

Global Judicial Integrity Network

Substantive Breakout Session Report

I. TITLE OF THE SESSION:

Title of the Session:	Transparency and how to demystify the work of courts
Date and time of the Session:	Monday, 9 April 2018 14:00 – 15:15
Topic of the session:	Judicial transparency as a tool to prevent corruption
Organizer(s):	Council of Europe (GRECO, Venice Commission, CCJE)
Contact information of the session coordinator:	Laura SANZ-LEVIA Groups of States against Corruption (GRECO), Council of Europe laura.sanz-levia@coe.int

II. RAPPORTEURS¹

Rapporteur:	Simona GRANATA-MENGHINI
Position:	Deputy Secretary
Organization:	Venice Commission, Council of Europe

Rapporteur:	Laura SANZ-LEVIA
Position:	Senior Legal Advisor
Organization:	GRECO

III. MODERATOR AND PANELLISTS:

Moderator:	Christophe GRABENWARTER
Position:	1. Vice-President 2.Member
Organization:	1. Constitutional Court of Austria 2. Venice Commission

PANELLISTS

Name:	Sheridan GREENLAND
Position:	Executive Director
Organization:	Judicial College, Judicial Office, United Kingdom. GRECO evaluator.

¹ Responsible for drafting the session report.

Topic of presentation:	How to enhance judicial commitment to integrity and public confidence in judicial decisions
Outline of presentation (max. 1000 characters):	Presentation of good practice in the UK including training on “Business of Judging” (a two-day seminar to help judges improve their judicial skills by practising them and learning from judges who sit in other jurisdictions; the modules deal <i>inter alia</i> with ethical and other problems that confront judges inside and outside the court or tribunal), “Open Days”, “Judges in Schools”, mock trials competitions (inter schools competitions run on a National scale using local courts to act out court scenes), etc.

Name:	Gerhard KURAS
Position:	Presiding Judge
Organization:	Supreme Court of Austria
Topic of presentation:	Many aspects, one aim: ensure and improve the acceptance of judicial decisions
Outline of presentation (max. 1000 characters):	Presentation of good practice in Austria through two concrete tools: legal information system, an internet database open to the public and which provides <i>inter alia</i> access to summaries of the legal reasoning of Supreme Court decisions since 1945 (over 130,000 files). Open courts. Role of lay judges in improving the acceptance of judicial decisions (labour law). Proactive ways for courts to reach out to the public: does the contact with universities and the observance of jurisprudence (legal literature) improve the acceptance of judicial decisions. Law professors and students as key judicial stakeholders, possible ways to integrate their views and work in the system (access of young academics to Supreme Court for research tasks).

Name:	Jose IGREJA MATOS
Position:	Judge
Organization:	Court of Appeal of Oporto. GRECO evaluator.
Topic of presentation:	Helping to demolish a myth – enlightening a justice to be seen
Outline of presentation (max. 1000 characters):	Judicial decisions. How to criticise them? The present trend of disrespectful criticism on judicial decisions. Where to draw the red line? Restraining improper, non-objective or solely politically motivated public criticism of individual judges and their judgments (red lines). Judicial independence as a paramount principle to integrity, transparency in decision-making in relation to judicial career processes. How to support independent judges in concrete circumstances in which the pressure from governments or from management bodies within the judicial career is leading to disputable ethical behaviour. The principles of internal independence and sub-judice.

Name:	Artashes MELIKYAN
Position:	Co-Secretary of the Consultative Council of European Judges (CCJE) and Consultative Council of European Prosecutors (CCPE)



Organization:	Council of Europe
Topic of presentation:	An institutional approach towards integrity
Outline of presentation (max. 1000 characters):	<p>Relations between judges and media: finding the right balance – what to report and what not to. The right of the public to information as a fundamental principle resulting from Article 10 of the European Convention on Human Rights (ECHR). The case law of the European Court of Human Rights and freedom of media enjoying a special status where other matters of public concern are at stake, and the role of media as a public watchdog. Respect of rights protected by Articles 6 and 8 of the ECHR. Fundamental importance of public confidence in the justice, therefore judges must be protected against destructive attacks lacking any factual basis.</p> <p>Impartiality of judges and the role of codes of ethics and conduct: 1) they help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence; 2) they inform the public about the standards of conduct it is entitled to expect from judges, and they contribute to give the public assurance that justice is administered independently and impartially. The role of court presidents as guardians of judicial impartiality: <i>primus inter pares</i>.</p>

IV. BACKGROUND INFORMATION ON THE TOPIC:

Transparency is required under the Rule of law in a number of areas pertaining to the judiciary, notably in the procedures of appointment of judges and members of the judicial councils and in the evaluation and disciplinary procedures of judges; it is also important in the management of court systems, especially in the allocation of cases. Transparency enhances the accountability of the judiciary. In a time of increased citizens’ scrutiny over public life, judges need to be accountable too; however, in a number of countries, this is quickly translated into political control over the judiciary.

V. SUMMARY OF THE SESSION:

The panel particularly focused on judicial transparency as a valuable tool to enhance accountability, as well as the necessary support to judges in their daily routines to meet expected ethical standards in difficult or complicated situations. The panel took the shape of an informal and semi-structured panel discussion. To ensure that the panel’s focus was on interactive discussion and exchanges of ideas, lengthy speeches or presentations were strongly discouraged. The questions and challenges identified by both the panellists and the audience are gathered later under Section VIII of the present report on Conclusions.

Key questions – indicative list:

- Open justice: transparent decision-making processes, the limits of openness: the rights of the parties and the need to preserve the intellectual freedom of the judge.
 - Open doors, access to documents and cause lists, digitalisation of the court system.
 - Communicating judicial decisions effectively.
 - Fighting stereotypes and building an inclusive community.

- Judicial conduct: added value of codes of conduct and their embedment in daily practice, dealing appropriately with ethical questions that confront judges inside and outside of court
 - Case studies: extra-judicial activities not casting reasonable doubt on a judge's capacity to act impartially and the effect that requirement has on a judge's speaking, writing, and teaching, including limiting statements on controversial or political issues, criticism of lawyers, expressions of bias and prejudice, and appearing before certain audiences.
 - Institutional support to deal with individual ethical dilemmas: training, counselling and advisory channels.
- Outreach and public communication: public scrutiny and how to deal with criticism, striking a balance between confidentiality of procedures and public access to information, shielding the judiciary from undue interference and attacks from other State bodies.
 - Communication policy of the judiciary, helping media provide competent, fair news coverage that can foster understanding of the work of the courts and building public support for the judiciary.
 - Individual and collective responses: the role of the judge, media officials/ spokes persons at court, judicial councils, judicial associations, other.
 - Judicial education.

VI. HOW THE SESSION SUPPORTS THE OVERALL OBJECTIVE OF THE GLOBAL JUDICIAL INTEGRITY NETWORK OF STRENGTHENING JUDICIAL INTEGRITY AND PREVENTING CORRUPTION IN THE JUSTICE SYSTEM:

The Council of Europe panel was intended to add to the Global Judicial Integrity Network's knowledge base, notably, by encouraging anyone interested in corruption prevention to learn more about the ways and means by which the judiciary should work to maintain the integrity of the public function it performs. It was also meant to aid judicial actors themselves by identifying trends and practices that will strengthen their capacity to prevent corruption among their ranks, with particular reference to the value of transparency in this respect.

VII. PROPOSED OUTCOME(S) OF THE SESSION AND THEIR ACHIEVEMENT:

The participants in the session were provided with both a broader context building on the notion of judicial transparency, as well as concrete examples on how individual jurisdictions are addressing this topic. Drawing on the discussions of the podium, as well as on the interaction with the audience, the session helped to identify emerging challenges faced by judicial professionals in present days, as well as demands from civil society on further improvements, and possible/innovative approaches to both of those.

VIII. CONCLUSIONS OF THE SESSION AND RECOMMENDATIONS TO THE GLOBAL JUDICIAL INTEGRITY NETWORK:

The two aspects of transparency of judicial work which directly stem from the standards are the publicity of the hearing and the publication of judicial decisions (Article 6, European Convention on Human Rights; Article 14, International Covenant on Civil and Political Rights).



Most European countries have taken steps to improve access to information on court management and respect an open court system. However, there is still room for improvement where courts' failures to publish in a timely way, or provide enough relevant information, undermine the purpose of such measures to allow public oversight and meaningful contribution. There is in any event a wealth of information and good practice in the Council of Europe regional area which can be of assistance for other parts of the world.

- Network to explore array of examples of good practice already in use regarding open justice, experience exchange.
 - Particular challenges regarding timeliness, completeness, accessibility and comprehensibility of information provided (including on case details – with due respect for privacy rights, procedural tracking until final judgement, existence of compendia of jurisprudence per topic or summaries of case-law, how to deal with the use of new technologies in the court room, etc.).

The notion of judicial transparency is however broader. In addition to public access to courts and to legal decisions (which serve the purpose of legal certainty), judicial transparency also applies to, and is increasingly focussed on, information about the manner in which the judicial function is actually performed and stretches to the conduct of individual judges. Judicial codes, drafted by the judiciary itself and made publicly available, provide guidance as to the basic principles of judicial ethics. Such a broad approach to transparency is multi-purpose: it informs and educates the public, enhances judicial accountability, deters misconduct and offers important assurance that justice has been done. The judiciary should therefore reach out to the public. This does not mean, however, that individual judges should engage in detailed interaction with the press or with the public on matters concerning them personally or the decisions prepared by them. Judges, unlike politicians, have a duty of restraint. This duty is essential for an impartial judiciary and for the principle of presumption of innocence.

However, the judges' duty of restraint needs to be coupled with the duty of State authorities, politicians and the press to respect the judiciary and individual judges as members of the judiciary. Judges should therefore be guaranteed certain conditions, of an institutionalised nature, to shield them from unjustified attacks, be those internal or external. With respect to the latter, restraint must be exercised by the legislature and the executive, and institutional channels must be developed to ensure that neither the independence of an individual judge, nor that of the entire judicial system is compromised. Institutional boundaries must be firmly drawn within the government to allow greater independence for the judiciary to conduct its work. Attacks on the judiciary from authorities within the executive or legislative branches not only undermine the credibility of the judicial branch, but also erode the vitality and legitimacy of the legal system as a whole. It is thus paramount to ensure that members of the executive and the legislature respect the authority of the judiciary and abstain from improper, non-objective or solely politically-motivated public criticism of individual judges and their judgements, as well as of the judiciary in general.

Transparency is a guarantee for the public (justice must not only be done, it must be seen to be done). It is also a guarantee for the judiciary: it shields judges from indirect interference in their work. For example, a transparent system of allocation of cases may help a court president resist pressure from the executive in relation to prominent cases.



Innovative approaches to these different dimensions and multifaceted interests are desirable and possible (under development in a number of jurisdictions).

- Network to explore array of examples of good practice already in use regarding dedicated judicial communication policies, judicial education (for judges, for primary, secondary and tertiary students), community activities.
- Network to provide guidance and technical assistance outlets regarding outreach activities of the judiciary.
 - Particular challenges relate to the issuance of codes of conduct that are conceived as living documents for the profession (and thus take into account contemporary challenges, e.g. use of social media, diversity), ethical training, communication guidelines, development of practice and structures that ensure a “safe environment” allowing judges to question themselves and to respond to society, but also not exposing them to undue pressure or influence, role of court presidents.

IX. RESOURCES:

[GRECO Study on Corruption prevention for members of Parliament, judges and prosecutors. Conclusions and Trends \(2017\).](#)

[GRECO Fourth Round Evaluation and Compliance Reports \(2012-ongoing\).](#)

[Opinion No. 3 \(2002\) of the CCJE on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality.](#)

[Opinion No.7 \(2005\) of the CCJE on justice and society.](#)

[Opinion No.10 \(2007\) of the CCJE on the council for the judiciary at the service of society.](#)

[Opinion No.11 \(2008\) of the CCJE on the quality of judicial decisions.](#)

[Opinion No. 19 \(2016\) of the CCJE on the role of court presidents.](#)

[Rule of Law Checklist, Venice Commission \(2016\).](#)

[Report on the Independence of the Judicial System Part I: The Independence of Judges, Venice Commission, \(2010\), CDL-AD\(2010\)004.](#)

[Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, Venice Commission, \(2010\) CDL-AD\(2010\)040.](#)

[Judicial Appointments, Venice Commission, \(2007\) CDL-AD\(2007\)028.](#)

[Compilation of Venice Commission Opinions and Reports concerning Courts and Judges \(2015\).](#)

[Compilation of Venice Commission Opinions and Reports concerning Prosecutors \(2018\), CDL-PI\(2018\)001.](#)