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NOTE ON CERTAIN ASPECTS RELATED TO SUSPENSION OF LIMITATION PERIODS FOR DISCIPLINARY AND CRIMINAL OFFENCES COMMITTED BY JUDGES AND PROSECUTORS

POLAND

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EXECUTIVE SUMMARY

ODIHR welcomes the request for international expertise in relation to the suspension of statutes of limitations applicable to disciplinary offences committed by public officials, specifically judges and prosecutors, or on their orders, that were not investigated due to "political reasons".

The Note does not seek to provide an exhaustive analysis of the issue of statutes of limitation but rather offers an overview of relevant international and regional standards, OSCE commitments and national practices, aims to provide general guidance on the matter, while recognizing complexity of the topic and diversity of state practices. The Note does not intend to assess Poland's legislation regulating statutes of limitation, including Article 44 of the Polish Constitution.

Although not explicitly mentioned in the request for a legal review, the Note also addresses the statute of limitations in criminal proceedings as it enables a more comprehensive analysis of the matter. Accordingly, this Note examines the suspension of limitation periods for both criminal and disciplinary offences, as well as the relevant applicable legal standards.

International standards recognize that should judges and prosecutors be subject to scrutiny for misconduct or crimes, such proceedings must adhere to strict procedural guarantees to respect their independence. Authorities must carefully track procedural steps, as any unjustified delay can result in expiration of the limitation period, while a defendant may raise the expiration of the limitation period as a defense.

Statutes of limitations, which are a common feature of domestic legal systems in the OSCE region, serve several purposes, such as ensuring legal certainty and finality of legal proceedings, protecting the rights of defendants, which may be impaired if courts were required to judge on the basis of evidence which might have become incomplete with the passage of time.

In the context of disciplinary proceedings against judges and prosecutors, by limiting the timeframe for legal action, statutes of limitations help strike a balance between protecting judicial or prosecutorial independence, fairness of the procedures, and ensuring accountability. They allow for investigation and sanctioning of misconduct, also respecting legal certainty and rights of defendants in the proceedings.

Rules on limitation periods are often considered procedural in nature, inasmuch as they do not define offences and penalties and can be construed as laying down a simple precondition for the assessment of the case. They may be also viewed as substantive, when expiration of a limitation period not only excludes procedural ability to pursue the case but also means that the act ceased to be

an offence. Thus, even when statute of limitations is regarded as a procedural right, it may give rise to a substantive right once it expires.

In general, legislator enjoys certain discretion when establishing the statutes of limitations for ordinary crimes and disciplinary offences. In the case of the latter, limitation periods are typically shorter due to the lesser gravity of disciplinary breaches, the administrative nature of the proceedings, and the importance of ensuring timely resolution to preserve legal certainty, procedural fairness, institutional efficiency.

When duly justified, the statutes of limitations may be reconsidered/extended in the interest of justice. At the same time, reopening of time-barred cases through retroactive extension of statutes of limitations requires a careful and nuanced approach, balancing of competing interests: on the one hand, the legitimate pursuit of justice, especially in cases involving serious crimes and offences; and on the other, the fundamental principles of legal certainty, the right to a fair trial and judicial and prosecutorial independence.

As a general rule, criminal responsibility cannot be revived after the expiry of a limitation period, as it would otherwise be deemed incompatible with the overarching principles of legality (*nullum crimen, nulla poena sine lege*) and foreseeability. Exception may apply to crimes punishable under international law, for which the applicable limitation period must be decided in the light of the relevant international standards in force at the material time, irrespective of a possible expiry of a limitation period according to domestic law. In this respect, no statute of limitations applies to crime against humanity and other grave breaches of international law, including war crimes and crime of torture.

International law and jurisprudence do not offer an exhaustive list of grounds allowing for application of the extended limitation periods once they have expired. However, it may be inferred that in **exceptional, specific, clearly and narrowly defined circumstances** – particularly **involving serious crimes and grave human rights violations**, when **criminal proceedings were intentionally delayed or obstructed**, suspension of limitation periods may also be justified in the interest of justice, **to ensure accountability and to prevent impunity.**

While **politically motivated prosecutions or failure to prosecute for political reasons could be considered as one of such exceptional circumstances**, to be consistent with the principles of legal certainty and procedural fairness, the **legislation must provide for a clear and concrete framework to allow for determination – based on objective criteria – whether the justice system in place at the relevant time was compromised to a degree that made prosecution practically impossible or politically suppressed, such as during the communist or other authoritarian regimes, disregarding the principles of rule of law and human rights**.

In order to exclude a possibility of arbitrary, abusive or erroneous application of the law, these **exceptional grounds may not be interpreted broadly**, and **should only allow for prosecution of serious crimes and grave human**

rights violation. Otherwise, they risk enabling political manipulation – the very problem they are intended to prevent.

When the legal provisions governing the statute of limitations, including its suspension, are neither clear, nor foreseeable, or there has not been an accessible and reasonably foreseeable judicial interpretation of these provisions, this runs the risk of potential arbitrary prosecution, conviction or punishment – at odds with international and regional human rights instruments, and in particular with *nullum crimen*, *nulla poena sine lege*.

Prosecution should not be based on political affiliation, opinion, or statutes, targeting individuals not for the objective elements of their conduct but for their identity or legal interpretations, as this would undermine equality before the law and impartiality of justice. At the same time, it is equally important to examine whether non-prosecution occurred under circumstances, where the independence and impartiality of the criminal justice system were significantly and systemically undermined. While it may be legitimate to address impunity for past serious crimes, in particular where prosecution was previously blocked due to political interference, **any new prosecution must be based on legal merit and should not be linked with political affiliation, or change of policies and priorities**.

Furthermore, a **differentiation should be recognized with respect to the approaches applicable to criminal and disciplinary offenses**. While international law and jurisprudence do not necessarily offer explicit guidance on the retroactive extension of statutes of limitation in disciplinary cases, **the issue of proportionality would remain a key consideration**.

In contrast to the criminal context - particularly in cases of failure to investigate serious crimes or grave human rights violations, where exemptions to statutes of limitations may be exceptionally justified - **the proportionality of retroactive application of extended limitation periods in disciplinary proceedings due to political obstacles to investigation may appear less convincing**.

Since disciplinary proceedings are mostly said to fall under the **civil limb** of Article 6(1) of ECHR, they may allow for some retroactive measures, which, however, must still comply with the principles of legality, legitimacy, proportionality, legal certainty, and procedural fairness. In this context, while the retroactive extension or suspension of limitation periods may not be categorically excluded, such measures risk undermining the principle of equality of arms, potentially impairing the defendant's ability to mount an effective defense due to the degradation of evidence, and ultimately jeopardizing judicial and prosecutorial independence. Moreover, timely resolution of such matters helps mitigate the real or perceived risk of pressure or undue influence on judges and prosecutors in the conduct of their duties, thereby undermining public confidence in judicial and prosecutorial independence and integrity. Finally, a retroactive extension of the limitation period may be restricted if, under national law, the expiry of the limitation period gives rise to substantive rather than merely procedural rights. Where the

nature of the disciplinary misconduct aligns more closely with criminal liability, the stricter non-retroactivity standard applies.

In general, individuals should not be shielded from liability simply because legal action was obstructed by an oppressive political system. The passage of time under such a regime should not preclude accountability for crimes that were politically motivated or closely tied to the structure and function of that regime. However, **the public interest in investigating cases of disciplinary misconduct despite their being time-barred due to an allegedly politically motivated failure to pursue them earlier – should be properly weighed against their relatively limited gravity and the potential risk they pose to judicial and prosecutorial independence, as well as to fair trial guarantees.**

While a retroactive extension of limitation periods in politically motivated disciplinary cases can be framed as serving a legitimate aim – such as restoring justice and enhancing credibility of justice system – applying such a measure to offences that do not amount to serious criminal acts may fail the proportionality test. Retroactive application of an extended limitation period **may not always be strictly necessary or proportionate given the limited gravity of the offence** (and it is due to its limited gravity that the offence is classified as disciplinary, not criminal) **and the rights of the individual concerned**, **who may have reasonably relied on the expiry of the limitation period, fair trial guarantees, including an ability to collect evidences in defense of oneself and adequate opportunity to respond.**

In light of the foregoing, while the retroactive extension of statutes of limitations – due to their suspension caused by political obstacles – may be exceptionally justified in the interest of justice, to prevent impunity and ensure investigation of grave human rights violations and serious crimes in line with obligations under international law, and on the basis of clearly defined criteria and procedure, invoking this mechanism in the disciplinary proceedings may give rise to greater concerns, especially without clearly defined procedure and legal grounds.

More detailed and elaborated considerations and concrete recommendations that should be taken into account in relation to suspending of statutes of limitations for disciplinary delicts committed by public officials or on their orders, not prosecuted for political reasons are highlighted in the text of the Note.

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 14 May 2025, the Minister of Justice of Poland sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for expert legal advice on the topic of suspension of limitation periods for disciplinary offenses committed by public officials, particularly judges and prosecutors, that were not prosecuted for political reasons.
2. On 16 May 2025, 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 on the issue.
3. The present Note should be read in light of the several opinions on judicial reform in Poland published by ODIHR between 2017 and 2024.[1]
4. ODIHR stands ready to further elaborate some of the issues addressed in the present Note, to provide more detailed analysis of compliance with international human rights standards and OSCE commitments and relevant examples of good practices from OSCE participating States (pSs) in relation to specific legislative choices and legal provisions.
5. This Note was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[2]

II. SCOPE OF THE NOTE

6. This Note primarily addresses the topic of the suspension of limitation periods for criminal acts and disciplinary offenses that may have been committed by judges and prosecutors – or carried out at their direction – that may not have been pursued due to "political reasons". While the letter of request refers broadly to the suspension of limitation periods for disciplinary offenses committed by public officials, ODIHR understands – given the specific context of rule of law reforms in Poland, as also referenced in the request – that the primary focus of this analysis should be on statutes of limitations in disciplinary proceedings against judges and prosecutors, which were not pursued due to political reasons. Furthermore, while this Note does not offer a direct analysis of Article 44 of the Polish Constitution, the general

1 *ODIHR Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland* (5 May 2017, also in Polish here); *ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland* (30 August 2017), in English and in Polish; *ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland* (proposed by the President, as of 26 September 2017), 13 November 2017, in English and Polish; *ODIHR Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act* on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019), 14 January 2020, in English and Polish; ODIHR Urgent Interim Opinion on the Bill Amending the Act on the Supreme Court and Certain other Acts of Poland (as of 16 January 2023), 25 January 2023, in English and Polish; *ODIHR Urgent Interim Opinion on the Bill Amending the Act on the National Council of the Judiciary of Poland*, 8 April 2024.

2 ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments, 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 […]".*

context it provides will be considered in the subsequent analysis, particularly as the request was made in reference to this provision. To that end, since Article 44 of the Constitution refers to the suspension of the statute of limitations for "crimes" committed by, or on the order of, public officials that were not prosecuted for so-called "political reasons", this Note will also examine the suspension of limitation periods within the criminal law context. This broader approach is intended to ensure a comprehensive analysis of the issue, even though the request for a legal opinion does not explicitly refer to this aspect.

7. The Note's main objective is to provide an overview of relevant international human rights standards and recommendations, OSCE commitments and comparative practices within the OSCE region related to this issue.

8. The Note aims to answer a question *in abstracto* and thus does not offer a comprehensive analysis of the broader legal and institutional frameworks governing the accountability of public officials, including judges and prosecutors, nor of the applicable procedural safeguards in the context of disciplinary or criminal proceedings. These include, among others, the right to an independent and impartial tribunal and the right to a hearing within a reasonable time – both of which are essential to ensuring that the independence and impartiality of the judiciary and prosecutorial autonomy and independence are not undermined. However, where needed and as applicable, the Note may also refer to the Polish legal framework with a view to tailor the present legal analysis to the country context, including with respect to the situation of judges and prosecutors. This Note raises key issues and seeks to provide general guiding principles to further pursue judicial and other reform with a view to restore the rule of law in Poland[3].

9. 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.

10. This Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the topic and other related legislation of Poland in the future. Should the Note be translated into Polish, the English version shall prevail in case of discrepancies.

III. BACKGROUND

11. Article 44 of the Constitution of Poland provides that "*the statute of limitation regarding crimes committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be suspended for the period during which such reasons existed*." This constitutional provision effectively means that if so-called "political" circumstances prevent

[3] For additional background pertaining to judicial reforms since 2016 and ongoing discussions on restoring the rule of law in Poland, ODIHR hereby refers to its legal opinions published since 2016.

the prosecution of certain offences – particularly those involving public officials – then the statute of limitations is put on hold for the duration of those circumstances. In practical terms, the limitation period does not run while such political obstacles are in place. Once those obstacles are removed and prosecution becomes feasible, the statute of limitations resumes. The total period of limitation is thus recalculated by excluding the time during which prosecution was hindered for so-called "political reasons".

12. From a comparative perspective, Poland stands out as one of the few countries[4] whose constitutional framework explicitly addresses the suspension – or potential extension – of criminal statutes of limitations, usually addressed in Criminal Codes or Criminal Procedure Codes. This reflects a deliberate effort to prevent impunity for public officials whose crimes might otherwise go unpunished due to politically motivated delays in prosecution.

13. While not explicitly stated, this provision may have been motivated by the aim to target criminal offenses committed during the communist regime in Poland, by suspending limitation period for such crimes for as long as those political impediments persisted. In this respect, systemic political repression or institutional obstacles under the communist regime may have prevented the genuine and fair prosecution of crimes committed by state actors. Notably, the 1997 Criminal Code of Poland initially included Article 105(2) providing that the criminal liability of public officials for crimes committed between 1939 and 1989 would not be subject to limitation if prosecution had been impossible due to political reasons. However, this provision was subsequently repealed.

14. In practice, this provision could allow for the initiation of investigations even after the statutory limitation period has formally expired - if the period during which political obstacles existed exceeds the duration of the limitation period itself. In such cases, the legal framework effectively "pauses" the clock on the statute of limitations, permitting prosecution once those political barriers are lifted.

15. This constitutional provision could also be seen as a preventive measure allowing for the suspension of the statute of limitations in future cases where criminal prosecution is rendered impossible due to the prevailing political conditions. This legal mechanism may be considered as a general safeguard against possible impunity for injustices in the transitional

4 The Hungarian Constitution stipulates that serious criminal offences during the communist dictatorship that were not prosecuted for political reasons are not to be considered time-barred, and the statute of limitations is extended retroactively. In 2013, the Hungarian parliament adopted an amendment of the Fundamental Law (Constitution) which included Article U in the chapter on National Avowal which states as follows: "The Hungarian Socialist Workers' Party and its legal predecessors and other political organisations established to serve them in the spirit of communist ideology were criminal organisations, whose leaders have responsibility without statute of limitations for: […] (i) [a]ll politically motivated ordinary offences which were not prosecuted by the administration of justice due to political reasons. The amendment to the Fundamental Law necessitated the amendment of Act CCX of 2011 on the Punishment and the Exclusion of the Limitation of Crimes Against Humanity and the Prosecution of Certain Crimes Committed During the Communist Dictatorship. Article 7 of this Act now states that the period of limitation of communist crimes as set forth in Article U)(7) and (8) of the Fundamental Law shall be interrupted by any act of criminal proceedings taken against the perpetrator on account of the criminal offence subsequent to 31 December 2011. On the day of such interruption, the period of limitation as set forth in Article U)(7) and (8) of the Fundamental Law shall recommence. The Federal Constitution of Switzerland stipulates that sexual or pornographic offences committed against children before puberty and the sentences imposed for these offences are not subject to the statute of limitations. The Croatian Amendments of Constitution from 2010 introduced the norm of the following content: "The statute of limitations shall not apply to the criminal offences of war profiteering, or any criminal offences perpetrated in the course of economic transformation and privatisation and perpetrated during the period of the Homeland War and peaceful reintegration, in wartime and during times of clear and present danger to the independence and territorial integrity of the state, as stipulated by law, or those not subject to the statute of limitations under international law. Any gains obtained by these acts or in connection therewith shall be confiscated." The introduction of the norm in the constitutional order of Croatia was rather a parliamentary compromise in order to enforce the necessary amendments of the Constitution in direction of accession to the European Union than a matter of parliamentary consent. This constitutional norm has been applied in the criminal case of the Prime Minister of Croatia who was charged for war profiteering as a public official during the Homeland War.

periods and ensure that crimes committed under certain political regimes can still be subject to judicial scrutiny, even many years after their commission.

16. In general, individuals should not be shielded from criminal liability simply because legal action was obstructed by an oppressive political system. The passage of time under such a regime should not preclude accountability for crimes that were politically motivated or closely tied to the structure and function of that regime.

17. It should be noted that Article 43 of the Polish Constitution provides that no statute of limitations shall apply to war crimes and crimes against humanity, that corresponds to Poland's international obligations concerning imprescriptible crimes[5]. This constitutional provision has been expressly incorporated into Poland's criminal legislation. Article 105(1) of the Criminal Code of Poland defines that its provisions regarding limitation periods shall not apply to, *among other*, crimes against peace, humanity and war crimes; intentional crimes: murder, grievous bodily harm, grievous bodily harm or deprivation of liberty combined with particular torment, committed by a public official in connection with the performance of official duties, as well as some other serious crimes committed under aggravating circumstances[6].

18. However, the Criminal Code of Poland currently lacks a provision that would provide a sufficient legal basis for implementing Article 44 of the Polish Constitution - unless the crimes referenced in this constitutional provision already fall within the scope of Article 105(1) of the Code, to which limitation periods do not apply in any case. As previously noted, the original version of the 1997 Criminal Code included Article 105(2), which provided that public officials could be held criminally liable for crimes committed between 1939 and 1989, without limitation, if prosecution had been impossible for political reasons. This provision has since been removed. Currently, the non-applicability of limitation periods to crimes committed during the Communist era is instead grounded in other legal frameworks, such as transitional justice legislation (e.g., the Institute of National Remembrance Act – Ustawa o Instytucie Pamięci Narodowej), relevant constitutional provisions (particularly Article 43), and Poland's international legal obligations (e.g. regarding crimes against humanity).

19. The current Note does not aim to analyze Article 44 of the Constitution or evaluate it against the international standards. It should be noted, however, that in order to effectively implement this provision, as well as avoid the possibility of the abusive, selective or erroneous application, there would be a need for reflecting this provision in the criminal legislation. This includes defining the categories of crimes that may be investigated despite the passage of time and establishing clear criteria for when the "political reason"' referenced in the constitutional provision can legitimately prevent prosecution (see more details in Sub-section V.5 *infra*).

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[5] See *UN Convention on the Non-Applicability of Statutory Limitations* (1968). Poland signed the Convention on December 16, 1968, and ratified it on February 14, 1969.

[6] Specifically, Article 105(1) indicates "the provisions of Art. 101–103 shall not apply to: 1) crimes against peace, humanity and war crimes; 2) intentional crimes: murder, grievous bodily harm, grievous bodily harm or deprivation of liberty combined with particular torment, committed by a public official in connection with the performance of official duties; 3) crimes specified in Art. 197 § 4 or 5, committed to the detriment of a minor under 15 years of age; 4) crimes specified in Art. 148 § 2 item 2 or § 3, committed in connection with the rape of a minor under 15 years of age or in connection with rape with particular cruelty; 5) crimes specified in Art. 197 § 4 or 5, if the perpetrator acted with particular cruelty; 6) crime specified in Art. Article 156 § 1 and Article 197 § 4 in conjunction with Article 11 § 2".

IV. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

20. Several international human rights instruments and OSCE commitments are of relevance to the issue of the suspension of statutes of limitations with respect to criminal and disciplinary proceedings against judges and prosecutors, including with respect to judicial independence and the independence and autonomy of prosecutors, fair trial guarantees, *nullum crimen sine lege* and the principle of legal certainty, which are vital to preserving the finality of proceedings, ensuring that no individual is subjected to proceedings indefinitely or beyond a reasonable time.

1. NULLUM CRIMEN, NULLA POENA SINE LEGE

21. Although as outlined below, (see para 25 *infra)* disciplinary proceedings against judges or prosecutors are considered to be of a civil rather than criminal nature, the request also refers to the *prosecution* of judicial or prosecutorial alleged misconducts, implying some alleged criminal offenses, and the suspension of the statute of limitations in that context.

22. In this respect, a fundamental principle of criminal law and human rights, which protects individuals from arbitrary prosecution or punishment is of relevance. Hence, the guarantee that a person cannot be punished for an act unless it was defined as a crime by law at the time the act was committed (principle of the legality of the crime and of the punishment), enshrined in Article 15 of the International Covenant on Civil and Political Rights (ICCPR) and Article 7 of the Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), thereby prohibiting the retrospective application of criminal law, is also of relevance. This prohibition is necessary from the viewpoint of legal certainty, which means that an individual can be prosecuted only for actions, which were foreseeable as criminal offences at the time when they were committed.

23. In principle, the guarantee of non-retroactivity of criminal legislation applies with respect to substantive norms as opposed to procedural rules, which apply immediately to proceedings that are underway according to the *tempus regit actum* principle. There have been divergence of opinions as to whether statutes of limitations should be regarded as substantive or procedural in nature.[7] The European Court of Human Rights (ECtHR) has clarified that Article 7 of the ECHR does not impede the immediate application to ongoing proceedings of laws extending limitation periods, where the alleged offences have never become subject to limitation.[8] By contrast, it held that Article 7 precludes the revival of a prosecution after

7 See e.g., Venice Commission, *Amicus Curiae Brief for the Constitutional Court of Georgia on the Retroactivity of Statutes of Limitation and the Retroactive Prevention of the Application of a conditional sentence*, CDL-AD(2009)012-e, paras. 7-15.

8 See e.g., ECtHR, *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, 22 June 2000, para. 149. See also e.g., ECtHR, *Glässner v. Germany*, where the ECtHR rejected the applicant's claim that his conviction by the post-reunification German court was based on a retroactive application of the criminal law in violation of Article 7(1) of the ECHR (no punishment without law), finding that the relevant provisions of the GDR criminal code, as interpreted and applied by the Berlin court, did not violate the principle that an offense be defined at the time of its commission with sufficient accessibility and foreseeability (*nullum crimen sine lege*). In setting

the expiry of a limitation period,[9] except in cases of crimes punishable under international law, where the issue of the applicable limitation period must be decided in the light of the relevant international law in force at the material time.[10]

24. It is also important to underline that the lack of an accessible and reasonably foreseeable judicial interpretation of criminal legislation may also lead to a finding of a violation of Article 7 of the ECHR as it may potentially lead to arbitrary prosecution, conviction or punishment – contrary to the guarantees of Article 7 of the ECHR.[11]

2. THE RIGHT TO A FAIR AND PUBLIC HEARING BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL

25. When judges or prosecutors are subject to disciplinary or criminal proceedings, including arising from the exercise of their official duties when not covered by functional immunity, various fair trial guarantees are applicable. In this respect, the ECtHR has held that the civil (rather than criminal)[12] fair trial guarantees enshrined in Article 6 (1) of the ECHR, including the right to a "hearing within a reasonable time", apply to disciplinary proceedings involving judges and prosecutors.[13]

26. International and regional standards and recommendations underline that disciplinary proceedings, the definition of disciplinary offenses and applicable sanctions should be established by law, which should be clear, precise and foreseeable – and conducted by an independent and impartial body or a court, be free from any political interference, sanctions should be proportionate, and the right of a judge/prosecutor to fair trial together with right to appeal against the disciplinary measure should be guaranteed.[14]

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out the applicable general principles of law, the ECtHR opined that: *"[I]t is legitimate for a State governed by the rule of law to bring criminal proceedings against persons who have committed crimes under a former regime; similarly, the courts of such a State, having taken the place of those which existed previously, cannot be criticised for applying and interpreting the legal provisions in force at the material time in the light of the principles governing a State subject to the rule of law."*

9 See e.g., ECtHR, *Antia and Khupenia v. Georgia*, no. 7523/10, 18 June 2020, paras. 38-43; see also ECtHR, *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], Request no. P16-2021-001, 26 April 2022, para. 77.

10 See e.g., ECtHR, Kononov v. Latvia [GC], no. 36376/04, 17 May 2010, paras. 229-233 (war crimes); *Kolk and Kislyiy v. Estonia* (dec.), no. 23052/04, 17 January 2006 (crime against humanity).

11 See e.g., ECtHR, *Del Río Prada v. Spain* [GC], no. 42750/09, 21 October 2013, para. 93.

12 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'"*).

13 See, e.g., ECtHR, *Olujić 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.

14 *See e.g.*, 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; UN Human Rights Committee, *General Comment No. 32 on Article 14 of the ICCPR*; ECtHR – Guide on Article 6 of the ECHR prepared by the Registrar (as of 28 February 2025); 21; Universal Charter of the Judge (1999, as last updated in 2017), adopted by the International Association of Judges, Section 5; the European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, DAJ/DOC (98)23, paras. 2.1. and 2.2; Venice Commission, Report on the Independence of the Judicial System – Part I: The Independence of Judges (2010), CDL-AD(2010)004, Section III.5; CCJE, Opinion No. 27 (2024) concerning the disciplinary liability of judges; *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, especially paras. 5, 9 and 25-26, which underline in particular that there shall not be "any political influence pertaining to [judicial] discipline". See also e.g., ECtHR,

27. The Court of Justice of the European Union (CJEU) has similarly 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 Charter of Fundamental Rights of the European Union (EU Charter), disciplinary proceedings against national judges must be brought before an independent and impartial tribunal,[15] 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.

28. The importance of applying civil fair trial guarantees – including the right to a fair and public hearing within a reasonable time – in the context of disciplinary proceedings against judges and prosecutors is twofold. Firstly, to protect the personal civil fair trial rights of a judge or prosecutor as an individual - just like any other person - under the law. Second, given the central and prominent role of judges and prosecutors within the criminal justice and broader legal system, prompt disciplinary proceedings promote and preserve the integrity, impartiality and independence of, and public trust in, the criminal justice and broader legal system as a whole. The public should be reassured that allegations of judicial or prosecutorial misconduct will be resolved promptly, whether in favour or against the judge or prosecutor; timely resolution of such matters helps mitigate the perception or risk that a judge or prosecutor may be susceptible to improper pressure or undue influence in the conduct of their duties.

3. Principle of Legal Certainty and Statutes of Limitations

29. Legal certainty is one of the fundamental rule of law principles which plays a significant role in shaping and justifying statutes of limitations in both criminal and disciplinary proceedings. This principle is firmly grounded in international human rights law, particularly the ICCPR[16], the ECHR and the jurisprudence of the ECtHR, and is echoed in other UN instruments and legal systems grounded in the rule of law. The principle of legal certainty requires that the law be formulated with sufficient precision to enable individuals – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances,

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.*"

15 See e.g., 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.

16 See Article 15(1) of ICCPR: Nullum crimen sine lege (No punishment without law): "No one shall be held guilty of any criminal offence unless it constituted a criminal offence under national or international law at the time..." This embodies legal certainty by requiring laws to be foreseeable and non-retroactive, especially in criminal matters. Article 9(1): Liberty and Security of Person: "No one shall be subjected to arbitrary arrest or detention..." The term "arbitrary" is understood to require that laws and procedures be clear and predictable. UN Human Rights Committee (HRC) jurisprudence emphasizes: legal norms must be formulated with sufficient precision to enable individuals to regulate their conduct. Vague or overly broad laws violate legal certainty (e.g., Toonen v. Australia, General Comment No. 29 on States of Emergency). The ECHR does not use the term "legal certainty" explicitly, but the principle is deeply embedded in its structure and jurisprudence: Article 7(1): No punishment without law: "No one shall be held guilty of any criminal offence... unless it was a criminal offence under national or international law at the time". This provision reflects the requirement of foreseeability and clarity of the law, central to legal certainty. Article 6(1): Right to a fair trial. Legal certainty is implied in the requirements for due process, independence of the judiciary, and equal treatment. Article 5: Right to liberty and security. Again, "lawful" detention must rest on clear and accessible legal bases.

the consequences which a given action may entail.[17] In disciplinary contexts (e.g., for professionals or public servants), this also ensures that employment and reputation are not clouded indefinitely by unresolved allegations. Disciplinary proceedings that affect livelihood and reputation, which fall within the scope of protection of Article 8 of the ECHR, must still adhere to legal certainty and fair trial principles under Article 6 of the ECHR, where applicable.[18]

30. As underlined by the ECtHR in a recent Advisory Opinion, "*Limitation periods, which are a common feature of the domestic legal systems of the Contracting States, serve several purposes, which include ensuring legal certainty and finality and preventing infringements of the rights of defendants, which might be impaired if courts were required to decide on the basis of evidence which might have become incomplete because of the passage of time*".[19] Hence, statutes of limitations are grounded in the need to ensure finality and predictability, both hallmarks of legal certainty. In the case of *Stubbings and Others v. the United Kingdom*, the ECtHR acknowledged the legitimacy of limitation periods as a means to promote legal certainty and avoid the injustice of trying stale claims.[20]

31. Legal certainty is linked to fair trial guarantees. Limitation periods require proceedings to be initiated and trials occur within a reasonable time, thereby ensuring that evidence and witness testimonies remain reliable, and trials fair, which directly supports the right to a fair trial under Article 6 of the ECHR and Article 14 of the ICCPR. Prolonged delays undermine procedural fairness and may lead to abuse of process. As time passes, evidence deteriorates, witnesses forget, and records may be lost, making a fair and reliable adjudication less likely.[21]

32. Limitation periods are generally proportional to the gravity of the alleged offence. International instruments also require that no statute of limitations shall apply to certain crimes punishable under international law, including war crimes and crimes against humanity, or international law provisions have been interpreted as such, for instance the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),[22] thereby acknowledging the primacy of justice for victims in such cases.[23] However, for ordinary crimes, legal certainty would in principle demand that statutes of limitations are respected and not arbitrarily altered.

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17 See e.g.,ECtHR, *The Sunday Times v. the United Kingdom* (No. 1), no. 6538/74, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause.*" See also e.g., ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 12; and Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, para. 58. In addition, see

18 ECtHR recognizes that civil limbs of Article 6 apply to disciplinary measures involving serious consequences (e.g., disbarment, dismissal). In Albert and Le Compte v. Belgium (1983), the Court found that disciplinary proceedings affecting the right to practice a profession fall under Article 6(1), requiring fair procedures and legal certainty.

19 See e.g., ECtHR, *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], Request no. P16-2021-001, 26 April 2022, para. 72.

20 See ECtHR, *Stubbings and Others v. the United Kingdom*, application no. 22083/93, 1996, para 51.

21 See e.g., ECtHR, *Mocie v. France*, no. 46096/99, 8 April 2003, para. 22, where the Court emphasized the importance of reasonable time limits in disciplinary and criminal proceedings as part of the right to a fair hearing.

22 While the UNCAT does not explicitly address limitation periods, the Committee against Torture has stated that the UNCAT requires States to ensure that "*acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations*", relying on Articles 1, 2, 4 and 14 of the Convention and affirmed that there should be no limitation periods for the prosecution of torture; it has also stressed that torture should not be time-barred even if it does not amount to a war crime or crimes against humanity; see e.g., CAT, *Concluding Observations on Denmark*, UN Doc. CAT/C/DNK/CO/5, 2007, para. 11; and *Concluding Observations of the UNCAT Committee on Japan*, CAT/C/JPN/CO/2, 28 June 2013, para. 8.

23 See *UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* (1968) and *Rome Statute of the ICC*, Article 29 (Crimes under ICC jurisdiction are not subject to any statute of limitations); Poland ratified the Rome Statute of the International Criminal Court (ICC) on 12 November 2001 and it entered into force on 1 July 2002.

4. JUDICIAL INDEPENDENCE AND THE AUTONOMY AND INDEPENDENCE OF THE PROSECUTION SERVICE

33. The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law.[24] The principle is also crucial to upholding other international human rights standards.[25] 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.[26]

34. Where judicial or prosecutorial accountability is at stake, particular attention must be paid to the preservation of their independence and autonomy. The prospect of being held liable indefinitely may give rise to disproportionate consequences, including the risk or perception that a judge or prosecutor could be subject to improper external pressure or influence in the performance of their duties, thereby undermining public confidence in judicial/prosecutorial independence and integrity.

35. 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 ICCPR,[27] Article 6 of the ECHR[28] and Article 47 of the EU Charter. 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.[29]

36. International understanding of the practical requirements of judicial independence continues to be shaped by the work of international mechanisms, including the UN Human Rights

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24 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).

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

26 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, *Rule of Law Checklist*, 2016, para. 74.

27 UN International Covenant on Civil and Political Rights (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Poland ratified the ICCPR on 18 March 1977. 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.

28 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. The Republic of Poland ratified the ECHR on 19 January 1993.

29 See *1990 OSCE Copenhagen Document*, paras. 5 and 5.12; *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (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 (2023, 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).

Committee,[30] the caselaw of the ECtHR[31] and of the CJEU,[32] as well as the development of soft-law instruments and other non-legally binding guidance documents.[33]

37. Likewise, a series of international documents sets a framework of standards and recommendations related to the work, status and role of the prosecution service. These instruments include the 1990 UN Guidelines on the Role of Prosecutors, which aim to assist UN Member States in securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings.[34] Other important principles are contained in the 1999 International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors.[35] Further standards are outlined in the UN Convention against Corruption (, which calls upon States Parties to take measures to strengthen the integrity of the prosecution services and prevent opportunities for their corruption, bearing in mind their crucial role in combating corruption.[36]

38. The CoE Committee of Ministers also formulated fundamental principles concerning the role of the public prosecution service.[37] The Rome Charter, adopted by the Consultative Council of European Prosecutors (CCPE) in 2014, proclaims the principle of independence and autonomy of prosecutors, and the CCPE recommends that the *"[i]ndependence of prosecutors […] be guaranteed by law, at the highest possible level, in a manner similar to that of judges"*.[38] Certain principles related to the prosecution service are also contained in OSCE commitments, such as the 1990 Copenhagen Document, which provides that "*the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures proceeding and accompanying prosecution*".[39] In addition,

30 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*."

31 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.).

32 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 NajwyższyA. 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 Juízes Portugueses*, C-64/16, 27 February 2018, para. 44.

33 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).

34 The *1990 UN Guidelines on the Role of Prosecutors* were adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

35 See *International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, approved by the International Association of Prosecutors on 23 April 1999. These Standards were annexed to resolution 2008/5 of the Commission on Crime Prevention and Criminal Justice of the UN Economic and Social Council on "Strengthening the rule of law through improved integrity and capacity of prosecution services", which also requested States to take these Standards into consideration when reviewing or developing their own prosecution standards.

36 See Article 11 of the *UNCAC*.

37 See *Recommendation Rec(2000)19 of the Committee of Ministers to Member States* on the Role of Public Prosecution in the Criminal Justice System (6 October 2000); and *Recommendation CM/Rec(2012)11 of the Committee of Ministers* to Member States on the Role of Public Prosecutors outside the Criminal Justice System (19 September 2012). See also Parliamentary Assembly of the Council of *Europe, Recommendation 1604 (2003) on the Role of the Public Prosecutor's Office in a Democratic Society Governed by the Rule of Law* (27 May 2003).

38 See Consultative Council of European Prosecutors (CCPE), *Rome Charter – Opinion no. 9 (2014) on European Norms and Principles concerning Prosecutors*, para. 33.

39 See *OSCE Copenhagen Document 1990*, para. 5.14.

the 2006 Brussels Declaration on Criminal Justice Systems states that "*[p]rosecutors should be individuals of integrity and ability, with appropriate training and qualifications; prosecutors should at all times maintain the honour and dignity of their profession and respect the rule of law*" and that *"[t]he office of prosecutor should be strictly separated from judicial functions, and prosecutors should respect the independence and the impartiality of judges"*.[40]

39. In principle, 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.[41] ODIHR and the Venice Commission have previously 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. In principle, a judge should only benefit from immunity in the exercise of lawful functions"*.[42] In principle, a judge should only benefit from immunity in the exercise of lawful functions, meaning that if he or she commits a criminal offense in the exercise of his or her office (e.g., accepting bribes, corruption, traffic of influence or other similar offenses), he or she should have no immunity from criminal liability.[43] Otherwise, judges should be protected from criminal and civil liability for the errors made in the exercise of their judicial function except in cases of malice or gross negligence; outside of the judicial function, judges are liable as ordinary citizens.[44]

V. LEGAL ANALYSES AND KEY PRINCIPLES

1. GENERAL CONSIDERATIONS

40. Statutes of limitations are essential for ensuring fairness, efficiency, and legal certainty in criminal and disciplinary systems. They also enhance accountability by requiring that complaints or charges against judges and prosecutors be brought within a reasonable time. This prevents the erosion of evidence and ensures that claims are addressed while witness

40 See OSCE, *2006 Brussels Declaration on Criminal Justice Systems*, 5 December 2006.

41 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. 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.

42 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. See also *ODIHR Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan*, 1 October 2018, paras. 42 and 54; and 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.

43 Ibid. para. 41 (2014 *Joint Opinion on the Draft Amendments to the Legal Framework on the Disciplinary Responsibility of Judges in the Kyrgyz Republic*).

44 See e.g., OSCE/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).

memories and records retain probative reliability, contributing to due process. Especially with respect to disciplinary proceedings, the passage of time can reduce the relevance or proportionality of disciplinary sanctions, weakening their corrective or deterrent effect. Without time limits, the risk of arbitrary or politically motivated prosecution also increases undermining the essence of judicial independence.

41. However, suspension mechanisms exist to safeguards against impunity and prevent the statute of limitations from being invoked in bad faith by alleged wrongdoers or from obstructing the course of justice, particularly in circumstances where certain impediments may have delayed legitimate proceedings.

42. Many legal systems provide that certain legal or factual reasons may delay the commencement of, or suspend the limitation period for investigation and prosecution of offences. When the obstacle ceases to exist, the limitation period may begin to run or the remainder of the period continues to run. This extends the limitation period by the period of its suspension. This is based on the idea that a statute of limitations should not run out without the (legal or factual) possibility of prosecution.

2. EXAMPLES OF STATE PRACTICES

43. At the outset, it is important to emphasize that due to differing institutional frameworks, legal traditions and historical developments, domestic legal systems within the OSCE region have developed diverse approaches to the regulation of statutes of limitations and their suspension. Nonetheless, any such regulatory framework must be consistent with applicable international human rights standards, including those pertaining to legal certainty, due process and fair trial guarantees. In this respect, legal systems are required to strike a fair balance between ensuring accountability and the protection of the rights of the accused or the subject of disciplinary proceedings.

44. Comparative practice among OSCE pSs suggests that statutes of limitations are strictly applied in criminal proceedings as an inherent part of the principle *nullum crimen, nulla poena* (see Sub-section IV.1 *supra*). The regulation of statutes of limitations in disciplinary proceedings tends to be less consistent and typically involves shorter timeframes. However, even within the realm of criminal law, the scope, duration and application of limitation periods vary considerably depending on the nature and seriousness of the offense. **Notably, apart from cases of suspension of limitation periods for purely procedural reasons, the suspension or lifting of limitation periods to prevent impunity is usually limited to the most serious criminal offenses.**

2.1. Statutes of Limitations in Criminal Proceedings

45. Typically, statutes of limitations in criminal proceedings vary in duration according to the gravity or seriousness of the offence, as determined by the sentencing framework established in the criminal code. Some countries link the length of the limitation period to the maximum

sentence,[45] while other countries – to the country-specific classification of offences into felonies, misdemeanours and the like.[46]

46. As to calculating statutes of limitation, some countries consider it to begin the day of the event that triggers the period, and some the day after, while it ends either the same day[47] or day before.[48]

47. According to the Criminal Code of Poland (Article 101), "*the punishability of an offence lapses if, from the time of its commission, the following period has passed*": 1. 40 years - if the act constitutes the crime of murder; 2. 20 years - if the act constitutes another serious crime (*zbrodnia*); 2a) 15 years - if the act constitutes a misdemeanor (*występek*) punishable by imprisonment exceeding 5 years; 3. 10 years - if the act constitutes a misdemeanor punishable by imprisonment exceeding 3 years; 4. 5 years - in the case of other misdemeanors. The punishability of an offence prosecuted upon a private charge lapses 1 year from the date the injured party became aware of the identity of the perpetrator, but no later than 3 years from the date the offence was committed (Article 101(2) of the Criminal Code). If proceedings have been initiated within the period referred to in Article 101, the limitation of the punishability of the offences defined in Article 101(1) occurs after 10 years, and in other cases — after 5 years from the end of that period (Article 102 of the Criminal Code of Poland). In accordance with Article 103 of the Criminal Code, "*A penalty may not be enforced if the following period has passed from the date the judgment became final and binding*": 30 years — in the case of a sentence of imprisonment exceeding 5 years or a more severe penalty; 15 years — in the case of a sentence of imprisonment not exceeding 5 years; 10 years — in the case of any other penalty.[49]

2.1.1. Tolling of Statutes of Limitations in Criminal Proceedings

48. Statutes of limitations may be subject to modification, such as interruption[50] (i.e., when the limitation period restarts from zero) or suspension,[51] due to certain procedural developments or external circumstances.[52] The limitation periods for prosecution can be suspended in

45 See e.g., **Germany, Italy, Austria, Switzerland, Sweden, Spain, Hungary** (see Gudrun Hochmayr, *a Comparative Analysis of Statutes of Limitation*, p. 769). For example, **in Italy**, in the case of infractions (contravvenzioni), the minimum limitation period of 4 years applies; for crimes (delitti), the upper penalty limits from the minimum limitation period are: 6, 7, 8, 10, 10.5, 12, 15, 20, 21, 24 years. This basically results in eleven limitation periods. It should be noted that the limitation periods can be doubled, for example if serious crimes are committed as "organized crimes"; the limit of 24 years is not binding for temporary custodial sentences, so that a higher upper limit of 30 years is found in isolated cases (e.g., Art. 280 para. 4 Italian Criminal Code).

46 See e.g., **Estonia, France, Greece** (where in the case of crimes the maximum sentence is also relevant), **Poland, the Netherlands**.

47 See e.g., **Estonia, France, Italy, Austria, Poland, Switzerland, Sweden**.

48 For instance, **Germany** and **Greece.**

49 See Criminal Code of Poland.

50 An *interruption* occurs when a specified event causes the limitation period to reset, such that a new period begins to run once the interrupting event concludes.

51 A *suspension* temporarily halts the running of the limitation period, which resumes from where it left off once the reason for the suspension has ceased.

52 The emphasis in the comparative literature is on when a limitation period restarts. Instead of suspension, the terminology used in research is "inhibition" or "tolling" (German Criminal Code). In **Germany**, for example, there can be a number of reasons for staying limitation under s78b Criminal Code or s153a(S) German Criminal Procedure. Important reasons in Germany are section 78b (1) Nr. 1 and 2 StGB. The background of Nr. 1 is that the victim is dependent on the offender and doesn't want to press charges against the offender. Nr. 2 means reasons like extraterritoriality (sections 18 ff. of the courts constitution act (Gerichtsverfassungsgesetz or GVG)) or immunity from criminal prosecution (articles 46 (2), 60 (IV) of the basic law for the Federal Republic of Germany (Grundgesetz or GG)). In connection with Nr. 2, attention should be paid to section 78b (2) StGB. Whereas section 78 (4) StGB says that the period is determined irrespective of aggravating or mitigating circumstances provided for in the provisions of the General Part or of aggravated or less serious cases under the Special Part, the stay of limitation is up to five years in especially serious cases. Section 78b (3) StGB prevents deferrals resulting from legal remedies.

situations where continuing to count the time would interfere with justice - for example, by enabling impunity or making a fair and effective prosecution impossible.

49. In the criminal context, the limitation period may be suspended if prosecution is impossible due to external circumstances, such as war or legal immunity. Suspension may also occur when the competent authority is legally or practically unable to act, for instance, due to procedural barriers or lack of jurisdiction[53].

50. There are countries with no statutes of limitations defining maximum period of time but nevertheless requiring certain reasonable grounds to be in place to allow the authorities to still pursue charges as the time elapsed[54] At the same time, one of the issues in the case of offences committed far in the past is that over time, crucial evidence may be lost, memories may become unreliable, and the ability to mount an effective defence can be seriously compromised.[55]

2.2. Statutes of Limitations in Disciplinary Proceedings Against Judges and Prosecutors

51. Practices across the OSCE region vary greatly with respect to both the duration and the time of commencement of statutes of limitations applicable to disciplinary offences.[56]

The offender could try to exhaust all remedies in order to reach the limitation period because the proceedings at first instance are not finally concluded if the offender or the prosecutor appeal to court. But section 78b (3) StGB says that the limitation period does not expire before the proceedings have been finally concluded which means the legal remedies are decided. Whereas s78c Criminal Code (Germany) allows for interruption of the limitation for the following reasons: (1) The limitation period is interrupted by 1. the first examination of the accused, notice that a preliminary investigation has been initiated against the accused, or the order for such examination or notice of such examination; 2. any judicial examination of the accused or the order for a judicial examination of the accused; 3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been examined or has been given notice of the launch of a preliminary investigation; 4. any judicial seizure or search warrant and judicial decisions upholding them; 5. a warrant of arrest, a provisional order for placement, an order to be brought before a judge for examination and judicial decisions upholding them; 6. the preferment of public charges; 7. the opening of the main proceedings; 8. the setting of each date for the main hearing; 9. a summary penalty order or another decision equivalent to a judgment; 10. the provisional judicial termination of the proceedings due to the indicted accused's absence, as well as any order of the judge or public prosecutor issued after such termination of the proceedings or in proceedings in absentia to ascertain the indicted accused's whereabouts or to secure evidence; 11. the provisional judicial termination of the proceedings due to the indicted accused being unfit to stand trial and any order of the judge or public prosecutor issued after such termination of the proceedings for the purposes of reviewing the indicted accused's fitness to stand trial or 12. any judicial request to undertake an investigative act abroad. In preventive detention proceedings and independent proceedings, the limitation period is interrupted on account of those acts done to conduct the preventive detention proceedings and independent proceedings which correspond to those in sentence. (2) In the case of a written order or decision being made, the limitation period is interrupted at the time at which the order or decision is signed. If the document is not immediately processed after signing, the time at which it is actually submitted for processing is decisive. (3) After each interruption, the limitation period begins to run anew. However, the prosecution is barred by limitation once double the statutory limitation period has elapsed since the time indicated in section 78a and at least three years if the limitation period is shorter than three years under special laws. Section 78b remains unaffected. (4) The interruption has effect only for the person in relation to whom the interrupting act is done. (5) If a law which applies at the time the offence is completed is amended before a decision is given and the limitation period is thereby shortened, then acts leading to an interruption which were undertaken before the entry into force of the new law retain their effect, notwithstanding that at the time of the interruption the prosecution would have been barred by the statute of limitations under the amended law.

53 See Gudrun Hochmayr, *a Comparative Analysis of Statutes of Limitation*, p. 769.

54 In England and Wales, the only limitation on a decision to prosecute is that it is taken within a reasonable time. See the Code for Crown Prosecutors (2018), para 5.10, which contains the last of five elements to be assessed under the 'Threshold Test' for purposes of determining the limited circumstances in which the 'Full Test' for charging decisions may be departed from and denial of bail for a suspect pursued. See the Code for Crown Prosecutors https://www.cps.gov.uk/publication/code-crown-prosecutors. In the Netherlands, the prosecutors have similar discretion whether or not prosecute.

55 In England and Wales, where a decision is made to prosecute a historical crime, it would normally be because new evidence has come to light after further investigation.

56 In **Austria**, limitation period for disciplinary offenses is five years and begins to run at the time the breach of duty ceases or, if it has already been the subject of disciplinary proceedings, at the time of their final and binding conclusion. The statute of limitations precludes prosecution of a judge for breach of professional or official duties if disciplinary proceedings have not been initiated against the judge within the limitation period or if disciplinary proceedings which have been legally concluded have not been reopened to his detriment. See Article 102 of Austrian

2.2.1. Statutes of Limitations of Disciplinary Proceedings in the Case of Criminal Liability

52. There are certain countries that have no statute of limitations regarding disciplinary proceedings against judges.[57] This is particularly relevant for the cases when the disciplinary offences are also regarded as criminal offences committed intentionally and punishable by imprisonment of more than one year.[58] When a disciplinary offense entails criminal liability, the disciplinary proceedings may be initiated within the period of limitation for the initiation of criminal proceedings, provided that such (criminal) proceedings have been initiated.[59] In some countries, disciplinary proceedings may also be initiated against a judge who has been finally convicted.[60]

53. For example, in Poland, according to Article 108 of the Law on the Organization of Common Courts and Article 141 of the Law on Law on the Prosecutor's Office, five years after committing the alleged misconduct, no disciplinary proceedings against judges and prosecutors may be initiated. If proceedings began within that period, the limitation period expires eight years after the act. If the offence is also a crime, the limitation cannot expire before the criminal limitation period under the Criminal Code. The limitation period is suspended from the time of filing the disciplinary claim until the final conclusion of disciplinary proceedings.

54. This aspect gives rise to the question of when a disciplinary offense may also constitute a criminal offence at the same time under domestic or international law (see also Sub-section V.3.1 *infra*).

2.2.2. Tolling of Statutes of Limitations in Disciplinary Proceedings

55. OSCE pSs have generally sought to comply with the principle of reasonably timely disciplinary proceedings against judges and prosecutors through statutory limitation periods,

Law on Judges and Prosecutors Service Act. In **Croatia**, disciplinary proceedings may not be initiated after one year from the date of knowledge of the committed disciplinary offence and the perpetrator, or three years from the date of the committed disciplinary offence. The statute of limitations for initiation of disciplinary proceedings shall expire six years from the date of completion of the disciplinary offence, while the enforcement of a disciplinary penalty shall expire one year from its entry into force. See Article 65 of the Croatian National Judicial Council Act. In **Slovenia**, disciplinary proceedings against a judge may not be initiated after two years have elapsed from the date of the committed offense. The limitation period begins to run upon the cessation of the conduct or omission constituting the disciplinary offense. Disciplinary proceedings become statute-barred in any case when four years have passed since the disciplinary offense had been committed. The enforcement of the imposed disciplinary sanction becomes statute-barred within six months since the decision becomes final.

57 For example, in **North Macedonia** the Law on the Courts (Official Gazette 58/2006) does not establish statute of limitations regarding disciplinary proceedings against judges. See https://legislationline.org/taxonomy/term/15191 accessed 05/06/2025. Having said that there have been examples of judges who were prosecuted for crimes rather than go through the disciplinary procedures. In October 2014, as part of the police operation "Justicija" (Justice), 14 judges and 11 court clerks from the Misdemeanor Department of the Basic Court Skopje 1 were arrested. They were suspected of misconduct in office, which allegedly caused damage to the state in excess of 1.3 million euros. According to the indictment, the judges deliberately kept judgments in their drawers, allowing approximately 8,000 misdemeanor cases to expire due to the statute of limitations. As a result, the state failed to collect fines and court fees. In April 2015, two of the arrested judges, who had since retired, reached a plea agreement with the prosecution and received a suspended prison sentence of one year. The sentence would not be executed unless they committed another crime within three years. Following the operation, the Judicial Council dismissed 14 judges—five retired and nine still active (see <https://faktor.mk/sudiite-uapseni-vo-aktsijata-justitsija-dobija-uslovna-kazna> accessed 05/06/2025).

58 For example, in Austria, there is no time limitation for disciplinary proceedings if the disciplinary offences are also regarded a criminal offence committed intentionally and punishable by imprisonment of more than one year. See Article 102 of Austrian Law on Judges and Prosecutors Service Act. .

59 Article 65 of the Croatian National Judicial Council Act

60 For instance, in **Slovenia**, no later than three months from the date on which the criminal conviction becomes final (Article 84 of the Slovenian Judicial Service Act).

with limited exceptions for the tolling of such time limits either through suspension or extension.[61]

56. Notably, where permitted, tolling may be based either on more abstract "valid reasons" - left to the discretion of a judge or investigator for limited period of time narrowly defined by the law,[62] - or on other specific more concrete legal grounds, including the initiation of parallel criminal proceedings,[63] the commission of a new breach of the law by a judge,[64] as well as on other procedural considerations,[65] such as the need to gather further information or additional evidence and/or to enable the judge to consult a legal counsel and prepare an adequate defense.

3. MATERIAL SCOPE OF THE SUSPENSION OF STATUTES OF LIMITATIONS

57. The material scope of statutes of limitations refers to what types of legal matters or offenses the limitation period applies to - in other words, the substantive content or categories of conduct covered by the limitation rules. While statutes of limitation may apply to both crimes[66] and other offences, including disciplinary delicts, ODIHR was primarily asked to examine the suspension of limitation periods in relation to disciplinary offences committed by judges and prosecutors. Addressing this issue requires an analysis of the distinction between criminal and disciplinary liability, as well as the nature of the respective offences.

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61 For judges, *see, e.g.*, 2015 ENCJ Report, pp. 28-29 (noting that, as of 2015, representatives from Albania, Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, England and Wales, France, Hungary, Italy, Lithuania, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovakia, Slovenia, Spain and Turkey all advised that clear time limits applied for the initiation of disciplinary proceedings against judges, and that, "[i]n some countries, such as Denmark, England and Wales, Northern Ireland and Ireland […], there is a limited power to extend the time limit in exceptional circumstances").

62 For example, **Moldova**: under revisions in 2018 in Moldova, LAW No. 136 of 19-07-2018 for amending Law No. 178/2014 on the disciplinary liability of judges, under article 23 the following amendment was inserted: '(1 2) If the inspector-judge finds the existence of the constituent elements of the disciplinary offenses, he/she orders by resolution the initiation of the disciplinary procedure, the commencement of the disciplinary investigation, which is carried out within 30 working days from the date of their disposition, with the possibility of extending the term by the chief inspector-judge by no more than 15 days, at the request of the inspector-judge who verifies the notification, if there are valid reasons justifying the extension of the term. However, there is no explanation for 'valid reasons justifying the extension of the term' See https://www.legis.md/cautare/getResults?doc_id=105495&lang=ro accessed 04/06/25.

63 **France**, Organic Law 58-1270/1958 (as amended), Art. 47 (cross-referring to Article 50(1) for alleged misconduct by Judges and Article 63 for alleged misconduct by public prosecutors). French legislation mandates that the referral by the relevant investigatory bodies of an alleged disciplinary delict for formal disciplinary proceedings and sanction against a judge or prosecutor must take place within three years of the relevant investigatory body having 'had actual knowledge of the reality, nature and extent of the facts likely to justify such a measure'. The running of this time limit may only be tolled during the period of any criminal investigation that has been launched into the same underlying facts until the final disposition of the criminal proceeding. **Italy**: In Italy, Article 15 of Legislative Decree No. 109 of 23 February 2006 (as amended) establishes a 10-year maximum period within which disciplinary actions against a judge or prosecutor (both classified as 'magistrati' under the unitary organisation of the Italian judiciary) may be initiated from the occurrence of the underlying facts (Article 15(1-bis), and further requires the initiation of proceedings within one year of a sufficiently detailed report of the relevant facts being submitted to the Attorney General at the Court of Cassation (Article 15(1)). Tolling of these time limits applies only in limited circumstances, including parallel criminal proceedings through the finalisation of such proceedings, or if the proceedings are adjourned at the request or due to the obstruction of the accused judge / prosecutor or their legal representative (Article 15(8)).

64 In **Austria** the limitation period is interrupted if the judge commits a new breach of duty within the limitation period that is punishable as a disciplinary offense. It begins to run anew at the time the new breach of duty ceases. Suspension of the limitation period comes in question of the criminal proceedings or of the administrative penal proceedings if the judge's breach of duty is the subject of such proceedings. **Slovenia:** In Slovenia, the statute of limitation is interrupted by any procedural action taken by the competent authority to prosecute a judge for a disciplinary violation. The statute of limitations is also interrupted if the judge commits a new disciplinary violation during the period of limitation.

65 **Spain**: In Spain, the statute of limitations shall be interrupted from the date of notification of the decision to initiate the disciplinary proceedings or, where applicable, of the information proceedings related to the investigated conduct of the judge or magistrate.

66 Notably, Article 44 of the Constitution of Poland speaks about suspension of the statute of limitation with respect to "crimes" committed by, or by order of, public officials and which have not been prosecuted for so-called "political reasons".

3.1. Legal Nature of Disciplinary Liability of Judges and Prosecutors

58. Disciplinary liability of judges and prosecutors represents an important aspect of judicial and prosecutorial accountability as an inherent element of the principle of independence and impartiality as it contributes to upholding the proper administration of justice, thereby strengthening public confidence in the judiciary. At the same time, accountability mechanisms should comply with the requirements of judicial and prosecutorial independence and principle of separation of powers, preventing undue interferences from the executive or legislative branches at all stages of the proceedings.[67]

59. If the legal framework governing judicial or prosecutorial disciplinary liability is not clearly and adequately regulated in accordance with the above-mentioned principles (see Section IV *supra*), judicial and prosecutorial independence might be undermined.

60. The scope and regulation of disciplinary liability is left to the discretion of each country at stake provided that fundamental international standards are respected.

61. Internationally or regionally, there is no uniform approach to the organization of the system of judicial or prosecutorial discipline and practices vary greatly in different countries with regard to the choices between defining in rather general terms the grounds for disciplinary liability of judges and prosecutors and providing an all-inclusive list of disciplinary violations. As mentioned by the Consultative Council of European Judges (CCJE), in many countries, the grounds for disciplinary liability are prescribed in law and cover judicial and extrajudicial misconduct. Due to cultural diversity and differing legal traditions across jurisdictions, public expectations regarding the behaviour of judges or prosecutors may vary, particularly with respect to their private behaviour. For example, while judges may express politically sensitive opinions on social media in one country, such conduct may constitute a disciplinary offense in another country. In certain legal systems, the grounds for disciplinary liability are defined through an exhaustive list, whereas in others, they are articulated in broader, open-ended terms.

62. In general terms, disciplinary liability of judges and prosecutors refers to their accountability for conduct or omissions that violate professional standards specific to the judiciary or the prosecution service.[68] This form of liability is designed to uphold the integrity, impartiality, and competence of the judicial and prosecution office, and it applies within the framework of internal or institutional disciplinary systems. It primarily aims to protect professional values, norms of conduct, and expectations that are specific to the judiciary and prosecution service as a distinct group, bound by their role, responsibilities, and the standards governing judicial or prosecutorial behaviour. Disciplinary delicts are generally considered less serious

67 See OSCE/ODIHR *Urgent Interim Opinion on the Bill amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland* (as of 20 December 2019), para. 38, 14 January 2020.

68 Disciplinary rules applicable to judges are distinct from rules of professional ethics, which aim to provide general rules, recommendations or standards of good behaviour that guide the activities of judges and enable judges to assess how to address specific issues which arise in conducting their day-to-day work, or during off duty activities. In the majority of countries, codes of ethics have only unofficial status and the breach of the ethical principles does not constitute direct ground for disciplinary action. They are entirely different from the purpose achieved by a disciplinary procedure which is designed to police misconduct and inappropriate acts which call for some form of disciplinary sanction. According to the CCJE, "*Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability*." See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 30.

because they concern internal professional rules and may have narrower impacts on society. It is generally important to resolve disciplinary proceedings quickly while evidence, records and witness testimonies retain probative reliability.

63. Criminal liability, by contrast, concerns offences against society at large and carries significantly higher stakes, including the possibility of imprisonment. Unlike disciplinary liability, which addresses breaches of professional standards within the judicial or prosecutorial framework, criminal liability aims to protect fundamental societal interests – such as public order, justice, and the rule of law. It is enforced through the ordinary criminal justice system and applies universally, regardless of the professional status of the individual. Because of the gravity of criminal offenses and the public interest in ensuring accountability, legislators often set longer limitation periods (or none at all, for the most serious crimes) to allow for prosecution regardless of the passage of time.

64. As mentioned above, the ECtHR has held that disciplinary sanctions stemming from disciplinary proceedings related to public servants' exercise of public duties, including judges, do not usually fall under the criminal limb of the Article 6 (1) of ECHR but rather within its civil limb.[69] At the same time, given the potential impact of disciplinary proceedings on judicial and prosecutorial independence and accountability, certain criminal procedural safeguards under Article 6 of the ECHR could be found relevant for many aspects of disciplinary proceedings against judges and prosecutors, especially if the offences are serious enough to justify application of criminal sanctions. As also described above (see Sub-section V.2.2. *supra*), in some jurisdictions, criminal law rules on limitation periods are applied subsidiarily in disciplinary proceedings, reflecting the seriousness of the conduct under review and the need for legal certainty.

65. At the same time, the CCJE stresses the importance of a threshold criterion to demarcate misconduct that potentially justifies the imposition of disciplinary sanctions from other forms of misbehaviour.

66. In each state, the law should define expressly and as far as possible in specific terms, the grounds on which disciplinary proceedings against judges and prosecutors may be initiated. The possibility of introducing *ad hoc* grounds that apply retroactively must be ruled out. Vague provisions (such as the "breach of oath" or "unethical behaviour") lend themselves to an overbroad interpretation and abuse, which may be dangerous for the independence of the judges.[70]

3.2. Judicial and Prosecutorial Immunity

67. Another important element of the judicial and prosecutorial accountability relates to immunity, which should protect judges and prosecutors from being held liable for acts made in the exercise of their functions (or functional immunity). It also should serve as a shield from the unjustified disciplinary proceedings.

68. At the outset, it must be highlighted that 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. It is

69 See ECtHR, *Vilho Eskalinen and Other v. Finland* [GC], no. 63235/00, 19 July 2007, paras. 62-63.
70 See CCJE, *Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality*, para. 77.

essential to ensure that judges can engage in the proper exercise of their functions without their independence being compromised through fear of the initiation of prosecution or civil action by an aggrieved party, including state authorities. As regards the immunity of judges, it is necessary to separate the substantive issue relating to the material scope of the functional immunity, which should provide the legal grounds to pronounce the inadmissibility of a complaint against a judge, from the procedural safeguards which exist to protect such functional immunity[71].

69. International standards are uniform in the view that judges should not suffer negative consequences for their interpretation of law, assessment of facts or weighing of evidence[72] neither in terms of civil or criminal liability, except in case of malice. This means that judges should enjoy a functional immunity, allowing a possibility to hold them liable for their actions in case of committing criminal acts in their exercise of the judicial function.[73]

70. As stressed by the CCJE, *"[a] judge's decision, including the interpretation of the law, assessment of facts or weighing of evidence and/or departing from established case law, must not give rise to disciplinary liability, except in cases of malice, wilful default or serious misconduct"*.[74] While several countries have introduced criminal liability for such offenses, as knowingly unjust judgments, decisions or any other judicial acts imposed by a judge,[75] the UN human rights treaty bodies have, on several occasions, raised concerns regarding legal provisions aimed at subjecting judges to criminal liability for adopting "*unjust judgments*", and thus endangering the independence of the judiciary.[76] In principle, a judge should only benefit from functional immunity in the exercise of their duties and lawful

71 See OSCE/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).

72 CoE Recommendation,CM/Rec (2010) 12 on judges: independence, efficiency and responsibilities.

73 **Austria** has no specific rules on judicial immunity. In the Republic of **Croatia**, judges enjoy the immunity by the Constitution. Judges and lay judges who participate in court proceedings may not be held to account for an opinion or a vote given in the process of judicial decision-making unless there is a violation of law on the part of a judge which constitutes a criminal offence. Similar constitutional solution is to be found in **Serbia**, according to which a judge cannot be called to account for the opinion given in connection with the performance of the judicial function and for voting when making a court decision, unless he commits a criminal offense of violating the law by a judge or a public prosecutor. In **Slovenia**, no one participating in a trial can be held accountable for the opinion they expressed in the court's decision-making process. Spanish legal solutions concentrate on the issue of commitment of a crime. Namely, judges and Magistrates on active duty may only be arrested by order of a competent judge or in the event of a crime being committed. Any arrest shall be reported, by the most expeditious means, to the President of the Court or the Court to which the Judge or Magistrate reports. The appropriate judicial authority shall take the necessary steps to arrange for the replacement of the detainee. Additionally, civil and military authorities shall refrain from summoning Judges and Magistrates and from summoning them to appear before them. However, in some countries, like Serbia and Croatia, even the provided opinion in the exercise of the judicial immunity may lead to criminal liability.

74 See CCJE, *Opinion No. 27 (2024) on the disciplinary liability of judges*, para. 28. See also CCJE, *Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality*, para. 60.

75 See e.g., Article 446 of the Spanish Criminal Code (Código Penal) which provides for criminal sanctions to be imposed to the "[t]he judge or magistrate who, knowingly, dictates an unjust sentence or resolution". See also Article 352 of the Criminal Code of Armenia (Adoption of an obviously unjust court sentence, verdict or other court act) and Article 375 of the Criminal Code of Ukraine (adoption of a knowingly wrongful decision by a judge).

76 See par 17 of the Concluding Observations of the Committee Against Torture on the 3rd periodic report submitted by Armenia (2012), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARM%2fCO%2f3&Lang=en See also par 8 of the Concluding Observations of the Human Rights Committee on the 2nd periodic report submitted by the Democratic People's Republic of Korea (2001), CCPR/CO/72/PRK, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/443/78/PDF/G0144378.pdf?OpenElement; par 10 of the Concluding Observations of the Human Rights Committee on Vietnam (2002), available at and those on Uzbekistan (2001), par 14, CCPR/CO/71/UZB, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument.

actions. However, immunity does not shield judges from criminal liability when committing criminal and "unlawful acts".[77]

71. Finally, when not exercising judicial functions, judges should in principle be liable under civil, criminal and administrative law in the same way as any other individual,[78] though certain procedural safeguards may be provided to protect judges from unfounded or false, and vexatious accusations or complaints that are levelled against a judge in order to exert pressure on him or her.[79]

4. "POLITICAL REASONS"

72. As underlined above, the existence of clearly defined limitation periods is a fundamental component of legal certainty, enabling individuals to ascertain the scope and temporal limits of the law's application. In both criminal and disciplinary contexts, such periods must be clearly and precisely prescribed by law, with any exceptions, suspensions or interruptions also clearly articulated in legal provisions. When the legal provisions governing the statute of limitations, including its suspension, are neither clear nor foreseeable, or there has not been an accessible and reasonably foreseeable judicial interpretation of these provisions, this runs the risk of potential arbitrary prosecution, conviction or punishment – at odds with international and regional human rights instruments, especially *nullum crimen, nulla poena sine lege*.[80]

73. It can be argued that both the decision to initiate prosecution and the deliberate failure to prosecute for "political reasons" may constitute in practice or be seen as a form of "weaponization" of prosecutorial authority - that is, the strategic use or withholding of criminal proceedings for political purposes undermining the rule of law and eroding public trust in the impartiality and integrity of the justice system.[81].

74. As mentioned above (see para 13 *supra*), in certain historical contexts - such as under communist or other authoritarian regimes - governments may have actively prevented the prosecution of individuals who were politically favoured or instrumental in implementing state policy. Therefore, it may be considered legitimate to resume prosecution once the political obstacles to justice are removed.

75. Where there is substantial and admissible evidence - collected in accordance with the applicable rules of criminal procedure and the law of evidence - demonstrating that a

77 See par 61 of the Venice Commission Report on the Independence of the Judicial System – Part I: The Independence of Judges: "[judges] should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes"; see also par 3 of the Venice Commission Opinion on the Constitution of the Russian Federation adopted by popular vote on 12 December 1993, Chapter 7: Justice: Article 118 to Article 129 (1994).

78 See par 71 of CoE Recommendation CM/Rec(2010)12 which states that "[w]hen not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen". See also par 75 of CCJE Opinion No. 3: "i) judges should be criminally liable in ordinary law for offences committed outside their judicial office; ii) criminal liability should not be imposed on judges for unintentional failings in the exercise of their functions". See also par 53 of the Amicus Curiae Brief of the Venice Commission on the Immunity of Judges in Moldova (2013).

79 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. 50.

80 See e.g., ECtHR, *Del Río Prada v. Spain* [GC], no. 42750/09, 21 October 2013, para. 93.

81 In this context, the ECtHR in the case Guja v. Moldova stressed that "in a democratic society both the courts and the investigation authorities must remain free from political pressure". See ECtHR, *Guja v. Moldova*, application no. 14277/04, 12 February 2008, para. 86. Moreover, the CCJE has emphasized on many occasions that public prosecutors and judges should be free from improper political influence and interference both in the conduct of their mandates, and in the context of disciplinary proceedings to which they may be subject. See, for example, CCEJ, *Opinion No. 21 (2018) "Preventing corruption among judges".*

criminal offence was committed at the time in question (in line with the principle of non-retroactivity), and further evidence indicating that the failure to prosecute was politically motivated or due to state-sanctioned protection of the offender, a legally grounded case for prosecution may exist. In such circumstances, pursuing prosecution would appear to be necessary to uphold justice, accountability, and the proper functioning of democratic institutions.

76. The ECtHR has had cause to address cases where the issue of non (or ineffective) investigation or prosecution of an alleged crime by state authorities for apparent political reasons was a central element of the claim submitted by the applicant or a relevant component of the case's factual matrix. While the ECtHR has not provided a specific definition of what acts may qualify as a "political reason" for not pursing the investigation or prosecution of an alleged crime, the Court's jurisprudence offers guidance on the application of an ECHR-compliant legal framework that can assist in identifying whether a particular case may be considered one in which investigation or prosecution of an alleged criminal law violation did not take place or was not effectively addressed on the basis of illegitimate political reasons.

77. In this respect, the ECtHR cases can be divided into two categories: (i) systemic non (or ineffective) investigation or prosecution, where the criminal justice system as a whole lacks impartiality and independence from executive and political authorities;[82] and (ii) discrete cases of non-prosecution, where the particular facts of the case indicate that political reasons were a primary or important factor in the decision not to (effectively) investigate or prosecute an alleged crime.[83]

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82 For instance, in the case *Glässner v. Germany*, the ECtHR did not specifically describe the "political reasons" of prosecuting the East German dissident by the applicant, but established principles of a politically motivated basis for non-prosecution of an alleged criminal offense, provided that the alleged offense is serious in nature; the non-prosecution took place in circumstances where it can be established, on an objective basis, that the independence and impartiality of the criminal justice system in place at the time of the events was systemically and significantly compromised; and the alleged perpetrator was part of or connected to the "regime" or government in power during the relevant period, and/or a purported victim of the alleged crime was deemed to be an opponent or critic of or threat to said 'regime' or government; see, ECtHR, *Glässner v. Germany*, *no.* 46362/99, 28 June 2001.

83 For instance, in *El-Masri v. the Former Yugoslav Republic of Macedonia*, no. 39630/09, 13 December 2012, the claimant alleged that he was detained by former Yugoslav Republic of Macedonia (now North Macedonia) authorities and transferred to agents of the United States Central Intelligence Agency (CIA) for rendition to a CIA 'black site' in Afghanistan, where he was held captive and subject to serious ill-treatment over the course of several months. The ECtHR assessed that "the applicant's description of events and the available material [from international and other foreign investigations] were sufficient to raise at least a reasonable suspicion that the said [article 3 and 8 substantive] Convention grievances could have been imputed to the State authorities as indicated by the applicant". The Court held that, in the context of alleged ECHR Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 5 (right to liberty and security) violations suffered by an individual "at the hands of the police or other similar agents of the State", when "read in connection with a state's ECHR Article 1 general duty to 'secure to everyone within their jurisdiction the rights and freedoms defined in […] [the] Convention', requires by implication that there should be an effective official investigation". The Court recalled, referring to established ECtHR precedent, that an effective investigation is one that is: (i) "capable of leading to the identification and punishment of those responsible"; (ii) "prompt and thorough" in that it entails "a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close the[] investigation or to use as the basis of" decisions taken, as well as "take all reasonable steps available […] to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence"; (iii) "independent from the executive", which "implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms"; and (iv) provides the victim the possibility "to participate effectively in the investigation in one form or another". The Court then detailed, from the case record, including former Yugoslav Republic of Macedonia concessions, the manner in which the actions and decisions of the relevant former Yugoslav Republic of Macedonia authorities, following the filing of a criminal complaint by the applicant, fell short of the state's obligations to undertake an effective official investigation in violation of articles 1, 3 and 5 of the ECHR, as assessed against the four elements of such an investigation noted above. This included the facts that the public prosecutor did not interview the applicant or other relevant witnesses, did not follow-up on obvious evidentiary leads, and, in rejecting the complaint two and a half years after it was filed for lack of evidence, "ruled on the sole basis of the papers submitted by the [former Yugoslav Republic of Macedonia] Ministry of the Interior" without "consider[ing] it necessary to go beyond the Ministry's assertions". Importantly, the Court took the further step of addressing the wider context of the CIA's extraordinary rendition program, the invocation of the "concept of 'State secrets'" by some of the states suspected of being connected with the program "to obstruct the search for the truth", and quoted the Council of Europe statement in the Council's Guidelines of 30 March 2011

78. Given, as discussed above, the element of discretion involved in decisions to investigate or prosecute an alleged crime, as well as the ECtHR's focus on whether a violation of rights enshrined under the ECHR took place, the Court's jurisprudence generally does not include specific findings that "political reasons" *per se* were the basis for improper non-prosecution. Instead, the improper primarily politically motivated nature of a discrete state decision not to (effectively) investigate or prosecute an alleged crime is implied or alluded to in ECtHR jurisprudence based on the following non-exhaustive factors: the seriousness of the alleged criminal act(s), which underline the egregious nature of a state's violation of its obligations under the ECHR to (effectively) investigate or prosecute the allegation(s); evidence of state decision-making or actions or omissions that fell short of ECHR obligations to conduct an effective investigation into serious criminal allegations; the broader factual circumstances in which the alleged criminal act(s) took place, which imply an illegitimate and politically motivated decision to abstain from investigation or prosecution, notwithstanding the serious nature of the alleged criminal act(s) – such as matters that involve foreign relations, state security, "sensitive" national subjects, or public corruption.[84]

79. In disciplinary context, a specific emphasis should be made to the European Network of Councils for the Judiciary (ENCJ) Report, which recommends that established time limits for the initiation, conclusion and imposition of sanctions in judicial disciplinary proceedings should "*be capable of being extended only in exceptional circumstances, such as the complexity of the investigation, illness of the judge or a criminal investigation*".[85] A central legal question thus emerges: whether, in light of applicable international and regional standards, and national practices within the OSCE region (as referenced in Section IV and Sub-section V.2.2 *supra*), political interference or politically motivated inaction in the context of judicial or prosecutorial disciplinary proceedings may be deemed to constitute an "exceptional circumstance" - as understood in the terminology of the 2015 Report of the ENCJ - sufficient to justify the tolling of applicable limitation periods.

80. Against this backdrop, there exists a tension between, on the one hand, the fundamental importance of timely and predictable disciplinary procedures, which serve to protect judicial and prosecutorial independence, and on the other hand, the risk of political interference leading to the non-prosecution of alleged disciplinary delicts. To reconcile these competing concerns, the development of an objective legal and institutional framework to identify and assess possible systemic or individual instances of political interference could assist in delineating clear conditions and legal parameters under which procedural deviations, such as the suspension of statutes of limitations, may be deemed justified without compromising the principles of judicial independence, due process, and legal certainty.

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on eradicating impunity for serious human rights violations, that "'impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system'".

84 *Ibid.* The El-Marsi Judgment never uses the term 'political reasons' when making its findings in favour of the applicant and against the FYRM. However, the linkages drawn by the Court between the (i) seriousness of the alleged criminal acts and ECHR violations, (ii) the particular acts and omissions of the former Yugoslav Republic of Macedonia prosecutorial authority, and (iii) the wider foreign-relations and security context in which the underlying allegations took place, allows a strong and reasonable conclusion to be drawn that the ECtHR viewed the decision not to effectively investigate and prosecute the allegations in question as arising from illegitimate political reasons, as opposed to impartial and independent processes of justice. Indeed, when dismissing the FYRM's admissibility challenge – based on the timeliness and propriety of the domestic remedy (criminal complaint) pursued by the applicant – the Court noted the finding of investigatory "obstruction" by Council of Europe member states, made in the 7 June 2007 report presented by Mr Dick Marty to the Parliamentary Assembly of the Council Europe on the subject of secret detentions and illegal transfer of detainees involving Council of Europe members states.

85 See ENCJ, *"Minimum Standards for Disciplinary Proceedings Against Judges and Prosecutors"* (European Network of Councils for the Judiciary, 2015).

5. SUMMARY OF THE KEY PRINCIPLES

81. Statutes of limitations incentivize authorities to investigate and prosecute offences diligently and without undue delay. They ensure that alleged misconduct is addressed within a defined time, promoting closure and protecting individuals from indefinite legal exposure, bearing in mind that over time, crucial evidence may be lost, witness memories fade, and the ability to mount an effective defence can be seriously compromised.

82. By limiting the timeframe for legal action, statutes of limitations help strike a balance between protecting judicial or prosecutorial independence and ensuring accountability. They allow for investigation and sanctioning of misconduct, but within a framework that respects legal certainty, while ensuring the rights of defendants in the proceedings.

83. Involving suspension and extension of the limitation period, justice demands flexibility – such as when prosecution is hindered by political interference or concealment – yet still requires safeguards to prevent indefinite or abusive delays.

84. In both criminal and disciplinary contexts, limitation periods must be clearly and precisely prescribed by law, with any extensions and suspensions also clearly articulated in legal provisions. In jurisdictions where certain crimes are not subject to statutory limitation periods, the governing legal framework should explicitly delineate the categories of offenses to which such exemption applies. Moreover, it should establish clear and objective criteria to guide the decision to initiate or continue investigations into historical offenses. Such criteria may include, but should not be limited to: the existence of reasonable grounds to suspect that the person in question has committed the alleged offense; the likelihood that further admissible evidence can be obtained to provide a realistic prospect of conviction; the gravity of the offense; and the particular circumstances surrounding the case. These safeguards are essential to ensure legal certainty, proportionality, and the fair administration of justice.

85. Rules on limitation periods are often considered to be procedural in nature, inasmuch as they do not define offences and penalties and can be construed as laying down a simple precondition for the assessment of the case. In certain jurisdictions, however, limitation periods may be also viewed as substantive, especially in criminal law. Once expired, they extinguish the liability entirely, i.e. the state may lose the right to punish, not just the procedural ability to prosecute[86]. Furthermore, even when statute of limitations is regarded as procedural right, it may give rise to a substantive right once it expires.

86. In the **context of criminal law**, the case law of the ECtHR recognises that, where domestic legislation classifies statutes of limitation as procedural rather than substantive, it is generally permissible for a state to amend such laws in order to retroactively extend the limitation period. This is particularly acceptable in cases where the original limitation period has not yet expired at the time the amendment takes effect. At the same time, the question of retroactive extensions to offences for which the limitation period had already lapsed before the legal amendment was enacted must be approached with particular caution. Reopening of time-barred criminal cases through retroactive legislative amendments requires a careful and nuanced approach balancing of competing interests: on the one hand, the legitimate pursuit

[86] See Venice Commission, *Amicus Curiae Brief for the Constitutional Court of Georgia on the Retroactivity of Statutes of Limitation and the Retroactive Prevention of the Application of a conditional sentence*, CDL-AD(2009)012-e, paras. 7-15.

of justice, especially in cases involving serious crimes; and on the other, the fundamental principles of legal certainty and the right to a fair trial, which are cornerstones of the rule of law and protected under the ECHR.[87]

87. In principle, criminal responsibility cannot be revived after the expiry of a limitation period, as it would otherwise be deemed incompatible with the overarching principles of legality (*nullum crimen, nulla poena sine lege*) and foreseeability[88] – except for crimes punishable under international law, for which the applicable limitation period must be decided in the light of the relevant international law in force at the material time, irrespective of a possible expiry of a limitation period according to domestic law.[89]

88. According to ECtHR jurisprudence, it may be nonetheless considered "*legitimate for a State governed by the rule of law to bring criminal proceedings against persons who have committed crimes under a former regime; similarly, the courts of such a State, having taken the place of those which existed previously, cannot be criticised for applying and interpreting the legal provisions in force at the material time in the light of the principles governing a State subject to the rule of law*"[90].

89. While the ECtHR has not definitively ruled on the permissibility of retroactively extending limitation periods, **it may be inferred that in exceptional, narrowly defined, and clearly specified circumstances - particularly involving serious crimes where proceedings have been deliberately delayed, obstructed, or rendered practically impossible - the imperative of justice may outweigh the principle of legal certainty**. In such cases, a retroactive revival of criminal prosecutions could be justified to uphold accountability and prevent impunity.

90. Politically motivated prosecutions or failure to prosecute for political reasons could be considered as one of such exceptional circumstances. **However, for this to be consistent with the principles of legal certainty and procedural fairness, the criminal procedural law must provide a clear and concrete framework. Furthermore, in order to exclude a possibility of arbitrary, abusive or erroneous application of the law, these exceptional grounds may not be interpreted broadly, and should only allow for prosecution of serious crimes and grave human rights violation.**

91. In this respect, it is essential to clearly define the criteria for what constitutes politically motivated non-prosecution of alleged offenses. As mentioned above, **prosecution should not be based on political affiliation, opinion, or status targeting individuals not for the objective elements of their conduct but for their identity or legal interpretations**, as this would undermine equality before the law and impartial justice. At the same time, it is equally important to examine whether non-prosecution occurred under circumstances where the

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87 This does not, of course, preclude a state from having a domestic law according to which the expiry of limitation periods gives rise to substantive rather than procedural rights, in which case an extension of the limitation period with retroactive effect may not be permitted.

88 See e.g., ECtHR, *Antia and Khupenia v. Georgia*, no. 7523/10, 18 June 2020, paras. 38-43; see also ECtHR, *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], Request no. P16-2021-001, 26 April 2022, para. 77.

89 See e.g., ECtHR, *Kononov v. Latvia* [GC], no. 36376/04, 17 May 2010, paras. 229-233 (war crimes); *Kolk and Kislyiy v. Estonia* (dec.), no. 23052/04, 17 January 2006 (crime against humanity). See ECtHR, *Glässner v. Germany,* cited above. However, in this case the offence of which the applicant was accused was not subject to limitation under the law of the GDR and thus, the issue of statutes of limitations was not analysed by the ECtHR. It rather alalysed from the standpoint of Article 7 § 1 of the Convention, whether the applicant's act, at the time when it was committed, constituted an offence defined with sufficient accessibility and foreseeability.

independence and impartiality of the criminal justice system were significantly and systemically undermined. While it may be legitimate to address impunity for past serious crimes, especially where prosecution was previously blocked due to political interference, **any new prosecution must be based on legal merit, not political affiliation, change of policies or priorities.** Failing to uphold these standards would violate international human rights obligations, particularly the principles of non-discrimination, fair trial, and rule of law.

92. Moreover, the extent of political obstruction cited as the reason for the failure to investigate should be carefully considered. **The more systematic and deliberate the obstruction of justice, the stronger the justification may appear for retroactive corrective measures**.

93. To that end, a determination should be made - based on objective criteria - whether the justice system in place at the relevant time was compromised to a degree that made prosecution practically impossible or politically suppressed such as during the communist or other authoritarian regimes, which disregard the principles of rule of law and human rights. **It is, therefore, recommended that the criminal procedural law include a formal mechanism for determining the existence and legal relevance of political obstacles to prosecution. This mechanism should be applied with caution and only in relation to serious criminal offenses, and should take into account the particular facts and context of each case. The procedure must be guided by objective, transparent criteria to ensure fairness, avoid arbitrariness, and safeguard the integrity of the judicial process**.

94. **Disciplinary proceedings** involving members of the judiciary or prosecution service as a rule are governed by strict procedural safeguards, including reasonable and typically shorter comparing to criminal context time limits designed to protect the rights of the person subject to proceedings, ensure legal certainty, and preserve the relevance and integrity of the disciplinary process. However, as mentioned above (see para 79 *supra*), the ENCJ has acknowledged that in exceptional situations, such guarantees may justifiably be limited - provided this is done in a manner that is proportionate, legally justified, and narrowly tailored to address the specific impediments involved.

95. Although political obstacles or institutional inaction could, in theory, be seen as an exceptional circumstance, comparative review of states practices reveals that those are not generally provided as ground to extend or suspend the limitation period (see Sub-section V.2.2 *supra*).

96. Moreover, the ENCJ report notes that extending the limitation period for disciplinary offenses is possible - but only if the period has not yet expired. Once it has expired, whether proceedings can still be initiated depends on how the legal system views limitation periods in disciplinary law. If they are considered substantive, the accused gains a legal right not to be investigated or punished after the deadline, and authorities cannot reopen or start a case - even if the law changes later. On the other hand, if limitation periods are considered purely procedural, they may be extended. However, **amending the law to retroactively extend a previously expired limitation period risks violating the principle of legality and legal certainty, the protection of acquired rights, as well as undermining judicial independence**.

97. In comparison to the criminal context - particularly in cases involving serious crimes or grave human rights violations, where the ECtHR has demonstrated a willingness to permit exceptions, especially when delays were attributable to obstruction or failures by the state -

the proportionality of retroactive application of extended limitation periods in disciplinary proceedings may appear less convincing. This is primarily due to the **distinct nature of disciplinary offences, which are generally regarded as less serious than criminal offences**.

98. As previously noted (see para 64 *supra*), the ECtHR has held that disciplinary proceedings involving public officials, including judges, typically fall under the **"civil" limb of Article 6(1) ECHR**, especially given the generally **less severe nature of disciplinary sanctions** such as suspension or dismissal.

99. While **retroactive legislation is not categorically prohibited in civil law**, it must pursue a **legitimate aim**, comply with **proportionality**, and respect **legal certainty**. In disciplinary cases, retroactive extension of limitation periods may undermine fairness, [91] particularly due to **faster degradation of evidence and context** in professional environments. Such measures risk disproportionately favoring the State, compromising the **equality of arms and thus, judicial and prosecutorial independence**.

100. Where disciplinary proceedings are of a criminal nature in substance, the stricter non-retroactivity principle applies.

101. While a **retroactive extension of limitation periods in politically motivated disciplinary cases can be framed as serving a legitimate aim** - such as restoring justice following political interference (provided that the relevant exceptions in such cases are clearly defined, narrowly interpreted, and grounded in law) - **applying such a measure to minor disciplinary offences may raise questions with respect to its proportionality and may not be justified**. This is because the retroactive application of an extended limitation period **may not always be strictly necessary or proportionate given the limited gravity of the offence** (and it is due to its limited gravity that the offence is classified as disciplinary, not criminal) **and the rights of the individual concerned, who may have reasonably relied on the expiry of the limitation period, fair trial guarantees, including an ability to collect evidences in defence of oneself and adequate opportunity to respond**. In this respect, a prejudicial impact of time on fairness and judicial independence may weigh heavily against retroactive disciplinary action. It should be also noted that the longer the time since the original conduct and the expiry of limitation periods, the less convincing it would be to reopen disciplinary cases, without undermining the fair trial standards and legal certainty. **In any case, extension or suspension of the statute of limitation should be clearly and narrowly defined, and procedural rights guaranteed by the law.**

102. In light of the foregoing, there are several general guiding principles that follow from the international and regional standards, as well as other state examples, that may be considered when deciding on the applicability of the suspension of limitation periods.

- **Legality, Foreseeability and Predictability:** for both criminal and disciplinary proceedings, limitation periods must be clearly and precisely prescribed by law, with any exceptions, suspensions or interruptions also clearly articulated in legal provisions.[92] The judge or prosecutor must be able to know when and why limitation

91 See ECtHR, *Zielinski, Pradal and Gonzalez v. France*, application no. 24846/94, judgment of 28 October 1999, para. 57

92 See ECtHR, *Koppi v. Austria*, application no. 33001/03, 10 March 2010, para. 43

periods may be suspended. **Limitation periods must be clear, foreseeable, and generally respect the principle of legal certainty.**

- **Legitimacy of the Aim.** Limitation periods can be suspended or interrupted where **justified by overriding public interest and the right of victims to access justice**, ensuring that limitation periods do not create *de facto* impunity.
- **Proportionality and Necessity.** The limitation periods should be proportional to the gravity of the alleged offence, while ensuring the respective duration of the limitation periods and the possibility of their suspension or even non-applicability is strictly necessary and proportionate in light of seriousness of the offence; the nature and impact of the obstruction; the time that has passed, and the rights and expectations of the individual affected. **For serious crimes or international crimes (e.g., war crimes, crimes against humanity), long or no limitation periods – in the case of the latter – are justified.**
- **Procedural Safeguards.** Suspension of the statutes of limitation can only be triggered by an independent and impartial judicial or disciplinary body upon assessing sufficient evidence that proceedings were intentionally obstructed due to external reasons.
- **Clear and Concrete Framework Providing for Exceptional Grounds for Retroactive Extension of Statutes of Limitation**. In order to exclude a possibility of arbitrary, abusive or erroneous application of the law, those grounds may not be interpreted broadly, and should only allow for prosecution of serious crimes and grave human rights violation.
- **Objective Framework for Identifying Political Interference Leading to the Non-prosecution of Alleged Disciplinary Delicts.** Development of an objective legal and institutional framework to identify and assess possible systemic or individual instances of political interference helps delineate conditions and parameters under which procedural deviations, such as the suspension of limitation periods may be deemed justified, without compromising the principles of judicial independence, due process, and legal certainty. This framework should include specific procedural steps for identifying and substantiating political obstacles and for ensuring their appropriate application in accordance with established procedural rules.

[END OF TEXT]