

IFES RULE OF LAW WHITE PAPER SERIES

GLOBAL BEST PRACTICES:

INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES

Lessons Learned from Eastern Europe and Latin America

April 2004

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The IFES Rule of Law Series is a collection of papers focused on capturing emerging global best practices and lessons learned on themes related to democratic principles, fundamental human rights and the Rule of Law. This paper was made possible by a grant from the United States Agency for International Development. It reflects the opinions of IFES and should in no way be construed as the official position of the United States Agency for International Development. Any person or organization is welcome to quote from this paper as long as proper citation is made.

**GLOBAL BEST PRACTICES
INCOME AND ASSET DISCLOSURE REQUIREMENTS FOR JUDGES
LESSONS LEARNED FROM EASTERNEUROPE AND LATIN AMERICA**

Abstract: In recent years, countries around the world have signed on to various governmental and non-governmental international and regional instruments designed to fight corruption at all levels of the State. Income and asset disclosure laws and policies have emerged as important mechanisms to promote probity and accountability in the fight against corruption. While these requirements were first imposed on the executive branch, they now are accepted as applying to members of the legislative and judicial branches as well. Income and asset disclosure, if properly designed and effectively applied, can also be an invaluable tool to strengthen judicial accountability, judicial independence and public trust in the judiciary and the Rule of Law. This paper provides a comparative overview of financial transparency for judges by testing the legal framework and practice in six Eastern European and Latin American countries against a set of core international best practices that have recently emerged.

**IFES Rule of Law Tool to Strengthen Judicial Accountability:
Ten Best Practices Related to Income and Asset Disclosure**

1. **Assets to be disclosed:** for thorough compliance with the principle, the disclosure of assets should be broad, including any real estate and movable property, intangible, rights, non-material assets, all kinds of income, participation in corporations or other kind of business and any other type of property that may have an economic value.
2. **Persons who must disclose:** judges should disclose not only their own property but also that of their spouses and minor children.
3. **Identification of the property:** all the property and income disclosed must be presented in a format which clearly shows how they can be identified.
4. **Time of disclosure:** the disclosure should be done before assuming the office, when finishing the term, and annually while in the position.
5. **Accessibility of the information:** the basic information should be easily accessible, and the person requesting the information, in general, should not be investigated for requesting it.
6. **Collecting entity:** the entity collecting the disclosure of assets should have a clear procedure for collecting, systematizing and disclosing the information and this entity should have a determined degree of autonomy and not be completely dependent on the judges who are obligated to disclose their assets.
7. **Enforcement Mechanism:** an independent institution, such as the collecting office, should be in charge of the implementation of a preventive mechanism which monitors compliance with the disclosure and verifies the contents of the statements. The establishment of a systemic, accessible report should be developed and maintained on an on-going basis. This office must also have powers and budget to investigate cases of potential illegal enrichment and conflict of interests arising from the disclosure statements. The office must also be competent to act as a denouncing party in front of a prosecutor or a judge.
8. **Sanctions for non compliance:** a clear system of sanctions should be established for those judicial officers who do not present the information in a timely manner.
9. **Sanctions for illegal enrichment:** judicial councils or designated judicial officers should implement a systematic follow up of the information related to judges' income and assets, and report cases of illegal enrichment to relevant officials in the criminal justice system. Criminal Codes should include illegal enrichment as a crime, including judges as potential perpetrators.
10. **Privacy and security concerns:** even though, for security reasons, some details related to the identification of property should be protected, the list of protected items should not be so broad as to undermine the disclosure. No privacy law should prevent the disclosure of detailed information to a public authority or a judge under official request. Nor should the decision of non-disclosure be based on purely discretionary grounds.

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“Although judges often balk at the invasion of privacy that disclosure of their private finances entails, it is almost uniformly considered to be an effective means of discouraging corruption, conflicts of interest, and misuse of public funds... [C]ivil society groups and the media play a key role in ensuring that these laws are enforced and the information disclosed is accurate, timely, and comprehensive.”¹

1. Introduction and Overview

Courts and judges are the key to a governance system based on democracy and the Rule of Law. Courts and judges are expected to be impartial and fair in resolving disputes and in upholding the law to protect citizen property rights and civil liberties. Guaranteeing impartiality and fairness implies the existence of an independent, impartial, accountable judiciary. Without judicial independence, the Rule of Law and democratic principles will remain illusory.

Judicial independence however, comes along with judicial accountability. Judicial accountability is necessary for ensuring impartial and equitable decisions.² Lack of judicial accountability may result in corruption and/or impropriety. While many courts have made strides in becoming more independent over the last twenty years, most are only beginning to address the issue of judicial accountability.

In recent years, the disclosure of assets and incomes of public officials has emerged as a global anticorruption and ethical issue. Initially, these disclosure obligations were directed primarily at elected officials, such as legislators and executive branch officials. However, many have quickly discovered that disclosure alone, without public access or oversight or fair and effective enforcement, will likely have limited impact. Indeed, from a human rights and business perspective, certain aspects of disclosure laws in systemically corrupt environments may be premature or too risky if approached in a piece-meal fashion.³

Financial transparency in public life is essential to the development of public trust and to the achievement of broader Rule of Law and anticorruption objectives. A comprehensive public financial disclosure system is an oversight tool that enables watchdogs and citizens to document the incomes and assets of public officials on an annual basis and to detect possible situations of conflicts of interest and illicit enrichment.

More recently, the issues of the scope of asset and income disclosure requirements and the accessibility of the information have emerged, and new laws have been drafted and passed. Judicial officials, especially judges, are increasingly incorporated under existing requirements or specifically mentioned in the new laws. However, few countries have experience in implementing effective, transparent systems of disclosure for any public official, regardless of the definition of the term.

The legal requirement of disclosure derives from different sources depending on the country. As mentioned above, some constitutions address the issue, but most frequently, legislation and court rules are the sources of this obligation. While there is an emerging consensus about the need to develop rules for financial transparency

1 IFES/USAID. 2001. *Guidance for Promoting Judicial Independence and Impartiality*. USAID Technical Publication. USAID: Washington, DC. Available at http://www.ifes.org/rule_of_law/description.html in English, French, Spanish and Arabic

2 DAKOLIAS, Maria, and Kim Thachuk. 2000. *Attacking Corruption in the Judiciary: A Critical Progress in Judicial Reform*. 18 Wis. Int'l L.J. 353, 354 (2000).

3 HENDERSON, Keith. 2000. *A Background Paper on Open Government Laws and Policies in Central America*. Prepared for the Organization of American States: Washington, DC. Available at IFES

and asset and income disclosure, no such consensus or best practice has yet emerged on how to fairly and effectively enforce such rules. In some countries, this requirement is enshrined in a specific asset disclosure law for public officers, while in others it is included in access to information laws. In other countries, the judiciary itself regulates financial transparency for judges through court rules.

The present paper focuses primarily on the laws and practices of six selected Eastern European and Latin American countries: **Romania**, **Moldova** and **Georgia**, as well as **Argentina**, **Peru** and **Paraguay**.⁴ When relevant, best practices and lessons learned from other countries will also be mentioned.

2. International and Regional Principles and Trends

a. Financial Transparency and Judicial Independence

Several treaties, conventions and non-binding guidelines and principles address the issue of judicial independence.⁵ While none of these instruments directly addresses the issue of financial transparency in the judiciary, some, such as the UN Basic Principles on the Independence of Judiciary (UNBP), provide the intellectual basis for ethics and disclosure legislation.⁶ Some international instruments, such as The Bangalore Code, present models and guidelines for judicial ethics and contain specific provisions relating to financial transparency and judicial disclosure.⁷

Judicial Independence and Ethics Requirements: The UN Basic Principles on the Independence of the Judiciary

- The judiciary shall decide matters impartially, without improper influences and inducements;
- There shall not be inappropriate or unwarranted interference with the judicial process.

Based on these principles, The United Nations recognized the need to develop practical tools to avoid improper influences on judges. In 2000, the United Nations convened a group of experts, the Judicial Group on Strengthening Judicial Integrity, in a meeting to draft a Code of Judicial Conduct. The Bangalore Code was adopted in 2001 and finalized in 2002.⁸ This non-binding, model code outlines international best practices

4 The information discussed in this paper is based primarily on an analysis of the legal framework of the six surveyed countries and on preliminary findings on the level of compliance in practice. Unless cited otherwise, the description of the legal requirements are based on the following laws and their implementing regulations:

- **Argentina**: Law no.25.188 on Public Ethics, published in the Official Gazette on November 1, 1999; Supreme Court Decision 1/2000
- **Georgia**: Law no.1022-Ic on Conflict of Interest and Corruption in the Public Service (Conflict of Interest Act) (1997); Presidential Decree no.413 on Asset and Financial Disclosure Procedure (1998)
- **Moldova**: Law no. 1264-XV on the Disclosure and Control of Assets (Asset Disclosure Act) (2002)
- **Paraguay**: Law no. 276 on the Organization of the Controller of the Republic (1993)
- **Peru**: Law no.27.482 on Asset Disclosure, Supreme Decree 080-2001-PCM on the Single Form for Sworn Statements of Income and Assets (2001)
- **Romania**: Law no. 115 on the Disclosure and Control of Wealth (Asset Disclosure Act) (1996), Law no. 161 on Measures Ensuring Transparency in Public Life (Law on Transparency) (2003)

5 International Covenant on Civil and Political Rights (1966), European Convention on Human Rights (1951), Inter-American Convention on Human Rights (1978), African Charter on Human and People's Rights (1986), UN Basic Principles on the Independence of the Judiciary (1985), the Universal Charter of the Judge (1999), the European Charter on the Status of the Judge (1998), the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (1995)

6 UN Basic Principles on the Independence of Judiciary (1985)

7 Code of Judicial Conduct – The Bangalore Draft (2001) a judge shall make such financial disclosures and pay all such taxes as required by law [rule 1.23]. Other relevant provisions include rules 1.15, 1.16, 1.20, 1.21 and 1.22.

8 United Nations, The Bangalore Principles of Judicial Conduct (2002), prepared by the Judicial Group on Strengthening Judicial Integrity

as they relate to professional conduct, ethics and financial transparency. It is intended to provide baseline principles that all judges in all countries should adhere to under their own codes of ethics and/or rules of professional conduct.

The Bangalore Code and Asset Disclosure Requirements

This code provides specific rules related to assets disclosure. The main provisions are the following:

- **Rule 1.15** prohibition to serve as a fiduciary, except for the estate of a family member;
- **Rule 1.16** prohibition on financial and business dealings that would interfere with judicial independence or the appearance thereof, except for personal or family investments;
- **Rule 1.20** prohibition of judicial bribery, whether the beneficiary of the gift or advantage is the judge or a member of his/her family;
- **Rule 1.21** authorized gifts and benefits, subject to law and to any legal requirements of public disclosure;
- **Rule 1.22** authorized compensation and expenses for extra-judicial activities;
- **Rule 1.22a** reasonable amount and proportionality to what a non-judge would receive for the same activities;
- **Rule 1.22b** limitations on reimbursement;
- **Rule 1.23** “A judge shall make such financial disclosures and pay all such taxes as are required by law”.

In December 2003, the UN adopted the first international Convention against Corruption.⁹ The Convention which is now open for ratification is the first global instrument to address a wide range of corruption issues, both in the public and private sector, including bribery, money laundering, accounting offenses, anticorruption agencies, preventive actions, sanctions and international cooperation. This Convention is an important addition to the international legal framework regulating financial transparency and anticorruption in all spheres of society, including in the judiciary.

The Convention calls for the creation of “effective financial disclosure systems for the appropriate public officials” and defines the notion of “public officials” to include judges. Moreover, it recommends the adoption and implementation of effective sanctions against judges who would not comply with disclosure requirements. Even though it is still pending ratification and is therefore not legally binding, it establishes an international standard for judges that ideally should become accepted judicial practice soon.

b. Financial Transparency and the Fight against Corruption

Several international and regional conventions have been drafted and passed in recent years. These conventions are designed to prevent and combat corruption. The most important are the Council of Europe Criminal Law Convention on Corruption (Council of Europe Convention), which specifically includes judges as public officials¹⁰, the Organization for Economic Cooperation and Development Anti-Corruption Convention (OECD Convention)¹¹ and the Inter-American Convention against Corruption (OAS Convention).¹² Only the OAS Convention expressly places on public officials the burden of proving that incomes and assets were derived legitimately under the principle of illicit enrichment and requires public officials to file income and asset disclosure statements. Even though the OAS Convention created the legal basis for income and asset

⁹ United Nations, Convention against Corruption, adopted in Merida, Mexico, December 9, 2003; full text available at http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

¹⁰ Council of Europe, Criminal Law Convention on Corruption (1999), ETS no.173

¹¹ OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)

¹² OAS, Inter-American Convention against Corruption (1996), reprinted in 35 I.L.M. 724

disclosure of public officials, whether judges are deemed to be public officials remains unclear or debated in some countries. For example, in Argentina, judges have raised issues of constitutional separation of powers and have taken the position that the judicial branch itself must pass and enforce its own disclosure laws and rules.

Other unresolved issues relate to how to effectively and fairly implement and enforce disclosure laws (few countries have had significant experience or success) and how much of this personal information should be available publicly and in what form. Moreover, in countries where corruption is systemic, the enforcement, privacy and security issues require careful balancing and human rights consideration.¹³ Indeed, in many countries, privacy issues loom large and help explain how difficult it is for the public to access meaningful financial information.

OAS Anticorruption Convention Follow Up Mechanism

One of the most significant elements of the OAS Anticorruption Convention is that it now has a monitoring mechanism to assess the successes and failures of Member States in their fight against corruption. The Committee of Experts of the follow up mechanism is responsible for, *inter alia*:

- Selecting the provisions of the Convention of which the implementation by Member States will be reviewed, seeking to include both preventive measures and other provisions contained in the Convention, and determining the length of time to be devoted to this task, which shall be known as a “round”;
- Adopting a methodology for the assessment of implementation focused on the provisions selected for review in each round and designed to ensure that sufficient reliable information is obtained; and
- Adopting an assessment questionnaire for each round.

In its first review round, the Committee of Experts has included asset disclosure mechanisms in its evaluation. Consequently, the reports submitted to the Committee of Experts by Member States must contain information related to asset disclosure. So far, sixteen (16) countries have submitted their official reports, which, unfortunately, vary greatly in their depth and in the clarity of the analysis provided. However, very few of these reports specify how the assets disclosure system works for the judiciary.

The OAS’s Convention is narrower than that of the Council of Europe in terms of criminalization. It addresses both domestic and transnational bribery, but only when public officials are involved. Its international cooperation aspects are similar to the CoE convention. OAS convention includes a broad range of measures to prevent acts of public corruption, a feature not present in the other instrument.

A number of countries in Latin America, such as Brazil, Mexico, Colombia, El Salvador, Honduras, Costa Rica, Nicaragua and Argentina, largely in response to their obligations under the OAS Convention, have passed specific assets disclosure laws and rules that pertain to public officials. Some of these laws and rules clarify exactly which public officials are covered but many fail to do so.¹⁴

13 HENDERSON, Keith. 2000. *A Background Paper on Open Government Laws and Policies in Central America*. Prepared for the Organization of American States: Washington, DC. Available at IFES.

14 Moreover, while the OAS has developed model disclosure legislation for member States to consider, it does not expressly mention judges. See, OAS Model Open Government Laws Conference for Central America, Guatemala (2000).

3. Source of Disclosure Obligations

Source of Disclosure Obligations

Constitutional – Peru (Articles 40 and 41 of the Peruvian Constitution)

Legislative – Poland (Access to Information Law), Moldova (Asset Disclosure Law), El Salvador (Anticorruption Law), Romania (Asset Disclosure Law)

Judicial – Argentina (Supreme Court Resolution 1/200)

While the source of disclosure obligations varies from country to country, three main trends can be identified:

- **Constitutional** – Some countries have enacted constitutional provisions that mandate asset and income disclosure. These provisions may apply to a variety of public officials, sometimes including judges.
- **Legislative** – In most countries, financial transparency rules are set out in legislation. The source of the obligation for judges may come from a variety of laws such as public financial transparency laws, access to information laws, illicit enrichment and anticorruption laws or even the law organizing the judiciary.
- **Judicial** – In some countries, the judiciary itself edicts disclosure requirements. While nothing in theory warrants against judicially-mandated disclosure, this should not be understood as a means to circumvent existing laws that would normally be applicable to judges. Indeed, in Argentina, a law enacted by Congress mandated asset disclosure for all public officials, including judges. The judiciary, however, chose to derogate from the law and enacted its own internal regulation in lieu of the law, on the grounds of judicial independence.

Argentina – Partial Derogation from the Law by Judicial Decision

The Argentine Supreme Court, in decision 1/2000 of February 9, 2000, adopted its own rules for the implementation of the provisions on financial disclosure contained in the Argentine Public Ethics Law. In summary, the rules are as follows:

- Judges must present a complete annual financial declaration of their assets and liabilities, as well as of those of their spouses and minor children;
- In the event of a request to consult a financial declaration, a confidential file will be opened, which may be consulted only by the petitioner, the judge whose financial declaration is requested, and their respective lawyers;
- The General Administrative Office of the Court verifies compliance with the requirement to obtain a copy of the disclosure statements;
- Before a decision is reached on the admissibility of a request for a financial declaration, the judge is given an opportunity to express his/her opinion on the admissibility of the request;
- The Supreme Court decides, in a motivated decision, whether to grant or to refuse access to the information contained in the financial declaration; and
- If the decision grants access, the financial declaration shall be opened in the presence of the judge concerned.

The purpose of the law was to adopt a uniform system of asset disclosure designed to facilitate the

public availability of the information. This purpose was achieved only for officials of the executive branch. Some believe that the above-mentioned decision of the Supreme Court and its past behavior undermined the access to information objectives of the Public Ethics Law as well as the effectiveness of its anti-corruption provisions. Moreover, since the court regulatory procedures and disclosures are not public, it is impossible to know whether judges are complying with the regulation.

4. Procedural Disclosure Requirements

a. Who Must Disclose?

Most countries now have laws or are in the process of adopting laws that obligate “public officials” to disclose their assets. While most include all senior executive branch officials in the definition of the notion of “public official”, the scope of the notion beyond the executive branch has been interpreted very differently depending on the country. However, it appears that a majority now tends to interpret the term broadly and include judges within the coverage of the notion for purposes of financial disclosure requirements. Other countries have simply chosen to introduce provisions specifically applicable to judges.

i. Judges and Judicial Employees

Disclosure requirements may apply only to judges, or even only to judges of some levels, or be extensively defined to include other judicial employees and officials such as prosecutors or clerks. Disclosure requirements in all surveyed countries apply to judges of all levels. **Romanian** law also covers assistant magistrates of the Supreme Court,¹⁵ and **Peruvian** law imposes similar requirements on prosecutors. In **Paraguay**, the law requires judicial employees to file financial declarations. At this stage of our research, it remains unclear whether all, some or any judicial employees are covered by financial disclosure requirements in the other countries surveyed.

ii. Judges and their Families

The current trend is that judges should disclose not only their own property but also that of their spouses and minor children. The rationale for including family members is to avert the divestment of income and assets by a judge to family members to avoid disclosure.¹⁶ Members of the family may disclose their income and assets individually or as a group.¹⁷

All countries surveyed, except for **Paraguay**, require judges to disclose both personal and family members’ income and assets. The only difference between these jurisdictions is the scope of the notion of “family member”. **Peruvian** law has a very restrictive obligation for family members, excluding the assets of spouses and children from the disclosure obligation, unless these assets are part of the common assets of the couple.

The assets of spouses and minor children must be disclosed in **Argentina, Georgia, Moldova and Romania** and Georgian law also includes minor stepchildren. In addition, **Argentine** law requires the common assets of the couple, the assets of concubines and common assets of the “de facto” couple. In **Georgia**, judges must also disclose the assets of all persons living permanently with the couple. **Moldovan** law extends the category of a

¹⁵ Assistant magistrates of the Romanian Supreme Court have the same status as other judges but they do not hear cases

¹⁶ CARNEY, Gerald. 1998. *Conflict of Interest: Legislators, Ministers and Public Officials*. Prepared for Transparency International. Available at http://www.transparency.org/working_papers/carney/index.html

¹⁷ *Id.*

family member to include not only the spouse and minors but also “persons in maintenance.”¹⁸

None of the above jurisdictions require judges to disclose information about the property of parents, siblings, or other close relatives. In practice this could be very burdensome, invading the privacy of persons other than those persons concerned. Too broad a definition of obligated family members might also turn the disclosure requirement into a management nightmare, overburdening the authority responsible for the collection of information with data that bears no relevance, or only little and episodic relevance, to the finances of the judge himself/herself.

b. What to Disclose?

A cursory review of existing laws reveals there is no one model law or policy regarding exactly the range of assets judges should disclose. To some degree, it will require striking a balance between financial transparency and public access to information on the one hand and the physical and economic safety and privacy of judges on the other hand. Consequently, a more limited disclosure obligation might be advisable in countries in which judges may be at risk of pressures or threats from organized crime or corruptors based on the information contained in the disclosures. Similarly, it is important to determine carefully where the information will be filed and who will be responsible for it.

In general, there is an emerging consensus that judges should err on the side of broad disclosure, since building public trust and confidence in the integrity of the judiciary is paramount to creating a Rule of Law culture. Such disclosure should therefore include any real property, intangible rights, non-material assets, all forms of income and their sources, any participation in corporations or other kind of businesses as well as foundations. In addition, it should include all financial obligations, business relationships and gifts.

i. Income

Among the countries surveyed, only **Romania** does not require judges to disclose their salaries or other income. In **Argentina**, **Peru** and **Paraguay**, judges must disclose all incomes received from professional activity, including contracts and employment. In some countries, like **Moldova**, judges are also required to disclose not only income derived from professional activity but also income received from bank deposits or stocks. In **Georgia**, the law does not specifically require disclosing income, but the law lists in detail the assets, jobs and contracts that must be disclosed.

ii. Business Interests

With significant variations, all countries surveyed require judges to disclose stocks, bonds, shares or other investments in businesses or corporations. **Romania** requires only disclosure for investments in excess of 10,000 Euros (i.e. USD 12,000), while in all other countries disclosure is mandated regardless of the amount of the investment. **Georgian** law also requires disclosure of any positions held by a judge or a family member in a company, such as partner, consultant, and member of a board of directors.

18 The Moldovan Asset Disclosure Act may create confusion because Articles 4 (c) and 4 (d), which refer to the subject matter of the disclosure, state that a judge shall disclose the financial obligations and securities held by him and his family members, while in relation to the rest of the assets it is silent about family members. Article 7(1) of the same law, however, provides that the financial declaration shall include information about personal as well as common property, spouses, minors, and persons in maintenance.

iii. Real Estate

All countries require some disclosure of real estate property owned by the judge and his family members, to the extent that the latter are covered by disclosure requirements. The definition of “real estate property” covered by the disclosure requirements usually includes land as well as residential and commercial buildings, as appears to be the case in all countries surveyed. In **Argentina**, judges are also required to disclose all improvements made to their property. Under **Peruvian** law, judges must not only disclose real estate property, but also all revenues generated by the property, such as rents. Under **Paraguayan** law, judges must specifically disclose the value of the property.

iv. Movable Property

All countries surveyed, except for **Peru**, specifically require the disclosure of registered movables and vehicles, such as cars, agricultural machines, boats, planes. In **Moldova**, judges are also required to disclose “other movable goods”, but the law does not provide any guidance as to what it covers. In **Argentina**, judges are required to disclose the total value of their movable assets and to identify separately registered movables and all non-registered movables of a value exceeding 5,000 Pesos (i.e. USD 1,750). In **Peru**, the law requires the disclosure of all movables which generate revenues. Other movables which are of high economic value such as paintings, jewelry, art objects and antiques must be disclosed when their value exceeds 6,500 Soles (i.e. USD 1,800).

v. Banking Information

Romanian, **Georgian** and **Peruvian** judges are not required to disclose their loans and mortgages. Conversely, **Moldovan** judges are required to disclose any “financial obligation” to financial institutions, insurance companies, individuals and other entities. The law does not define the term “financial obligation” but we may conclude that this includes loans, mortgages, and other debts. **Argentine** judges must disclose any loan, mortgage or personal debt. In **Paraguay**, judges must disclose all their credits and debts.

While **Moldovan** judges are not required to disclose their bank deposits or securities, in all other countries surveyed, judges are under some obligation to disclose their deposits or cash. In **Romania**, judges must only disclose their bank deposits if they exceed 10,000 Euros (i.e. USD 12,000). In **Argentina**, **Paraguay** and **Peru**, judges should disclose their deposits in financial institutions in and outside the country. Moreover, in **Argentina** and **Georgia**, judges are required to disclose any cash amount in their possession. **Argentine** judges must also submit, in a closed envelope not available to the public, the names of their banks and the numbers of the accounts and credit cards.

vi. Gifts and Reimbursement

In **Romania** and **Georgia**, judges are required to disclose gifts, while no specific requirement can be found under **Argentine**, **Moldovan** or **Peruvian** law. **Romanian** judges must disclose any goods or services received for free while exercising their mandate if “each” gratuity exceeds 300 Euros (i.e. USD 360). In countries in which the law does not specifically mention gifts or reimbursements, disclosure requirements can be derived from the provisions mandating the disclosure of any income derived from professional or independent activities or of immovable and movable property. For example, in **Argentina**, if a gift is movable property valued in excess of 5,000 Pesos (i.e. USD 1,750), it must be disclosed following the general rule for the disclosure of movable property (see, above). Even though **Paraguayan** law does not mention gifts, the general principle is that all incomes must be disclosed.

vii. Miscellaneous

In **Georgia**, judges are required to disclose their employment positions and those of their family members. Moreover, they must disclose any contracts of acquiring or transferring property or securities, any donations and spending. In **Argentina**, judges must disclose any income and expenditure derived from any rent or from the pensions system. Under Argentine law, it is also mandatory to disclose the value, date of acquisition and origin of the funds used to acquire real estate property, movable property and shares. **Peruvian** judges must disclose all income derived from retirement or pension. **Paraguayan** law does not appear to mandate the disclosure of any other items.

c. Frequency of Disclosure

The general consensus on the optimal frequency of disclosure calls for two types of disclosure, either at the start and end of the term or periodically throughout the term – for example, annually.

In all six countries, judges are required to file their financial declarations upon appointment and at the end of their terms. The first declaration may even predate the appointment and be mandated of candidates to judgeships. The delay for filing the declaration varies from country to country, from seven (7) days from registration as a judicial candidate in **Georgia** to fifteen (15) or twenty (20) days from appointment in **Romania** and **Moldova**. In **Argentina**, a presidential decree requires candidates to the Supreme Court to disclose their assets for public debate prior to their nomination.

While in **Paraguay** judges must only file a financial declaration at the time of their candidacy, in all other countries judges are required to file periodic interim declarations. This declaration must be filed annually in **Argentina**, **Georgia**, **Moldova** and **Peru**, on a specific date either predetermined (December 30 in **Moldova**) or contingent on the date of appointment (within the first month of the anniversary of appointment in **Georgia**). In **Romania**, updated declarations must be filed yearly on January 31 if new assets have been acquired or every four years. Judges must also file a financial declaration at the end of their judgeships.

d. Identification of Income and Property

All the property and income disclosed must be presented in a format that facilitates their identification. An adequate financial declaration should include the “source, type and amount” of income, gifts, property, liabilities, jobs, etc. Moreover, it should clearly present all sales, purchases and exchanges, as well as the details of all major spending.

While the **Romanian** law does not clearly state how the assets and income should be identified or evaluated, it requires compliance with the Annex of the law, which contains a form listing the assets and incomes to be disclosed. Judges are required only to specify:

- The size and tax value of real estate property;
- The name, brand and production year of their vehicles;
- Whether they have bank deposits, bonds, securities, properties and commercial activities exceeding 10,000 Euro (i.e. USD 12,000).

Regarding the third category of disclosures, judges are not required to disclose the source or type of these assets.

In **Moldova**, property is evaluated based on the price indicated in the title certifying the origins of property (e.g. sale, exchange, donation, or privatization). Moldovan judges are required to disclose:

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- The type of income and its value;
- The type of real estate property, address, size and value;
- The type of movable property, its brand, and the place of registration; and
- The number, value, income, and the name and address of the company in which they hold shares.

The **Georgian** law specifies in detail how the income and assets should be identified or evaluated. The Instructions on Filing accompanying the financial declaration further clarify what type of assets and how those assets should be disclosed. Under the Instructions, a judge must disclose:

- The type of assets, their location, and market value;
- The number and type of securities, and their face value;
- The type of bank deposits, bank address, their amount;
- Business interests in any company, directorships and the address of the company;
- The type of job, salary and address of the employer;
- The type of contracts, their subject matter and value;
- Any transfer (e.g. sale, exchange or donation) of assets, securities or property and their price; and
- Any increase or spending in bank accounts.

In **Argentina**, the law requires a broad identification of the assets. For purposes of identification, besides naming and valuing the assets, judges must disclose:

- The name of the bank or financial entity in which they have cash deposits;
- The numbers of checking accounts, savings accounts, safety deposit boxes, credit cards and extensions thereof;
- Income tax returns or personal assets that are not part of the economic process;
- The details of the location of immovable properties; and
- Identification or registration data of movable properties subject to registration.

In **Paraguay**, immovable property is identified by reference to the filing number in the property register as well as its land and building value. Disclosing the number of the bank account is not required under the law.

In **Peru**, the information is submitted in a sworn statement, which must include names of the banks, numbers of bank accounts, the kinds of incomes and the description of the movable and unmovable property with their value.

5. Collecting Office

Many countries have created a centralized or decentralized collecting office to manage all financial declarations in a coherent, uniform manner. Such an office should have a clear procedure for collecting, systematizing and disclosing the information. The office should have a high degree of independence from the general operations of the court. In particular, it should not be solely dependent on the judges to review each other's disclosures. The office should have adequate human and financial resources, including discreet, trustworthy and skilled staff, adequate facilities and its own budget.

The key role of the collecting office is the monitoring of financial declarations and of their accuracy. In order to fulfill this responsibility, the collecting office should have sufficient investigative powers to access sources of information and verify that the data is accurate and complete. It should also have some coercive powers to sanction judges who fail to meet the disclosure requirements.

In **Romania** the collecting office is a decentralized body. Each individual concerned has to file the financial

declaration with the Chancellery or secretary of the public institution they represent. Judges, however, file their declarations with the Superior Council of Magistrates.¹⁹ The Superior Council of Magistrates sends a copy of the declarations to the President of the Court of Accounts, which maintains a public register of financial declarations. Whether there is a preliminary examination of declarations and who is in charge of such examination remain unclear. Based on Article 5(6) of the Asset Disclosure Act, which requires the collecting office to send to the Court of Accounts a list of all persons who have failed to file a financial declaration, we may assume that the Superior Council of the Magistrates conducts some preliminary examination.

The **Moldovan** collecting office is a decentralized body composed of collecting commissions at various levels: the Central Control Commission, the control commission of State Chancellery, and the control commissions created by the appointment body for lower level public officials. These commissions collect and perform a preliminary verification of the financial declarations. There is no hierarchical subordination of the departmental control commissions to the Central Control Commission. They are autonomous and have separate organizational regulations. The Central Control Commission is composed of 9 members, the President, Parliament, and Government each appointing three members. The control commissioners, however, are not paid for their work. They act on a *pro bono* basis, receiving payment only from their main employment.

The Central Control Commission collects and verifies in a preliminary manner the financial declarations received from judges and other high ranking officials, while the departmental control commissions collect and verify financial declarations of senior level officials, like deputy ministers. Once the control commission has collected the financial declarations, it makes a preliminary examination. The preliminary examination consists of checking the correctness of the declarations. The control commission may hire experts and request the assistance of public authorities in examination of the data in the declarations. If, during the preliminary examination, the commission discovers any irregularities, including elements of a crime, it will send the file to the Center for the Fight against Economical Crimes and Corruption (CFECC).

The **Georgian** collecting office is centralized. The Information Bureau of Asset and Financial Status for State Officials operates within the Chamber of Control. The President of the Bureau is appointed and dismissed directly by the President of Georgia. Moreover, the Bureau is accountable to and supervised by the President of Georgia. The Bureau collects financial declarations and keeps a registry of State officials. The Bureau has its own budget and personnel.

After collecting the financial declarations and the filing deadline expires, the Bureau makes public a list of persons that failed to file or filed late financial declarations. The Bureau can ask any person for supplementary information or clarification. If the Bureau finds that the information disclosed by a judge or president of a court is not complete or false, it will inform the President of the Supreme Court, the President of the Constitutional Court, or the Attorney General of the non-disclosure or false disclosure and recommend administrative sanctions.

In **Argentina**, the Public Ethic law created the Anticorruption Office to receive and systematize financial declarations in an attempt to centralize within one independent office the financial disclosures of public officials of the three branches of the State. This structural set up was challenged by the legislative and judicial powers, which considered that they should have their own offices for these tasks. As a result, the Supreme Court itself is in charge of collecting judges' financial disclosure forms. However, since the court regulatory procedures and disclosures are not public, it is largely impossible for the public to access the declarations and assess the level of compliance with disclosure requirements.

19 For more information on Judicial Councils, their composition, roles and powers, see, IFES. 2004. *Global Best Practices: Judicial Councils - Lessons Learned from Europe and Latin America*. Rule of Law White Paper Series, WP # 2. IFES: Washington, DC.

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In **Peru** the Office of Control of the Magistracy, a body within the judiciary, is in charge of administering, recording and publishing the financial declarations of judges. The General Controller of the Republic has the responsibility of keeping all the records on these declarations.

Similarly, in **Paraguay**, the General Controller of the Republic is responsible for receiving financial declarations. This office, however, has been generally unable to perform its duties fully due to widespread non compliance and to insufficient technological and human resources. For example, it lacks an effective database, which could help it review and monitor financial declarations.

6. Enforcement Mechanisms

a. Overview

The proper enforcement of the law requires taking into account a number of consequences derived from non compliance with the law, including (i) investigation of suspicious or incomplete declarations; (ii) prosecution of improper activities before either disciplinary bodies or criminal courts, depending on the gravity of the misconduct; and (iii) adequate, proportionate and dissuasive sanctions effectively applied in case of proven violation or non compliance with the law.

Upon a determination that improper activities are likely to have taken place, referral to the appropriate anticorruption agency or other competent authority should be made. When necessary, criminal action should be initiated. While attempting to create an enforcement mechanism for asset disclosure, the legislative and executive branches should avoid intruding on the independence of judiciary.²⁰

Enforcement mechanisms and their effectiveness vary greatly from country to country. Indeed, among the few studied countries, it is interesting to note that some like **Peru** or **Argentina** lack virtually any enforcement mechanism for judges who fail to comply with financial disclosure requirements. On the other hand, **Romania** offers an interesting example of a two-stage investigative and trial mechanism, not to mention the possibility of reliance on the criminal courts when violations amount to criminal offenses.

In **Romania**, there are two stages of enforcement, the investigation and the trial. Commissions composed of judges and prosecutors appointed for three years are responsible for the investigation of the property of judges.²¹ Investigation is automatic in case of non-disclosure. It may also be initiated in case of clear evidence of illegal enrichment and at the request of a chief prosecutor, president of court of appeal, or Minister of Justice. While anonymous requests are not considered, any citizen may request that the chief prosecutor of the court of appeal file an application for investigation if he/she has strong proof that a judge had obtained property illegally.

Once the investigation starts, the relevant commission summons the applicant (e.g. chief prosecutor) or its representative and the person whose property is subjected to control. The commission hears the arguments and looks at evidence presented by the parties. The documents and hearings of the commission are not public.

20 WALLACE, Judge J. Clifford. 1998. *Resolving Judicial Corruption while preserving Judicial Independence: Comparative Perspectives*, 28 Cal. W. Int'l L.J. 341 (1998) (discussing the diversity of approaches used in the United States and Asian judicial systems to discipline judges). See, also, *Guidance for Promoting Judicial Independence and Impartiality*, pp. 147-55.

21 The investigation of property of lower court and tribunal judges is done by a commission composed of two judges of the court of appeals, appointed by the president of court of appeals, and a prosecutor appointed by the chief prosecutor of the court of appeal. The control of property of Constitutional, Supreme and appeal court judges is done by a commission composed of two Supreme Court judges, appointed by the General Assembly of the Supreme Court, and a prosecutor, appointed by the chief prosecutor of the Supreme Court.

The commission deliberates by majority vote to send the case for trial if it determines that some property was obtained illegally, to suspend the investigation or to send the case to the prosecutor's office if there are elements of a crime, or dismiss the application. The decision of the commission may be appealed. The second stage consists of an ordinary trial. The court of appeal fixes the date of hearing and summons the parties. The court will administer the evidence presented before the investigation commission, but the parties may present additional evidence. If the court establishes that some property was obtained "unjustifiably," it may order its seizure. Moreover, if there are elements of a crime, the court will send the case to the prosecutor, who will decide whether to file criminal charges. If the court decides that the property was obtained and is owned legitimately, the court will close the case. A similar procedure is applied to Constitutional, Supreme, and appeal court judges, but these cases are tried by the Supreme Court.

In **Moldova**, the verification of financial declarations is performed by the Center for the Fight against Economic Crimes and Corruption (CFECC). The CFECC was created in an effort to fight economical, financial and tax evasion crimes and corruption.²² Although separate from the Ministry of Interior, CFECC is structured as a police-like body, charged with police powers. The director and deputy-directors of CFECC are appointed and are accountable to the Government.

Under the law, once the control commission, after preliminary examination, finds that a judge did not file a financial declaration at the end of the judgeship or that the declaration contains irregularities, including elements of a crime, it will send the case to CFECC. CFECC will perform a *de facto* verification of the declaration. A *de facto* verification consists of examining the information disclosed in the declaration and documents available to the public authorities. CFECC sends notice of *de facto* examination to both the judge under the investigation and the president of the court. The law does not create a special procedure for investigation. It seems that the *de facto* control is similar to any police investigation and CFECC will decide whether to make further investigation, file criminal charges, and send the case to the prosecutor's office or stop the investigation. If criminal charges are filed, there will be an ordinary trial under the Criminal Procedure Code.²³

The **Georgian** law does not specify in detail any enforcement procedure for non-compliance with the law. Some details of the enforcement procedure are set up in Rules on Asset and Financial Disclosure. Under the Rules, the Information Bureau, after receiving and examining financial declarations, may request a judge to file further explanations and information. If the Bureau finds that a judge violated the Rules, it must report to the President of the Supreme Court, recommending administrative sanctions.

The Rules do not state whether there will be an investigation, and how such an investigation will proceed, and who will undertake it. It seems that the Bureau has power only to conduct a preliminary examination and gather further explanations and information. The Rules state only that when recommending administrative sanctions, the Bureau must do so in writing. Finally, if a judge fails to file a declaration and he/she has received an administrative sanction for failure to file a declaration previously, the Bureau must request that the Attorney General file criminal charges.

In **Argentina**, the Public Ethic Law establishes a mechanism for investigation of any case of illegal enrichment, violation of the disclosure obligation or conflict of interests. Any investigation that raises suspicions that a crime was committed must be referred to the criminal justice system. While this appears to be an extremely comprehensive enforcement mechanism, the judiciary falls outside of its jurisdiction. Through court regulation 1/2000, the Supreme Court declared that the enforcement mechanism provided under the Public Ethics Law was inapplicable to judges. As a result, there is virtually no enforcement mechanism for judges who do not comply with the law.

22 The information on the CFECC and its enforcement procedures is based on an analysis of the Law on the Center for the Fight against Economic Crimes and Corruption, No. 1104-XV/2001, M.O. 91-94/02.

23 See, Law No. 122-XV/2003, M.O. 104-110/03.

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In **Peru**, there is no enforcement mechanism for failure to comply with income and asset disclosure requirements. The law only requires the authorities in charge of public institutions to send financial declarations to the Office of the Controller of the Republic and to publish these declarations in a Peruvian newspaper within twenty (20) days of the declaration.

In **Paraguay**, if the information presented in the financial declaration is not accurate, the file is transferred to a magistrates' commission which will investigate the declaration and eventually sanction the judge.

b. Sanctions for Non Compliance

A clear system of sanctions should be established for those judges who fail to meet disclosure requirements, by failing to file their declaration, filing incomplete or false information or failing to present their declaration in a timely manner. Disciplinary sanctions should range from warnings to removal from the office. The actual threat of removal from office for non compliance with disclosure requirements can be a powerful instrument against corruption since evidence of actual corruption is not required. Criminal sanctions should also be available in cases in which non compliance is evidence of criminal behavior.

In **Romania**, the law does not provide for any administrative sanctions for non compliance with the law. A judge, however, whose property was found by a final judgment to be "unjustified", will be removed and barred from practicing law for a period of three years. In addition, non-disclosure subjects a judge to *ex officio* investigation of his/her property. Finally, a judge may be disciplined under the Code of Ethics, which creates an express duty to file a financial declaration.

Moldovan law refers only in general terms to administrative and criminal liability for non-disclosure, false or late disclosure. The law does not expressly state or refer to any specific sanctions which might be imposed. No provision of the Criminal Code criminalizes non-disclosure or false disclosure. Moreover, the Code of Administrative Offences does not provide any sanctions for non compliance with the law.²⁴ It seems that the only sanction prescribed by the law is the *ex officio* audit for failure to file a declaration after the end of the judgeship.

Under **Georgian** law, non-compliance with the Conflict of Interest Act may result in criminal, administrative, or disciplinary sanctions, but the law fails to specify which criminal or administrative sanctions may be imposed. Under Georgian Code of Administrative Offences, non-disclosure is considered an administrative offence and is sanctioned with a fine.²⁵ Non-disclosure or incomplete disclosure is subject to criminal sanctions such as fine, public service work, or deprivation of the right to hold a position for a term up to three years.²⁶

Moreover, the Georgian Conflict Interest Law provides that if a person who committed an "offence of corruption" and was previously sanctioned administratively for the same offence, commits a new "offence of corruption" within one year, he/she would be removed, but it fails to define what an "offence of corruption" is.²⁷ The Law on Courts of Common Jurisdiction also states that commission of an "offence of corruption" may serve as a ground for removal or disciplinary liability.

In **Peru**, judges may only receive fines or administrative sanctions for non compliance with disclosure requirements.²⁸

24 Code of Administrative Offences (1984)

25 Code of Administrative Offences (1984)

26 Criminal Code (1999), Law No.2287-rs, P.U. 41(48)/99

27 Criminal Code (1999), Law No.2287-rs, P.U. 41(48)/99

28 Organic Law on the Judiciary, Supreme Decree DS017-93-JUS (1993)

Argentine law provides that judges who fail to present their statements in due time will be requested by the Supreme Court to do so. Judges have fifteen (15) days to comply with the request. If the judge does not comply, the office will send the case to the Court's Auditors Office. In theory, non-compliance after the request will be considered as a fault and call for a disciplinary sanction. In practice, it is impossible to know the degree of compliance with the law because this is not public information.

In **Paraguay**, the law does not provide any explicit sanctions for cases of non compliance, nor does there seem to be any in other legal instruments. The Paraguayan Chapter of Transparency International considers that only a few public officials and judges comply with the law, but none of those who fail to comply have ever been punished.

Most of the studied countries provide some criminal sanctions for filing false financial declarations. While the level of certainty of the applicability of the offense to financial declarations varies from country to country, a false declaration may generally fall under the broader criminal offense of "forgery in declarations".²⁹ Under the **Romanian** Criminal Code, "forgery in declarations" is punishable by imprisonment of 3 months to two years or fine.³⁰ Under **Argentine** and **Peruvian** criminal law, false declarations could give rise to criminal action for "forgery in public documents".³¹

The existence of a forgery offense is more questionable in **Moldova** and **Paraguay**. The Moldovan Criminal Code makes it an offence to provide false data in "public documents" by "public officials."³² The Code, however, does not define the term "public documents" and therefore it is arguable whether this provision applies to cases of false disclosure. The Criminal Code of **Paraguay** establishes that any person who produces a false document may be punished with prison, but the definition of "document" is vague.³³

c. Sanctions for Illicit Enrichment and Corruption

Excessive assets, income, gifts, and liabilities that grossly outweigh one's earned salary are all indicators of illegal enrichment. In addition to the types of sanctions mentioned above, penalties could be consistent with sanctions for the offence of illicit enrichment. Beyond illicit enrichment, the financial declarations may also provide evidence of corrupt behavior by judges or of conflict of interest.

In **Romania**, the court of appeal may order either seizure of assets or payment of an amount of money equal to the value of "unjustified property" if the court established that some property is held unjustifiably. This sanction may be imposed without proof of elements of a crime. The law however, fails to define what "unjustified property" is. Regarding corruption, the Romanian Criminal Code prescribes imprisonment and seizure of assets of public officials for crimes of accepting a bribe or undue advantages or for undue influence.

Moldovan law does not provide for seizure of property in case of illegal enrichment. Moreover, unlike in Romania, the Moldovan Criminal Code imposes other types of sanction such as fine, social service work or imprisonment for public officials who committed a crime of corruption, undue influence, and acceptance of illicit compensation or advantages.

29 See, Romanian Law on Transparency

30 Criminal Code, Law No. 65/1997, M.O. 065/97

31 Argentine Criminal Code, article 292 and Peruvian Criminal Code, article 427

32 Criminal Code, article 332, Law No. 985-XV/2003, M.O. 128-129/03

33 Criminal Code of Paraguay, article 246

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In **Georgia**, there are no sanctions for illegal enrichment in the law. However, in the case of acceptance of a bribe by a judge, the Criminal Code prescribes imprisonment from eight to fifteen years. The Georgian law states that if a person who committed an “offence of corruption” and was previously sanctioned administratively for the same offence, commits a new “offence of corruption” within one year, he/she would be removed, but it fails to define what an “offense of corruption” is.³⁴ Moreover, the Penal Code imposes imprisonment or deprivation of the right to hold a position or conduct certain activities in case of illegal participation in entrepreneurial activities by public officials.

The **Argentine** Public Ethic Law contains a section dedicated to the prevention of illegal enrichment, but this sanction mechanism was set aside by Supreme Court regulation 1/2000. As a result, there is no particular mechanism that connects the disclosure obligation with illegal enrichment of judges. Nevertheless, the criminal code does contemplate the crime of illegal enrichment. The criminal code provides that public officials who cannot explain their enrichment will be imprisoned from two to ten years.³⁵ The code also provides that judges who accept a bribe for the purpose of deciding, not deciding, or delaying a case will be sentenced to a 4-to-12-year imprisonment and life prohibition from holding any judicial office.³⁶

Under the **Peruvian** criminal code, illegal enrichment is punishable by imprisonment of 5 to 10 years.³⁷ If there is evidence of illegal enrichment, the Office of the Controller of the Republic must communicate all the relevant information to the Prosecutor’s office. The prosecutor is responsible for bringing criminal charges against the judge.

The Criminal Code of **Paraguay** does not mention illegal enrichment as a crime in itself, but punishes bribery. Judges accepting any payment or contribution to make a decision can be sentenced to imprisonment of up to ten years.³⁸

7. Access to Information

It is widely accepted that information related to financial transparency should be easily accessible to anybody requesting it. The request could be required in writing, but providing the information must not be discretionary, nor based on who is asking for it. Any situation in which the person requesting the information is investigated should be discouraged as much as possible.

When addressing the issue of assets disclosure, it is fundamental to find a balance between the kind of information that must be available to the public and the rights to privacy and security of the official or judge. Corrupt “information keepers” or weak information systems and institutions can result in serious information leaks that could have serious human rights implications, particularly in transition countries.

In some countries in which the physical safety of the judges and their families could be at risk, it would make sense to restrict access to some aspects of the financial disclosure and only disclose sensitive information pursuant to a judicial order during a trial. For example, numbers of banks accounts and the physical location of the residence of the judges’ family may be restricted information.

34 Criminal Code, Article 20(3)

35 Criminal Code, Article 268 (2)

36 Criminal Code, Article 257

37 Criminal Code, Article 401

38 Criminal Code, Article 301

Another issue to consider is whether judges should have access to the identity of people consulting their files. Providing this information could further discourage individuals from requesting and monitoring the declarations because judges will be informed of their names and affiliations. Releasing information on the identity of people accessing information on the financial declarations could potentially expose them to pressure or threats. On the other hand, prohibiting judges from accessing information about those who requested information on them may encourage speculators and criminals to obtain information that can be used to pressure or threaten the judges.

In most surveyed countries, the right of the public to access information is guaranteed constitutionally and refined under the law. Indeed, the **Romanian, Moldovan, Georgian, and Peruvian** Constitutions expressly provide for public access to information. Whether public access to information applies to the financial disclosure of judges has not always been obvious in some of the surveyed countries and still remains problematic in some.

In **Romania**, the Law on Access to Public Information (hereinafter Freedom of Information Act) creates the legal framework for free access to information of public interest.³⁹ In particular, article 6 of the Freedom of Information Act provides that “any person” may obtain from public authorities any public interest information. Public interest information is defined as “information that regards activities or results from activities of public authorities or institutions.” The law defines also “personal information” which is “any information related to an identifiable or unidentifiable individual.” Personal information is publicly accessible if the concerned individual exercises a public function.⁴⁰

Romania – From Confidentiality to Publicity

The original provisions of the Romanian Asset Disclosure Act provided that financial declarations were confidential and the public could not have access to them. This provision was amended by the Law on Transparency. It now provides that all financial declarations are published on the Internet or in the Official Gazette. For example, financial declarations of the Supreme Court judges and their assistants can be accessed online.⁴¹ The amendment, however, states that all financial declarations filed before the amendment of the law will remain confidential. The Asset Disclosure Act also states that all final decisions to cease the investigation of property and all irrevocable decisions finding that the property is justified are published in the Official Gazette.

In **Moldova**, the right to access to information is detailed in the Law on Access to Information, which states that any person may access “official information.”⁴² Under Moldovan law, access to “official information” is limited only if the information is state, military and trade secret or infringes upon the right of privacy.⁴³ The Asset Disclosure Act, however, provides that financial declarations, except for those of the President of Moldova, parliamentarians, and Chairmen of the Constitutional and Supreme Courts, which are published in the Official Gazette, are confidential. These provisions seem to directly contradict the Constitution and the Law on Access to Information.

In **Georgia**, Title III of the General Administrative Code organizes the public’s access to information.⁴⁴ Under the Conflict of Interest Act, any person may request a copy of a financial declaration. However, access to the financial declarations of judicial candidates before they have been appointed is restricted to the public.⁴⁵ Access

39 Law on Public Access to Information (Freedom of Information Act), Law No. 544/2001, M.O. 663/01

40 Freedom of Information Act, article 14

41 See, <http://www.scj.ro/declaratii.asp>

42 Law on Access to Information, articles 4 and 5, Law No. 982-XIV/2000, M.O. 88-90/00

43 Law on Access to Information, articles 7 and 8

44 Constitution of Georgia (1995); Law No. 2372/1999, P.U.32/99

45 Law on Courts of Common Jurisdiction, article 47(2)

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to financial declarations is free, but the applicant may be charged an amount equal to the price of making a copy.⁴⁶

In **Argentina**, there is no Access to Information Law, but NGOs and advocacy groups have been lobbying for a bill on the topic for a long time. A bill was recently approved by the House of Representatives and has been pending before the Constitutional Committee of the Senate for more than a year.

The Public Ethics Law specifically provides that any person can consult and obtain a copy of the financial disclosure made by a public servant. The law establishes that anyone requesting information must do so in writing, including a mention of his/her name and address, the purpose of the petition and the use that will be put to the information. He/she is obligated to provide a statement that the information will not be utilized for any illegal or commercial purpose, nor to determine the creditworthiness of the public servant or to ask for a grant. Any person soliciting the information who uses it for the mentioned purposes will be subject to a fine. This system should be applied also to judges, but through a decision of the Supreme Court, they decided to exclude themselves from this part of the law.⁴⁷

Judges created their own system for accessing the information. Anyone who wants to consult and obtain a copy of the financial declaration of a judge must file a written petition and present it to the Supreme Court. It has discretionary power whether to accept or reject it.

In practice, the information is restricted, and it is not provided in any form to the petitioners. *Poder Ciudadano*, an Argentine NGO, solicited information related to ten federal judges almost two years ago:

“On April 23rd, 2002, *Poder Ciudadano* foundation and the Center for Legal and Social Studies (CELS) filed a lawsuit against the Supreme Court based on its refusal to communicate judges’ assets disclosure statements to the public. Judicial action took place after an entire year of permanent requests from NGOs to the Supreme Court to comply with the Public Ethic Law, which establishes that all financial disclosure statements must be available to the public. After more than one year and a half, the judiciary not only has not rendered a decision, but no judge was even assigned to hear the case after three different judges recused themselves.”⁴⁸

In **Paraguay**, the financial declarations of judges are not accessible to the public. Only certain persons have access to the information, including the executive power, the legislative power, the general prosecutor, the public defender, the Investigative Commission for Illicit Acts and the judiciary.⁴⁹

In **Peru**, information about the income and assets of judges is published in *El Peruano*, a Peruvian newspaper. The information is also available on the website of this newspaper (<http://www.editoraperu.com/pe/declara/>). The published information is, however, very summary and contains only the monthly income, the total value of assets and the total value of other property without providing any details on these incomes and assets. Information is also available from the Office of Control of the Magistracy, which maintains records on members of the judiciary. In practice, the Office of Control of the Magistracy does not provide this information in a timely manner, and multiple requests are necessary. Taking into account the delays in responding and the frequent lack of response altogether, it can be said that there is no real public access to the declarations.

46 Law on Courts of Common Jurisdiction, article 19

47 Supreme Court Decision 1/2000

48 Information provided by *Poder Ciudadano*.

49 Organic Law 276/1993 on the General Controller of the Republic, art.9.f

If the information request or consultation procedures are too restrictive and require a series of cumbersome, complex steps, it will undermine the effective ability of the public to access the financial declarations of judges. The law should provide swift, flexible and accessible procedures that enable the public to obtain information on the financial disclosures of judges within a reasonable time and at a reasonable cost, or ideally at no cost at all.

USA – Past and Present Access to Financial Declaration Procedures

In the past, the US access to financial declaration procedures followed a complicated administrative process, which included a signature of a public notary, to make the information available to the public. Recently, the *Judicial Conference* approved reforms tending to facilitate the procedure:

- They voted to slash charges for copies of the reports by 60%;
- Dropped a requirement that each request must be signed by a notary public;
- Provided that court officials should supply each of the nation's 2000 federal judges with standardized checklists to ensure that judges accurately complete disclosure reports and identify all financial conflicts;
- Ordered development of computer systems to help judges and their clerks compare their stocks holdings with the names of litigants in their courtrooms; and
- Ordered a committee to consider requiring each corporation involved in litigation to list all parent and affiliated companies as a way to help judges identify conflicts.

However, in practice, the information accessible to the public does not provide sufficient information for effective public monitoring of the probity of judges. While preparing this paper, we requested a copy of the financial declaration of one of the Justices of the Supreme Court. While the information was provided to us within a reasonable delay of 10 days and at minimal cost, the financial data provided in the declaration was in no way sufficient to constitute a tool for public oversight of the accountability of the judiciary.

8. Privacy Laws

Financial declarations contain highly sensitive and personal information, which mandates some protection of privacy for those submitting financial declarations. The law should ensure restricted access and safeguards to guarantee that information disclosed will not be misused. For example, access to information about income and assets of family members may be restricted only to the enforcement authority. Moreover, financial declarations can be redacted so that strictly private information is not available to the public.

The right to privacy argument, however, should not serve as an excuse to protect corrupt judiciaries and restrict access to information. Otherwise, the whole objective of the law will be undermined. Therefore, when addressing the issue of asset disclosure, a fine balance between the right to information and a judge's right to privacy and security must be found.

The **Romanian** Asset Disclosure Act has no specific provision concerning the protection of personal information. Overall, the law ensures protection of strictly personal information. The law does not require judges to disclose information that might infringe on the right of privacy. Judges do not have to disclose bank account numbers or detailed addresses of their residency or of the real estate property they own.

In **Moldova**, the right to privacy seems to be overprotected at the expense of the right of access to information. Since most of the financial declarations are confidential, the public has no access to personal information. Moreover, the Asset Disclosure Act provides that all persons dealing with information on asset disclosure shall

keep such information secret and makes it unlawful to reveal such information.

In **Georgia**, anyone may access any information disclosed in a financial declaration. The Instructions on Filing require judges to disclose personal identification number, place of birth, address of permanent residency, including house or apartment number, and phone number. Similar data must be disclosed with regard to family members. The Instructions limit public access only to state secret or confidential information. Confidential information includes personal data, which is defined as data that permits identification of a person.⁵⁰ Since any person may ask for copies of the declarations, it seems that any person may have access to some strictly personal information unless the Information Bureau removes personal data before providing a copy.

In **Argentina**, the names of the financial institutions in which the judge has accounts, the numbers of those accounts, security boxes and credit cards must be included in the financial declaration, but in a separate statement in a closed envelope. This information is not accessible to the public and will only be disclosed to the authorities or to judges.

In **Paraguay**, the public does not have access to the financial declarations of judges. While the right to privacy is fully protected, it raises serious questions as to respect of the right to access to information.

In **Peru**, the law recognizes that making detailed information on incomes and assets broadly available to the public may cause harm to the individual disclosing the information and to his personal and family privacy and safety. The law therefore exempts from public disclosure all information related to the “intimacy of the person”. There is, however, no definition of what “intimacy of the person” covers, which opens the door to a discretionary protection of information from disclosure to the public.

9. Selected Recommendations

While some recommendations are of global applicability, others require some level of identification of the country-specific problems and needs before targeted reforms can be implemented or even fully designed. Solutions, and therefore the specificities of the financial transparency framework, may vary from country to country as regulatory loopholes and enforcement shortcomings are identified.

The following are some recommendations and guidelines for reformers to consider as a means to promote more financial transparency, as a tool to strengthen judicial accountability within the country, regional and global context:

- **Judges and Disclosure Requirements** – In countries in which judges are not covered by income and asset disclosure requirements, lawmakers and judges should work towards the adoption of explicit provisions imposing these requirements on judges. In countries in which judges are implicitly considered to be covered by income and asset disclosure requirements, the clarification of the obligations of judges might help avoid creating loopholes in the future.
- **Broad Disclosure** – The legal framework for financial transparency should provide for broad disclosure obligations that cover the wide range of income and assets that judges may have. It should also cover the income and assets of certain family members and dependents, especially spouses, in order to avoid creating opportunities for transferring assets to third parties.

50 General Administration Code, articles 24 and 44

- **Balance between Financial Transparency and Privacy Issues** – In many countries, privacy and security issues may justify limitations on financial transparency requirements and on public access to disclosures. These issues should not, however, be used to justify a blanket waiver for judges; nor should it be construed as shielding judges from all accountability. A comprehensive package of laws and policies, including those that relate to whistleblowing, privacy, national security and access to information needs to be developed and implemented in order to protect the constitutional rights of both judges and citizens.
- **Public Access to Information** – A clear and adequate framework for public access to information should be created – for example, by adopting a Judicial Access to Information Law – that includes mechanisms for accessing disclosure statements. The procedures for accessing information on the assets and income of judges should be clearly defined and available to the public. Without adequate access to information, the public will not be able to play its oversight role that is meant to ensure the accountability of the judiciary.
- **Whistleblower protection** – Whistleblower laws and policies need to be considered and balanced alongside the passage of any access to information and anticorruption legislation.
- **Anticorruption Obligations** – Countries should be encouraged to sign on to anticorruption treaties if they have not already done so. Judicial compliance with existing obligations under international treaties will help countries fight corruption and strengthen the Rule of Law. Such compliance requires, *inter alia*, a respect for the reporting requirements established under the monitoring frameworks of anticorruption treaties.
- **Collecting Office** – In countries which have created an independent or autonomous collecting office or are considering the creation of such an office for purposes of managing income and asset disclosures, the structure, roles and powers of this office should be designed in a way that protects its independence and guarantees the fair and effective enforcement of financial transparency requirements. The collecting office should have the authority not only to collect disclosure statements but also to investigate irregular disclosures and to sanction offenders.
- **Sanctions** – Clear, effective and proportional sanctions must be provided under the law in case of non-compliance with disclosure requirements, including disciplinary, civil and criminal penalties. Such sanctions should be provided for all types of non-compliance, including absence of declaration, false declaration, incomplete declaration, etc. Creating an effective mechanism to identify and punish illegal enrichment may also go a long way towards promoting more accountability within the judiciary.

ANNEX I – INCOME AND ASSET DISCLOSURE CHECKLIST

IFES Income and Asset Disclosure Checklist

The following are some key issues that should be addressed by reformers when drafting or implementing income and asset disclosure laws and regulations:

- Is there a clear rule that makes assets disclosure mandatory for judges?
- Is the disclosure obligation provided by the Constitution, the law or a judicial rule? Are serious issues of separation of powers raised in the country's constitution (with respect to whether the judiciary should pass and enforce its own disclosure rules)?
- Who is covered under the disclosure obligation? Only judges or other judicial officials also?
- Does the judge have to report the assets of his family members? What are the criteria used to define "family members"?
- Which kind of assets and incomes must be disclosed and what information, if any, should remain confidential?
- What is the procedure for accessing information? Is it narrowly or broadly conceived?
- Who can receive and file the information?
- Where is the information available (physically, on-line, mail, fax, etc), and is there a cost for it?
- Who can access the information (the public, media, businesses, international organizations, etc)?
- Is there any sanction for those who do not comply with the disclosure requirements?
- Is there sufficient punishment for those who sell, disclose or use protected information for corrupt or illicit purposes?
- How often are the judges obligated to present the information (annually, pre-appointment, pre-retirement, etc)?
- Are there clearly defined processes and a trusted entity for determining whether illegal enrichment has occurred, based on this information?
- Does the institution or official(s) responsible for receiving, maintaining and reviewing this information have the capacity, resources and political will to discharge its legal and ethical responsibilities?
- Is there a serious likelihood of abuse, especially in relation to the protection of the right to privacy, career or physical safety?
- Is the judiciary independent and capable of enforcing these laws and regulations fairly and effectively and of protecting people's human and privacy rights?

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- Is there an access to information and whistleblower law? Are privacy rights in this area clearly defined in the legislation?
- If there is systemic corruption or institutional state capture, a comprehensive cost/benefit analysis focused on potential human rights abuses should be undertaken and carefully weighed.
- Is there sufficient executive, parliamentary and civil society oversight, as well as an independent media, that can fairly report on this information to the public?
- Have the criminal and civil codes undergone reform, and are the investigative and prosecutorial roles of judges and prosecutors clear?
- Is there an anti-corruption commission or campaign underway? If so, are the laws and judicial institutions being used as political weapons?

ANNEX II – SELECTED BIBLIOGRAPHY

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ANNEX III – FINANCIAL TRANSPARENCY REQUIREMENTS FOR JUDGES

For each table, the colors correspond to the following answers:

- Satisfactory = white;
- Partially satisfactory = gray;
- Unsatisfactory = black.

Table 1 – General Overview of Compliance with Financial Transparency Best Practices

	Argentina	Georgia	Moldova	Paraguay	Peru	Romania
Disclosure law applies to judges						
Disclosure law covers spouse and dependents						
Disclosure of Income and Assets (detail in Table 2)						
Periodic disclosure						
Specialized office to collect the information						
Information accessible to the public						
Sanctions for non disclosure						
Criminal penalties for false disclosure						
Sanctions for illegal enrichment						
Enforcement in practice						

Table 2 – Detail of Income and Asset Disclosure Requirements

	Argentina	Georgia	Moldova	Paraguay	Peru	Romania
Income						
Business Interests and Stocks						
Real Estate						
Movable property						
Bank accounts: loans, debts, deposits, cash amounts						
Gifts						