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**Submission to the report on disciplinary, civil and criminal liability of judges**

**International Commission of Jurists**

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The International Commission of Jurists (ICJ) is pleased to provide this submission in response to a call for input by the UN Special Rapporteur on the Independence of Judges and Lawyers, for information on disciplinary, civil and criminal liability of judges.

# ICJ Practitioners Guide no 13 on Judicial Accountability

The ICJ addressed in detail international standards and best practices in relation to relevant mechanisms and processes in its 2016 publication, *ICJ Practitioners’ Guide no. 13: Judicial Accountability*, available here: <https://www.icj.org/wp-content/uploads/2016/06/Universal-PG-13-Judicial-Accountability-Publications-Reports-Practitioners-Guide-2016-ENG.pdf>

This submission supplements the content of Practitioners Guide no 13 with additional information about the situation in Europe and Central Asia, and the Middle East North Africa regions.

# Europe and Central Asia

The ICJ has repeatedly expressed concerns about the **number of judges that have been subject to disciplinary proceedings** in several countries of Europe and Central Asia, as a strategy to undermine their independence and impartiality. Many of the sanctions were **not previously established by law** or were imposed through a procedure that did **not meet the procedural requirements** established by law. Furthermore, the ICJ has repeatedly reported **other measures** different than disciplinary proceedings that have been used to interfere with the independence of judges, including transfers to different courts or other forms of coercion or pressure. In this contribution, the ICJ provides evidence of such practice obtained during its work on the Russian Federation, Poland, Hungary, Serbia and Turkey.

In the **Russian Federation**, the security of tenure of judges is not sufficient and is particularly undermined though dismissals on arbitrary grounds which may jeopardise the independence of the judiciary.[[1]](#footnote-1) During its missions to the Russian Federation, the ICJ heard from a number of former and sitting judges as well as from experts that the number of dismissals of judges in the Russian Federation each year is unusually large by comparison with other States.[[2]](#footnote-2) On average, some 40 to 50 judges are dismissed each year following disciplinary proceedings.[[3]](#footnote-3) It should be noted that the impact of disciplinary action goes far beyond the specific judges dismissed: the ICJ has received reports of many cases of arbitrary warnings and frequent instances of pressure on judges to resign under the threat of disciplinary proceedings, which may further undermine judges’ ability to administer judges in an independent manner.[[4]](#footnote-4)

For instance, Judge Olga Kudeshkina was dismissed from her judicial position following critical statements she made concerning the pressure to which she had been subjected. She was said to have “*undermined public confidence that the judiciary in Russia are independent and impartial; consequently, many citizens were led to believe, erroneously, that all judges in this country are unprincipled, biased and venal, that in exercising their functions they only pursue their own mercenary ends or other selfish goals and interests*”.[[5]](#footnote-5) Despite the decision of the European Court of Human Rights in her favour, she has not been reinstated as a judge. This decision was appealed to the Supreme Court, which also rejected her reinstatement.

According to the procedure, it is the Court President who makes a recommendation for the termination of a judge’s functions on a disciplinary basis and after an initial investigation stage, the Qualification Collegium of Judges holds a session where the relevant material and evidence are to be considered.[[6]](#footnote-6) In this regard, concerns over the significant powers of court presidents, their impartiality and objectivity were expressed on multiple occasions.[[7]](#footnote-7) Even if it is qualification collegiums that eventual consider dismissals of judges, they are dependent and highly influenced by court presidents, that in practice are said to be the ones who often take the decision.[[8]](#footnote-8) Besides, court presidents, who submitted the motion for disciplinary action against the judge, can further influence the process by attending disciplinary hearings.[[9]](#footnote-9) It was also reported that the dismissal procedure is often a mere formality while actual decisions are taken within the bureaucracy and not at the disciplinary hearings.[[10]](#footnote-10) Moreover, recent amendments to the Constitution proposed by the President of the Russian Federation to the Federal Assembly (Upper Chamber of the Parliament) might jeopardize the independence of the Constitutional Court, the Supreme Court and other appeals and cassation courts’ independence, since dismissal of judges of these courts would no longer require initiation and even decision by the judiciary.[[11]](#footnote-11)

The ICJ has been consistently informed that the process of promotions is largely based on the loyalty of judges and political sensitivity, while independent and principled judges have lesser chances to be promoted or appointed as court presidents.[[12]](#footnote-12) Among the measures used to interference in judges’ independence, ranging from manipulation of promotions or benefits to applying direct pressure on judges, “telephone justice” has been systematically denounced. In fact, judges were said to be often directly instructed on how to resolve a case. The ICJ’s interlocutors also stressed the fact that as judges are aware of the expectations of a particular outcome in a case over which they preside, there is often no need to give direct instructions. When such expectations are not met, a judicial decision may be overturned or not implemented and the judge may face discipline as a result of having issued an “erroneous” decision.[[13]](#footnote-13) One dismissed judge was genuinely surprised at the mission’s “ignorance” about the de facto obligation of judges to receive instructions on certain cases from court presidents.[[14]](#footnote-14) The mission was told that there has been an increase of telephone justice and a broadening of other means of exerting influence upon judges. The practice of the president directing instructions as to the expected outcome of cases is said to be routine.[[15]](#footnote-15) Furthermore, the process of assignment of cases can also interfere with judges’ independence. Indeed, Court Presidents can also abuse their power: it has been reported to the ICJ that the power of Court Presidents to assign cases has been abused on occasion to create a situation where a judge is overburdened with cases and, therefore, may be subject to disciplinary proceedings for delay.[[16]](#footnote-16)

It should be noted that important reforms in the **Russian Federation** have been put in place, including the abolition of the three-year probationary period for new judges and the introduction of random allocation of cases in some courts.[[17]](#footnote-17) The ICJ has also welcomed the introduction of the statute of limitations for an alleged judicial misconduct which lead to a disciplinary sanction against a judge, including a termination of judicial office. In practice, this lead to situations where judges faced risk of dismissal or discipline throughout their career for any possible misconduct regardless of when it happened and if judges could effectively present any evidence in their defence. The procedure was modified to require that disciplinary action must be taken within two years of the time of the alleged misconduct or six months from the moment the misconduct became known, provided that this knowledge is attained within two years of the alleged misconduct.[[18]](#footnote-18)

In the same vein, the ICJ has reported several cases of unjustified disciplinary proceedings initiated against judges in **Poland**, including Krystian Markiewicz, Chairperson of the Polish Judges’ Association “Iustitia”. Krystian Markiewicz was a judge of the District Court in Katowice and had repeatedly spoken in public debates on the state of the rule of law in Poland, openly criticising the lack of judicial independence.[[19]](#footnote-19) Judge Krystian Markiewicz received on several occasions summons to appear as a witness in the framework of disciplinary proceedings initiated against other judges, accused of organising and posting on social network entries which violated the rules of professional ethics.[[20]](#footnote-20) Having rejected to appear on these summons, that he considered to lack the minimum guarantees of impartiality, judge Markiewicz was accused of violating the dignity of the office. [[21]](#footnote-21) He was finally charged with 55 charges of disciplinary misconduct, including disrespect for Poland’s legal order by questioning the independence and legality of the National Council of the Judiciary and the constitutionality of the Disciplinary Chamber of the Supreme Court, as well as calling for appeals to the Disciplinary Chamber to be suspended.[[22]](#footnote-22) The disciplinary action against Judge Markiewicz came within a week of the decision to suspend with immediate effect district Judge Pawel Juszczyszyn, who, in presiding over an appeal, questioned the impartiality of the judge who had delivered the original verdict as a result of being elected by the National Council for the Judiciary.[[23]](#footnote-23) Judge Pawel Juszczyszyn was in charge of assessing the legal status of the National Council of the Judiciary for the application of the CJEU judgement of 19 November 2019. His findings met with the immediate reaction of the disciplinary system that accused him of committing an offence of abuse of power by assessing the legality of the election of members of the National Council of the Judiciary.[[24]](#footnote-24) On 4 February 2020, the Disciplinary Chamber decided to suspend him in official duties with a reduction of the remuneration of 40% for the duration of his suspension.[[25]](#footnote-25) Moreover, the ICJ has also condemned the forced retirement of 27 out of 72 judges of the Supreme Court of Poland, including the President of the Court, Malgorzata Gersdorf, which constituted an arbitrary and disguised dismissal of judges gravely undermining the independence of the judiciary.[[26]](#footnote-26)

In recent years, the independence of the judiciary in **Poland** has been systematically undermined including with the 2018 Law on the Supreme Court that have sought to force the dismissal of judges by lowering the mandatory retirement age.[[27]](#footnote-27) The proceeding of dismissal is also highly politized since members of the Disciplinary Chamber of the Supreme Court are selected by the National Council of the Judiciary, the majority members of which are selected by the Polish Parliament.[[28]](#footnote-28) In fact, in October 2019, the European Commission referred Poland to the CJEU on the grounds that the disciplinary regime for judges undermined their independence[[29]](#footnote-29); and the CJEU held that lowering the retirement age of judges of the Supreme Court providing discretionary power to the President to allow a judge to remain in office was contrary to the principle of effective judicial protection.[[30]](#footnote-30) It also held that lowering the pension age of Polish judges giving the power to maintain them in office to the Minister of Judice was a violation of the independence of the judiciary.[[31]](#footnote-31) Despite the ICJ call on the Polish Parliament to drop a draft law that would put judges at risk of disciplinary action, since it foresaw disciplinary penalties for legitimate criticism of judicial reforms, such as questioning the status of Polish judges and “political engagement” [[32]](#footnote-32); on 23 January 2020 the Polish House of Representatives passed the amendments to the laws of the judiciary, effectively implementing the changes. The ICJ has firmly criticized the law.[[33]](#footnote-33)

In this context, it is worth mentioning that 3 April 2019, the European Commission launched infringement proceedings against Poland for the new disciplinary system; and, subsequently, on 10 October 2019, it launched a complaint against Poland on the same grounds, considering that the Disciplinary Chamber attached to the Supreme Court does not fulfil the requirements of independence and impartiality. Recently, the 8 April 2020, the Court of Justice of the European Union granted the Commission’s application for interim measures against Poland (C-791/19 R), immediately suspending the application of the provisions on the law granting powers to the Disciplinary Chamber of the Supreme Court.[[34]](#footnote-34) The Court’s decision has exposed the lack of independence of the Disciplinary Chamber, that is selected by the new National Council of the Judiciary, confirming the criticisms put forward by the same judges that suffered from dismissal on the basis of the same declarations. However, Poland’s officials have responded suggesting they might not follow the court’s order, to the extent that Sebastian Kaleta, a deputy justice minister, has stated that “*no power to evaluate or suspend constitutional organs of any member states*” was given to the European Court.[[35]](#footnote-35)

Among additional measures used in **Poland** to impact the independence of the judiciary different than disciplinary proceedings, the ICJ has identified the procedures for appointment of judges. Indeed, the appointment procedure has been brought under political control through the re-structing the National Council of the Judiciary (NCJ), with a majority of its members selected by the Polish Parliament.[[36]](#footnote-36) Assigning concrete cases to specific judges might be also an avenue for ensuring a certain ruling in the matter.

Furthermore, concerning **Serbia,** the ICJ manifests as well its concern regarding disciplinary procedures, for which offences are not sufficiently defined and transparency is not fully ensured.[[37]](#footnote-37) The ICJ is concerned by the existence of disciplinary charges against judges that have been speaking freely about the challenges faced by the judiciary, particularly in the public debate about the amendments proposed to the Constitution in September 2019, that included new grounds for dismissal of judges.[[38]](#footnote-38) Among the grounds, “*if a judge performed the judicial functions incompetently*” was incorporated, which amounts to an extremely vague provision.[[39]](#footnote-39) However, following the Opinion issued by the Venice Commission on this matter[[40]](#footnote-40), the Serbian authorities introduced a number of positive changes clarifying the meaning of this provision. The amendments have not yet been adopted as they are awaiting for a confirmatory referendum to be held in 2020.[[41]](#footnote-41) The European Commission has recently called Serbia to strengthen the independence of the judiciary and the autonomy of the prosecution, including through amendments to constitutional and legislative provisions related to disciplinary proceedings of judges, a recommendation that it had also done in 2018.[[42]](#footnote-42) Regarding the legal basis, during its 2015 mission, the ICJ was further concerned at the importance given to unsatisfactory marks in evaluations as a ground for dismissal of judges, specially taking into consideration that the system of evaluations is mainly based on quantitative data.[[43]](#footnote-43) Concerning procedural guarantees, although the ICJ mission was informed that affected persons could file criminal complaints under a criminal offence of judicial abuse of power in cases of dismissal, it was repeatedly told that almost all the complaints are dismissed by the public prosecutor who is supposed to investigate them. In fact, it was reported as the criminal offence with the highest dismissal rate.[[44]](#footnote-44) In addition, the ICJ has expressed concern from a systematic point of view, that the High Judicial Council did not have an established and codified procedure for protection of judges from attacks to their independence.[[45]](#footnote-45) In the ICJ’s visit to Serbia in 2015, the mission identified shortcomings in the High Judicial Council and the State Prosecutorial Council, bodies in charge of the self-governance of the judiciary and the prosecution service, including lack of effective procedures of evaluation of the work of judges, misuse of such procedures to impose conformity in decisions, a strong hierarchical system in practice in the judiciary undermining internal independence and appointment, selection and dismissal procedures open to direct and indirect political influence.[[46]](#footnote-46) Furthermore, the ICJ has expressed concerns as to the involvement of the National Assembly in the appointment and dismissal of judges.[[47]](#footnote-47)

The ICJ has also expressed concerns about the situation of the independence of the judiciary in **Turkey.** With regard to the procedure of dismissal, although international law requires dismissal procedures to be conducted through a fair hearing before an independent authority, the ICJ expressed in its 2018 report *Justice Suspended* that, within the current constitutional framework, the Council of Judges and Prosecutors is not provided with the guarantees necessary to ensure its institutional independence.[[48]](#footnote-48)

The ICJ has observed that the summary and mass dismissal of around 30 percent of active judges and prosecutors in **Turkey** following the attempted coup, and the mass arrest of judges, have weakened the justice system, frequently based in imprecise, unclear or vague allegations of association with the organization FETÖ/PDY.[[49]](#footnote-49) In fact, on 4 August 2016, the Constitutional Court dismissed two of its members, Alparslan Altan and Erdal Tercan, after they had been taken into custody, under orders of the Ankara Chief's Public Prosecutor's Office of 16 July 2016 purportedly to prevent their fleeing the country or absconding.[[50]](#footnote-50) The arrest warrant was confirmed by the Ankara Magistrate's Judge on 20 July 2016 that authorized their detention on remand and charged them with "being a member of an armed terrorist organization".[[51]](#footnote-51) Moreover, five members of the High Council of Judges and Prosecutors, Mustafa Kemal Özçelik, Kerim Tosun, Şaban Işık, Ahmet Berberoğlu and Mahmut Şen, were dismissed from their position by the Plenary of this institution on 16 July 2016[[52]](#footnote-52) for lack of one of the entry requirements, i.e. not being investigated or prosecuted for an offences sanctioned with more than three months of imprisonment.[[53]](#footnote-53) The then High Council of Judges and Prosecutors subsequently proceeded to dismiss 4,279 judges and prosecutors as an "exceptional measure" because "*retaining in office members of the judiciary, who are linked to the FETÖ/PDY, which is responsible for the coup attempt on 15/07/2016 conflicts first and foremost with the independence and impartiality of the judiciary*”.[[54]](#footnote-54)

Despite the state of emergency being lifted in July 2018, the extraordinary powers given to the Council of Judges and Prosecutors were extended for 3 years by Law no. 7145. In fact, on 10 January 2019, the Council of Judges and Prosecutors made use for the first time of the special powers to dismiss judges without complying with the ordinary procedure, invoking extraordinary powers enacted by the law. The Turkey’s Council of Judges and Prosecutors dismissed 17 judges and prosecutors on 10 January 2019, based on the allegation of membership or connections with FETÖ.[[55]](#footnote-55)

The ICJ has also manifested that the conviction of the former head of the judges’ organization Yarsav, Mr Murat Arslan, seems to have been in violation of the right to a fair trial in the proceedings. Recently, the ICJ together with the International Bar Association’s Human Rights Institute has urged the Turkish Council of Judges and Prosecutors to stop the disciplinary proceedings against the three judges of the Istanbul 30th Heavy Penal Court who had acquitted the defendants in the Gezi Park trial, which appears to be a direct interference with their independence with chilling effect on all members of the judiciary.[[56]](#footnote-56)

Besides, among different measures used in **Turkey** to affect judges’ independence, it appears that many judges that do not follow or favour the Government in their decisions are transferred against their will. The ICJ has expressed concerns that these transfers were being applied as a hidden form of disciplinary sanctions and as a way to marginalise judges. This practice has been occurring for the past years, as confirmed by the European Commission in April 2018 and the latest ICJ report about Turkey in 2018.[[57]](#footnote-57)

Problematic practice of disciplinary proceedings has been also reported in **Hungary**, where the ICJ has called the Hungarian authorities to desist from instigating disciplinary proceedings threatened against Judge Csaba Vasvári, a judge of the Central District Court of Pest and a member of the Hungarian National Judicial Council, as a consequence of his request for a preliminary reference to the Court of Justice of the European Union precisely on the issue of judicial independence.[[58]](#footnote-58) The ICJ has also intervened before the European Court of Human Rights in the case of Baka v. Hungary, regarding the dismissal of the former Supreme Court President of Hungary András Baka, that has held that the removal from office violated the European Convention on Human Rights.[[59]](#footnote-59)

Moreover, regarding the situation in **Moldova**, although the ICJ has welcomed the reforms of the disciplinary system of judges, it is still particularly concerned by some of the grounds of dismissal. *Inter alia*, the ground of dismissal of issuing a decision contrary to fundamental rights because the disciplinary proceedings could be triggered even before a final decision by the last instance court is issued and may constitute undue pressure on the internal independence of appellate judges. Furthermore, the ICJ has expressed its concern about the ground of dismissal after two negative evaluations or a failed evaluation, since disciplinary proceedings should be only linked to disciplinary offences provided by international standards, and not evaluation assessments.[[60]](#footnote-60) Of particular concern is the fact that judges may be subject to criminal prosecution for issuing an “unlawful judgement”. The criminal prosecution for this offence, even if subject to the authorisation by the Supreme Council of the Magistracy, until recently was practically always allowed by this body. Whenever a judge was prosecuted under this offence, a disciplinary proceeding will begin in parallel as it occurs whenever judges are subject to a criminal prosecution.[[61]](#footnote-61) Furthermore, regarding the procedural guarantees, the ICJ has reported that there are some concerns amongst judges that the Ministry of Justice and the Prosecutor’s office have an inappropriate role in initiating disciplinary proceedings.

Finally, instances of problematic disciplinary proceedings against judges and flaws in the legal basis and procedures have been also reported in **Tajikistan**. Concretely, the grounds for disciplinary responsibility appear to be overly general and vague, including the ground of committing an offense discrediting the image of the judiciary, the honour and dignity of a judge or a violation of the Ethic Code of Judges.[[62]](#footnote-62) The lack of precision of the grounds and the correlation of breaches of professional standards with disciplinary sanctions, may contradict the requirements of legal certainty and predictability. The ICJ’s attention was specifically drawn to the ground of dismissal of a judge based on violations of the law on regulation of traditions, celebrations and rites, a ground for termination of office introduced with the adoption of the law in 2007.[[63]](#footnote-63) It is particularly problematic that the Law on Courts makes a reference to the violation of the Law on Traditions, including provisions which may not meet the principle of the quality of law.[[64]](#footnote-64)

Furthermore, disciplinary bodies in **Tajikistan** are, in many instances, weak, and the operation of these mechanisms is not prescribed by law.[[65]](#footnote-65) In addition, the internal documents upon which they are organised and operate are not publicly available, reason why the ICJ has expressed concerns about the unexpected problem of accessibility of the documents regulating disciplinary procedure. The ICJ has manifested particular concerns about accessibility to the work of the Judicial Unit, the body in charge of carrying out an enquiry into the work of the judge concerned, including visits to the court where the judge works, interviewing the judge and others as well as examining decisions of the judge and other relevant documents.[[66]](#footnote-66) Moreover, the law does not fully disciplinary proceedings from criminal or administrative offence proceedings and one may follow the other.[[67]](#footnote-67) This appears to be problematic, since the conflation of these proceedings might put judicial independence at risk. In particular, the ICJ was informed of a consistent practice of suspending judicial status when initiating a criminal case against a judge. In a number of cases, although the criminal charges were removed, the judge was never reinstated in his or her judicial status**.**[[68]](#footnote-68)Despite these flaws, the ICJ has observed that judges do not appear to be often dismissed, which points to a certain level of security of tenure in practice.[[69]](#footnote-69)

Besides disciplinary proceedings, the ICJ has learned about other measures used in **Tajikistan** to interfere with judges’ independence. Although according to the law transfer of a judge from one court to another is only allowed with his or her consent, it seems that the voluntary nature of the consent does not exist in practice. Judges are often transferred to a remote locality without necessarily consent of the judge. In fact, the ICJ mission heard that transfers may be done without providing proper housing, under the threat of disciplinary sanctions and even deprivation of status of the judge.[[70]](#footnote-70)

# Middle East North Africa

For relevant information from the Middle East North Africa region, please see the following sources:

**Egypt**

Disciplinary framework & procedure

ICJ report: [Egypt’s Judiciary: A Tool of Repression *Lack of Effective Guarantees of Independence and Accountability*](https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf) Pages 91-94 and 101-104

Individual cases

The July 2013 Statement Case. See briefing note at: <https://www.icj.org/egypt-reinstate-judges-that-have-been-arbitrarily-removed-from-office-in-the-july-2013-statement-case/>

As well as:

<https://www.icj.org/egypt-authorities-must-end-actions-against-independent-judges/>

<https://www.icj.org/egypt-sustained-attacks-against-judges-must-stop/>

<https://www.icj.org/egypt-arbitrary-and-unfair-removal-of-judges-must-be-reversed/>

**Morocco**

Disciplinary framework & procedure

ICJ report [Reforming the Judiciary in Morocco](https://www.icj.org/wp-content/uploads/2013/12/Morocco-Judiciary-final-20-11-13light.pdf) Pages : 35-41

Morocco: [The Draft Organic Law on the Statute for Judges and International Law and Standards on the Independence of the Judiciary](https://www.icj.org/wp-content/uploads/2015/06/Morocco-Memo-on-Statute-for-Judges-Advocacy-Briefing-paper-2015-ENG.pdf) Pages 5-7

Individual cases

<https://www.icj.org/morocco-end-disciplinary-proceedings-against-judges/>

<https://www.icj.org/morocco-arbitrary-dismissal-of-judge-al-haini-must-be-reversed/>

**Tunisia**

Disciplinary framework & procedure

ICJ briefing: [Judicial Conduct and the Development of a Code of Ethics in Light of International Standards](https://www.icj.org/wp-content/uploads/2019/11/Tunisia-Code-of-Ethics-Advocacy-Analysis-Brief-2016-ENG.pdf) Pages 13-22

ICJ report : [The Independence and Accountability of the Tunisian Judicial System](https://www.icj.org/wp-content/uploads/2014/05/Tunisia-Strengthen-Judicial-Independence-Report-2014-ENG.pdf) Pages 37-50

Individual cases

<https://www.icj.org/executive-control-over-judiciary-persists-in-tunisia/>

**Libya**

Disciplinary framework & procedure, including individual cases

[Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality](https://www.icj.org/wp-content/uploads/2016/07/Libya-Challenges-the-Judiciary-Publications-Reports-Thematic-report-2016-ENG.pdf) Pages 53-63

**Lebanon**

Disciplinary framework & procedure

ICJ briefing : [Judicial Accountability in Lebanon](https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-re-accountability-Advocacy-Analysis-Brief-2017-ENG.pdf)

1. See International Commission of Jurists, “Russian Federation: Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers”, 2014; International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010; International Commission of Jurists, “The State of the Judiciary in Russia”, 2010. [↑](#footnote-ref-1)
2. International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010, p. 10. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. International Commission of Jurists, “The State of the Judiciary in Russia”, 2010, p. 17. [↑](#footnote-ref-5)
6. International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010, p. 33-43. [↑](#footnote-ref-6)
7. Ibid, p. 19. [↑](#footnote-ref-7)
8. Ibid, p. 13. [↑](#footnote-ref-8)
9. Decision of the Constitutional Court (28 February 2008), N 3-, para. 5.4; International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010, p. 36. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. International Commission of Jurists, “ICJ Briefing Paper on Certain Amendments to the Constitution of the Russian Federation”, 2020, p. 8-9. [↑](#footnote-ref-11)
12. International Commission of Jurists, “The State of the Judiciary in Russia”, 2010, p. 14. [↑](#footnote-ref-12)
13. International Commission of Jurists, “Russian Federation: Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers”, 2014. [↑](#footnote-ref-13)
14. International Commission of Jurists, “The State of the Judiciary in Russia”, 2010, p. 27. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010. [↑](#footnote-ref-16)
17. International Commission of Jurists, “Securing Justice: The disciplinary system for judges in the Russian Federation”, 2010. [↑](#footnote-ref-17)
18. International Commission of Jurists, “Russian Federation: Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers”, 2014. [↑](#footnote-ref-18)
19. IUSTITIA, “Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015-2019”, p. 46. [↑](#footnote-ref-19)
20. Ibid, p. 49. [↑](#footnote-ref-20)
21. Ibid, p. 50. [↑](#footnote-ref-21)
22. International Commission of Jurists, “Poland: end unjustified disciplinary proceedings against judges”, December 6, 2019. Available at: <https://www.icj.org/poland-end-unjustified-disciplinary-proceedings-against-judges/> [↑](#footnote-ref-22)
23. International Commission of Jurists, “Poland: end unjustified disciplinary proceedings against judges”, December 6, 2019. Available at: <https://www.icj.org/poland-end-unjustified-disciplinary-proceedings-against-judges/> [↑](#footnote-ref-23)
24. IUSTITIA, “Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015-2019”, p. 36. [↑](#footnote-ref-24)
25. Ibid, p. 38. [↑](#footnote-ref-25)
26. International Commission of Jurists, “Poland: ICJ calls for immediate reinstatement of forcibly retired Supreme Court justices”, July 4, 2018. Available at: <https://www.icj.org/poland-icj-calls-for-immediate-reinstatement-of-forcibly-retired-supreme-court-justices/> [↑](#footnote-ref-26)
27. The Polish Law on the Supreme Court, which entered into force on 3 April 2018, lowered the retirement age of Supreme Court judges from 70 to 65; See also International Commission of Jurists, “Poland: end unjustified disciplinary proceedings against judges”, December 6, 2019. Available at: <https://www.icj.org/poland-end-unjustified-disciplinary-proceedings-against-judges/> [↑](#footnote-ref-27)
28. International Commission of Jurists, “Poland: end unjustified disciplinary proceedings against judges”, December 6, 2019. Available at: <https://www.icj.org/poland-end-unjustified-disciplinary-proceedings-against-judges/> [↑](#footnote-ref-28)
29. European Commission, “Rule of law: European Commission refers Poland to the Court of Justice to protect judges from political control”, October 10, 2019. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6033> [↑](#footnote-ref-29)
30. International Commission of Jurists, “Poland: Court of Justice ruling must herald return to rule of law”, June 25, 2019. Available at: <https://www.icj.org/poland-court-of-justice-ruling-must-herald-return-to-rule-of-law/> [↑](#footnote-ref-30)
31. International Commission of Jurists, “ICJ welcomes EU Court of Justice ruling finding Poland violated independence of the judiciary, protection against gender-based discrimination”, November 5, 2019. Available at: <https://www.icj.org/icj-welcomes-eu-court-of-justice-ruling-finding-poland-violated-independence-of-the-judiciary-protection-against-gender-based-discrimination/> [↑](#footnote-ref-31)
32. International Commission of Jurists, “Poland: ICJ calls on Parliament to drop draft law further restricting judicial independence”, December 18, 2019. Available at: <https://www.icj.org/poland-icj-calls-on-parliament-to-drop-draft-law-further-restricting-judicial-independence/> [↑](#footnote-ref-32)
33. International Commission of Jurists, “Statement of ICJ Commissioners and Honorary Members on the Rule of Law Crisis in Poland”, available at: <https://www.icj.org/wp-content/uploads/2020/02/Poland-Commissioners-Statement-Advocacy-Open-Letter-2020-ENG.pdf> [↑](#footnote-ref-33)
34. IUSTITIA, “CJEU decision should close the way for abuse of the arbitrary recognition of the elections validity”, April 8, 2020. Available at: <https://www.iustitia.pl/en/new-krs/3793-today-s-cjeu-decision-should-close-the-way-for-abuse-of-the-arbitrary-recognition-of-the-elections-validity-professor-krystian-markiewicz-president-of-the-association-of-polish-judges-iustitia> [↑](#footnote-ref-34)
35. New York Times, “E.U. Court Rules Poland Must Suspend Disciplinary Panel for Judges”, April 8, 2020. Available at: <https://www.nytimes.com/2020/04/08/world/europe/poland-judges-eu-court.html> [↑](#footnote-ref-35)
36. International Commission of Jurists, “Poland: Parliament must reject draft laws attacking judicial independence, urges ICJ”, December 4, 2017. Available at: https://www.icj.org/poland-parliament-must-reject-draft-laws-attacking-judicial-independence-urges-icj/ [↑](#footnote-ref-36)
37. European Commission, “Serbia 2019 Report. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions”, May 29, 2019. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf> [↑](#footnote-ref-37)
38. See “MEDEL statement on the recent developments in the judiciary of the Republic of Serbia”, September 13 2019. Available at: https://medelnet.eu/index.php/news/europe/545-medel-statement-on-the-recentdevelopments-in-the-judiciary-of-the-republic-of-serbia [↑](#footnote-ref-38)
39. Amendments to the Constitution of the Republic of Serbia, available at: https://www.mpravde.gov.rs/files/Draft%20Amendments%20to%20the%20Constitution%20of%20Republic%20of%20Serbia.pdf [↑](#footnote-ref-39)
40. Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the

Judiciary in Serbia, adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June

2018) (CDL-AD(2018)011). [↑](#footnote-ref-40)
41. Council of Europe, “Bureau of the Consultative Council of European Judges. Report on judicial independence and impartiality in the Council of Europe member states”, 2019, p. 22. Available at: https://rm.coe.int/ccje-report-2019-situation-of-judges-en/16809e0d05 [↑](#footnote-ref-41)
42. European Commission, “Serbia 2019 Report. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions”, May 29, 2019, p. 13. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>; See also European Commission, “Serbia 2018 Report. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions”, April 17, 2018, p. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf [↑](#footnote-ref-42)
43. International Commission of Jurists, “Serbia’s Judges and Prosecutors: The Long road to Independent Self Governance”, 2016, p. 35. [↑](#footnote-ref-43)
44. Ibid. [↑](#footnote-ref-44)
45. Ibid. [↑](#footnote-ref-45)
46. International Commission of Jurists, “New ICJ report analyses the transition to judicial self-governance in Serbia”, February 2, 2016. Available at: <https://www.icj.org/new-icj-report-analyses-the-transition-to-judicial-self-governance-in-serbia/> [↑](#footnote-ref-46)
47. International Commission of Jurists, “Serbia must do more to ensure judges’ and prosecutors’ independence”, June 29, 2017. Available at: <https://www.icj.org/serbia-serbia-must-do-more-to-ensure-judges-and-prosecutors-independence-says-icj-to-un-human-rights-council/> [↑](#footnote-ref-47)
48. International Commission of Jurists, “Turkey: Dismissal of judges and prosecutors tainted by unfairness, says ICJ”, February 4, 2019. Available at: <https://www.icj.org/turkey-dismissal-of-judges-and-prosecutors-tainted-by-unfairness-says-icj/>; See also International Commission of Jurists, “Justice Suspended: Access to Justice and the State of Emergency in Turkey”, 2018. [↑](#footnote-ref-48)
49. International Commission of Jurists, “Justice Suspended: Access to Justice and the State of Emergency in Turkey”, 2018, p. 15. [↑](#footnote-ref-49)
50. Press Release of the Constitutional Court in English of 9 August 2016 , available at http://constitutionalcourt.gov.tr/inlinepages/press/PressReleases/detail/31.html, para. 18. [↑](#footnote-ref-50)
51. Ibid. [↑](#footnote-ref-51)
52. MFA Turkey, Information on the terrorist attempt on 15 July 2016 and the investigations conducted against the judges and public prosecutors, in Notification of State of Emergency under article 15 ECHR, Doc. JJ8190C, Tr./005-192, p. 9, p. 10. [↑](#footnote-ref-52)
53. See Article 18.1, Law on the High Council of Judges and Prosecutors no. 6087, read together with article 8.h of the Law on Judges and Prosecutors no. 2802; MFA Turkey, Information on the terrorist attempt on 15 July 2016 and the investigations conducted against the judges and public prosecutors, in Notification of State of Emergency under article 15 ECHR, Doc. JJ8190C, Tr./005-192, p. 9, p. 11 [↑](#footnote-ref-53)
54. International Commission of Jurists, “Justice Suspended: Access to Justice and the State of Emergency in Turkey”, 2018, p. 16. [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. International Commission of Jurists, “Turkey: ICJ and IBAHRI urge Turkey’s Council of Judges and Prosecutors to cease probe into Gezi Park trial judges”, February 28, 2020. Available at: <https://www.icj.org/turkey-icj-and-ibahri-urge-turkeys-council-of-judges-and-prosecutors-to-cease-probe-into-gezi-park-trial-judges/> [↑](#footnote-ref-56)
57. International Commission of Jurists, “Justice Suspended: Access to Justice and the State of Emergency in Turkey”, 2018, p. 19. [↑](#footnote-ref-57)
58. International Commission of Jurists, “Hungary: disciplinary action against judge for recourse to EU Court must cease”, November 18, 2019. Available at: <https://www.icj.org/hungary-disciplinary-action-against-judge-for-recourse-to-eu-court-must-cease/> [↑](#footnote-ref-58)
59. International Commission of Jurists, “European Court: removal of Hungarian Supreme Court President unlawful”, June 23, 2016. Available at: <https://www.icj.org/european-court-removal-of-hungarian-supreme-court-president-unlawful/> [↑](#footnote-ref-59)
60. International Commission of Jurists, “Only an Empty Shell: the Undelivered Promise of an Independent Judiciary in Moldova”, 2019, p. 43. [↑](#footnote-ref-60)
61. International Commission of Jurists, “Only an Empty Shell: the Undelivered Promise of an Independent Judiciary in Moldova”, 2019. [↑](#footnote-ref-61)
62. International Commission of Jurists, “Tajikistan report”, 2020, p. 39. [↑](#footnote-ref-62)
63. Ibid, p. 38. [↑](#footnote-ref-63)
64. Ibid. [↑](#footnote-ref-64)
65. Ibid, p. 39. [↑](#footnote-ref-65)
66. Ibid. [↑](#footnote-ref-66)
67. Ibid, p. 36. [↑](#footnote-ref-67)
68. Ibid. [↑](#footnote-ref-68)
69. Ibid, p. 39. [↑](#footnote-ref-69)
70. Ibid., p. 32. [↑](#footnote-ref-70)