Plenary session of the High Council for the Judiciary

Opinion for the President of the Republic

Referral of 17th February 2021

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CONSEIL SUPERIEUR
DE LA MAGISTRATURE
(High Council for the Judiciary)

THE PRESIDENT OF THE REPUBLIC

Paris, 17th February 2021

Madam First President,

The issue of the responsibility of judges in our ordinary courts is now of fundamental importance. This is a question of confidence in the legitimacy of the justice system. As an institution at the heart of social regulation, the judiciary finds itself highly exposed, and its performance needs to be exemplary.

I raised this matter – a key issue in my view – with your predecessor early in my term of office in 2017, indicating that I felt the need for an analysis of the judiciary. When you took office, I again drew your attention to this subject, which was raised once more when I met with the full membership of the High Council for the Judiciary. I am pleased to observe that your Council has elected to tackle this issue, and has initiated a process of discussion within its membership.

The most recent activity report of the Council for the Judiciary reflects only a limited level of disciplinary action. In 2019, the figures were as follows: three referrals to the judicial session and two referrals to the prosecutorial session; four substantive decisions handed down by the judicial session and two opinions issued by the prosecutorial session. In 2020, there were four referrals to the judicial session and two referrals to the prosecutorial session; five substantive decisions were handed down by the judicial session and two opinions issued by the prosecutorial session.

The vast majority of referrals originated from the Keeper of the Seals, with only one referral filed by the Commission for the admission of petitions. In 2019 and 2020, no Chief Judicial Officer exercised the option made available under the terms of Article 50-2 of the Ordinance of 22nd December 1958 relating to the status of the judiciary.

In the light of this limited activity, which may stem from a material weakness in evidence which is required to generate a referral, from the core definition of what constitutes a disciplinary breach, or from restrictive practices observed by the Keeper of the Seals and Chief Judicial Officers, I am of the view than an objective analysis is required.

Mrs Chantal ARENS
First President
High Council for the Judiciary
21 Boulevard Haussmann
75009 PARIS

Thus, in accordance with Article 65 of the Constitution, I am pleased to file for the attention of the plenary session of the High Council for the Judiciary a request for an opinion relating to conditions for the exercise of the responsibility of judges. I would therefore be grateful if your Council could formulate specific proposals for the improvement of arrangements for the referral of cases to the High Council for the Judiciary by litigants, and of the system of responsibility in place (definition of a disciplinary breach, and the scale of sanctions).

Finally, pathways might be explored for the means whereby the judiciary might protect judges more effectively, when they themselves are the victims of particularly serious misdemeanours.

1. Improvement of procedure for the referral of cases to the High Council for the Judiciary by litigants

The direct referral of cases by litigants to the High Council for the Judiciary, an innovation introduced under the constitutional reform of 23rd July 2008 for the modification of Article 65 of the Constitution, was implemented under organic law n° 2010-830 of 22nd July 2010. Accordingly, a system for the filtering of complaints has been introduced by means of the constitution of commissions for the admission of petitions.

The key aspect of this reform was the pursuit of a fair balance between greater transparency and responsibility on the part of the judiciary, and the deployment of a system which would not destabilize the day-to-day work of judges, or compromise the independence of judges and the authority of their decisions.

It emerges from the activity reports of the High Council for the Judiciary that, while the average number of complaints registered annually since the entry into force of this scheme in 2011 is 263, only eight of these complaints, on average, have been declared admissible each year. In 2019, eleven complaints were declared admissible, out of 324 received. It would therefore appear that this reform has not provided an effective means of legal redress for litigants.

The low proportion of complaints declared admissible may be associated with the practice whereby plaintiffs appeal to the Council as a means of redress against a ruling which they consider to be unsatisfactory, which is not the intended purpose of this procedure.

The constitutional principle of the independence of the judiciary, upheld by both the Council of State and the Constitutional Council, requires that, in the exercise of their jurisdictional activity, a judge should be exempt from any pressure, criticism, action at law or threat of action at law, and that the ruling of a judge can only be corrected by another judge, in the context of the exercise of rights of appeal.

Limits on this immunity, under the terms of case law, have been set by the High Council of the Judiciary, where the act of a judge is jurisdictional in appearance only, is informed by motives other than those upon which it should be based, or is characterized by a gross error of judgement, to the point that it embodies a culpable absence of professionalism, or stems from a procedural error resulting from a severe and wilful breach.

I would be grateful if you could give me your opinion, firstly on the possibility of the more effective appraisal of professional incompetence on the part of a judge in the exercise of their jurisdictional office, whilst observing the principle of independence, and secondly on means of improving the effectiveness of the complaint system for litigants.

2. Behaviour of judges, definition of a breach and the scale of disciplinary penalties

The central role assumed by the judiciary in social regulation, by definition, goes hand in hand with a stringent requirement for exemplary behaviour. This is a matter of civic confidence in institutions, and the legitimacy of these institutions from a public perspective.

Litigants are particularly sensitive to the observance by all judges of the dictates of professional ethics associated with the essential requirement for objectivity, both objective and subjective. The attitude adopted to the hearing is also closely observed, as is the wording of rulings.

In the complaints which they submit to the Council, litigants regularly highlight behaviours which, however unpleasant, cannot necessarily be classified as disciplinary matters: the use of language by judges at hearings which litigants may find disturbing when they are in a vulnerable situation, difficulties in the acquisition of exhibits, problems with the notification of rights, or an adjournment to a hearing conducted in a prison or a courtroom corridor.

Whilst jurisdictional acts evidently need to be ringfenced, I would ask you to formulate specific proposals, which are consistent with the independence of judges, for the elimination of behaviours which undermine the confidence of our citizens in the public justice system. In general, the plenary session might ultimately formulate an opinion on means for the more effective appraisal of the behaviour of judges, particularly at hearings and, more generally, from the standpoint of litigants, who observe infringements of sensitivity, dignity, or the principle of impartiality.

It is also appropriate that the plenary session should give broader consideration to the definition of a disciplinary breach within the meaning of Article 43 of the Ordinance of 22nd October 1958 on the organic law governing the status of the judiciary and any sanctions currently in force. In this regard, the 2019 report of the Council highlighted the limited range of sanctions available.

3. Better protection of judges

A number of recent cases have demonstrated that judges themselves can be the victims of serious circumstances, which may be classified as disciplinary, if not criminal matters. I am thinking here of situations of harassment or unacceptable disturbance at work, or external attacks which exceed the bounds of reasonable criticism. The judiciary needs to be aware of these circumstances, and responses need to be employed. Mechanisms are in place, but their effectiveness is sometimes compromised.

I look forward to hearing your opinion on pathways for the improvement of the detection and management of these failings.

Madam First President, I remain yours faithfully.

[manuscript:

With best regards,
Emmanuel Macron]

Emmanuel MACRON

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INTRODUCTION

The judiciary is the object of stinging criticism, regardless of whether this addresses the incompetence of judges, their partiality, malfunctions in the public justice system, the slow pace of its operations, the absence of genuine democratic legitimacy or elements of laxity.

In truth, these critiques do not relate exclusively to the justice system, nor exclusively to France. In this case, all authorities responsible for the regulation of social relations find themselves subject to an element of denigration, the profound significance of which, and the underlying democratic malaise which it signals cannot be denied. Judges are all too frequently vilified, more so than other figures, given the issues of populism and demagogy which are a feature of certain democracies.

As a matter of principle, the issue here is not the evasion of these criticisms, but rather to address them, or to rectify the shortcomings which they identify, provided that these criticisms are relevant. The justice system is frequently too slow, but sometimes too quick, it is free but expensive, locally embedded but perceived as inaccessible, delivers tailored responses, but has difficulty being understood: these reproaches need to be heard.

However, the manner in which these criticisms are embodied is a source of concern. The issue here relates less to the media coverage of the justice system than to the increasing adoption of an editorial slant. In an ever more routine manner, the treatment reserved for the justice system is informed by polemical arguments originating from various sources, specifically the political sphere, which fuel the myth of an irresponsible judiciary. For this reason, while the separation of powers and confidence in the justice system are essential foundations of democracy, it is essential that these issues should be addressed from a stance of dispassionate reflection, in the interests of balance.

This pursuit of balance is all the more essential, lest we forget that the judiciary is essentially comprised of skilled individuals who are committed to the service of justice and their fellow citizens, and are steeped in the dictates of professional ethics, which drive both their professional activities and their personal lives.

This consideration is further reinforced by an awareness of the difficulties with which judges are faced, the practical conditions in which they are required to perform a difficult job, the rising number of disputes and the instability of standards, but also the threats and implications to which they are subjected, compounded by the weakness of the institutional resources deployed in response. These difficulties do not provide a universal explanation, and are not uniformly distributed, but they do permit the more effective demarcation of what constitutes the responsibility of judges *per se* within the institution.

Responsibility and the protection of judges - this is the two-fold issue on which the President of the Republic requested that the High Council of the Judiciary ("Conseil supérieur de la magistrature" or "CSM") formulate an opinion under the terms of Article 65 of the Constitution, on 17th February 2021. The analysis requested stems from a purely mathematical observation of the low level of disciplinary activity, and encourages proposals for the improvement of conditions for the referral of cases to the CSM by litigants, together with the definition of breaches, the scale of sanctions and disciplinary procedure.

There can be no justice without independence. Under the rule of law, this point is beyond question. In prosecutorial terms, this entire debate falls within the context of reforms which have yet to reach fruition over a period of some twenty years.

Increasingly, however, expectations of virtuous behaviour are compounded by demands for efficiency and performance, coinciding with the emergence of a sentiment of endemic doubt, shot through with an image of conformism, irresponsibility and a culture of cronyism.

This sentiment, albeit vague and largely unsubstantiated, raises the question of the relationship between responsibility and authority. It is reinforced by the general and constant preoccupation of the populace with any possessor of even a slice of public authority. Driven by the principle of exemplarity, this is the thrust of the demand for the observance of professional ethics.

Only professional ethics, as an embodiment of individual and collective values, can ensure compliance with the dictates of public service, the primacy of the general interest and the quality of relations with users. From its beginnings as a "personal morality of action", the concept of professional ethics has progressively been confirmed vis-à-vis all public servants: integrity and the prevention of conflicts of interest, neutrality and the obligation to withdraw, respect for discretion and professional confidentiality, and declaratory obligations (declaration of interests, declaration of assets).

Conventional and disciplinary law is now compounded by broader imperatives, which are based upon flexible law (opinions, recommendations, charters, etc.). The assimilation of these dictates by the judiciary involves the presumption of career-long training and updating, but also a dialogue with reference contacts, which will remove the judge from a position of isolation and the exercise of their individual conscience alone.

The dictates of professional ethics, now a permanent, multi-faceted and diverse principle, assume a major preventative role. This strong preventative function limits the number of severe infringements which are liable to result in mandatory and statutory sanctions based upon the recognition of a disciplinary breach. It would, however, be erroneous to believe that disciplinary activity in the judiciary is baulked by a lack of commitment or determination. This activity is not restricted to the limited results, which are invariably highlighted, achieved by

the complaints system for litigants, which solely attributable to the criteria of admissibility defined by law and the absence of any investigative powers conferred in favour of the commission for the admission of petitions (“commission d’admission des requêtes” or “CAR”).

Since 1959, 200 judges have been sanctioned by the CSM, including 74 between 2007 and 2020[1]: this means that over a third of sanctions handed down under the Fifth Republic date back no more than fifteen years. A focus on the nature of these sanctions also reveals that, in more than one case out of three, they involve the exclusion of the judge concerned from the judiciary – a far remove, therefore, from the indulgence which is sometimes alluded.

This entire rationale, ranging from the career development of judges (training, evaluation and hierarchical ranking) through to disciplinary action and sanctions, and encompassing a fresh and demanding perspective on professional ethics, is set out in the present opinion through the presentation of thirty proposals which adopt three key objectives: the positioning of professional ethics at the heart of the judge’s role, the promotion of the detection of disciplinary breaches, and the improved execution of disciplinary procedures and the application of the scale of sanctions.

This will provide a yardstick whereby it will be possible to gauge, from the perspective of the position of judges in public service and in society, what is to be understood by responsibility. And it is in this way, in the face of difficulties and excessively numerous attacks, that the enhancement of the requisite protection for judges will be achieved.

[1] As at 1st January 2021, the judiciary is comprised of 9,090 judges. Of the 8,970 judges in service (including 278 judges under secondment), 8,399 are court-based.

I. PLACING PROFESSIONAL ETHICS AT THE HEART OF THE JUDGE'S ROLE

As a corollary to the importance of the responsibilities vested in judges and the role of social regulation which they increasingly assume, the dictates of professional ethics which are incumbent upon them are significant. These dictates structure their professional lives, and also carry consequences for their private lives.

Professional ethics specifically constitute a flexible law, in a perpetual state of change, and the subject of legitimate debate and controversy, such is the occasional complexity of defining beyond question the correct stances and appropriate behaviours to be employed: in the light of this difficulty, it is important that judges should not be left in isolation for the appraisal of issues of professional ethics with which they are faced.

Senior figures in the judiciary assume a key role at this stage, in that they constitute a natural resource, in a relationship of confidence and fairness, for the referral of issues concerning professional ethics by any judge, and are bound by a genuine obligation of vigilance in this area.

The updating of the compendium of ethical obligations for judges, the recent constitution of the Professional Ethics Support & Watchdog Service ("Service d'Aide et de Veille Déontologique" or "SAVD") and the college of professional ethics, which judges are now beginning to assimilate, are undoubtedly indicators of progress. The introduction of a declaration of interests and professional ethics interviews with senior management also represent contributory factors.

A number of other instruments will need to be developed in the context of this professional ethics watch, involving the enhanced prevention of conflicts of interest and the deployment of infra-disciplinary measures.

A. Development of the professional ethics watch

Evaluation of judges – The evaluation of judges provides an ideal two-yearly opportunity for exchanges on professional practices, and for the review, if necessary, of ethical principles and issues involving the enforcement of the responsibility of judges in the exercise of their functions. This evaluation delivers a preventative function with respect to any behavioural difficulties.

As such, it is essential that, in advance of any evaluation procedure, senior judges and chief judicial officers, in the context of their management authority, should be able to make any comments or issue any appropriate reminder of ethical obligations. These comments or reminders are not equivalent to warnings[2].

[2] CE., 16th January 2006, n° 272313

In the context of certain disciplinary cases, the CSM has observed that impaired circumstances or erratic behaviours – sometimes of long standing – did not give rise to any comment or observation in evaluations conducted in previous years.

Whilst not ignoring the potential discomfiture of an evaluator whose concern is the pursuit of an as untroubled and effective collaboration as possible with the judge concerned, **the Council recommends a different approach to this "evaluation time"**, which it would prefer to be a genuinely constructive management tool and a means of assisting the evaluated judge to amend their behaviour, if necessary, and to engage in a process of potential progress.

The Council particularly recommends the inclusion in the evaluation matrix for judges of a specific section dedicated to professional ethics, combining a number of items and requiring the execution of a dedicated dialogue during the interview between the judge and their head of court.

Above all, however, the CSM observes that a proportion of judges, particularly chief judicial officers, are no longer evaluated. This situation has a number of disadvantages, and places senior judges in a singular situation, in comparison with numerous public authorities, the most senior officers of which, conversely, are subject to increased evaluation.

The Council is therefore proposing the introduction, for chief judicial officers or heads of court, of "360°" evaluation, which would provide professional colleagues and/or contacts with the opportunity to deliver their appraisals of certain skills of the evaluated party; this multiple viewpoint would simultaneously deliver a positive perspective for the evaluated judge, and a guarantee for the judicial institution.

This evaluation might be delegated to an external college to the constitution of the CSM, who would rule on appointments, through the organization of appropriate interaction between the two authorities concerned. The Council might be tasked with the selection of the members of this college, or should at very least issue its approval of the proposed appointment of these members.

Intervision – Although extensively employed, particularly in the Netherlands, where the judiciary was the target of extremely severe criticism some thirty years ago, intervision[3] remains a relatively marginal practice in France, and is not necessarily addressed at those judges whose need is greatest.

Through a genuinely ethics-related reflection on the personal conduct of judges, which accounts for a significant proportion of the critiques directed at members of the judiciary, intervision nevertheless contributes to the improvement of the quality of justice handed down.

[3] A peer-to-peer method of observation, which is executed confidentially and exclusively of any hierarchical relationship, in a pairing comprised of freely-selected judges.

The Council therefore proposes that intervision should be institutionalized, and thus made available to any judge.

Situations at the boundary of medical and disciplinary issues – The consideration of situations relating to medical matters (addictions, stress, depression, work-related fatigue, etc.), rather than to professional ethics or disciplinary issues, raises genuine practical difficulties, insofar as the absence or incorrect use of applicable medical options (specifically referrals to medical committees, at whatever level), and of associated statutory arrangements, sometimes results in the tardy and inappropriate pursuit of the disciplinary route. It is nevertheless appropriate that the medical profession should be engaged in those matters which fall within its remit, and that this should be achieved rapidly. However, specific difficulties associated with the function of occupational medicine in the judicial environment have been observed: insufficient deployment in the field, and inappropriate consideration of the particular characteristics of the judge's profession and office.

The Council proposes that this situation should be rectified by the introduction of a dedicated territorial network for occupational medicine in courts.

B. Enhanced prevention of conflicts of interest

Unlike situations of secondment, transfer or the assumption of non-active service, the margins for manoeuvre available to the Ministry of Justice and the CSM are narrow, where a judge elects to resign in order to take up a private occupation.

This notional circumstance, which remains rare, nevertheless finds itself encouraged by the establishment of national prosecutors' offices, specialized inter-regional courts ("juridictions interrégionales spécialisées" or "JIRS") or regulatory chambers, which create judges with highly specialized professional profiles, who are liable to be of interest to major corporations or legal firms.

In order to guard against any risk of a conflict of interests, **the Council proposes that any resigning judge who wishes to take up a private occupation within a term of five years should be required to obtain the consent of a regulatory authority, whether the CSM, the High Authority for Transparency in Public Life ("Haute autorité pour la transparence de la vie publique"** or **"HATVP"), or the college of professional ethics.**

C. Deployment of infra-disciplinary measures

The warning, as a tool in the execution of a professional ethics watch – Notwithstanding the circulation of the guide published by the Judicial Services Division ("Direction des services judiciaires" or "DSJ")/General Inspectorate of Justice ("Inspection Générale de la Justice" or "IGJ") on the use of warnings,

which is highly comprehensive, heads of court feel that they are not adequately informed of warnings actually issued.

The Council proposes the introduction of an annual disclosure of the number of warnings issued, and of the circumstances relating thereto.

Moreover, Article 44 of Ordinance n° 58-1270 of 22nd December 1958 concerning the status of the judiciary (hereinafter the "statutory ordinance") provides for the automatic deletion of a warning issued from the record of the judge concerned after three years, if no further warning or no disciplinary action has been enacted during this period.

The Council recommends that the duration of the registration of a warning in the record of a judge should be extended to a term of five years.

Conferral upon the commission for the admission of petitions of authority for the referral of ethical obligations – Since the enactment of constitutional law n° 2008-724 of 23rd July 2008, any litigant has been entitled to refer a case to the CSM, if they are of the view that, in the conduct of judicial proceedings involving them, the behaviour adopted by a judge in the exercise of their functions is liable to be classified as a disciplinary matter qualification.

Many litigants are unaware of this system, and confuse a complaint on disciplinary grounds with a new appeal procedure which contests the substance of decisions handed down, or even the fact that a decision has been handed down at all. In 2020, 67.28% of petitions were declared inadmissible.

Whilst not being classifiable as disciplinary matters, certain behaviours are contrary to professional ethics. These behaviours, which may take the form, for example, of inappropriate attitudes at a hearing, contribute to the loss of confidence of litigants in the justice system.

The Council proposes that the CAR, whether judicial or prosecutorial, should be endowed with authority for the referral of ethical obligations to the judge concerned, with the same formal structure as that applied to a warning.

II. PROMOTING THE DETECTION OF DISCIPLINARY BREACHES

Buried under successive layers of reform, interaction between the various authorities tasked with the pursuit and investigation of disciplinary breaches by judges is now in need of restructuring, in the interests of greater clarity and efficiency. The objective to be pursued is three-fold: the systematic organization of a preliminary dialogue between heads of court and the Keeper of the Seals, the facilitation of referrals to the General Inspectorate of Justice (IGJ), and the elimination of the overlapping of institutions for the receipt of complaints from litigants.

A. Preliminary dialogue between heads of court and the Keeper of the Seals

The power vested in heads of court since 2001 for the referral of cases to the disciplinary council has created a competing authority to the Keeper of the Seals, First Presidents and General Prosecutors.

This reform acknowledged the ideal position occupied by heads of court for the appraisal of the behaviour of the judges placed under their authority. It was also intended to eliminate any political dimension from the decision as to whether or not a case against a judge should be pursued.

However, there has been no resulting statute for the resolution of conflicts of authority, which frequently occur in practice. The result is a potential degree of confusion, leading to a lack of efficiency in the management of situations. A head of court might consider the issue of a warning, whereas the Keeper of the Seals might prefer to initiate disciplinary proceedings. Conversely, a head of court might wish to refer a case directly to the disciplinary council, whereas the Keeper of the Seals might prefer to initiate an administrative enquiry. It might therefore be questioned why a head of court is entitled to issue a warning without having previously permitted the central administration to exercise its disciplinary authority, which exercise is then removed, given that the same circumstances can no longer give rise to a disciplinary procedure once a warning has been issued.

The Council recommends that a more formal dialogue should now be introduced between the head of court concerned and the judicial services management division, in order to prevent any failure of disciplinary actions associated with non-concerted decisions. The terms of this dialogue might be defined by a circular, if not by the adoption of a regulatory text.

B. Greater recourse to the General Inspectorate of Justice

Extension of powers of referral to the General Inspectorate of Justice – The objective for the more effective consideration of disciplinary issues also necessitates, in the opinion of the CSM, the extension of powers of referral to the

General Inspectorate of Justice (IGJ) to include authorities other than the Keeper of the Seals.

Albeit tasked, in common with the Keeper of the Seals, with the referral to the disciplinary council of cases involving judges within their jurisdiction, heads of court enjoy no correlated power for the initiation of administrative enquiries which will permit the adoption of the most enlightened decisions possible, and are thus constrained, in practice, to refer only strictly limited circumstances to a disciplinary session of the CSM. For this reason, the disciplinary authority has received only 17 referrals from heads of court since 2001.

The Council therefore recommends that heads of court should be permitted to refer cases directly to the IGJ, for the initiation of an administrative enquiry.

The complaints process for litigants is seriously handicapped by the absence of the conferral of investigative powers in favour of the CAR. In practice, the verification of certain elements would permit a more effective understanding of the context of grievances which are the object of a complaint, and the determination of whether repeated behaviours on the part of a judge are liable to constitute disciplinary breaches. Such a verification might also prevent the summons before a disciplinary authority of a judge, in respect of whom the investigator can confirm, further to checks, the absence of the commitment of any breach.

The Council therefore proposes that the CAR should be permitted to conduct investigations into any grievances which are referred to the latter, before considering any referral to a competent disciplinary authority, and to delegate to inspectors a duty for the conduct of detailed investigations, in order to permit the adoption of the most enlightened decision possible.

The Council also proposes that this power should be accompanied by a facility for the classification by the CAR of grievances which are to be referred to a disciplinary authority, in order to eliminate any spurious grievances.

Similarly, the Council proposes that, where a case is referred to the disciplinary authority and an inspector appointed, the latter can elect to be assisted by inspectors from judicial services, where no administrative enquiry has been instructed beforehand.

A new system for the rectification of the absence of the initiation of an administrative enquiry by the Keeper of the Seals – It has emerged from the analysis conducted by the CSM that certain situations, notwithstanding the notification thereof to a higher authority or to the central administration, do not give rise to any associated investigations.

The absence of investigations is frequently explained by the non-disciplinary nature of information communicated. In certain cases, however, the grounds for this absence remain difficult to interpret or understand. This applies particularly

to cases in which the behaviours at issue are committed by senior officers, and result in occupational stress.

The Council therefore proposes the establishment of a system which will rectify the absence of the initiation of an administrative enquiry by the Keeper of the Seals, where a request for such investigations has been referred to the latter by a judge or a trade union organization.

In order to eliminate any risk of destabilizing the position of judges, **the Council proposes that this option should be subject to a proviso for the issue of a prior and reasoned refusal by the Keeper of the Seals, and for the introduction of a filtering system.**

A number of working hypotheses for this filtering system have been analyzed, in the interests of observing the fundamental principle for the separation of investigative and judicial authorities: the appointment of a general investigator at the CSM (according to the model applied by other regulatory or disciplinary authorities); the constitution, within the CSM, of an equivalent authority to the CAR, but specifically tasked with the examination of appeals filed against the absence of the initiation of an enquiry, the members of which would not participate in any judgement of cases; the constitution of an external authority to the CSM and the Keeper of the Seals, for example by the legislative embodiment of the Professional Ethics Support & Watchdog Service and the expansion of the scope of the tasks which are presently assumed by the latter, etc..

In any event, and whatever option is preferred, it would appear that a development of this type would foster a substantially more comprehensive appraisal of behaviours which, at present, are only perceived to a partial extent.

It should be observed that this option for the initiation of investigations in the absence of the referral of a case to the inspectorate by the Keeper of the Seals already exists in other judicial systems. For example, the public prosecutor's office at the Italian Court of Cassation has the power to initiate investigations, if a case is referred to the office for this purpose, independently of or in tandem with the referral of a case to the inspectorate (*l'ispettorato*) by the Minister of Justice. In Italy, the public prosecutor's office and the Minister of Justice are jointly empowered to execute *azione disciplinare*.

The requisite change in status of the general inspectorate for justice – The recommended extension of the facility for the initiation of administrative enquiries to authorities other than the Keeper of the Seals will, by definition, result in an adaptation of the context in which inspection is employed, or in any event of the operating context of certain inspectors of judicial services.

In administrative justice, these adaptations are already in place. For example, the Permanent Mission for the Inspection of Administrative Courts ("mission permanente d'inspection des juridictions administratives" or "MIJA") operates under the exclusive authority of the Vice-president of the Council of State, and

the Keeper the Seals has no powers of referral whatsoever to the disciplinary authority constituted by the High Council of Administrative Courts & Administrative Courts of Appeal ("conseil supérieur des tribunaux administratifs et des cours administratives d'appel" or "CSTACAA").

Likewise, under certain foreign systems, the power to initiate disciplinary investigations into judges is reserved for an independent authority. In Spain, for example, cases can only be referred to inspection services by the *Consejo General del Poder Judicial.*

In this connection, various options for change have been envisaged:

- Placement of inspection under the exclusive authority of the CSM, or under the combined authority of the Keeper of the Seals and the CSM: whilst this innovation would undoubtedly enhance the guarantee of independence provided in favour of judges, the first of these options would deprive the Keeper of the Seals of any latitude for the initiation of investigations into matters which might be far removed from disciplinary matters, and are akin to the evaluation of public policies, while the second of these options might reduce the clarity of the system;
- Maintenance of inspection under the sole authority of the Keeper of the Seals, but with the enactment, under a statutory ordinance, of new options for the referral of cases to the latter: this option would reconcile the principle of the authority of the Keeper of the Seals over inspection with a diversification of powers for the initiation of enquiries, but would not change the balance of institutions which are frequently challenged on the grounds of the insufficient consideration given to the separation of powers and the means whereby this separation is guaranteed;
- Secondment of inspectors for judicial services to work in support of the CSM, which inspectors might be appointed by a commission for the admission of petitions or a head of court chef: this option would do nothing to change the balance of institutions, but would be baulked by numerous practical obstacles (regarding the status and selection of these inspectors, the difficulty of matching their numbers to their functions, etc.).

Having analyzed the benefits and drawbacks of these various options, **the Council proposes that, at very least, the second arrangement might be preferred**, firstly in the interests of the improved reconciliation of the conferral of executive authority with the dictates arising from the separation of powers, and secondly in the interests of the more effective and comprehensive consideration of disciplinary situations.

C. Greater coordination between institutions hearing complaints from litigants

Confidence in the justice system is undoubtedly dependent upon greater transparency in the throughput of complaints processed, and upon more

effective coordination between the authorities or institutions responsible for the management of these complaints.

Numerous complaints are dismissed by the CAR on the grounds that they do not relate to the behaviour of judges, but rather to the public justice system, or are even targeted at a judge for the sole reason that the latter embodies, in the eyes of the litigant, the shortcomings of the public justice service, even though the judge themself is the victim of the impaired conditions in which they are required to exercise their functions.

The exclusion of these "non-ethics-related" claims is a source of substantial incomprehension for the plaintiff, as there are no practical means for further action in response to situations which are nevertheless worthy of attention, nor any option for raising awareness or improving the services concerned. These impossibilities unquestionably contribute to an impairment of the image of the justice system.

At the same time, various institutions receive complaints from litigants against judges, even though these complaints do not fall within their remit[4]. This applies, for example, to the Defender of Rights, whose function is the monitoring of compliance with laws by various institutions and government departments and who, in this capacity, manages a substantial number of "claims" which are directed against the public justice service.

More effective coordination between the actions of the CSM and the actions of institutions would provide a response, firstly to those situations in which the public justice service is objectively implicated, but which are declared inadmissible by the CAR on the grounds that they do not involve the behaviour of a judge, and secondly to those claims which misdirected to an inappropriate recipient, in that they implicate a judge rather than the public justice service.

In the interests of ensuring the greater effectiveness of the complaints system, and a simplification in favour of litigants, **the Council recommends that institutions responsible for hearing the complaints of litigants should be encouraged to provide mutual information, in the interests of more effective coordination**, such that complaints can be processed without the litigant being constrained to initiate multiple procedures.

[4] See Annex 2

III. IMPROVING THE EXECUTION OF DISCIPLINARY PROCEDURES AND THE APPLICATION OF THE SCALE OF SANCTIONS

Highly desirable changes to the institutional architecture responsible for the investigation and disciplinary censure of judges must go hand-in-hand with the adaptation of rules applied in these areas: this will firstly involve the formulation of a more comprehensible definition of a disciplinary breach, which will not alter the ring-fencing of jurisdictional activity, and will be matched to a rewording of the judicial oath, which will be followed by the adoption of the requisite procedural guarantees, and finally by an overhaul of the scale of sanctions.

A. A more flexible and comprehensible definition of a disciplinary breach

It is essential that the concept of a disciplinary breach should continue to be shaped by CSM case law.

The definition of this breach in Article 43[5] of the statutory ordinance has the merit of being wide-ranging, and permits the inclusion of situations of all kinds. This definition thus permits the appraisal of circumstances which conventionally fall within the scope of professional activity, but also those relating to private life. In practice, this definition is sufficiently flexible to accommodate the fullest role of the Council in case law. Whilst an increasing demand for foreseeability dictates a more positive statement of the major principles of professional ethics, it is essential that jurisdictional activity should be protected, particularly since not all available arrangements are deployed at present.

Statement of the major principles of professional ethics – A disciplinary breach does not represent a standalone concept, given that, in Article 43 of the statutory ordinance, while this term describes infringements of honour, decency and dignity, it also refers to a generic category of duties of office of a judge resulting from other articles of this ordinance, or from principles which are not included in the latter (for example, independence, impartiality and integrity). Unlike certain foreign systems, there is no restrictive list of sanctionable breaches.

Under these circumstances, rising demand for foreseeability has led the CSM to question the adequacy of the terms of this paragraph.

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[5] *"Any infringement by a judge of their duties of office, honour, decency or dignity shall constitute a disciplinary breach".*
"Infringements of duties of office shall include a gross and wilful breach by a judge of a procedural rule which constitutes an essential guarantee of the entitlements of the parties, as confirmed by a definitive judicial ruling.
For a member of the prosecutor's office or a judge operating in the central administration of the Ministry of Justice, and for a judge exercising the functions of an inspector general, a senior general inspector of justice, a general inspector of justice or an inspector of justice, a breach shall be appraised in consideration of obligations arising from their hierarchical subordination".

A number of working hypotheses have been considered: establishment of a schedule of duties or breaches by a judge, the codification of case law, referral to the compendium of ethical obligations or the judicial oath.

The CSM is of the view that any reference to the compendium of ethical obligations would not be appropriate, as this would confer a legislative value upon a compendium which has been conceived as a vital, pragmatic and progressive instrument of professional ethics, and should be preserved as such.

The Council nevertheless proposes that the first para of Article 43 should be reworded, in the interests of greater clarity. Accordingly, this would involve:

- the explicit inclusion of a list of the statutory duties of office of a judge: independence, impartiality, integrity and probity, fairness, professional conscientiousness, dignity, respect and consideration for others, confidentiality and discretion;
- the addition of references to obligations arising from other provisions of the statute, which form part of the duties of office of a judge, whilst not being incorporated in the above-mentioned principles (particularly declarations of interest and incompatibilities);
- the maintenance of reference to an infringement of honour, but the deletion of any reference to the notion of decency, which is already included in the concepts of respect and consideration for others which, by definition, will entail the respect due to litigants, such that there is no reason for any explicit reference thereto.

Moreover, the current wording of the judicial oath[6] refers only to professional conscientiousness, dignity and fairness. Only respect for the confidentiality of deliberations is mentioned in addition to these terms. This wording appears somewhat sparse with respect to the duties of office of a judge, and the values which should guide them.

The Council therefore proposes that the oath should be reworded as follows: *"I hereby swear to execute my duties with independence and impartiality, to behave at all times as a worthy, upright and fair judge, to show consideration for others, to respect professional confidentiality and protect the confidentiality of deliberations*".

Ring-fencing of jurisdictional activity – The disciplinary liability of a judge cannot be enforced with respect to a jurisdictional act, unless it can be proved that the judge has committed a gross and wilful breach of a procedural rule. The logical principle is that the liability of a judge cannot be enforceable with respect to a jurisdictional ruling, which can only be contested by means of appeal.

[6] Article 6 of Ordinance n° 58-1270: "*Any judge, at the time of appointment to their first post and prior to the assumption of their functions, shall swear an oath which shall be worded as follows: "I hereby swear to truly and faithfully execute my duties, to protect the confidentiality of deliberations, and to conduct myself at all times as a fair and worthy judge." (…)*".

A number of working hypotheses have been analyzed, in order to establish whether it would be appropriate to amend the second para of Article 43, and thus extend the disciplinary liability of judges, by reference to solutions and limits determined by European case law, and by the CSM itself. As a preliminary observation, it is important to note that the provision in question, as it stands, closely addresses the function of passing judgement, as the core activity of the judiciary, which a constitutionally recognized independence is intended to protect. It is therefore essential to act with caution, as the enforcement of the liability of a judge on this basis might result in the scrutiny of the solution applied by the judge concerned.

Under national law, the Constitutional Council itself has set a number of limits on the implication of a judge on the grounds of a jurisdictional act, particularly in its decision n° 2007-551 DC of 1st March 2007[7]. This decision specifies that, while the independence of the judiciary and the principle of the separation of powers do not preclude the extension by the organic legislative authorities of the disciplinary liability of judges to include their jurisdictional activity, whereby a gross and wilful breach of a procedural rule which constitutes an essential guarantee of the rights of the parties might entail the enforcement of this liability, these principles constitute an obstacle to the initiation of disciplinary proceedings, in the event that this breach has not previously been confirmed by a judicial ruling which has since become definitive. The jurisdictional activity of a judge, or any deficiency on their part, can only entail the implication of their liability in strict compliance with the principles of the independence of the judiciary and the separation of powers.

The Court of Justice of the European Union[8] recently reaffirmed the highly exceptional nature of conditions required for the implication of a judge on the sole grounds of a jurisdictional act (CJEU, 18th May 2021, case n° C-83/19, case n° C-127/19, case n° C-195/19, case n° C-291/19, case n° C-355/19, case n° C-397/19). With particular reference to the judicial reforms introduced in Romania since 2017, this ruling emphasizes that, while the guarantee of independence does not require the conferral in favour of judges of absolute immunity with respect to actions committed in the exercise of their judicial functions, their personal liability for damages caused in the exercise of their functions can only be enforced in exceptional cases, in which their personal and gross culpability has been established. Accordingly, the inclusion of a judicial error in a judgement is not, in itself, sufficient to entail the enforcement of the personal liability of the judge concerned.

The CSM itself, ruling in disciplinary matters, has established limits on the ring-fencing of jurisdictional activity, although the same general principle continues to apply. The Council refrains, in principle, from any appraisal of this activity. The Council has nevertheless adjudged that a disciplinary breach may result from a jurisdictional act "where it proceeds, from the essential and definitive authority of *res judicata*, that a judge, in a wilful and systematic manner, has

[7] See Annex 3

[8] See Annex 3

exceeded the scope of their authority or misunderstood the context of the case thus referred, such that, notwithstanding appearances, their action is entirely alien to any jurisdictional activity" (resolution n° S 044 of 8th February 1981). Likewise, the Council, it its capacity as a disciplinary authority, has had occasion to analyze behaviours associated with jurisdictional activity, and to sanction those behaviours which, in its estimation, constitute disciplinary breaches, and are thus germane to the very core of this activity; this applies to breaches of impartiality, wherein the Council has sanctioned, on a number of occasions and quite severely in some instances, the failure of trial judges to disqualify themselves, in cases where they ought to have done so.

Accordingly, although judges do not enjoy total immunity, including immunity in their jurisdictional activity, a core element of judicial independence, any implication of their liability must be bound by strict terms, which provide genuine guarantees to judges. Point 66 of Recommendation CM/Rec(2010)12, adopted by the Council of Europe on 17th November 2010, concerning Judges, independence, efficiency and responsibility, is couched in the same terms, on the basis of the principle whereby: "*Interpretation of the law, the appraisal of circumstances or the evaluation of evidence undertaken by judges in the judgement of cases should not give rise to any enforcement of their civil or disciplinary liability, except in the event of malice or gross negligence*".

In consideration of these various factors, two options have been envisaged:

- affirmation of the principle whereby the disciplinary liability of a judge cannot be enforced with respect to a jurisdictional act, wherein any option for the pursuit of this enforcement is considered as an entirely exceptional derogation. However, this approach would deliver no additional elements with respect to the current interpretation of the text;
- relaxation of criteria for the enforcement of the liability of a judge, thereby requiring, rather than a gross and wilful breach of a procedural rule constituting a guarantee, confirmed by a definitive judicial ruling, a gross **or** wilful breach of a procedural rule having the characteristics set out above. This would provide a response to certain questions concerning instances of gross negligence committed under the exclusive application of procedural rules which constitute an essential guarantee of the entitlements of the parties, and which may result in severe consequences. However, any such development would appear to exceed the limits set by European law and, specifically, does not guarantee the essential balance between independence and responsibility. Moreover, any such wording would introduce a constitutional difficulty: although a judgement handed down by a single judge might permit the investigation of criteria leading to the potential enforcement of their liability, this would not apply to a judgement handed down by a collegiate court. In practice, in the absence of a system of dissenting opinions, it would be impossible to appraise the application of the terms "manifest" and "wilful" to each member of the court.

The issue of the working conditions of judges should not be excluded from this consideration. Although, in certain cases with high-profile media coverage,

scrutiny has focused on a potential fault on the part of a judge, an analysis of circumstances, in practice, frequently reveals difficulties in the internal operation of courts (lack of resources, equipment, registrars, etc.).

The CSM is of the view that, in the light of both constitutional and European case law, and the recommendations of the Council of Europe, it would not be appropriate to alter the balance which is currently established, and considers that the current wording of the second para of Article 43 should not be amended, in consideration of the fact that a gross and wilful breach of a procedural rule might stem equally from a positive action on the part of a judge as from an omission. This argument is therefore based upon the necessary preservation of public confidence in a justice system which must continue to be protected from any pressure regarding the tenor of jurisdictional rulings, a pressure which would inevitably be encouraged by any expansion of conditions for the enforcement of the disciplinary liability of judges with respect to jurisdictional activity.

In consequence, the Council proposes that the wording of Article 43, para 2 of the statutory ordinance should be maintained as it stands.

Responsibility for malfunctions in the public justice system – According to Article L. 141 of the Code of Judicial Organization, the State is required to compensate any damage caused by the defective operation of the justice service, in the event of gross negligence or a miscarriage of justice. The State enjoys a right of recourse against judges who are culpable of a personal default. This right is never exercised, and no further disciplinary action is taken against them.

Article 48-1[9] of the statutory ordinance nevertheless instructs heads of the court of appeal and the Keeper of the Seals to systematically examine any rulings involving the conviction of the State, in order to detect any deficiencies on the part of judges and to refer these deficiencies, if necessary, to the CSM.

Whilst the enforcement of the civil liability of judges appears to be largely ineffective, or even non-existent in France, the same applies in the majority of European countries; there is no right of recourse in Belgium, Luxembourg and the Netherlands, and this right is barely enforced in Italy, Spain and Germany.

The Council recommends that rulings involving the conviction of the State should be employed more effectively as a means of identifying any deficiencies which constitute the source of these rulings, and that mechanisms should be introduced for the prevention of these convictions.

B. A disciplinary procedure with improved guarantees

[9] *"Any definitive ruling handed down by a national or international court whereby the State is convicted on the grounds of the defective operation of the justice system shall be notified to the relevant heads of the court of appeal by the Keeper of the Seals and the Minister for Justice.*
The judge or judges concerned shall be notified under the same conditions.
Disciplinary proceedings may be initiated by the Keeper of the Seals, the Minister for Justice and the relevant heads of the court of appeal, under the conditions provided in Articles 50-1, 50-2 and 63".

It is appropriate that the disciplinary procedure should be reviewed, in order to reinforce the guarantees which it delivers.

Outside the scope of action of commissions for the admission of petitions – As a preliminary observation, the Council strongly reiterates its desire to see the completion of the constitutional reform which would transfer in its favour disciplinary decision-making powers with respect to prosecutorial judges[10]. The rule of law entails a positive obligation for the guarantee of impartial and independent justice, which must be absolutely above suspicion – this requires that prosecutorial judges should receive protection which is equivalent to that afforded to court judges.

Moreover, the existing disciplinary procedure requires improvement on two levels.

Firstly, there is a need for the reinforcement of the adversarial system and rights of defence applied in the context of the administrative enquiry which might be instructed by the Keeper of the Seals, in advance of disciplinary proceedings, in accordance with the methodology established by the General Inspectorate of Justice (IGJ) itself. The CSM observes that the judge who is the subject of such an enquiry, and the head of court concerned, receive no systematic referral of the resulting report.

The CSM recommends forthwith that this report should be disclosed both to the person concerned, provided that this does not prejudice third party rights, and to the relevant head of court, in the interests of notifying the latter of acts committed by a judge who is placed under their authority, so that they can then appraise whether it is appropriate to issue a warning, in the absence of any proceedings.

Secondly, there is a need for the more effective management of the duration of disciplinary proceedings, the length of which is criticized by conferences of heads of court and chief judicial officers, and by trade union organizations, on the grounds that this duration destabilizes the working life of courts and creates a high degree of insecurity for the judge concerned.

Although organic law n° 2016-1090 of 8th August 2016 introduced a three-year prescription period (which is interrupted in the event of criminal proceedings) for the initiation of disciplinary proceedings, no time limit has been imposed upon the Keeper of the Seals for the appraisal of further action to be taken in response to an administrative enquiry report. In practice, several months can elapse between the filing of such a report and a decision by the Keeper of the Seals as to whether or not action is to be taken against the judge concerned.

The Council therefore recommends that the Keeper of the Seals should be constrained to adjudge whether or not they intend to initiate disciplinary

[10] Over and above the alignment of conditions for the appointment of prosecutorial judges with those applied to court judges.

proceedings within a term of three months of the filing of the administrative enquiry report. Beyond this term, the absence of any referral would imply the definitive termination of proceedings.

The CSM further observes that the administrative enquiry report is not always attached to the disciplinary referral, even though this report itself is subject to time limits. Any delay in the disclosure of this document reduces the time which the investigator can usefully devote to their enquiry.

Under these conditions, the Council recommends that the time permitted for the issue of a ruling should be suspended pending the receipt of the administrative enquiry report, accompanied by its attachments.

In the context of commissions for the admission of petitions - The CSM has observed the relatively substantial rate of inadmissibility (nearly 15% of complaints) applied to complaints on the grounds that they do not include a detailed indication of the alleged circumstances and grievances. In this connection, the assistance of a lawyer for the drafting of a complaint has a genuine impact, as it would appear that a substantial proportion of complaints which are declared admissible proceed from submissions which are drafted by the offices of a counsel. In parliamentary proceedings, the legislative authorities preferred not to impose the assistance of a lawyer, in order to open up the option for referral to the CSM to a greater number of litigants. Nevertheless, **the Council proposes that this prior consultation, if not assistance, should be encouraged, and should include persons in receipt of legal aid.**

The Council further recommends the constitution of a "combined" commission for the admission of petitions, comprised of a court judge, a prosecutorial judge and two non-judicial members who share both instruction backgrounds, in order to process complaints filed by one litigant, in conjunction with the same proceedings, against a court judge and a prosecutorial judge. Overall, a development of this type would permit the more effective consideration of a unique situation.

However, the CSM does not consider it appropriate to modify criteria for the admissibility of complaints defined by the legislative authorities in the interests of balance between the entitlements of the litigant and the necessary protection of proceedings against any action brought for the purposes of delay or the destabilization of judges and prosecutors in the exercise of their functions.

Regarding litigant rights, it is considered important that their position as a plaintiff should be formally defined, without conferring the status of a party to the proceedings as such, and not extending the option of referral to persons who are not directly involved in the proceedings. The facilitation of material conditions for a referral is also considered essential, for example by the introduction of an on-line complaints system, as applied in other countries.

C. An overhauled scale of sanctions

The scale of sanctions provided by Article 45 of the statutory ordinance is inadequate, both in its variety and in its gradation as a form of response to the various breaches pursued, whether in private life or in matters of professional behaviour.

This applies, for example, to the sanction for downgrading (Article 45, 4°), which ultimately corresponds to a modest financial penalty.

Moreover, this scale does not permit the disciplinary council to entirely prohibit the exercise of certain functions by a sanctioned judge, even if, in their opinion, such a sanction would be appropriate. At present, it is only possible to prohibit the appointment or designation of functions in respect of a single judge for a maximum term of five years (Article 45, 3°*b*).

The CSM recommends that this prohibition should be extended to include all functions which are statutorily time-limited, which would permit the inclusion of the functions of heads of court or chief judicial officers, for a term of up to ten years; this prohibition might also include functions which are not time-limited, such as those of the First Vice-president, the First Deputy Vice-president, the First Vice-prosecutor General and the First Deputy Vice-prosecutor General.

Organic law n° 2001-539 of 25th June 2001[11] introduced a temporary suspension from duties for a maximum term of one year, with a total or partial loss of salary, as an option between grade relegation and demotion (Article 45, 5°).

The preliminary draft organic law presented to members of parliament in December 1999, in preparation for congressional approval of constitutional reform pertaining to the CSM, which ultimately did not take place, also provided for a sanction in the form of temporary suspension from duties, for a term ranging from three months to two years, with a total loss of pay. The regime of applicable sanctions for judges in administrative courts and administrative courts of appeal[12], under sanctions of the second category, provides for a temporary suspension from duties, subject to a limit of six months and, under sanctions of the third category, for a temporary suspension from duties for a term ranging from six months to two years. Conversely to the rules applied to judicial judges, this temporary suspension from duties involves a total loss of pay, but may be entirely or partially suspended.

The CSM recommends that a comparable regime should be introduced in the statutory ordinance, involving either a total suspension from duties or removal from jurisdictional duties only, in which case a judge would be able to undertake preparatory work or execute support functions, and would thus continue to be paid.

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[11] At the proposal of the CSM in its activity report for 1999, which included an invitation to "*enforce the disciplinary consequences of behaviours which, whilst not justifying permanent exclusion from the judiciary, would merit more punitive sanctions than those provided by the current Article 45*".

[12] Article L. 236-1 of the Administrative Justice Code.

IV. ENHANCING THE PERSONAL AND PROFESSIONAL PROTECTION OF JUDGES

The greater emphasis upon preventative ethics and changes to the disciplinary regime applied to judges, as described above, cannot conceivably be introduced without the conferral of concrete guarantees in favour of judges, in terms of protection: the duties of judges cannot be modified unless their rights are correspondingly respected and effectively guaranteed.

A distinction needs to be drawn between various situations, according to the involvement of a response to attacks on the independence of the judiciary, the protection of judges who are implicated – or even endangered – on the grounds of their actions, or the detection and management of situations involving occupational stress and harassment.

A. By the management of attacks on the independence of the judiciary

Criticisms of the justice system and/or judicial rulings, which are often exaggerated, sometimes for the generation of political capital, or due to a manifest ignorance of actual circumstances and applicable rules, are becoming increasingly frequent. In the words of the European Court of Human Rights, these are "*destructive attacks, which are devoid of any genuine foundation*", and cannot be justified by the right to freedom of expression.

It is not often that a strong voice is raised, particularly by the Keeper of the Seals, in support of the judiciary, for the rectification of errors and the clarification of terms of debate.

The offence of an attack on the authority and independence of the justice system, which is defined and sanctioned under Article 434-25 of the Penal Code, is difficult to enforce and, in consequence, is rarely pursued. Above and beyond these difficulties, the Council is of the view that the penal option is not the most appropriate, as it is not conducive either to instruction or to equanimity. Other options, whether for prior application in the interests of preventing attacks, or for subsequent application in response thereto, need to be envisaged.

As an upstream measure, communication needs to be the preferred route, as the CSM has already emphasized in previous opinions[13]. It is important to construct and implement a genuine policy of communication, the objective of which needs to be two-fold: 1°) the provision of public information on the realities and resources of the justice system, together with the rules governing this system and the rules which it is required to observe; 2°) the provision of a response to inaccurate, if not mendacious statements, which implicate its organization, its operation and the management of cases which it is required to examine.

[13] Opinions of 11th March 2004 and 14th December 2014.

As this type of communication policy essentially rests on the shoulders of heads of court, or chief judicial officers, **the Council proposes that institutional judicial communications should be reinforced, structured and professionalized** by the following measures:

- the appointment by the President and the Prosecutor General, in each jurisdiction, of a spokesperson judge who is specifically trained for this role, together with the provision for heads of court, in each court, of the services of a professional communication officer;
- the formal devolution, in favour of heads of court and chief judicial officers for the bench, of authority for communication, for the purposes of instruction, clarification, rectification, or even the defence of a judge, as a "departure" from the system defined solely by Article 11 of the Code of Criminal Proceedings, which confers exclusivity in favour of Prosecutors General of the Republic;
- the harmonization of communication practices, which vary substantially from court to court and from jurisdiction to jurisdiction, by means of a "communications roadmap", to be developed at ministerial level.

By way of subsequent measures, the response to attacks on the authority of the justice system should be institutional, rather than repressive. In its opinion of 4th December 2014, the Council referred to Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe, whereby judges, if they are of the view that their independence is under threat, "*should be able to consult the judicial council or another independent authority*". By way of a relevant example, this opinion referred to Spanish and Italian legislation, and described a constitutional reform which would permit any judge to refer to the Council any circumstances implicating its independence or impartiality. In any event, this Recommendation appeared to ratify its practice – which continues under the present mandate – for the issue of unprompted statements, whenever the CSM deems this necessary, by way of a reminder of the respect due by all parties to the principle of the independence of the judiciary, and as a countermeasure to deliberate initiatives which are intended to undermine public confidence in the justice system.

The Council therefore proposes that any judge should be entitled to refer a case to the latter, in the event of an attack on their independence, and that a facility should be introduced for the Council to automatically address such a case, by way of the issue of a recommendation for the elimination of the attack concerned. This recommendation should be made public and, in the most severe cases, potentially published in the Official Journal.

B. By the more effective personal protection of judges

One of the most effective means of preventing *ad hominem* attacks is the collegiate system, the scope of application of which, unfortunately, has declined continuously over recent decades. The Council is of the view that this development, whereby a litigant engages with a single judge, is potentially

prejudicial to the authority of judicial rulings and confidence in the judiciary, and encourages the litigant to take issue with a judge and question their impartiality.

The Council is therefore pinning its hopes on a departure from the development thus observed, by way of the re-establishment or effective deployment of the collegiate system.

Over and above the essential role of heads of court and chief judicial officers in the deployment of both preventative (or instructive) and curative (or defensive) communications, it is important that all institutional players who might be aware of individual attacks against judges should be fully engaged in flagging-up these attacks. The Council therefore recommends that terms for an institutional response should be defined, involving not only the judicial chain of command, but also any organizations and authorities who, in the exercise of their functions, might become aware of insults or threats against judges, such that these situations should not be left unanswered, in the knowledge that inactivity lies at the root of a general sentiment whereby these behaviours are trivialized or treated with impunity.

Moreover, the results of a survey[14] conducted by the CSM among judges revealed frequent outrage at a lack of action on the part of prosecutors' offices, who are in no hurry to initiate proceedings against the originators of contempt or violence directed against judges. In this regard, the CSM would draw attention to the fact that, in an opinion of 11th March 2004, it had already recommended "*a more active penal policy for the pursuit of offences of which judges are the victim, whether in a professional or non-professional capacity, in the exercise of, or in conjunction with their functions, specifically in the interests of rendering sanctions more foreseeable, and thus more visible, and ultimately fostering the prevention of reprehensible behaviours*".

As such a penal policy has yet to be constructed and disseminated, **the Council proposes that a penal policy should be developed at ministerial level for the pursuit of crimes of which judges are the victim.**

The system of functional protection is susceptible to improvements, in the interests of delivering rapid, robust and effective support to any judge who requests that this system be applied.

The Council therefore proposes:

- **that the Keeper of the Seals should be set a term of 15 days to respond to a request for functional protection, beyond which term the benefit thereof will be deemed to have been withheld. This refusal might be referred to the administrative court, who might issue an order for the provision of protection;**
- **that it should be possible, in the event of inaction on the part of the head of court or the chief judicial officer, for the petitioning judge to refer a case directly to the judicial services division, whilst addressing a copy of the referral to their immediate superior.**

[14] See Annex 10

Some of the attacks sustained by judges involve social media. Securing the removal of the content concerned is an extremely difficult, time-consuming, and thus demoralizing process. The judges concerned do not know where to turn[15].

The Council therefore proposes, over and above the functional protection system, that the Chancellery should be tasked with the completion of all necessary procedures for the removal of defamatory and/or illicit publications from social media, and can receive instruction for this purpose from any affected judge, a head of court or a chief judicial officer.

C. By the management of situations of occupational stress and harassment

Some instances of occupational stress result from the conditions, whether material or psychological, in which judges exercise their functions. The CSM has observed, particularly in the context of information programmes which it conducts in all jurisdictions, a growing dismay on the part of judges who are faced with a substantial workload, assisted by functionaries who are manifestly insufficient in number, and supported by disparate teams of assistants which, albeit in the course of development, are as yet substantially unstructured and unstable. These judges, who are required to assimilate constant legislative reforms, who receive paradoxical and changeable orders, and who are accused of various evils, of which they are entirely blameless, are experiencing a painful loss of any sense of purpose to their tasks, and a growing feeling of impotence.

Many schemes exist, both within judicial services and within interregional delegations of the general secretariat, which are intended to support judges suffering from stress. However, these schemes, particularly arrangements for preventative medicine, are only little-known, and are in need of reinforcement. Moreover, there are grounds for the general application of useful local initiatives, following the model of the psycho-social risk prevention unit at the Court of Appeal of Paris.

A specific problem occurs where a head of court themselves is a source of occupational stress, or is responsible for harassment, in which case it is impossible for the judge concerned to refer their case to this hierarchical authority. It is nevertheless possible for this judge to approach the judicial services division, in the interests of receiving functional protection. The Council of State[16] recently adjudged that, while functional protection is not applicable to disputes which might arise, in the execution of service, between a public servant and one of their superiors, the same does not apply where the acts of that superior, by dint of their nature or severity, are unlikely to be classified within the normal exercise of hierarchical authority.

[15] Referral of cases to the CNIL (the French data protection authority) is a difficult process, with uncertain results.

[16] Council of State, 29th June 2020, Louis Constant Fleming Medical Centre, Saint-Martin, n° 423996.

The CSM proposes that the scheme for psycho-social risk prevention units should be extended to each court of appeal.

CONCLUSION

The justice system is under attack, judges are vulnerable, and the issue of their responsibility is increasingly highlighted.

The increasing involvement of the law in social relations, now more than ever, has vested a responsibility for the regulation of social affairs in judges, who are ultimately responsible for the resolution of conflicts.

This is compounded by challenging and legitimate expectations for greater transparency in judicial functions, improved accessibility to the justice system and a better understanding of judicial rulings.

Compliance with these requirements, under any circumstances, additionally raises the recurrent question of the extent to which the judiciary is genuinely open to society. This is nevertheless borne out by the composition of the CSM, the various lay courts, public access to the justice system, or the emergence of different types of regulation (mediation, conciliation) and institutions which are liable to enhance professional ethics.

Although not peculiar to our country, this situation has a particular context in France. Essentially comprised of skilled persons who are dedicated to the service of justice, the judiciary perceives that it is being discredited, whether intentionally or otherwise, at a time when it is particularly vulnerable, and its members occasionally under threat. Protection must be conceived as a corollary to responsibility, as the referral of cases requires. Moreover, in recent years, judges have been required to implement multiple large-scale reforms, at a time where the scarcity of resources is acknowledged in all quarters.

For this reason, in general, social dictates which are specifically targeted at the role and function of judges cannot be fully effective unless they encompass all those who, by dint of their functions, constitute auxiliaries and partners of the justice system, all of whom are subject to strong and increasing ethical obligations.

Accordingly, independence, responsibility and guarantees of protection do not only constitute the expression of requirements which are specific to judges. If the judiciary finds itself at the heart of this demand for responsibility, it is because it is perceived, not only as an agent of State authority which transcends the French people, but as a model of exemplary behaviour, which must be guaranteed by practical conditions for its operation under any circumstances.

This is a matter of respect for the litigant, and of respect by the litigant for those who, ultimately, have occasion to pass judgement upon them, with complete independence.

The Council, sitting in a plenary session on 1st July 2020, further to the deliberation thereof, adopted the present opinion, which was deliberated by:

- Mrs Sandrine Clavel, university professor, honorary Dean of the Faculty of Law & Political Sciences at the University of Versailles Saint-Quentin-en-Yvelines, honorary President of the Conference of Deans of Law & Political Sciences
- M. Yves Saint-Geours, non-graded minister plenipotentiary and ambassador (retired)
- Mrs Hélène Pauliat, Professor of Public Law at the Faculty of Law & Economic Sciences at the University of Limoges, honorary President of the University of Limoges
- Mr Georges Bergougnous, former Director of the Legal Affairs Service of the National Assembly
- Mrs Natalie Fricero, Professor of Private Law & Criminal Sciences at the University of Nice Côte d'Azur
- Mr Jean-Christophe Galloux, Associate Professor of Law at the University of Paris 2, President of the IRPI (Institute for Intellectual Property Research)
- Mr Frank Natali, member of the Bar Association of Essonne, former President of the Bar and honorary Chairman of the Conference of Presidents of the Bar
- Mr Olivier Schrameck, President of the honorary section of the Council of State
- Mrs Jeanne-Marie Vermeulin, honorary Prosecutor General
- Mr Benoit Giraud, Presiding Judge of the Judicial Court of Limoges
- Mrs Virginie Duval, Deputy Presiding Judge of the Judicial Court of Versailles
- Mr Benoist Hurel, Deputy Presiding Judge for the instruction of the Judicial Court of Paris
- Mr Jean-François Mayet, Vice-prosecutor General of the Republic to the Judicial Court of Carpentras
- Mrs Isabelle Pouey, general alternate to the Court of Appeal of Aix-en-Provence

under the chairmanship of Mrs Chantal Arens, First President of the Court of Cassation, chair of the plenary session of the High Council of the Judiciary.

LIST OF PROPOSALS

Placing professional ethics at the heart of the judge's role

1°/ The conception of "evaluation time" as a management tool, and the inclusion in the evaluation matrix for judges of a specific section dedicated to professional ethics, requiring the execution of a dedicated dialogue during the interview between the judge and their head of court

2°/ The introduction, for heads of court and chief judicial officers, of "360°" evaluation

3°/ The institutionalization of intervision

4°/ The introduction of a dedicated territorial network for occupational medicine in courts

5°/ An obligation for a resigning judge, should they wish to take up a private post within a term of five years, to obtain the agreement of a regulatory authority

6°/ The introduction of an annual disclosure of the number of warnings issued, and of associated circumstances

7°/ The extension to 5 years of the term of registration of a warning in the professional record of a judge

8°/ The endowment of the CAR with authority to issue reminders of ethical obligations to the judge concerned, using the formal structure of a warning

Promoting the detection of disciplinary breaches

9°/ The introduction of a more formal dialogue between the head of court concerned and the judicial services management division, in disciplinary matters

10°/ The introduction of a facility for heads of court, the CAR and the investigator of a disciplinary matter to refer a case directly to the IGJ (General Inspectorate of Justice), for the purposes of the initiation of an administrative enquiry

11°/ The introduction of a facility for the CAR to conduct investigations into grievances before considering any referral to the competent disciplinary authority, and for the classification of grievances, the disciplinary examination of which is to be instructed

12°/ The creation of a system to rectify the absence of the initiation of an administrative enquiry by the Keeper of the Seals

13°/ The inclusion in the statutory ordinance of new options for referral to the IGJ, whilst maintaining the application of the sole authority of the Keeper of the Seals.

14°/ The encouragement of institutions hearing complaints from litigants to engage in dialogue, in the interests of more effective coordination

Enhancing the execution of disciplinary proceedings and the application of the scale of sanctions

15°/ The redrafting of the first para of Article 43 of the statutory ordinance for the definition of the obligations of a judge in a more comprehensive and specific manner, and the rewording of the judicial oath

16°/ The maintenance of the wording of the second para of Article 43 of the statutory ordinance as it stands

17°/ The closer examination of rulings under which the State is convicted on the grounds of a malfunction of the public justice service

18°/ The disclosure of the administrative enquiry report to the head of court concerned, and to the party at issue, provided that there is no resulting infringement of third party rights

19°/ The imposition upon the Keeper of the Seals of a term of three months further to the filing of an administrative enquiry report to decide upon the initiation of disciplinary action, beyond which term the absence of any referral would imply the definitive termination of proceedings

20°/ The suspension of the term imposed upon the Council to rule on a disciplinary referral, pending the receipt of the administrative enquiry report and attachments

21°/ The encouragement of litigants to consult a lawyer before referring a case to the CAR, or to be assisted by a lawyer, including persons in receipt of legal aid

22°/ The constitution of a "combined" CAR for the examination of complaints which are simultaneously filed, in the same proceedings, against a court judge and a prosecutorial judge

23°/ The establishment of disciplinary sanctions for the prohibition of appointment or assignment to statutorily time-limited functions, the temporary suspension of a judge from the exercise of any function, or temporary suspension from jurisdictional functions only

Enhancing the personal and professional protection of judges

24°/ The reinforcement of institutional judicial communications

25°/ The introduction of a facility for any judge to refer a case to the Council, in the event of an attack on their independence, and for the Council to automatically address such a case, by way of the issue of a recommendation for the elimination of the attack concerned

26°/ The development, at ministerial level, of a penal policy for the pursuit of offences of which judges are the victim

27°/ The setting of a term of 15 days for a response to a request for functional protection

28°/ The introduction of a facility, in the event of inaction on the part of a head of court or a chief judicial officer, for the direct referral of a case to the judicial services division by a judge requesting functional protection

29°/ The tasking of the Chancellery with the completion of all necessary procedures for the removal of defamatory and/or illicit publications from social media

30°/ The general introduction of psycho-social risk prevention units in each court of appeal

ANNEXES

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ANNEX 1: Schedule of parties heard in the conduct of hearings, and of written contributions received

Parties heard

Mr Paul Huber, Director of Judicial Services

Mr Fabien Raynaud, Counsellor of State, President of the 6th Chamber

Mr Dominique Verdeilhan, deputy chief draughtsman for judicial issues in France 2 (retired)

Mr Jérôme Gavaudan, Chair of the National Council of Bar Associations, Mr Olivier Cousi, Bar President of the Order of Barristers of Paris, and Mrs Hélène Fontaine, Chair of the Conference of Bar Presidents

Written contributions

National conference of First Presidents
National conference of Prosecutors General
National conference of Presiding Judges of Judicial Courts
National conference of Public Prosecutors of the Republic

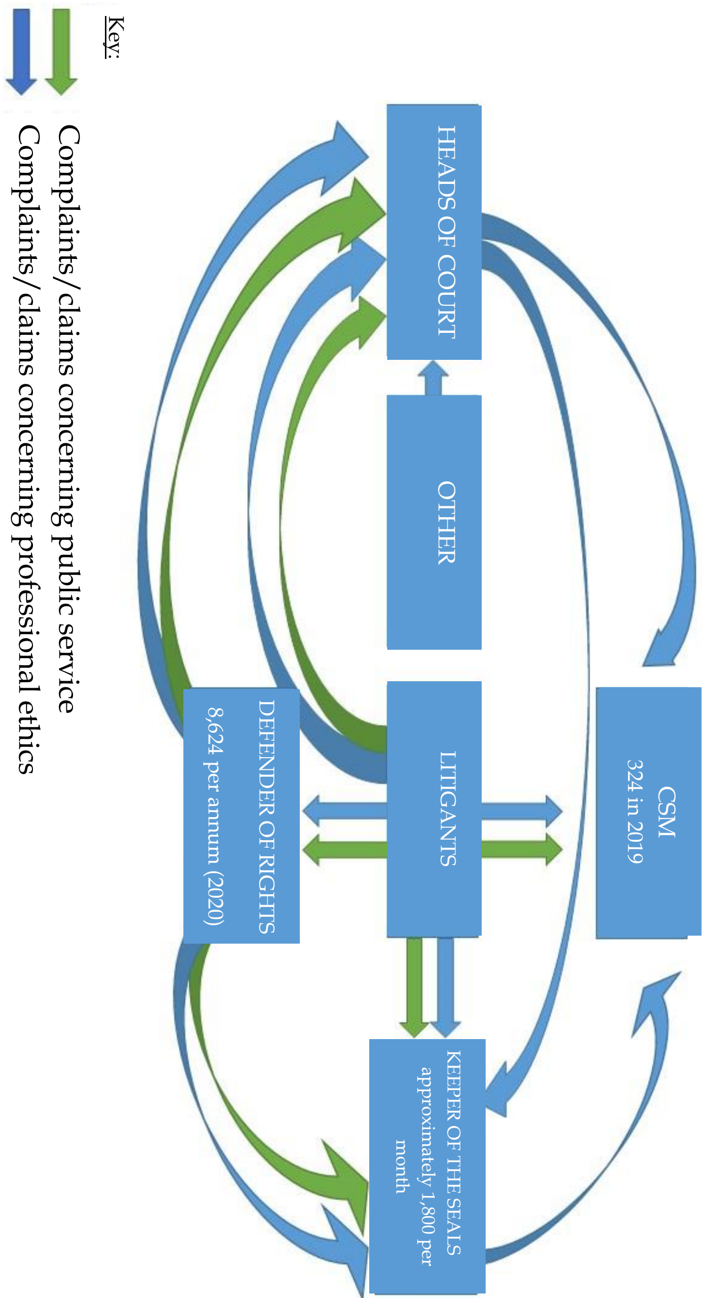
The trade union of judges
The Syndicate of the Judiciary

The college of professional ethics for judges in the judiciary
The Constitutional Council
The Defender of Rights

Mrs Martine Lombard, Professor Emeritus at the University of Paris-Panthéon Assas, former member of the High Council for the Judiciary

Mr Joël Moret-Bailly, Professor of Private Law & Criminal Sciences, University of Lyon (Saint-Etienne), CERCRID UMR-CNRS 5137

ANNEX 2: Flow diagram of claims filed by litigants



ANNEX 3: Case law of the Constitutional Council and the Court of Justice of the European Union

Decision of the Constitutional Council n° 2007-551 DC of 1st March 2007 (extract)

"*Whereas the independence of the judiciary, which is guaranteed by Article 64 of the Constitution, and the principle of the separation of powers enshrined in Article 16 of the Declaration of 1789, do not preclude the extension by the organic legislative authorities of the disciplinary liability of judges to include their jurisdictional activity, whereby a gross and wilful breach of a procedural rule which constitutes an essential guarantee of the rights of the parties might entail the enforcement of this liability; whereas, however, these same principles constitute an obstacle to the initiation of disciplinary proceedings, in the event that this breach has not previously been confirmed by a judicial ruling which has since become definitive*".

Ruling of the Court of Justice of the European Union, case n° C-397/19, 18th May 2021 (extract, points 233 and following)

"*Recognition of the principle of the personal liability of judges for judicial errors which they commit entails a risk of interference in the independence of judges, in that it is liable to influence decision-making on the part of those whose function is to pass judgement.*
Consequently, it is essential that any implication, in the context of a recursory action, of the personal liability of a judge on the grounds a judicial error should be limited to exceptional cases and circumscribed by objective and verifiable criteria, involving the observation of essential requirements associated with the effective administration of justice, and by guarantees for the prevention of any risk of the exertion of external pressure upon the substance of judicial rulings, thereby eliminating any legitimate doubt from the mind of the litigant (…). It is essential that rules should be provided which specifically define, in a clear and accurate manner, those behaviours which are liability to entail the enforcement of the personal liability of judges, in order to guarantee the independence which is integral to their function, and to prevent their exposure to any risk that their personal liability might be enforced on the sole grounds of their judgement.
While (…) the guarantee of independence does not require the conferral in favour of judges of absolute immunity with respect to actions committed in the exercise of their judicial functions, their personal liability for damages caused in the exercise of their functions can only be enforced in exceptional cases, in which their personal and gross culpability has been established. Accordingly, the inclusion of a judicial error in a judgement is not, in itself, sufficient to entail the enforcement of the personal liability of the judge concerned".

ANNEX 4: Schedule of substantive referrals (2001-2020)

Years	Referrals by Keeper of the Seals Judicial	Referrals by First Presid-ents Judicial	Referrals by CAR Judicial	TOTAL JUDIC-IAL REFER-RALS	Referrals by Keeper of the Seals Prosecut-orial	Referrals by First Presid-ents Prosecut-orial	Referrals by CAR Prosecut-orial	TOTAL PROSEC-UTORIAL REFER-RALS	Total	Comments
2001	4			**4**	6			**6**	**10**	
2002	3	1		**4**				**0**	**4**	Including 1 joint referral by the Keeper of the Seals/a First President
2003	3	2		**5**	2	1		**3**	**8**	
2004	3	2		**5**	1			**1**	**6**	Including 1 joint referral by the Keeper of the Seals/a First President
2005	6			**6**	2	1		**3**	**9**	
2006	4	1		**5**	3			**3**	**8**	Including 1 joint referral by the Keeper of the Seals/a First President
2007	5			**5**	2			**2**	**7**	
2008	3	3		**6**	1			**1**	**7**	
2009	6			**6**				**0**	**6**	
2010	7			**7**	1			**1**	**8**	
2011	7	2		**9**	5			**5**	**14**	
2012	2	1	1	**4**	3	1	1	**5**	**9**	
2013	7		1	**8**	3			**3**	**11**	
2014	2			**2**	1			**1**	**3**	
2015	2		1	**3**	1			**1**	**4**	

2016	2		1	**2**	2			**2**	**4**	
2017	3			**3**				**0**	**3**	
2018	2		1	**3**	2			**2**	**5**	
2019	3			**3**	2			**2**	**5**	
2020	4			**4**	2			**2**	**6**	
Total	**78**	**12**	**5**	**95**	**39**	**3**	**1**	**43**	**138**	

ANNEX 5: Summary table of sanctions handed down or proposed by the Council (2007 – 2020)

Sanctions handed or proposed by the CSM from 2007 to 2020	Judicial ruling	Prosecutorial opinion	**Total**
Reprimand – Censure	10	3	**13**
Transfer of post	5	5	**10**
Transfer of post, and prohibition of exercise of the functions of a single judge	6	0	**6**
Suspension from duties			**0**
Suspension from duties, with transfer of post	5	2	**7**
Grade relegation		1	**1**
Grade relegation, with transfer of post	2	1	**3**
Temporary exclusion			**0**
Downgrading	1		**1**
Downgrading, with transfer of post	4	1	**5**
Automatic retirement – cessation of functions	15	2	**17**
Dismissal	4	5	**9**
TOTAL	**52**	**20**	**72**

72 serving judges have been sanctioned (52 in judicial courts, and 20 at prosecutors' offices) – this represents a third of all judges who have been sanctioned since 1959, thereby demonstrating a substantial and recent increase of activity in this area.
On average, between 5 and 6 serving judges are sanctioned each year and, in one case out of three, the judge concerned is excluded from the judiciary.
10 decisions for the withdrawal or withholding of honorary status from retired judges should also be considered.
Previously, and over the same period, 87 warnings had been issued by heads of court (65 to judicial courts and 22 to prosecutors' offices).

ANNEX 6: Schedule of decisions by commissions for the admission of petitions

		2012	2013	2014	2015	2016	2017	2018	2019	2020
	NUMBER OF REFERRALS	290	325	242	223	250	245	327	324	307
	NUMBER OF RULINGS	288	303	346	201	252	230	227	301	380
RULINGS	Manifestly inadmissible	218	251	245	138	177	163	145	153	211
	Manifestly unfounded	57	47	91	53	68	65	73	138	160
	Admissible	13	5	10	10	7	2	9	11	9
	Referred for disciplinary examination	2	1	0	1	1	0	0	1	0
	% admissible	*4.5%*	*1.7%*	*2.9%*	*5.0%*	*2.8%*	*0.9%*	*4.0%*	*3.7%*	*2.4%*

Since the entry into force of the reform whereby the commission for the admission of petitions was constituted in 2011, up to the end of 2020, 2,533 claims from litigants were received by the Council, 2,528 rulings have been handed down, 76 complaints have been declared admissible, corresponding to 3% of referrals. Of these 76 admissible complaints, six have been referred for disciplinary examination by the CSM. None of these cases has given rise to any sanction.

This absence of results is specifically attributable to the criteria for admissibility defined by legislative authorities, acting under the supervision of the Constitutional Council.
The original objective was to permit a litigant to take issue with "*the behaviour adopted by a judge in the exercise of their functions*", rather than with the judicial ruling itself, any challenge to which is a matter for appeal. Accordingly, provision has been made for a number of filters:

- A complaint will not be admissible while a judge is still engaged in proceedings;
- It will not be admissible if it is filed more than one year after the end of proceedings;
- The complaint must include detailed grounds in substantiation of the circumstances and grievances against the judge;
- The complaint must be signed by the plaintiff, who shall indicate their identity, and must permit the identification of the proceedings concerned.

In practice, litigants primarily use this system as a means of taking issue with a ruling handed down or with the operation of the public justice system, but to a far lesser extent with the behaviour of a judge. Accordingly, complaints are manifestly inadmissible, in two-thirds of cases, or manifestly unfounded, in the absence of any provision by the litigant of any evidence of ethically reprehensible behaviour.

Annex 7: Study by the DAEI (European and International Affairs Delegation) **on disciplinary actions and sanctions handed down against judges**

General Secretariat

European and International Affairs Delegation

Office of Comparative Law & Legal Communications

MINISTRY OF JUSTICE
Liberty
Equality
Fraternity

March 2021

Statistics on disciplinary proceedings and sanctions handed down against judges

(Germany, Belgium, Italy, Spain, Finland and United Kingdom)

Authors:
Charles Dagan, Draughtsman at the Office of Comparative Law
Marie Arbache, Draughtsman at the Office of Comparative Law

Data collected on the basis of 2020 and 2018 evaluation reports for judicial systems completed by the European Commission for the Efficiency of Justice of the Council of Europe, for the reference years 2018 and 2016.

Profiles for each country are available on-line at: https://www.coe.int/en/web/cepej/country-profiles.

Initial findings

Data sourced from the 2020 and 2018 evaluation reports for judicial systems completed by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe relate to **Germany**, **Belgium**, **Italy**, **Spain**, **Finland** and the **United Kingdom.** The 2020 CEPEJ report is based upon the reference year 2018, and the 2018 report upon the reference year 2016.

Data collected draw a distinction between disciplinary proceedings initiated and sanctions handed down against judges, and those initiated and handed down against prosecutors. These data permit the identification of a uniform set of countries, comprised of **Germany**, **Belgium, Italy** and **Spain.**

Within this set of countries, more judges have been subject to disciplinary proceedings than prosecutors. Nevertheless, in proportion, sanctions handed down against judges and prosecutors are substantially equivalent in each country.

In 2018, in the majority of the countries studied, a small proportion of the total number of judges and prosecutors were sanctioned annually. The smallest proportions were

recorded in **Germany**, both for judges (0.03%) and for prosecutors (0.05%). Conversely, in **Italy**, these proportions are greatest, with 0.75% of judges and 0.80% of prosecutors sanctioned in 2018.

Within this set of countries, judges and prosecutors are primarily targeted by proceedings brought on the grounds of professional incompetence. Where these proceedings result in a sanction, reprimands and suspensions are applied in the majority of cases.

In Finland and the United Kingdom, the number of disciplinary proceedings brought against judges and prosecutors is very high. This is a reflection of specific procedural characteristics.

In **Finland,** for example, authorities responsible for the protection of human rights, such as the Parliamentary Ombudsman and the Chancellor of Justice, have the authority to initiate disciplinary proceedings. Finally, in the **United Kingdom**, while a greater number of proceedings are initiated, it would appear that these result in numbers of sanctions which are similar to those in other countries which are the object of this study.

COUNTRY-BY-COUNTRY DATA

GERMANY

Figures have been supplied by the Länder of Baden-Württemberg, Bavaria, Berlin, Hamburg, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony and Thuringia.

These are data for the reference year 2018.

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of prosecutors as at 31st December 2018
20,323	5,883

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges	Prosecutors
Total number (1+2+3+4)	-	-
1. Breach of ethics	2	1
2. Professional incompetence	10	5
3. Criminal offence	9	1
4. Other	2	2

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges	Prosecutors
Total number (total from 1 to 10)	-	-
1. Reprimand	4	2
2. Suspension	1	0
3. Removal from a case	0	0
4. Fine	1	1
5. Temporary reduction of salary	1	0
6. Downgrading of post	0	0
7. Geographical transfer to another court	0	0
8. Resignation	0	0
9. Other	1	0
10. Dismissal	0	0

BELGIUM

Data collected on the sole basis of the 2020 evaluation report for judicial systems (reference year: 2018)

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of prosecutors as at 31st December 2018
1,523	879

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges	Prosecutors
Total number (1+2+3+4)	19	2
1. Breach of ethics	7	0
2. Professional incompetence	12	2
3. Criminal offence	0	0
4. Other	0	0

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges	Prosecutors
Total number (total from 1 to 10)	5	2
1. Reprimand	0	0
2. Suspension	2	1
3. Removal from a case	0	0
4. Fine	0	0
5. Temporary reduction of salary	0	0
6. Downgrading of post	0	1
7. Geographical transfer to another court	0	0
8. Resignation	2	0
9. Other	0	0
10. Dismissal	1	0

ITALY (order of judges)

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of judges as at 31st December 2016	Number of prosecutors as at 31st December 2018	Number of prosecutors as at 31st December 2016
7,015	6,395	2,230	2,138

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number 1+2+3+4)	128	128	64	62
1. Breach of ethics	17	17	13	13
2. Professional incompetence	93	95	41	41
3. Criminal offence	18	14	19	6
4. Other	0	2	0	2

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (total from 1 to 10)	53	41	18	15
1. Reprimand	33	31	11	12
2. Suspension	5	0	2	0
3. Removal from a case	0	0	0	0
4. Fine	0	0	0	0
5. Temporary reduction of salary	0	0	0	0
6. Downgrading of post	4	3	2	1
7. Geographical transfer to another court	4	2	3	2
8. Resignation	6	5	0	0
9. Other	0	5	0	0
10. Dismissal	1	0	0	0

SPAIN

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of judges as at 31st December 2016	Number of prosecutors as at 31st December 2018	Number of prosecutors as at 31st December 2016
5,419	5,367	2,465	2,473

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (1+2+3+4)	23	41	3	3
1. Breach of ethics	0	5	0	0
2. Professional incompetence	23	36	-	3
3. Criminal offence	0	0	0	0
4. Other	0	0	-	0

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (total from 1 to 10)	14	17	0	3
1. Reprimand	2	0	0	0
2. Suspension	6	6	0	0
3. Removal from a case	0	-	0	-
4. Fine	6	11	0	2
5. Temporary reduction of salary	0	-	0	-
6. Downgrading of post	0	-	0	-
7. Geographical transfer to another court	0	-	0	-
8. Resignation	0	0	0	1
9. Other	0	0	0	0
10. Dismissal	0	-	0	-

FINLAND

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of judges as at 31st December 2016	Number of prosecutors as at 31st December 2018	Number of prosecutors as at 31st December 2016
1,081	1,068	393	372

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (1+2+3+4)	-	737	-	165
1. Breach of ethics	-	-	-	-
2. Professional incompetence	-	-	-	-
3. Criminal offence	30	30	-	-
4. Other	635	707	185	165

Explanatory commentary for 2018:

The Parliamentary Ombudsman[17] initiated 199 disciplinary proceedings against judges, and the Chancellor of Justice[18] 466, including 356 complaints, 80 proceedings initiated further to a random verification of judgements, and 30 notifications originating from the police and courts of appeal concerning suspected breaches of criminal law.

The category "criminal offence" includes proceedings initiated on the basis of a notification originating from the police, or from courts of appeal.

The category "other" includes all other cases for which no exact data is available with regard to the grounds giving rise to the proceedings concerned.

The Parliamentary Ombudsman initiated 47 disciplinary proceedings against prosecutors, the Chancellor of Justice 101 and the Prosecutor General's Office 37.

[17] In Finland, the Parliamentary Ombudsman is a similar figure to the Defender of Human Rights. They review the legality of official acts. Although appointed by the Finnish Parliament for a 4-year term of office, the Parliamentary Ombudsman exercises their functions with complete neutrality, independently of Parliament. To this end, they may be contacted if a public authority or public servant is suspected of having failed to observe the law, or of having breached their obligations. Any individual is entitled to file a complaint with the Ombudsman. https://www.oikeusasiamies.fi/en/francais

[18] The primary function of the Chancellor of Justice is the promotion of the rule of law, as stipulated by the Finnish Constitution. To this end, they assume a key role in the management of complaints and observations which may arise, for example further to an inspection. https://www.okv.fi/en/chancellor/duties-and-activities/

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (total from 1 to 10)	-	20	-	11
1. Reprimand	41	17	12	-
2. Suspension	-	-	-	-
3. Removal from a case	-	-	-	-
4. Fine	-	-	-	-
5. Temporary reduction of salary	-	-	-	-
6. Downgrading of post	-	-	-	-
7. Geographical transfer to another court	-	-	-	-
8. Resignation	-	-	-	-
9. Other	6	3	-	2
10. Dismissal	-	No data available for 2016	-	No data available for 2016

Explanatory commentary for 2018:

The Parliamentary Ombudsman handed down 11 sanctions against judges, and the Chancellor of Justice 36. The Parliamentary Ombudsman handed down 4 sanctions against prosecutors, the Chancellor of Justice 3, and the Prosecutor General's Office 5.

Explanatory commentary for 2016:

Of the 737 disciplinary cases recorded in 2016, 404 were initiated by the Chancellor of Justice and 333 by the Parliamentary Ombudsman.

Only 10 of the cases referred to the Chancellor of Justice were followed by any sanction. The same applies to cases referred to the Parliamentary Ombudsman.

In practice, in the majority of cases, no further measures were taken.

The total number of disciplinary proceedings brought against prosecutors was 165 (91 by the Chancellor of Justice, 72 by the Parliamentary Ombudsman and 2 by the Prosecutor General). The number of sanctions handed down, relative to the number of complaints resulting in the initiation of disciplinary proceedings, nevertheless remains low:

- Before the Chancellor of Justice: 5;
- Before the Parliamentary Ombudsman: 4;
- Before the Prosecutor General's Office: 2.

UNITED KINGDOM (England and Wales)

The relevant data are available for consultation on-line:
https://judicialconduct.judiciary.gov.uk/reports-publications/

Total number of judges and prosecutors

Number of judges as at 31st December 2018	Number of judges as at 31st December 2016	Number of prosecutors as at 31st December 2018	Number of prosecutors as at 31st December 2016
1,831	1,760	2,455	2,080

Number of disciplinary proceedings brought during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (1+2+3+4)	1,672	1,459	25	32
1. Breach of ethics	-	4	3	4
2. Professional incompetence	-	22	4	4
3. Criminal offence	-	7	0	2
4. Other	1,672	1,426	18	22

Explanatory commentary for 2018:

In 2018, 1,672 disciplinary proceedings were brought against judges:

- 1 173 on the grounds of a judicial ruling or the management of cases;
- 293 on the grounds of inappropriate behaviour/comments;
- 35 on the grounds of a procedural delay;
- 21 on the grounds of a conflict of interest;
- 17 on the grounds of failure to observe conditions for the conduct of a hearing;
- 4 on the grounds of criminal conviction (excluding traffic offences and fraud);
- 2 on the grounds of tax fraud;
- 4 on the grounds of a traffic offence;
- 4 on the grounds of an abuse of judicial authority;
- 7 issues associated with civil proceedings;
- 112 cases of missing data.

In 2018, 25 prosecutors were the object of disciplinary proceedings:

- 3 on the grounds of a breach of the rules of professional ethics;
- 4 on the grounds of professional incompetence;
- 18 on other grounds:
    - ✓ 4 on the grounds of a breach of policy for dignity at the workplace;
    - ✓ 2 on the grounds of a breach of security;
    - ✓ 1 on the grounds of an abuse of the flexibility of working hours;
    - ✓ 1 on the grounds of absence from court;

- ✓ 3 on the grounds of refusal to execute a reasonable administrative instruction;
- ✓ 5 on the grounds of unauthorized absence.

Explanatory commentary for 2016:

In the year under consideration, 42 disciplinary measures were implemented by the Lord Chancellor and the Lord Chief Justice, including opinions, warnings, reprimands, suspensions or dismissals.

In the case of prosecutors, 32 were the object of disciplinary proceedings brought on the following grounds, other than a breach of ethics, professional incompetence or a criminal offence:

- ✓ 2 on the grounds of a breach of rules of confidentiality;
- ✓ 1 on the grounds of a breach of policy for dignity at the workplace
- ✓ 4 on the grounds of dishonesty
- ✓ 3 on the grounds of a breach of security;
- ✓ 1 on the grounds of an abuse of the flexibility of working hours;
- ✓ 6 on the grounds of inappropriate behaviour;
- ✓ 1 on the grounds of absence from court;
- ✓ 1 on the grounds of "uncertified" practice;
- ✓ 2 on the grounds of refusal to execute a reasonable administrative instruction;
- ✓ 1 on the grounds of unauthorized absence.

Number of sanctions handed down during the reference year against judges and prosecutors

	Judges 2018	Judges 2016	Prosecutors 2018	Prosecutors 2016
Total number (total from 1 to 10)	55	-	-	-
1. Reprimand	7	8	9	19
2. Suspension	-	0	16	19
3. Removal from a case	-	-	0	-
4. Fine	-	-	0	-
5. Temporary reduction of salary	-	-	0	-
6. Downgrading of post	-	-	0	-
7. Geographical transfer to another court	-	-	0	-
8. Resignation	-	-	0	-
9. Other	33	34	0	-
10. Dismissal	15	No data available for 2016	-	No data available for 2016

Explanatory commentary for 2018:

Of the 55 sanctions handed down against judges, 33 were classified in category 9: “Other”. These involved official opinions and warnings.

Explanatory commentary for 2016:

Of the sanctions handed down against judges, 34 were classified in category 9: “Other”. These involved:

- Formal opinions: 11;
- Warnings: 9;
- Dismissals: 19.

There are two potential explanatory reasons for the difference between the high number of disciplinary proceedings initiated and the substantially lower number of sanctions handed down:

- The first is the possible conclusion of proceedings with the issue of “No warning”; albeit not a sanction, this was the outcome handed down on 10 occasions;
- The second explanation is that there is no direct correlation in any given year between proceedings initiated and the number of cases “concluded” in the same period.

ANNEX 8: Presentation given by Mr Carlos Lesmes, President of the Supreme Court of Spain, at a conference organized by the High Council for the Judiciary
Effectiveness of the responsibility of judges under French law, and a comparative law approach – 6th May 2021

- Guaranteeing the independence of the justice system in Spain: what is the role of the *Consejo general del Poder judicial* (General Council of the Judiciary)?

Article 117 of the Spanish Constitution, which opens Title VI, the section dedicated to judicial authority, proclaims in its first paragraph that "justice originates from the people, and is administered in the name of the King by judges and magistrates who, as members of the judiciary, are independent, immutable, responsible, and subject only to the rule of law."

The independence of the judiciary is a key element of the legal system and the rule of law, a fact which the Spanish Constitution itself highlights in graphic terms by its express reference to judicial "power", whereas this qualifier is not employed in references to other traditional State powers, such as legislative and executive powers.

Judicial power resides in the power to exercise jurisdiction, and its independence is a *de facto* quality for each judge, to the extent that they execute this function.

The Spanish Constitution envisages a professional judge, ensconced in a judicial career and who, from a position of independence and impartiality, exercises jurisdiction exclusively in accordance with the rule of law, and who is responsible for their acts specifically on the grounds of their independence in the exercise of jurisdictional power.

Judicial independence (i.e. the independence of each judge or court in the exercise of their jurisdiction) must be respected, both within the judiciary and by "all parties".

The Constitution provides a number of guarantees which are intended to secure this independence. The first of these is immutability, which constitutes a key guarantee; however, these guarantees also include the discretion of organic law to determine the constitution, operation and governance of courts and tribunals, and for the predetermination of the legal status of judges and magistrates, together will rules governing incompatibility of functions.

Independence is counterbalanced by responsibility, and the strict adherence of judges and magistrates to their jurisdictional function, and to other functions which are expressly assigned thereto in law, for the defence of any entitlements.

Judicial independence has been ratified, and the guarantee thereof constituted, primarily vis-à-vis State powers, and particularly vis-à-vis executive power; however, this independence has also been expressed in relation to judicial structures themselves. A distinction is thus drawn between internal and external independence. The former applies to relations between judges, whether within a given judicial body or in various bodies, and with respect to the governing bodies of courts. External independence is established vis-à-vis other public authorities.

Under Article 12 of the Organic Law on the Judiciary ("*Ley Orgánic del Poder Judicial*" or "LOPJ", it is established that: "1. In the exercise of jurisdictional power, judges and magistrates shall be independent of all judicial bodies and governing bodies of the judiciary; 2. Judges and courts shall not be entitled to correct the application or interpretation of the legal system adopted by their subordinates in the judicial hierarchy, except in the exercise of justice by way of the remedies for which the law provides; 3. Judges and courts, their governing bodies or the General Council of the Judiciary shall likewise not be entitled to issue instructions to their subordinates,

whether of a general or specific nature, on the application or interpretation of legal matters to be applied in the exercise of their jurisdictional function.”

At the same time, Article 417.4 of the LOPJ classifies the following behaviour as exceptionally severe misconduct: “Interference, by means of instructions or by way of pressure of any kind, in the exercise of the jurisdictional power of another judge or magistrate.”

The outward appearance of independence, in normative terms, is reflected by Article 14 of the LOPJ, which provides that: “1. Judges and magistrates who are of the view that their independence has been compromised or disturbed shall notify the General Council of the Judiciary, and shall report the circumstances concerned to the competent judge or court, in accordance with the appropriate procedure, without prejudice to their own implementation of such measures as shall be strictly necessary to the security of judicial action and the restoration of legal order; 2. The public ministry, on its own initiative or at their request, shall implement any relevant initiatives for the protection of judicial independence”.

The General Council of the Judiciary is the governing body of the judiciary, as provided by Article 122.2 of the Spanish Constitution, which incorporates a qualified proviso in favour of organic law for the establishment of its status and rules governing any incompatibilities of its members and their functions, specifically with respect to appointment, promotion, inspection and disciplinary rules.

The Council, constitutionally, is the body which governs the judiciary; it has pluralistic membership, and its *raison d'être* is to provide a guarantee of judicial independence. As such, it is independent, not only of the Government, but also of Parliament, and has no political dependency. In consequence, it is not politically responsible to Parliament, and its members are under no general obligation to appear before the latter.

The General Council of the Judiciary (“*Consejo general del Poder judicial*” or “CGPJ”) is therefore constitutionally configured as the body which is called upon to guarantee judicial independence vis-à-vis other State authorities.

However, the same Constitution emphasizes that judicial independence and the constitutional existence of the Council do not signify the achievement of the point at which it can be maintained that the Constitution recognizes the autonomy of the judiciary, which is understood to comprise all professional magistrates and judges, nor, in consequence, any power for self-governance assumed by this corpus of judges and magistrates.

Consequently, the role reserved by the Constitution for the Council is not the status of an independent body of judges, but the assumption of a position which is independent and not subjugated to other public authorities (STC 108/1986, FJ 10).

It is not possible to assume, on the basis of constitutional doctrine, any representative status of judges by the Council.

The Constitutional Court has accepted the constitutional validity of the system for the parliamentary appointment of (all) members of the CGPJ, recognizing that the proposal of its twenty members by the Chambers does not make them delegates or commissioners of the Congress or the Senate, with all the political implications which this situation would entail.

- Can you explain what is meant by the *procedimiento de amparo judicial*?;

In 1978, the Spanish Constitution adopted a firm commitment to the promotion of the independence of the judiciary, which is enacted in Article 117, and which was to be effectively instituted by the constitution, under Article 122, of a General Council of the Judiciary. In

consideration of these constitutional provisions, the protection of judges or magistrates whose independence is deemed to be comprised or disturbed is a function of the CGPJ.

Notwithstanding its importance, the protection by the CGPJ of judges or magistrates who consider that their independence is compromised or disturbed is an unprecedented provision in the history of Spanish law, and is now legally regulated by the substance of Article 14 of the Organic Law on the Judiciary, which provides, in para 1, that “Judges and magistrates who are of the view that their independence has been compromised or disturbed shall notify the General Council of the Judiciary, and shall report the circumstances concerned to the competent judge or court, in accordance with the appropriate procedure, without prejudice to their own implementation of such measures as shall be strictly necessary to the security of judicial action and the restoration of legal order”, and adds, in para 2 that “The public ministry, on its own initiative or at their request, shall implement any relevant initiatives for the protection of judicial independence”.

Protection of the CGPJ vis-à-vis judges or magistrates who consider that their independence is compromised or disturbed was expanded in Regulation 2/2011 of 28th April on the judicial profession, Title XV of which, comprised of Articles 318 to 325, is entitled “Protection procedure” (*Procedimiento de amparo*).

In essence, the protection of the CGPJ vis-à-vis judges or magistrates whose independence is deemed to be compromised or disturbed may be configured in the form of institutional protection, i.e. identification by a government body, the competencies of which specifically concern judicial independence, that the latter has been breached in a specific case which is brought to its attention by the judge or magistrate concerned. Accordingly, this is not indiscriminate institutional protection, but institutional protection which is qualified by the fact that it is adopted by a government body in which specific powers are vested for the defence of judicial independence thus breached. It follows that any decision adopted by the CGPJ for the conferral or withholding of protection is an administrative decision which, as such, may be subject to appeal before the Administrative Chamber of the Supreme Court (Article 58.1 of the LOPJ).

Judicial protection may be sought in the event of interference or disturbance sustained by judges and magistrates which compromise their independence. However, a conviction to this effect on the part of the judge who is the object of interference or disturbance is not sufficient in itself, on the grounds that, over and above their subjective appraisal, there needs to be objective evidence which confers a semblance of plausibility upon any claim of third party interference or disturbance. It might even be said that the coherence of any pressure applied is more important than the manner in which the latter is perceived by the judge. In other words, the mere appearance of an attack on the independence of a judge should constitute sufficient grounds for a ruling by the CGPJ, even if the judge concerned is not subject to psychological interference or disturbance, as observed by the Supreme Court.

The Regulation refers to a number of factual assumptions which are required for the activation of judicial protection, indicating that:

“the following, *inter alia*, are classified as acts of disturbance or interference:

a) Public declarations or statements reported by the media which objectively constitute an attack upon the independence of the justice system, and which are liable to influence the unrestricted capacity of a judge or magistrate to reach a decision.

b) Acts or statements which are not publicized in the manner described in the preceding para, but which nevertheless, in consideration of the capacity or status of their originator or the circumstances in which they occur, might affect, in the same manner, the freedom of decision-making of a judge or magistrate in the exercise of their functions".

The above list is provided by way of illustration only, such that other cases of a similar nature to those provided in the Regulation also need to be considered.

Any demonstrations conducted by the parties in the context of the judicial process thus lie outside the objective scope of application of the judicial protection procedure, to the extent that, in the courtroom, such matters may be reserved for police action (Article 553 of the LOPJ) or, where applicable, may lie within the penal domain.

The judicial protection procedure is initiated at the request of the judge or magistrate concerned, by means of statement of grounds submitted in the form of a letter to the CGPJ, in which they are required to set out, clearly and accurately, the context, circumstances and grounds on which they believe their independence has been compromised or disturbed, together with the protection sought for the preservation or restoration thereof.

A request for protection shall be inadmissible:

(i) where the application for protection is not submitted within the time limit provided in Article 320;

(ii) where the procedure is not initiated by the interested party themselves;

(iii) where protection has not been accorded in manifestly similar cases;

(iv) where the request for protection is manifestly unfounded.

Further to the receipt of submissions and the completion of procedural formalities, the permanent Commission will submit the case, accompanied by the relevant proposal, to the Plenary Assembly, who will hand down a substantiated decision for the conferral or withholding of the protection requested.

An appeal to the administrative chamber of the Supreme Court is possible.

The decision of the Council, if it upholds the application, will entail an injunction for the person, entity or association concerned to terminate the action which has given rise to the request for protection, and to adopt or promote the requisite measures for the restoration of judicial independence thus compromised. The decision adopted by the Plenary Assembly will be notified to the interested party and the Public Ministry and, moreover, the CGPJ shall undertake such publication as shall be appropriate of the decision for the conferral of protection.

- Spain applies a particular treatment to the liability of judges, particularly with respect to offences committed in the act of judgement (Articles 417, 418, 419 of the Organic Law). Can you explain how this liability is enforced?

The Spanish Constitution includes express reference to the liability of judges and magistrates in Article 117.1, which stipulates that: "Justice originates from the people, and is administered in the name of the King by judges and magistrates who, as members of the judiciary, are independent, immutable, responsible, and subject only to the rule of law" (identical wording to Article 1 of the LOPJ), reserving in favour of the General Council of the Judiciary functions relating to the disciplinary treatment of judges and magistrates (Article 122.2 of the Spanish Constitution).

The preamble to the Organic Law on the Judiciary has previously defined the disciplinary authority as “an essential instrument for guaranteeing the independence of the judiciary”.

In the exercise of their functions, Spanish judges and magistrates are subject to public liability, criminal liability and disciplinary liability.

The public liability of judges and magistrates, as conventionally perceived, is a direct liability. Further to a reform in 2015, legal rules governing liability for damages and prejudices caused by judges and magistrates in the exercise of their functions, included in Article 296 of the LOPJ, do not permit injured parties to bring any direct action against said judges and magistrates.

This is not the case where damage or prejudice results from fraud or a serious offence on the part of a judge or magistrate, in which case the State, further to the settlement of compensation in favour of the injured party, may require the liable judge or magistrate to reimburse the amount thus settled, notwithstanding any disciplinary liability which may be enforceable.

Current rules governing public liability must be linked to disciplinary liability, given that “actions and omissions giving rise, in a definitive judgement or a definitive ruling of the General Council of the Judiciary, to a declaration of public liability incurred in the exercise of functions on the grounds of fraud or a serious offence, shall constitute a very serious offence (Article 417.5 of the LOPJ).

Criminal liability, which is incurred for crimes committed in the exercise of functions, must be enforced in accordance with the provisions of the LOPJ (Article 405 of the LOPJ).

- Could you also provide some clarification of the crime of the perversion of justice (*prevaricacion*, under Articles 446 and 447 of the Penal Code), and its practical consequences?

Crimes which constitute the perversion of justice under the Penal Code include perversion by intent, perversion by gross negligence, and two specific forms: the withholding of judgement by the judge or magistrate, and a malicious delay in the administration of justice.

Supreme Court case law clearly identifies the perversion of justice as a crime committed by experts in law.

Consequently, variants which require, *inter alia*¸ that the deviation of a judgement from the law be “flagrant” or “evident to any party” will be relevant for other public servants, but not for judges.

Judges hold the highest legal qualifications and cannot be treated in the same way as other public servants. This extends to the prevention of a subterfuge whereby a ruling – which is known to be unjust – is accompanied by arguments which are intended to conceal the illegal nature of the act.

The objective element of this crime comprises the handing down of an “unjust ruling” by a judicial authority engaged in the exercise of functions which are specific to its office.

It is therefore clear that the crime of the perversion of justice will only be possible where the ruling in question is clearly and manifestly devoid of any possible and reasonable explanation, i.e. in the case of ruling which, by any evidence, is contrary to the law, to the extent that its substance, even under the most favourable interpretation of rules which apply to the case in question or of the available evidence, is not consistent with the law.

Moreover, any illegality which is classified as such may equally well describe procedural or material aspects, whether involving an issue of legal qualification, problems observed or the appraisal of evidence.

As a representative of State authority, the judge is both the guarantor and the interpreter of legality – this places them in a different position, and entails two important consequences. The first of these is the greater severity of the perversion of justice, in comparison with that committed by a civil servant, a difference with is reflected in the level of severity of the penalties reserved for the former. Secondly, and to the extent that, as observed above, case law considers the perversion of justice to be a crime committed by legal specialists, it is clear that perversionary rulings are predominantly backed by arguments which conceal the illegal nature of the act concerned. For this reason, it is necessary to proceed with caution in the translation of criteria which an act of perversion is required to fulfil, given that the adjectives employed in case law essentially originate from cases of perversion committed by civil servants who, in general, are not specialists in the law.

In both its intentional and its negligent form, the crime of the perversion of justice requires an objective element, namely, the injustice of the decision or judgement concerned, the determination of which is based, not upon the circumstance whereby the originator considers it as such, but rather, in strictly objective terms, that such a classification is merited on the grounds that it is not possible to include the approach applied for the handing down of the judgement in the various potential options which are legally defensible.

In accordance with the above argument, the objective nature of an injustice implies that any deviation in the judicial function which is specific to the rule of law occurs where the application of the law has been executed in the absence of knowledge of the means and methods of legal interpretation which are acceptable under the rule of law.

- What is the role of the *Consejo general del Poder judicial* in overall disciplinary policy?

The competencies of the General Council of the Judiciary, according to the Spanish Constitution, are as follows: appointments, promotions, inspections and the disciplinary system.

The disciplinary system requires the assumption of responsibility by judges and magistrates which is neither unique nor exclusive (Articles 296 and 405 to 410 of the LOPJ), as it forms part of the overall responsibility which is demanded of members of the legal profession, in the same way as criminal, public or even ethical liability which, in combination, constitute an essential and indispensable element of judicial authority.

This means, firstly, that exercise of disciplinary powers over judges and magistrates is no longer in the gift of executive authority.

The LOPJ expands upon appropriate procedure, in accordance with principles which are established in the field of applicable law for administrative sanctions, by the application thereof to public service, and specifically incorporating constitutional principles which govern the penal process.

Disciplinary breaches, which are divided into very severe, severe and minor breaches, are typified under the terms of the LOPJ.

It is appropriate that the powers of the CGPJ in this field should be specified.

It proceeds that, once the internal governance of courts is vested in Presiding Judges and Presidents of Chambers, the latter will also assume disciplinary powers, specifically for the

respective imposition of sanctions by way of a warning, and a warning and a fine, in case of minor breaches.

These sanctions may be subject to appeal before the Disciplinary Commission of the Council, such that this constitutional body is, in any event, the authority of last resort in the administrative sector for the resolution of any sanction imposed upon a member of the judicial profession by internal bodies. At the same time, these rulings on appeal to the Disciplinary Commission constitute the last stage of administrative procedure, such that the case is then open to appeal under administrative litigation before the Supreme Court.

The Disciplinary Commission, comprised of seven members (who reflect the proportional make-up of the Plenary Assembly: three members elected by bodies of legal experts having recognized competency, and four members selected by the judicial service) is also competent for the resolution of disciplinary cases brought on the grounds of severe or very severe breaches and for the imposition, where applicable, of the corresponding sanctions upon judges and magistrates. When the proposed sanction involves dismissal from service, competency to this effect will be exercised by the Plenary Assembly of the Council. The latter will also assume the resolution of appeals introduced against the agreement of sanctions by the Disciplinary Commission. Commission. In practice, the resolution of these appeals by the Plenary Assembly opens up the option for the introduction of a jurisdictional appeal.

Action at law in disciplinary cases or, more accurately and specifically, the hearing of complaints and the initiation and examination of disciplinary cases, and the presentation of charges before the Disciplinary Commission, are vested in the Promoter of disciplinary action, a role introduced by Law n° 4/2013 of 28th June, which reinforces the accusatorial principle of disciplinary proceedings, thereby enhancing the professional and rational quality of examinations.

In response to complaints received, the Promoter may elect not to open a disciplinary case, or to archive a case which has already been opened. This decision is subject to appeal before the standing committee of the Council, who may automatically instruct the Promoter of disciplinary action to initiate or pursue a disciplinary case.

Any complaint concerning the operation of the administration of justice in general, and the action of judges and magistrates in particular, will be the object, within one month, of a report by the Head of the Inspection Service of the CGPJ, in which it may clearly be proposed that the matter is archived, that investigative enquiries be initiated, or that a disciplinary case be opened forthwith (Article 423.2 of the LOPJ). The Inspection Service – a technical authority of the Council (Article 611.4 of the LOPJ) – may, in the exercise of this function, have occasion to examine actions or situations which might entail disciplinary liability. To this end, it should be observed that the Inspection Service is empowered to analyze or examine these situations or actions, and to consider the potential incorporation thereof in the systems envisaged under the LOPJ; however, neither the Inspection Service, nor the Disciplinary Commission, nor the Plenary Assembly is empowered to query the legal correctness or incorrectness of judicial rulings: these are exclusively jurisdictional matters, the independence of which must be protected by the Council.

- Is the issue of the independence and responsibility of judges the subject of as much debate in Spain as it is in France?

In Spain, the level of judicial independence is the subject of recurrent discussions, whether in society, in judicial circles or in the legal world.

The concern of the General Council of the Judiciary has been particularly focused in response to an awareness of the level of judicial independence perceived by judges and magistrates themselves.

To this end, a national survey of judges and magistrates was conducted in 2015, in the interests of an up-to-date and detailed awareness of the opinion of members of the judicial profession on various issues affecting the exercise of jurisdictional functions.

These issues prominently include the subject of judicial independence. On this issue, the results of the survey revealed that 74% of responding judges and magistrates (1,285 in total) stated that they had not, on any occasion, been subject to external pressure in the execution or pursuit of proceedings concerning crimes of corruption, whereas 9% stated that they had been subject to pressure, and 9% preferred not to respond to the question.

The impact of external pressure applies primarily to judges and magistrates in examining magistrates' courts (16%) and, to a lesser extent, to provincial hearings and criminal courts (13% and 3% respectively). Sources of pressure are primarily attributed to mass media (51%) and political circles (43%).

In a survey conducted by the European Network of Councils for the Judiciary in 2017, 45% of the 718 participating Spanish judges drew attention to external pressure from the mass media, and 42% were of the view that their independence was not respected.

In a survey conducted in September 2020 at the request of the Council, 99% of those surveyed stated that they felt entirely independent in the execution of decision-making associated with jurisdictional functions, and 90% were in agreement that they had received no instruction or suggestion on the resolution of a specific case from the government, independent communities or the General Council of the Judiciary itself, whereas 88% of those surveyed stated that they had been subject to no such instruction or suggestion from political parties, other judges, or economic and social pressure groups, although this percentage fell to 72% when the question referred to pressure from the media. 9% of those surveyed stated that they frequently felt pressurized by the mass media which, in the opinion of a substantial majority, did not properly reflect the work of the judiciary. According to 84% of members of the judiciary, the media have never (32%) or rarely (52%) taken account of the pressures to which they might have been exposed.

The perception of judicial independence in Spain refers, not so much to the independence of judges and magistrates as to the judiciary system as a whole, which is fundamentally subject to question on the grounds of the type of composition of the General Council of the Judiciary and the appointment of its members, and on the grounds of mechanisms for discretionary appointments to judicial offices. However, neither of these circumstances is particularly peculiar among the justice systems of Member States of the European Union.

Spain, moreover, particularly within the General Council of the Judiciary, invariably observes the Recommendations of the Council of Europe on judicial independence, as a prerequisite for the rule of law.

- How do you see the future of our European judicial area?

One of the objectives of the European Union which calls for the greatest attention at present is the project known as the Area of Freedom, Security & Justice (AFSJ). This project rests upon key pillars of civic life, including the control of frontiers, the jurisdiction of judges and courts in the civil and criminal sectors, the work of the security forces and organizations of Member States, asylum and immigration policies.

At present, the AFSJ features as an objective of the EU in para 2 of Article 3 of the TEU, which provides that "the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime"

The TFEU defines four major categories of competencies: policies on the control of frontiers, asylum and immigration (Chapter II); judicial cooperation in civil matters (Chapter III); judicial cooperation in criminal matters (Chapter IV), and police cooperation (Chapter V).

The future of the European judicial area in the field of criminal matters

As all parties are aware, a cornerstone of judicial cooperation in criminal matters within the European judicial area is the system of mutual recognition based upon mutual confidence between our judicial systems.

The entry into force with effect from 2017 of the European Investigation Order (Directive n° 214/41/EC of the European Parliament and Council of 3rd April 2014) presumes a definitive impetus in the process for the establishment of a European judicial area in criminal matters which will rise to the challenge of crime which is increasingly focused on national frontiers.

The fight against transnational crime has recently been reinforced by the introduction of the European Public Prosecutor's Office and the new Eurojust Regulation, which extends the competencies and actions of this European agency, the object of which is more effective coordination and cooperation between the competent judicial authorities of Member States.

The future of our European judicial area will undoubtedly be dependent upon a deeper analysis of mechanisms for judicial operation, in the interests of improving both the speed and efficiency of these mechanisms. To this end, the recent Regulation on the mutual regulation of freezing orders and confiscation orders (Regulation n° 1805/2018 of the European Parliament and Council), was brought into force on 20th December 2020 and, in combination with the future Regulation concerning production and preservation orders associated with the acquisition of electronic evidence, will assume its full potential for the provision of an appropriate response to the ever-growing problem of cybercrime.

Finally, it should be observed that the pandemic has highlighted the necessity for the use of digital means for the transmission of requests for judicial cooperation within the European area and, in this connection, it is anticipated that, in the current year of 2021, operation of the new e-EDES platform will commence (in the context of the e-CODEX project) for the digital transmission of European investigation orders between competent authorities.

The future of the European judicial area in the civil sector

The key issue currently stirring the European judicial area, announced by the Commission in its Work Programme for 2021, is the proposal for new legislation governing the digitization of judicial cooperation procedures in civil, commercial and criminal matters.

A first step was taken as early as 2nd December 2020, with the adoption by the Commission of a Communication on this issue, in which it proposes a series of trans-frontier and national digitization measures, and in which it is proposed that consideration should be given to the modernization of the existing legislative framework for trans-frontier procedures, whilst simultaneously ensuring the maintenance of safeguards which are already in place.

We are already aware that the majority of data exchanges involving trans-frontier judicial cooperation still take place in hard copy form, which is source of delays and a lack of efficiency,

particularly during a pandemic in which it has been necessary for numerous proceedings, including trans-frontier proceedings, to be suspended, thereby depriving citizens and businesses of effective access to justice.

Thus, in the context of the e-CODEX, which is currently focused on a number of legal instruments, including limited quantity claims and monitoring processes, the European Commission is to launch an access point to e-Justice. The e-CODEX system will be the future platform for trans-frontier electronic communications. To this end, the long-term sustainability of this platform will need to be confirmed, in the light of its intended use for the acquisition of evidence and the notification of the transmission of documents, further to the recent Regulations nos. 2020/1784 and 2020/1783, in which decentralized IT systems are called upon to play a crucial role, not forgetting the use of e-CODEX in criminal matters, wherein the e-Evidence Digital Exchange System functions as a communication tool.

In certain practical areas, the European Commission continues to prepare for the implementation of the crucial Regulation n° 2019/111 concerning matters of parental responsibility and international child abduction, including the review of instruments in force in critical areas such as estates and support claims, and the promotion of the Hague Convention of 13th January 2000 for the international protection of adults, a subject on which the Commission is about to initiate a study of vulnerable adults which might generate an initiative in this area, probably in 2022.

ANNEX 9: Elements of comparative law in Italy – Responsibility and the protection of judges

Disciplinary breaches

The definition of a disciplinary breach on the part of a judge proceeds from Legislative Decree n° 109/2006 concerning "disciplinary offences by judges, associated sanctions and procedure". This legislative decree was enacted further to the legislative reform of the judicial system (Law n° 150/2005).

Disciplinary breaches are classified in three categories:

- those committed in the exercise of judicial functions (Article 2)

- those committed outside the exercise of said functions (Article 3)

- disciplinary breaches which are the consequence of another criminal offence (Article 4).

These texts define behaviours which are sanctioned.

This exhaustive list of sanctioned behaviours reflects the intent of the Berlusconi government to silence criticisms of the previous system. In practice, the former text provided by Article 18 of Legislative Decree n° 511/1946 concerning the "disciplinary liability" of judges resulted in problems of interpretation, on the grounds of its vague and imprecise nature.

Article 1, para 1 of Legislative Decree n° 109/2006 now lists the "duties of a judge". These are principles and values of professional ethics which judges are required to observed. These are principles which have previously been recognized and identified, whether doctrinally or in case law. Accordingly, this provision refers to the duties of impartiality, correctness, diligence, assiduity, discretion, fairness and respect for the dignity of the individual.

Article 2, para 2 states that activity for the interpretation of standards and the appraisal of circumstances and evidence can never constitute grounds for disciplinary liability.

Article 2 of Legislative Decree n° 109/2006 then describes 25 types of disciplinary breaches.

However, Article 3 of said Legislative Decree also describes 8 behaviours which are extraneous to the exercise of functions, to which reference may be made.

Finally, Article 4 describes disciplinary offences which are consequential to a criminal offence committed, establishing an automatic link between circumstances on the grounds of which a conviction for a wilful crime has been handed down and disciplinary action. However, in the case of crimes committed without intent, it is necessary to establish the particular gravity of the circumstances and consequences of the act concerned.

Disciplinary sanctions

Article 5 defines penalties according to the principle of "*tale crimen, talis poena*": accordingly, the six types of penalties are adapted to the type of offence concerned. These penalties are as follows: warning, censure, loss of years of service, temporary exclusion from the exercise of a management or intermediate management function, suspension from duties and dismissal. Transfer of office is an ancillary sanction.

By way of examples, two recent rulings concerning actions which compromise the image of judges are described below:

- the first of these, ruling n° 10/2017, established that the behaviour of a judge who instructed a payment for auxiliary judges, whose participation in the college was falsely reported, constitutes a breach which compromises the image of judges.

- in ruling n° 9/2017, it was adjudged that a judge who addressed offensive remarks to one of the parties was guilty of a breach which compromises the image of judges.

Procedure

Disciplinary procedure is jurisdictional, and falls within the competence of the Disciplinary Chamber of the CSM. The latter rules on the basis of the provisions of the Code of Criminal Proceedings, where these provisions are compatible.

This collegiate body is comprised of six members, including the Vice-President of the High Council for the Judiciary (CSM), who takes the chair. The other five members are elected by the CSM from amongst its peers, subject to certain conditions: one must be elected by Parliament, one must be a judge in a court of cassation, and the other three must be trial judges.

Disciplinary action is exercised, either mandatorily by the Prosecutor General to the Court of Cassation (in the event that breaches are referred thereto), or discretionarily by the Minister of Justice. Under the Italian judicial system, there is no entitlement for a litigant to file a case against a judge directly with a disciplinary authority. A party who is of view that their rights have been infringed by a disciplinary breach on the part of a judge may file a complaint with the Minister of Justice or with the Directorate General of Judges. The Prosecutor General has the authority to terminate a case without further action, if the alleged circumstance:

- does not constitute behaviour which is susceptible to disciplinary action;

- is the subject of an unsubstantiated accusation;

- does not fall within any of the categories for which the law provides;

- is non-existent, or has not been committed.

Termination without further action will be notified to the Minister of Justice. Within a term of 10 days of this notification, the latter will be entitled to request copies of the case documents and, within a term of 60 days, they may request that the Chair of the Disciplinary Chamber call an oral hearing, specifying the breach indicted; in any event, at this hearing, the functions of public prosecutor will be assumed by the Prosecutor General or their alternate.

Secondly, action must be brought within a term of one year with effect from the date upon which the Prosecutor General to the Court of Cassation has been notified of the case, further to the conduct of summary preliminary enquiries, or further to a substantiated accusation or the notification of the Minister of Justice.

The Prosecutor General will be required to formulate its motions within a term of two years with effect from the initiation of proceedings. The Disciplinary Chamber of the CSM will then have two years to issue a ruling. In any event, disciplinary action cannot be initiated if more than 10 years have elapsed since the act concerned was committed.

The judge at issue will be notified of the initiation of disciplinary action within a term of 30 days, and shall have the right to be assisted by a barrister, or by another judge. Thereafter, the Prosecutor General will conduct enquiries and formulate motions. The case will be referred to the Disciplinary Chamber of the CSM, who will be notified of the implication in question. If the Prosecutor General is of the view that the matter should be pursued, the breach concerned will be formulated, and a request filed for the setting of the date for an oral hearing.

Proceedings will be conducted at a public hearing. During this hearing, one of the members of the Disciplinary Chamber will read the report, and evidence will be examined. Further to the hearing of the parties, the Disciplinary Chamber will deliberate. An appeal may be filed with the combined Civil Chambers of the Court of Cassation by the Minister of Justice, the Prosecutor General and the judge at issue, but never by the litigant who is responsible for originating a complaint.

No filtering procedure for disciplinary proceedings is in place.

Special procedure: Article 36 of the CSM regulation

This involves procedural action for the protection of the independence and prestige of judges and the judicial function.

Para 1 of this article provides that interventions by the Council for the protection of individual judges or the judiciary as a whole are subject to a condition precedent for the existence of a behaviour which is prejudicial to the prestige and the independent exercise of jurisdiction, and which is liable to impair the correct operation or the credibility of the judicial function.

Requests for intervention by the CSM in this context will be submitted by the Chair of the Committee to the First Commission, who will verify conditions for the initiation of the corresponding procedure. If the Commission is of the view that the behaviour implicated is prejudicial to the prestige and the independent exercise of jurisdiction, and is liable to impair the correct operation or credibility of the jurisdictional function, it may elect to open a case and to proceed with the examination and formulation of a proposal for referral to the Council. The decision to open a case will be taken by the majority of members of the Commission.

If the case is not opened, the First Commission will propose the closure thereof. This proposal will be filed with the General Secretariat of the Council. The chairman, together with all the members of the administrative board, will be notified thereof forthwith, by means of a notification submitted to their institutional E-mail addresses. Ten days after the notification of filing, the proposal for closure will be deemed to have been definitively approved.

If, within ten days of the notification of filing, at least half the members of the Council file an application for the opening of the case, documents will be referred to the First Commission for discussion and the formulation of a proposal, which will be submitted to the Council for approval.

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Affectation actuelle	Current deployment
Avez-vous subi une atteinte personnelle dans ou à l'occasion de l'exercice de vos fonctions au cours des années 2018, 2019 et 2020?	Have you been subject to a personal attack during, or in conjunction with the exercise of your functions in 2018, 2019 or 2020
Oui	Yes
Non	No
Cette atteinte s'est-elle produite	Did this attack occur
dans votre poste actuel?	in your current post?
au sein de la juridiction?	in court?
à l'extérieur de la juridiction mais en lien avec l'exercice de vos fonctions?	outside court, but in conjunction with the exercise of your functions:
Profil des répondants	Profile of respondents
Ans	Years
Femme	Female
Homme	Male
Autres	Other

1/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Avez-vous subi une atteinte personnelle dans ou à l'occasion de l'exercice de vos fonctions	Have you been subject to a personal attack during, or in conjunction with the exercise of your functions
Oui	Yes
Non	No
Autres	Other
Femme	Female
Homme	Male
Ans	years

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Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Cette atteinte s'est-elle produite dans votre poste actuel?	Did this attack occur in your current post?
Ressort de cour d'appel de l'affectation actuelle	Jurisdiction of court of appeal of current deployment
Réponses effectives:	Effective responses:
Oui	Yes
Non	No
Ressort de cour d'appel dans laquelle l'atteinte s'est produite	Jurisdiction of court of appeal in which the attack occurred

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Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

De quel type d'atteinte s'agissait-il?	What type of attack was this?
De quel type d'infraction pénale s'agissait-il?	What type of criminal offence was this?
Infraction pénale	Criminal offence
Incident d'audience	Incident at a hearing
Autre	Other
Sentiment d'insécurité	Feeling of insecurity
Action civile abusive intentée à votre encontre	Spurious civil action brought against you
Réponses effectives	Effective responses
Outrage	Contempt
Destruction, dégradation, menaces	Disruption, degradation, threats
Diffamation, injure	Defamation, slander
Autre infraction pénale	Other criminal offence
Violences et menaces sur l'entourage	Violence and threats to entourage
Violences délictuelles	Culpable violence
Atteinte à l'autorité judiciaire par discrédit	Attack on judicial authority by way of discredit
Violences criminelles	Criminal violence

Key to mind map:

Discrimination	Discrimination
Nom	Name
Député	Member of parliament
À mon encontre	Against me
Diffamation	Defamation
Probité	Probity
Diffusion	Circulation
Attaque	Attack
Déposer	File
Dépôt	Filing
Aggression	Aggression
Diffuser	Circulate
Abusif	Improper
Hierarchique	Hierarchical
Internet	Internet
Personnel	Personal
Atteinte	Attack
Mise	Submission
Calomnieux	Untruthful
Médiatique	Media
Juridiction	Court
Harcèlement	Harassment
Justiciable	Litigant

Égard	Regard
À la suite de	Further to
Professional	Professional
Cause	Case
Action	Action
Réseau	Network
Mettre en cause	Implicate
Menace	Threat
Faire	Commit
Humiliation	Humiliation
Collègue	Colleague
Destabilisation	Destabilization
Courrier	Mail
Mail	E-mail
Pénal	Penal
Dossier	Case record
Nominatif	Nominative
Bureau	Office
De la part de	From
Propos	Statement
Injurieux	Insulting
Presse	Press
Avocat	Barrister
Plainte	Complaint
Social	Social
Insulte	Insult
Atteindre	Attack
Tentative	Attempt
Incident	Incident
À l’occasion	In conjunction with
Président	Presiding judge
Article de presse	Press article
Fonction	Function
Menacer	Threaten
Jugement	Judgement
Moral	Moral
Décision	Ruling
Adresser	Address
En qualité	In the capacity
Lors de	During
Décision de justice	Judicial ruling
Pression	Pressure
Csm	Csm
Chef	Head
Diffamatoire	Defamatory
Dans le cadre de	In the context of
Maltraitance	Mistreatment
Autorité	Authority
Intimidation	Intimidation
Atteindre	Attack
Parquet	Prosecutor’s office
Commentaire	Commentary
Hiérarchie	Hierarchy
Audience	Hearing
Juridictionnel	Jurisdictional
Disciplinaire	Disciplinary

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Pourriez-vous clarifier de quelle atteinte il s'agissait?	Could you clarify what type of attack was involved?
Réponses effectives:	Effective responses:

Key to mind map:

Pénal	Penal
Corrrectionnel	Correctional
De la part de	By
Social	Social
Indiquer	Indicate
Dossier	Case record
Adresser	Submit
À l'occasion	In conjunction with
Agir	Act
Deux	Two
Pouvoir	Authority
Collègue	Colleague
Bureau	Office
Courrier	Mail
Tribunal	Tribunal
Juridiction	Court
Devoir	Duty
Demander	Request
Prendre	Take
Violence	Violence
Insulte	Insult
Menace	Threat
Personnel	Personal
Comportement	Behaviour
Egalement	Also
Connaître	Examine
Décision	Ruling
Incident	Incident
Outrageant	Contemptuous
Procédure	Procedure
Public	Public
Judiciable	Litigant
Audience	Hearing
Magistrat	Judge
Alors que	Whereas
Détenu	Held
Individu	Individual
Nom	Name
Fonction	Function
Personne	Person
Situation	Situation
Parquet	Prosecutor's office
Prévenu	Alerted
Examen	Examination
Attaque	Attack
Affaire	Affair
Cause	Case
Juge	Judge

Avocat	Barrister
Fait	Circumstance
Outrage	Contempt
Menace de mort	Death threat
Condamné	Convict
Enfant	Child
Menacer	Threaten
Mécontent	Complainant
Au cours de	During
Proférer	Proffer
Dire	State
Justiciable	Litigant
Réseau	Network

5/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Lorsque vous avez subi une atteinte dans ou à l'occasion de l'exercice de vos fonctions, étiez-vous en poste:	When you sustained an attack during, or in conjunction with the exercise of your functions, were you in service:
Au siège penal	In a criminal court
Au parquet	In a prosecutor's office
Au siège civil	In a civil court
Au siège	In court
Au siège spécialisé	In a specialized court
Pôle civil de la protection	Civil protection office
Qui en était l'auteur?	Who committed the attack?
Un justiciable	A litigant
Un auxiliaire de justice	An auxiliary officer of justice
Les médias	The media
Autre	Other
Formation à juge unique	Single-judge formation
Formation collégiale	Collegiate formation
Cette atteinte a-t-elle été opérée en utilisant les réseaux sociaux?	Was this attack conducted using social media?
Non	No
Pourcentage	Percentage

6/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Avez-vous déposé plainte?	Did you file a complaint?
Pour quelle raison n'avez-vous pas déposé plainte?	For what reason did you not file a complaint?
Réponses effectives:	Effective responses:
Oui	Yes
Non	No
Type d'atteinte	Type of attack
Infraction pénale	Criminal offence
Incident d'audience	Incident at a hearing
Autre	Other
Sentiment d'insécurité	Feeling of insecurity
Action civile abusive intentée à votre encontre	Spurious civil action brought against you
Auteur	Originator
Un justiciable	A litigant
Un auxiliaire de justice	An auxiliary judicial officer
Les médias	The media
Autre	Other

Key to mind map:

Problème	Problem
Intéressé	Interested party
Caractériser	Characterize
Considérer	Consider
Charge	Charge
Chef	Head
Juridiction	Court
Incident	Incident
Audience	Hearing
Difficile	Difficult
Démarche	Procedure
Auteur	Originator
Propos	Statement
Relever	Record
Par ailleurs	Additionally
Sentiment	Sentiment
Pouvoir	Authority
Procédure	Proceedings
Enquête	Enquiry
Deposer plainte	File a complaint
Plainte	Complaint
Psychiatrique	Psychiatric
Objet	Object
Dossier	Case record
Procureur	Prosecutor
Engager	Appoint
Attaque	Attack
Estimer	Appraise
Paraître	Appear
Rapport	Report
Situation	Situation
Agir	Act
Pénal	Penal

Audience	Hearing
Magistrat	Judge
Déposer	File
Envenimer	Inflame
Lors de	During
Devoir	Duty
Poursuite	Pursuit
En cours	In progress
Prendre	Take
Souhaiter	Intend
Risque	Risk
Menace	Threat
Suite	Consequence
Condamné	Convict
Infraction	Offence
Hiérarchie	Hierarchy
Absence	Absence
Peine	Penalty
Temps	Time
Sembler	Appear
Sens	Purpose
Parquet	Prosecutor’s office
Atteinte	Attack
Personne	Person
Eviter	Avoid
Réaction	Reaction
Outrage	Contempt
Collègue	Colleague
Transmettre	Submit
Juridiction	Court
Incident	Incident
Insulte	Insult
Poursuivre	Pursue
Parce que	Because
Trouble	Disturbance
Individu	Individual
Necéssaire	Necessary
Fonction	Function
Judiciable	Litigant
Article	Article
Enfant	Child
Mineur	Minor
Egalement	Also
Affaire	Case
Volonté	Intent
Dépôt	Filing
Plainte	Complaint
Dans le cadre de	In the context of
Atteindre	Attack
Diligenter	Examine
Utile	Appropriate

7/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May2021

Avez-vous solicité un ou des soutiens?	Did you seek support from one or more sources?
Ces soutiens vous paraissent-ils perfectibles?	In your opinion, are these sources of support in need of improvement?
Oui	Yes
De votre chef de juridiction	From your chief judicial officer
De vos collègues	From your colleagues
De votre chef de cour	From your head of court
D'une organisation syndicale	From a trade union organization
De la DSJ – pôle protection fonctionnelle	From the DSJ (judicial services division) – functional protection office
D'un avocat	From a barrister
Autre	Other
Quelles devraient être les améliorations à y apporter, notamment dans le domaine de la protection fonctionnelle?	What improvements need to be made, particularly in the field of functional protection?
Réponses effectives:	Effective responses:

Key to mind map:

Systématique	Systematic
Sécurité	Security
Apparaître	Appear
Judiciaire	Judicial
Comportement	Behaviour
Jamais	Never
Donner	Provide
Poursuite	Pursuit
Président	Presiding judge
Matière	Substance
Informer	Inform
Passer	Pass
Exercise	Exercise
Demande	Petition
Difficile	Difficult
Signaler	Indicate
Suite	Consequence
Cas	Case
Meilleur	Best
Mise	Submission
Menace	Threat
Décision	Ruling
Sembler	Appear
Fonction	Function
Sentir	Perceive
Prendre	Take
Permettre	Permit
Parfois	Sometimes
Information	Information
Objet	Object
Service	Service
Falloir	Require
Protection	Protection
DSJ	DSJ (judicial services division)
Police	Police

Justice	Justice
Réponse	Response
Attaque	Attack
Souvent	Frequent
Temps	Time
Rapport	Report
Partie	Party
Soutenir	Support
Justiciable	Litigant
Psychologique	Psychological
Question	Question
Cause	Case
Pénal	Penal
Demander	Petition
Outrage	Contempt
Bénéficier	Benefit
Magistrat	Judge
Fait	Circumstance
Agir	Act
CSM	CSM (high council for the judiciary)
Incident	Incident
Devoir	Duty
Réaction	Reaction
Grand	Major
Dossier	Case record
Alors que	Whereas
Sentir	Perceive
Prendre	Take
Permettre	Permit
Fonctionnel	Functional
Public	Public
Possibilité	Possibility
Nécessaire	Necessary
Collègue	Colleague
Démarche	Procedure
Juridiction	Court
Personne	Person
Attaquer	Attack
Auteur	Originator
Bureau	Office
Recevoir	Admit
Seul	Single
Chef	Head
Situation	Situation
Faire	Act
Cour	Court
Audience	Hearing
Aller	Go
En cas de	In the event of
Procédure	Proceedings
Exister	Exist
Place	Location
Savoir	Knowledge
Institution	Institution
Lien	Link
Difficulté	Difficulty

8/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Au-delà de votre situation personnelle de magistrat, avez-vous été témoin d'une atteinte portée à d'autres personnels de la direction des services judiciaires?	Leaving aside your personal situation as a judge, have you been the witness of an attack on other personnel involved in the management of judicial services?
Oui	Yes
De quel ordre était cette atteinte?	What was the nature of this attack?
Réponses effectives:	Effective responses

Key to mind map:

Tentative	Attempt
Institution	Institution
Notamment	Specifically
Fonction	Function
Comportement	Behaviour
Auxiliaire de justice	Auxiliary judicial officer
Atteint	Attack
Presse	Press
Atteindre	Attack
Personne	Person
Président	Presiding judge
Pénal	Penal
Courrier	Mail
Moral	Moral
Lors de	During
Physique	Physical
Menace de mort	Death threat
Enfant	Child
Témoin	Witness
Prise à partie	Lodging of claim
Juge	Judge
Avocat	Barrister
Avis	Opinion
Magistrat	Judge
Justiciable	Litigant
Tribunal	Tribunal
Dans le cadre de	In the context of
Victime	Victim
Menacer	Threaten
Prévenu	Alerted
Correctionnel	Correctional
Incident critique	Critical incident
Mettre	Place
Parquet	Prosecutor's office
Propos	Statement
Impartialité	Impartiality
Intimidation	Intimidation
Atteinte	Attack
Outrage	Contempt
Cause	Case
Média	Media
Juger	Judge
À l'égard de	With respect to
Personnel	Personal

Porter	File
Menaçant	Threatening
Bureau	Office
Pouvoir	Authority
Social	Social
Greffier	Registrar
Attaque	Attack
Nombreux	Numerous
Affaire	Affair
Mettre en cause	Implicate
Réseau	Network
Verbal	Verbal
Injure	Insult
Fait	Circumstance
Audience	Hearing
Mise	Submission
Faire	Act
Insulte	Slander
Harcélement	Harassment
Public	Public
Parfois	Sometimes
Cabinet	Chambers
Egalement	Equally
En cause	In question
Décision	Ruling
Fonctionnaire	Civil servant
De la part de	By
Service	Service
Agression	Aggression
Pression	Pressure
Judiciaire	Judicial
Juridiction	Court
Agressif	Aggressive
Agir	Act
Plainte	Complaint
Greffe	Registry
Chef	Head
Dossier	Case record
À l'encontre	Against
Justice	Justice
Acceuil	Reception

9/10

Population studied: **Total sample**
Size of sample: 2,390 responses
High Council of the Judiciary **Survey on the protection of judges** April/May 2021

Quelles sont vos autres suggestions pour améliorer la protection des magistrats?	Do you have any other suggestions for improving the protection of judges?
Réponses effectives:	Effective responses:

Key to mind map:

Comprendre	Understand
Salle d'audience	Courtroom
Travail	Work
Mise … Cause	Implicate
Professionnel	Professional
Information	Information
Penser	Believe
Sembler	Appear
Formation	Training
Améliorer	Improve
Parfois	Sometimes
Agression	Aggression
Hiérarchie	Hierarchy
Moyen	Means
Systématique	Systematic
Difficulté	Difficulty
Menace	Threat
Temps	Time
Donner	Confer
Social	Social
Communication	Communication
Exister	Exist
Situation	Situation
Juridiction	Court
Décision	Ruling
Social	Social
Falloir	Require
Public	Public
Judiciaire	Judicial
Dossier	Case record
Réseau	Network
Fait	Circumstance
Assurer	Ensure
Justice	Justice
Bureau	Office
Rendre	Hand down
Renforcer	Reinforce
Meilleur	Improved
Cas	Case
Audience	Hearing
Avocat	Barrister
Pouvoir	Authority
Devoir	Duty
Droit	Right
Fonction	Function
Personne	Person
Juge	Judge
Souvent	Frequently

Risque	Risk
Juge	Judge
Mieux	Better
Personne	Person
Presse	Press
Absence	Absence
Nécessaire	Necessary
Fonctionnel	Functional
Avocat	Barrister
Cas	Case
Mettre	Submit
Présence	Presence
Tribunal	Tribunal
Atteinte	Attack
Média	Media
Indépendance	Independence
Sécurité	Security
Politique	Political
Justiciable	Litigant
Csm	CSM (high council for the judiciary)
Personnel	Personal
Grand	Major
Permettre	Permit
Collègue	Colleague
Respect	Respect
Afin de	In order to
Prévoir	Foresee
Savoir	Knowledge
Recevoir	Admit
Attaque	Attack
Procédure	Procedure
Réponse	Response
Physique	Physical
Agent	Agent
Chef … Juridiction	Chief judicial officer
Protection	Protection
Sécuriser	Secure
Chef	Head
Magistrat	Judge
Juridiction	Court
Accès	Access
Cour	Court
Non	No
Seul	Single
Eviter	Avoid
Incident	Incident
Poursuite	Pursuit
Parquet	Prosecutor’s office
Comportement	Behaviour
Victime	Victim
Exercer	Exercise
Chef … Cour	Head of court
Manière	Manner

10/10