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ENSURING THE INDEPENDENCE OF THE CONSTITUTIONAL COURT

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ENSURING THE INDEPENDENCE OF THE CONSTITUTIONAL COURT

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Independence is an essential dimension of justice. Alexander Hamilton, one of the US Constitution "Fathers", wrote in the paper Federalist No. 78 that in a separation of powers state the Executive branch has the sword, the Legislative branch has the purse, so for the Judiciary branch only the independence is left.

After so many years, this is a comment that can reasonably be accommodated to the situation of the modern constitutional courts[1] too, irrespective if they, pursuant to various national constitutional systems, formally belong or do not belong to the judiciary branch *stricto sensu*. As the Venice Commission remarks, "The separation between Constitutional Court and the ordinary judiciary probably represents the most widespread model in Europe. On the other hand, a court exercising a power of constitutional review might be considered a part of the judiciary even though it may have a power of review over other courts. However, this seems to be primarily a dogmatic question of classification rather than having a practical effect, provided that the Constitutional Court receives the fundamental guarantees for its independence and respect for its authority which should be afforded to the highest judicial organ. In this respect it is to be welcomed that the revised draft speaks about judges rather than 'members' of the Constitutional Court as was the case in the previous draft."[2]

Separation of powers is not an end in itself, nor is it a simple tool for legal or political scientists. It is a basic principle in every democratic society that serves other purposes such as freedom, legality of state acts – and independence of certain organs which exercise power delegated to them by a specific constitutional rule.

Therefore, while the independence of the CC is one of the objectives of the separation of powers principle, the independence is its result. The reverse aspect is that the independence of CCs is a precondition for the separation of powers. Independence enables CCs to effectively control the respect for the separation of powers.

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[1] Hereinafter, "**CC**" or "**CCs**", as the case may be.

[2] CDL-AD(2005)005 Opinion on Draft Constitutional Amendments relating to the Reform of the Judiciary in Georgia, paragraph14.

As the Venice Commission emphasized, "While the basic requirements for judicial independence are the same for both ordinary and constitutional court judges, the latter must be protected from any attempt of political influence due to their position, which is particularly exposed to criticism and pressure from other state powers. Therefore, constitutional court judges are in need of special guarantees for their independence [...]."[3]

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At the European and international level there exist a large number of texts on the independence of the judiciary, which are relevant - *mutatis mutandis* - the CCs too.

Thus, at European level, the right to an independent and impartial tribunal is first of all guaranteed by Article 6 of the European Convention on Human Rights *("1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...").* The case-law of the Court sheds light on a number of important aspects of judicial independence but, by its very nature, does not approach the issue in a systematic way.

Apart from the European Convention on Human Rights, the most authoritative text on the independence of the judiciary at the European level is Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges.

The most comprehensive text is Opinion No. 1 of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges.

Another Council of Europe text is the European Charter on the Statute of Judges, which was approved at a multilateral meeting organized by the Directorate of Legal Affairs of the Council of Europe in Strasbourg in July 1998.

The Venice Commission's "Report on the independence of the judicial system. Part I: The independence of judges" (adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010) (CDL-AD(2010)004) is of great importance.

Based on Article 10 of the Universal Declaration of Human Rights *("Everyone is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"),* there are also a number of UN standards on the independence of the judiciary, in particular the "Basic Principles on the Independence of the Judiciary" endorsed by the United Nations General Assembly in 1985 and the Bangalore "Principles of Judicial Conduct" of 2002. These standards often coincide with the Council of Europe standards but usually do not go beyond them.

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[3]CDL-AD(2008)029 "Opinion on the Draft Laws amending and supplementing (1) the Law on Constitutional Proceedings and (2) the Law on the Constitutional Court of Kyrgyzstan", paragraph 14.

"The independence of the judiciary can be seen as having two forms: institutional and individual independence. Institutional independence refers to the separation of powers in the state and the ability of the judiciary to act free of any pressure from either the legislature or the executive. Individual independence pertains to the ability of individual judges to decide cases in the absence of any political or other pressure."[4]

The independence of the CC can be seen as having two forms: **institutional independence** and **individual independence**. Institutional independence refers to the separation of powers in the state and the ability of the CC to act free of any pressure from either the legislature or the executive (external institutional independence); the relationship between courts within the same judicial system should also be taken into account (internal institutional independence). Individual independence pertains to the ability of individual judges of the CC to decide cases in the absence of any political or other pressure.

A. THE INDEPENDENCE OF THE CONSTITUTIONAL COURT AS AN INSTITUTION

1. Enshrinement of the principle of independence of the CC

The UN Basic Principles on the Independence of the Judiciary of 1985 state that "the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws."

An explicit statement of the principle of independence of the CC contributes to the fundamental guarantee of the rule of law, democracy and respect for human rights in a country.

2. The powers of the CC and their limits

Legislative branch sets up the CC court by laws (including Constitution, as the case may be), which establish its authority, composition, operations, guarantees of the specific activity. Therefore, it establishes the legal basis for the performance of the control of constitutionality. The way how such legal basis is shaped can influence the independence of the CC.

Ideally, all rules regarding the CC should be established by Constitution, so the legislative power could not attempt to weaken by laws the CC powers (including its independence). Of course, this ideal is not technically possible. Still, the most important rules regarding the CC must be provided by the Constitution itself.

First of all, the explicit statement (principle) regarding the independence of the CC should be laid down primarily in the body of the Constitution. Other constitutional texts have to deal at least with the main issues regarding powers, composition, appointment, incompatibilities and tenure.

Also, in respect of powers, the independence of the CC is better protected if all its powers are established exclusively by Constitution itself. A list of powers which contains a final end-open

[4] CDL-AD(2012)014 Opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina, paragraph 7.

constitutional provision (for instance: "plus other duties to be stipulated by future laws passed by the Parliament") can be sometimes used to influence/weaken the independence of the CC.

On another note, in those national legal systems which acknowledge the existence of distinct types of laws passed by the Parliament, the independence of the CC is better protected if the Constitution provides that in respect of the CC the Parliament can adopt exclusively the type of laws for which higher constitutional requirements are necessary to be met (for instance, the so named "organic" laws, for whose adoption the quorum and/or the number of necessary votes are higher).

As a general remark, it is obvious that when a CC is provided by the Constitution or by its organic law with stronger powers, it can easier enjoy independence.

3. Determination of its own jurisdiction

It is elementary that in a rule of law system any CC must observe strictly its powers specifically provided by the Constitution and its organic law, which cannot be exceeded or supplemented on its own. But this obligation of the CC does not deny the power of the CC to be the only one which determines its own jurisdiction in a case.

4. Scope of binding laws

The independence of the CC can not operate without observing the principle that, in performing their duties and considering the case, the judges of the CC shall be bound only by the Constitution and its organic law. Of course, the judges are bound as any other citizens by the other laws in force which do not regulate the performance of their duties when considering a case (for instance, laws on road traffic).

5. Financial autonomy

The CC should be independent in financial matters. It must be granted sufficient funds to properly carry out its functions and must have a role in deciding how these funds are administered.[5]

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[5] Opinion No. 2 of the Consultative Council of European Judges (CCJE) on the funding and management of courts (https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2001)OP2&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3) provides as follows:

> *"5. The CCJE agreed that although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence. [...]*
> *10. Although the CCJE cannot ignore the economic disparities between countries, the development of appropriate funding for courts requires greater involvement by the courts themselves in the process of drawing up the budget. The CCJE agreed that it was therefore important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.*

CCs have their own budget, which is integral part of the State budget approved by the Legislature. The financial resources of the Courts consist in the funds transferred by the State on a yearly basis. In most of the cases, the draft budget of CCs is determined by them and submitted to the executive authority to include it in the draft general budget law, and then submitted to the endorsement of the law-making authority. There are also cases when the draft budget prepared by the Court is sent or directly presented to the law-maker.[6]

However the real nature of the financial autonomy of CC is questionable sometimes, taking into account that in several countries the executive authority can intervene on the draft budget submitted by the CC. There are differences among the states in connection with this point.[7]

Some national laws set forth the participation of the representatives of CC in Parliamentary debates concerning the budget (for instance, Cyprus, Montenegro, Poland, Turkey).

In the same context, there are some countries which have established the rule that the resources which are annually allocated for the activities of the CC should not be reduced as compared to budgetary appropriations for the previous fiscal year (*i.e.*, Azerbaijan, Georgia, the Russian Federation).

A further component of the constitutional courts' financial autonomy is independence in terms of managing the funds allocated through their budget, within the limit of endorsed budgetary appropriations and, in general, while keeping with the destination of such appropriations.

As to changing the amount of endorsed funds, such may take place during the year within the budgetary correction procedure. In principle, following the endorsement of the budget by law,

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11. One form which this active judicial involvement in drawing up the budget could take would be to give the independent authority responsible for managing the judiciary – in countries where such an authority exists – a co-ordinating role in preparing requests for court funding, and to make this body Parliament's direct contact for evaluating the needs of the courts. It is desirable for a body representing all the courts to be responsible for submitting budget requests to Parliament or one ofits special committees."

[6] In Belgium, according to a customary rule derived from an agreement between the Chamber of Representatives and the Constitutional Court, the latter determines its budget and, on that basis, it shall submit its appropriations application directly to the Chamber of Representatives, whereas it shall also notify it to the minister for budgetary affairs. In Switzerland as well, the Swiss Federal Supreme Court determines its own budget, and presents it to the competent parliamentary committees and in the plenary of the Parliament. The Ministry of Justice is not at all involved.

[7] For instance, in Estonia, the reasonableness and advisability of the budget is negotiated between representatives of the Ministry of Finance and the Supreme Court (which comprises the Constitutional Review Chamber). Following the negotiations, the Ministry of Finance draws up the draft state budget and submits it to the Parliament via the Government. In the budget negotiations with the officials of the Ministry of Finance the Supreme Court is represented by the Director of the Supreme Court, and in negotiations with the members of the Government and the Parliament by the Chief Justice. Upon amendment or omission of amounts allocated to the Supreme Court in the draft state budget, the Government shall present the amendments with justification therefore in the explanatory memorandum to the draft State budget aimed at the Parliament.
In Germany, the Ministry of Finance is not required to accept all estimates presented by the Court. In the event that the estimates of the Federal Constitutional Court are derogated from, the initial submissions are still forwarded to the further deciding authorities, ultimately to the Parliament.

the appropriations of the CC cannot be decreased any longer. However, such a possibility is provided in some countries where the appropriations may be reviewed if the State goes through a severe economic and financial situation.

CCs draw up reports concerning the execution of their budgets, which are submitted to the Minister of Finance, respectively, to the Parliament and are subject to inspection by the Courts of Accounts.[8]

6. Amendments by the Parliament of the organic law of the CC

As a general rule, the organization and functioning of the CC is governed by law, *i.e.* an act adopted by the legislative branch - that can be amended without consultation of the CC, in the sense there is no regulation to oblige the law-maker to do so. This is a consequence arising from the general principle of separation of powers, but it could be used in order to weaken the independence of the CC.

Nonetheless, in very few cases specific regulations exist, either concerning an obligation to send the amending draft law to the Constitutional Court (Czech Republic), or that the President of the Constitutional Court has the possibility to attend and speak in the parliamentary session (Hungary).[9]

7. Enforcement of the decisions of the CC as guarantee of independence

An important issue in order to identify the independence and effectiveness of the CCs is whether the execution of their decisions is dependent on other branches of the government.

In most cases, the CC decisions are final, i.e. they can not be appealed, and are generally binding *ex law*, without the intervention of other authorities.[10]

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[8] There is a particularity regarding the Constitutional Court of Italy, whose expenses are under the control of its internal bodies, in full autonomy, without any type of external interferences, including for purposes of audit or control.

[9] Thus, in the Czech Republic, a draft statute or substantive outline thereof shall be given to the Constitutional Court, the Supreme Court, and the Supreme Administrative Court, if it concerns them as organizational components of the state, or their competence, or the procedural rules that govern them, so that the Constitutional Court is always in a position to comment on a potential amendment to the Act on the Constitutional Court. However, its comments are just recommendations and consultations, and the Constitutional Court does not have a veto in the process. In the event of a draft statute (or amendment) submitted by a subject other than the government, the Constitutional Court is not legally entitled to make comments, though the proponent of the statute or amendment may ask for its opinion, as may Parliament during discussions.

[10] V.Z. Puskas, B. Karoly, "Enforcement of the Constitutional Court Decisions", – Part III of the General Report "Constitutional Justice: Functions and Relationship with the other Public Authorities", the XVth Congress of the Conference of European Constitutional Courts (http://www.confeuconstco.org/).

B. THE INDEPENDENCE OF THE JUDGES OF THE CONSTITUTIONAL COURT

Individual judicial independence refers to the independence enjoyed by individual judges in carrying out their professional duties. Judges must be independent and impartial. This requirement is an integral part of the fundamental democratic principle of the separation of powers: judges should not be subject to political influence and the judiciary should always be impartial. It contains many aspects, out of which the following are of particular importance.

1. Appointment of judges

The way how the composition of the CC is set up can be a factor of influence regarding the performance of its duties. The selection of judges and their promotion must be based on merit (professional qualifications, personal integrity).

This is particularly of interest when the appointment is made by the Parliament or the executive branch (the Government and/or the Head of the State).[11]

1.1. The Parliament's role in appointment

There are various systems in this respect:

a) Parliament has exclusive power to appoint judges to the Constitutional Court[12];

b) Parliament appoints part of the judges to the Constitutional Court[13];

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[11] See T. Toader. M. Safta, "The Constitutional Court's Relationship to Parliament and Government" – Part I of the General Report "Constitutional Justice: Functions and Relationship with the other Public Authorities", the XVth Congress of the Conference of European Constitutional Courts (http://www.confeuconstco.org/).

[12] Thus, in Germany, all constitutional judges are appointed by the Parliament. Half of the justices of a chamber are elected by the Bundestag, whereas the other half – by the Bundesrat. In Switzerland, the federal Parliament elects the judges of the Swiss Federal Supreme Court, based on proposal by the Judicial Committee. In Poland, the fifteen constitutional judges are individually appointed for a nine-year term of office, by the first Chamber of Parliament. In Hungary, the eleven constitutional justices are elected by the Parliament. In Croatia, all thirteen justices are elected by the Parliament. In Montenegro, the Constitutional Court judges are appointed by the Parliament. In Lithuania, all justices of the Constitutional Court are appointed by the institution of legislature – the Seimas.

[13] In France, all nine members of the Constitutional Council are appointed for a nine-year term of office, three of them being appointed every other third year. Upon each renewal, one appointment is made by the President of the Republic, the president of the National Assembly, and the president of the Senate. In Latvia, of the seven judges of the Constitutional Court validated by the Parliament, three are proposed by at least ten members of the Parliament. In the Republic of Moldova, two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy. In Portugal, the Parliament appoints ten out of the thirteen judges. In Romania, three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania. It can be noted that the Legislative appoints two thirds of the constitutional judges, while the Executive, through the intermediary of the President of Romania, another third of their total number. In Spain, of the twelve constitutional judges, four are appointed by the Congress of Deputies and four by the Senate. In Armenia, the National Assembly appoints five of the nine members of the Constitutional Court. In Belarus, of the twelve constitutional judges, the Council of the Republic (one of the Houses of Parliament) elects six and gives consent to the appointment of the Chairperson of the Constitutional Court; the other six are appointed by the

c) Parliament appoints constitutional judges based on proposal by the Head of State[14];
d) Parliament makes proposals to the Head of the State with respect to the appointment of judges to the Constitutional Court[15];
e) Parliament gives its consent in connection with proposals of the Head of State concerning the appointment of judges to the Constitutional Court[16];
f) Parliament does not participate in the appointment of judges to the Constitutional Court.[17]

1.2. The Government's role in the appointment
There are various systems in this respect too:
a) Government has exclusive power to appoint judges to the Constitutional Court[18];
b) Government appoints part of the judges to the Constitutional Court[19];
c) Government makes proposals for the appointment of judges to the Constitutional Court[20].

President of the Republic. In Turkey, three of the seventeen justices of the Constitutional Court are elected by the Turkish Grand National Assembly, while the others are selected by the President of the Republic from different sources (members of the judiciary and high public officials).

[14] In Russia, the judges of the Constitutional Court are appointed by the Federation Council by secret ballot, upon the submission of the President of the Russian Federation. In Slovenia, judges at the Constitutional Court are elected by the National Assembly, by secret ballot and with a majority vote of all Deputies, on the proposal by the President of the Republic. In Azerbaijan, the appointment of Constitutional Court judges is made by the Parliament, based on recommendation by the President of the Republic.

[15] In Austria, the constitutional judges are appointed by the Federal President who, however, is bound by the recommendations made by the other constitutional bodies. Consequently, of the fourteen constitutional judges, three are appointed upon recommendation by the National Council (the House of Parliament elected through a direct vote based on a proportional system), and three more members are appointed on proposal by the Federal Council (the Parliamentary Chamber appointed indirectly which represents the Länder of Austria). In Belgium, all twelve judges of the Constitutional Court are appointed by the King based on a list that is alternatively presented to him by the House of Representatives and the Senate. Usually, the King shall appoint the person who ranks first on the list of that House. It appears that appointment as a judge is made in reality not by the King, but either by the Deputies or the Senators. Since parliamentary assemblies practically apply the principle of proportionality in the appointment of judges, the Court's composition will reflect the composition of the assemblies. Hence, a candidate's prospects to come up on the list depend on whether he/she enjoys support from the political group(s) to which the respective position may actually go.

[16] In Albania, the members of the Constitutional Court are appointed by the President of the Republic, with consent given from the Assembly. In the Czech Republic, the Constitutional Court judges are appointed by the President of the Republic, based on consent of the Senate.

[17] In Luxembourg, Parliament is not involved in the procedure of appointment of judges, the same in Ireland, whose Parliament has no direct role in the appointment of justices to the Supreme Court. Nor does in Cyprus, where the President of the Republic makes the appointment of judges to the Supreme Court – in whose jurisdiction fall proceedings of constitutional reviews. But the President will also seek the Court's opinion, and usually keeps to it. In Malta, according to Article 96 of the Constitution, The President of Malta appoints all members of the Judiciary on the advice of the Prime Minister.

[18] In Ireland, for instance, the Cabinet has exclusive competence to nominate candidates as constitutional judges. After having selected a candidate for nomination, the Cabinet recommends the nominee to the President, and the President formally appoints the candidate. In Norway, Parliament does not take part in the appointment of judges. Judges are appointed by the King-in-council.

[19] In Spain, of the twelve constitutional judges, two are appointed by the Government.

[20] As already shown, in Austria, constitutional justices are appointed by the Federal President who, however, is bound by the recommendations from the other constitutional bodies. Thus, of the fourteen constitutional justices, the President, the Vice-President and six judges are appointed based on proposal by the Federal Government. In

As far as the appointment of the President of the CC is concerned, the Venice Commission position is the following: "The fact that the Constitutional Court's president is elected by a political actor and not the Court itself is a widely accepted phenomenon. Nevertheless, the election of the President by the Court itself is, of course, preferable from the perspective of the independence of the court."[21]

2. Term of office. Security of tenure

In its documents[22], the Venice Commission favours long, non-renewable terms or at most one possible re-election. The non-renewability even further increases the independence of a CC judge.

Principle I.3 of Recommendation (94)12 provides that "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of the term of office."

In Europe, in the majority of countries, a constitutional judge cannot be dismissed by the appointing authority. As an exception, revocation is possible in special instances.[23]

Latvia, of the seven justices of the Constitutional Court who are to be validated by the Parliament, two are proposed by the Cabinet of Ministers. In Denmark judges are formally appointed by the Queen via the Ministry of Justice, but the Minister acts upon recommendation from the Council for the Appointment of Judges.

[21] CDL-AD(2008)029 "Opinion on the Draft Laws amending and supplementing (1) the Law on Constitutional Proceedings and (2) the Law on the Constitutional Court of Kyrgyzstan", paragraph 8.

[22] For instance, CDL-STD(1997)020 "The composition of constitutional courts".

[23] In Albania, after being appointed, the judge of the Constitutional Court can be removed only by the Assembly by two-thirds of all its members. In Armenia, the National Assembly by a majority vote of the total number of Deputies, or – as the case may be - the President of the Republic, in the cases and procedures prescribed by Law, can terminate the powers of any of its appointees to the Constitutional Court, on the basis of the conclusion of the Constitutional Court. In Azerbaijan, the provisions under article 128 of the Constitution define the basis and procedure for the dismissal of the Constitutional Court judges. Should a judge commit an offence, the President of the Republic, based on conclusions of Supreme Court, may make statement in Milli Mejlis (Parliament) of the Republic of Azerbaijan with the initiative to dismiss judges from office. Respective conclusions of Supreme Court must be presented to the President of the Republic within 30 days after his request. Decision on dismissal of judges of Constitutional Court is taken by Milli Mejlis. In Belarus, the President is empowered under the Constitution to dismiss the Chairperson and judges of the Constitutional Court on the grounds provided by law with notification of the Council of the Republic. In accordance with article 124 of the Code on Judicial System and Status of Judges, the said powers can also be terminated by the President if a judge voluntary applies for resignation or dismissal, or the Constitutional Court submits for the termination of the powers on the grounds provided in the named Code (notably, appointment to another office or transfer to another position) with notification of the Council of the Republic. Hence the Constitutional Court submission shall be adopted by a majority vote of the full composition of the judges thereof. If the Constitutional Court submits for the termination of the judge powers due to gross violations of his duties, commission of an act incompatible with public service, such submission shall be adopted by no less than a two thirds majority vote of the full composition of judges. In Russia, the termination of powers of a judge of the Constitutional Court of the Russian Federation shall be effected by the Federation Council, upon submission of the Constitutional Court.

The Venice Commission stated that "Disciplinary rules for judges and rules for their dismissal should involve a binding vote by the court itself. Any rules for dismissal of judges and the president of the court should be very restrictive."[24]

3. Immunity

In this respect, the general position of the Venice Commission is the following: "It is indisputable that judges have to be protected against undue external influence. To this end they should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes)."[25]

4. Incompatibility

"Moreover, judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges."[26]

"As other individuals, judges enjoy an array of human rights, yet some of these rights (freedom of association, freedom of expression, etc.) are of special importance to them as these rights help in ensuring their individual independence. On the other hand, certain fundamental rights are somewhat limited for judges: for instance, freedom of expression is limited by the duty of confidentiality, which forms a part of the principle of impartiality."[27]

5. Remuneration

"A level of remuneration should be guaranteed to judges which corresponds to the dignity of their office and the scope of their duties. [...]
Bonuses and non-financial benefits for judges, the distribution of which involves a discretionary element, should be phased out."[28]

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[24] CDL-STD(1997)020 "The composition of constitutional courts".
[25] CDL-AD(2010)004 "Report on the independence of the judicial system. Part I: The independence of judges", paragraph 61.
[26] CDL-AD(2010)004 "Report on the independence of the judicial system. Part I: The independence of judges", paragraph 62.
[27] CDL-AD(2012)014 "Opinion on legal certainty and the independence of the judiciary in Bosnia and Herzegovina", paragraph 7.
[28] CDL-AD(2010)004 "Report on the independence of the judicial system. Part I: The independence of judges", paragraph 82(7)(8).