

## Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights

# ODIHR and Judicial Independence: The Kyiv Recommendations

***“The participating States will respect the internationally recognized standards that relate to the independence of judges and legal practitioners.”***

(Moscow Document, 1991)

The “Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia” were developed in June 2010 at a regional expert meeting hosted by ODIHR, together with the Max Planck Institute on Comparative Public Law and International Law. The regional expert meeting followed and built upon the results of a comprehensive analysis of the state of judicial independence in the entire OSCE region.

In Copenhagen in 1990, the OSCE participating States committed to support and advance the independence of judges and the impartial operation of the public judicial service. In Brussels in 2006, ODIHR was mandated to assist participating States in implementing this and other human dimension commitments.

## How are the Kyiv Recommendations used?

The purpose of the recommendations is to further strengthen judicial independence in the OSCE region. In this regard, the recommendations aid ODIHR in providing input into ongoing policy discussions on judicial reform and technical assistance in participating States, upon their request.

ODIHR also consults with policymakers and judges in OSCE participating States to further develop the recommendations and facilitate the exchange of good practices to strengthen judicial independence.

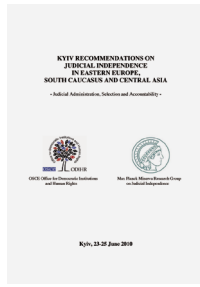
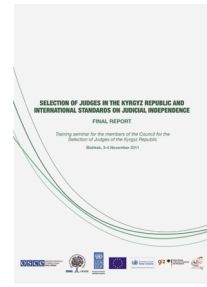
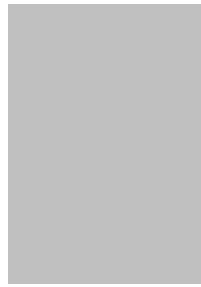
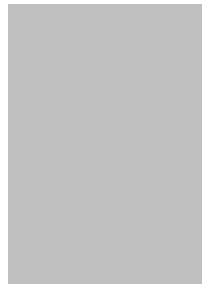
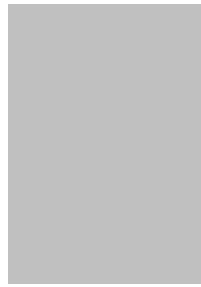
## What issues do the Kyiv Recommendations address?

### Judicial Administration

The first part of the recommendations focuses on judicial councils and the role of court chairs. The recommendations aim to avoid undue executive control of the judiciary, while involving elected officials in the judicial administration to allow for greater democratic legitimacy.

To avoid undue concentration of powers in judicial councils, the recommendations propose ways to divide competencies among various bodies with different compositions, commensurate with the degree of desired or acceptable involvement of government and other non-judicial members.

The role of court chairs in managing the courts should not extend to controlling the content of judges’ decisions. The recommendations attempt, therefore, to reduce



court chairs' *de jure* and *de facto* competencies. This should enable individual judges to take decisions independently from expressed or implied expectations of court chairs, which may amount to undue influence.

### Judicial Selection and Training

The second section of the recommendations addresses training, selection criteria and appointment procedures. The recommendations call on governments to ensure diversity of access to the judicial profession and to attract individuals from other legal professions, as well as members of minority groups.

Some of the recommendations address the quality and independence of legal education and judges' training. To facilitate selection according to merit, they also suggest clear selection criteria and transparent procedures. Finally, the document recommends limiting the discretion of heads of state or government to appoint candidates.

### Accountability of Judges and Judicial Independence in Adjudication

The final recommendations focus on questions related to discipline, professional evaluation, transparency and independence within the judicial hierarchy. The recommendations suggest ways to find a balance between judicial independence, which is particularly crucial in the process of adjudication, and the need to hold judges accountable under the law.

In particular, it is recommended that grounds and procedures for disciplining judges should not be used to influence them in their core function – decision-making. Judges are not above the law and must be held accountable when they abuse the law, but judicial errors should not be punished.

Furthermore, the professional evaluation of judges should not harm independent adjudication. Therefore, the Kyiv

Recommendations suggest that judges should be evaluated for their quality of work and their skills, and not for the content of their decisions. In addressing the phenomenon of accusatorial bias of judges, the recommendations also discourage using the number of acquittals as an indicator in evaluation.

The recommendations also deal with transparency as a means to make judges accountable to society by other means than subjecting them to the control of the government. Finally, the recommendations suggest that the issuance of directives, explanations or resolutions by high courts should be discouraged, or should not be binding on lower court judges.

The full text of the Kyiv Recommendations in English, Russian and a number of other languages is available at: <http://www.osce.org/odihr/KyivRec>.

A short description of recent activities, as well as the full report of the expert meeting in Kyiv in June 2010, can be viewed at: <http://www.osce.org/odihr/judiciary>.

## More information

For detailed information about ODIHR's rule of law work and to view its full range of resources and publications, please visit:

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