qualification Board and transfer the responsibility for managing the Board to lawyers' self-governing bodies.*
- *Ensure that lawyers can exercise their professional duties free from any obstruction, intimidation or pressure.*
- *Work in consultation with NGOs, both registered and unregistered, as well as other civil society actors, to identify areas in need of reform, and prepare and implement recommendations to improve the judicial system in accordance with international standards*.[126]

The same conclusions have been reached by the UN Special Rapporteur on The Situation of Human Rights in Belarus of 17 July 2020:

"The independence and impartiality of the legal profession continue to be a concern. The Special Rapporteur emphasizes that the freedom of lawyers from interference by the authorities must be maintained, including by enabling the establishment of a truly independent bar association and ensuring that lawyers, including those working for human rights defenders, are able to perform their work unimpeded and to exercise their freedom of expression without fear of retaliation or harassment from the authorities. The Basic Principles on the Role of Lawyers must be upheld."[127]

With regard to the Independence and impartiality of judges, the Special Rapporteur stated that:

…Organizational, logistical and staffing support for the activities of the courts of general jurisdiction is provided by the Supreme Court of Belarus. This is a positive aspect of the judicial and legal reform, as these functions lie beyond the

[125] See: Report "On the independence of the legal profession in Belarus" issued by the Helsinki Foundation for Human Rights in partnership with the World Organisation Against Torture later reaffirmed before the UN Human Rights Council in the Joint submission before the HRC, Human Rights Council, Working Group on the Universal Periodic Review, Thirty-sixth session 4–15 May 2020. A/HRC/WG.6/36/BLR/3.

[126] On 30 September 2021, the Belarusian Supreme Court upheld the government's move to liquidate the Belarusian Helsinki Committee, the ruling cannot be appealed

[127] See, para. 5 of the Special Report submitted on the Seventy-fifth session of the UN General Assembly, Item 72 (c), Situation of Human Rights in Belarus, 17.07.2020

> *competence of the Ministry of Justice as an executive authority. However, the Special Rapporteur is concerned that issues remain that undermine judicial independence and negatively affect the realization of the right to a fair trial.* [128]

Several organisations of the Human Rights Defenders[129] have also raised their concerns as to the quality of law, the non-transparency and the lacks of fairness of the procedure of appointment judges.[130] Then, the same Human Rights organisations recommended that the authorities take measures to ensure in law and in practice the complete independence of judges, and delegate the responsibilities of selection, appointment, dismissal and disciplining of judges from the executive authorities, including the President, to judicial self-government bodies.[131]

As to the independence of lawyers, the Special Rapporteur has pointed out that contrary to the Principle 16 of the UN Basic Principles on the Role of Lawyers, stipulated that lawyers must be independent and free of any pressure or influence.[132] However, as the Special Rapporteur stressed in her Report:

> *However, the laws of Belarus effectively limit the independence of lawyers by bringing their activities under excessive control of the authorities, in particular the Ministry of Justice, which undermines the core values of the independence of lawyers. Especially concerning is the situation of lawyers who protect human rights defenders, as the authorities reportedly selectively use laws to target such lawyers.*[133]

The same approach is for the functioning of the Bar. For instance, in respect of registration and dissolution of the Bar, there are the special Regulations approved by the decrees of the president of Belarus: Regulation on the State Registration of the Republican and Territorial Bar Associations; and on the Dissolution of Territorial Bar Associations.

In respect of the interaction between lawyers and judiciary Charter 6 of the Law on the Bar “The Interaction of the Bar with the State and Public Associations” merely lists the various functions of the Bar, which are performed under the leading role of the Ministry of Justice.

In respect to the fairness of the trial, significant lack of adversarial and unbiased court hearings, including, *inter alia* substantial problems of communication between lawyers and judges during the hearings, are manifestly evident in the case *Marinich v. Belarus*, 1502/2006, examined by the UN Human Rights Committee:

> *2.16 The author submits that the trial, which lasted from 23 to 30 December 2004, was neither independent nor unbiased. Although the hearings were declared open to the public, representatives of political parties and NGOs were effectively barred from the court room. The court building was allegedly*

[128] *Ibidem,* Section A, p.5.

[129] See, The Human Rights Council, Working Group on the Universal Periodic Review. Thirty-sixth session, 4–15 May 2020. A/HRC/WG.6/36/BLR/3

[130] *Ibidem,* para.37.

[131] *Ibidem.*, para.39.

[132] See Principle 16 of the UN Basic Principles on the Role of Lawyers.

[133] Para. 30 of the Special Report submitted on Situation of Human Rights in Belarus. 17.07.2020

surrounded by the police who prevented people from even approaching it. He adds that KGB officers were constantly present in the building. Two of them recorded the proceedings. The hearings were held in a small room which could seat only 12 people. He claims that during recesses, KGB officers and the judge held consultations without witnesses. Journalists allowed into the court room at the insistence of the defence and relatives were not permitted to record the hearings.

(...)

10.5 The Committee notes the author's claims that the court was neither independent nor unbiased as the judges were acting under instructions from the authorities; the hearings were not fully open to the public and were closely monitored by special services which taped the whole trial; and the judges tendentiously interpreted the evidence gathered by the investigation, as well as the evidence given by the witnesses and the defendant. The State party limited itself to stating that the court trial was open to the public and conducted in accordance with the criminal procedure law, and that the author's claims of inappropriate behavior of the accusation and the judge have not been confirmed. The Committee notes the prominent profile of the author and recalls its jurisprudence that the court must provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, e.g. potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made. It also notes that the State party did not provide any arguments as to the measures taken to accommodate the interested public taking into account the role of the author as a public figure… In the absence of comments from the State party to counter the allegations by the author, the Committee concludes that the facts alleged constitute a violation of article 14, paragraph 1, of the Covenant.

In respect to the questions related to the interaction between lawyers and judges, the Rules of Ethics in Rule 65 stipulates that:

> *Advocate should not influence persons holding inquest, investigators, public prosecutors, judges and other officials by means prohibited by law, as well as to make unofficial contacts with the named persons for achievement of favorable result.*[134]

Rule 64 of the Rules of Ethics stipulates that:

> "…*If necessary to make an objection against actions of Judge or other participants of the proceedings, Advocate should act in correct manner and in strict adherence to the legislation."*

4. CONCLUDING REMARKS AND RECOMMENDATIONS

Conclusions

[134] The text of this provision is aligned with the provisions of para. 24 of the CCJE Opinion (2013)16 on the Relations between Judges and Lawyers.

The Bar of Belarus does not represent an independent self-governing organisation, neither de jure nor de facto and is under control of the Ministry of Justice, a reality that has been confirmed by practicing Belarusian lawyers and the Human Rights activists. Moreover, given the recent amendments on the legislation regulating the functioning of lawyers, the only form of advocacy allowed will be the legal services provided within the Legal Consultations (as it was in the USSR). The establishment and functioning of such types of bodies have to be agreed with the MoJ, unlike as it was before with such organizational forms as the advocate bureaus and the individual advocates. Therefore, at the current moment, it is clear that the authorities controlling all kinds of the Bar's and the lawyers' activity.

The current legal framework on interaction between lawyers and judges, is manifestly non-complying with the international standards and in the Recommendation No. R (2000)21. It allows to de-facto arbitrary revoking of an advocate license by the MoJ under the negligible and/or unsubstantiated incidents; or the suspension of a lawyer from performing his/her professional duties, while the disciplinary proceedings initiated by the MoJ are underway.

Furthermore, there is a wide critic of the MoJ competences under the existing legal framework, in respect of appointment, approval and dissolution of the heads of the Belarus Bar Association.

The same observations could be given to the mentioned process of the development of the Rules of Ethics. The Bar issued the latter ones from the formal standpoint. However, in fact, the professional organisation could only agree or disagree with it. Which is indeed contrary to the provisions of the Recommendation No. R(2000) 21.

- The evident defects of the quality of regulating law, non-transparency and lack of fairness of the procedure of appointment judges have been revealed.[135]
- The practical examples of the manifestly unfair court proceedings and undue relations between the lawyers and the judiciary in the courts of Belarus have been cited in the existing caselaw of the UN HRC (*Marinich v. Belarus*, 1502/2006).

Recommendations

It is difficult to make precise recommendations on interaction between lawyers and judges, when the practical implementation and current problems have not been adequately identified, due to the fact that no interviews could be carried out with the stakeholders. Only general recommendations would apply, but not on the precise topic addressed under this report. Thus, based only on the desk research, it can be said that:

- Chapter 6 of the Law on the Bar (Clauses 37 and 38) should be amended, to align the provisions regulating the relations between the authorities and the Bar with the standards set out in CoE Recommendation No. R(2000) 21.
- The powers of the Ministry of Justice regarding the conduct of individual lawyers and their relations with the bar, as well as the internal organization and

[135] The Human Rights Council, Working Group on the Universal Periodic Review. Thirty-sixth session, 4–15 May 2020, para.37, A/HRC/WG.6/36/BLR/3

functioning of the Bar, should be eliminated and regulated by the self-governing bodies of the advocacy.

RULES OF ETHICS SHOULD BE THE COMPETENCE OF THE PROFESSIONAL SELF-REGULATING AUTHORITY (THE BELARUS BAR ASSOCIATION). THE MINISTRY OF JUSTICE SHOULD ONLY HAVE THE POWER TO AGREE OR DISAGREE WITH THE RULES OF ETHICS ELABORATED BY THE PROFESSIONAL SELF-REGULATING AUTHORITY

VI. GEORGIA

5. INTRODUCTION

In order to have a better vision on the professional standards of interaction between lawyers and judges in the courts of Georgia, some general data will be provided. The population of Georgia is 3 723 500 inhabitants, there are 370 courts and 352 judges.[136] Justice in Georgia is administered by the general courts through the civil, administrative and criminal proceedings. The system of general courts of Georgia is composed by the district (city) courts, the courts of appeals and the Supreme Court of Georgia.[137] The district (city) courts are the courts of first instance, which try cases attributed to their jurisdiction by one or a panel of three judges, depending on the cases. The courts of appeals hear appeals on decisions of district (city) courts by a panel of three judges under the rules established by the procedural law. The Supreme Court of Georgia is the highest and final instance, acts as court of cassation with jurisdiction through all Georgia. The Supreme Court of Georgia in the prescribed procedural form provides supervision over the administration of justice at the general courts of Georgia.[138] The Constitutional Court of Georgia is the authority for constitutional control,[139] and its decisions are final and not subject to appeal or review.[140]

Given the information from the Georgian Bar Association (hereinafter GBA)[141] there are 9455 lawyers registered with the GBA in 2021. Following the data from the CEPEJ Evaluation Report on Georgia[142] there were around 123 lawyers per 100.00 inhabitants in 201. Given the information provided by the interviewees, the figures have not significantly changed since then.

Georgia became the 41-th member state of the Council of Europe, having signed the European Convention on Human Rights on 27 April 1999.[143] The Georgian system provides that the Convention has to be applied directly by the national institutions, including courts.[144] The rights and freedoms provided in the Convention must be directly

[136] See the CEPEJ Evaluation of the Judicial Systems Report, Evaluation Cycle 2018-2020, issued 24.09.2020 (hereinafter - the CEPEJ Evaluation Report, Georgia)

[137] See: http://gov.ge/index.php?lang_id=ENG&sec_id=160

[138] Regulated under provisions of Article 61 of the Constitution of Georgia and the Law on General Courts of Georgia.

[139] Main regulations and functions are enshrined in Article 60 of the Constitution of Georgia.

[140] *Ibidem.*

[141] GBA legal acts

[142] See the CEPEJ Evaluation Report, Georgia.

[143] Georgia signed the European Convention on Human Rights on 27 April 1999, ratified on 20 May 1999,. See "The ECHR and Georgia in facts and figures", available on:; and also the Council of Europe and Georgia,; and ECHR in Brief

[144] See also: *K.Korkelia, N.Mchedlidze, A.Nalbandov.* Compatibility of Georgian Legislation with the Standards of the European Convention on Human Rights and its Protocols: CoE Publication, , p.12.

ensured for natural and legal persons. Hierarchically the Convention stands lower than the Constitution[145] and Constitutional Agreement,[146] but higher than other normative legal acts.

Thus, Article 6(2) of the Constitution of Georgia proclaimed that:

> "*The legislation of Georgia shall comply with the universally recognized principles and norms of international law. An international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia*"

Identical provisions on the correlation and hierarchy of the norms of domestic and international law in the structure of the Georgian legal system are enshrined in the Law on Normative Acts.[147]

Following the well-established case law of the ECtHR, the domestic courts are primarily responsible for guaranteeing and protecting human rights at the national level.[148] Thus, according to Prof. K.Korkelia:[149]

> *"The Georgian courts should apply not only the text of the European Convention, but also the case-law of the European Court of Human Rights established on the basis of the rights and freedoms of the Convention. Although the European Court takes decisions on specific cases, such decisions interpret the provisions of the Convention. It is difficult to determine the essence of the provisions of the Convention and its protocols without an analysis of the practice of the European Court as expressed in its case-law, in particular since the Convention constitutes a "living instrument".*[150]

6. LEGAL AND INSTITUTIONAL FRAMEWORK

The professional standards related to the interaction between lawyers and judges in the courts of Georgia are enshrined in a number of legal instruments:[151]

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[145] Issued on 24 August 1995. Available at:

[146] The notion of Constitutional Agreement has been introduced in the Constitution in March 2001. It is an agreement between the Georgian Orthodox Church and the State of Georgia. *K.Korkelia, N.Mchedlidze, A.Nalbandov,* op.cit., ibidem.

[147] Article 7(5) of the Law on Normative Acts of 22 October 2009.

[148] *Scordino v. Italy (No. 1)* [GC], Appl. no. 36813/97, 29 March 2006, § 140.

[149] Prof. K. Korkelia, Ambassador, the Former Permanent Representative of Georgia before the Council of Europe.

[150] See, *K.Korkelia, N.Mchedlidze, A.Nalbandov*. Compatibility of Georgian Legislation*…,* cit., p.13. See also, *K. Korkelia,* The Role of the Case-Law of the European Court of Human Rights in the Practice of the Georgian Courts, in: Protection of Human Rights in National and International Law, *K. Korkelia (ed.),* 2002. Though, it was published nearly twenty years ago, taking into account successful legal reforms in Georgia, it still seems to be actual, not solely for Georgia but for many other Eastern European states.

[151] Although the current report is focused on the interactions between lawyers and judges in courts certain questions related to the independence of lawyers, professional trainings, disciplinary proceedings and ethical standards will also be addressed in so far, they are related to interactions between lawyers and judges in courts.

- Law of Georgia on Lawyers of 2001 (Law on Lawyers);[152]
- Law of Georgia on General Courts of 2009 (Law on General Courts);[153]
- the Criminal Procedure Code of Georgia;[154]
- the Civil Procedure Code of Georgia;[155]
- the Administrative Procedure Code of Georgia.[156]

Given the provisions of para. 9 of the CCJE Opinion (2013)16[157] there are two main pillars of the relations between judges and lawyers:

- *the relations between judges and lawyers which stem from the procedural principles and rules of the state in question, and which will have a direct impact on the efficiency and quality of judicial proceedings.*
- *on the other hand, the relations which result from the professional conduct of judges and lawyers, and which require mutual respect for the roles played by each side and a constructive dialogue between judges and lawyers.*

In respect of the latter one, there are following legal instruments regulating the professional ethics of interactions between lawyers and judges:[158]

- Rules of Judicial Ethics;[159]
- Code of Professional Ethics for Lawyers.[160]

These acts have been elaborated and adopted by the self-governance bodies. For the judiciary, the High Council of Justice (HCJ) and for the lawyers, the Georgian Bar Association (GBA).

Independence of Judiciary and Lawyers

Even the Constitution of Georgia does not touch directly the questions pertained to the issue in question – the interaction of lawyers and judges –, still the importance of the concept of a fair trial, which would be illusory without an *"independent and impartial tribunal"*, the role of an independent and impartial judge as its core element, and importance of a free and unhindered activity of a lawyer are enshrined in this cornerstone national act. Thus, there are several relative provisions:

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[152] Even in some sources this law is called as "The Law of Georgia on Advocates" of 20 June 2001, however here it is used the official translation and interpretation from the official website of the Legislative Herald of Georgia. Available at:; the English version with the latest amendments available at the Regional Lawyers Network Project

[153] *Ibidem*, in some sources this law named as "The Law of Georgia on Common Courts", however here it used the official translation and interpretation from the official website of the Legislative Herald of Georgia. See also Article 59 of the Constitution.

[154] Criminal Procedure Code of Georgia

[155] Civil Procedure Code of Georgia.

[156] Administrative Procedure Code of Georgia:

[157] CCJE Opinion (2013)16 "On the relations between judges and lawyers, adopted at the 14th Plenary meeting of the CCJE, 13-15 November 2013.

[158] GBA Legal acts

[159] Website of the High Council of Justice

[160] Regional network of lawyer

- Having incorporated the provisions of the Convention, the CCJE Opinion No.11 (2008) on the Quality of Judicial Decisions[161], taking into account that the standard of quality of judicial decisions is clearly the result of interactions between the numerous actors in the judicial system**,** Article 62(5) of the Constitution stated that: "…*the legal proceedings shall be conducted on the basis of equality of arms and the adversarial process*"[162].
- Article 31(3) of the Constitution of Georgia guarantees the unrestricted exercise of the rights of lawyers, including the rights of lawyers to self-organisation.
- Article 63 of the Constitution of Georgia stated that: *An independency of a judge is guaranteed by fact that his/her activity only has comply with the Constitution and the respective law. Any pressure upon a judge or any interference in his/her activity in order to influence his/her decision-making is prohibited and punishable by law. No one shall have the right to demand an account concerning a particular case from a judge. All acts restricting the independence of a judge shall be null and void.*

As to the independence and impartiality of judges, Article 7 states:

1. *A judge shall be independent in his/her activity. The judge shall assess facts and make decisions only according to the Constitution of Georgia, universally accepted principles and standards of international law, other laws and by his/her inner conviction. A judge may not be requested to report or instructed as to which decision to make on a particular case.*
2. *Withdrawal of a judge from hearing cases, his/her dismissal from post or transfer to another position shall be permissible only in the cases defined by this Law.*

In developing the principle of independent tribunal as it is enshrined in Article 6(1) of the Convention, Article 8 of the Law on General Courts, provides for the following safeguards:

1. *A government or local self-government body, agency, public or political association, official, legal or natural person shall be prohibited from encroaching upon the independence of the judiciary.*
2. *Any pressure upon a judge or any interference in his/her activity to influence the decision shall be prohibited and punished by law.*

Court hearings shall be public and the Law on General Courts envisages the possibility of the airing of a court session by the media.[163]

Rules on the status and functioning of judges and judiciary including these pertaining to the impartiality, efficiency and responsibilities are mainly governed by the provisions of

[161] CCJE Opinion 11

[162] The identical provisions were set in the Law on General Courts. Thus, Article 6 Principles of justice and trial, says that*: 1. Justice shall be administered as equality before law and court of all persons involved in the case, as well as by the principles of transparency and non-substitution and independence of judges. 2. Trials shall be conducted with respect to the equality of parties and in adversary proceedings.*

See also, Article 25 of the Code of Criminal Procedure, *Adversary proceedings and equality of arms*.

[163] Article 13 of the Law on General Courts, airing a court session by the media.

the Law on General Courts.[164] Chapter XII of the Law on General Courts[165] is devoted to regulation of the procedure of communication between judges of the general courts (including the Supreme Court) from one side and by:

- the participants of legal proceedings – i.e., an employee of a prosecutor's office, an investigator, a lawyer, a representative, a party, third party, and another person participating a criminal, civil or administrative case hearing;
- interested persons - a person who is interested in the outcome of a case to be considered and tries to communicate with a judge to this end;
- public servants[166], state servants[167], state political officials and political officials[168]

Moreover, Article 1(a) gives a definition and understanding of the term – "*communication with a judge"*– that means "…*any form of contact with a judge of a general court, including correspondence, conversation by phone or via another technical means."*[169]

It is important to highlight here, that the first article of the Chapter XII - Article 72(1), has specified the inadmissibility of communication with a judge:

> *From the moment a case is submitted to a court until the court judgment made on the case takes effect, and at the stage of criminal investigation, any communication of a participant to legal proceedings, an interested person, a public servant, a state servant, a state political official and a political official, which is related to the consideration of a specific case or issue, and/or to a presumable result of a case, and which fails to comply with the principles of independence and impartiality of court/judge, and of the adversarial nature of legal proceedings.*

Several interviewees highlighted, that along with a discussion on the way of facilitating communication between various legal professionals, it is important to comply with the abovementioned requirements of the Chapter XII of the Law on General Courts in order to avoid a conflict of interests, complying with professional ethics, etc. Since such communications could be considered as suspicious of partiality and non-transparency in this way having influenced the fairness of trial and effectiveness of justice.[170]

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[164] Thus, given the Law on General Courts, along with the requirements of Article 6(1) of the ECHR on fair and impartial trial, this Law defines a system and organization of general courts of Georgia, the legal status of judges, the procedure for their recruitment, appointment (election) and discharge; the guarantees for social and legal protection of judges, and the procedure for communicating with judges of general courts of Georgia.

[165] The current Law of Georgia on Common Courts has replaced several laws dealt precisely with the issues related to the process of interaction between judges and lawyers in court. Namely, the Law of Georgia on the Procedure for Communication with Judges of Common Courts N5273 of 11/07/2007, which was in force until 16/12/2018:; and the Law of Georgia on Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings, N150 of 2000, which was in force until 01/05/2018

[166] The persons defined under Article 3(d) of the Law of Georgia on Public Service.

[167] The persons defined under Article 3(b) of the Law of Georgia on Public Service.

[168] The persons defined under Article 3(h) of the Law of Georgia on Public Service/the persons defined under Article 3(i) of the Law of Georgia on Public Service.

[169] Article 1(a) of The Law of Georgia on General Courts

[170] See paragraph 24 of the CCJE Opinion (2013) 16 regarding the impartiality of judges.

The matters pertained to the procedural safeguards for the independence of lawyers have been elaborated in the Comparative Review III of the PGG II Regional Project. In this regard, it would be appropriate in the instant review merely to cite the key legal sources:

Article 38(1) of the Law on Lawyers, sets out:

> *A lawyer shall practice the profession of lawyer independently. Unlawful interference with the activities of a lawyer or their hindering, inappropriate influence on the lawyer on the part of a state body and/or other person, his/her intimidation, harassment, coercion, persecution, oppression, causing moral or material damage to him/her, violence against him/her or offering violence as well as any other action that might interfere with the independence of a lawyer, shall not be allowed.*

Article 2(1) of the Code of Professional Ethics for Lawyers in turn, further strengthens the principle of lawyer's independence:[171]

With regard to the lawyer's relations with the court, the Code of Professional Ethics for Lawyers in Article 9, having developed the principle of independence of lawyers and judges from each other while exercising their professional duties as it is stipulated by paragraph 7 of the CCJE Opinion (2013)16 on the relations between judges and lawyers' states:

1. *A lawyer appearing before a Georgian or foreign court or tribunal shall comply with and respect the rules of conduct applied in that court/tribunal.*
2. *A lawyer shall not contact or meet a judge connected to the specific case without prior agreement with the lawyer of the opposing party, unless permitted under the procedure law.*
3. *A lawyer shall not knowingly give false evidence to the court.*
4. *The rules governing lawyers' relations with the courts apply similarly to his/her relations with the parties to the trial, as well as arbitration and any other persons administering the justice or other similar function.*

Institutional framework

As was already pointed out above, there are several state and non-governmental self-regulating institutions those functions related to the interaction between lawyers and judges.

- the Georgian Bar Association (GBA),[172] including the Ethics Committee of the Georgian Bar Association and the Training Center of the GBA;
- the High Council of Justice;[173]
- the Legal Aid Council[174];

[171] "*In performing his professional activities, a lawyer shall be free from any influence or pressure including his personal interest and shell be directed only by the Georgian legislation, international law and standards of professional ethics."*

[172] Charter of the GBA

[173] Website of the High Council of Judges

[174] The Law on Legal Aid,

- professional NGOs: “Association of Law Firms of Georgia” (ALFG); “Georgian Lawyers for Independent Profession”; “Union of Law Firms of Georgia”; “Georgian Young Lawyers’ Association”; “Independent Union of Georgian Lawyers”, etc.

Inter alia, the GBA Charter[175] dealing with the matters related to the interaction between lawyers and judges and pertaining to the: Continuing Legal Education Program (Article 15) these provisions have practically been implemented by the Training Centre of the GBA; and Chapter V devoted to the Ethics Committee of the Georgian Bar Association, including conditions and practical implementation of the Disciplinary Proceedings (Article 24). The practical applications of these provisions have been carried out accordingly by the abovementioned Ethics Committee.[176]

Then, in order to reach these goals, the Association is authorised to fulfil the activities under Article 4 of the Statute.

The High Council of Justice of Georgia was created under the Constitution of Georgia and the Law on General Courts, as a special authority, which is in charge of selecting, appointing, promoting, transferring and dismissing judges.[177] The lack of transparency and partiality of the High Council of Justice and Georgian judges in the matters related to the selection, appointment and functioning of the Supreme Court judges and the HCJ members. It was grounded in the findings of the CoE’s Venice Commission,[178] the OSCE (ODIHR),[179] Transparency International[180] and the Coalition for an Independent and Transparent Judiciary,[181] composed of the number of active Georgian Human Rights NGOs.[182] This has also been confirmed by the persons interviewed within this project, were they called for more effectiveness of the legal reforms proposed by the Georgian authorities including the reform of the HJC. *Inter alia,* it was highlighted in the recent statement of the abovementioned independent Coalition for an Independent and Transparent Judiciary.

The activity of **the Public Defender Office (Ombudsman)**[183] also forms a part of relations between lawyers and judges; besides, it forms *a crucial constitutional body for the protection of human rights.”*[184]

[175] GBA Legal acts
[176] The principles enshrined in the Recommendation CM/Rec (2010)12 and the CCJE Opinion (2013)16 have also been implemented in the Statute of the NGO “Association of Law Firms of Georgia. The NGO “Association of Law Firms of Georgia” (ALFG) has been established in 2014 in Tbilisi. See *Article 3. The Purpose of the Association.*
[177]Article 64 of the Constitution of Georgia.
[178] See, e.g., para.21 of the Urgent Opinion on the Amendments to the Organic Law on Common Courts of Georgia, Venice Commission Opinion No. 1039/2021 CDL-PI(2021)007, Strasbourg, 28 April 2021
[178] See: para.47, the Human Rights Council, Working Group on the Universal Periodic Review. Thirty-seventh session, 18–29 January 2021. Summary of Stakeholders’ submissions on Georgia. Report of the Office of the United Nations High Commissioner for Human Rights. A/HRC/WG.6/37/GEO/3

[180] E.g.: The Selection of Candidates for the Supreme Court Judges is Arbitrary and Unfair, 24 June 2021
[181]See: The Coalition Reacts to the Competition of Supreme Court Judicial Candidates, 07 June 2021
[182] See: A New Perspective on Judicial Reform
[183] Ombudsman’s website
[184] See: para.14 of the National report submitted by the Georgian authorities, Working Group on the Universal Periodic Review, Human Rights Council, 37-th session, 18–29 January 2021. A/HRC/WG.6/37/GEO/1.

Regarding the institutional framework of the interaction between lawyers and judges in Georgia, the collegiate executive body providing legal aid, **the Legal Aid Council,** plays a relevant role, as it provides for the administration, functioning, independence and transparency of the legal aid service in Georgia.[185]

Finally, with regard to the interaction between lawyers and judges, it is important to mention the activity of **the Human Rights Interagency Council**,[186] which is chaired by the Prime Minister and the Human Rights Secretariat of the Administration of the Government supervises the effective implementation of the respective action plans on legal reforms.

Liability and disciplinary measures

In respect to the liability for infringement of the procedure of communication between judges of the general courts and lawyers (under the requirements of Chapter XII of the Law on General Courts), the Law sets such liability for a failure to follow the procedure prescribed by this Law and stipulates the grounds for disciplinary liability for judges, lawyers and other actors involved.

For instance, as to liability of a lawyer in case of such infringement, the Law on General Courts in Article 72(4) stipulates that:

> *"Failure to comply with the requirement under Article 72(1) of this Law by a lawyer shall be considered to be a violation of the lawyers' professional ethical standards, and shall entail the imposition of disciplinary liability under the Law of Georgia on Lawyers, and of a fine under the procedure determined by this Chapter".*

And Article 72(9) stipulates:

> *If a lawyer fails to comply with the requirements defined in this Chapter, the Secretary of the High Council of Justice of Georgia shall apply to the chairperson of the Georgian Bar Association with a recommendation to respond, and shall forward appropriate materials to him/her.*

Article 72(11) stipulates that:

> *Information on the communication under Article 72(1) of this Law with a judge shall be public, except for information of the identity of a judge with whom the communication was conducted, and for the information of a case on which the communication was conducted.*

Moreover:

> *To ensure publicity of the information on the communication under Article 72(1) of this Law with judges of general courts of Georgia, the High Council of Justice of Georgia shall maintain, under the legislation of Georgia, the unified database of statistical information on the application of this Chapter, which also includes*

[185] details of the Legal Aid Council ; The Law of Georgia on Legal Aid. 19.06.2007.; Article 26(1) Law on Lawyers and Article 50(1) Law on General Courts.

[186] See: the National report submitted by the Georgian authorities, before the Working Group on the Universal Periodic Review, Human Rights Council, 37-th session, held on 18–29 January 2021. A/HRC/WG.6/37/GEO/1. See also: On Establishing an Interagency Human Rights Council and Approving its Statute. Ordinance of the Government of Georgia, issued on 15.12.2016

the information on the identity of persons imposed with a fine under the procedure determined by this Chapter.

However, it should be noted that it was not possible during the instant Project to obtain such statistics.

On the other hand, having prohibited the communication with a judge, Article 72(2) of the Law on General Courts has specified that:

The liability under this Chapter shall not be entailed for an action, which contains the elements of a crime under the Criminal Code of Georgia.[187]

Chapter XI of the Criminal Procedure Code (CPC) of Georgia contains provisions for imposing a procedural liability for non-performance of procedural duties and for disrupting order in a courtroom.[188]

The detailed procedure of imposing sanctions for disrupting the order during the court hearings[189] on the civil proceedings, is administrated under Article 212 of the Code of Civil Procedure (CivPC):

1. *Responsibility to maintain order in the court shall rest with the chairperson of the court, and in the case of the Supreme Court of Georgia, the order shall be maintained by the Deputy Chairperson of the Supreme Court of Georgia. The presiding judge shall be responsible for keeping order in the courtroom. He/she may limit the number of attendees at the hearing according to the number of seats available in the courtroom.*
2. *The court shall warn the parties that if they leave the hearing on their own initiative, a default ruling will be delivered against them.*
3. *In cases of disruption of order at the hearing, disobedience to an order of the presiding judge or disrespect towards the court, the presiding judge may, following deliberation in the courtroom, issue an order to penalise the participant of the trial and/or the person attending the hearing, and/or to expel him/her from the courtroom. If the expelled person continues to disrupt order, the bailiff shall accompany him/her out of the court building. At the same time, he/she may be penalised under this article or imprisoned (…).*[190]

In turn, the Law on Lawyers,[191] the Code of Ethics[192] adopted by the General Assembly of the GBA and the Charter of the Georgian Bar Association[193], containing the respective

[187] E.g., such criminal actions and sanctions against them are regulated under the provisions of Charter XLI of the Criminal Code of Georgia – "Crime against Activities of Judicial Bodies" Thus, for instance Article 364 of the CrC of Georgia has dealing with *Interference with legal proceedings, investigation, or conduct of defence;* or provisions of Article 365, imposing safeguards against – *Threat or violence with respect to legal proceedings, investigation, or conduct of defence*

[188] See: Article 85 CPC of Georgia – Liability for non-performance of procedural duties and for disrupting order in a courtroom.

[189] I.e., here it is in respect of a main stage of the court hearings.

[190] The Code of Georgia on the Civil Procedure.

[191] See, Article 28 of the Law on Lawyers: the Ethics Commission.

[192] Chapter V of the GBA Charter is devoted to the Ethics Commission of the Georgian Bar Association.

[193] Namely, Article 24 of the Georgian Bar Association Charter.

provisions on the disciplinary measures[194] imposed on lawyers in case of infringement. However, since the procedures related to the disciplinary proceeding and ethical standards primarily falls outside of the scope of instant review these issues will be touched in the questions addressed during the interviews on the instant Project.

7. CURRENT SITUATION, PROBLEMS AND CHALLENGES CONCERNING THE INTERACTION BETWEEN LAWYERS AND JUDGES IN COURT

As stressed also in the previous country review, this country analysis follows the same methodology and questionnaire. In Georgia, as in other countries in a transitional period, quite often is a significant difference between provisions enshrined in the law and its practical application. This has been highlighted also by the Georgian stakeholders interviewed.

i. Existence of the procedural instruments for facilitating the interaction between the judges and lawyers during the proceedings.

The CEPEJ Evaluation Report (2018) shows the existence of the legal framework regulating the interactions between judges and lawyers and also that ICTs are employed in judiciary, including communication between the lawyers and the courts. The average figures are higher than 5 points in the 0-10 scale.

The judges interviewed, specified that there is no specific regulation/instrument for facilitation of such interaction between the court users and judges. E.g., when the prospects of amicable resolution of a dispute have arisen, the judge may formally adjourn the hearings, however let the parties and their representatives stay in the courtroom and discuss the case with them; if the representatives try to hinder the amicable resolution, the judge may ask the representatives to leave the courtroom and hold a discussion with the parties alone.

In any respect, as it stems from the Georgian legislation and was highlighted by the interviewees, there are provisions in the Law on General Courts[195] which restrict **communications with the judge** during the proceedings to preserve the principle of judicial impartiality.[196]

ii. Existence of the legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution.

Given the information from the judges interviewed, it is a quite common practice for lawyers' to intentionally delay the hearings, e.g.:

- filing the poorly/unsubstantiated requests for postponing the hearings based on formal grounds not on the substance of the case;

[194] The procedure of dealing with complaints is regulated by the decree on "Disciplinary Liabilities and Disciplinary Proceedings of Lawyers".

[195] The current Law of Georgia on Common Courts has replaced several laws which dealt precisely with the issues related to interaction between judges and lawyers in court.

[196] In accordance with para. 24 of the CCJE Opinion (2013) 16.

- non-appearance of the lawyers at the hearings without filing a preliminary request, which led automatically to the protraction of the hearings;
- using the mechanism of a default (/mistake) in a bad faith;
- Intentionally scheduling several hearings at the same time in order to force the postponement of one of them, etc.

In turn, following information from the lawyers, the judges could provoke a procrastination of the hearings by scheduling insufficient time for preparing defence and delivering the short-time announcements for the hearings.

Thus although there are safeguards envisaged in the procedural law to prevent and remedy such delaying actions, in fact protractions of the court hearings still occur often.

iii. **Rules for preventing improper behaviour from lawyers towards the judges in court.**

The legal framework in respect of the procedural and ethics rules of behavior in the court hearings which has been explained above, seems to be adequate, but according to lawyers and judges interviewed the main problems lie in its practical implementation. As it was noted above, the provisions regulating such behavior are enshrined mainly in the respective procedural codes (the Law on Lawyers and the Law on General Courts). As for the ethics, the rules are set in the Code of Professional Ethics for Lawyers and the Charter of the GBA. Along with the general rules, there are the legal sanctions envisaged for the improper behaviour. For instance, in respect of the criminal proceedings Chapter XI of the CPC of Georgia provides procedural consequences for non-performance of procedural duties and for disrupting order in a courtroom.[197] In respect of the civil proceedings, it is the provisions of Article 212 of the Code of Civil Procedure (see above).

iv. **Formal rules to address the court (e.g., "Your honour", etc.)**

There is no specific way to address the court, but there are certain formalities established. With regard to criminal proceedings Article 186 CPC on Hearing procedure, stipulates that:

1. *Before the court enters and leaves a courtroom, a secretary of the court session shall announce 'All rise, the court is in session!' or 'All rise, the court is in recess!', respectively. Upon this announcement, all persons attending the session shall rise.*
2. *Participants in proceedings shall address the court politely and with respect, after which, they shall make statements while standing. Any exception to the rules of conduct in the court shall only be allowed by the presiding judge.*

The application of these rules do not seem to cause any problems that would affect the interaction between judges and lawyers.

[197] See, Article 85 of the CPC of Georgia – Liability for non-performance of procedural duties and for disrupting order in a courtroom.

v. **Existence of a certain dress code for the lawyers. Punctuality during the court hearings.**

The Law on Lawyers provides for the possibility of wearing the gown for lawyers,[198] although as confirmed by the interviewees currently there is no lawyer's/advocate gown and/or special dress-code. In practice, there was a case when the presiding judge did not allow participation in the hearings the person wearing the shorts.

As for the lack of punctuality, it should be noted that it constitutes a form of disrespect towards to the court. Moreover, there is a special digital program for controlling such omissions. Therefore, each time when a lawyer/representative is late for the hearings, such information is uploaded into that program. However, no additional information as to the consequences has been reported.

vi. **Cases of improper behavior during the court hearings.**

Interrupting the judge is a breach of the rules of due conduct by being disrespectful towards to the court, as provided in the procedural laws, and can lead to sanctions being imposed (e.g., a fine).

As for the usage of mobile phones, the general ethical norms of politeness and a due behaviour apply. Nevertheless, in order to prevent disorder, presiding judge may call upon all the attendees to turn off their mobile phones or to put them in silent mode. As well as to stay far from the recording equipment, which could be employed during the proceedings given the respective provisions of applicable legislation (e.g. the provisions of Article 13 of the Law on General Courts envisage a possibility of an airing of a court session by the media (see above).

vii. **Respect to the authority of the judges by lawyers in court.**

All stakeholders have pointed out that a huge progress has been achieved since the series of judicial reforms were started, although the current situation is still not satisfactory. E.g., the judges have highlighted that, as a rule, lawyers do not express disrespect towards to the judges in court, but they often do it outside of the courts. Moreover, the judges are unsatisfied by the fact that currently there is no specific mechanism available to have these lawyers liable for such disrespect shown mainly via the social media etc. (see below).

viii. **The consequences for breach of order during the court hearings. Disciplinary/administrative and/or a criminal sanction.**

Disciplinary matters for the Georgian Bar Association members are set in accordance with the Law on Lawyers, the Regulations on Disciplinary Proceedings against Lawyers[199] and the Code of Professional Ethics for Lawyers. Hence, the Charter of the GBA established the Ethics Commission,[200] the independence of which is guaranteed by the Law on Lawyers.[201]

[198] Article 39 Law on Lawyers - Lawyer's Gown.

[199] Regulation on Disciplinary Proceedings against Lawyers. Approved on 11 December 2010, by General Assembly of the Georgian Bar Association, last amended on 23 December 2018.

[200] Article 21, GBA Charter

[201] Article 28(4), Law of Georgia on Lawyers

During the interviews the stakeholders have pointed out that the situations with severe sanctions imposed is a quite rare procedure at the current moment. Pursuant Article 34 of the Law on Lawyers following disciplinary sanctions can be imposed upon a lawyer: a warning; temporary suspension of the right to practice from six months up to three years; and disbarment.

The Law on Lawyers makes a distinction between disciplinary sanctions and disciplinary measures. Following measures may be imposed on a lawyer in breach of the Code of Ethics: a personal letter of reprimand; and termination of membership within the bodies of the GBA, i.e., the Executive Council, the Ethics Commission, and the Audit Commission. Moreover, judicial sanctions may be imposed, which can be: a fine; removal from the courtroom; and custody up to 30 days.

ix. The disciplinary procedures at the Bar in case of misconduct of lawyers in court. Their implementation in practice.

In the view of the members of judiciary interviewed, the Ethics Commission of the GBA lacks effectiveness. The judges, some of whom are former practicing lawyers, have stated that the activity of the Ethics Commission of the GBA does not respond adequately to the complains related to lawyers showing disrespect towards to the courts. The judges interviewed, stressed that the Ethics Commission is nearly a tool in the hands of the management of the GBA in order to punish the lawyers who may "disobey" them.

On the other hand, lawyers say that the disciplinary procedures in overall seem to be fair and effective.

x. Contempt of a court.

Since the commence of the "waves" of legal reforms, significant progress has been achieved in strengthening the rule of law institutions, reinforcement of the role and importance of lawyers.

As for the practical law-enforcement and a balanced approach, the judges interviewed pointed out, that they could also be liable for a disrespectful behaviour against the lawyers. Article 75(1) para. 8 of the Rules of Judicial Ethics regulates as a disciplinary offence "*a judge expressing explicit disrespect towards another judge, court staff or any party of the proceedings"*.

Given the provisions of Article 9 of the Law on General Courts the disposition of the liability for contempt of court has been given:

> *Any act on the part of the parties, other persons involved in the case or any other person attending the hearing or present in the court that conveys contempt of or disrespect for court shall carry the liability provided by law.*

Article 366 of Criminal Code of Georgia on *Contempt of court* establishes:

Contempt of court manifested in the insult of a participant in the legal proceedings, shall be punished by a fine or community service… or with imprisonment for up to one year.[202]

An interesting case concerning alleged contempt of court against lawyers has been examined by the Constitutional Court of Georgia in its judgment *"Masurashvili and Mebonia v. the Parliament of Georgia*" of 15 December 2006.[203] The case originated in constitutional appeals by the two advocates who had been detained under Article 208.6 of the CPC[204] for a breach of public order and contempt of court committed in courtrooms during the oral hearing of criminal cases. In the judgment of 15 December 2006, the Constitutional Court abrogated Article 208.7 of the CPC as unconstitutional. In its reasoning, the Constitutional Court, referring to the ECtHR's case-law, found that those proceedings, which entitled the hearing judge to convict a person of a breach of public order/contempt of court by on-the-spot deliberations, without holding an oral hearing, negated the most fundamental safeguards of a fair trial, such as the right to equality of arms and adversarial proceedings, the right to have adequate time and facilities for the preparation of the defence, etc. The Constitutional Court stated that, by denying a person convicted under Article 208 CPC the right to lodge an appeal, paragraph 7 of that provision violated the Georgian Constitution (Article 42.1 of the Constitution) and Article 2 of Protocol No. 7. In support of the latter finding, the Constitutional Court referred to the Court's judgment in the case of *Gurepka v. Ukraine*.[205] In its judgment, the Constitutional Court also criticized the definition of the offence of contempt of court contained in Article 208.6 CPC, for being too vague, [206] although finally the rule was not declared unconstitutional.

The ECtHR has addressed the issue of contempt of court in several cases against Georgia. In the case *Kakabadze and Others v. Georgia,*[207] the applicants were the members of the Equality Institute, a Georgian non-governmental organization, which carry out activities of monitoring the penal and law-enforcement authorities and promotion of the independence of the judiciary. The NGO held public press conferences and street demonstrations denouncing various serious human-rights abuses allegedly committed in Georgian prisons. The case concerned the applicants' arrest and punishment by detention, imposed as an administrative sanction by a

[202] Article 366(2) of Criminal Code of Georgia: *The same act manifested in the insult of a member of the Constitutional Court, of a judge or a juror, – shall be punished by a fine or corrective labour from one to two years, or with imprisonment for a term of up to two years.*

[203] The Constitutional Court's judgment of 15 December 2006 in the case of *"Masurashvili and Mebonia v. the Parliament of Georgia* 1/3//393,397

[204] At the material time the liability for the contempt of court was regulated under the old redaction of the Code of Criminal Procedure. The Article 208 "Liability for breach of public order in court"

[205] *Gurepka v. Ukraine*, no. 61406/00, §§ 59-62, 6 September 2005.

[206] *"The offence prescribed by the disputed provision is not clearly formulated... and the interpretation may be ambiguous due to the lack of specificity and vagueness of the provision.... Where the legislation introduces a sanction such as detention, an offender must clearly understand the nature of the offence for which he is subjected to detention and, on the other hand, the judge applying the law should be able to do so correctly and adequately. ... [I]n the Constitutional Court's view, achieving and maintaining such important purposes as the protection of the authority of the courts and the smooth functioning of the justice system should not be carried out at the expense of the impairment of fundamental human rights."*

[207] *Kakabadze and Others v. Georgia,* no. 1484/07, 2 October 2012.

court for their participation in a demonstration supporting two owners of a TV channel. The applicants were accused of *"breaching public order, shown manifest and gross contempt towards the court and endangered the administration of justice*" (para.17). The Court noted that the applicants held a demonstration in front of the Tbilisi Court of Appeal, for several minutes only. Then, they were arrested and subsequently punished by being placed in detention for breach of public order and contempt of court. As to the accusations of contempt of court, the ECtHR has pointed out that:

> "…the only offensive phrase voiced by one of the applicants during their short picket was the referral to the Minister of the Interior as "Lavrentiy Beria's bastard". However, the Court cannot understand how that expression could constitute contempt of court, as it was not addressed to a member of the judiciary. In any event, in a democratic society, greater tolerance should be shown to those expressing opinions which are critical of important public figures, even if those opinions are expressed, as in the instant case, inarticulately, intemperately or in a provocative manner (see *Hyde Park and Others v. Moldova (nos. 5 and 6)*, nos. 6991/08 and 15084/08, 14 September 2010 § 43, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, §§ 52 and 53, ECHR 1999-VIII)".

In respect of the contempt of court, it is worth to mention a recently communicated case pending before the Court:[208] the application concerns the arrest of the applicant for his alleged refusal to comply with the orders of police and for breaching public order while participating in a demonstration on 29 November 2019. Moreover, Mr Chkhartishvili was expelled from the courtroom for alleged contempt of court. The applicant's appeal was rejected as inadmissible by the Tbilisi Court of Appeal, with the court concluding that the applicant had failed to substantiate his arguments. The case is pending before the ECtHR.

xi. Possible adverse consequences in sensitive cases.

The lawyers interviewed stated that they had never faced any adverse consequences in their practice,but admitted the existence of such practice especially in high-profile cases. It was also highlighted that despite the existence of several complications (especially in cases with political element), the tendency is overall positive. In general, such practice is recognized as existing but mainly in the past , before commencing of a third wave of legal reforms in 2014 and earlier.

The ECtHR case: *Ramishvili and Kokhreidze v. Georgia* illustrates how the situation concerning sensitive matters was 15 years ago, in particular a case involving public figures and obstacles to the provision of effective legal assistance during the court hearing deciding on their detention in remand.[209] The applicants Mr Shalva Ramishvili and Mr Davit Kokhreidze were the co-founders and shareholders of a private TV company. The court hearings on the applicants' case held at the Tbilisi Regional Court on 2 September 2005. The court room was overcrowded, and the

[208] The case concerns the alleged contempt of court in conjunction with the breach of the right to a fair trial, legal assistance and freedom to assembly, *Chkhartishvili v. Georgia*, Appl.no. 31349/20, communicated on 22 April 2021.

[209] *Ramishvili and Kokhreidze v. Georgia*, Appl. no. 1704/06, 27 January 2009.

applicants were placed in a metal cage at one end of the room. The general noise level in the room, including bitter arguing and swearing, made it difficult to hear or understand what the party who spoke was saying. When the lawyers spoke, they were dazzled by journalists' camera flashes and halogen lights. During the lawyers' speech there were incessant interruptions by the judge and the public, and relentless banging on the entrance door from the outside, as well as the sound of nearby construction work. Now and then mobile telephones rang, and conversations were held. Communication between the defence, the prosecution and the judge, constantly hampered by journalists' interruptions, was only made possible by repeatedly requesting other people to move aside or sit down on the floor.

In order to see what was happening, respond to the judge or be heard, the applicants had to stand on the chair in the metal cage, hanging on to the metal side bars, and shout. They repeatedly asked the judge and the prosecutors to speak louder as they could not hear them...On the other hand, the prosecutor and the judge were so close to each other that they could converse easily. At times, when the prosecutor found it difficult to respond to the applicants' questions, the judge either replied in his stead or rephrased their questions in a leading manner. As to the manner in which the hearing of 2 September 2005 had been held, the Court first considered that an oral hearing in such chaotic conditions could hardly be conducive to a sober judicial examination. The Court could not help but observe that the judge had obviously been aiding the prosecutor during the hearing. The Court concluded that the judicial review of 2 September 2005 had lacked the fundamental requisites of a fair hearing, in violation of Article 5 § 4.

xii. **Procedure of recusal against the sitting judge.**

None of the interviewees suggests it might be a problem from a formal side and/or due to fears for negative consequences. However, while in paper it would be fine, given the opinion of lawyers interviewed, a process of requesting the recusal is quite difficult in practice. First because it puts an applicant against the judge, which could entail a retaliation within examining the case (e.g., a protraction with examination, etc.). The ground for recusal has to be a very well founded and duly substantiated, nevertheless it is a quite common opinion that in most cases it would not be granted.

Moreover, in civil proceedings the first instance, given the provisions of Article 34(3) it would be the same recused judge who would decide on the application for recusal. [210] Therefore, despite the critics of such rules by the ECtHR, it seems that Article 34.3 of the CCivP may not correspond to the concept of a fair trial and a right to an impartial judge as it is enshrined in Article 6(1) of the Convention.

In respect of the substantiation of a request for recusal the case of the well-known Georgian media company *Rustavi-2*, the owners of this broadcasting company alleged in particular that the judges examining the ownership row had lacked

[210] Article 34.3 CivPC: *If a **recusal is declared against a judge, who hears a case alone, this judge himself/herself shall decide the matter of recusal.** When a recusal is admitted or when a judge recuses himself/herself, the judge shall refer the case to the presiding judge who shall forward it to another judge for review. If there is no other judge in a district (city) court who hears civil cases, then the presiding judge shall refer the case to the presiding judge of appeal in order for the court of appeals to forward it to another district (city) court.*

independence and impartiality. Albeit the numerous allegations of bias, the Court found that there had been no violation of Article 6 § 1 ECHR regarding the composition of the bench deciding the case during the cassation proceedings before the Supreme Court. The Supreme Court found in particular that all but one of the allegations of bias had been either unsubstantiated or unconvincing. The involvement of Rustavi 2's Director General in disciplinary proceedings against the President of the Supreme Court some years previously, leading to her dismissal from her judicial post at the time, had raised an arguable claim of a lack of impartiality. However, the Supreme Court had extensively assessed any fears in that regard and had convincingly dissipated them in a thoroughly reasoned ruling. The Strasbourg Court bore in mind that Rustavi 2's owners had systematically introduced ill-founded recusal requests against many different judges at all three levels of jurisdiction in a probable attempt to paralyse the administration of justice, while Rustavi 2's Director General had made gratuitous and virulent attacks in the media against the domestic judges. The Court reached the conclusion that such actions could even be indicative of the abusive nature of the motion for bias, and found that there had been no violation of Article 6 § 1 ECHR. Despite the applicants' appeal for the further examination, the Grand Chamber upheld and rejected the request for referral on 9 December 2019.

xiii. **Possibility for discrimination given the size/relevance of the law firm or the lawyers' connections or status of their clients.**

The interviewed judges underlined that they provide equal treatment to all parties to the dispute, and therefore lawyers and other participants would consequently been treated equally and accorded the same respect. The lawyers however stated that such inequality still exists, and some of them expressed that that the judicial community remains closed, lacks public trust, and show a strong corporatism.[211] Hence, according to the lawyers such a discriminatory treatment in practice still exists and influences the fairness of the court proceedings.[212]

However, as it was mentioned above, the judges accused part of lawyers' society to be biased and their criticism against judiciary was considered as unsubstantiated given the huge progress Georgia has made in legal reforms and efficiency of law-enforcement and quality of justice. [213]

xiv. **Existence of the legal instruments (substantive or procedural) which potentially could be used by judges to ignore, to disregard or in any manner to avoid taking into consideration the claims, demands and arguments of lawyers.**

As the judiciary community have pointed out, admissibility of evidence and the related proceedings are regulated under the respective procedural laws. If the party

[211] Described as a "clan" in Government's Inaction Demonstrates its Support for Clan of Judges, 31 May 2021,

[212] E.g. see, "Concept - Fair Trial Summary of the Online Public Discussions" - a series of public discussions, organized and conducted by the Coalition for an Independent and Transparent Judiciary, from July 17 to 2 November 2020,

[213] See, web-site of the High Council of Justice of Georgia: Appeal of judges of common courts of Georgia, 28 June 2021. On June 27, 2021, the High School of Justice of Georgia hosted a discussion meeting of judges of the common courts regarding the recent developments within the courts.

is not satisfied with the decision of the court, there are prospects for lodging an appeal on this matter. In their turn, the lawyers stated that discretion of judges might be unreasonably wide in respect of acceptance of evidence, attributing time for pleadings and introducing facts/evidence by the defence (in case of criminal proceedings) and/or summoning the witnesses.

xv. **Mutual understanding of the judges – lawyers' role and work**

As it was pointed out, all the interviewees agreed that the mutual understanding between lawyers and judiciary needs to be improved. The judges confirmed that indeed, they respect the independence of lawyers and try to develop the good professional relations with them. The joint events, bench-bars, trainings would be beneficial to understand their respective roles in the proceedings[214].

xvi. **Communication between the judges and lawyers and ICTs.**

The communications are limited for fear of giving the wrong perception on the judges' impartiality, as explained above. As to the use of ICTs to channel the communications, the implementation is diverse in the different courts and jurisdictions, although all confirm that it is being improved.

xvii. **Gender issues.**

The persons interviewed coincided that gender aspects do not have any serious impact on the relations between lawyers and judges. Even, it there were several incidents of usage unacceptable discriminative lexis with reference to gender, they affirm this is not a structural problem. Data of 2018 shows that most part of judges were women (from 305 acting judges there were 144 men and 161 women, respectively)[215]. There are 9455 lawyers registered with the GBA, of whom 4858 are active: 2332 female active members and 2526 male active members (4597 members are not active). In addition, the CEPEJ report of 2018 shows that Georgia is among the states having a national programme to promote gender balance in their justice system.[216]

According to the information from the National Report of the Georgian authorities before the Human Rights Council of 2021,[217] the Georgian authorities are constantly introducing new measures to overcome possible gender problems and encouraging more active involvement of women into the judicial and governmental structures. Thus, in March 2020, the Parliament appointed a woman as the President of the Supreme Court for a 10-year tenure. In 2018, the first female President of the State

[214] E.g., also in the framework of the Coordinative Council of Justice, which set up by the Chairperson of the Supreme Court, the Chairperson of the GBA and the General Prosecutor of Georgia.

[215] CEPEJ Evaluation of the Judicial Systems, Evaluation Cycle 2018-2020 (2018 data), Georgia, p.21.

[216] CEPEJ study on European judicial systems. Efficiency and quality of justice. CEPEJ Studies No. 26. 2018 (2016 data), p.188. Back in 2014-2016 the action plan was introduced in favour of parity in court recruitment mechanisms and the production of gender statistics. Since 2013 the Gender Equality Department operates at the Public Defender Office. It aims at supervising human rights situation from the gender equality perspective. The 2018 amendments into the Criminal Code of Georgia introduced gender discrimination as an aggravating circumstance of a crime.

[217] See para.49, National report on HRC by the Georgian authorities submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Human Rights Council. Working Group on the Universal Periodic Review. Thirty-seventh session, 18–29 January 2021. Georgia A/HRC/WG.6/37/GEO/1

was elected. In 2017, the Parliament appointed a woman as the Public Defender and in 2018 the female chairperson of the Central Election Commission was re-elected for the second term.[218] Furthermore, the Prime Minister appointed a special Advisor on Human Rights and Gender Equality, who coordinates activities of state agencies and officials for improving the human rights situation in Georgia.

xviii. **Patterns/problems linked to the age of the lawyer or judge.**

According to the stakeholders interviewed, the new generation of judges as well as the lawyers is more liberal, respectful, and open to dialogue. The new legal specialists have a better understanding of their role as the independent professionals, a vision of an open court and adversarial character of the proceedings. As in the other countries of the region, there are several NGOs consisting of primarily the new generation, promoting the dialogue between lawyers and judiciary, pursuing the initiatives for the new legislative reforms, promoting the more attentive approach to the Human Rights, promoting the ideas of democracy and the rule of law, including, *inter alia,* the implementation of the ECtHR case-law development.

xix. **The current relationship between the judges and lawyers in Georgia.**

Despite the factors already mentioned that negatively impact upon the interaction between lawyers and judges in court, all stakeholders confirm that the tendency is positive and both sides are ready for finding compromise. Moreover, there are many judges, including members of the High Council of Justice, who are former lawyers. Hence, at least a part of top-ranked members of the judicial community are well informed about the particularities of the lawyer's/attorney's key problems and open to dialogue.

xx. **Assessment of the causes of misconduct in court.**

The persons interviewed were asked about their view about the most frequent causes for the misconduct, precisely: do you consider that misconducts in court are due to 1) lack of knowledge or the rules; 2) lack of human and/or professional respect towards each other's profession; 3) lack of implementation of the sanctions in case of infringements; 4) cultural elements.

Most of them pointed the cultural elements as the possible reason, some of them also mentioned the lack of professional respect.

xxi. **Possibility for the joint training programmes.**

All stakeholders highlighted the importance of joint trainings as one of the key elements of improvement the relationship between judiciary and lawyers. Such a measure is along with the recommendations of para 22 of the CCJE Opinion (2013)16. It is a common view that both lawyers and judges need to constantly improve their professional level especially in such spheres as IT law, bankruptcy, where the most elderly professionals might have difficulties staying updated. In these areas, joint trainings would definitely facilitate mutual understanding and mutual respect between the judges and lawyers. On the other hand, several

[218] *Ibidem.* Para. 50

members of the judiciary interviewed, have pointed out that all these activities have to avoid creating conflicts of interests, and issues affecting professional ethics.

xxii. **Other factors relevant for understanding and assessing the interaction between lawyers and judges in the courts (e.g. a corruption potential, etc.)**

The issues concerning professional ethics seems to be actual. Thus, given the data of the CEPEJ Report there were 41 cases of disciplinary proceedings on the breaches of professional ethics initiated against lawyers in the reported period.[219] As for the judges, the CEPEJ Report showed that there have been 449 disciplinary proceedings initiated against judges, mainly due to professional inadequacy (251), corruption offences (112) and breach of professional ethics (81).[220] In respect of the corruption offences, it should be noted that according to the organic law of Georgia on General Courts Article 75(1) a corruption offence or misuse of one's official position to the detriment of justice and official interests is constitute a disciplinary misconduct. Besides, an offence under the Law of Georgia on Conflict of Interest and Corruption in Public Institutions shall be considered a corruption offence unless it entails criminal or administrative liability.[221]

In respect of corruption, Georgian anti-corruption reforms are one of the most successful among the Eastern European states and Georgia has one of the lowest rates among them,[222] as evidenced by many international studies. According to the 2019 report of the World Justice Project, Georgia has leading position and ranks on the first position in the East Europe and Central Asian region; further in the Open Budget Index for 2017, Georgia ranks on the 5th position for the transparency of the budgetary process.[223]

During the 37-th Session of the Human Rights Council in 2021, GRECO welcomed the work carried out by the Georgian authorities in improving the law "On conflicts of interest and corruption in public institutions", which should allow for a more effective monitoring of asset declarations of members of parliament, judges and prosecutors.[224]

8. CONCLUDING REMARKS AND RECOMMENDATIONS

Conclusions

The current legal framework on relations between lawyers and judges seems to be adequate and flexible enough to address the actual needs and challenges. The legislative reforms adopted in the last years have been particularly responsive to the

[219] CEPEJ Report, p.84.

[220] *Ibidem,* p.79.

[221] Article 75(1) of the Law – *Grounds for disciplinary misconduct of a judge and types of disciplinary misconduct.*

[222] Transparency International Corruption Perceptions Index for 2020 Rank was 45/180. The 2020 score was 56/100. 4% is a percentage of public service users paid a bribe in the previous 12 months.

[223] See: para.16 of the National report submitted by the Georgian authorities, Working Group on the Universal Periodic Review, Human Rights Council, 37-th session, 18–29 January 2021. A/HRC/WG.6/37/GEO/1.

[224] *Ibidem.*

current requirements.[225] However, the stakeholders interviewed have a common view that the current stage of relations between the lawyers and judges is at a difficult time, *inter alia,* due to the wide critics of the procedure of selection and appointment of the judges for the Supreme Court and members for the HCJ. There is a special Chapter XII (1) of the Law on General Courts which restricts communications between judges and lawyers, as this could be considered as suspicious of partiality and non-transparency. On the other hand, as far as it stems from the materials available, the other acts leave a room for performing such interaction.[226]

The actual provisions of the Regulation on Disciplinary Proceedings against lawyers, have safeguarded composition of the Ethics Commission. For instance, including these related to the family ties of the members of the Ethics Commission.[227]

Recommendations

- Seems to be relevant to redraft the legal provision that limits communications between the court and the lawyers. The image of impartiality or the prevention of corruption could be addressed by other avenues, but not by cutting the ways of communication between lawyers and courts.
- Develop further the implementation of the procedure for imposing sanctions for misconducts and improper behaviour towards the judges by lawyers. In this regard, probably reconsider a possibility to keep the contempt of court, and if maintained, redraft its regulation in the criminal code.
- Monitor the practical implementation of the disciplinary liability proceedings by the Ethics Commission of the GBA lacks effectiveness and needs to be improved.
- Ensure that certain conducts by lawyers, such as unjustified non-appearance are adequately dealt with, inclduing the proper sanction, to prevent such misconducts.
- Amend the provisions of the Georgian CivPC (Article 34(3), which allow for the recused judge to decide on it, as such procedure does not correspond to the requirements of a fair trial under Article 6(1) of the ECHR.
- Provide for a mechanism to restrict disrespectful activity and statements of the lawyers in social media towards individual judges.
- Continue to develop the common platform for performing the joint training programmes and facilitation dialogue on various sensitive legal themes[228] within the direct involvance of the GBA, the HCJ, the other legal professional organisations and their members. Such a platform and the joint training

[225] For instance, upon the information from the High Council of Georgia, the Sustainable Development Index of 2021 published by Cambridge University, listed Georgia among the top 20 European states in terms of access and affordability of justice. Cited from: Appeal of judges of common courts of Georgia, the High Council of Justice of Georgia, 28 June 2021.

[226] E.g., the Code of Professional Ethics for Lawyers, Art.9(2) states:

A lawyer shall not contact or meet a judge connected to the specific case without prior agreement with the lawyer of the opposing party, unless permitted under the procedure law.

[227] See, Regulation On Disciplinary Proceedings against Lawyers: *Article 11. Prohibition of participation in disciplinary proceedings.*

[228] E.g. it could be an open discussion on: the ongoing and/or discussing legal reforms; application of the Code of Professional Ethics for lawyers and functioning of the Ethics Commission; appointment the candidates and elections to the Supreme Court&the HCJ; implementation of the recent ECtHR practice; etc.

programmes, bench-bars and workshops could be most fruitful for improving mutual understanding and respect for the role of each side in achieving the common goal – improvement of a quality and efficiency of justice.

VIII. REPUBLIC OF MOLDOVA

1. INTRODUCTION

This review seeks to analyse the professional standards of interaction of lawyers and judges in courts and its practical implementation. No other aspects of the legal profession will be addressed, as there are specific reports on institutional framework,[229] codes of ethics, etc. To better understand the context of the interactions between lawyers and judges, some general data regarding the number of courts and lawyers in the Republic of Moldova will be provided. The Republic of Moldova has 2.68 million inhabitants,[230] and at present there are 49 courts and 440 professional judges, although only 360 are currently acting in July 2021, as informed orally during the interviews. There are around 2000 licensed lawyers, [231] which represents around 78.9 lawyers per 100.000 inhabitants.[232] They are self-employed, and the lawyers negotiate freely their fees, although the Lawyers' Association of the Republic of Moldova provides for standard fees as well for quality standards.[233]

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The main rules on the conduct and relationship between lawyers and judges in court proceedings, are to be found in the Law on Advocacy of the Republic of Moldova.[234] The general principles applicable to the advocacy are set out in Article 3 LA,[235] and under paragraph (e) the general principle applicable to every activity of the lawyer and thus his/her conduct in court are "lawfulness and humanity". The principle of independence of the lawyers in the exercise of their profession, which shall be respected by all public

[229] See the Report on Comparative Review on Procedural and institutional setup of the functioning of lawyers in Armenia, Belarus, Georgia, Republic of Moldova and Ukraine, elaborated within the project on "Strengthening the profession of lawyer in line with European standards", of the PGG II Regional Project European Union and Council of Europe Partnership for Good Governance 2019-2021.

[230] The data are to be found in the CEPEJ Evaluation of the Judicial Systems, Evaluation Cycle 2018-2020 (2018 data), Republic of Moldova, published 24.9.2020:, hereinafter "Report CEPEJ Moldova".

[231] CEPEJ Report on the Republic of Moldova states the number of lawyers is 2115, but again, these data are from 2018.

[232] The ratio is reflected in the CEPEJ Report, whose data, as already stated are from 2018, (see CEPEJ Report 2020 Evaluation Cycle, Part 2 Country Profiles, p. 60,), while the total number of acting lawyers was provided by the representative of the Bar Association during the online meetings held in July 2021.

[233] Report CEPEJ on the Republic of Moldova, pp. 80-82.

[234] N 1260-XV of 19.07.2002) (hereinafter LA).

[235] Article 3. LA "Principles of advocacy

Advocacy shall be carried out on the basis of following principles:

a) ensuring the right to defense guaranteed by the Constitution;

b) freedom and independence of advocacy;

c) democracy and collegiality in relationships between advocates;

d) voluntary membership in professional associations of advocates

e) ensuring lawfulness and humanity."

authorities, is also to be applicable to the relationship between lawyers and judges, thus judges shall behave in accordance with such principle of independence of the advocate's profession.[236]

These are obviously very general principles, and the rules of the Law on Advocacy of the Republic of Moldova are further developed by the Statute of the Profession of Lawyer of the Union of Lawyers of the Republic of Moldova,[237] and the Regulation on the Organization and Functioning of the Union of Lawyers of the Republic of Moldova.[238]

Lawyers shall comply "with best professional practices in the field of law, substantive and procedural rules and be **based on professional and courteous behaviour** (Article 9 LA). Advocates shall be subject to disciplinary liability for actions which violate provisions of the Law on the Advocacy, the Code of Ethics and other legal acts which regulate the advocate's practice **(**Article 56 LA).[239]

In case of infringement of his/her duties and obligations, and depending on the gravity of the disciplinary offence, the advocate's practice can be suspended "by a court decision or a decision of a disciplinary body (Article 14.1 (c) LA). Moreover, the licence to practice as an advocate[240] can be annulled in case of "a serious violation of the Code of Ethics of Advocates;" (Article 25. (f) LA). *The annulment of the license to practise as an advocate*). The disciplinary sanctions range from reprimand to the deprivation of the license.[241] The competent disciplinary body is the Commission for Ethics and Discipline of the Bar Association (Article 35. (b) LA), whose composition and powers are regulated under Article 44 LA.[242]

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[236] See Article 52. LA:

"Guarantees of independence

(1) The interference in the professional activity shall be prohibited. The state shall

ensure the exercise and protection of the freedom of the advocate's practice without

discrimination and without undue interference by state authorities or public."

[237] Official Gazette No.54-57/302 of 08.04.2011.

[238] Approved, by the Resolution of the Council of the Union of Lawyers of 27 May 2016.

[239] In more detail, see also Article 59. Of the Statute of the Profession, which reads: "Disciplinary liability

(1) The lawyers are subject to disciplinary liability for the actions that violate the provisions of the Law, of the Code of Ethics of the lawyer, of this Statute and the provisions of other regulatory acts governing the activity of lawyer.

(2) The lawyer, against whom a disciplinary procedure has been instituted, may attend the examination of the issue regarding his/her disciplinary liability and give explanations directly to the Ethics and Discipline Committee."

[240] Requirements and issuing of the license for Advocates are regulated under Articles 20 to 22 Law on the Advocacy.

[241] Article 60. Statute of the Profession

" Disciplinary sanctions

(1) Disciplinary sanctions are:

a) warning;

b) reprimand;

c) the fine from 1000 to 3000 MDL, which is an income to the budget of the Union of Lawyers. The fine shall be paid within 30 days from the date of issue of the decision regarding the application of the disciplinary sanction in the form of a fine;

d) suspension of the activity of lawyer (pursuant to Art. 13(1)(c) and (d) of the Law);

e) withdrawal of the license to practice the profession of lawyer (pursuant to Art. 25(1) of the Law)."

[242] In particular the Commission for Ethics and Discipline shall:

And Article 48 (5) of the Statute of the Profession, contains a general definition of "misconduct" of a lawyer in the following terms: "The act committed by a lawyer, whereby the provisions of the Law, of the Statute of the profession, of the Code of Ethics, the binding decisions of the bodies of the profession likely to harm the honour or prestige of the profession or of the body of lawyers, is a misconduct and is sanctioned under the Law. Violation of the provisions of the Law and the Statute that expressly provide for such a qualification is a serious misconduct."

The main rules that apply to the conduct of lawyer and their interaction with judges in court are to be found in following provisions of the Statute of the Profession of Lawyer of the Union of Lawyers of the Republic of Moldova. First, Article 31, when regulating the Lawyer's Oath, expressly includes in the oath the obligation to swear that through his/her behaviour the lawyer will "not to compromise the professional honour of the lawyer".

With regard to the conduct in court, "The lawyer is obliged to respect the solemnity of the court hearings, to plead with dignity. The lawyer is forbidden to use phrases that could harm the court and the participants in the trial, both in court and outside it. (Article 57.(2) of the Statute of the Profession). Of particular relevance for this review is Article, is paragraph (5) of the same Article 57: (5) Repeated unreasonable absence from the court hearings, without ensuring a legal and competent substitution with the prior consent of the client, is a case of misconduct.

Finally, the code of conduct of lawyers is regulated in the Code of Ethics of Lawyers of the Union of Lawyers of the Republic of Moldova.[243] Under Chapter V, it specifically regulates the "Relations with courts and other bodies with jurisdiction":

> *"(1) The lawyer is obliged to demonstrate respect in court, demanding from them mutual respect and treatment as a lawyer. The lawyer who appears before a court or participates in legal proceedings must comply with the rules of conduct applicable in the court. The obligation to comply with these rules does not restrict the lawyer in objecting against the judge's actions or in exercising other procedural rights."*

In 2017 the Charter for the legal profession was adopted, which should act as a code of conduct for all professionals acting in the justice system. However, it was prepared with hardly any involvement of the judiciary, and it appears that most of the professionals do not even know its content. It should address problems with workload, and also concerns of lawyers when they act in court. At present it does not contain a specific chapter on interaction of judges and advocates, but the representatives of the Bar inform that there is the intention to schedule meetings with all stakeholders (which were planned for 2020,

"a) consider complaints against advocates and advocates-interns;

b) examine cases of violations of discipline and professional ethics by advocates and advocates-interns;

c) open disciplinary proceedings against advocates and advocates-interns;

d) take decisions in disciplinary cases;

e) approve a template of the statement of oath and reputation questionnaire.

[243] Adopted by the Congress of Lawyers of 20 December 2002, with amendments and additions adopted on 23 March 2007 by the Congress of Lawyers, with amendments and additions adopted on 01 July 2016 by the Congress of Lawyers.

but had to be suspended due to Covid-19 pandemic).[244] The main objective is to provide a set of rules upon which all practitioners, coming from the prosecution service, judiciary and advocacy could agree, as well as establishing a common forum to communicate their respective problems and identify shared concerns, in order to provide a better service for society in the justice system. In this report, this Charter will not be further analysed as it appears to be a "work in progress" and up to now, with no impact in practice.

3. CURRENT SITUATION, PROBLEMS AND CHALLENGES CONCERNING THE INTERACTION BETWEEN LAWYERS AND JUDGES IN COURT

Following the methodology and the questionnaire for the country specific analysis a number of on-line interviews have been performed with the project stakeholders and relevant authorities and institutions with the aim of identifying important issues in the implementation of the standards that define the interaction between lawyers and judges in courts, as well as to provide certain uniformity among the different national reports. However, the set of questions shall serve only as a guide, as the answers provided by the stakeholders are not meant to be statistically assessed. The objective is to allow to understand the actual situation of implementation of the legal standards described above, as well as to identify possible reasons and grounds of tensions in the relationship between judges and lawyers that might impact the sound administration of justice.

i **Existence of the procedural instruments for facilitating the interaction between the judges and lawyers during the proceedings.**

The legal framework defines how lawyers and judges shall behave in court. Respectful conduct is the general requirement. However, the rules of conduct do not seem to prevent many of the tensions that are seen in practice. First, the communication does not seem to be as fluent as it should be. According to CEPEJ, ICTs are used for the communications between the courts and the professionals and court users, but the CEPEJ Report (data 2018) states that such system of communications is not available in every court and seems to be more extended in civil courts and less in criminal courts,[245] with limited availability.[246] The Index of ICT communications with Courts is scored by CEPEJ in the civil jurisdiction with 5.8/10, in the criminal jurisdiction with 4.1/10 and in the administrative jurisdiction with 5.4/10.[247]

In general, the usual system of notifications is considered by all the stakeholders as outdated and deficient. They all request investment in e-management and e-justice.

An aspect that raises also complains by the lawyers in their communications with the courts, is the lack of involvement of the judges in discussing the process advancement and the agenda for the hearings with them. In the Republic of

[244] The president of the Bar Association informs that meetings are scheduled for September 2021. It might be positive to follow the outcome of such meetings.

[245] CEPEJ Report on the Republic of Moldova, p. 40.

[246] Ibid. p. 42, ranging from 1% to 9%.

[247] CEPEJ Report 2020 Evaluation Cycle, Part 2 Country Profiles, p. 60.

Moldova, there is the possibility for agreeing with the lawyers the processing of cases,[248] but in practice it seems such interaction is not very fluent. Some lawyers complain that courts do not take into account the agenda of lawyers, precisely when they have overlapping court hearings, which is against the principles set out in the CCJE Opinion (2013) 16, point 17, which requires cooperation between the court and the parties in planning the agendas and hearings.

All these factors show that the principle set out in the CCJE Opinion (2013)16, point 18 which reads:

> *"It is necessary to establish proper communication between courts and lawyers to ensure the speed and efficiency of proceedings. The CCJE considers that states should introduce systems facilitating computer communication between the courts and lawyers, in order to improve the service for lawyers and to enable them to consult easily the procedural status of cases. In its Opinion No. 14 (2011) on "Justice and Information Technologies", the CCJE notes that information technologies play a central role in the provision of information to judges, lawyers and other stakeholders in the justice system as well as to the public and the media."*

is still not adequately implemented and would need to be further improvement.

ii **Existence of the legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution.**

According to the judges interviewed the rules of the code of criminal procedure allow to procrastinate and thus cause undue delays (as explained below). It is also mentioned, that since there is no provision that prevents a lawyer to take cases before a judge who is relative of him/her, this leads to a procedure of self-recusal of the judge, which also causes delays. And sometimes, this is activated in an advanced stage of the proceedings, which originates to annul all the previous procedural acts, and re-start the whole proceedings with a substitute judge whose impartiality is not affected by links to the lawyer.

These situations are a source of tension because the judges claim to be overloaded, and any hearing that has to be cancelled or postponed causes a distortion in their agenda, and thus creates them stress as to the compliance with the deadlines and caseload. They claim to be under much pressure as to timing and workload, under the risk of facing disciplinary proceedings themselves for delays. Judges see in this context the lawyers as a non-cooperative partner, causing them trouble in the adequate performance of their work.

iii **Rules for preventing improper behaviour from lawyers towards the judges in court.**

The legal framework that regulates the profession of lawyers in the Republic of Moldova is mainly found in the Law on the Advocacy, as has been described

[248] See CEPEJ Report on the Republic of Moldova, p. 55.

above, developed by the Statute on the Profession of Lawyers, the relevant Regulation and the Code of Ethics. In addition, the codes of procedure also contain rules on the behaviour of lawyers towards the judges, as has been already mentioned above. However, practitioners in general consider that the implementation is far from being satisfactory.

The reasons for this, as explained by the stakeholders, might be: cultural aspects, case overload of judges, lack of adequate case management on the side of the courts, lack of efficient system in disciplinary sanctioning, lack of professionalism on the side of lawyers. The opinions of the stakeholders interviewed differ regarding the question whether the judges have enough tools to control abusive conducts on the side of the lawyers. While some of them consider that the reprimands and warnings are effective in preventing misconducts, on the side of the judges they state that most of the complaints they present to the Bar for the misconduct of a lawyer, are mostly rejected.

When asked about statistics on the numbers of sanctions imposed to lawyers for misconduct in court, they claim there are none. They affirm there have been no case of suspension, neither of exclusion of the trial or contempt of court for misconduct. It appears that so far reprimand, warning and fine are the only sanctions that have been imposed for misconduct of lawyers. Some of the cases where lawyers have been fined are related to non-appearance of the lawyer without justification; some also for improper behaviour.

Both sides report on abusive behaviours, however not as a systemic problem, but as a cultural issue. Some examples reported by lawyers –which were explained to us, but which cannot be checked by this consultant–, might be illustrative. It appears that a lawyer was reprimanded for not having closed one button of the robe; another one was fined for citing a wrong case in his pleadings, which was interpreted by the judge as misleading and amounting to unlawful behaviour; it seems that often judges correct the lawyers during the hearings, and even call them ignorant or not well prepared; lawyers claim that judges are often arrogant towards them; they cut their pleadings, because they have too many hearings scheduled or they want to leave for lunch. Although the possibility of cutting the pleadings is one of the powers accorded to the presiding judge in directing the debate, when the arguments are not related to the case, or are not essential, the view of judges and lawyers at this point are differing.

iv **Formal rules to address the court (e.g., "Your honour", etc.)**

The law requires that the hearings are conducted in an orderly and respectful way and set out which formalities are to be complied with, as explained above. In general, this is respected, although there are single exceptions, that can lead to a fine, plus complaint filed to the Bar and notification to the Ministry of Justice. Insults or rude words are not frequent, they are reported to be mostly the exception. Any infringement of the code of conduct in court may lead to a reprimand and a disciplinary complaint to the bar. This is not a systemic problem, as recognised both by lawyers and judges, but only abusive conducts in single cases.

v **Existence of a certain dress code for the lawyers. Punctuality during the court hearings.**

In courts all professionals (judges, public prosecutors, and lawyers) have to wear robes, and they are not allowed to enter the courtroom without the robe.[249] In the past there were complaints about improper dress, which caused some frictions in court. However, since it became mandatory, it is generally acknowledged that in practice the formal appearance in court rarely poses any problems. There have been single cases, where the judge has acted in an abusive way, for example, where the lawyer appeared in court correctly dressed (suit and robe) but wearing no socks. This was considered by the judge as inadequate and disrespectful and reacted by issuing a reprimand against the lawyer.

On other occasions, some lawyer appeared without the gown, stating that they were not afforded with a room to change clothes and put the robe on. The judge's reaction in such cases, as reported by the interviewees, was to issue some warnings, but as the misconduct was reiterated, they communicated the complaint to the Bar. However, the disciplinary commission of the Bar rejected almost all of them, finding that there had not been any intentional misconduct, as the lawyers indeed were not provided with a room to put the gown on. In practice, it seems this minor practical issue is still causing problems, and many lawyers take advantage of this lack of adequate premises to cause delays in the proceedings.

In general, however, the formalities in addressing the judges do not pose problems in practice.

As to punctuality, all stakeholders claim problems of coordinating agendas, and many judges state lawyers frequently appear late or simply miss the appointment for the hearing. This seems to be one of the sore points in the relations between lawyers and judges: for the lawyers, having overlaps in hearings, is not adequately taken into account by the judges in drafting the agenda; while for judges, lawyers should not take more work/client that they can deal with. Management of the agenda and coordination is mentioned often as one of the sources of lots of tensions among them. Lawyers mention that while some judges are prone to coordinate agendas with the lawyer so that overlaps of hearing are avoided from the very beginning, some of the judges, claim that lawyers should coordinate with the other lawyers in their firms, so that they don't cause continuous postponements of the hearings.

vi **Cases of improper behaviour during the court hearings.**

[249] Article 62. The uniform of advocates

"(1) An advocate shall be obliged to appear before judicial authorities wearing a gown.

(2) A model of a gown shall be approved by the Council of the Association of Advocates.

(3) Wearing a gown outside a courthouse shall be prohibited except occasions when an advocate is commissioned by a collegium of advocates to represent the advocate's profession at events which require wearing of such uniform."

It is the duty and authority of the judge to ensure that the oral hearing is conducted in an orderly way, and to that end, the judges are accorded powers to direct the debates. In general, a lawyer interrupting the judge has not been mentioned by any of the stakeholders interviewed.

Often lawyers have to consult their mobiles for information or legal support, and this is not considered as disrespectful towards the court. During some hearings, require the mobiles to be switched off, or even left outside the courtroom.

vii **Respect to the authority of the judges by lawyers in court.**

All stakeholders recognise that the situation has improved in the last years, and a positive trend is visible. While extended corruption of judges in the past created a situation of absolute distrust, this appears to be improving, especially with regard to younger judges. Nevertheless, it is recognised that corruption is still a problem,[250] and the lack of a lustration or vetting process within the judiciary is still impacting the functioning of the judiciary and thus also the general respect towards courts.

It seems there is a recurrent problem in Moldovan courts, which is that the lawyers simply leave the courtroom as a sign of protest when they consider the ruling given by the judge is unjust (or they are not satisfied by it).

It seems there are also problems with non-appearance or delayed appearance to the hearing of lawyers, which leads to the imposing of fines by the courts, which are often also reversed by Higher Courts.

viii **Consequences for breach of order during the court hearings. Disciplinary/administrative and/or criminal sanctions.**

This is causing major problems. According to the Code of Criminal Procedure, the judge is entitled to impose a sanction to the lawyer for such behaviour (leaving the courtroom without permission). In addition, according to the Criminal Code of Procedure, leaving the courtroom by the lawyer leads to the halting of the proceedings (arts. 322 and 301 CPC). The hearing cannot continue until a replacement lawyer is appointed. However, until the court can find a duty appointed lawyer to take over the defence of the accused and continue representing the defendant in the proceedings, the hearing must be suspended. Moreover, additional time must be given to the newly appointed lawyer to get acquainted with the case.

ix **The disciplinary procedures at the Bar in case of misconduct of lawyers in court. Their implementation in practice.**

All parties consider that the disciplinary proceedings at the Bar are not effective in case of misconduct of lawyers in court. First, because the lack of a proper regulation in the procedural codes. It is again stated that a lawyer who leaves without reasons the courtroom, can be fined but only if such behaviour causes "additional costs". However, the CPC does not define additional costs, and who

[250] According to the Transparency International Perception Index, Republic of Moldova is ranked in position 115 from 180 countries, with 22% of the public service users that recognized having paid a bribe in the last 12 months.

bears the burden to proof them. It goes without saying that any postponement causes additional costs for the administration of justice, but it seems no one is responsible for calculating such costs and how to present them to the disciplinary commission of the bar. Therefore, in those cases where the lawyer has been sanctioned for leaving the courtroom without authorization, the fines imposed by the judge are reversed in 80% of the cases for lack of proof on the issue of the additional costs that it might have originated. Although some caselaw has provided with certain guidelines as how the additional costs should be calculated, this does not solve the problem on who bears the burden to proof them. From a practical perspective, for the judge imposing a fine in these cases only will increase his/her own burden of work, without uncertain or none advantages as to the advancement of the proceedings that had to be halted.

This clearly needs to be amended, because on the one side it is affecting the efficiency of the justice system, it is a sign of disrespect to the court, and the reaction is completely ineffective. This cannot be considered as a systemic problem, but still occurs, especially in high profile cases that attract the attention of the media, and the advocates stage a show for them.

In some criminal cases, with multiple offenders and thus multiples lawyers, the lawyers have abused this behaviour with the aim of causing consequent suspensions for non-appearance of the lawyer, so that the hearings and the proceedings have to be halted several times. As the maximum time for remand in pre-trial custody is 12 months, if the trial could not take place, for whatever reasons –even if the delays were caused by the defendants' lawyers), the defendants have to be set free.

The representatives of the Bar recognise that the disciplinary proceedings by the Bar should be improved, they need to be better implemented, because they are not working correctly.

x **Contempt of court.**

Contempt of court is not applicable in the Republic of Moldova. Sanctions imposed to the lawyers by judges, as described above, range from warning, reprimand to fine, and they are to be reviewed by the disciplinary commission of the Bar. Lawyers do not complain generally of a lack of freedom in the exercise of the profession, main complaints have to do with cutting the time for their pleadings, not being allowed to introduce new evidence, or lack of coordination of the agenda, but not contempt of court or similar negative consequences.

Judges can incur in disciplinary liability in case they behave in a disrespectful way against the lawyers. Some judge claims that the fact that the judge cannot recuse himself/herself based on bias against a lawyer, might create tensions in practice.

xi **Possible adverse consequences in sensitive cases.**

Cases on adverse consequences suffered by lawyers in an indirect way, related to their activity in defending sensitive cases have been reported, but more precise information has not been provided.

xii **Procedure of recusal against the sitting judge.**

In general, the filing of recusals is not signalled as a relevant problem, however, no lawyer is comfortable in challenging the impartiality of a sitting judge, partly because this is still felt as an attack on the side of the judges. However, some of the lawyers consider that the consequences when filing a recusal against a judge, will entail retaliation within the case, and judicial inspection rarely enters into the merits of these complaints. Some advocates state they do not feel protected if they would dare to try to recuse a judge.

xiii **Possibility for discrimination given the size/relevance of the law firm or the lawyers' connections or status of their clients.**

The persons interviewed affirm that there is clearly a different approach towards professional and prestigious lawyers in contrast to unexperienced or lawyers with bad reputation for not being good professionals, rather than the law firm they come from or the size of the firm. Differences between lawyers acting in the same case have not been mentioned, although there is a tendency to communicate better with lawyers whose income is higher, and less with younger lawyers.

However, it appears that judges tend to treat duty appointed lawyers in a less respectful way, watching them as a "lesser evil" or "tolerating" their actions, but without really respecting them.

A general complain is that the judges have not really interiorised the adversarial principle and the role of the advocates, especially in the collecting of evidence and in their attitude towards the public prosecutor. It appears that the approach of the judges towards the lawyer is completely different when compared to the role of the public prosecutor, as if judges still remained frightened of public prosecutors.

xiv **Legal instruments (substantive or procedural) which potentially could be used by judges to disregard claim or arguments of the lawyers.**

This appears to be a problem, especially in civil proceedings, where because of newly introduced facts by the counterpart, the judge fails to accord additional time to provide evidence against those facts/allegations. In general lawyers claim that judges want them to reduce their time in pleading, something which is understandable due to the tight schedule for each of the hearings. This is generally not attributed to the judges, but to the system and the procedural rules.

On the other side, judges claim that some advocates just use the proceedings for staging some message to the public or to the client, introducing allegations not related to the case or unnecessary, which according to the law, they have the power to interrupt within their directing powers.

xv **Mutual understanding of the judges – lawyers' role and work**

All stakeholders confirm that more common understanding is to be promoted, and that there is a cultural problem imbedded in the legal context, stemming already from the university education, which is focused rather than on constructive debate and encouraging critical comments and teamwork, it still adheres to a strict hierarchical approach, where critics are viewed as a

questioning of the hierarchy, and thus as a subversive suspicious attitude or at least it is seen as negative.

One common complaint on the side of the lawyers is that judges often disregard the rules regarding the amount of fees when they decide on compensation of fees on one side. Although they do not have legal power to reduce the fees allocated to the losing party, in practice they do it often, and lawyers see in such practice a way of "sanctioning "the lawyers they dislike, albeit in a disguised and unlawful way. This, they claim, does not aid to build up a good relationship between them.

General

xvi **Communication between the judges and lawyers and ICTs.**

Practitioners state that there are no professional communications among lawyers and judges. For some lawyers this is explained by the way judges still see themselves as the only actor in the proceedings, and see the lawyers as watchdogs of their work, thus an unpleasant player in the justice system. The possibilities and rights for lawyers to act, are described and regulated in the codes of procedure, and the judges have to comply with the rules set out in the Judiciary Act. Most of the professionals interviewed refer to the procedural rules, and they highlight that there are no other ways to facilitate the communication, and even out of court communications could be seen as improper and suspicious of bias if not corruption, and thus many judges tend to avoid them.

See also, what was explained above, under question 1.

xvii **Role of the media in the interaction between lawyers and judges.**

While it was acknowledged that the media have a strong impact in reflecting the image of the judiciary and they have strong reputational influence upon the lawyers as well as the judges, no specific remarks were made in this regard by the stakeholders interviewed. Differently was their opinion regarding social media, which was in general considered affecting negatively the relations and thus the interactions between judges and lawyers also in court.

xviii **Gender issues.**

It seems that gender issues do not have a salient impact upon the interaction of judges and lawyers, and this is affirmed by both male and female practitioners interviewed. There are women judges who might show abusive or arrogant attitudes to lawyers –women or male–, in the same way as male judges.

On the side of the lawyers, it seems that the older ones, with more years of exercise are the ones who tend to behave more arrogantly towards women, and when reporting about conflicting situations from lawyers towards judges, in practice it has been usually a male lawyer. One of the lawyers claims that usually he has experienced fewer conflicting situations with women judges than with male judges, but this was his impression, not backed with further studies or broader sociological assessment. But when conflicts arise and complaints are formulated ones against the others the practitioners interviewed express that it

does not seem to be a specific gender pattern, entailing neither discrimination nor favouritism. In terms of corruption or abusive practices, none recognised it openly and therefore none provided detailed information. However, not only the Transparency International Index for the Republic of Moldova shows that the perception on corruption is still very high, but also in the research report of Transparency International "Overview of corruption and anti-corruption in Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine", published on 26 March 2020,[251] it is stated that "Corruption is an endemic and systemic issue in the Republic of Moldova (BTI 2018e), and there is evidence of state capture in each of the three branches of government (TI Republic of Moldova 2017). One embezzlement scheme alone is believed to have cost Republic of Moldova 12% of its GDP".[252]

xix **Patterns/problems linked to the age of the lawyer or judge.**

The general impression is that elder judges might show more authoritarian attitudes, while younger judges usually have better managerial skills and in the way they deal with the case management; they seem to show also more respect to the needs of the lawyers. The idea that younger judges in general show a better attitude was confirmed by several lawyers interviewed.

On the other hand, some of the younger lawyers expressed that he felt that there was a general tendency of the judges to show less respect towards younger lawyer.

However, this view is not shared by all the persons interviewed, as some of them considered precisely the opposite, that the younger lawyers and judges tended to behave more arrogantly.

Nevertheless, this was not assessed as a systemic problem by none of the professionals interviewed.

Finally, it seems that there have been issues regarding lawyers who speak Russian and not good Romanian, who have complained that they are not treated equally by the courts. Five complaints have been received by the Appellate Court of Appeals regarding improper behaviour on this ground.

xx **The current relationship between the judges and lawyers in Armenia.**

Point 21 of the CCJE Opinion (2013)16, states: "The CCJE considers that the relations between judges and lawyers should be based on the mutual understanding of each other's role, on mutual respect and on independence vis-à-vis each other."

When stakeholders were asked about this relationship, the general answer has been, that there is no mutual understanding. All of them considered that the relationship could be better described as of "mutual disrespect" or rather "mutual distrust". This is surprising as quite a few judges later become litigating lawyers, as the income can be much higher as that of an acting judge.

[251] Transparency International

[252] See p. 17.

The main reasons given on the side of lawyers, is that judges still have not understood the role of the advocates in an adversarial procedure; they tend to act arrogantly; and that there is still corruption.

On the side of judges, they complain about some abusive manoeuvres to procrastinate, and lack of professionalism.

xxi **Assessment of the causes of misconduct in court.**

When asked about the reasons for the conflicting relationship between lawyers and judges, the interviewed persons were asked to chose one of the following options: **1) lack of knowledge or the rules; 2) lack of human and/or professional respect towards each other's profession; 3) lack of implementation of the sanctions in case of infringements; 4) cultural elements.** None of them mentioned "lack of knowledge of the rules" as the ground for such problems, while cultural elements were signalled by all of them, mostly together with reasons number 2) and 3).

xxii **Possibility for joint training programmes.**

In general, joint programmes are seen as very beneficial by all stakeholders, to become to know the problems of each other's profession, the difficulties they encounter and to find ways to soften certain misunderstandings. Especially joint programmes on new legal problems, on international standards, and digital developments are pointed out as adequate to share common spaces and common doubts. Sharing common fora is seen by all persons interviewed as very positive, both to foster a mutual understanding, as well as increase professionalism, knowledge, and mutual respect. Nevertheless, these common events are seen by some of the interviewees as entailing risks for corruption and/or conflicts of interest.

Many consider that joint training programmes on ethics could also be improved, as a way to overcome a culture of corporativism and seeing each other as enemies, rather than adversaries with a common goal: an efficient justice system.

xxiii **Other factors relevant for understanding and assessing the interaction between lawyers and judges in the courts (e.g. a corruption potential, etc.)**

Cultural elements, like a general lack of respect towards the others, which is also reflected in courts interactions, is mentioned by some of the interviewed.

Lack of adequate implementation of disciplinary proceedings on both sides. CEPEJ Report states that there have been 34 disciplinary proceedings initiated against judges, most of them for breach of ethical standards (21) or professional inadequacy (13), with 4 sanctions imposed. The number of total complaints filed against judges were 1639. According to the Compliance Report GRECO RC4 (2020)9,[253] "Recommendation xiii. *GRECO recommended that the legal and*

[253] Fourth Evaluation Round "Corruption prevention in respect of Members of Parliament, Judges and Public Prosecutors, Compliance Report GRECO RC4 (2020)9, adopted by GRECO at its 85th Plenary Meeting, Strasbourg, 21-25 September 2020, accessible at https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b.

operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency", remains partly implemented.[254]

On the side of the lawyers, the disciplinary accountability seems to present also shortcomings. Apart from the composition, some affirm that members of the Council or important lawyers are treated differently when facing disciplinary proceedings, and thus are never sanctioned. According the CEPEJ Report, there have been in 2018 a total of 21 disciplinary proceedings against lawyers, which ended up in 21 sanctions, 10 with a decision of withdrawal of the case, and 7 with a fine. No suspension and no expulsion have been imposed.

xxiv **Ways to improve.**

All of the interviewed mention that the interactions, communications and mutual respect are in need of improvement. All of them agree that professional standards need to be improved on both sides. Lack of professionalism is seen as a major problem, coupled with the inefficient disciplinary proceedings.

The video recording of the hearings might improve the interaction in court. At present, all hearings in all civil, criminal and administrative jurisdictions are audio-recorded (CEPEJ report also corroborates this, p. 45). This may be seen as an effective safeguard in practice. However, it is reported that some judges control themselves the device and they stop the audio recording when they wish. Full video-recording with no possibility of stopping it, might help to improve the conduct of both parties, as well as on the side of the prosecutor.

Some of the measures mentioned are: to promote exchange of experiences in joint training programmes.

4. CONCLUDING REMARKS AND RECOMMENDATIONS

Conclusions

There seems to be a sufficient legal framework regarding the behaviour of lawyers in court, how they should address the judges, the compliance with the dress-code, and the consequences of unjustified non-appearance and also rules on disciplinary proceedings when such rules are infringed. However, practitioners from the judiciary consider there are some shortcomings in the code of ethics for advocates, which might not be in full compliance with European standards. In contrast, it appears that the code of ethics for judges is more elaborated and complies with those standards fully. Such shortcomings are not easy to assess by this consultant.

Practitioners have drawn our attention towards to points: 1) the composition of the disciplinary commissions of the bar association should be mixed, with involvement of other practitioners, so that the objectivity of such bodies would be strengthened, and thus prevent corporativism; and 2) there is no rule that prevents a lawyer who is a relative of the judge to take a case for conflict of interest, and thus it causes the judge to recuse

[254] GRECO RC4 (2020)9, p. 15. The report states that despite the legal reforms undertaken in the Law on the High Council of the Magistracy of Moldova, "GRECO cannot conclude, based on the information provided, that the Disciplinary Board's decisions are duly justified".

him/herself every time this lawyer has to act in court. The Code of ethics does not define this situation as “conflict of interest” and thus, there is often no action to avoid this from the outset. This causes major problems in the agenda, when the proceedings are already at an advanced stage, because the change of the lawyer (or the judge) would cause the whole case to be re-initiated from the beginning. This is a source of delays, albeit not a systemic problem, it is considered that should be addressed at the legal level.

Apart from some improvement in the legal framework, which should address some of the shortcomings, the major problem is seen in the implementation of the mechanisms to prevent and react against misconducts and abusive practices.

In fact, none of the stakeholders that were interviewed describes the interaction between lawyers and judges in courts as good. On the contrary, it seems this relationship is far from being smooth, leading to frequent disciplinary complaints against judges, tensions, improper attitudes on both sides and also to the filing of complaints against lawyers. For lawyers, judges do not show respect towards them and their profession, they tend to see them as an interference in their work, rather than co-operators and necessary actors in the administration of justice. Lawyers claim that the situation depends greatly on the particular judge and/or lawyer who is acting, his/her professionalism and legal education.

Recommendations

- Revise the present Code of Ethics for Lawyers and the composition of the Ethics Commission.
- Revise the rules on incompatibility for lawyers to present cases before the courts when the judge is a relative.
- To improve the efficiency of disciplinary proceedings against lawyers as well as against judges, for a proper deterrent effect for misconducts.
- Ensure that the fight of corruption within the judiciary is effective.
- Continue the organization of joint events for judges and lawyers, on specific topics of common interest, in reduced groups and on specific legal topics.
- Provide the students in the high school education in the law faculties with the adequate understanding of the meaning of the different legal professions, the importance of ethical standards, and the understanding of the fairness of the proceedings and its adversarial structure.

IX. UKRAINE

1. INTRODUCTION

This review aims to provide useful information on the "Interaction of Lawyers and Judges in Courts", For a better understanding of the interactions between lawyers and judges, the data regarding the number of lawyers and judges in Ukraine, is to be recalled. Ukraine has a population of around 42 million persons.[255] At present there are 679 courts and 5.409 professional judges in Ukraine (data 2018). There are around 45.000 lawyers,[256] which represents around 107.6 lawyers per 100.000 inhabitants.[257] This includes self-employed, staff of law firms and in-house lawyers. Lawyers negotiate freely their fees, although the Lawyers' Association of Ukraine publishes certain standards applicable to the lawyers' fees as well as for quality standards.[258]

2. LEGAL AND INSTITUTIONAL FRAMEWORK

Article 59 of the Constitution of Ukraine of 1996 (last amended in 2019) recognizes the fundamental right to legal assistance: "Everyone has the right to professional legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights."

The Law of Ukraine "On the Bar and Practice of Law"[259] (hereinafter LA) is the basic and comprehensive legal framework of the advocacy and institutional organisation of the legal profession. Its Article 4 enumerates the main principles that shall govern the practice of the legal profession. For this study it is relevant to mention para. 1: "The practice of law shall be based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflict of interest." By taking the oath, the advocates commit themselves to comply "with the principles of the rule of law, legality, independence and confidentiality, rules of professional conduct" and "honestly and faithfully support the right to defence" and respect the laws (Article 11 LA).

These principles shall therefore inform and lead the conduct of lawyers in their interactions with judges in courts.

One of the main principles of the advocacy is the independence of lawyers,[260] and it shall be safeguarded by all public authorities. Specifically, Article 23.1 LA provides that:

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[255] The data are to be found in the CEPEJ Evaluation of the Judicial Systems, Evaluation Cycle 2018-2020 (2018 data), Ukraine, published 24.9.2020, hereinafter "Report CEPEJ Ukraine".

[256] CEPEJ Report Ukraine reflects that there are 45.370 lawyers (2018 data).

[257] The ratio is reflected in the CEPEJ Report (data 2018) (see CEPEJ Report 2020 Evaluation Cycle, Part 2 Country Profiles, p. 94,:.

[258] Report CEPEJ Ukraine, pp. 79-82.

[259] Bulletin of the Verkhovna Rada (BVR), 2013, No. 27, p. 282), last amended by law 4.3.2020.

[260] When listing the functions and aims of the advocates' self-government body, Article 44 LA sets out, among others:

1) ensuring advocates' independency, protecting against interference in the practice of law;

2) supporting the high professional level of advocates;

3) creating and maintaining the activities of the qualification and disciplinary commission of the bar;

4) creating favourable conditions for the practice of law;

> "1. Professional rights, honour and dignity of the advocate are guaranteed and protected by the Constitution of Ukraine, this Law, and other laws, in particular: 1) any interference and obstruction of the practice of law is prohibited;"

And para. 5 continues:

> "5) the advocate is guaranteed equal rights with that of other participants of the proceedings, observance of the principles of competition and freedom in the provision of evidence and proving its strength;"

The right of an advocate to practice law shall be suspended, upon the "imposition of a disciplinary sanction on the advocate in the form of suspension of his/her right to practice law;" (Article 31.1.3 LA); and under Article 31.2 LA

> "2. A disciplinary sanction in the form of suspension of the right to practice law may be imposed on the advocate only in the following cases: 1) re-occurrence of misconduct within a year; 2) failure by the advocate to comply with the requirements as regards incompatibility; 3) systematic or a single gross violation of the rules of professional conduct."

As the consequence of a disciplinary sanction an advocate can also be disbarred (Article 31.1.4 LA), among others in the cases of "violation of the oath of advocate of Ukraine" (Article 31.2.1 LA); and also, upon finding of a "systematic or a single gross violation of the rules of professional conduct, which undermines the credibility of the bar of Ukraine" (Article 31.2.4 LA). Further Articles 33 to 35 LA provide for rules on the disciplinary liability of lawyers, and under Article 34.1 LA a list of infringements that shall be considered professional misconduct entailing disciplinary liability is again reiterated, mentioning again "violation of the oath of advocate of Ukraine", "violation of the rules of professional conduct", or "violation of other advocate's duties provided for by law". As can be seen, these grounds for disciplinary liability are drafted in a very general way and need to be interpreted at the light of the Code of Professional Conduct.

The types of disciplinary sanctions are provided in Article 35 LA.[261] The body competent for disciplinary sanctions against advocates is the Qualification and Disciplinary Commission of the Bar,[262] and also the Higher Qualification and Disciplinary Commission of the Bar.[263] This would constitute the general framework on the conduct of lawyers, but as can be seen, these are very general principles and rules, and do not refer expressly to the interaction between lawyers and judges in courts.

The conduct and professional standards in the interaction between lawyers and judges in court proceedings, are mainly regulated in the Rules of professional conduct.[264] The principles of independence (Article 6), professional competence and good faith (Article

[261] Any of the following disciplinary sanctions may be imposed on the advocate for misconduct: 1) These are: warning; suspension of the right to practice law for a period from one month to one year; and disbarment for Ukrainian lawyers. (Article 35.1 LA).

[262] For its functioning, competence and proceedings, see the Regulation on the Qualification and Disciplinary Commission of the Bar, approved by the decision of the report-and-election meeting of 2017 Congress of Advocates of Ukraine, 9 June 2017.

[263] See the Rules of the Higher Qualification and Disciplinary Commission of the Bar, approved by the Decision No. 78 of the Bar Council of Ukraine dated 4–5 July 2014, last amended on 26 June 2019.

[264] Approved by the 2017 Reporting and Election Congress of Advocates of Ukraine on June 09, 2017, with amendments approved by 2019 Congress of Advocates of Ukraine on February 15, 2019.

11), and honesty and good reputation (Article 12), are further developed and specified. For the present study, Chapter IV titled "Advocate's Relations with the Court and other Participants of the Court Proceedings" is of particular relevance, as it contains the only more precise rules on the interaction between lawyers and judges. These provisions are:

> **Article 42. Observance by the advocate of the principle of legality in relations with the court and other participants of the court proceedings**
>
> *"In representing the client's interests or acting as a defender in the court the advocate shall comply with the requirements of applicable procedural legislation, legislation on the bar and advocate's activity, judicial system and status of judges, other legislation governing the conduct of the parties to the court proceedings, and with the requirements of these Rules."*
>
> **Article 43. Observance of the principle of advocate's independence and dominance of client's interests in relations of the advocate with the court**
>
> *"While observing the principle of legality, the advocate shall at the same time be persistent and principled in asserting the client's interests in the court; the advocate shall not compromise his or her independence in the defence and representation of the client's rights and interests in order not to worsen the relations with judges; in the case of court pressure on the advocate, the latter shall not allow compromises which are contrary to the client's legally protected interests. The advocate shall consistently adhere to the principle of dominance of the client's interests over all other interests and considerations related to the relations of the advocate with the court.*
>
> *The advocate shall not ignore the breaches of the law, tactless and disrespectful attitude of the court and other parties to the proceedings towards his or her client, to himself or herself or the bar as a whole and must respond to such acts in the manner provided by the applicable legislation and/or the UNBA, BCU regulations."*
>
> **Article 44. Observance by the advocate of the principles of honesty and decency during his or her professional activity in the court**
>
> *"When conducting his or her professional activities in the court, the advocate must be decent, behave honestly and with dignity by asserting his or her respect to the legal profession.*
>
> *The advocate shall respect the procedural rights of the advocate who represents the other party and shall not take actions which grossly breach such rights.*
>
> *The advocate shall not take any actions aimed at unjustified protraction of the court proceedings."*[265]

[265] Article 44 as amended by the Decision of 2019 Congress of Advocates of Ukraine dated 15 February 2019.

3. CURRENT SITUATION, PROBLEMS AND CHALLENGES CONCERNING THE INTERACTION BETWEEN LAWYERS AND JUDGES IN COURT

Following the methodology and the questionnaire for the country specific analysis a number of on-line interviews have been performed with the project stakeholders and relevant authorities and institutions, aimed at checking the practical implementation of the legal framework and its compliance with international standards, as well as for spotting salient problems in the interaction between lawyers and judges in courts, however depending on the area of expertise of each of the partners, the adequate questions were selected.

Although the set of questions should provide a common approach to the theme, and thus ensure certain uniformity among the different country reviews, this consultant has taken it as an initial guide, which should allow flexibility during the interviews. The answers provided by the stakeholders are not to be statistically evaluated but should serve to gather relevant information on the actual situation of implementation of the legal standards described above, as well as to identify what are the causes of tensions in the relationship between judges and lawyers. that might impact the sound administration of justice.

i Existence of the procedural instruments for facilitating the interaction between the judges and lawyers during the proceedings.

Last available CEPEJ Report for Ukraine (data 2018) reflects that ICTs are used for the communications between the courts and the professionals and court users in around 50 to 99% of the courts, except in criminal courts, where it appears it is not available. [266] Where it is used, these communications can take place by mail or SMS, but since electronic system of communications is not available in every jurisdiction, partners interviewed expressed that communications with lawyers should be improved. The Index of ICT communications with Courts is scored by CEPEJ in the civil jurisdiction with 5.4/10, in the criminal jurisdiction with 2/10 and in the administrative jurisdiction with 5.6/10.[267]

As to the case management system, it seems to be available in around 50 to 99% of the courts of civil and administrative jurisdiction, but not in criminal courts (data 2018).[268]

Despite these shortcomings, according to some of the interviewees, communications with courts are not one of the salient problems. There may be single situations where it fails to function properly, but it is not pointed out as one of the problems that causes a bad relationship between lawyers and courts. In the anticorruption court, communication is described as fluent, most probably because they have more staff and technical means when compared to ordinary courts.

[266] CEPEJ Report Ukraine, p. 40.

[267] CEPEJ Report 2020 Evaluation Cycle, Part 2 Country Profiles, p. 95.

[268] CEPEJ Report Ukraine, p. 38.

ii **Existence of the legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution.**

Non-show is the most frequent way lawyers use for delaying the case. Sometimes it is even the client in criminal cases who is interested in such procrastination, because each day spent in pre-trial detention counts as two if finally convicted.

It seems this is ground for repeated tensions in the Anticorruption court, where lawyers seem to abuse process for protracting the proceedings, and the response of the Bar upon the complaints of the judges is either simply disregarded, or not effective. This is claimed to be a systemic problem, aggravated in the Anti-corruption court.

iii **Rules for preventing improper behaviour from lawyers towards the judges in court.**

The rules, as described above, are mainly contained in the Code of Professional Conduct, under Articles 42 to 45, which shall be interpreted at the sight of the general principles of independence, competency and good faith when defending the parties' lawyers represent in the judicial proceedings. However, these rules do not refer in a precise way how lawyers should behave in courts, apart from being respectful, and complying with the lawfulness, and being decent and honest. Contrary, Article 45 of the Code of Professional Conduct, when regulating how to behave towards other parties of the proceedings, the wording is much more precise.

iv **Formal rules to address the court (e.g., "Your honour", etc.)**

Lawyers shall address the judge always using the form "your honour". Not doing so will lead to a warning. However, it seems that in practice, judges do not take action against such behaviours, because it entails more work for them, and the consequences for the lawyer are hardly applied in case of such minor infringements. The interviewed stakeholders report that only in more severe infringements, like the case where the lawyer would have insulted the judge, the judge would report to the disciplinary commission of the Bar. This is, however, an absolutely exceptional situation, which –according to the interviews– hardly occurs in practice. The fact that hearings are videorecorded might have influenced that formally the interactions are kept within a certain level of formality and external respect.

v **Existence of a certain dress code for the lawyers. Punctuality during the court hearings.**

Lawyers are not obliged to wear robe in court. Articles 12 and 44 of the Code of Professional Conduct require lawyers to act always in a respectful way. In general, it is considered that business etiquette is required for acting in court. However, it seems that lawyers often appear under-dressed in court, late and they often do not appear at all for the hearing. This is considered a systemic problem, and not just a single exceptional situation. It is reported a recent case where a lawyer has been disbarred for appearing drunk at court and tearing the

robe of the judge. It can be said that the most invoked complain is related to non-show, without any justification or prior notification to the court. This is seen often as part of the defence strategy seeking procrastination.

Another problem, which may impact the relationship of lawyers and judges in courts, is the use the lawyers make of social media, with improper messages against judges, trying to blame them or demonise them as a whole. While there is still some corruption in the judiciary, it is claimed that most judges are not corrupt and good professionals. In this regard the report prepared by USAID on perception of corruption might shed some light upon the current situation[269]

Although there is a very extensive regulation on the use of internet by lawyers, this appears not to be implemented correctly in practice.

While it is not foreseen that lawyers do not wear a robe in court, the public prosecutors appear in uniform and the judges also wears a robe. This is seen by some of the interviewees as negative, because it may give the impression that there is a marked difference of status.

vi **Cases of improper behaviour during the court hearings.**

See above 4.

vii **Respect to the authority of the judges by lawyers in court.**

The situation has improved, and the general trend is that lawyers behave respectfully. However, there are examples of lawyers insulting judges and even this consultant was informed of a case where the lawyer threw flour to the judge. As stated above, in most cases, judges do not even refer the case to the disciplinary commission of the bar, because they usually do not get a response. And again, the partners interviewed shared the impression that certain members of the Council of the Bar Association feel immune to any complaint, and thus might increase their attacks against judges in court, feeling protected.

The report by USAID on the independence of judges, shows that lawyers are not the actors that pose risks for the judges. More than 80% of judges answered that they do not feel that their independence has been violated by lawyers.[270] Precisely to the question: To what extent you agree (or disagree) with the following statements? Lawyers and prosecutors taking part in the process use the institution of a disciplinary complaint to put pressure on a judge in order to persuade them to make a certain decision in a case. 52% strongly agree/ rather

[269] "46% of respondents admitted that there were no signs that the judge acted under influence of another party or any individuals (43% of advocates and 68% of prosecutors), and 41% of respondents mentioned, that judges consistently ensured adherence to the adversary process principle and did not give advantage to any party (41% of advocates and 78% of prosecutors). The least respondents agreed that the case was considered within a reasonable timeframe, only 22% of respondents agreed to this, among advocates there are 19% and among prosecutors 49%." *Survey of legal professionals participating in court proceedings who are not judges or court staff regarding trust in the judiciary, judicial independence and accountability, perception of and reporting corruption,* prepared by: INFOSAPIENS, submitted by: Chemonics International Inc., April 1, 2021, p.7, available at: https://newjustice.org.ua/en/lib/research-and-reports/page/2/

[270] *All-Ukrainian survey of judges regarding the independence and accountability of the judiciary, judicial reform, perception of and reporting on corruption*, Report of April 1, 2021, p. 10, available at https://newjustice.org.ua/en/lib/research-and-reports/page/2/.

agree tan not agree; 22% neither agree nor disagree; 24% strongly disagree/ rather disagree.[271]

viii **Consequences for breach of order during the court hearings. Disciplinary/administrative and/or criminal sanctions.**

Misconduct in court on the side of lawyers for breaching the Code of Professional Conduct entails disciplinary liability (Article 34.1 LA). Upon receipt of a complaint from the judge, the Commission should take action and initiate disciplinary proceedings.

However, even lawyers' representatives explain that it is frequent that the Disciplinary Commission of the Bar tends to cover up with the lawyer, not acting in an objective way in applying sanctions to reported infringements of the Code of Professional Conduct. This is an element that tends to discourage the judges to file complaints to the Bar in case of misbehaviour, and consequently, lawyers feel they can overstep some of the limits in their conduct towards judges.

It is also reported that the Bar in certain cases might tend to protect lawyers who occupy relevant positions in their executive bodies.

ix **The disciplinary procedures at the Bar in case of misconduct of lawyers in court. Their implementation in practice.**

The legal framework seems to be adequate, although the general impression is that many of the reasons for the unsatisfactory relationship between lawyers and judges, is due to the lack of effective response by the disciplinary commission when the rules are breached. The lack of compliance with the ethical standards, and the lack of responsible approach towards infringements of the Code of Professional Conduct is generally mentioned as one of the problematic issues.

According to CEPEJ, in 2018 there were 3559 disciplinary proceedings initiated against lawyers, however the number and type of sanctions imposed are not reflected in the country review.[272]

x **Contempt of court.**

Contempt of court is not available anymore in Ukraine for misconduct of lawyers in court. Judges can only report to the disciplinary commission of the Bar by way of general complaints. This has changed the scenario completely and judges claim they feel themselves without any proper tools to ensure respectful behaviour of lawyers in court.

The approach towards the legal profession has changed significantly in the last years in Ukraine, being a key development that the Advocacy is considered in the Strategy of the Judicial System approved by executive order of 11 June 2021, as an institution of the Justice system. By derogating the possibility of holding lawyers in contempt of court, the protection of their independence and their freedom in defending the interests of their clients has improved.

[271] *Ibidem*, p. 11.

[272] See CEPEJ Report Ukraine, p. 83.

Nevertheless, stakeholders claim that, while this approach is to be welcomed, it must be coupled with the keeping of high standards of ethics in the advocacy.

There are voices that state that from an abusive use of contempt of court by the judges, the situation has changed to the opposite: disrespectful attitudes of lawyers towards judges.

xi **Possible adverse consequences in sensitive cases.**

No case law was reported in this sense, but it was not denied either. It was confirmed that in high-profile cases is where the most tensions arise.

xii **Procedure of recusal against the sitting judge.**

Recusals are always to be used in a very sparse way because many judges consider them as offensive, as if the recusing party is questioning his/her professionalism and even worse, his/her ethics. Retaliation for justified recusals is always feared, especially if the lawyer has to act before the same court in other cases. However, there are also some abuses of lawyers filing ungrounded recusals to damage the reputation of the judge or simply to delay the case. This is a problem where education and adequate procedural framework is needed, because obviously recusals have a huge potential for damaging the relationships between lawyers and judges.

xiii **Possibility for discrimination given the size/relevance of the law firm or the lawyers' connections or status of their clients.**

No differences are pointed out depending on the size of the law firm or the different lawyers acting in the same case. Differences depend, according to the replies received, on the professionalism of the relevant lawyer/judge.

There is criticism by the lawyers because of the different treatment they receive vis á vis the public prosecutor: judges tend to show more respect to the prosecution, and also follow their positions.

xiv **Legal instruments (substantive or procedural) which potentially could be used by judges to disregard claim or arguments of the lawyers.**

In practice lawyers often complain that they are not accorded enough time to present their case at the oral hearing, although at present most judges try not to interrupt them, so that they cannot complain later of breach of the defence rights. There are still single judges that cut the pleadings of the lawyers, on the justification that they have to many hearings and an agenda to comply with. However, such behaviour, which is not viewed as a systemic problem, but rather single cases, is not generally accepted anymore, and indeed the reputation of such courts might be put under question

xv **Mutual understanding of the judges – lawyers' role and work**

In general, all interviewed persons confirmed that there is no mutual understanding, and there seems that the efforts in keeping constructive relationship are rather absent.

Even some judge has stated that they try to avoid meeting lawyers for not being considered as suspects of corruption.

General

xvi **Communication between the judges and lawyers and ICTs.**

They all claim there is still room for improvement. See above, paragraph 1.

xvii **Role of the media in the interaction between lawyers and judges.**

No answers were provided on this issue, the impression being that rather than the media, possibly social media might spread out news that may negatively affect the judiciary or single judges' reputation.

xviii **Gender issues.**

There are no precise statistics, but in general they all consider that gender issues are not a relevant problem. Indeed, majority of judges in Ukraine are women and there are also quite several women acting as lawyers. These replies are to be taken with caution, because sometimes certain behaviours which in other European countries would be considered as undoubtedly as discrimination against women or showing an inadequate gender perspective, in Ukraine it is not even noticed as improper, as certain patterns are so embedded (and interiorised) in the Ukrainian society, that they are not even noticed as problematic.

xix **Patterns/problems linked to the age of the lawyer or judge.**

Persons interviewed generally considered that usually younger judges were more liberal and more understanding towards the needs of the attorneys, and that they usually behaved in a more respectful way, while being more aware of their role as an independent judge. However, while this is seen as a trend, there are also examples of lawyers who take older, famous and aggressive lawyers as their role-model and tend to copy those aggressive and non-respectful modes.

In general, it can be said that there is a generational shift towards a more active debate among lawyers and judges, and in general more understanding of their own roles.

xx **The current relationship between the judges and lawyers in Armenia.**

Majority of the replies describe the relationship not as of mutual understanding, and they claim it can be considered either of mutual disrespect or mutual distrust. There seem to be abusive behaviours on both sides, and too many disciplinary –ungrounded? – complaints filed by lawyers against judges and from judges against lawyers. There are thousands of complaints filed against judges every year, and the Disciplinary Board of the High Council of Justice is under much pressure because of so much case load. It takes for them around 4 months to review each case, which is seen by the claimant as too lengthy, as the proceedings might already be over. According to the data of CEPEJ, 453 disciplinary proceedings were instituted against judges and out of those, 176 ended up with the imposing of a sanction to the judge (36 dismissals (data of 2018).[273]

[273] CEPEJ Report Ukraine, p. 77.

On the other side according to the GRECO report,[274]

> "**Recommendation xix.** *GRECO recommended defining disciplinary offences relating to judges' conduct more precisely, including by replacing the reference to "norms of judicial ethics and standards of conduct which ensure public trust in court" with clear and specific offences"* has not been implemented. This may also affect the interactions between lawyers and judges in court.

The reaction on the side of the disciplinary commissions is not considered positive neither by the lawyers nor by the judges.

xxi **Assessment of the causes of misconduct in court.**

The interviews were asked to provide answer to which element was considered in their view more relevant for the assessment of the grounds of misconduct in court. Precisely the questions were: do you consider that misconducts in court are due: 1) lack of knowledge or the rules; 2) lack of human and/or professional respect towards each other's profession; 3) lack of implementation of the sanctions in case of infringements; 4) cultural elements.

Cultural elements, and lack of implementation of sanctions are the most often mentioned reasons as grounds for the bad interaction between lawyers and judges in court. Some authoritarian judges still abuse their powers –for example by reporting to the Bar minor infringements–, and many lawyers simply feel immune to any consequence of misconduct against the judges.

Lack of professional experience is also mentioned as a cause for disrespect and conflicting interactions in court regarding legal aid lawyers, as they all claim they are not experienced, and their quality standards are not always satisfactory.

xxii **Possibility for joint training programmes.**

The general opinion is that these training programmes if adequately organised and structured, would aid in getting better knowledge of each other, and also trying to understand the role judges and lawyers play in the justice system, and not just viewing the other as an enemy that stands as an obstacle to their own interests or their own professional tasks.

xxiii **Other factors relevant for understanding and assessing the interaction between lawyers and judges in the courts (e.g. a corruption potential, etc.)**

When asked about other relevant factors that could have an impact upon the interactions between lawyers and judges in court, corruption was mentioned. Despite the continuous efforts in fighting corruption, the lustration process and the progress of the anti-corruption court, it is acknowledged that there are still cases of corruption. It can be said that corruption is not so widespread as it was one decade ago, but it is difficult to say that it has disappeared. According to the

[274] See Fourth Evaluation Round "Corruption prevention in respect of Members of Parliament, Judges and Public Prosecutors", Ukraine Compliance Report GRECO RC4 (2019)28, adopted by GRECO at its 84th meeting (Strasbourg 2-6 December 2019), accessible at:

Transparency International Perception Index, the Republic of Moldova is ranked in position 117 from 180 countries, with 33% of the public service users that recognised having paid a bribe in the last 12 months.[275]

This obviously hampers the relationship between judges and lawyers, although they should understand that it is a problem of both professions: there are no corrupt judges without corrupt lawyers and the other way round. If there is still corruption it is because both sides (and/or prosecution), accept it or do not fight efficiently against it, identifying and sanctioning those cases.

When asked on the possible ways to improve the current situation, some mentioned the possibility of elaborating a common Code of Ethics applicable to all legal professionals, so that they could feel belonging to the same "legal world". However, there are also voices against this approach, stating –not without reason– that the ethical standards for judges are quite different than those applicable to advocates. There is a joint initiative of the Supreme Court to provide a common Code of conduct for all players in the proceedings. However, National Bar Association refused to participate.

4. CONCLUDING REMARKS AND RECOMMENDATIONS

Conclusions

While in the past, there was frequent abuse on the side of the judges to hold lawyers in contempt of court, the elimination of the contempt of court –which is to be assessed positively for the free exercise of the advocacy– seems to have originated an abusive behaviour on the side of certain lawyers.

The culture of respect towards each other is not adequately developed and many judges still do not see the advocates as a necessary player in the administration of justice. There is a trend towards improvement in general, slowly permeating the principle of adversariality in the judicial proceedings, and the need to respect the fair trial rights and right of defence of defendants. While until recently judges where not even aware of exclusionary rules of evidence or the need to assess the authenticity and integrity of the evidence –having to rely on the undebatable reliability of the evidence produced by the public prosecutor–, this has been changing in the last decade, albeit very slowly and not in all courts.

Judges still do not see themselves as impartial and objective in the adjudication process but rely heavily in the case as presented by the prosecution, while they also continue viewing the lawyers as an uncomfortable interference in the swift adjudication of cases.

There are judges and lawyers that suggest that the provision of a common code of ethics (or professional conduct) could be further explored. This is not foreseen (nor recommended) in the CCJE Opinion (2013) 16 On the relations between Judges and Lawyers", despite the existence of common principles that are applicable to all professions acting in the justice system.

[275] Data accessible at https://www.transparency.org/en/countries/ukraine .

Recommendations

- Improve the programmes in the law schools on the role of a judge, its limits and functions in a democratic society under the rule of law.
- Introduce procedural reforms that prevent abusive procrastination of the proceedings.
- Consider the convenience of imposing the use of gowns also for lawyers, to avoid the formal appearance of unequality between defence lawyers and prosecutors in criminal cases.
- Increase the effectiveness of the disciplinary proceedings against lawyers by their own self-governing bodies.
- Continue improving the fight against corruption. Corruption is still an existing problem in the judiciary (and the legal profession) in Ukraine. The introduction of efficient systems of whistleblowing should be fostered.
- Explore the possibility of elaborating a “Code of Ethics” for all players of the legal profession in the sense of “finding what units” instead of what separates.
- Continue developing joint programmes, also in topics such as judicial and professional ethics.