

ANJA TSCHIRKY

Dr. iur.

The Council of Europe's activities in the judicial field

The contribution of Council of Europe bodies to defining and implementing judicial independence and impartiality within judicial systems of Central and Eastern European countries

Table of contents

Acknowledgements	V
Overview of contents	VII
Table of contents	XI
Glossary of abbreviations and acronyms	XXIII
Bibliography	XXIX
Introduction	1
Part I: Court organisation and the professional status of judges complying with Council of Europe standards and recommendations	7
A. Council of Europe documents including standards and recommendations on judicial independence and impartiality	17
I. Principle reference documents of the Council of Europe concerning judicial independence and impartiality	18
1. The European Convention on Human Rights and the case-law of the European Court of Human Rights	19
a) The European Court of Human Rights	20
aa) Composition	21
bb) Functions	25
	XI

b)	The right to a fair trial within the meaning of Art. 6 para. 1 of the Convention	29
c)	Overview of the rights of Art. 6 para. 1 of the Convention relating to judicial independence and impartiality	35
d)	Further Convention's rights and Protocols relating to judicial independence and impartiality	37
2.	The Statute of the Council of Europe	39
3.	Recommendation No. R (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges	40
4.	The European Charter on the Statute for Judges	43
II.	Other Council of Europe documents setting out standards and recommendations on judicial independence and impartiality	44
1.	Documents of the statutory organs	45
a)	Opinions of the Parliamentary Assembly and reports of its Committees on accession to the Council of Europe	46
aa)	Methodology	48
bb)	The content of the Opinions adopted by the Parliamentary Assembly: definitions of the membership obligations and commitments	51
b)	Monitoring documents of the Parliamentary Assembly and the Committee of Ministers	55

aa) Monitoring documents of the Parliamentary Assembly	55
bb) Monitoring documents of the Committee of Ministers	60
2. Documents of the Secretariat	65
3. Reports of the Council of Europe Commissioner for Human Rights	66
4. Documents of consultative bodies	69
a) Documents of the European Committee on Legal Co-operation	69
b) Opinions of the European Commission for Democracy through Law (Venice Commission)	71
c) Opinions of the Consultative Council of European Judges	78
d) Documents of the European Commission for the Efficiency of Justice	80
5. Conclusions adopted within the framework of international co-operation under the auspices of the Council of Europe	81
a) Conferences of the European ministers of justice	82
b) Conferences and multilateral meetings within the framework of co-operation programmes	83
III. Concluding observations	84

B.	Judicial independence and impartiality as applied by the Council of Europe	87
I.	Judicial independence and impartiality as fundamental aspects of the rule of law	87
II.	Judicial independence and impartiality as applied by the statutory organs, institutions and consultative bodies of the Council of Europe	93
1.	The definitions of judicial independence and impartiality according to the scholarship	93
2.	Judicial independence and impartiality as applied by the statutory organs of the Council of Europe	96
3.	Judicial independence and impartiality as applied by the European Court of Human Rights	98
4.	Judicial independence and impartiality as applied by other institutions and consultative bodies of the Council of Europe	103
5.	Judicial independence and impartiality according to conclusions of conferences and multilateral meetings organised by the Council of Europe	105
III.	Concluding observations	107
C.	Council of Europe standards and recommendations on court organisation	109
I.	The organisation of court systems	110
1.	The structure of court systems	110
a)	General recommendations on the structure of court systems	111

b) Courts of special jurisdiction	115
aa) Specialised courts	116
bb) Military tribunals	119
2. Composition of courts	121
a) Court members	121
b) Non-judge staff	126
3. Structural impartiality of courts	129
4. Efficient functioning of courts	133
a) Definition of the time requirement and the optimum timeframes	134
b) General measures against the excessive length of court proceedings	137
aa) Special procedures	138
bb) Monitoring	142
cc) Tools for preventing formal litigation	142
II. Organisational autonomy of courts	145
1. Management of the judiciary by judicial councils	145
a) Composition of judicial councils	151
b) Internal organisation of judicial councils	159
c) Additional safeguards for judicial councils and their members	162
d) Functions of judicial councils	166

2. Material autonomy of courts	172
3. Financial autonomy of courts	176
4. Operational autonomy of courts	183
III. Functional independence of courts	185
1. Independent exercise of judicial functions	186
2. Administrative supervision of courts	191
a) Tools of administrative supervision and quality indicators	192
b) Supervisory body	194
IV. Concluding observations	201
D. Council of Europe standards and recommendations on the professional status of judges	203
I. Personal independence of judges	204
1. Judicial appointment	205
a) Initial training of future judges	207
b) Selection criteria	217
c) Judicial selection	222
d) Methods of judicial appointment	225
e) Appointment of court presidents	232
f) Re-appointment	234
g) Appointment on probation	235

2. Rights and privileges of judges	239
a) Individual rights and freedoms granted to judges	240
b) The right of judges to form and join professional associations	241
c) Political activities of judges	243
d) Irremovability of judges	246
e) Judicial immunity for official actions	250
f) Salary guarantees	254
g) Promotion of judges	258
h) Means of personal safety for judges	265
3. Termination of judicial office	266
a) Term of judicial office	267
b) Valid reasons for the early termination of judicial office	271
c) Methods of removal from judicial office	274
II. Duties of judges	277
1. Personal impartiality of judges	278
2. Incompatibilities	282
3. In-service training	285
4. Efficiency	292
a) Case management	293

b)	Effective remedies to accelerate or compensate for delays in judicial proceedings	294
aa)	Types of effective remedies	294
bb)	Acceleratory remedies	296
cc)	Compensatory remedies	299
III.	Responsibilities of judges	301
1.	Disciplinary responsibility of judges	302
a)	Disciplinary violations	303
b)	Disciplinary measures	306
c)	Bodies involved in disciplinary proceedings	308
d)	Disciplinary procedure	312
2.	Civil liability of judges	315
IV.	Concluding observations	317
Part II:	Implementation of Council of Europe standards and recommendations within judicial systems of Central and Eastern European countries	321
E.	Procedures and tools applied by the Council of Europe for promoting and implementing standards and recommendations in the judicial field	327
I.	Accession procedure of the Council of Europe	327
II.	Monitoring procedures of the statutory organs	331

1. The Monitoring procedures of the Parliamentary Assembly	332
2. The Monitoring procedures of the Committee of Ministers	337
III. Further tools of Council of Europe bodies for promoting and implementing standards and recommendations in the judicial field	340
1. The special guest status of the Parliamentary Assembly	340
2. The sanctioning system of the Council of Europe	342
3. Means of promotion and implementation under the Convention	347
4. Co-operation and assistance programmes	354
5. Other tools for promoting and implementing Council of Europe standards and recommendations in the judicial field	357
IV. Concluding observations	359
F. The judicial system of the Republic of Albania: a case study	363
I. Relations between former communist countries and the Council of Europe over the course of time	363
II. Implementation of Council of Europe standards and recommendations within the judicial system of the Republic of Albania	367
1. General remarks on the Republic of Albania	368

a) Historical background	368
b) The Constitution	373
c) Albania and the international community	375
2. Activities of Council of Europe bodies in the judicial field	378
3. Developments within the Albanian judicial system	384
a) The principle of judicial independence	388
b) Court organisation in Albania	389
aa) The Albanian court system	389
bb) Staffing	392
c) Organisational autonomy of Albanian courts	393
aa) Material, financial and operational autonomy of Albanian courts	393
bb) The High Council of Justice	397
d) Functional independence of Albanian courts	402
e) The professional status of Albanian judges	406
aa) Initial and in-service training of Albanian judges	406
bb) Judicial appointment	410
cc) Termination of judicial office	413
dd) Right and privileges of Albanian judges	416
ee) Duties of Albanian judges	424

ff) Efficiency	426
gg) Responsibilities of Albanian judges	431
f) The fight against corruption within the judiciary	436
III. Concluding observations	439
Conclusion	443