



International Association of Judicial Independence and World Peace

MOUNT SCOPUS INTERNATIONAL STANDARDS OF JUDICIAL INDEPENDENCE

Approved by the International Association of Judicial Independence and World Peace (JIWP)

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Consolidated 2022

Preamble

These revised standards are approved in recognition of the need for the revision of the guidelines of general application to contribute to the independence and impartiality of the judiciary, with a view to ensuring the legitimacy and effectiveness of the judicial process.

In formulating these standards due regard has been given to the New Delhi Minimum Standards on Judicial Independence 1982 and the Montréal Universal Declaration on the Independence of Justice 1983 drafted with the assistance of members of the International Project of Judicial independence of the International Association of Judicial Independence and World Peace and to the UN Basic Principles of Judicial Independence 1985 and the long series of sets of other international rules and standards relating to judicial independence and the right to a fair trial; and The Burgh House Principles of Judicial Independence in International Law (for the international judiciary). Inspiration has also been drawn from the Tokyo Law Asia Principles; Council of Europe Statements on judicial independence, particularly the Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges by the Council of Europe 1998, The Bangalore Principles of Judicial Conduct November 2002, and the American Bar Association's revision of its ethical standards for judges.

The Standards were drafted bearing in mind the special challenges facing the judiciary in view of the challenges and problems in both the national and international spheres.

An updated comprehensive revision of minimum standards for judicial independence is called for in order to give appropriate response to the developments and challenges regarding the position of courts and judges in contemporary society. This revision is important to enable the judiciary to play a role in the adequate protection of human rights and in the operation of an efficient and fair market economy with a human face in the era of globalisation.

The standards give due consideration particularly to the fact that that each jurisdiction and legal tradition has own characteristics that must be recognised. It is also recognized that in the international judiciary each court or tribunal has its unique features and functions and that in certain instances judges serve on a part-time basis or as *ad hoc* or *ad litem* judges.

A. NATIONAL JUDGES

1. THE SIGNIFICANCE OF THE INDEPENDENCE OF THE JUDICIARY

1.1. An independent and impartial¹ judiciary is an institution of the highest value in every society² and an essential pillar of liberty³ and the rule of law.

1.2. The objectives and functions of the judiciary shall include:

1.2.1.1. To resolve disputes and to administer the law impartially between persons and between persons and public authorities;

1.2.1.2. To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

1.2.1.3. To ensure that all people are able to live securely under the rule of law.⁴

1.3 It is vital that supranational and international Tribunals respect the fundamental principles of the legal systems of the Member States and to that end acknowledge the collegiality of the traditions of the courts of both the municipal and extra municipal courts⁵.

1.3A (a) The task of creating international standards requires taking into account not only judicial independence but also the other fundamental values of the justice system such as accountability of the judiciary, efficiency of the judicial process, accessibility of the courts and public confidence in the courts.

(b) A central challenge of drafting international standards of judicial independence is to formulate standards which will reflect the values of universal desired standards. At the same time the standards must take into

¹ Stating this in the body of the standards themselves in addition to the preamble helps stress the section's importance and ensures that it is more easily referred to.

→ This is preferred to the first version as it describes exactly what elements are required in the Judiciary

→ Tokyo Law Asia Principles. Stating this in the body of the standards themselves rather than in a preamble helps stress the section's importance and ensures that it is more easily referred to.

³ Preamble, Montréal Declaration.

⁴ Montréal Declaration.

→ Recall competing values of judicial independence and judicial accountability: "As phrased by a Canadian judge, Mr. Justice Riddell, commenting on an arrangement of divisions of labour among the judges, 'Judges are the servants, not the masters of the people.' Servants are accountable, so are judges." From Shetreet, *Judicial Independence: The Contemporary Debate*, at 593, referring to *Davis Acetylene Gas Co. v. Morrison*, (1915) 34 O.L.R. 155, 23 D.L.R. 871 (C.A.).

⁵ This Article 1.3 was added as an Amendment in the Conference in Vienna 2011.

account the particular circumstances of the domestic jurisdictions and the different legal cultures and traditions in the various countries This challenge is met by careful deliberation.

(c) It was decided⁶ that in order to properly analyze compliance with judicial independence in matters of judicial process and judicial terms, we must consider two main approaches, universality and particularity.⁷ Universal Theory, or “universality,” holds that an independent judiciary is necessarily a shared value of all legal systems, essential to the Rule of Law. Universality calls for defining a universal model of judicial independence, reflected in legal rules and other formal institutional arrangements—including judicial appointments process and the rules for terms of appointment, review, retention, and recall of judges.⁸

(d) Alongside the universality approach, we must take into account circumstances in each jurisdiction and recognize that, in some countries, it is justified to exempt certain practices from the universal standards. This is what we call the approach of “particularity.”

(e) The universality and particularity rule should be qualified so as not to accept legislation or judicial decisions that, when carefully examined, are predominantly motivated by improper aims to interfere with judicial independence.

(f) Measures taken by government in countries that changed the system of governments⁹ must meet the test of predominantly valid aims to prevent actions with predominant improper aims.

(g) Similarly, in the case of long established practices , if such predominant improper aims can be shown in the use of the long-established practices to the detriment of judges and judicial independence, such measures should be equally declared as being in violation of judicial independence. Being an long established practice cannot be a shield from an adverse judgment regarding actions of the legislature or judicial decision that violate judicial independence.

BUILDING AND MAINTAINING CULTURE OF JUDICIAL INDEPENDENCE¹⁰

1.4 Every society and all international bodies, tribunals and courts shall endeavour to build and maintain a culture of judicial independence that is essential for democracy, liberty, rule of law and human rights in domestic system of government and is a necessary foundation for world peace, orderly world trade ,globalised markets and beneficial international investments.

1..4.1 The culture of judicial independence is created on five important and essential aspects: creating institutional structure, establishing constitutional infrastructures, introducing legislative provisions and constitutional safeguards, creating adjudicative arrangements and jurisprudence, and maintaining ethical traditions and code of judicial conduct.

⁶Elsewhere this issue is examined in detail in: Shimon Shetreet, *The Rule of Universality and Particularity*, in: CHALLENGED JUSTICE: IN PURSUIT OF JUDICIAL INDEPENDENCE, 68-119 (Shimon Shetreet, Hiram E. Chodosh and Eric Helland Eds., Brill 2021).

⁷ Ibid. p. 116.

⁹ Such as the legislation and court decisions in the new democracies in Europe which changed from communist rule to democratic system of government.

¹⁰ This Article 1.4 was added as an Amendment in October 2012 in the conference in Ghent .

1.4.2 The institutional structures regulate the matters relative to status of the judges and jurisdiction of the courts.

1.4.3 The constitutional infrastructure embodies in the constitution the main provisions of the protection of the judiciary as outlined in this standards.

1.4.4 The legislative provisions offer a detailed regulation of the basic constitutional principles of judicial independence and impartiality

1.4.5 The courts add to the constitutional infrastructure and the legislative provisions complimentary interpretations and jurisprudence on different aspects of the conduct of judges operation and courts.

1.4.6 The ethical traditions and code of judicial conduct cover the judge's official and non-official spheres of activities, and shield the judge's substantive independence from dependencies, associations, and even less intensive involvements which might cast doubts on judicial neutrality.

1.5 Foundations of Democracy and the Rule of Law

1.5.1 For culture of judicial independent to be maintained and preserved it is essential to safeguard and protect central foundations of democracy and the rule of law.¹¹

1.5.2 Further to the resolution and recommendations of leading international organizations¹², it is significant to require national jurisdictions to respect certain fundamental foundations of democracy and rule of law

1.5.3 These essential foundations of democracy and rule of law include the following foundations:

(a) Legality - Supremacy of the law, Compliance with the law, Relationship between international law and domestic law, Law-making powers of the executive, Law-making procedures, Exceptions in emergency situations, Duty to enforce the law, Private actors in charge of public tasks

(b) Legal certainty - Accessibility of legislation, Accessibility of court decisions, Foreseeability of the laws, Stability and consistency of law, Legitimate expectations, Non-retroactivity, Res judicata

(c) Prevention of abuse (misuse) of powers

¹¹ In recent months and years, serious challenges have emerged to the judicial system ,the position of the judiciary and the rule of law in numerous countries. These challenges took place in countries with different systems of government in different parts of the world. We have witnessed these challenges in such countries as Turkey (after the attempted coup), Hungary (with the legislative changes regarding the judiciary), Poland (the crisis regarding the controversial appointments to the top constitutional tribunal), U.S.A (President Trump critical statement on “so called Judge” and the heated division in the U.S Senate on the confirmation of Justice Neil Gorsuch) and Venezuela (attempted restriction of the activities of the opposition). This and other challenges require careful study.

¹² Venice commission - European commission through law, rule of law checklist, adopted Venice 11-12 march 2016, endorsed by ministers deputies 6-7 September 2016
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

(d) Equality before the law and non-discrimination - including Equality in law

(e) Independence and impartiality of the justice system - Independence and impartiality, Independence of the judiciary, Independence of the individual judges, Impartiality of the judiciary, prosecution service: autonomy and control, Independence and impartiality of the Bar

(f) Fair trial - Access to courts, Presumption of innocence, aspects of the right to a fair trial, Effectiveness of judicial decisions

(g) Constitutional and administrative judicial review

(h) Substantive rule of law democracy and respect of democratic minority groups

(i) Maintenance and respect of effective opposition in parliament and in the streets

(j) Protection of the freedom of the press and all forms of electronic and digital and social media and limited government control on private and public media institutions

(k) Protection of activities of civil society groups and non-governmental organisations

(l) Maintenance of the principle of civilian supremacy of military and security authorities

(m) Respect the separation of powers

(n) Respect of human rights, including political and civil rights and social and economic human rights.

1.6 Fundamental values of the justice system

1.6.1 The culture of judicial independent require legal and constitutional environment which insure that the justice system will perform its functions independently impartially and efficiently.

1.6.2 Every national and international jurisdictions shall insure that the justice system will respect and implement the basic values underlying the operation of the court system and administration of justice.

1.6.3 The basics values of the justice system are: The Independence of the Judicial Process and the Independence and the impartiality of the judiciary , high quality of the adjudicative process, efficiency of the Judicial Process and Judicial Administration , accessibility of the courts and judicial services and ensuring public confidence in the courts, accountability of the judiciary and the transparency od of the justice system.

1.6.4 The Independence of the Judicial Process and the Independence and the impartiality of the judiciary shall be detailed according to the Standards listed in the Mount Scoops of Judicial Independent.

1.6.5 High quality of the judicative process, includes keeping high judicial ethics and integrity and insuring the right of appeal, insuring justice and fairness and correcting errors in the individual case and developing and maintaining sound rules of law of the legal system.

1.6.6 The Efficiency of the Judicial Process and Judicial Administration including exercising careful oversight and to keep the cost of litigation reasonable, insuring speedy trial, reducing courts delays, backlogs, efficient management of case assignments, and caseload management.

1.6.7 The value of accessibility of the justice system requires that the system will ensure full accesses to the courts. , including: economic access, geographical access, procedural access and, substantive access.

(a) Economic access means providing legal aid to the needy and reduce cost of services and judicial fees.

(b) Geographical access means providing judicial services in rural and remote areas and not only in urban centres.

(c) Procedural access means that the rules of procedure allow full opportunities for hearing and presenting of evidence and providing small claims courts to adjudicate small cases at modest cost, and allowing class actions in proper jurisdiction.

(d) Substantive access means that the law will provide substantive causes of action to remedy wrongs and injuries.

1.6.8 Public Confidence in the Courts , including ensuring publicity of trials, carefully define judicial immunity from injury and ensuring restraint and good taste criticism of judicial decision.

1.6.9 Accountability of judges - judges must be accountable for their conduct of and on the bench and should be subject to proper and adequate discipline when necessary.

1.6.10 Transparency – courts and judges must give a public and the academic community and legal profession full transparency subject to privacy consideration.

1.6.11 In shaping of judicial reforms, careful attention must be giving in order to insure proper balance between the basic values of the justice system, Particular attention should be giving to ensuring proper balance between Efficiency and Quality of Justice.

2. THE JUDICIARY¹³ AND THE EXECUTIVE

2.1. The Judiciary as a whole shall be independent.

2.2. Each judge shall enjoy both personal independence and substantive independence:¹⁴

2.2.1. Personal independence means that the terms and conditions of judicial service are adequately secured by law¹⁵ so as to ensure that individual judges are not subject to executive control; and

2.2.2. Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.

2.3. The Judiciary as a whole shall¹⁶ enjoy collective independence and autonomy vis-à-vis the Executive.

¹³ The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

¹⁴ Although substantive independence warrants wide protection, it is not without boundaries. Judges must exercise their powers subject to the general limit of mutual respect between the various branches of the government and accepted lines of demarcation of their respective responsibilities. The mutual respect is expressed in judge-made rules, including the rule that courts will not engage in the adjudication of unjustifiable issues, such as political questions: Shetreet, *Judicial Independence :New Conceptual Dimensions and Contemporary Challenges* , in Shetreet and Deschenes *Judicial Independence: The Contemporary Debate* at 635.(1985)

¹⁵ To clarify that these important conditions must be legally entrenched.

¹⁶ Adds mandatory language.

Measuring justice and rule of law

2.3.1 Judicial independence and the rule of law are essential requirements for economic growth. This is because they insure businessman or employees of certainty and confidence that in case of a dispute their claims will be adjudicated fairly, impartially and independently.

2.3.2 Fair and efficient operation of the justice system must be assessed and evaluated on the basis of indicators and data that can help create reliable measures to judge the quality, efficiency, independence and equality of the justice system.

2.3.3 According to the relatively new and most desirable pattern of data collection and publication which have begun in recent years such as by European Union Scoreboard on Justice published by the European Union and by reports of international and national organizations should be encouraged and followed.¹⁷

2.3.4 Every jurisdiction (domestic and international) shall prepare and make public periodic reports with detailed relevant data and analysis on courts, judges and administration of justice. based on established indicators and scoreboards that assist in measuring the justice system.

2.3.5 The periodical reports shall include data and findings on efficiency, quality, and independence of the justice system.

2.3.6 Efficiency of justice systems shall include: Length of proceedings, Clearance rate, Pending cases, Efficiency in specific areas and introduction of technological and online information system in the courts.¹⁸

2.3.7 The data on quality of the justice system shall include data on: Accessibility, Resources, Assessment tools and Quality standards.

2.3.8 The data on independence of the judiciary shall include perceived judicial independence, Structural independence and Work of the judicial networks on judicial independence.

2.4. Judicial appointments and promotions by the Executive are not inconsistent with judicial independence as long as they are in accordance with Principles 4.

2.5. No executive decree shall reverse specific court decisions, or change the composition of the court in order to affect its decision-making.¹⁹

¹⁷ EU Report on: Strengthening Trust, Mobility and Growth within the European Union, 2014 ., EU Report on: The 2016 EU Justice Scoreboard 2018 EU justice Scoreboard https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en

IMF Report on Italy: <https://www.imf.org/external/pubs/ft/scr/2013/cr13299.pdf>, Shimon Shetreet: The Justice System as an Essential Foundation of Economy and Trade, 3 Journal of International and Comparative Law 127-140 (2016).

European Commission for the Efficiency of Justice (CEPEJ),” Report on “European Judicial Systems: Edition 2014 (2012 data): Efficiency and Quality Justice”, 2014.

¹⁸ <http://network-presidents.eu/sites/default/files/EUJusticeScoreboard2016.pdf>
https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf

¹⁹ Montréal Declaration section 2.08.

- 2.6. The Executive may only participate in the discipline of judges by referring complaints against judges, or by the initiation of disciplinary proceedings, but not by the adjudication of such matters.
- 2.7. The power to discipline or remove a judge must be vested in an institution, which is independent of the Executive.
- 2.8. The power of removal of a judge shall preferably be vested in a judicial tribunal.
- 2.9. The Executive shall not have control over judicial functions.
- 2.10. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.
- 2.11. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.
- 2.12. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.
- 2.13. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
- 2.14. The principle of democratic accountability should be respected and therefore it is legitimate for the legislature to play a role in judicial appointments and central administration of justice provided that due consideration is given to the principle of judicial independence.
- 2.15. The process and standards of judicial selection shall give due consideration to the principle of fair reflection by the judiciary of the society in all its aspects.²⁰
- 2.15.1. Taking into consideration the principle of fair reflection by the judiciary of the society in all its aspects, in the selection of judges, there shall be no discrimination on the grounds of race, colour, gender, language, religion, national or social origin, property, birth or status, subject however to citizenship requirements.²¹
- 2.16. Candidates for judicial office shall be individuals of integrity²² and ability, well- trained in the law. They shall have equality of access to judicial office.²³

²⁰ Montréal Declaration section 2.13. See also Shetreet, *Judicial Independence: The Contemporary Debate*, at 401.

²¹ Montréal Declaration

→ "Political opinion" is also taken from PH Lane, *Fragile Bastion: Constitutional Aspects of Judicial Independence* (judicial independence is composed of at least five aspects: (1) non-political appointments to a court; (2) guaranteed tenure and salary; (3) executive and legislative interference with court proceedings or office holders; (4) budgetary autonomy; (5) administrative autonomy).

²² Montréal Declaration section 2.11.

²³ Exact wording of the Montréal Declaration, section 2.11.

- 2.17. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.
- 2.18. Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
- 2.18.1. In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.
- 2.18.2. Subject to 2.18.1, the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.
- 2.19. The power to transfer a judge from one court to another shall be vested in a judicial authority according to grounds provided by law and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.
- 2.20. Judicial salaries and pensions shall be adequate at all times, fixed by law, and should be periodically reviewed independently of Executive control
- 2.21. The position of the judges, their independence, their security of tenure, and their adequate remuneration shall be entrenched constitutionally²⁴ or secured by law.
- 2.22. Judicial salaries, pensions, and benefits²⁵ cannot be decreased during judges' service except as a coherent part of an overall public economic measure.
- 2.23. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements, which adversely affect the independence of individual judges, or of the Judiciary as a whole.
- 2.24. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.
- 2.25. The Executive shall refrain from any act or omission, which pre-empts the judicial resolution of a dispute, or frustrates the proper execution of a court judgment.
- 2.26. The Executive shall not have the power to close down, or suspend, or delay, the operation of the court system at any level.

3. THE JUDICIARY²⁶ AND THE LEGISLATURE

²⁴ UN Basic Principles.

→ Change suggested in order to provide additional flexibility, and also to stress how this is an important enough issue to be constitutionally entrenched.

²⁵ In the interests of completeness

²⁶ The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

- 3.1. The Legislature shall not pass legislation, which reverses specific court decisions.
- 3.2. Legislation introducing changes in the terms and conditions of judicial service shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service and are generally applied.²⁷
- 3.3. In case of legislation reorganising or abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same or materially comparable²⁸ status.
- 3.4. Everyone shall have the right to be tried expeditiously by the established ordinary courts or judicial tribunals under law, subject to review by the courts.²⁹
- 3.5. Part-time judges should be appointed only with proper safeguards secured by law.
- 3.6. The Legislature may be vested with the powers of removal of judges, upon a recommendation of a judicial commission or pursuant to constitutional provisions or validly enacted legislation.³⁰

4. TERMS AND NATURE OF JUDICIAL APPOINTMENTS

- 4.1. The method of judicial selection shall safeguard against judicial appointments for improper motives³¹ and shall not threaten judicial independence.
- 4.2. a) The principle of democratic accountability should be respected and therefore it is legitimate for the Executive and the Legislature to play a role in judicial appointments provided that due consideration is given to the principle of Judicial Independence.

²⁷ In order to prevent "rewarding" specific judges.

- The US Constitution's Compensation Clause guarantees federal judges a "Compensation, which shall not be diminished during their Continuance in Office." *U.S. Const.*, Art. III, §1.
- See *US v. Hatter* (99-1978) 532 U.S. 557 (2001) 203 F.3d 795: Congress is prohibited from singling out judges for specially unfavourable taxation treatment, although it is permitted to impose a "non-discriminatory tax laid generally" upon judges and other citizens.
- See *United States v. Will*, 449 U.S. 200, 220-21 (1980): though Congress may not rescind a salary increase for judges once it has gone into effect - that would be a diminishment of compensation - Congress is under no constitutional obligation to grant salary increases.
- See *Evans v. Gore*, 253 U.S. 245, 253 (1920): The imposition of a new federal tax that has the effect of reducing the judicial compensation of judges already in office is unconstitutional.
- But see *O'Malley v. Woodrough*, 307 U.S. 277 (1939): an income tax levied against the judicial salary of judges who took office after the levy is in effect is constitutional, when the taxing measure is of general, non-discriminatory application to all earners of income.

²⁸ To provide for situations such as those that occurred in Ontario when the entire court structure was reorganized.

²⁹ For a discussion of this issue, see Shetreet, *Judicial Independence: The Contemporary Debate*, at 616.

³⁰ In order to try to prevent situations such as those that occurred in Ecuador in April 2007 when Congress removed all nine judges of the Constitutional Court in a retaliatory measure, contrary to the Ecuadorian constitution which provides that judges of the Constitutional Court can only be removed by impeachment: Human Rights Watch, *Ecuador: Removal of Judges Undermines Judicial Independence* (May 11, 2007).

³¹ Montréal Declaration.

b) The recent trend of establishing judicial selection boards or commissions in which members or representatives of the Legislature, the Executive, the Judiciary and the legal profession take part, should be viewed favourably, provided that a proper balance is maintained in the composition of such boards or commissions of each of the branches of government

4.3. Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

4.3.1. Retirement age shall not be reduced for existing judges.³²

4.4. Promotion of judges shall³³ be based on objective factors, in particular merit,³⁴ integrity and experience.³⁵

4.5. Judicial appointments and promotions shall be based on transparency of the procedures and standards and shall be based on professional qualifications, integrity, ability and efficiency.

4.6. Judges should not be appointed for probationary periods except in legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment, and provided that permanent appointment will be granted on merit.³⁶

4.7. The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

4.8. Part-time judges should be appointed only with proper safeguards secured by law.

4.9. The number of the members of the highest court should be fixed, with the exception of courts modelled after the courts of cassation, and in the case of all courts, should not be altered for improper motives.

4.10. Legislatures should formulate special procedures for the appointment of Chief Justices and Presidents of courts.

5. JUDICIAL REMOVAL AND DISCIPLINE

³² See Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in Shetreet and Descenes *Judicial Independence: The Contemporary Debate*, at 607 (1985) reporting that in Bangladesh, in 1977 an ordinance was passed bringing down the retirement age from 65 to 62 years with immediate effect. This resulted in the retirement of two distinguished judges. This was in fact a legislative removal of these two judges though it was in theory a general statute.

³³ In order to make this mandatory.

³⁴ "Merit" is broader than "ability".

³⁵ UN Basic Principles.

→ Montréal Declaration provides: "Promotion of a judge shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law."

³⁶ Scottish temporary judges cases *Starrs and Chalmers v. D. F. Linlithgow* 2000 S. L. 2; *Clancy v. Caird* 2000 Scottish Law Times, *The Bailiff Judicial Appointments (Scotland) Act 2000*

- 5.1. The proceedings for discipline and removal of judges³⁷ shall be processed expeditiously and fairly³⁸ and shall ensure fairness to the judge including adequate opportunity for hearing.
- 5.2. With the exception of proceedings before the Legislature³⁹, the procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public⁴⁰ and such request should be respected, subject to expeditious, final and reasoned disposition of this request by the disciplinary tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.⁴¹
- 5.3. All of the grounds for the discipline, suspension and removal of judges shall be entrenched constitutionally or fixed by law and shall be clearly defined.
- 5.4. All disciplinary, suspension and removal⁴² actions shall be based upon established standards of judicial conduct.⁴³
- 5.5. A judge shall not be subject to removal, unless by reason of a criminal act or through gross or repeated neglect or serious infringements of disciplinary rules or physical or mental incapacity he has shown himself manifestly unfit to hold the position of judge. The grounds for removal shall be limited to reasons of medical incapacity or behaviour that renders the judge unfit to discharge their duties.⁴⁴
- 5.6. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of members of the Judiciary.
- 5.7. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

6. THE MEDIA AND THE JUDICIARY

- 6.1. It should be recognized that judicial independence does not render judges free from public accountability, however, the media and other institutions should show respect for judicial independence and exercise restraint in criticism of judicial decisions.⁴⁵

³⁷ The UN Basic Principles adds "in his/her judicial and professional capacity." This wording was not added here to prevent personal suits being lodged against judges as a back-door method of interfering with their independence.

³⁸ UN Basic Principles.

³⁹ Montréal Declaration section 2.36.

⁴⁰ Montréal Declaration section 2.36.

⁴¹ Montréal Declaration section 2.36.

⁴² Inclusive.

⁴³ Montréal Declaration section 2.34. Broad.

⁴⁴ UN Basic Principles.

⁴⁵ See discussion by Julie Debeljak, *Judicial Conference of Australia, Uluru, April 2001: Judicial Independence: A Collection of Material for the Judicial Conference of Australia* regarding the consequences of inappropriate public criticism (it leaves judges having to choose between being silent leading to a potential decrease in public confidence in the judiciary, or else inappropriately being drawn into public criticism).

- 6.2. While recognising the general right of freedom of expression of all citizens, a judge should not interview directly with the general media. If a judge needs to respond to the media in regard to a media report or inquiry, it shall be done via a spokesperson assigned by the court or a judge specifically assigned by the court for this purpose. In exceptional circumstances a judge may respond directly to the media if that judge's direct response will prevent an irreparable damage.
- 6.3. The media should show responsibility and restraint in publications on pending cases where such publication may influence the outcome of the case.
- 6.4. A judge shall not knowingly, while a proceeding is, or could come before the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.⁴⁶

7. STANDARDS OF CONDUCT⁴⁷

- 7.1. Judges may not serve in Executive or Legislative functions, including as:
 - 7.1.1. Ministers of the government; or as
 - 7.1.2. Members of the Legislature or of municipal councils.
- 7.2. Judges shall not hold positions in political parties.
- 7.3. A judge, other than a temporary or part-time judge, may not practice law.
- 7.4. A judge should refrain from business activities and should avoid from engaging in other remunerative activity,⁴⁸ that can affect the exercise of judicial functions or the image of the judge, except in respect of that judge's personal investments, ownership of property, the business activities or ownership of property of family members⁴⁹, or that judge's teaching at a university or a college.
- 7.5. A judge should always behave in such a manner as to preserve the dignity of the office and the impartiality, integrity and independence of the Judiciary.
- 7.6. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

⁴⁶ Bangalore Principles

⁴⁷ Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Volume 16, No. 3(B) (June 2004) reporting some of allegations of judicial bias in Venezuela. For instance, Attorney General Isaías Rodríguez in May 2004 allegedly described how the country's top administrative court in the past established set fees for resolving different kinds of cases.

⁴⁸ ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).

⁴⁹ ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.

- 7.7. Judges may take appropriate action to protect their judicial independence.⁵⁰
- 7.8. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.
- 7.9. Such proceedings include, but are not limited to, instances where
- a) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - b) the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - c) the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
- Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice
- 7.10. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.⁵²
- 7.11. Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.
- 7.12. Except in cases of legitimate consultations a Judge shall not approach other judges not sitting with him on the same panel on pending cases.⁵³

8. SECURING IMPARTIALITY AND INDEPENDENCE⁵⁴

- 8.1. A judge⁵⁵ shall enjoy immunity from legal actions in the exercise of his official functions.⁵⁶

⁵⁰ This is how the section appears in the Montréal Declaration, section 2.09.

⁵¹ Bangalore Principles

⁵² Recommendation No.R(94)12). of the committee of Ministers of the Council of Europe to Member States

⁵³ This Article 7.12 was added as an Amendment in Vienna in 2011.

⁵⁴ See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi.

⁵⁵ This does not exclude the possibility that the state may be liable for the gross negligence of a judicial officer.

⁵⁶ Consider a 1988 Italian law which was designed to, within certain limit, render judges accountable for damages caused by serious fault in the exercise of their functions: see Giovanni E. Longo, "The Human Right to an Independent Judiciary: International Norms and Denied application before a Domestic Jurisdiction," *St. John's Law Review* (Winter 1996).

- 8.2. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.⁵⁷
- 8.3. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.
- 8.4. The state shall ensure that in the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats⁵⁸ or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary⁵⁹

9. THE INTERNAL INDEPENDENCE OF THE JUDICIARY

- 9.1 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and superiors.
- 9.2 Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of judges to pronounce their judgments freely.⁶⁰

9A. ADMINISTRATIVE ADJUDICATORS⁶¹

Administrative adjudicatory officers

9A.1— Definitions

In this section the term administrative adjudicators means — Administrative officers exercising judicial functions in agencies but are not part of the regular court system.

9A.2. Except as provided below, the standards applicable to national judges shall apply to administrative adjudicators

9A.3. Administrative officers exercising judicial functions - hereinafter administrative adjudicators - may be appointed by the executive on merit according to the general principles in section 4.4 and section 4.5.

9A.4. Administrative adjudicators may be appointed for probationary periods provided the decision whether to make a permanent appointment is based on merit.

9A.5. Compensation of administrative adjudicators shall not be reduced except as part of a general economic measures applied to the country as a whole

⁵⁷ "It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case": Howland, CJ, *R. v. Valente* 2 C.C.C. (3d) 417, at 423 (1983).

⁵⁸ Including physical threats to injure or to kill .

⁵⁹ Recommendation No.R(94)12 of the committee of Ministers of the Council of Europe to Member States

⁶⁰ Montréal Declaration section 2.03.

⁶¹ This Article 9A was added as an Amendment in Vienna in 2011.

9A.6. Administrative adjudicators may be removed only for good cause, to be specified by law, and only after a fair hearing.

9A.7. Administrative adjudicators shall not exercise or be assigned non-adjudicatory functions in the same or a related matter in which they perform adjudicatory functions.

9A.8. Decisions of administrative adjudicators , including factual findings and legal conclusions, shall be subject to review by the agency that administers the program under which the matter arises and also may be subject to judicial review according to law.

9A.9. The executive shall not interfere in the substantive decision-making of administrative adjudicators.

9A.10. Administrative adjudicators shall be subject to evaluation according to objective criteria that are related to promoting uniform decisional standards.

PUBLIC INQUIRIES BY JUDGES⁶²

9B. If a serving member of the judiciary accepts appointment as a Commissioner of Inquiry on behalf of Government, he or she does so not in the capacity of a judge but as a public servant in public administration.

9B.1 While a serving judge conducts a public inquiry, in accordance with terms of reference stated by the Government, he must act impartially and independently of any party interested in the substance of the public inquiry.

9B.2 A serving judge who chairs a public inquiry is entitled to insist that all matters of the procedure in the conduct of the inquiry shall be at his complete discretion; in particular he or she may, according to the applicable law or standards, issue a warning letter to any interested party of any complaint that may appear in the Inquiry's report to Government

9B.3 If an interested party responds to any such warning letter from the public inquiry, the judge will consider such response, and if necessary, indicate that it has been considered in the preparation of the final report to Government.

9B.4 Upon receiving a request to chair a commission of inquiry, a judge shall carefully consider all the ramifications of such appointment before giving consent to said appointment

9B.5 Judges who exercise other functions such as in alternative dispute resolution (ADR), in mediation or arbitration, shall act impartially and independently of any party to the relevant procedure.

Section 9C: Ensuring impartiality of chairpersons and members of commissions and committees of inquiry and other quasi judicial institutions.⁶³

⁶² This Article 9B was added as an Amendment in Ghent in 2012.

⁶³ This section was added in the Osnabruck Conference, 2014.

9C.1. All officers exercising judicial and quasi judicial functions and investigative and auditing functions are subject to the duty of fairness and impartiality. This includes commissions of inquiry, mediation, arbitration, state auditing and internal auditing. All such officers and Members or chairpersons of commission or committee of inquiry shall maintain impartiality and demonstrate independence in conducting inquiries and in making fact-finding and recommendations.

9C.2. The general rules applicable to national judges , including sections 1-9B in case of circumstances requiring disqualification of judges, shall also apply to officers enumerated in section 9C.1 and members of commissions of inquiry and to quasi judicial institutions.

9C.3. The general rules applicable to, including sections 1-9B judges in case of circumstances requiring disqualification of judges shall also apply to internal auditors and state auditors.

Section 9D: Lawyers

Definitions

- 2 The legal profession is one of the institutions referred to in 1 In this section:
 - a) "lawyer" means a person qualified and authorized to practice before the courts, or to advise and represent his clients in legal matters;
 - b) "Bar association" means the recognized professional association to which lawyers within a given jurisdiction belong.

General Principles

the preamble to this declaration. Its independence constitutes an essential guarantee for the promotion and protection of human rights.

3 There shall be a fair and equitable system of administration of justice, which guarantees the independence of lawyers in the discharge of their professional duties without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

4 All persons shall have effective access to legal services provided by an independent lawyer, to protect and establish their economic, social and cultural, as well as civil and political rights.

Legal Education and Entry into the Legal Profession

5 Legal education shall be open to all persons with requisite qualifications, and no one shall be denied such opportunity by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

6 Legal education shall be designed to promote in the public interest, in addition to technical competence, awareness of the ideals and ethical duties of the lawyer, and of human rights and fundamental freedoms recognized by national and international law.

7 Programmes of legal education shall have regard to the social responsibilities of the lawyer, including cooperation in providing legal services to persons of limited means and the promotion and defence of economic, social and cultural rights in the process of development.

8 Every person having the necessary integrity, good character and qualifications in law shall be entitled to

become a lawyer, and to continue in practice without discrimination for having been convicted of an offence for exercising his internationally recognized civil or political rights.

Education of the Public Concerning the Law

9 It shall be the responsibility of the lawyer to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties, and the relevant and available remedies.

Rights and Duties of Lawyers

10 The duties of a lawyer towards his client include: a) advising the client as to his legal rights and obligations; b) taking legal action to protect him and his interests; and, where required, c) representing him before courts, tribunals or administrative authorities.

The lawyer must also advise the client on both the legal and ethical consequences of proposed actions, while asking questions about future actions that are implicit in what the client has disclosed.

11 The lawyer, in discharging his duties, shall at all times act freely, diligently and fearlessly in accordance with the wishes of his client and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public.

The lawyer shall (1) inform the client when proposed action would violate either legal or ethical standards, and (2) raise questions that are implied by proposed actions.

12 Every person and group of persons is entitled to call upon the assistance of a lawyer to defend his or its interests or cause within the law, and it is the duty of the lawyer to do so to the best of his ability.

Consequently the lawyer is not to be identified by the authorities or the public with his client or his client's cause, however popular or unpopular it may be.

13 No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.

14 No court or administrative authority shall refuse to recognize the right of a lawyer to appear before it for his client.

15 It is the duty of a lawyer to show proper respect towards the judiciary. He shall have the right to raise an objection to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.

16 If any proceedings are taken against a lawyer for failing to show proper respect towards a court, no sanction against him shall be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer.

17 Save as provided in these principles, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings, or in his professional appearances before a court, tribunal or other legal or administrative authority.

18 The independence of lawyers, in dealing with persons deprived of their liberty, shall be guaranteed so as to

ensure that they have free and fair legal assistance. Safeguards shall be built to avoid any possible suggestions of collusion, arrangement or dependence between the lawyer who acts for them and the authorities.

19 Lawyers shall have all such other facilities and privileges as are necessary to fulfill their professional responsibilities effectively, including: a) absolute confidentiality of the lawyer-client relationship: b) the right to travel end to consult with their clients freely, both within their own country and abroad; c) the right freely to seek, to receive and, subject to the rules of their profession, to impart information and ideas relating to their professional work; d) the right to accept or refuse a client or a brief.

20 Lawyers shall enjoy freedom of belief, expression, association and assembly; and in particular they shall have the right to: a) take part in public discussion of matters concerning the law and the administration of justice. b) join freely local, national and international organizations c) propose and recommend well-considered law reforms in the public interest and inform the public about such matters, and d) take full and active part in the political, social and cultural life of their country.

21 Rules and regulations governing the fees and remunerations of lawyers shall be designed to ensure that they earn a fair and adequate income, and legal services are made available to the public on reasonable terms.

Legal Services for persons with limited means

22 It is a necessary corollary of the concept of an independent bar, that its members shall make their services available to all sectors of society, so that no one _{may} be denied justice, and shall promote the cause of justice by protecting the human rights, economic, social and cultural, as well as civil and political, of individuals and groups.

23 Governments shall be responsible for providing sufficient funding for legal service programmes for persons of limited means .

24 lawyers engaged in legal service programmes and organizations, which are financed wholly or in part, from public funds, shall receive adequate remuneration and enjoy full guarantees of their professional independence in particular by:

- the direction of such programmes or organizations being entrusted to an independent board, composed mainly or entirely of members of the profession, with full control over its policies, budget and staff;
- recognition that, in serving the cause of justice, the lawyers primary duty is towards his client; whom he must advise and represent in conformity with his professional conscience and judgment.

The Bar Association

25 There shall be established in each jurisdiction one or more independent and self-governing associations of lawyers recognized in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person. This shall be without prejudice to their right to form or join, in addition, other professional associations of lawyers and jurists.

26 In this section:

(a) In order to enjoy the right of audience before the courts, all lawyers are encouraged to be members of the appropriate Bar Association.

(b) Mandatory system of bar membership may be changed to a voluntary one provided it is insuring high

professional and ethical standards and maintaining independence of the profession.

Function of the Bar Association

- 27 The functions of a Bar Association in ensuring the independence of the legal profession shall be inter alia:
- (a) to promote and uphold the cause of justice, without fear or favour;
 - (b) to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession
 - (c) to defend the role of lawyers in society and preserve the independence of the profession;
 - (d) to protect and defend the dignity and independence of the judiciary;
 - (e) to promote the free and equal access of the public to the system of justice, including the provision of legal aid and advice;
 - (f) to promote the right of everyone to a fair and public hearing before a competent, independent and impartial tribunal, and in accordance with proper procedures in all matters;
 - (g) to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation;
 - (h) to promote a high standard of legal education as a prerequisite for entry into the profession;
 - (i) to ensure that there is free access to the profession for all persons having the requisite professional competence and good character, without discrimination of any kind, and to give assistance to new entrants into the profession;
 - (j) to promote the welfare of members of the profession and render assistance to a cases; appropriate in family his of member (k) to affiliate with and participate in the activities of international organizations of lawyers.

28 Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the Bar Association shall cooperate in assisting the foreign lawyer to obtain the necessary right of audience.

29 To enable the Bar Association to fulfill its function of preserving the independence of lawyers, it shall be informed immediately of the reason and legal basis for the arrest or detention of any lawyer; and for the same purpose the association shall have prior notice for: t) any search of his person or property, ii) any seizure of documents in his possessions, and iii) any decision to take or calling into question the integrity of a lawyer. In such cases, the Bar Association shall be entitled to be represented by its president or nominee, to follow the proceedings, and in particular to ensure that- professional secrecy is safeguarded.

Disciplinary Proceedings

30 The Bar Association shall freely establish and enforce, in accordance with the law, a code of professional conduct of lawyers.

31 The Bar Association shall have exclusive competence to initiate and conduct disciplinary proceedings against lawyers on its own initiative or at the request of a litigant. Although no court or public authority shall itself take disciplinary proceedings against a lawyer, it may report a case to the Bar Association with a view to its initiating disciplinary proceedings.

32 Disciplinary proceedings shall be conducted in the first instance by a disciplinary committee established by the Bar Association.

33 An appeal shall lie from a decision of the disciplinary committee to an appropriate appellate body.

34 Disciplinary proceedings shall be conducted with full observance of the requirements of fair and proper procedure, in the light of the principles expressed in this declaration.

Defence of judicial independence

35.Lawyers have an individual professional responsibility to uphold the independence of the judiciary.

36.Lawyers professional associations shall have a duty to defend the independence of the judiciary.

Section 9E: Online Justice

9E.1 Complaints Officers in Government Agencies and business Firms shall be appointed in separate complaints department that handles digital or online disputes with consumers and shall not hold parallel functions in ordinary company departments such as accounting and finance departments

The complaints department must be separate from other departments.

This complaints department must be presided over by persons who enjoy independence from the accounting and financial officers of the company.

The procedure should insure fairness.

9.E.2When regulatory authorities use electronic measures to receive public inputs and comments from interested parties and civil society groups when making rules or deciding on policy by conducting electronic hearings, they must take strict measures to insure that the comments submitted are truly those of the persons that their names are giving and not by other interested parties who misuse their names.

Add article 8.2.9 to Bologna and Milan Global Code of Judicial Ethics and 9E.3 to Mt Scopus Standards

9.E.3 With the expansion of the use of electronic filling of cases, pleadings and case mangemange in the courts, and with the common use of online access to case dockets, pleadings and briefs extreme caution and stick measures of data protection must be taken to ensure the privacy protection of materials and information which are designated to authorised access only and are not supposed to be open to public access.

9.F

B. INTERNATIONAL JUDGES

The following text on minimum standards for the independence of the international judiciary is based, with minor amendments, on the Burgh House Principles on the Independence of the International Judiciary which were formulated by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals

10. INDEPENDENCE

10.1 The international courts and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.

- 10.2 This freedom of the judges and courts shall apply both to the judicial process in pending cases, including the assignment of cases to particular judges, and to the operation of the court and its registry.
- 10.3 The court shall be free to determine the conditions for its international administration, including staff recruitment policy, information systems and allocation of budgetary expenditure.
- 10.4 Deliberations of the court shall remain confidential.
- 10.5 All Judges of international courts and tribunals shall adhere to the principle that a judges who are nationals of a member state of the organisation establishing the court or tribunal when exercising judicial discretion and function shall engage in fair and independent adjudication of the case and by no means in representation of the member state.

11 NOMINATION, ELECTION AND APPOINTMENT

- 11.1 In accordance with the governing instruments, judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned.
- 11.2 While procedures for nomination, election and appointment should consider fair representation of different geographic regions and the principal legal systems, as appropriate, as well as of female and male judges, appropriate personal and professional qualifications must be the overriding consideration in the nomination, election and appointment of judges.
- 11.3 Procedures for the nomination, election, and appointment of judges should be transparent and provide appropriate safeguards against nominations, elections and appointments motivated by improper considerations.
- 11.4 Information regarding the nomination, election and appointment process and information about candidates for judicial office should be made public, in due time and in an effective manner, by the international organisation or other body responsible for the nomination, election and appointment process.
- 11.5 For the promotion of the independence of judges it is preferable that appointment of judges to the international courts and tribunals shall be for one long term and shall not be open for re-election.

12 SECURITY OF TENURE

- 12.1 Judges shall have security of tenure in relations to their term of office. They may only be removed from office upon specified grounds and in accordance with appropriate procedures specified in advance.

- 12.2 The governing instruments of each court should provide for judges to be appointed for a minimum term to enable them to exercise their judicial functions in an independent manner.

13 SERVICE AND REMUNERATION

- 13.1 Judges' essential conditions of service shall be enumerated in legally binding instruments.
- 13.2 No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.
- 13.3 Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court.
- 13.4 Conditions of service should include adequate pension arrangements.

14 PRIVILEGES AND IMMUNITIES

- 14.1 Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial functions.
- 14.2 The court alone shall be competent to waive the immunity of judges; it should waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the exercise of the judicial function.
- 14.3 Documents and papers of the courts, judges and registry, in so far as they relate to the business of the court, shall be inviolable.
- 14.4 The state in which an international court has its seat shall take the necessary measures to protect the security of the judges and their families, and to protect them from adverse measures related to the exercise of their judicial function.

15 BUDGET

- 15.1 States, parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

16 FREEDOM OF EXPRESSION AND ASSOCIATION

- 16.1 Judges shall enjoy freedom of expression and association. These freedoms must be exercised in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect judicial independence or impartiality.

- 16.2 Judges shall maintain the confidentiality of deliberations, and shall not comment extra-judicially upon pending cases.
- 16.3 Judges shall exercise appropriate restraint in commenting extra-judicially upon judgements and procedures of their own and other courts and may upon any legislation, drafts, proposals or subject-matter likely to come before their court.

17 EXTRA-JUDICIAL ACTIVITY

- 17.1 Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the court of which they are members, or that may affect or may reasonably appear to affect their independence or impartiality.
- 17.2 Judges shall not exercise any political function.
- 17.3 Each court should establish an appropriate mechanism to give guidance to judges in relation to extra-judicial activities, and to ensure that appropriate means exist for parties to proceedings to raise any concerns.

18 PAST LINKS TO A CASE

- 18.1 Judges shall not serve in a case in which they have previously served as agent, counsel, advisor, advocate, expert or in any other capacity for one of the parties, or as a member of a national or international court or other dispute settlement body which has considered the subject matter of the dispute or in a case where they had previously commented or expressed an opinion concerning the subject matter in a manner that is likely to affect or may reasonably appear to affect their independence or impartiality.
- 18.2 Judges shall not serve in a case with the subject matter of which they had other forms of association that may affect or may reasonably appear to affect their independence or impartiality.

19 PAST LINKS TO A PARTY

- 19.1 Judges shall not sit in any case involving a party for whom they have served as agent, counsel, advisor, advocate or expert within the previous three years or such other period as the court may establish within its rules; or with whom they have had any other significant professional or personal link within the previous three years or such other period as the court may establish within its rules.

20 INTEREST IN THE OUTCOME OF A CASE

- 20.1 Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.

- 20.2 Judges shall not sit in any case in the outcome of which other persons or entities closely related to them hold a material, personal, professional or financial interest.
- 20.3 Judges must not accept any undisclosed payment from a party to the proceedings or any payment whatsoever on account of a judge's participation in the proceedings.

21 CONTACT WITH A PARTY

- 21.1 Judges shall exercise appropriate caution in their personal contacts with parties, agents, counsel, advocates, advisors, and other persons and entities associated with a pending case. Any such contacts should be conducted in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect the judge's independence and impartiality.
- 21.2 Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

22 POST-SERVICE LIMITATIONS

- 22.1 Judges shall not serve in a case with the subject-matter of which they have had any other form of association that may affect or may reasonably appear to affect their independence or impartiality.
- 22.2 Judges shall not seek or accept, while they are in office, any future employment, appointment or benefit, from a party to a case on which they sat or from any entity related to such a party that may affect or may reasonably appear to affect their independence or impartiality.
- 22.3 Former judges shall not, except as permitted by rules of the court, act in any capacity in relations to any case on which they sat during their judicial term of office.
- 22.4 Former judges shall not act as agent, counsel, advisor or advocate in any proceedings before the court on which they previously served for a period of three years after they have left office or such other period as the court may establish and publish.
- 22.5 Former judges should exercise appropriate caution as regards the acceptance of any employment, appointment or benefit, in particular from a party to a case on which they sat or from any entity related to such a party.

23 DISCLOSURE

- 23.1 Judges shall disclose to the court and, as appropriate, to the parties of the proceedings any circumstances which come to their notice at any time by virtue of which any of Principles 16 to 22 apply.

23.2 Each court shall establish appropriate procedures to enable judges to disclose to the court and, as appropriate, to the parties to the proceedings matters that may affect or may reasonably appear to affect their independence or impartiality in relations to any particular case.

24 WAIVER

24.1 Notwithstanding Principles 16 to 22, judges shall not be prevented from sitting in a case where they have made appropriate disclosure of any facts bringing any of those Principles into operation, where the court expresses no objections and the parties give their express and informed consent to the judge acting.

Section 24A: Ensuring impartiality of chairperson and members of commission of inquiry and other quasi judicial institutions.⁶⁴

24A.1 All international officers exercising judicial and quasi judicial functions and investigative and auditing functions are subject to the duty of fairness and impartiality. This includes international commissions of inquiry, mediation, arbitration, auditing officers and internal auditing officers of international organizations. Such said officers and Members or chairmen of international commission or committee of inquiry shall maintain impartiality and demonstrate independence in conducting inquiries and in making fact-finding and recommendations.

24A.2. The general rules applicable to international judges, including sections 10-24 in case of circumstances requiring disqualification of judges, shall also apply to said officers and commissions and committees of inquiry and to quasi judicial or investigative or auditing institutions.

24A.3. The general rules applicable to international judges, including sections 10-24 in case of circumstances requiring disqualification of judges shall also apply to auditing officers and internal auditing officers of international organizations.

25 WITHDRAWAL OR DISQUALIFICATION

25.1 Each court shall establish rules of procedure to enable the determination whether judges are prevented from sitting in a particular case as a result of the application of these Principles or for reasons of incapacity. Such procedures shall be available to a judge, the court, or any party to the proceedings.

⁶⁴ Amended at Osnabruck Conference, 2014.

26 MISCONDUCT

- 26.1 Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the part of a judge that may affect independence or impartiality.
- 26.2 Such a complaint may, if clearly unfounded, be resolved on a summary basis. IN any case where the court determines that more detailed investigation is required, the rules shall establish adequate safeguards to protect the judges' rights and interests and to ensure appropriate confidentiality of the proceedings.
- 26.3 The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.
- 26.4 The outcome of any complaint shall be communicated to the complainant.

27 AD HOC JUDGES

- 27.1 An *ad hoc* judge in an international court or tribunal must act conscientiously and independently in the adjudication of the case to which that judge was assigned to sit.
- 27.2 The restrictions and provisions applicable to full-time international judges regarding past links, extra-judicial activities, post-service limitations, and security of tenure shall not apply to *ad hoc* judges.

International Association of Judicial Independence and World Peace

International Project on Judicial Independence
Mt Scopus Standards Conferences Series

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Professor Wayne McCormack, Co-Chair of the Conference, E.W. Thode Professor of Law of Law, University of Utah

VII. Co-Chairs of the International Conference on Judicial Independence, University of Vienna, 20-22 May 2011

Professor Shimon Shetreet, Co-Chair of the Conference, Director, Sacher Institute of Comparative Law, and Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Professor Walter Rechberger, Co-Chair of the Conference, Faculty of Law, University of Vienna

VIII. Co-Chairs of the International Conference on Judicial Independence and Globalisation, City University of Hong Kong, 21-23 March 2012

Professor Shimon Shetreet, Co-Chair of the Conference, Director, Sacher Institute of Comparative Law, and Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Professor Anton Cooray, Associate Dean of Law, City University of Hong Kong

IX. Co-Chairs of the International Conference on Judicial Independence: Impartiality and Fairness of the Judicial Process, University of Ghent, 18-20 October 2012

Professor Shimon Shetreet, Co-Chair of the Conference, Director, Sacher Institute of Comparative Law, and Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Professor Marcel Storme, University of Ghent, Belgium, Honorary President, International Association of Procedural Law

X. Co-Chairs of the International Conference on Judicial Independence: Rule of Law and World Peace, University of San Diego, August 2013

Professor Shimon Shetreet, Co-Chair of the Conference, Director, Sacher Institute of Comparative Law, and Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Professor Maimon Schwarzschild, Co-Chair of the Conference, Professor of Law, University of San Diego

XI. Moscow May 2014

Judicial Independence As Essential Foundation of Justice and Peace, Moscow and St. Petersburg, May 2014

Kutafin Moscow State Law University

Co chairs and Organising Committee

Professor Irina Reshetnikova, Urals State Law Academy, President of the Federal Arbitrazh Court of Urals Region, Conference Co-Chair ,

Professor Shimon Shetreet , Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem, President, International Association of Judicial Independence and World Peace, Co Chair

Dmitry Magonya, Managing Partner for ART DE LEX Law Firm, Moscow,

Professor Vladimir Sinyukov, Prorector, Kutafin Moscow State Law University (MSAL),

XII. Osnabrueck October 2014

Judicial Impartiality and Independence :Ensuring Fairness in Cases Involving Foreign Parties in Domestic Courts , Judicial Impartiality and Independence -Ensuring Fairness in Cases Involving Foreign Parties in Domestic Courts, Osnabrück University, 24-26 October 2014

Co-Chairs

Professor Fryderyk Zoll, Osnabrück University, Jagiellonian University of Krakow

Professor Shimon Shetreet, Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem, President, International Association of Judicial Independence and World Peace

XIII. Bologna Milan 2015

Judicial independence in a Globalized Legal Culture: The Use of Foreign and Transnational Precedents by National Supreme Courts, University of Bologna and University of Bocconi Milan, 4 June - 6 June 2015

Co-Chairs :

Professor Dr. Shimon Shetreet, Hebrew University of Jerusalem, President, International Association of Judicial Independence and World Peace

Aggregate Professor Daniela Cavallini, University of Bologna, Bologna

Professor Dr. Giuseppe Franco Ferrari, University of Bocconi, Milan

XIV. Krakow 2016

International Conference on Judicial Independence in Times of Transition of Government and Impartiality for Foreign Parties in Domestic Courts. Krakow, Poland, at the School of the Judiciary, January 2016.

Co Chairs :

Professor Dr. Shimon Shetreet, Hebrew University of Jerusalem, President, International Association of Judicial Independence and World Peace

Prof. Dr. Fryderyk Zoll , Jagellonian University and Osnabruck University

Dr Elwira Macierzynska, Kozminski University, Warsaw

XV. London 2018

Queen Mary University of London, School of Law, UK, on 20-22 June 2018.

Judicial Independence: Global Challenges and Appropriate Remedies; and Measuring Justice and the Rule of Law.

Co Chairs :

Professor Shimon Shetreet, Hebrew University of Jerusalem President, International Association of Judicial Independence and World Peace,

Professor Seán McConville Professor of Law and Public Policy Queen Mary University of London.

XVI. Claremont California 2019

Claremont McKenna College 8-10 March 2019.

Focus Issue : Judicial Independence: The Challenge of Maintaining and Measuring Justice and the Rule of Law.

Co Chairs : Professor Shimon Shetreet, Hebrew University of Jerusalem, and Professor Hiram Chodosh President Claremont McKenna College, California, USA.

XVII. Potsdam 2020

University of Potsdam, 14 - 16 February 2020

Focus Issues : Judicial Independence A Cornerstone of Democracy ,Justice and Technology

Conference Co-Chairs:

Professor Shimon Shetreet, Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem,

University Professor Dr. Thorsten Ingo Schmidt, Chair in Public Law, Especially Constitutional Law, Administrative Law and Local Government Law

Jerusalem 2022 4-6 January 2022
Hebrew University of Jerusalem and Claremont McKenna College
Focus Issue: Measuring Justice: Efficiency, Quality and Independence of Justice

Co-Chairs: The co-chairs of the conference are Professor Hiram Chodosh, the President of Claremont McKenna College California, Professor Eric Helland of Claremont McKenna College, and Prof. Shimon Shetreet, President of the JIWP Association and Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem

Members of the Consultation Group of the International Project of Judicial Independence:

Professor Neil H. Andrews, University of Cambridge, Clare College,
Professor Frank Bates, School of Law, University of Newcastle Australia
Professor John Bell, Faculty of Law, University of Cambridge
Professor Vernon Bogdanor, Oxford University
Prof. Tomer Braude, Faculty of Law, Hebrew University
Professor Dr. Winfried Brugger, Universität Heidelberg
H.E. Advocate Markus Buechel, Senior Lawyer, Liechtenstein
Professor Federico Carpi, President of the World -Association of Procedural Law
Professor Oscar G. Chase, New York University School of Law
Professor Albert Chen, Professor of Law, Hong Kong University
Professor Hiram Chodosh, President Claremont McKenna College ,California and former Dean, S.J. College of Law, the University of Utah
The Late Professor Sir Louis Blom Cooper, QC UK
Professor Anton Cooray, The School of Law, City University of London
Professor James R Crawford, Faculty of Law, University of Cambridge
Dr. Cyrus Das, Former President of the Bar of Malaysia
Professor Masahisa Deguchi, Faculty of Law, Ritsumeikan University
Professor Chandra R. de Silva, Vice Provost, Old Dominion University
Prof Yoav Dotan, Dean Faculty of Law, Hebrew University of Jerusalem
Professor Bernhard Ehrenzeller, Universität St.Gallen
Professor Jonathan Entin, Case Western Reserve University School of Law
Professor Hans Walter Fasching, Austria
Professor David Feldman, Chairman of the Faculty Board of Law, Faculty of Law, University of Cambridge
Professor Christopher F Forsyth, Director Centre of Public Law, Faculty of Law, University of Cambridge

Professor Martin Friedland, Faculty of Law, University of Toronto
 Professor Bryant G. Garth, American Bar Foundation
 Professor Peter Gilles, Institut für Rechtsvergleichung, Johann Wolfgang Goethe Universität
 The Late Professor Stephen Goldstein, Emeritus Professor, Hebrew University of Jerusalem
 Professor Peter Gottwald, Universität Regensburg, Secretary General World Association of Procedural Law
 Professor Ada Pellegrini Grinover, Brazil
 The Late Professor Walter Habscheid, Emeritus Professor, University of Geneva and University of Zurich
 Prof. Yitzhak Hadari, Tel Aviv University, Natanya College Law
 Professor Dr. Burkhardt Hess, University of Heidelberg
 Professor Moshe Hirsh, Faculty of Law, Hebrew University of Jerusalem
 Justice Tassaduq Hussain Jilani, Judge of the Supreme Court of Pakistan
 The Late Professor John Anthony Jolowicz, Trinity College, University of Cambridge
 Professor Konstantinos D. Kerameus, University of Athens
 Professor Nikolas Klamaris, University of Athens
 Professor Ruth Lapidot, Faculty of Law, Hebrew University of Jerusalem
 Professor Per Henrick Lindblom, Faculty of Law, Uppsala University Juridicum
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 Professor Stephen Marks, Francois-Xavier Bagnoud Professor of Health and Human Rights, Department of
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 Professor Sean McConville, Professor of Law and Professorial Research Fellow
 School of Law, Queen Mary College, University of London
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 Paul Morris, Barrister, York, UK
 Professor James Nemeth, Eotvos Lorand University, Hungary
 Professor Dr. Paul Oberhammer, University of Vienna
 Professor Roger Perrot, Université de Paris
 Professor Hoong Phun ('HP') Lee, Deputy Dean, Faculty of Law, Monash University
 Professor Walter H. Rechberger, University of Vienna
 Professor Judith Resnik, Yale Law School
 Professor Michel Rosenfeld, Benjamin N. Cardozo School of Law, Yeshiva University
 Professor Maimon Schwarzschild, Faculty of Law, University of San Diego
 Dr. Anat Scolnicov, Deputy Director, Centre of Public Law, University of Cambridge
 Prof. Yuval Shany, Faculty of Law, Hebrew University of Jerusalem
 Professor Shimon Shetreet, Greenblatt professor of Public and International Law, former Director, Sacher
 Institute of Comparative Law Hebrew University of Jerusalem
 Professor Gary J Simson, Dean, Case Western Reserve University
 Professor Zhivko Stalev, Bulgaria
 The late Professor Marcel Storme, Ghent University, Past President of the World -Association of Procedural Law
 Professor Yasuhei Taniguchi, Senshu University, Tokyo
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 Professor K. K. Venogopal, Attorney General of India, Senior Advocate of the Supreme Court, India
 Professor Garry D. Watson, Osgoode Hall Law School, York University
 Prof Joseph Weiler, New York University
 Professor Neil James Williams, University of Melbourne,
 Professor Pelayia Yessiou-Faltsi, Faculty of Law, Aristotle University of Thessaloniki

Professor Andrey J. Zoll, Former President of Constitutional Court of Poland
Professor Dr. Fryderyk Zoll, Faculty of Law, Jagellonian University, Krakow

**International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals
on the Independence of International Judges**

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Appendix 2:

