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COMPARATIVE NOTE ON DISCIPLINARY LIABILITY AND PROCEEDINGS AGAINST JUDGES OF CONSTITUTIONAL COURTS

UKRAINE

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EXECUTIVE SUMMARY

ODIHR welcomes the request for international expertise in relation to relevant international standards and domestic models on the disciplinary liability and proceedings against constitutional court judges.

Judicial accountability is intrinsically linked to judicial independence, and disciplinary liability of judges constitutes one of the key mechanisms through which such accountability is ensured and public confidence in the judiciary is preserved. At the same time, this requires a careful balance so that mechanisms addressing judicial misconduct promote transparency and effective oversight without exposing judges to undue influence in the exercise of their judicial functions.

At the outset, it should be underlined that there is no uniform model within the OSCE region governing the disciplinary liability of constitutional court judges. Domestic approaches vary significantly, ranging from jurisdictions where the matter is not regulated or disciplinary liability is expressly excluded, while strictly regulating the grounds for impeachment or dismissal, to systems with limited regulation, and a number of legal orders providing detailed frameworks governing disciplinary grounds, the institutional framework, sanctions, as well as procedural guarantees.

The Note provides an overview of relevant international and regional standards, recommendations, and OSCE commitments, as well as selected comparative practices. It primarily aims at informing legislative choices with a view to ensuring a disciplinary framework for constitutional court judges that is consistent with the requirements of judicial independence, accountability, and due process, while safeguarding the effectiveness and integrity of constitutional adjudication and ensuring compliance with applicable human rights standards.

Although this Note focuses specifically on the disciplinary liability of constitutional court judges, it draws to a significant extent on the relevant standards and models developed in respect of the judiciary broadly. This approach reflects the relative scarcity of detailed international and comparative material addressing disciplinary regimes tailored exclusively to constitutional court judges.

As further elaborated below, while the core guarantees of judicial independence apply equally to all judges, Constitutional Courts occupy a distinct position within the constitutional architecture. Thus, while shared foundational principles justify reliance on general standards of judicial independence and accountability, a careful adaptation may be required, recognizing a specific role and status of constitutional courts.

Special role that Constitutional Courts have, owing to their mandate to review the constitutionality of laws and acts of public authorities, potential exposure to political pressure and institutional tensions with other branches of power, necessitates effective guarantees for inviolability of constitutional court judges

in the exercise of their judicial functions. Disciplinary frameworks must therefore be designed and applied in a manner that excludes any risk of political influence or instrumentalization.

Generally, where Constitutional Court represents a judicial branch separate from common court system, it is recommended that issues of the disciplinary liability against its judges are dealt primarily by the Constitutional Court itself, with the judge concerned not sitting on the bench which takes such a decision. At the same time, constitutional framework may envisage intervention of other public institutions, providing information, evidences or assessments of the behaviour of a constitutional court judge. Where political organs (parliaments or presidents) are constitutionally involved in termination of mandates of constitutional court judges due to disciplinary violations, such decisions should be based on the findings of the Constitutional Court. At the same time, a decisive role of the Constitutional Court in proceedings concerning the disciplinary liability of Constitutional Court judges, including cases that may result in suspension, removal from office, or other serious sanctions, does not preclude, as comparative practice demonstrates, the involvement of courts within the ordinary judiciary in decisions concerning the dismissal of Constitutional Court judges. This may be the case, for example, where a final criminal conviction constitutes an objective ground for removal from office and serves as an indication that the judge is no longer fit to hold judicial office.

While Constitutional Courts play a key role in disciplinary matters of its judges, in some cases, limited number of judges of constitutional courts may create structural difficulties in disciplinary proceedings, particularly with respect to the separation of initiating, investigating, and adjudicating functions, while ensuring quorum and avoiding institutional deadlock.

Disciplinary liability and potential dismissal of constitutional court judges should be approached with the utmost caution, requiring clarity as regards the constituent material and mental elements of the alleged misconduct, which may lead to disciplinary liability, including dismissal. Accordingly, the Note proceeds on the premise that general principles governing disciplinary liability of judges – such as the need for narrowly and clearly defined grounds, the exclusion of liability for the substance of judicial decisions, as well as the requirement of robust procedural safeguards to protect judicial independence – are fully applicable to constitutional court judges. At the same time, guarantees of judicial independence do not extend to bad faith judicial misconduct, malice, gross negligence, or criminal conduct such as abuse of office or traffic of influence, which are not covered by functional immunity.

These principles and guarantees should inform all aspects of the disciplinary framework, including institutional design of the disciplinary body/ies, the definition of grounds for liability, procedural safeguards, sanctions, and transparency requirements, while ensuring a careful balance between accountability and judicial independence and preventing disciplinary mechanisms from being instrumentalized for political influence.

Scope and grounds of disciplinary liability - Care must be taken to ensure that vague formulations of disciplinary grounds are avoided and that each ground is defined with sufficient precision to ensure foreseeability and prevent arbitrary application. As such, wording such as “breach of oath” or being “unworthy of the office” or conduct bringing “discredit” to the court, in the absence of guidelines or practice establishing a consistent and restrictive interpretation of the disciplinary ground, may be open to misinterpretation or arbitrary application, and therefore must always be interpreted narrowly with a view to safeguard judicial independence and in line with applicable international standards.

Institutional models – Where external actors, such as parliament or the executive, are involved, their role should be pre-conditioned by a prior assessment of or final decision with respect to the behaviour of the constitutional court judge by Constitutional Court, or in some cases, an assessment of criminal conviction by an independent court. Whatever the model, it is essential that the bodies initiating disciplinary proceedings are distinct from those conducting investigation, which themselves should also be separate from those deciding on disciplinary liability. While such separation may be challenging in apex courts with a limited number of judges, comparative practice nevertheless shows that some form of functional differentiation between these roles tends to be pursued.

Procedural guarantees – Robust procedural safeguards are essential to ensure fairness of the disciplinary proceedings and protect judicial independence, in compliance with Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR). These include the right to be informed of charges, the right to be heard, equality of arms, access to evidence, legal representation, investigation as well as decision within a reasonable time and reasoned decisions.

Proportionality of sanctions – Disciplinary systems generally provide for a graduated range of sanctions, including warnings, reprimands, suspension, reduction of remuneration, and suspension or removal from office. Sanctions must be clearly prescribed by law, foreseeable, and applied in accordance with the principle of proportionality. Removal from office must be reserved for the most serious cases and subject to particularly stringent safeguards, especially in relation to constitutional court judges.

Transparency and confidentiality – While investigative stages may be confidential to preserve the reputation of the constitutional court judge, unless otherwise requested by the judges, as well as the integrity of disciplinary proceedings, disciplinary hearings should, as a rule, be public, and any departure from openness must remain exceptional and duly justified. A case-by-case approach is therefore required, balancing the rights of the judge concerned, the public interest, and the proper administration of justice.

More detailed and elaborated considerations and concrete recommendations are highlighted in bold in the text of the Note below.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 26 January 2026, the Acting Chair of the Constitutional Court of Ukraine sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for expert legal advice on several issues pertaining to disciplinary liability and proceedings against constitutional court judges.
2. On 28 January 2026, ODIHR responded to this request, confirming the Office’s readiness to provide an analysis outlining applicable international and regional standards and OSCE commitments, and where relevant, providing a comparative overview of legislative practices in other countries.
3. This Note was prepared in response to the above request and aims to outline key principles related to the above topic with a view to inform possible policy and/or legislative choices for reform. Since the request also lists a number of specific issues for which the requestor is seeking ODIHR’s guidance, the present Note also seeks to address such issues.¹ ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.²
4. ODIHR stands ready to further elaborate some of the matters addressed in the present Note, to provide more detailed analysis of compliance with international human rights standards and OSCE commitments, as well as relevant examples of good practices from OSCE participating States (pSs) in relation to specific legislative choices and legal provisions.

II. SCOPE OF THE NOTE

5. This Note addresses the topic of disciplinary liability and procedure against constitutional court judges, including from a comparative perspective, especially the above-mentioned issues as requested by the Acting Chair of the Constitutional Court of Ukraine. While the letter of request refers to the Draft Law of Ukraine No. 14321 dated 19 December 2025 and Draft Law No. 14321-1 dated 23 December 2025, both of which purport to introduce new models of disciplinary liability and disciplinary procedure applicable to justices of the Constitutional Court of Ukraine, as per the request, the Note addresses the issues mentioned

1 These issues primarily relate to the following: (i) the applicable international and European standards for designing a disciplinary liability framework for constitutional court judges; (ii) the need to balance judicial independence and accountability while ensuring compliance with applicable standards and preventing risks of political influence or instrumentalization of disciplinary mechanisms; (iii) the scope and grounds of disciplinary liability, with a view to clearly distinguish them from adjudicative functions, exercise of judicial discretion and the expression of dissenting or concurring opinions, as well as inter-relations with constitutionally defined grounds for dismissal or termination of office under Article 1491 of the Constitution of Ukraine; (iv) the institutional models for initiating, examining and deciding on disciplinary matters concerning constitutional court justices; (v) the minimum procedural guarantees to be ensured in line with international standards; (vi) the types and proportionality of sanctions that may be imposed on constitutional court justices, and criteria and modalities governing their application in light of the status of constitutional court justices; (vii) the recommended level of transparency of disciplinary proceedings and decisions to ensure respect of judicial independence, deliberative secrecy and personal rights; and (viii) relevant comparative practices from other jurisdictions.

2 See especially *OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area* (2008), point 4, where the Ministerial Council “[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention [...]”.

in the request *in abstracto* and thus does not offer a comprehensive analysis of the broader legal and institutional frameworks governing the disciplinary liability of judges of the Constitutional Court of Ukraine, nor of the draft laws, although the Note aims to tailor the comparative overview and guidance to the country context to inform possible policy or legislative options.

6. Moreover, since the request specifically refers to certain provisions of the Ukrainian legislation currently in force, especially with respect to the grounds for termination and dismissal of Constitutional Court justices, as requested, this Note will also examine how disciplinary liability should be delineated in relation to the constitutionally defined grounds for dismissal or termination of office, in order to prevent overlap, legal uncertainty, or the *de facto* circumvention of constitutional safeguards.
7. The Note's main objective is to provide an overview of relevant international human rights standards and recommendations, OSCE commitments and good legislative practices within the OSCE region related to the aforementioned issues. At the same time, the comparative examples provided are not intended to be exhaustive, particularly since this issue is not always expressly regulated across the OSCE region. Thus limited, it does not constitute a review of the entire legal and institutional framework regulating disciplinary liability of judges of the Constitutional Court in Ukraine or in other OSCE participating States. When referring to country examples, ODIHR does not advocate for any specific model; it rather focuses on providing information about applicable international standards while illustrating how they are considered or implemented in certain national laws. Any country example should be assessed with caution since it cannot necessarily be replicated in another country and should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
8. This Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the topic and other related legislation of Ukraine in the future. Should the Note be translated into Ukrainian, the English version shall prevail in case of discrepancies.

III. RELEVANT INTERNATIONAL STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

1. GENERAL COMMENT

9. At the outset, it is important to underline that while most OSCE participating States have separate constitutional courts (while for others, constitutional review is exercised by supreme courts or the like),³ the status of constitutional courts varies as to whether they are considered separate from ordinary courts or part of the judicial system.⁴ At the same time, even where

3 See European Commission for Democracy Through Law (hereinafter "Venice Commission"), *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 12.

4 It is noted that under Section XII of the Constitution of Ukraine, the status of the Constitutional Court of Ukraine is separate from courts governed by Section VIII; at the same time, it should be considered a court within the meaning of Article 6 of the ECHR and Article 14 of

the Constitution provides that the Constitutional Court or similar body is institutionally separate from the ordinary court system, if individuals may lodge constitutional complaints alleging that a domestic law applied in a final court judgment in their case is incompatible with the Constitution, and if the outcome of the proceedings before the Constitutional Court is decisive for the determination of an individual's civil rights and obligations, then such a body should be considered a "court" within the meaning of Article 6 of the ECHR and Article 14 of the ICCPR, and other international documents, and should therefore comply with the applicable international human rights standards.⁵

10. Although this Note focuses specifically on the disciplinary liability of judges of constitutional courts, it draws to a significant extent on the relevant standards and models developed in respect of the judiciary more broadly. This approach reflects the relative scarcity of detailed international and comparative material addressing disciplinary regimes tailored exclusively to constitutional court judges. At the same time, and as will be discussed in greater detail below, while the core guarantees of judicial independence apply equally to all judges, constitutional court judges occupy a distinct position within the constitutional architecture.⁶ Owing to their mandate to review the constitutionality of laws and acts of public authorities, they are particularly exposed to political pressure and institutional tensions with other branches of power.⁷ Where the grounds for dismissal of constitutional court judges or provisions on judicial independence are contained in the constitutions itself, it also means that ultimately the constitutional court is the only authority that can rule on those provisions. Another challenge relates to the small number of judges of the constitutional courts, which may trigger a structural tension in disciplinary proceedings in models where the court itself is involved in (various aspects) of disciplinary proceedings, as the functions of initiating, investigating, and adjudicating disciplinary liability should be clearly separated to safeguard impartiality, whereas broad recusal requirements may prevent the court from reaching the quorum necessary to rule on the case⁸ (see further elaboration of the separation of functions in Sub-Section V.2 *infra*)
11. This duality – shared foundational principles alongside a functionally unique role – justifies both reliance on general standards on judicial independence and their careful adaptation to the specific context of constitutional adjudication, which may justify that some specific features and/or special guarantees may apply.
12. In this respect, the Note proceeds on the premise that general principles governing disciplinary liability of judges in general – such as the need for narrowly and clearly defined grounds for disciplinary liability, the exclusion of liability for the substance of judicial decisions except in case of bad faith judicial misconduct, malice or gross negligence,⁹ and

the ICCPR, and other international documents, to the extent that individuals may lodge constitutional complaints when considering that a Ukrainian law applied in the final court judgment in his/her case contradicts the Constitution of Ukraine and the outcome of the proceedings before the Constitutional Court is decisive for the determination of an individual's civil rights and obligations.

5 See e.g., as a comparison, European Court of Human Rights (ECtHR), *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021, paras. 187-210.

6 See e.g., Venice Commission, *Opinion no. 481 / 2008 of 24 October 2008 "On the draft laws amending and supplementing (1) the Law on constitutional proceedings and (2) the Law on the Constitutional Court of Kyrgyzstan"*, CDL-AD(2008)029, para. 14.

7 *Ibid.* [CDL-AD\(2008\)029](#), para. 14.

8 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 19.

9 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104, which underlines that "the liability of a judge for the substance of judicial activity is a highly delicate question which requires that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals, for example, a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand."

the requirement of robust procedural safeguards – are fully applicable to constitutional court judges. At the same time, as emphasized in the case-law of the European Court of Human Rights (hereinafter “ECtHR”), given the special role of constitutional court judges in safeguarding the rule of law and democracy, their disciplinary liability and potential dismissal in the most serious cases must be approached with the utmost caution, underlining that beyond a clear legal basis, detailed reasoning, especially regarding the constituent elements of the alleged misconduct, are essential.¹⁰ This approach reflects the need to prevent disciplinary mechanisms from being instrumentalized as tools of political influence or *ex post facto* review of constitutional interpretation. Particular attention should thus be paid to ensuring that disciplinary frameworks and procedures are designed in a manner that preserves the independence, institutional autonomy and proper functioning of constitutional justice, while guaranteeing fairness and due process, and maintaining a strict balance between accountability and the protection of judges from undue interference or political influence.

2. INDEPENDENCE OF THE JUDICIARY

9. The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law.¹¹ The principle is also crucial to upholding other international human rights standards.¹² This independence means that both the judiciary as an institution and individual judges must be able to exercise their professional responsibilities without being influenced by the executive or legislative branches or other sources.¹³
10. At the international level, it has long been recognized that litigants in both criminal and civil matters have the right to a fair hearing before an “*independent and impartial tribunal*”, as guaranteed by Article 14 of the ICCPR,¹⁴ Article 6 of the ECHR¹⁵ and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter “EU Charter”). International understanding of the practical requirements of judicial independence continues to be shaped by the work of international mechanisms, including the UN Human Rights

10 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 106.

11 See UN Human Rights Council, Resolution on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers, *A/HRC/29/L.11*, 30 June 2015, which stresses “the importance of ensuring accountability, transparency and integrity in the judiciary as an essential element of judicial independence and a concept inherent to the rule of law, when it is implemented in line with the Basic Principles on the Independence of the Judiciary and other relevant human rights norms, principles and standards”. As stated in the *1990 OSCE Copenhagen Document*, “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression” (para. 2).

12 *OSCE Ministerial Council Decision No. 12/05* on Upholding Human Rights and the Rule of Law in Criminal Justice Systems, 6 December 2005.

13 See e.g., UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR*, para. 19; see also the overview of the caselaw of the European Court of Human Rights relating to Article 6 (1) of the ECHR in *Guide on Article 6 of the ECHR – Right to a Fair Trial (civil limb)* (August 2023) (in particular ECtHR, *Ástráðsson v. Iceland [GC]*, no. 26374/18, 1 December 2020, paras. 207 and seq.). See also Venice Commission, *Updated Rule of Law Checklist*, *CDL-AD(2025)002*, 16 December 2025, paras. 104-107.

14 See UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. See also UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, which provides guiding interpretation of Article 1 of the ICCPR.

15 The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953.

Committee,¹⁶ the case-law of the ECtHR¹⁷ and of the Court of Justice of the European Union (hereinafter “CJEU”),¹⁸ as well as the development of soft-law instruments and other non-legally binding guidance documents.¹⁹ OSCE participating States have also committed to ensuring that the independence of the judiciary is guaranteed in law and respected in practice, recognizing the independence of judges and the impartial operation of the public judicial service as elements of justice that are essential to the full expression of the inherent dignity and equal and inalienable rights of all human beings.²⁰

3. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY OF JUDGES

11. Judicial accountability is intrinsically linked to judicial independence, and disciplinary liability of judges represents one of the mechanisms through which such accountability is ensured and public confidence in the judiciary preserved. Judicial accountability refers to both the institutional accountability of the judiciary as a whole to society and the individual accountability of judges, which implies an obligation to explain decisions in such a way that parties, media and the public in general can understand and scrutinize them.²¹ As underlined by the UN Special Rapporteur on the independence of judges and lawyers, achieving an appropriate balance between judicial independence and accountability is a structural challenge for all judicial systems.²² While mechanisms of accountability are necessary to address bad faith judicial misconduct, malice and gross negligence, as well as to ensure proper administration of justice, they must not expose judges to undue influence in the exercise of their judicial functions; at the same time, such mechanisms should promote transparency and effective oversight, ensuring that judges discharge their duties in accordance with the highest standards.²³

16 See CCPR, *General Comment No. 32 on Article 14 of the ICCPR*, “States should take specific measures guaranteeing the independence of the judiciary [...] through the constitution or adoption of laws establishing clear procedures and objective criteria for the [...] dismissal of the members of the judiciary and disciplinary sanctions taken against them.”

17 See the overview of the caselaw of the European Court of Human Rights (ECtHR) relating to Article 6 (1) of the ECHR in *Guide on Article 6 of the ECHR – Right to a Fair Trial (civil limb)* (August 2023) (in particular ECtHR, *Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020, paras. 207 and seq.).

18 See e.g., Court of Justice of the European Union (CJEU), *Criminal proceedings against WB and Others*, Joined Cases C-748/19 to C-754/19, 16 November 2021, para. 67; W.Ż., *C-487/19*, preliminary ruling request by the Supreme Court (Civil Chamber) of Poland (regarding the Chamber of Extraordinary Control and Public Affairs of the Supreme Court), 6 October 2021, para. 109; *Commission v. Poland*, C-791/19, 15 July 2021, para. 59; *A.B.* [GC], C-824/18, 2 March 2021, para.117; CJEU, *A. K. and Others v. Sąd Najwyższy, CP v. Sąd Najwyższy and DO v. Sąd Najwyższy*, *A. K. and Others v. Sąd Najwyższy, CP v. Sąd Najwyższy and DO v. Sąd Najwyższy* [GC], C-585/18, C-624/18 and C-625/18, 19 November 2019, paras. 121 and 122; *Commission v. Poland* [GC], C-619/18, 24 June 2019, paras. 73 and 74; *Associação Sindical dos Juizes Portugueses*, C-64/16, 27 February 2018, para. 44.

19 See e.g., UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR*; see also *UN Basic Principles on the Independence of the Judiciary*, endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; and *Bangalore Principles of Judicial Conduct*, endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006; and *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), prepared by the Judicial Group on Strengthening Judicial Integrity. See also *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010, Kyiv Recommendations)*, and the *ODIHR Recommendations on Judicial Independence and Accountability (2023, Warsaw Recommendations)* (2023).

20 See *1990 OSCE Copenhagen Document*, paras. 5 and 5.12; *Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE* (Moscow, 10 September-4 October 1991); *Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area*, Helsinki, 4-5 December 2008. See also *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010, Kyiv Recommendations)*, developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence; and the *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)* (2023), which aim to supplement the *ODIHR Kyiv Recommendations* by elaborating on certain, previously unaddressed issues and to respond to developments since 2010; the two documents should be read in tandem. See also ODIHR, *Legal Digest of International Fair Trial Rights* (2012).

21 See also *ENCJ Report 2013-2014: Independence and Accountability of the Judiciary*, 3.6. Key components of judicial accountability.

22 See *Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán (A/72/140)* of 25 July 2017, para. 75, citing page 15 of the International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption (May 2016).

23 *Ibid.* para. 75.

12. Judicial accountability requires from judges to be accountable for their conduct and the proper exercise of the judicial function and disciplinary proceedings constitute one of the key mechanisms through which judicial accountability is operationalized in cases of serious judicial misconduct. At the same time, judges should not be liable for their decisions, including the interpretation of the law, assessment of facts or weighing of evidence, except in cases of bad faith judicial misconduct, malice, or gross negligence. It needs to be noted that as constitutional courts' decisions are usually adopted collectively (similarly to collegial decisions of appeal courts or supreme courts), establishing liability of an individual judge may be limited in practice, although not excluded *per se*. The protection of judges from liability for their judicial decisions exists as an essential corollary of judicial independence and is expressed as a functional immunity for acts performed in the exercise of their judicial functions. This is essential to ensure that judges can engage in the proper exercise of their functions without their independence being compromised through fear of criminal, civil or disciplinary proceedings, including by state authorities.²⁴ Judges should only benefit from functional immunity in the exercise of lawful judicial functions but otherwise be liable as ordinary citizens.²⁵ This means that if he or she commits a criminal offense (e.g., corruption, traffic of influence, abuse of office or other similar offenses), they should not enjoy immunity from criminal liability.²⁶

4. JUDICIAL INDEPENDENCE AND DISCIPLINARY LIABILITY OF JUDGES

13. While judges must be accountable for misconduct, any system of disciplinary liability must be carefully designed so as not to undermine their independence or expose them to undue influence, including from other branches of power. Disciplinary liability must be regulated in a clear, precise and foreseeable manner in order to avoid risks of improper pressure or influence in the exercise of judicial functions. As further detailed below, international and regional instruments and recommendations set out a number of core requirements for national laws governing the disciplinary responsibility of judges, including: (i) a clear, precise and foreseeable definition of the acts or omissions constituting disciplinary offences and applicable sanctions; (ii) the proportionality of disciplinary sanctions in relation to the seriousness of the disciplinary offence; (iii) the independence and impartiality of the disciplinary body; and (iv) disciplinary proceedings of an appropriate quality, providing adequate procedural and substantive guarantees ensuring respect for the rights of judges. A distinction should be made between disciplinary proceedings resulting in rather minor sanctions, on the one hand, and procedures for the suspension or removal (impeachment) of constitutional court judges, on the other, as the latter should be subject to more stringent

24 See e.g., ODIHR-Venice Commission, *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*, CDL-AD(2014)018), para. 37, where ODIHR and the Venice Commission noted that “[t]here needs to be a balance between immunity as a means to protect the judge against pressures and abuses from state powers or individuals (e.g., abusive prosecution, frivolous, vexatious or manifestly ill-founded complaints) and the fact that the judges should not be above the law”. See also e.g., ECtHR, *Ernst v. Belgium*, no. 33400/96, 15 October 2003, para. 85, holding that barring suit against judges to ensure their independence met the requirement for a reasonable relationship of proportionality between the means used and the aim pursued.

25 See e.g., ODIHR and the Venice Commission, *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014).

26 *Ibid.* para. 41 (2014 *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*). See also the *ODIHR Recommendations on Judicial Independence and Accountability (2023, Warsaw Recommendations)* (2023), para. 16, which provides that “judges who commit a criminal offence in the exercise of their office should not have immunity from criminal prosecution”.

grounds and safeguards in light of the principle of security of tenure and irremovability of judges (see Sub-Section IV.2.5. *infra*).

4.1. At the UN Level

14. At the UN level, several documents provide further guidance and recommendations concerning the disciplinary liability of judges. In its [General Comment No. 32 on Article 14 of the ICCPR](#), the UN Human Rights Committee specifically provided that States should *“take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws, and establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them”*.²⁷
15. The UN Basic Principles on the Independence of the Judiciary provide that judges shall be subject to suspension or removal only on grounds of incapacity or conduct rendering them unfit to discharge their duties, and that all disciplinary, suspension or removal proceedings must be conducted in accordance with established standards of judicial conduct.²⁸ In addition, *“[d]ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings”* (Principle 20). Further, Principle 17 establishes that *“[a] charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.”*
16. In parallel, the Global Judicial Integrity Network’s Bangalore Principles of Judicial Conduct (2006)²⁹ underscore the fundamental role of a competent, independent and impartial judiciary in ensuring the effective protection of human rights, the proper administration of justice, and the upholding of the rule of law. To this end, they articulate six core values intended to guide judicial behaviour and provide a framework for regulating judicial conduct, namely independence, impartiality, integrity, propriety, equality, and competence and diligence. The Measures for the Effective Implementation of the Bangalore Principles (2010) further elaborate key principles that should guide disciplinary liability and proceedings against a judge, including that they should be limited to serious misconduct, based on clearly defined offences and procedures established by law, initiated and assessed by an independent body primarily composed of judges, conducted in accordance with fair

27 UN Human Rights Committee, [General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial](#), 23 August 2007, para. 19.

28 See [UN Basic Principles on the Independence of the Judiciary](#), endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 18 and 19.

29 [Bangalore Principles of Judicial Conduct](#), adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006. See also the [Commentary on the Bangalore Principles of Judicial Conduct](#) (September 2007), and the [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles.

trial guarantees, subject to appeal before a court, and resulting in proportionate sanctions that are ultimately made public when imposed.³⁰

4.2. At the Council of Europe Level

17. At the Council of Europe (hereinafter “CoE”) level, the case-law of the ECtHR has emphasized the importance of a clear and foreseeable legal framework concerning judicial immunity and judicial accountability for the purposes of ensuring judicial independence.³¹ With respect to liability for the substance of judicial decisions, it has also underlined this is “*a highly delicate question which requires that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals, for example, a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand*”, noting the importance of clarity as to the constitutive elements of the disciplinary offences.³² The ECtHR also held that disciplinary rules must be sufficiently foreseeable and accompanied by safeguards against arbitrariness – including an effective framework for independent and impartial review, noting that while some degree of flexibility and general wording is acceptable in disciplinary law, the absence of consistent, restrictive interpretative practice with a view to protect judicial independence, of clear procedural safeguards, of proportionate sanctions, and of effective independent review may render such provisions unforeseeable in their effects.³³ With respect to disciplinary liability against constitutional court judges specifically, the Court noted the clear trend among the CoE Member States towards common understanding that the grounds for sanctioning Constitutional Court judges must be particularly strict and narrow, underlining that utmost caution and detailed reasons are particularly crucial with regard to the dismissal of Constitutional Court judges given the special role and status of a constitutional court.³⁴
18. In its Recommendation CM/Rec(2010)12, the CoE Committee of Ministers, addressing issues of liability and disciplinary proceedings against judges, clearly excludes the use of disciplinary measures in relation to the “*interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases [...], except in cases of malice and gross negligence*”.³⁵ At the same time, the Recommendation recognizes that disciplinary proceedings may be warranted where judges fail to perform their duties in an efficient and proper manner.³⁶ It further requires that such proceedings be conducted by an independent authority or a court, in full compliance with fair trial guarantees, including the right of the judge concerned to challenge both the decision and any sanction imposed; any disciplinary measures must, moreover, comply with the principle of proportionality.³⁷
19. The 1998 European Charter on the Statute for Judges and Explanatory Memorandum specifically address disciplinary liability and proceedings against judges, emphasizing the

30 *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles, especially paras. 15.1-15.8.

31 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104.

32 *Ibid.* ECtHR, *Ovcharenko and Kolos v. Ukraine*, para. 104.

33 See e.g., ECtHR, *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013, paras. 174-185.

34 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, paras. 106-108.

35 See CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 66.

36 *Ibid.* CoE, *Recommendation (2010)12*, para. 69.

37 *Ibid.* CoE, *Recommendation (2010)12*, para. 69.

principles of legality and proportionality of disciplinary sanctions, recommending that the disciplinary decision-making authority be composed of at least half judges, and providing for the availability of an appeal to a higher judicial authority.³⁸

20. The Consultative Council of European Judges (hereinafter “CCJE”) Opinion No. 27(2024) on the disciplinary liability of judges identifies a set of overarching principles that should guide the design and operation of disciplinary systems for judges, including that (i) any system of disciplinary liability must be carefully designed so as not to undermine judicial independence; (ii) disciplinary offences and sanctions must be clearly defined and foreseeable; (iii) the legitimate exercise of judicial functions must not give rise to liability; (iv) disciplinary proceedings must be conducted by an independent and impartial authority or court, with full guarantees of due process; and (v) any sanctions imposed must comply with the principle of proportionality.³⁹
21. Furthermore, the European Commission for Democracy through Law (hereinafter “Venice Commission”) of the CoE has also elaborated key recommendations relating to the disciplinary liability of judges, emphasizing that “[o]ffences leading to disciplinary sanctions and their legal consequences should be set out clearly in law and disciplinary sanctions should comply with the principle of proportionality. The disciplinary system should fulfil the requirements of procedural fairness by including provision for a fair and public hearing and the possibility of an appeal, as a rule before an independent judicial body. Only exceptional circumstances may justify dispensing with a hearing. A judge’s decision, including the interpretation of the law, assessment of facts or weighing of evidence, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct.”⁴⁰
22. With respect to disciplinary liability and proceedings against constitutional court judges specifically, the Venice Commission recognizes that, while constitutional court judges may be subject to disciplinary liability, such liability must remain exceptional, narrowly circumscribed by clear legal standards, accompanied by reinforced procedural safeguards, and applied in a manner that fully preserves the independence and autonomy of constitutional justice and prevents disciplinary mechanisms from being instrumentalized for political purposes.⁴¹
23. Although these documents primarily address the disciplinary liability and proceedings against judges more generally, these standards and recommendations are also relevant to constitutional court judges.⁴² At the same time, as underlined by the Venice Commission

38 See [European Charter on the Statute for Judges and Explanatory Memorandum](#), see para. 5.1.

39 See CCJE [Opinion No. 27 \(2024\) on the disciplinary liability of judges](#).

40 See Venice Commission, Updated Rule of Law Checklist, [CDL-AD\(2025\)002](#), 16 December 2025, Part II.F.1, para. 107. See also e.g., Venice Commission, [Opinion on Draft amendments to Laws on the Judiciary of Serbia](#), CDL-AD(2013)005, paras. 18-19 and 22; and Venice Commission, [Report on the Independence of the Judicial System Part I: The Independence of Judges](#), CDL-AD(2010)004, para. 61.

41 See legal opinions on constitutional justice, Venice Commission, as well as the [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice \(Updated\)](#), CDL-PI(2022)050, 7 December 2022, Section 4.6.1.

42 See Venice Commission, [Amicus Curiae Brief to Moldova on the Criminal Liability of Constitutional Court Judges](#), CDL-AD(2019)028-e, paras. 27-28. This approach is reaffirmed in the [Amicus Curiae Brief of the Venice Commission for ECtHR in the case of Shevchuk v. Ukraine](#) on standards on the disciplinary rules concerning presidents and judges of constitutional courts, which was based on the comparative overview of the rules on the disciplinary liability of judges and presidents of constitutional courts and equivalent bodies in the 46 CoE Member States. The Amicus Curiae showed that although most CoE Member States (35) have separate constitutional courts or equivalent bodies while others have supreme courts or supreme administrative courts that are competent for constitutional review, legislation of many countries does not provide for specific provisions governing disciplinary liability and proceedings against constitutional court judges. See [Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts](#), CDL-AD(2024)038-e, 9 December 2024, para. 12.

"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".⁴³

4.3. At the European Union Level

24. Given the EU candidate status of Ukraine and the negotiation on the opening of 'Cluster 1: Fundamentals' of the EU accession negotiations, which focuses *inter alia* on the functioning of democratic institutions, rule-of-law and public administration reform, the need to ensure the judicial independence and impartiality and integrity within the judiciary at all levels, including the Constitutional Court of Ukraine, is paramount.⁴⁴ Article 47 of the EU Charter of Fundamental Rights guarantees the right to an effective remedy and to a fair trial by an independent and impartial tribunal previously established by law.⁴⁵ The caselaw of the Court of Justice of the European Union (CJEU) underlines that disciplinary systems against judges must include essential guarantees, including that disciplinary cases are examined by an independent and impartial tribunal established by law, that disciplinary offences are defined with sufficient clarity and precision, so that judicial decisions themselves cannot, save in exceptional circumstances, give rise to disciplinary liability; disciplinary proceedings should be conducted within a reasonable time and with full respect for defence rights, including effective legal representation, the possibility to participate meaningfully in the proceedings and the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions.⁴⁶

4.4. At the OSCE Level

25. OSCE participating States have committed to ensure "*the independence of judges and the impartial operation of the public judicial service*" as one of the elements of justice ([1990 Copenhagen Document](#)).⁴⁷ In the [1991 Moscow Document](#), participating States further committed to "*respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service*" and to "*ensure that the disciplining, suspension and removal of judges are determined according to law*".⁴⁸ Moreover, in its [Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area](#) (2008), the OSCE Ministerial Council called upon OSCE participating States "*to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary*", as a key element of strengthening the rule

43 See e.g., Venice Commission, *Opinion no. 481 / 2008 of 24 October 2008 "On the draft laws amending and supplementing (1) the Law on constitutional proceedings and (2) the Law on the Constitutional Court of Kyrgyzstan"*, CDL-AD(2008)029, para. 14; and ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 64.

44 See European Commission, *Commission Staff Working Document – Ukraine 2025 Report*, SWD(2025) 759 final, 4 November 2025, pp. 31 and 33, which refers to the Constitutional Court of Ukraine.

45 *Charter of Fundamental Rights of the European Union* (EU), OJ C 326, 26 October 2012.

46 See e.g., Court of Justice of the EU (CJEU), *European Commission v. Poland* [GC], Case C-791/19, 15 July 2021, paras. 61, 137-140, 176, 208-213. See also CJEU, *Asociația 'Forumul Judecătorilor din România' and Others v. Inspecția Judiciară and Others* [GC], Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, 18 May 2021, para. 198.

47 CSCE/OSCE, [1990 Copenhagen Document](#), paras. 5 and 5.12.

48 CSCE/OSCE, [1991 Moscow Document](#), paras. 19.1 and 19.2.

of law in the OSCE area.⁴⁹ Further and more detailed guidance, including with respect to disciplinary liability and proceedings against judges, is provided by the [ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#) (2010) (ODIHR Kyiv Recommendations)⁵⁰ and the [ODIHR Recommendations on Judicial Independence and Accountability](#) (2023) (ODIHR Warsaw Recommendations).⁵¹ The 2018 ODIHR Note on International Standards and Good Practices of Disciplinary Proceedings against Judges may also serve as a useful reference document.⁵²

5. RIGHTS OF JUDGES IN DISCIPLINARY PROCEEDINGS

26. The disciplinary framework applicable to constitutional court judges must carefully balance the dual imperatives of judicial independence and judicial accountability. Such a framework should ensure that judges remain fully accountable for bad faith judicial misconduct, malice or gross negligence, while simultaneously protecting them from undue influence, including any attempt to exert political control over the content of their judicial decisions. Achieving this balance requires that the disciplinary regime incorporate robust procedural and substantive safeguards and guarantees, and respect the rights of judges throughout. Constitutional court judges subject to disciplinary proceedings that may attract suspension or removal from office in the most serious cases impacts their right to serve their full term in office and potentially their right to respect for private and family life.⁵³ As such, they must benefit from guarantees derived from the right to a fair trial by an independent and impartial tribunal under Article 14 (1) of the ICCPR⁵⁴ and Article 6 (1) of the ECHR,⁵⁵ and from the right to respect for their private and family life (Articles 17 of the ICCPR and Article 8 of the ECHR). As underlined by the Venice Commission, “[w]hen addressing the issue of procedural guarantees in disciplinary proceedings against a constitutional court judge, the presumption should be that the ordinary guarantees apply, unless there can be identified grounds specific to the function of Constitutional Courts that require derogation from, or adaptation of the procedural guarantees applicable for other judges”.⁵⁶

⁴⁹ OSCE, *Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area* (Helsinki, 4-5 December 2008).
⁵⁰ [ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#) (2010) were developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence; see in particular paras. 2, 5, 9, 14, 25-26, 32.

⁵¹ See [ODIHR Recommendations on Judicial Independence and Accountability \(Warsaw Recommendations\)](#), 2023, Part III, p. 16.

⁵² See ODIHR, *Note on International Standards and Good Practices of Disciplinary Proceedings against Judges*, 27 December 2018.

⁵³ See e.g., ECtHR, *Grzęda v. Poland* [GC], no.43572/18, 15 March 2022, para. 282.

⁵⁴ See e.g. UN Human Rights Committee, *Casanovas v France*, Communication 441/1990, UN Doc CCPR/C/51/D/441/1990 (1994), para. 5.2; and *Perterer v Austria*, Human Rights Committee Communication 1015/2001, UN Doc CCPR/C/81/D/1015/2001 (2004), para. 9.2. See also UN Basic Principles on the Independence of the Judiciary, Principle 17, which states that “[t]he judge shall have the right to a fair hearing”. See also [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), para. 15.5, provides that “All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence”.

⁵⁵ See, e.g., ECtHR, *Ramos Nunes de Carvalho v. Portugal* [GC], nos. 55391/13, 57728/13, 74041/13, 6 November 2018, paras. 122-123 (recalling the Court’s significant jurisprudence, including the seminal case *Engel and Others v. the Netherlands* (nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976), “long h[olding] that disciplinary proceedings as such cannot be characterised as ‘criminal’”); ECtHR, *Olujic v. Croatia*, no. 22330/05, 5 May 2009, paras. 31-43, which states that “[...] Article 6 [ECHR] is applicable both to the disciplinary proceedings against the applicant before the National Judicial Council and the proceedings following from the applicant’s constitutional complaint”, including, specifically, a hearing within a reasonable time; ECtHR, *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016, paras. 100-106 (referring to the Court’s relevant case law on the applicability of Article 6(1) civil fair trial guarantees to “to all types of disputes concerning civil servants and judges”, including disciplinary proceedings against judges and prosecutors; see also ECtHR, *Ramos Nunes de Carvalho v. Portugal* [GC], nos. 55391/13, 57728/13, 74041/13, 6 November 2018, para. 120. See also ECtHR, *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013, paras. 91 and 95; and *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021, paras. 183-185.

⁵⁶ See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 15.

27. First, the disciplinary body/ies conducting or involved in disciplinary proceedings should be independent and impartial, free from political influence, and structurally insulated from the executive and legislative branches.⁵⁷ This also means that bodies initiating disciplinary proceedings should be distinct from the independent body conducting investigation, which themselves should also be separate from the independent body or court that will take the decision relating to the disciplinary liability of a judge.⁵⁸ At the same time, the most severe sanctions, such as suspension or removal of constitutional court judges, may be subject to distinct or additional procedures carried out by other branches of powers, which, when they involve an assessment of the constitutional court judges' behaviour, should require a prior determination by an independent authority/body or court of the seriousness of the misconduct and of the recommended sanction, a determination which should pre-condition the decision of the political organs.⁵⁹ As noted above however, when the constitutional court itself is in charge of disciplinary matters, the small number of judges of the constitutional courts may render difficult to fully comply with this requirement and may require some adjustments.⁶⁰
28. In addition, international fair trial standards require that disciplinary proceedings against judges respect a number of essential procedural safeguards and guarantees, including:
 - Right to be informed: the respondent judge has the right to be informed in advance and in detail of the nature of the disciplinary charge and the alleged facts of the charge, and should have the opportunity to comment on the complaint against him/her at an early stage.⁶¹ This does not mean that judges need to be informed of every complaint immediately, especially if these are later dismissed as ill-founded or manifestly inadmissible.⁶² At the same time, any mechanism for the preliminary screening of complaints should be carefully assessed to ensure that it does not result in the dismissal of complaints that are *prima facie* substantiated.
 - Right to be present or represented: the right to a fair hearing in Article 14 (1) of the ICCPR and Article 6 (1) of the ECHR requires that the judge subject to the disciplinary

57 See e.g., *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), prepared by the Judicial Group on Strengthening Judicial Integrity to assist with the practical implementation of the Bangalore Principles, especially para. 15.4; CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 66; and ODIHR *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 26. The CJEU has held in the context of guaranteeing the proper administration and application of EU law that, pursuant to the relevant provisions of Articles 2 and 19 (1) of the Treaty on European Union, Article 267 of the Treaty on the Functioning of the European Union, and Article 47 of the EU Charter of Fundamental Rights, disciplinary proceedings against national judges must be brought before an independent and impartial tribunal, as otherwise the independence and impartiality of such judges themselves may be compromised in applying EU law - including the obligation to refer questions of EU law to the CJEU to make preliminary rulings (see CJEU, *A. K. and Others v. Sąd Najwyższy*, *CP v. Sąd Najwyższy and DO v. Sąd Najwyższy* [GC], C-585/18, C-624/18 and C-625/18, 19 November 2019, especially, paras. 137-154 regarding the elements to take into account to assess the independence of the judicial council vis-à-vis the executive and the legislative branches; and *European Commission v. Poland* [GC], Case C-791/19, 15 July 2021, para. 113).

58 See CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 69; and ODIHR *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 5, which provides: "In order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, Judicial Councils shall not be competent both to a) receive complaints and conduct disciplinary investigations and at the same time b) hear a case and make a decision on disciplinary measures." See also e.g., ECtHR, *Guja v. Moldova*, no. 14277/04, 12 February 2008, para. 86, which states: "[I]n a democratic society both the courts and the investigation authorities must remain free from political pressure."

59 See e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 122.

60 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 19.

61 See the 1988 *Draft Universal Declaration on the Independence of Justice* ("Singhvi Declaration"), par 26 a), *op cit* footnote 73.

62 See e.g., ENCI, *Minimum Judicial Standards V – Disciplinary proceedings and liability of judges*, Report 2014-2015, p. 37, which notes that the rationale of not informing judges of initial complaints immediately was "to protect the judge against the possibility of being unnecessarily troubled, or to avoid the impartiality and independence of the judge being compromised, or the public perception being that it may be compromised".

proceedings shall be present or represented at the disciplinary hearing⁶³ and shall be assisted by a lawyer of his or her choice.⁶⁴

- Equality of arms and right to be heard: the principle of equality of arms calls for a “fair balance” between the parties, requiring that each party should be afforded a reasonable opportunity to present the case under conditions that do not place her/him at a substantial disadvantage vis-à-vis the opponent;⁶⁵ the respondent judge should have the right to be heard, and to present witnesses and receive all relevant information pertaining to his/her case;⁶⁶
- Confidentiality of investigative stages, unless otherwise requested by the judges;⁶⁷
- Right to have the disciplinary case heard within a reasonable time: national rules governing disciplinary proceedings relating to judges should be designed in such a way as to ensure that their case be heard within a reasonable time;⁶⁸
- Public hearing of the case: in principle, all hearings on the merits of a case should be conducted orally and publicly and proceedings may only be held *in camera* in the circumstances prescribed by law and if duly justified, on the basis of a factual assessment of the circumstances,⁶⁹ with due consideration of the right of the judge to the protection of his or her honour, privacy and reputation as guaranteed under Article 17 of the ICCPR and Article 8 of the ECHR. Decisions to exclude the public from disciplinary hearings will need to be justified by the body holding the hearings; given the importance of public scrutiny in such cases, the failure to justify closed hearings may amount to a violation of the right to a fair trial.⁷⁰ Moreover, in order to effectively ensure the publicity of hearings, information must be made available to the public

63 See UN Human Rights Committee, *Aarela and Nakkalajarvi v Finland*, Communication 779/1997, UN Doc CCPR/C/73/D/779/1997 (2001), para. 7.4. See also, for reference, par 5.1. the European Charter on the Statute for Judges (1998): “the judge proceeded against must be entitled to representation”. See also *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 20.

64 See e.g., UN Human Rights Committee, *Kulov v Kyrgyzstan*, Communication 1369/2005, UN Doc CCPR/C/99/D/1369/2005 (2010), para. 8.7; and *Aarela and Nakkalajarvi v Finland*, Communication 779/1997, UN Doc CCPR/C/73/D/779/1997 (2001), para. 7.4. See also CJEU, *European Commission v. Poland* [GC], Case C-791/19, 15 July 2021, paras. 205-214. See also European Charter on the Statute for Judges (1998), para. 5.1, which states that “the judge proceeded against must be entitled to representation”. See also *OSCE Concluding Document of the Vienna Meeting*, Vienna 1989, para. 13.9.

65 See, for reference, ECtHR, *Werner v. Austria*, no. 21835/93, 24 November 1997, para. 63.

66 *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)* from 2023, para. 19.

67 See the UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, paras. 17 and 20. See also the 1988 *Draft Universal Declaration on the Independence of Justice* (“Singhvi Declaration”), para. 26 (a). See also e.g., CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 36.

68 See e.g., ECtHR, *Olujic v. Croatia*, no. 22330/05, 5 May 2009, paras. 31-43; CJEU, *European Commission v. Poland* [GC], Case C-791/19, 15 July 2021, paras. 189-202; *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)* from 2023, para. 19. See also ENCI: *Minimum Judicial Standards V – Disciplinary proceedings and liability of judges*, Report 2014-2015, p. 29. See also ODIHR, *Note on International Standards and Good Practices of Disciplinary Proceedings against Judges*, 27 December 2018, which notes that it is good practice to have time limits for all relevant aspects of disciplinary proceedings, including the conclusion of investigations, issuing final decisions, and the imposition of sanctions (which should take place immediately and without undue delay after the decision on the merits).

69 See e.g., UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, para. 28; ECtHR, *Diennet v. France*, no. 18160/91, 26 September 1995. See also CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990, para. 12; *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 26; and *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 20.

70 See e.g., ECtHR, *Olujic v. Croatia*, no. 22330/05, 5 February 2009, where the Court found a violation of the applicant’s rights due to the fact that the public had been unjustifiably excluded from attending the hearing, despite the applicant’s request for publicity, and considerable public interest in the case (paras. 74-76).

regarding the time and venue of such oral hearings⁷¹ and the location must be easily accessible to the public;

- Motivation: the decision of the disciplinary body on liability should be motivated and state the essential findings, evidence and legal reasoning, so that the judge or the complainant may evaluate the legality of the decision taken, as well as analyse the possibility to successfully achieve the desired result by means of an appeal. The decision on liability should be motivated and state the essential findings, evidence and legal reasoning;⁷²
- Publicity of the decision: decisions on disciplinary measures shall be published;⁷³
- Right to challenge the disciplinary decisions through judicial review or other legal remedies: while there is in principle no entitlement to appeal in non-criminal proceedings,⁷⁴ judges should have the possibility to challenge the decisions of disciplinary bodies through judicial review or other legal remedies, with the possible exception of decisions of the highest court and those of the legislature in impeachment or similar proceedings.⁷⁵ As Constitutional Court should be competent to decide in disciplinary cases against constitutional justices, appealing its decisions on dismissal before the ordinary courts may lead to the relativization of the specific role of the constitutional courts meaning that their authority *vis-à-vis* ordinary courts could be put in question.⁷⁶ Thus, if appeal is provided, it should be considered by Constitutional Courts. The grounds for appeal should allow the review of facts, evidence and correct application of law.⁷⁷ If the appeal allows the examination of the merits of the case, then the judge subject to the disciplinary sanction should in principle be considered to have had access to a court under the domestic system, and consequently the fact that the decisions of the Parliament, of the President or other competent authority regarding possible removal or dismissal are not appealable would not as such deprive the judge of his or her right to a court.

71 See e.g., UN Human Rights Committee, *Van Meurs v. the Netherlands*, Communication 215/1986, UN Doc CCPR/C/39/D/215/1986 (1990), para. 6.2.

72 See UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, para. 29; and *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 26: “[t]he decisions regarding judicial discipline shall provide reasons”. See also e.g., as a comparison in the case of a decision on disciplinary responsibility taken by a Bar Council, ECtHR, *H. v. Belgium*, no. 8950/80, 30 November 1987, para. 53. See also *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 22.

73 See UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, para. 29; and *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 26. See also *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), para. 15.7, which provides that “[t]he final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published”.

74 See e.g., UN Human Rights Committee, *I.P. v. Finland*, Communication No. 450/1991, UN Doc CCPR/C/48/D/450/1991 (1993), para. 6.2.

75 See e.g., *UN Basic Principles on the Independence of the Judiciary*, Principle 20. See also UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial*, 23 August 2007, para. 18, where the UN Human Rights Committee has considered that civil proceedings are compatible with the ICCPR, as long as the said decisions are capable of review on at least one occasion by a competent, independent and impartial tribunal established by law.

76 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 30.

77 See e.g., UN Human Rights Committee, *Riedl-Riedenstien et al. v. Germany*, Communication No. 1188/2003, UN Doc CCPR/C/82/D/1188/2003 (2004), para. 7.3.

29. The above-mentioned safeguards and guarantees are essential to ensure that disciplinary mechanisms serve the legitimate aim of maintaining judicial accountability without compromising the independence and impartiality of the judiciary.⁷⁸

IV. KEY GUIDING PRINCIPLES AND RECOMMENDATIONS

30. A comparative review of legal frameworks governing constitutional courts or similar bodies in charge of constitutional adjudication in the OSCE region shows that there is no single uniform model of disciplinary liability and proceedings against constitutional courts judges,⁷⁹ with the legislation of some countries not regulating the matter,⁸⁰ others explicitly excluding disciplinary liability of constitutional court judges, while strictly regulating the grounds for impeachment or dismissal,⁸¹ as well as jurisdictions where the issue is succinctly regulated,⁸² or provide very detailed elaboration of the disciplinary grounds, sanctions, procedural modalities and guarantees and decisions.⁸³ As underlined above, **scarcity of detailed international and comparative material addressing disciplinary regimes tailored exclusively to constitutional court judges suggests that principles and guarantees related to disciplinary liability ordinarily applying to common court judges would similarly be applicable to constitutional court judges. At the same time, Constitutional Courts, where they exist as separate judicate bodies, should play a key role in matters related to disciplinary liability of its judges accounting for the special role and status of constitutional courts.** These principles and guarantees should inform all aspects of the disciplinary framework, including the institutional design, clearly defining the scope and grounds of the disciplinary liability, procedural safeguards and guarantees, and the range and application of sanctions.

1. SCOPE AND GROUNDS OF DISCIPLINARY LIABILITY OF CONSTITUTIONAL JUSTICES

31. The scope of disciplinary liability defines which areas of a judge's conduct may, in principle, fall within the reach of disciplinary oversight and, crucially, which areas must remain excluded. At the same time, the grounds of disciplinary liability refer to the specific legal bases or types of misconduct that may justify the imposition of disciplinary sanctions within that defined scope.
32. At the outset, it is essential to reiterate that **any disciplinary regime concerning constitutional court judges should operate strictly within, and not extend beyond, what**

⁷⁸ See CJEU, *European Commission v. Republic of Poland*, Case C-791/19, 15 July 2021, para. 61.

⁷⁹ See e.g., Venice Commission, *Comparative overview of legislation on disciplinary liability of judges and presidents of the constitutional courts in the 46 Council of Europe member States*, CDL-PI(2024)034.

⁸⁰ See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 12.

⁸¹ See e.g., Lithuania (Article 12 of the *Law on the Constitutional Court of the Republic of Lithuania*, consolidated version of 17 June 2025, provides: “Disciplinary responsibility may not be applied to a justice of the Constitutional Court”), Kazakhstan (Article 11 (3) of the *Constitutional Law On the Constitutional Court of the Republic of Kazakhstan*, 5 November 2022 No. 153-VII ZRK, provides that “the Constitutional Court judges shall not be subject to disciplinary liability”; see in this respect ODIHR, - (2022), para. 57, recommending to reconsider this exclusion).

⁸² See e.g., Belgium, France, North Macedonia, Portugal.

⁸³ See e.g., Albania, Armenia, Czechia, Georgia, Liechtenstein, Luxembourg, Poland, Romania, Slovakia, Türkiye, Ukraine..

is provided in the constitutional framework should it govern the disciplinary liability of constitutional court judges, including the scope and grounds of disciplinary liability of constitutional court judges.

1.1. Scope of Disciplinary Liability

33. International standards consistently require that **the scope of disciplinary liability be restrictive, clearly circumscribed, and protective of judicial independence**.⁸⁴ This means, in particular, that certain core areas must fall outside the permissible scope of disciplinary control. In this respect, as underlined above, the protection of judges from liability for their judicial decisions exists as an essential corollary of judicial independence and is expressed as a functional immunity for acts performed in the exercise of their judicial functions.⁸⁵ This is essential to ensure that judges can engage in the proper exercise of their functions without their independence being compromised through fear of criminal, civil or disciplinary proceedings, including by state authorities.
34. At the same time, there needs to be a balance between functional immunity as a means to protect a judge against liability for their decisions, or other pressures and abuses from state powers or individuals (e.g., abusive prosecution, frivolous, vexatious or manifestly ill-founded complaints) and the fact that the judges should not be above the law.⁸⁶ As mentioned above, in principle, a judge should only benefit from immunity in the exercise of lawful functions, those involving the interpretation of the law, the assessment of facts or evidence, outcome of cases, but not in cases involving bad faith judicial misconduct, malice or gross negligence, or other serious misconduct or commission of a criminal offense in the exercise of his or her office (e.g., accepting bribes, corruption, traffic of influence or other similar offenses).⁸⁷ As emphasized by the UN Special Rapporteur on the independence of judges and lawyers, judges should not be sanctioned or removed from office for judicial errors or

84 See e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104, which underlines that “the liability of a judge for the substance of judicial activity is a highly delicate question which requires that a distinction be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals, for example, a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand.” See also CCJE *Opinion* No. 27 (2024) on the disciplinary liability of judges, para. 9, which underscores that the scope of disciplinary liability must be clearly defined in order to be consistent with the rule of law.

85 See ODIHR, *Urgent Opinion on the Draft Constitutional Law on the Constitutional Court of Kazakhstan* (2022), para. 56.

86 *Ibid.* para. 56. See also ODIHR and Venice Commission, *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*, 16 June 2014, paras. 37 and 41. See also ECtHR, *Ernst v. Belgium*, no. 33400/96, 15 October 2003, para. 85, holding that barring suit against judges to ensure their independence met the requirement for a reasonable relationship of proportionality between the means used and the aim pursued.

87 See e.g., CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 66, which provides that “[t]he interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”; ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104; and CCJE *Opinion* No. 27 (2024) on the disciplinary liability of judges, paras. 9 and 28, which underline that “disciplinary liability must not extend to the substance of judicial decision-making, including the interpretation of the law, assessment of facts or evidence, or the outcome of cases, except in instances of intentional wrongdoing or gross misconduct”. See also ODIHR *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 25, which provides that disciplinary responsibility should not extend to judicial rulings, differences in legal interpretation, or ordinary judicial errors; ODIHR-Venice Commission, *Joint Opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic* (CDL-AD(2014)018), paras. 41-43. See also Venice Commission, *Updated Rule of Law Checklist*, CDL-AD(2025)002, 16 December 2025, Part II.F.1, para. 107, which provides: “A judge’s decision, including the interpretation of the law, assessment of facts or weighing of evidence, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct”. See also e.g., CJEU, *Commission v. Poland (Disciplinary regime for judges)*, Case C-791/19, 15 July 2021, ECLI:EU:C:2021:596, in particular, paras. 61 and 164 (requirement that disciplinary regimes include safeguards preventing their use as a system of political control over judicial decisions), which underlines that judicial liability regimes must include precise substantive and procedural safeguards to ensure that they cannot be used as instruments of pressure on judicial decision-making.

decisions subsequently overturned on appeal or reviewed by a higher judicial body.⁸⁸ At the same time, cases involving the liability of a judge require consideration of the mental element of the alleged judicial misconduct and it is necessary to carry out a specific analysis of the *mens rea* of the individual judge to establish the individual mental aspect of the alleged misconduct.⁸⁹ Therefore, the mere interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases, or the outcomes of cases should not give rise to civil, criminal or disciplinary liability, even in cases of ordinary negligence or judicial errors,⁹⁰ and even if overturned on appeal or by higher judicial authority, and these should be clearly excluded from the scope of disciplinary liability of constitutional court judges.

35. These considerations are of particular importance in the context of constitutional adjudication, which is inherently collegial in nature. While constitutional courts decide cases collectively, individual judges play a significant role in the preparation of cases, including the analysis of facts and the formulation of draft decisions. Nevertheless, the interpretation of the Constitution and the final adjudication remain acts of the Court as a whole. Accordingly, **disciplinary liability must not be used to target individual judges for positions taken within the deliberative process, including dissenting or concurring opinions, or for the exercise of judicial discretion understood as the good-faith application of legal discretion or judgment within the framework of the Constitution and the law.**
36. More specifically, constitutional interpretation and adjudication concern the core adjudicative function of a Constitutional Court. The authoritative interpretation of the Constitution, the resolution of constitutional disputes, and the application of constitutional principles to concrete cases go to the substance of judicial decision-making itself and, as such, should remain insulated from disciplinary scrutiny. As noted above, judges should not incur disciplinary liability for the content of their decisions, which would *a fortiori* extend to constitutional court judges and their interpretation of the Constitution, assessment of facts, weighing of evidence, or legal reasoning in constitutional disputes. Especially, constitutional court judges should not incur legal liability for the results of their votes as members of the Constitutional Court.⁹¹
37. In the context of constitutional adjudication, when there is a possibility for constitutional court judges to issue dissenting or concurring opinions,⁹² it is also essential to protect judicial discretion, i.e., the judge's latitude, within the bounds of the constitution and the law, to make choices in applying legal norms to particular facts, assessing competing considerations, and determining outcomes where the law allows room for judgment. This discretion is inherent in all judicial functions and especially pronounced in constitutional adjudication, and therefore should likewise remain outside the scope of disciplinary liability. Judges should not incur liability merely because discretionary choices prove controversial,

88 See UN Special Rapporteur on the independence of judges and lawyers, *Report to the Human Rights Council, A/HRC/11/41*, 24 March 2009, paras. 57-59.

89 See e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104.

90 See Venice Commission, *Amicus Curiae Brief to Moldova on the Criminal Liability of Constitutional Court Judges*, CDL-AD(2019)028-e, para. 25. See also *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 25, which provides that disciplinary responsibility should not extend to judicial rulings, differences in legal interpretation, or ordinary judicial errors.

91 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 126.

92 i.e., opinions in which a judge agrees with the content of the majority decision but with a different reasoning.

are subject to disagreement, or are later reversed. The expression of dissenting or concurring opinions generally forms an integral part of judicial discretion and independence, and of the deliberative process within constitutional courts. In comparative practice, dissenting and concurring opinions are not considered to weaken a constitutional court but rather have several benefits.⁹³ They contribute to the transparency, legitimacy, and development of constitutional jurisprudence, and they also enable public, especially scientific, discussion of the judgments, strengthen the independence of the judges and ensure their effective participation in the review of the case in this respect; separate opinions also improve the quality of judgments, because those delivering a dissenting or concurring opinion must explain why they do not agree with the majority.⁹⁴ In light of the foregoing, **dissenting and concurring opinions, as such, should not be subject to disciplinary liability, without prejudice to disciplinary responsibility for conduct that is independent of the mere expression of a separate judicial opinion.**

Finally, a constitutional court judge's decision to submit a request for consideration of a preliminary ruling to the Court of Justice of the European Union (CJEU) should also not give rise to disciplinary liability,⁹⁵ since national courts act as ordinary courts of EU law when applying and interpreting EU law, and the possibility of making such a request forms part of the core judicial competences conferred under EU law. Similarly, the request for an Advisory Opinion of the ECtHR must not give rise to judicial liability.⁹⁶

1.2. Disciplinary Grounds and Sanctions

38. Within the above-mentioned scope of disciplinary liability, as underlined above, **the grounds of disciplinary liability must themselves be clearly defined, specific, and limited to serious misconduct. Also, disciplinary liability cannot be expanded through legislation or practice in a manner that effectively creates additional grounds for removal and sanctions beyond those that may be provided for in the Constitution, as this would otherwise risk exceeding the constitutional limits of judicial accountability.**
39. While disciplinary liability must not extend to the substance of judicial decision-making, disciplinary liability should arise in case of professional misconduct that are gross and inexcusable and that bring the judiciary into disrepute,⁹⁷ reflecting a deliberate abuse of judicial office or a manifest and serious departure from professional standards, or the commission of a criminal offence.⁹⁸
40. At the same time, disciplinary liability may not interfere with the legitimate exercise of individual rights of judges such as their freedom of expression – including lawful participation in debates on constitutional, judicial, or rule-of-law issues (as enshrined in Article 19 of the ICCPR and Article 10 of the ECHR), freedom of association (as guaranteed in Article 22 of the ICCPR and Article 11 of the ECHR), their right to respect for private

93 See ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 91; and *Urgent Opinion on the Draft Constitutional Law of the Republic of Kazakhstan on the Constitutional Court*, 30 September 2022, paras. 82 and 83.

94 See ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 91.

95 See e.g., CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 28.

96 CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 28..

97 OSCE, *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 25. See also International Association of Judicial Independence and World Peace, *Bologna and Milan Global Code of Judicial Ethics* (2015), Article 1.2.

98 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 73. Comparative practice indicates that such grounds typically include criminal offences, serious breaches of judicial duties, or conduct incompatible with judicial office.

and family life under Article 17 of the ICCPR and Article 8 of the ECHR or their right to a fair trial pursuant to Article 14 of the ICCPR and Article 6 of the ECHR.⁹⁹ At the same time, judges should exercise particular caution in the exercise of their rights, for instance when using social media or engaging with the press, bearing in mind the need to safeguard the honour and dignity of their office, a consideration that may be of particular importance in the case of judges of apex or constitutional courts. They should also refrain from comments which may prejudice the perception of judicial impartiality in the examination of cases in front of them,¹⁰⁰ or more generally, where their statements could undermine public confidence in their independence or impartiality, or affect the authority of the judiciary in general,¹⁰¹ including that of the Constitutional Court.

41. It is noted however that the right to freedom of expression of judges has been interpreted as also implying a duty to speak in defence of the rule of law and judicial independence in situations where such fundamental values are threatened.¹⁰² At the same time, while the general principles governing freedom of expression apply equally to constitutional court judges, their specific institutional role may justify a more demanding standard of judicial restraint in public communication. Given the constitutional function of constitutional courts in adjudicating issues of high political and institutional sensitivity, constitutional justices may be expected to exercise particular caution in their public statements, in order to preserve not only their personal appearance of independence and impartiality, but also the authority and legitimacy of the Court as a constitutional organ. This heightened expectation, however, would seem to relate more to standards of judicial ethics and propriety rather than to the scope of disciplinary liability, which should be kept clearly distinct due to the very different nature of the respective rules and standards.¹⁰³
42. When applicable domestic legislation specifically regulates the disciplinary liability of constitutional court judges, approaches vary considerably with regard to both the nature of disciplinary liability and the degree of detail in which disciplinary grounds are defined. Certain OSCE participating States provide an exhaustive though limited list of more or less strictly formulated disciplinary grounds,¹⁰⁴ while others provide a more extensive list of

99 See e.g., CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 12.

100 See e.g., *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, paras. 27-29.

101 See e.g., CCJE *Opinion No. 25 (2022) on freedom of expression of judges*, paras. 4 and 28.

102 CCJE, *Opinion No. 25 (2022) on freedom of expression of judges*, para. 58; Report of the UN Special Rapporteur on the independence of judges and lawyers (2019), para. 102; European Network of Councils for the Judiciary, *Sofia Declaration on judicial independence and accountability* (2013), para. vii; Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct* (September 2007), para. 140; CCJE, *Magna Carta of Judges* (2010), para. 3. See also ECtHR, *Baka v. Hungary* [GC], no. 20261/12, 23 June 2016, paras. 170-173, where the ECtHR observed that the applicant, a judge who was prematurely removed as the President of the Supreme Court following legal reforms, had expressed views and criticisms on constitutional and legislative reforms affecting the judiciary, on issues related to the functioning and reform of the judicial system, the independence and irremovability of judges, and the lowering of the retirement age for judges, all of which are questions of public interest and concluded that the judge's statements did not go beyond mere criticism from a strictly professional perspective. See also ODIHR *Warsaw Recommendations on Judicial Independence and Accountability*, ODIHR, 2023, para. 28, which state: "Judges should be able to exercise this freedom to contribute to public discourse on issues affecting the rule of law and enjoyment of human rights, including, but not limited to, debates on legislation, policies that may affect judicial self-governance, and topics that raise fundamental questions in a democratic society. Judges also have a duty to speak out in defence of the rule of law and judicial independence in situations where these values are threatened. However, judges should show particular caution in the exercise of this right when using social media and dealing with the press, bearing in mind the aforementioned need to safeguard the honour and dignity of their office, as well as the need to abstain from comments which may prejudice the perception of judicial impartiality in the examination of cases in front of them."

103 ODIHR *Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine* (2025), para. 81.

104 See e.g., Article 10 of the *Law No. 8577 of 10 February 2000* on the Organisation and Functioning of the Constitutional Court of the Republic of Albania lists 17 disciplinary grounds, although some of the wording such as "Repeated or serious breach of the rules of solemnity and rules of conduct" or "improper behaviour" may potentially lead to diverging interpretation.

disciplinary grounds, and others, a range of more broadly framed disciplinary grounds,¹⁰⁵ at times in open-ended terms.¹⁰⁶ Certain countries seek to elaborate in their legal frameworks a gradation in the seriousness of disciplinary offences, clarifying what is meant by serious or very serious misconduct and modulating procedural modalities and sanctions depending on the level of seriousness, and setting out, where appropriate, the relevant mental elements.¹⁰⁷

43. As underlined above, the requirement of legal certainty and foreseeability is central to any disciplinary regime and **it is generally considered a good practice to define disciplinary offences through an exhaustive and precise list**, insofar as it seeks to define in clear and precise terms the grounds on which constitutional court judges may incur disciplinary liability **rather than relying on broad, undefined or open-ended formulations**.¹⁰⁸ **At the same time, enumeration alone does not suffice to satisfy the requirements of legality and foreseeability; each listed disciplinary ground must itself be formulated with sufficient precision to enable judges to foresee, to a reasonable degree, the consequences of their conduct and to prevent overly broad or discretionary application.**
44. While it is not uncommon from a comparative perspective for certain legislation to refer to broad disciplinary grounds such as “breach of oath”, “unethical behaviour”, being “unworthy of the office” or conduct bringing “discredit” to the court or “undermining the dignity of the office” of a constitutional court judge, such wording may be open to misinterpretation or

105 See e.g., Section 36 of the Constitutional Court Law of **Latvia** (1997, as amended), which provides that “A Constitutional Court judge may be subject to disciplinary liability regarding: 1) breach of the restrictions specified in Section 34 of this Law [(i.e., Obtaining of Income, Combining of Offices and other Restrictions for Judges of the Constitutional Court)]; 2) failure to fulfil official duties; 3) reprehensible conduct”; Article 12 (4) of the [Constitutional Court Act of 27 November 2003 of Lichtenstein](#), which provides for dismissal from office in case of a constitutional court judge being sentenced in a criminal matter that bars from election to Parliament or if, through actions either in or out of office, the judge has shown being unworthy of the respect and trust the office requires or has seriously violated the duty of professional secrecy; Article 27 (1) of the Law of 24 October 2018 on the Constitutional Court of the **Slovak Republic**, which states: “A judge of the Constitutional Court commits a disciplinary offence if he/she culpably violates the duties entailed in the exercise of the office of Constitutional Court judge or if he/she behaves in such a way as to disrupt or threaten the authority of the Constitutional Court, the trust in the Constitutional Court or the authority of the office of judge of the Constitutional Court”.

106 See e.g., Article 49 of the Special Act of 6 January 1989 on the Constitutional Court of **Belgium**, which provides: “Presidents and judges who have infringed the dignity of their office or have fallen short of the obligations of their position may be removed or suspended from their office by a judgment pronounced by the Constitutional Court”; Article 133 of the [Act on the Constitutional Court of Czechia of 16 June 1993](#), No. 182/1993, which refers to “any conduct by a Justice which lowers the esteem and dignity of his office or tends to undermine confidence in the independent and impartial decision-making of the Court, as well as any other culpable violation by a Justice of his duties”; Article 24 of the [Act on the Constitutional Tribunal of Poland](#) (2016, as amended), which provides: “A judge of the Tribunal shall be subject to disciplinary proceedings before the Tribunal for a breach of provisions of law, conduct that undermines the dignity of the office of a judge of the Tribunal, a breach of the Code of Ethics for the Judges of the Constitutional Tribunal of Poland or any other unethical conduct that may weaken trust in the said judge’s impartiality or independence.” See also, as a comparison with respect to disciplinary liability of judges in general, CCJE, [Opinion No. 27 \(2024\) on the disciplinary liability of judges](#), para. 25.

107 For instance, Article 18 of the [Qualified Law on the Constitutional Court of Andorra](#) provides an exhaustive list of “slight offenses” (i.e., lack of consideration and respect towards other members of the Court, the Court staff or persons appearing in the proceedings, in whatever capacity; imprudent delay in performing the duties arising out of their office), of “serious offenses” (i.e., failure to observe the requirement of secrecy of the deliberations, failure by reporting judges to state the reasons for the opinions which they submit, manifest and repeated negligence in the resolution of the cases within their jurisdiction, public criticism of or disagreement with the decisions and judgments of the Court, issuing warnings, compliments or rebukes to the bodies and authorities of the State, unwarranted absence from two or more plenary sessions of the Court or from two or more sessions formally called by the president, infringement of the parties’ right to conduct the proceedings at any stage thereof, repetition of slight offenses where the penalty imposed has not yet lapsed), Lack of consideration and respect towards other members of the Court, the Court staff or persons appearing in the proceedings, in whatever capacity and of “very serious offenses” (i.e., failure to observe the grounds for disqualification provided for in this Law, unwarranted dereliction of judicial duties for more than two months, repeated or further commission of serious offenses), while Article 19 specifies the types of sanctions for each category of offenses; Article 12 (3) of the [Constitutional Law of the Republic of Armenia on the Constitutional Court](#) specifies that “3. A significant disciplinary violation is: 1) the absence of a judge of the Constitutional Court at meetings of the Constitutional Court three times or more during the year without a good reason; 2) a judge of the Constitutional Court, having two reprimands or one severe reprimand, re-disciplinary violation; 3) intentional or grossly negligent violation of the rules of conduct prescribed in Clauses 1-4, 8, 9, 11, 12, 15 and 16 of Part 1 of Article 14 of this”; Law, is incompatible with the status of a judge due to the circumstances of the execution and/or the consequences. 3.1. In accordance with this article, the act is considered grossly negligent if the judge has not realized the unlawful nature of his/her conduct, although in the given situation he/she obviously could and should have done so. 3.2. In accordance with this Article, the act is considered intentional if the judge has realized the unlawful nature of his/her conduct.”

108 See e.g., CCJE, [Opinion No. 27 \(2024\) on the disciplinary liability of judges](#), para. 25.

- arbitrary application, unless there are clear guidelines or practice establishing a consistent and restrictive interpretation of the disciplinary ground and its constitutive elements.¹⁰⁹
45. In addition, as underlined in the ODIHR Warsaw Recommendations, “[d]espite interplay between them, ethical rules should not be used as grounds for disciplinary proceedings, and the bodies that oversee breaches of ethical norms should be separate from those competent to hear a disciplinary case”.¹¹⁰ **While ethical guidance and disciplinary accountability may be related, they pursue distinct purposes and require different institutional approaches. Hence, no single body should in principle be simultaneously responsible for oversight of ethical standards and for disciplinary proceedings.** Combining these functions within the same body risks blurring the distinction between ethical counselling and disciplinary accountability, may undermine trust in the confidentiality and preventive nature of ethical oversight, and could potentially raise concerns regarding impartiality of the body.¹¹¹
46. Similar concerns arise regarding the reference to “gross disrespect” toward fellow judges, participants or others present in the courtroom, which although warranting institutional response,¹¹² remains inherently evaluative and may be difficult to reconcile with the requirement that disciplinary liability arise only in exceptional circumstances involving serious misconduct, particularly for constitutional court judges. In the past, **ODIHR has warned against the use of such vague formulations, emphasizing that international standards require disciplinary offences to be clearly defined by law and formulated with sufficient precision to ensure foreseeability.**¹¹³ In the absence of guidelines or practice establishing a consistent and restrictive interpretation of the disciplinary ground(s),¹¹⁴ it is essential for such grounds to always be interpreted narrowly with a view to safeguard judicial independence and in line with applicable international standards. In this respect, **cases involving the liability of constitutional court judges require consideration of the mental element of the alleged judicial misconduct in order to distinguish circumstances that amount to a good-faith legal error that should fall within the scope of the functional immunity, from bad faith judicial misconduct, malice or gross negligence that should lead to disciplinary liability.**¹¹⁵
47. Further, from a comparative perspective, it is also not uncommon for the repeated commission of disciplinary offences to be treated as an aggravating factor, which may lead to the qualification of the conduct as more serious and to correspondingly more severe

109 In the case *Ovcharenko and Kolos v. Ukraine*, the ECtHR found that broadly framed disciplinary provisions, such as “breach of oath”, failed to meet the requirements of foreseeability, legal uncertainty and protection against arbitrariness, especially given the importance of judicial tenure for the rule of law; see ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, paras. 96 and 108. See also e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 79. At the same time, certain domestic legislation seeks to clarify such terms, e.g., in *Montenegro*, Article 18 of the Law on the Constitutional Court provides that “Criminal offences that deem the Constitutional Court judge unworthy of performing his function are those criminal offences which are prosecuted ex officio and for which a punishment of imprisonment of more than six months is prescribed”.

110 ODIHR *Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 25.

111 See e.g., ODIHR *Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine* (20 December 2025), paras. 81-83 and 100-101.

112 For instance, in *Andorra*, “Lack of consideration and respect towards other members of the Court, the Court staff or persons appearing in the proceedings, in whatever capacity” constitutes a slight offence, which may only be subject to an oral or written warning imposed by the President or Vice-President of the Court (Articles 18 (2) and 19 (2) of the Qualified Law on the Constitutional Court).

113 See e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 79.

114 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 96.

115 See e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104.

sanctions.¹¹⁶ At the same time, while repeated misconduct may legitimately be considered an aggravating factor, the automatic reclassification of otherwise lesser offences as serious disciplinary misconduct capable of leading to dismissal may risk blurring the distinction between ordinary disciplinary liability and the exceptional grounds for removal provided in the Constitution. Hence, while the repeated commission of disciplinary offences should be taken into consideration in determining sanctions, it should not in itself mechanically transform the underlying conduct into the most severe form of disciplinary liability.

48. Finally, and as underlined in the *ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine*, ethical standards, while providing important guidance for judicial conduct, should not in themselves constitute autonomous grounds for disciplinary liability.¹¹⁷ This distinction is necessary to prevent the use of vague or subjective criteria as a means of exerting pressure on judges. Generally, given the aspirational nature of rules of professional ethics, they are often not enshrined in legislation and tend to be formulated in broad and general terms, which do not fulfil the requirement of foreseeability and should not be equated with a piece of legislation nor directly applied as a ground for disciplinary sanctions.¹¹⁸ Occasionally, a breach of ethical rules may be sufficiently serious that it may have been included in legislation as one of the grounds for disciplinary liability or may be interpreted as such, thereby warranting the conduct to be referred to the relevant (independent) specific investigatory body, which will be in charge to assess whether or not there is a sufficient case against the judge to call for the initiation of disciplinary proceedings.¹¹⁹
49. In any case, **the wider the potential discretion as to what constitutes a (serious) disciplinary offence and the higher the severity of the sanction, the more comprehensive procedural guarantees are necessary; conversely, if the grounds for dismissal are clearly and narrowly set out in the law, so that violations can be determined objectively with little discretion necessary, leaving the disciplinary body a mostly formal power of disciplinary sanction or even dismissal, less comprehensive procedural guarantees may be acceptable.**¹²⁰

2. INSTITUTIONAL FRAMEWORK FOR DISCIPLINARY LIABILITY

50. As noted above, international standards and recommendations provide that disciplinary proceedings should be conducted by an independent and impartial body, free from political influence, and structurally insulated from the executive and legislative branches (see para.

¹¹⁶ For instance, Articles 18 of the Qualified Law on the Constitutional Court of Andorra.

¹¹⁷ See *ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine* (20 December 2025), paras. 81-83. See also, *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)* (2023), para. 25, which underlines that ethical rules and disciplinary norms, although related, must remain distinct, and the bodies responsible for their enforcement should be separate.

¹¹⁸ See e.g., *ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine* (20 December 2025), para. 26 and references therein. See also e.g., Venice Commission, *Opinion on the Draft Code on Judicial Ethics of the Republic of Tajikistan*, of 10 December 2013, adopted by the Venice Commission at its 97th Plenary Session (6-7 December 2013), CDL AD(2013)035. See also *CCJE Opinion No. 3(2002) on the Principles and Rules Governing Judges' professional conduct, in particular ethics, incompatible behaviour and impartiality*, paras. 44 and 46-47; see also para. 48 (i), which underlines that “principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence”.

¹¹⁹ See e.g., *ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine* (20 December 2025), para. 83. See also *CCJE Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 19.

¹²⁰ See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 21.

27 above).¹²¹ The UN Basic Principles on the Independence of the Judiciary specifically emphasize that disciplinary proceedings must respect judicial independence and be based on pre-established standards of conduct.¹²² Especially, it is essential that sufficient guarantees exist to ensure an independent and impartial examination of disciplinary cases, which addresses all relevant factual and legal issues that are decisive for the outcome of the case, is ensured.¹²³ Generally, where Constitutional Court, following Kelsenian model, represents a judicial branch separate from common court system, it is recommended that issues of disciplinary liability are primarily considered by the Constitutional Court itself. At the same time, constitutional framework may envisage involvement of other public institutions, providing information, evidences or assessments of the behaviour of a constitutional court judge. Where political organs (parliaments or presidents) are constitutionally involved in termination of mandates of constitutional court judges due to disciplinary violations, such decisions should be based on the findings of the Constitutional Court. A decisive role of the Constitutional Court in proceedings concerning the disciplinary liability of Constitutional Court judges, including cases that may result in suspension, removal from office, or other serious sanctions, does not preclude, as comparative practice demonstrates, the involvement of courts within the ordinary judiciary in decisions concerning the dismissal of Constitutional Court judges. This may be the case, for example, where a final criminal conviction constitutes a ground for removal from office and serves as an indication that the judge is no longer fit to hold judicial office. Hence, it is not uncommon to have separate procedural tracks and special procedural modalities for suspension or removal of constitutional court judges (see Sub-Section 5.1. *infra*).

51. International standards do not prescribe a single institutional model for initiating, examining, and deciding disciplinary matters concerning constitutional court justices. From a comparative perspective, when applicable legislation specifically addresses the disciplinary liability of constitutional court judges, there is a trend that disciplinary procedures against the judges of Constitutional Courts or equivalent bodies are carried out within those courts,¹²⁴ with a view to minimize external interference and protect judicial independence. Certain systems appear to favour internal corrective or material sanctions over formal disciplinary

121 As a comparison, with respect to the institutional design of disciplinary mechanisms for judges in general, the CCJE identifies two main models for the organization of disciplinary proceedings concerning judges: (i) the “council system”, in which a judicial council or similar independent body is entrusted with disciplinary functions, and (ii) the “court system”, in which disciplinary competence is exercised by a judicial or quasi-judicial body, typically within or closely linked to the judiciary itself; see *CCJE Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 15. See also e.g., *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), especially para. 15.4; CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 66; and *ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 26. The CJEU has held in the context of guaranteeing the proper administration and application of EU law that, pursuant to the relevant provisions of Articles 2 and 19 (1) of the Treaty on European Union, Article 267 of the Treaty on the Functioning of the European Union, and Article 47 of the EU Charter of Fundamental Rights, disciplinary proceedings against national judges must be brought before an independent and impartial tribunal, as otherwise the independence and impartiality of such judges themselves may be compromised in applying EU law - including the obligation to refer questions of EU law to the CJEU to make preliminary rulings (see CJEU, *A. K. and Others v. Sąd Najwyższy, CP v. Sąd Najwyższy and DO v. Sąd Najwyższy* [GC], C-585/18, C-624/18 and C-625/18, 19 November 2019, especially, paras. 137-154 regarding the elements to take into account to assess the independence of the judicial council vis-à-vis the executive and the legislative branches; and CJEU, *European Commission v. Poland* [GC], Case C-791/19, 15 July 2021, para. 113).

122 See *UN Basic Principles on the Independence of the Judiciary*, endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 17-19.

123 See e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 126.

124 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 26. For instance, this is the case in Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Czechia, Estonia, France, Georgia, Germany, Latvia, Liechtenstein, Luxembourg, the Republic of Moldova, Poland, Portugal, Romania, Slovakia, Spain, Türkiye, Ukraine.

liability in the ordinary sense.¹²⁵ At the same time, its legitimacy depends on the institutional independence and impartiality of the Court itself. Even where disciplinary sanctions are administered internally, robust procedural safeguards, clear legal criteria, and transparency remain indispensable to prevent misuse and maintain public confidence in the integrity of the institution. When liability may potentially attract removal or suspension as a sanction, it is not uncommon that other branches of power, such as the Parliament or the President of the Republic, decide on the removal, after disciplinary procedures are conducted within Constitutional Court (or equivalent courts with respect to their own judges).¹²⁶ This does not exclude, involvement of common courts in dismissal of constitutional court judges, for example, in case of a criminal conviction, leading to the dismissal from office. Generally, any involvement of the other branches in disciplinary proceedings risks rendering the constitutional court even more vulnerable to political pressure and is generally not recommended,¹²⁷ unless the external/political body's decision is pre-conditioned by a prior assessment of the behaviour of the constitutional court judge by an independent body or court.¹²⁸

52. One of these essential safeguards is, as noted above, to ensure a clear separation between the persons or bodies entitled to initiate disciplinary proceedings and those conducting the investigation, themselves to be distinct from the independent body or court that will take the decision relating to the disciplinary liability of a judge¹²⁹ – although acknowledging potential difficulties in ensuring such clear demarcation when dealing with the apex court and its small number of judges.¹³⁰
53. In this respect, overly rigid or automatic recusal mechanisms may create functional difficulties, particularly in small judicial bodies such as constitutional courts, potentially preventing them from reaching the quorum necessary to adjudicate disciplinary matters.¹³¹ The findings and recommendations from the [ODIHR Comparative Note on the Applicable Standards and Regulation of Recusals and Self-recusals of Judges](#) may be useful in this respect.¹³² A potential invocation of the “doctrine of necessity” (whereby in extraordinary

125 For example, in **Italy**, judges of the Constitutional Court of Italy are not subject to an ordinary disciplinary regime and accountability is largely mediated through constitutional rules on tenure, internal collegial practice, and constitutionally regulated grounds for removal; in **Germany**, judges of the Federal Constitutional Court are subject to a highly restrictive accountability framework centred on constitutionally defined grounds for removal rather than ordinary disciplinary sanctions, with strong emphasis on institutional autonomy; in **Spain**, members of the Constitutional Court of Spain fall outside the ordinary disciplinary system applicable to career judges, with accountability primarily governed through constitutional and internal institutional mechanisms. These models tend to favour internal corrective arrangements or narrowly circumscribed constitutional removal mechanisms over formal disciplinary liability in the ordinary sense.

126 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 26.

127 See ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 76. See also Venice Commission, *Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice (Updated)*, CDL-PI(2022)050, 7 December 2022, Section 4.6.1; and Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, paras. 26-27.

128 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 122.

129 See CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 69; and ODIHR *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 5, which provides: “In order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, Judicial Councils shall not be competent both to a) receive complaints and conduct disciplinary investigations and at the same time b) hear a case and make a decision on disciplinary measures.” See also e.g., ECtHR, *Guja v. Moldova*, no. 14277/04, 12 February 2008, para. 86, which states: “[I]n a democratic society both the courts and the investigation authorities must remain free from political pressure.”

130 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 19.

131 See e.g., ODIHR, [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-Recusals of Judges](#).

132 See ODIHR, [Comparative Note on the Applicable Standards and Regulation of Recusals and Self-Recusals of Judges](#), 15 December 2025. See also [ODIHR Opinion on the Rules of Professional Ethics of the Judges of the Constitutional Court of Ukraine](#) (20 December 2025), Sub-Section 4.3.

circumstances a judge who is otherwise disqualified may still hear and decide a case where failure to do so may result in an injustice, for instance where there is no other judge reasonably available who is not similarly disqualified), may be considered.¹³³ **A careful institutional balance is therefore required between safeguarding impartiality and ensuring the operability of the decision-making body.**

54. While having disciplinary functions exercised internally within the Constitutional Court may help shielding its members from external pressure, internal models also require particularly careful safeguards against risks of corporatism, bias, or internal pressure. Ensuring a clear separation between those responsible for receiving complaints, deciding on the initiation of disciplinary proceedings, conducting any preliminary examination or investigation, and those deciding the merits of the case constitutes such a safeguard against potential bias and institutional self-interest and is recommended with respect to disciplinary liability of judges in general.¹³⁴ At the same time, as underlined above, the small number of judges of the constitutional courts may render difficult to fully comply with this requirement and may require some adjustments.¹³⁵ From a comparative perspective, several national institutional frameworks, when they specifically regulate the disciplinary liability and proceedings against constitutional court judges, envisage mechanisms to ensure that those receiving/submitting complaints, deciding on the initiation of disciplinary proceedings and/or investigating allegations of disciplinary misconduct by constitutional court judges are not ultimately involved in the adoption of the decision on disciplinary liability.¹³⁶ It would be essential in any case for legislation or internal rules of procedure to regulate the issue.

133 See ODIHR, *Comparative Note on the Applicable Standards and Regulation of Recusals and Self-Recusals of Judges*, 15 December 2025, paras. 23 and 41. See also Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 20.

134 See CoE, *Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities*, para. 69; CCJE *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 19, where the CCJE recommends that “[t]he body that is responsible for the initiation of a disciplinary procedure and its investigation should not be the same body deciding the disciplinary matter” and para. 31, which identifies four sequential stages in disciplinary proceedings: the information or complaint phase, the investigation phase, the report/initiation phase and the decision stage. See also ODIHR *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* (2010), para. 5, which provides: “In order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, Judicial Councils shall not be competent both to a) receive complaints and conduct disciplinary investigations and at the same time b) hear a case and make a decision on disciplinary measures”; ODIHR *Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)* (2023), para. 23, which provides that “[t]he members of bodies initiating disciplinary proceedings should not be the same as those that render a decision in such proceedings”. See also e.g., ECtHR, *Guja v. Moldova*, no. 14277/04, 12 February 2008, para. 86, which states: “[I]n a democratic society both the courts and the investigation authorities must remain free from political pressure.”

135 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 19.

136 See e.g., in **Albania**, the decision to initiate disciplinary proceedings is taken, upon the request of the Chairperson or of any Constitutional Court judge; the Chairperson or the most senior judge in office, when the Chairperson is subject to proceedings, shall take measures to initiate disciplinary proceedings (Article 10/a (1) of the *Law No. 8577 of 10 February 2000* on the Organisation and Functioning of the Constitutional Court of the Republic of Albania); two judges assigned by lot shall collect facts, evidence and other data regarding the misconduct attributable to the judge and they shall, within 30 days, prepare the respective report and send it to the Disciplinary Committee for examination (Article 10a (3)); the Disciplinary Committee shall be composed of three Constitutional Court judges assigned by lot, without the participation of the judges involved in collection of facts and evidence under Article 10a (3) (Article 10a (4)). In **Luxembourg**, Article 23 of the *Law of 27 July 1997 on the organisation of the Constitutional Court* provides that “Disciplinary penalties shall be imposed by the Constitutional Court sitting in general assembly and taking its decision in private. The President of the Court or the member of the Court who, owing to the President’s unavailability, investigated the disciplinary case for hearing, shall not participate in the deliberations or decisions on the case.” In **Slovakia**, the motion for commencement of disciplinary proceedings against a judge of the Constitutional Court may be filed by the President of the Constitutional Court or again the President of the Constitutional Court, by at least three fifths of members of the National Council (Article 27 (2) and (3) of the *Law of 24 October 2018 on the Constitutional Court of the Slovak Republic*, as amended); the Plenum of the Constitutional Court decided whether to stay or to initiate disciplinary proceedings, in which latter case it appoints a three-member disciplinary senate randomly (Article 28 (4)); the President of the Constitutional Court, if he/she has filed the motion, and the judge against whom the motion is directed may not be members of that disciplinary senate (Article 28 (4)); the Plenum adopts a ruling on the disciplinary liability of the Constitutional Justice without being bound by the proposal of the disciplinary senate (Article 28 (5)-(7)).

55. The comparative review shows that there is a variety of institutional mechanisms for disciplining constitutional court judges and although not necessarily common, having a standing commission in charge of disciplinary matters may be an option, provided this ensures an independent and impartial examination of disciplinary cases, as mentioned above. If it exists, its exact role within the disciplinary proceedings should be clear while ensuring that the functions of initiating disciplinary proceedings, investigation of the case and decision on the merits are kept separate.
56. Regardless of the model adopted, international standards require that all bodies involved in disciplinary proceedings – at the investigative, prosecutorial, and decision-making stages – be independent and free from undue influence, particularly from the executive and legislative branches.¹³⁷ These guarantees should be firmly anchored at the constitutional or legislative level in order to prevent political pressure and ensure institutional independence. In this context, **particular risks arise where disciplinary proceedings are subject to direct or indirect control by the executive, for example through ministries of justice or prosecution services that lack institutional autonomy or independence,**¹³⁸ **as this would raise serious concerns regarding the separation of powers and judicial independence.**
57. Finally, it is essential that the provisions governing the institutional framework are clear, precise and sufficiently foreseeable, in order to ensure legal certainty, transparency and the institutional guarantees inherent in judicial independence.

2.1. Complaints and Initiation of Disciplinary Proceedings against Constitutional Court Justices

58. In order to prevent abuse at the initiation stage of disciplinary proceedings, the decision to commence such proceedings must be based on clearly defined, sufficiently precise, and foreseeable grounds (see Sub-Section 1 *supra*), enabling judges to reasonably anticipate the disciplinary consequences that may result from specific conduct.¹³⁹ **Complaints based on illegitimate grounds, as outlined above, or otherwise manifestly unfounded or vexatious claims should be declared inadmissible and dismissed without delay.**¹⁴⁰ At the same time, any mechanism for the preliminary screening of complaints should be carefully assessed to ensure that it does not result in the dismissal of complaints that are *prima facie* substantiated. As noted above, **a Constitutional Court judge should also not incur disciplinary liability for the content of their decisions, although a distinction may need to be made between a disputable interpretation or application of the law, on the one hand, and a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, gross negligence or an obvious lack of legal basis for a judicial measure, on the other hand, which may potentially trigger liability.**¹⁴¹ It is also important that a complaint seeking to raise the disciplinary liability of a judge on the basis of the same factual

¹³⁷ See e.g., *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 17; and ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 76; *CCJE Opinion No. 27 (2024) on the disciplinary liability of judges*, paras. 20-22. See also e.g., Venice Commission, *Opinion on the Act on the Constitutional Tribunal of Poland*, CDL-AD(2016)026, paragraph 23.

¹³⁸ See e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 76; *CCJE Opinion No. 27 (2024) on the disciplinary liability of judges*, paras. 20-22. See also e.g., Venice Commission, *Opinion on the Act on the Constitutional Tribunal of Poland*, CDL-AD(2016)026, para. 23.

¹³⁹ *CCJE Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 32.

¹⁴⁰ *Ibid.*

¹⁴¹ See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 104.

circumstances that have already resulted in a decision dismissing the case is also rejected as inadmissible. Certain national legislation specifically lists the grounds for inadmissibility with respect to complaints concerning the content of decisions – although the use of content to prove gross negligence or gross misconduct should be allowed, repeated complaints based on the same factual circumstances or those that are manifestly unfounded.¹⁴²

59. In terms of the persons having standing to bring a complaint, in previous opinions, ODIHR underlined that the right to submit a complaint against an apex court judge to the authorities competent to initiate disciplinary proceedings should be granted to persons who have been affected by the said behaviour or to those who have some form of legal interest in the matter.¹⁴³ As mentioned above, the members of the executive branch should not have standing to bring a complaint against a Constitutional Court judge as this would risk exposing constitutional court judges to political influence.¹⁴⁴ From a comparative perspective, it appears rather common to provide that the President of the Constitutional Court, Vice-Presidents, or a certain number of Constitutional Court judges, may submit a complaint or motion to initiate disciplinary proceedings.¹⁴⁵
60. With respect to the decision to initiate disciplinary proceedings, it is essential that the body taking the decisions also presents all guarantees of independence against potential external

142 For instance, in **Türkiye**, the President of the Constitutional Court “shall not process complaints and notifications that are anonymous, unsigned, lack a specific address, do not pertain to a particular incident or cause, or lack substantiated evidence or grounds. Nevertheless, if such complaints and notifications are substantiated by material evidence, the necessary examinations and investigations shall be conducted” (see Article 17 (1) of the [Internal Regulations of the Constitutional Court](#)); in **Albania**, Article 10/a (1) of the [Law No. 8577 of 10 February 2000](#) on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides that “Where there is sufficient evidence that a Constitutional Court judge has committed a misconduct provided for in Article 128 of the Constitution and Article 10 of this Law, upon the request of the Chairperson or of any Constitutional Court judge, the Chairperson or the most senior judge in office, when the Chairperson is subject to proceedings, shall take measures to initiate disciplinary proceedings”; Article 139 (1) of the [Act on the Constitutional Court of Czechia of 16 June 1993](#), No. 182/1993, which provides that “Another disciplinary proceeding may not be instituted in the same matter”; in **Slovakia**, Article 28 (2) and (3) of the [Law of 24 October 2018 on the Constitutional Court of the Slovak Republic](#), as amended, provides that “(2) The Plenum of the Constitutional Court shall not admit the disciplinary motion for further proceedings if it finds that it is manifestly unfounded. (3) The Plenum of the Constitutional Court shall stay the proceedings if: a) it concerns a judge of the Constitutional Court in whose case earlier disciplinary proceedings for the same conduct ended with a decision of the Constitutional Court not admitting the motion for further proceedings or with one of the decisions of the Plenum of the Constitutional Court specified in paragraph 7 below, b) the time limit for filing a motion for commencement of disciplinary proceedings has elapsed, c) the disciplinary liability of the Constitutional Court judge has lapsed, d) the office of the judge of the Constitutional Court has ended”; in **Georgia**, Article 46 (4) of the Organic Law “On the Constitutional Court of Georgia” (1997) explicitly provides: “It is not allowed to repeatedly raise the issue of early termination of the judge’s authority with reference to the same factual circumstances”; in **Denmark** (although it does not have a Constitutional Court and constitutional adjudication is handled by ordinary courts), it is explicitly provided that “The Special Court of Indictment and Revision cannot review a judge’s judicial decisions” (Administration of Justice Act).

143 See e.g., ODIHR, [Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal \(as of 24 July 2024\)](#), 24 August 2024, para. 78; ODIHR-Venice Commission, [Joint Opinion on the Draft Law on Disciplinary Liability of Judges of the Republic of Moldova](#), CDL-AD(2014)006-e, March 2014, para. 64.

144 See e.g., ODIHR, [Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal \(as of 24 July 2024\)](#), 24 August 2024, para. 76; Venice Commission, [Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro](#), CDL-AD(2014)038, para. 68.

145 For instance, Article 134 (1) of the [Act on the Constitutional Court of Czechia of 16 June 1993](#), No. 182/1993, provides that “(1) The Chairperson may by ruling institute disciplinary proceedings. The ruling must be reasoned and shall be delivered to the Justice against whom the disciplinary proceeding has been instituted”; Article 36 of the Constitutional Court Act of **Liechtenstein** provides that “[t]he disciplinary proceedings shall be initiated by the President or by a Judge mandated by the President, by means of a ruling of the Constitutional Court, after questioning of the person being charged”; Article 23 (4)-(5) of Law No. 74 of 10 April 2025 on the Constitutional Court of the Republic of **Moldova** provides “(4) The disciplinary investigation is carried out by two judges appointed by the President of the Constitutional Court in the manner prescribed by the Constitutional Court’s regulations. If the referral concerns the President of the Constitutional Court, the disciplinary investigation panel is designated by the judge who exercises the duties of the President of the Constitutional Court in their absence. The determination of disciplinary violations is the responsibility of the plenary of the Constitutional Court. (5) If the disciplinary investigation panel finds the application to be unfounded, the case is closed by a decision of the President of the Constitutional Court or the judge exercising the President’s duties in their absence. If the application is found to be justified, the disciplinary investigation panel prepares a report that will be forwarded for examination by the plenary of the Constitutional Court”; Article 82 (1) of the [Constitutional Law of the Republic of Armenia on the Constitutional Court](#) provides that “[t]he applications referred to in this Article may be submitted to the Constitutional Court by at least three judges of the Constitutional Court, except for the suspension of powers on the grounds of a substantial disciplinary violation, where the National Assembly may submit an application by a decision adopted by at least three-fifths of the total number of votes of the deputies, in accordance with the procedure prescribed in Article 83 of this Law”.

pressure.¹⁴⁶ In particular, the executive should not have the authority to directly initiate disciplinary proceedings against constitutional court judges.¹⁴⁷ At the same time, entrusting the competence to independent bodies to request the initiation of disciplinary proceedings against constitutional court judges, such as the anti-corruption bodies acting within their mandates, judicial councils or their sub-committees or other (*de facto*) independent body, would in principle be acceptable, provided that they present all guarantees of independence.¹⁴⁸ At the same time, even where an investigation is initiated following information received from other bodies, the authority to decide whether to commence disciplinary proceedings should remain vested with the Constitutional Court. From a comparative perspective, when disciplinary proceedings against constitutional court judges are expressly regulated, the decision to initiate disciplinary proceedings is frequently entrusted to the plenary of the Constitutional Court, without the participation of the justice concerned; at the same time, it is also not uncommon for such authority to be vested in the chairperson of the Court, subject to appropriate adjustments where the proceedings are directed against the chairperson.¹⁴⁹ The applicable legislation also generally provides for a statute of limitation for initiating disciplinary proceedings, which serves to ensure legal certainty, procedural fairness, and protection against abuse by requiring authorities to commence disciplinary action within a reasonable time.¹⁵⁰

146 CCJE *Opinion* No. 27 (2024) on the disciplinary liability of judges, para. 22.

147 *Ibid.*

148 See e.g., Venice Commission, *Ukraine - Opinion on the Draft Law on the Constitutional Procedure (Draft Law No. 4533) and Alternative Draft Law on the Procedure for Consideration of Cases and Execution of Judgements of Judgements of Constitutional Court (Draft Law No. 4533-1)*, 22 March 2021, paras. 45–46. For instance, in **Slovakia**, Article 27 (3) of the [Law of 24 October 2018 on the Constitutional Court of the Slovak Republic](#), as amended, provides that “A motion for commencement of disciplinary proceedings against the President of the Constitutional Court may only be filed by at least three fifths of members of the National Council. The motion must be reasoned and must contain the list of members who have filed it”; in **Norway**, an independent Impeachment Jury decides on the commencement of disciplinary proceedings.

149 See e.g., in **Albania**, Article 10/a (1) of the [Law No. 8577 of 10 February 2000](#) on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides that “Where there is sufficient evidence that a Constitutional Court judge has committed a misconduct provided for in Article 128 of the Constitution and Article 10 of this Law, upon the request of the Chairperson or of any Constitutional Court judge, the Chairperson or the most senior judge in office, when the Chairperson is subject to proceedings, shall take measures to initiate disciplinary proceedings”; Article 134 (2) of the [Act on the Constitutional Court of Czechia of 16 June 1993](#), No. 182/1993, which provides that “The Plenum, on the joint proposal of at least three Justices, may adopt a ruling instituting disciplinary proceedings against the Chairperson”; in **Latvia**, a disciplinary case may be initiated by the President of the Constitutional Court, his or her deputy, or not less than three Constitutional Court judges (Section 36 (2) of the [Constitutional Court Law](#) (1997, as amended)); Article 36 of the Constitutional Court Act of **Liechtenstein** provides that “[t]he disciplinary proceedings shall be initiated by the President or by a Judge mandated by the President, by means of a ruling of the Constitutional Court, after questioning of the person being charged”; in **Türkiye**, Article 18 (1) of the [Law on Constitutional Court](#) (2011, as amended) provides that “[t]he General Assembly decides whether or not to institute a disciplinary investigation based on available information and evidence and nature of the alleged manner and behaviour”.

150 See e.g., in **Armenia**, Article 13 (3) of the [Constitutional Law on the Constitutional Court](#) provides that “[p]roceedings for starting a disciplinary act against a judge of the Constitutional Court may be initiated due to misconduct of a judge of the rules envisaged by this Law within three months after it is revealed, but not later than one year, except for the violations prescribed in Clauses 14 and 15 of Part 1 of Article 14 this Law. Disciplinary proceedings may be initiated due to misconduct of the judge prescribed in Clauses 14 and 15 of Part 1 of Article 14 this Law, within one year, but not later than three years”; in **Czechia**, “[d]isciplinary proceedings may be instituted within one year of the occurrence of the conduct which constitutes the grounds for instituting the proceedings” (Article 134 (3) of the [Act on the Constitutional Court of Czechia of 16 June 1993](#), No. 182/1993); in **Slovakia**, Article 27 (5) of the [Law of 24 October 2018 on the Constitutional Court of the Slovak Republic](#) provides that “[a] motion for commencement of disciplinary proceedings may be filed within six months from the day on which the person with the standing to file it learned about the circumstances which suggest that the judge of the Constitutional Court or the President of the Constitutional Court has committed a disciplinary offence as defined in paragraph one or that there are serious circumstances related to them which objectively diminishes the authority of the office of judge of the Constitutional Court or threatens the trust in the independent and impartial decision-making of the Constitutional Court”; in **Türkiye**, “[d]isciplinary investigations cannot be initiated in case one year has lapsed after the acts calling for a disciplinary investigation have been found out. No disciplinary punishment may be pronounced in case five years have lapsed after the acts calling for a disciplinary sanction” (Article 18 (2) of the [Law on Constitutional Court](#) (2011, as amended)).

2.2. Investigation Stage

61. Similarly, the investigative phase must be organized in a manner that safeguards institutional independence and prevents external interference or political pressure. In this respect, it is essential that the bodies initiating disciplinary proceedings are distinct from those conducting investigation, which themselves should also be separate from those deciding the merits of the case, so as to avoid any risk of undue influence over judges and to safeguard institutional independence.¹⁵¹ From a comparative perspective, where disciplinary proceedings against constitutional court judges are regulated, the investigation and collection of evidence are usually carried out by a single constitutional court judge or by an ad hoc panel composed of members of the constitutional court itself, often selected by drawing lots or by the President of the Court.¹⁵²
62. Further, as recalled in CCJE Opinion No. 27, disciplinary proceedings must strike an appropriate balance between confidentiality and transparency, while emphasizing that **the investigations should remain confidential, unless otherwise requested by the judge.**¹⁵³ Any investigative report and related proceedings must fully respect the judge's right to respect for private and family life, including his/her reputation, throughout the gathering, handling, and disclosure of sensitive information.¹⁵⁴ In particular, personal – including tax and financial records – as well as medical information obtained in the course of an investigation should be subject to strict confidentiality guarantees and used only to the extent strictly necessary and proportionate for the purposes of the proceedings. These safeguards are essential both to protect the rights of the judge concerned and to ensure the integrity and fairness of the disciplinary process.

2.3. Decision on the Merits

63. Disciplinary investigations will ordinarily conclude with the preparation of an investigative report setting out the relevant facts, findings, and, where appropriate, recommendations on possible imposition of disciplinary sanctions.¹⁵⁵ As already emphasized above, it is essential that the independence and impartiality of the disciplinary decision-making body be ensured

151 See *Joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law of the Council of Europe, and of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the draft law on disciplinary liability of judges of the Republic of Moldova*, CDL-AD(2014)006, paras 64, 68, 69 and 71.

152 See e.g., in **Albania**, Article 10/a (3) of the *Law No. 8577 of 10 February 2000* on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides that “[t]wo judges assigned by lot shall collect facts, evidence and other data regarding the misconduct attributable to the judge and they shall, within 30 days, prepare the respective report and send it to the Disciplinary Committee for examination” while Article 10/a (4) specifies that “[t]he Disciplinary Committee shall be composed of three Constitutional Court judges assigned by lot, without the participation of the judges involved in collection of facts and evidence under paragraph three of this Article”; Article 27 (1) of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal of **Poland**, which provides that “1. The President of the Tribunal shall carry out a draw to select a judge of the Tribunal to act as a disciplinary officer (hereinafter: ‘the disciplinary officer’). 2. The disciplinary officer shall take preliminary steps to investigate circumstances that are necessary for determining the characteristics of misconduct, as well as shall hear the judge who is mentioned in the notification referred to in Article 26, unless there is no possibility of hearing the judge”; in **Moldova**, Article 84 (2) of the provides that “[o]n receiving this complaint, the President of the Constitutional Court shall appoint a commission for disciplinary investigation, consisting of two judges in order to examine the appeal. If the complaint refers to the President of the Constitutional Court, the Court shall appoint the commission for the disciplinary investigation and the judge who performs the functions of the President of the Constitutional Court in his/her absence shall convoke it. One of those two judges shall be designated as Chairman of the commission for disciplinary investigation”; in **Türkiye**, Article 16 (5) of the *Law on Constitutional Court* (2011, as amended) provides that “[i]f a decision to institute an investigation is rendered, the General Assembly elects three persons amongst members to set up an Investigation Committee.”

153 See e.g., CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 36.

154 See e.g., as a comparison, *Venice Commission, Opinion on the Draft Law on Judges and Prosecutors of Turkey*, CDL-AD(2011)004, para. 58.

155 See e.g., CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 31.

and that any influence of the executive or legislative branches over such a body be fully excluded.¹⁵⁶ As mentioned above (see para 61 *supra*), in order to safeguard impartiality and prevent concentration of disciplinary functions among the same actors, those responsible for investigative functions should not participate in the subsequent decision-making phase of the proceedings. Such functional separation constitutes an important safeguard against bias, pre-judgement, and abuse of process, and contributes to the protection of judicial independence. Although the matter is seldom specifically regulated, a comparative review of frameworks governing the disciplinary liability of constitutional court judges shows that certain national legislations nonetheless provide for such functional separation.¹⁵⁷

64. As underlined by the ECtHR in the context of disciplinary proceedings against constitutional courts' judges, it is essential that the decision-making disciplinary body addresses all relevant factual and legal issues that are decisive for the outcome of the case.¹⁵⁸

2.4. Appeal or Judicial Review in Disciplinary Proceedings against Constitutional Court Judges

65. With respect to disciplinary proceedings against judges in general, the CCJE has underlined that judges should be granted the right to appeal against disciplinary decisions and sanctions.¹⁵⁹ At the same time, the specific institutional position of constitutional courts may justify a differentiated approach. Given that disciplinary proceedings against constitutional court judges, where regulated, tend to be conducted within the Constitutional Court itself, and bearing in mind the special role and status of a Constitutional Court, the modalities of such an appeal may require certain adjustments. Indeed, allowing appeals against decisions of an apex court before ordinary courts could risk undermining the authority and institutional position of that apex court.¹⁶⁰ In this respect, the UN Basic Principles on the Independence of the Judiciary provide that the principle of an independent review of decisions in disciplinary, suspension or removal proceedings “*may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings*”.¹⁶¹ At the same time, from a separation of powers perspective, the involvement of non-judicial actors, including parliamentary bodies, in disciplinary proceedings may be permissible only insofar as an **ultimate basis for disciplinary liability rests on judicial findings**. Accordingly, final decisions on the disciplinary liability of constitutional court judges should be based on findings of the Constitutional Court itself or by other highest court within the ordinary

156 CCJE *Opinion* No. 27 (2024) on the disciplinary liability of judges, para. 20.

157 See e.g., in **Albania**, Article 10/a (4) of the [Law No. 8577 of 10 February 2000](#) on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides that “[t]he Disciplinary Committee shall be composed of three Constitutional Court judges assigned by lot, without the participation of the judges involved in collection of facts and evidence under paragraph three of this Article”; In **Luxembourg**, Article 23 of the [Law of 27 July 1997 on the Organisation of the Constitutional Court](#) provides that “Disciplinary penalties shall be imposed by the Constitutional Court sitting in general assembly and taking its decision in private. The President of the Court or the member of the Court who, owing to the President’s unavailability, investigated the disciplinary case for hearing, shall not participate in the deliberations or decisions on the case.”

158 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15), 12 April 2023, para. 126. See also CCJE, *Opinion* No. 27 (2024) on the disciplinary liability of judges, para. 36, which provides that “Disciplinary decisions should be properly reasoned, i.e. address all relevant aspects brought forward by the investigatory body and the judge”.

159 See e.g., CCJE, *Opinion* No. 27 (2024) on the disciplinary liability of judges, para. 38; and [ODIHR Recommendations on Judicial Independence and Accountability \(Warsaw Recommendations\)](#), 2023, para. 22.

160 See e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, paras. 29-30.

161 See [UN Basic Principles on the Independence of the Judiciary](#), endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 20.

judiciary, if national legislation so determines, such as in case when disciplinary liability follows from a final criminal conviction.

66. The importance of these guarantees has been highlighted by the ECtHR in the aforementioned case *Ovcharenko and Kolos v. Ukraine*,¹⁶² which concerned the dismissal of Constitutional Court judges following parliamentary proceedings. The Court noted that, since the decision-making power of the political body was “*not preconditioned by any assessment of the matter by an independent authority, the ex post judicial review of the case was of crucial significance in the global assessment of the compatibility of the domestic proceedings with Article 6 (1) of the ECHR*”,¹⁶³ underlining the need for a review by a judicial body with full jurisdiction, capable of examining all relevant questions of fact and law and providing the guarantees of a fair trial.¹⁶⁴
67. From a comparative perspective, certain domestic legislations provide for some mechanisms of appeal within the Constitutional Court itself, to challenge the Court’s initial disciplinary decision on the merits of the case.¹⁶⁵

2.5. Separate Procedural Tracks and Special Procedural Modalities for Suspension or Removal of Constitutional Court Judges

68. As noted above, it is important to clearly distinguish between ordinary disciplinary mechanisms and liability that may lead to suspension or removal of a constitutional court judge as a sanction, which should only occur in exceptional cases involving the most serious misconduct. Providing for separate procedural tracks for such liability is not uncommon in comparative constitutional practice and in many systems, a distinction is drawn between ordinary disciplinary proceedings and more serious procedures concerning suspension or removal of constitutional court judges, which are subject to distinct and often more stringent procedural modalities, such as qualified majorities or unanimity within the decision-making

162 See ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023.

163 *Ibid.* ECtHR, *Ovcharenko and Kolos v. Ukraine*, para. 122.

164 *Ibid.* ECtHR, *Ovcharenko and Kolos v. Ukraine*, paras. 125-126.

165 See e.g., in **Albania**, Article 10/a (5) of the **Law No. 8577 of 10 February 2000** on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides that “*The judge being subject to proceedings shall have a right to complain against the decision of the Disciplinary Committee. The complaint shall be examined by the Ad Hoc Committee consisting of three Constitutional Court judges, who have not taken part in the proceedings, under paragraph three [investigation] and four [decision-making] of this Article.*”; Article 142 (3) of the **Act on the Constitutional Court of Czechia of 16 June 1993**, No. 182/1993, which provides that “*Within 15 days of the day a disciplinary panel’s ruling reprimanding a Justice for her conduct is delivered, that Justice may submit objections to it. The Plenum shall decide on the objections either by confirming the disciplinary panel’s ruling, annulling it, or returning the matter to the panel for further action; the Plenum’s orders to supplement the proceeding are binding on the disciplinary panel*”; Article 25 of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal of **Poland**, which provides that “*1. In the disciplinary proceedings, the Tribunal shall adjudicate as a disciplinary court: 1) in first-instance proceedings – by three judges of the Tribunal; 2) in second-instance proceedings – by five judges of the Tribunal. 2. The composition of adjudicating benches shall be selected by a draw carried out by the President of the Tribunal. A draw to select judges for the disciplinary court of second instance shall not include the judges of the Tribunal who adjudicated in the first-instance proceedings*”; Article 25 of the **Law of the Constitutional Court of Portugal** provides that “*1. It is the exclusive responsibility of the Constitutional Court to exercise disciplinary authority over its judges, even when the disciplinary action involves acts practised in the exercise of their duties, and it is for the Court to open the disciplinary procedure, appoint the respective reporter judge from among its members, deliberate on the eventual preventive suspension and pass final judgement. 2. An appeal may be made against decisions taken on disciplinary matters (by the Constitutional Court) to the Court itself. 3. Apart from the ruling in the previous numbers the disciplinary system established by law for judicial magistrates applies to the judges of the Constitutional Court*”; in **Türkiye**, Article 19 (3) of the **Law on Constitutional Court** (2011, as amended) provides that “*[t]he concerned person may apply to the General Assembly against the decision of the General Assembly on disciplinary punishment with a request to re-examine it within ten days after date of notification. The decision as a result of re-examination of the General Assembly is final*”; in **Romania**, Article 66 of the **Regulations on the Organization and Functioning of the Constitutional Court** provides that the disciplinary decision “*can be appealed against within 15 days of communication. Jurisdiction to hear the appeal lies with the 5 Judges’ panel of the High Court of Cassation and Justice. (2) An appeal suspends execution of the resolution by which the Constitutional Court Plenum has applied the disciplinary sanction. (3) Judgment rendered on the appeal provided under paragraph (1) shall be final and irrevocable*”;

body for deciding on suspension or removal.¹⁶⁶ In particular, in case of suspension or removal of constitutional court judges, distinct or additional procedures involving other branches of powers may apply. At the same time, as mentioned above while constitutional framework may envisage intervention of other public institutions in termination of mandates of constitutional court judges due to disciplinary violations, especially to provide information, evidences or assessments of the behaviour of a constitutional court judge, such decisions should be based on the findings of the Constitutional Court.; often, such procedures are being accompanied by enhanced decision-making requirements, such as qualified majorities or unanimity within the decision-making body for deciding on suspension or removal.¹⁶⁷

3. DISCIPLINARY SANCTIONS

69. Disciplinary sanctions constitute an integral component of any system of judicial disciplinary liability. Together with the definition of disciplinary offences and grounds for disciplinary liability, sanctions should be applied in a structured and foreseeable manner consistent with the principle of proportionality, taking into account the seriousness of the misconduct and its consequence.¹⁶⁸ From a comparative perspective, disciplinary systems applicable to constitutional court judges generally provide for a graduated range of sanctions, including warnings or reprimands, suspension, reduction of remuneration, removal from office.¹⁶⁹ Such graduated sanctions reflect the principle of proportionality by allowing responses tailored to differing levels of misconduct.¹⁷⁰ In practice, minor misconduct is often addressed through internal or administrative mechanisms, as formal investigation of less serious matters may disproportionately impact the functioning of a constitutional court; in practice, it is rather common to have constitutional courts only providing for discipline for the most serious forms of misconduct.

166 See Venice Commission, as well as the [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice \(Updated\)](#), CDL-PI(2022)050, 7 December 2022, Sections 4.5 and 4.6.

167 See Venice Commission, as well as the [Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice \(Updated\)](#), CDL-PI(2022)050, 7 December 2022, Sections 4.5 and 4.6.

168 See e.g., [Report of the UN Special Rapporteur on the independence of judges and lawyers](#) (A/HRC/11/41, 24 March 2009), para. 57, citing A/HRC/11/41/Add.2, para. 99, which emphasizes that legal frameworks should provide detailed guidance not only on the types of conduct triggering disciplinary liability, but also on the relative gravity of such misconduct and the corresponding sanctions that may be imposed; [CCJE Opinion No. 27 \(2024\) on the disciplinary liability of judges](#), para. 40; [ODIHR Recommendations on Judicial Independence and Accountability \(Warsaw Recommendations\)](#), 2023, para. 24. From a comparative perspective, Article 82 (11) of the [Constitutional Law of the Republic of Armenia on the Constitutional Court](#) provides that “[d]isciplinary sanction imposed to the judge shall be proportionate to the violation. When applying the disciplinary sanction, the Constitutional Court shall take into account the nature and consequences of the violation, the identity of the judge, the penalties available and other noteworthy circumstances”. Another illustrative example is provided by the Law on the Constitutional Court of [Lithuania](#), which although excluding the application of a general disciplinary regime to Constitutional Court judges, provides for limited internal accountability mechanisms, such as a reduction of remuneration - by up to 50 per cent for the previous month - in cases of failure to perform statutory duties or unjustified absence from sittings, upon a decision of the Court itself.

169 See e.g., in [Albania](#), Article 10/b (1) of the [Law No. 8577 of 10 February 2000](#) on the Organisation and Functioning of the Constitutional Court of the Republic of Albania provides for the following disciplinary sanctions: “a) Written reprimand; b) Public reprimand; c) Temporary reduction of salary up to 50% for a period not longer than 1 year, c) Suspension from office for a period from 3 months up to six months; d) Dismissal from office”; Article 82 (10)-(11) of the [Constitutional Law of the Republic of Armenia on the Constitutional Court](#) provides that “(10) [...] the Constitutional Court may apply one of the following disciplinary sanctions to a judge: 1) warning; 2) reprimand; 3) severe reprimand. (11) Disciplinary sanction imposed to the judge shall be proportionate to the violation. When applying the disciplinary sanction, the Constitutional Court shall take into account the nature and consequences of the violation, the identity of the judge, the penalties available and other noteworthy circumstances”; Article 29 of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal of [Poland](#), which provides that “[t]he disciplinary penalties shall be as follows: 1) a warning; 2) a reprimand; 3) a decrease in the remuneration of a judge of the Tribunal, in the amount ranging from 10% to 20% for the period of 2 years; 4) the recall of a judge of the Tribunal from office”.

170 [CCJE Opinion No. 27 \(2024\) on the disciplinary liability of judges](#), paras. 39-43, which underlines that the availability of a differentiated range of sanctions is itself an important safeguard against disproportionate responses.

70. Removal from office constitutes the most severe disciplinary sanction and should therefore be regarded as a measure of last resort, reserved only for exceptionally serious cases and subject to particularly stringent substantive and procedural safeguards,¹⁷¹ all the more when this concerns judges of the apex courts.¹⁷²
71. As indicated above, Constitutional Court judges should only be protected by functional immunity, which does not cover ordinary crimes (e.g., bribery, corruption, abuse of office, traffic of influence, causing a traffic accident by careless driving when under the influence of drink, etc.).¹⁷³ From a comparative perspective, a final conviction for an intentional criminal offence is commonly provided as a ground for the removal or dismissal of constitutional court judges,¹⁷⁴ which may serve as an objective indication of unworthiness for office, which can be determined objectively with little discretion necessary, thereby enhancing legal certainty and foreseeability.¹⁷⁵
72. In some systems, the more serious the disciplinary sanction, the more stringent the applicable procedural safeguards and decision-making requirements are, including, for instance, the requirement of a qualified majority or even unanimity for decisions entailing the dismissal of a judge of the Constitutional Court.¹⁷⁶

¹⁷¹ *Ibid.* para. 40.

¹⁷² For instance, Article 18 of the [Qualified Law on the Constitutional Court of Andorra](#) provides an exhaustive list of “slight offenses” (i.e., lack of consideration and respect towards other members of the Court, the Court staff or persons appearing in the proceedings, in whatever capacity; imprudent delay in performing the duties arising out of their office) and of “serious offenses” (i.e., failure to observe the requirement of secrecy of the deliberations, failure by reporting judges to state the reasons for the opinions which they submit, manifest and repeated negligence in the resolution of the cases within their jurisdiction, public criticism of or disagreement with the decisions and judgments of the Court, issuing warnings, compliments or rebukes to the bodies and authorities of the State, unwarranted absence from two or more plenary sessions of the Court or from two or more sessions formally called by the president, infringement of the parties’ right to conduct the proceedings at any stage thereof, repetition of slight offenses where the penalty imposed has not yet lapsed), and of “very serious offenses” (i.e., failure to observe the grounds for disqualification provided for in this Law, unwarranted dereliction of judicial duties for more than two months, repeated or further commission of serious offenses), while Article 19 specifies the types of sanctions for each category of offenses.

¹⁷³ See e.g., Venice Commission, [Amicus Curiae Brief to Moldova on the Criminal Liability of Constitutional Court Judges](#), CDL-AD(2019)028-e, para. 53.

¹⁷⁴ See e.g., Article 19 (1) of the [Law of 24 October 2018 on the Constitutional Court of the Slovak Republic](#) provides that “The President of the Republic shall remove a judge of the Constitutional Court from office a) following a final conviction for an intentional crime or if the Constitutional Court judge has been convicted on the basis of a final decision and the court has not decided to suspend the prison sentence”; in [Slovenia](#), Article 19 (4) of the Constitutional Court Act provides that “When a Constitutional Court judge is dismissed due to a final conviction for a criminal offence and punished by imprisonment [...] the office of the Constitutional Court judge is terminated the next day after the publication of the decision on dismissal in the Official Gazette of the Republic of Slovenia”.

¹⁷⁵ See e.g., Venice Commission, [Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts](#), CDL-AD(2024)038-e, para. 21.

¹⁷⁶ See e.g., in [Italy](#), Article 7 of [Constitutional Law No 1 of 11 March 1953 on Norms supplementing the Constitution](#) concerning the Constitutional Court provides that judges of the Constitutional Court may be removed or suspended from office pursuant to Article 3 of Constitutional Law No. 1 of 9 February 1948 only by a decision of the Court taken by a two-thirds majority of the members attending the meeting; in [Czechia](#), Article 144 (2) of the [Act on the Constitutional Court of 16 June 1993](#), No. 182/1993, states that “The consent of at least nine Justices is required to adopt a ruling pursuant to paragraph 1 [to terminate the Justice’s office]. The Plenum may take actions on and adopt rulings concerning the proposal if at least 12 Justices are present”; in [Spain](#), Article 23 (2) of the [Organic Law of the Constitutional Court](#) provides that “2. The ending or vacancy of the office of Judge of the Constitutional Court shall be decreed by the President in the first and second cases as well as in the event of decease. In the other cases, the full Court shall rule by a simple majority in the third and fourth cases and by a three-quarters majority of its members in the remaining cases”; Article 18 (1) of the [Qualified Law on the Constitutional Court of Andorra](#) provides that “In respect of serious and very serious offenses disciplinary liability is determined by the Constitutional Court in plenary session and the unanimous votes of the other members. In respect of slight offenses liability is determined by the president of the Court or, where appropriate, the vice-president”. See also e.g., Venice Commission, [Hungary - Opinion on Act CLI of 2011 on the Constitutional Court](#), CDL-AD(2012)009, para. 54 (2); and Venice Commission, [Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts](#), CDL-AD(2024)038-e, para. 39, first indent.

4. PROCEDURAL GUARANTEES

73. As emphasized above, as a starting point, **constitutional judges should in principle be subject to the same procedural guarantees as ordinary judges, unless specific features inherent to the special role and status of constitutional courts and the nature of constitutional adjudication justify adaptations, derogations, or stronger procedural safeguards.**¹⁷⁷ As such, the constitutional court judge subject to disciplinary proceedings should benefit from fair trial guarantees listed in Sub-Section IV.3 *supra*, including the right to be fully informed of the charges, the right to be heard, the right to challenge the grounds for dismissal and to present evidence of his or her innocence, and the requirement that decisions be delivered within a reasonable time; in addition, disciplinary bodies must respect the principle of equality of arms, ensuring that the judge concerned has access to legal representation, the assistance of a lawyer of their choice, the opportunity to present a defence, and effective access to evidence; decisions must be duly reasoned, setting out the essential findings of fact, the evidence relied upon, and the applicable legal reasoning.¹⁷⁸
74. From a comparative perspective, applicable legislation governing the disciplinary liability and proceedings against constitutional court judges at times either expressly provides for some of these safeguards or refers, by cross-reference, to relevant criminal procedural legislation, thereby ensuring the application of the corresponding necessary procedural guarantees.¹⁷⁹ At the same time, **the wider the discretion of the Constitutional Court as**

177 See Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 15. See also e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 81.

178 See ODIHR *Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, paras. 19-22. See also e.g., ODIHR, *Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal (as of 24 July 2024)*, 24 August 2024, para. 81, which refers to the right to be fully informed of the charges against them, the right to be heard, the right to present a defense, the right to have decisions rendered within a reasonable time; the right to be represented by a lawyer of their choice in disciplinary proceedings. See also e.g., Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 21.

179 See e.g., Article 137 (2) of the *Act on the Constitutional Court of Czechia of 16 June 1993*, No. 182/1993, which provides that “[t]he Justice against whom a disciplinary proceeding has been instituted must be given the opportunity to express his views on the grounds for the ruling instituting the disciplinary proceeding and to take part in all of the Plenum’s dealings in the matter, with the exception of conferences and votes”, Article 138 specifies that “[t]he relevant provisions of the Code of Criminal Procedure shall be applied, mutatis mutandis, to the taking of evidence in disciplinary proceedings” and Article 140 (3) states that “A Justice, against whom a disciplinary proceeding has been brought, has the right to take part in the dealings of the disciplinary panel, with the exception of conferences and votes, to express her views on the grounds for the disciplinary proceeding and on the evidence taken, to question witnesses and experts, and to submit proposals for taking supplemental evidence”; in **Estonia**, where the Supreme Court is also the Court of constitutional review, Article 92 of the *Courts Act* provides that: “(1) A disciplinary charge is a written document, which sets out: 1) the name and position of the accused; 2) the description and time of commission of the offence; 3) the evidence proving commission of the offence; 4) the name of the person who commences a disciplinary proceeding, and the date and place of the preparation of the charge. (2) The person who commences a disciplinary procedure shall forward the disciplinary charges and the related material to the Disciplinary Chamber, which shall immediately notify the judge against whom the disciplinary proceeding is commenced thereof. (3) A judge against whom a disciplinary proceeding is commenced shall be served the disciplinary charges at least ten days before the session of the Disciplinary Chamber. The judge or his or her representative has the right to examine the materials of the disciplinary charge”; in **Luxembourg**, Article 24 Article 23 of the *Law of 27 July 1997 on the Organisation of the Constitutional Court* provides that “No penalty may be imposed unless the member concerned has been heard or duly summoned. If the member does not appear when the Court is sitting in chambers, he or she, if found guilty, may lodge with the registry an application to set aside the decision within five days of service of the decision”; in **Poland**, Article 27 (3) of the Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal provides that “[a]fter the steps referred to in para 2 have been taken, if there are grounds for instituting disciplinary proceedings, the disciplinary officer shall institute disciplinary proceedings and provide the judge of the Tribunal with a written account of allegations. After having been notified about the allegations, within 14 days, the judge in question may provide an explanation as well as file evidentiary submissions” while Article 30 specifies that in matters not regulated by the Act, “with regard to disciplinary proceedings, the provisions of the Act of 27 July 2001 on the Organisational Structure of Common Courts (Journal of Laws – Dz. U. of 2015 item 133, as amended) and the Act of 6 June 1997 – the Criminal Procedure Code (Journal of Laws – Dz. U. of 2016 item 1749) shall be applied accordingly”; in **Slovakia**, Article 28 (1) of the *Law of 24 October 2018 on the Constitutional Court of the Slovak Republic* provides that “[t]he Plenum of the Constitutional Court shall hear the judge against whom the motion for commencement of

to what constitutes a serious disciplinary offence that may lead to the termination of office of its judges, and the higher the severity of the sanction, the more comprehensive procedural guarantees are necessary; conversely, if the grounds for dismissal are clearly and narrowly set out in the law (Constitution, statutory laws and by-laws), so that violations can be determined objectively with little discretion necessary, for example, following the criminal conviction by another court, leaving the Constitutional Court a mostly formal power of dismissal, less comprehensive procedural guarantees may be acceptable.¹⁸⁰

75. **Effective participation necessarily presupposes timely and adequate notification to the constitutional court judge of the initiation of disciplinary proceedings, including access to the substance of the allegations at the earliest possible stage of the process.** In this respect, procedural safeguards require that the judge concerned be informed of the initiation of an investigation at an early, including preliminary, stage, so as to ensure the effective exercise of the right to defence and access to legal assistance from the outset of the proceedings.¹⁸¹
76. In ordinary disciplinary proceedings against judges, transparency is itself a key procedural safeguard. In this respect, the ODIHR Warsaw Recommendations provide that **disciplinary hearings concerning judges should, as a rule, be open to the public, unless the judge concerned requests a closed hearing; such requests should not be granted automatically but must be assessed on a case-by-case basis by a competent authority, which must determine whether closure is justified in the circumstances.**¹⁸² Exceptions to the rule of public hearings may be justified only if important rights and interests are at stake, including the protection of the private life of the parties, in special circumstances where publicity would prejudice the interests of justice, or where this relates to the nature of the issues.¹⁸³ Decisions to exclude the public from disciplinary hearings will need to be justified by the body holding the hearings; given the importance of public scrutiny in such cases, the failure to justify closed hearings may amount to a violation of the ECHR.¹⁸⁴
77. **While preliminary or investigative stages may be conducted in confidence in order to protect the integrity of the process, the public character of disciplinary hearings constitutes an essential safeguard against secret justice and ensures public scrutiny of the administration of justice, while promoting accountability.** Accordingly, hearings should, as a rule, be held in public, subject only to the limited exceptions permitted under

disciplinary proceedings has been filed. The judge concerned must be allowed at the least during that hearing to become acquainted with the motion for commencement of disciplinary proceedings” and Article 28 (1) specifies that “[f]or the purposes of assessing the disciplinary liability, Part One of the Criminal Code and for the purposes of disciplinary proceedings the Criminal Procedure Code shall apply accordingly, unless paragraphs one to nine and § 27 stipulate otherwise, or something different follows from the nature of the matter”.

180 See Venice Commission, *Amicus Curiae Brief of Venice Commission for the European Court of Human Rights in the case of Shevchuk v. Ukraine on standards on the disciplinary rules concerning presidents and judges of constitutional courts*, CDL-AD(2024)038-e, para. 21.

181 See e.g., *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia*, CDL-AD(2014)032, para. 50.

182 See *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 20, which provides: “Transparency should be the rule for disciplinary hearings of judges. Hearings should be open, unless the accused judge requests that they be closed. Hearings should not be closed automatically upon the judge’s request; rather, such requests should be duly considered on a case-by-case basis, whereby a competent court should decide whether the request is justified”.

183 See e.g., ECtHR, *Olujic v. Croatia*, no. 22330/05, 5 February 2009, where the Court found a violation of the applicant’s rights due to the fact that the public had been unjustifiably excluded from attending the hearing, despite the applicant’s request for publicity, and considerable public interest in the case (paras. 74-76).

184 See e.g., ECtHR, *Olujic v. Croatia*, no. 22330/05, 5 February 2009, where the Court found a violation of the applicant’s rights due to the fact that the public had been unjustifiably excluded from attending the hearing, despite the applicant’s request for publicity, and considerable public interest in the case (paras. 74-76).

Article 6 of the ECHR where exclusion of the public may be justified.¹⁸⁵ The same principles should be applicable with respect to **disciplinary proceedings against constitutional court judges, which should, in principle, be open to the public, and any limitation on such openness should be exceptional and subject to specific and duly reasoned justification, in particular where required to safeguard the proper administration of justice, the impartiality of the proceedings, or the procedural rights of the judge concerned.** It is noted that from a comparative perspective, only a few jurisdictions specifically provide for a closed hearing.¹⁸⁶

78. The fair trial guarantees under Article 6 of the ECtHR also encompass **the right to have decisions rendered within a reasonable time.**¹⁸⁷ This includes, in particular, **the requirement of clear and foreseeable procedural time limits set out in the applicable regulatory framework.**¹⁸⁸ From a comparative perspective, the regulatory framework would generally provide for clear time limits for the respective stages of the disciplinary proceedings.¹⁸⁹ Where proceedings are subject to excessive or unjustified delay, effective remedies must be available to the judge concerned, including the possibility to apply for termination or dismissal of the disciplinary proceedings, in order to safeguard legal certainty and prevent undue procedural pressure.¹⁹⁰
79. **Finally, disciplinary decisions should be properly reasoned, addressing all relevant arguments and evidence presented both by the investigating authority and by the judge concerned.**¹⁹¹ Such decisions should, as a rule, be publicly pronounced and published, subject where necessary to anonymization. Transparency should be further reinforced through the publication of aggregate information and statistics concerning disciplinary proceedings and outcomes. The publicity of proceedings and decisions serves not only procedural fairness and accountability, but also strengthens public confidence in the integrity and proper administration of justice.¹⁹²

185 *Ibid.*, para. 37. In the vast majority of countries, there are safeguards to protect the independence and impartiality of the institutions involved in the disciplinary proceedings, particularly the deciding body. In some countries, safeguards are provided to ensure that all institutions are independent after the initiating stage, including the investigative body and the decision-making body. In other countries, some risks for a certain form of politicisation of the proceedings are pointed out. This is the case when the investigating prosecutors are subordinate to the Ministry of Justice, when the same person initiates and decides on the proceedings as a member of the Council for the Judiciary, or when members of the Council for the Judiciary are appointed by Parliament. A similar risk exists if the members of the Council for the Judiciary are appointed by the executive.

186 For instance, in **Latvia**, the Rules of Procedure of the Constitutional Court provide that “*court sitting for examining issues connected with the disciplinary case shall be closed*” (para. 167); in **Georgia**, Article 45 (2) of the Organic Law “On the Constitutional Court of Georgia” (1997) provides that “[t]he issue of premature termination of the mandate of a member of the Constitutional Court shall be discussed at the closed session of the Plenum of the Constitutional Court of Georgia”; in **Liechtenstein**, Article 36 (2) of the Constitutional Court Act of **Liechtenstein** provides that “[t]he disciplinary proceedings shall not be public”; in **Malta**, Article 101B (9) of the Constitution provides that “*Proceedings before the Committee shall be held in camera unless the judge or magistrate against whom the proceedings are taken requests otherwise*”.

187 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 37; and ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 108.

188 *Ibid.*, paras. 33 and 37.

189 See e.g., Venice Commission, *Comparative overview of legislation on disciplinary liability of judges and presidents of the constitutional courts in the 46 Council of Europe member States* (2022). For instance, in **Armenia**, Article 82 (9) of the **Constitutional Law of the Republic of Armenia on the Constitutional Court** provides that “*In the cases referred to in this article, the Constitutional Court shall adopt one of the following decisions no later than 50 days from the date of registration of the application*”;

190 CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 37.

191 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 36, which provides that “*Disciplinary decisions should be properly reasoned, i.e. address all relevant aspects brought forward by the investigatory body and the judge*”. See also e.g., ECtHR, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 April 2023, para. 126. See also *ODIHR Recommendations on Judicial Independence and Accountability (Warsaw Recommendations)*, 2023, para. 22, which provides that “[d]ecisions in disciplinary proceedings should be well-reasoned and state the essential findings, evidence and legal reasoning”.

192 *Ibid.*, para. 36.

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