

# **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)**

At Mt Scopus, Jerusalem, March 19, 2008

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 impartial<sup>1</sup> judiciary is an institution of the highest value in every society<sup>2</sup> and an essential pillar of liberty<sup>3</sup> 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.<sup>4</sup>

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 courts<sup>5</sup>.

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

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Stating this in the body of the standards themselves in addition to the preamble helps stress the section's importance and ensures that<sup>1</sup> 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.

Preamble, Montréal Declaration.<sup>3</sup>

Montréal Declaration.<sup>4</sup>

→ 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.).

This Article 1.3 was added as an Amendment in the Conference in Venna 2011.<sup>5</sup>

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 decided<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

(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 governments<sup>9</sup> 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.

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<sup>6</sup>Elsewhere 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).

<sup>7</sup> Ibid., p. 116.

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

## **BUILDING AND MAINTAINING CULTURE OF JUDICIAL INDEPENDENCE<sup>10</sup>**

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.

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.<sup>11</sup>

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

<sup>11</sup> 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.

**1.5.2** Further to the resolution and recommendations of leading international organizations<sup>12</sup>, 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**

**(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

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<sup>12</sup> 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)

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 and backlogs and 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 JUDICIARY<sup>13</sup> AND THE EXECUTIVE

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

- 2.1. The Judiciary as a whole shall be independent.
- 2.2. Each judge shall enjoy both personal independence and substantive independence:<sup>14</sup>
  - 2.2.1. Personal independence means that the terms and conditions of judicial service are adequately secured by law<sup>15</sup> 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 shall<sup>16</sup> enjoy collective independence and autonomy vis-à-vis the Executive.

## 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.<sup>17</sup>

**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.

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Although substantive independence warrants wide protection, it is not without boundaries. Judges must exercise their powers<sup>14</sup> 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 unjusticiable issues, such as political questions: Shetreet, *Judicial Independence :New Conceptual Dimensions and Contemporary Challenges* , in Shetreet and Descenes *Judicial Independence: The Contemporary Debate* at 635.( 1985 )

To clarify that these important conditions must be legally entrenched.<sup>15</sup>

Adds mandatory language.<sup>16</sup>

, EU Report on: The 2016 EU Justice Scoreboard 2018 EU justice Scoreboard . EU Report on: Strengthening Trust, Mobility and Growth within the European Union, 201417

[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en)

Shimon Shetreet: The Justice System as an Essential Foundation of Economy and Trade, 3 *Journal of IMF Report on Italy*: <https://www.imf.org/external/pubs/ft/scr/2013/cr13299.pdf>

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.

**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.<sup>18</sup>

**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.<sup>19</sup>
- 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.

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<http://network-presidents.eu/sites/default/files/EUJusticeScoreboard2016.pdf><sup>18</sup>  
[https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf)



- 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.<sup>20</sup>
- 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.<sup>21</sup>
- 2.16. Candidates for judicial office shall be individuals of integrity<sup>22</sup> and ability, well- trained in the law. They shall have equality of access to judicial office.<sup>23</sup>
- 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 constitutionally<sup>24</sup> or secured by law.

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

Montréal Declaration<sup>21</sup>

→ "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).

Montréal Declaration section 2.11.<sup>22</sup>

Exact wording of the Montréal Declaration, section 2.11.<sup>23</sup>

UN Basic Principles.<sup>24</sup>

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

- 2.22. Judicial salaries, pensions, and benefits<sup>25</sup> 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-empt 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 JUDICIARY<sup>26</sup> AND THE LEGISLATURE

- 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.<sup>27</sup>
- 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 comparable<sup>28</sup> 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.<sup>29</sup>

In the interests of completeness<sup>25</sup>

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

In order to prevent "rewarding" specific judges.<sup>27</sup>

- 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.

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

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

- 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.<sup>30</sup>

#### 4. TERMS AND NATURE OF JUDICIAL APPOINTMENTS

- 4.1. The method of judicial selection shall safeguard against judicial appointments for improper motives<sup>31</sup> 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.
- 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.<sup>32</sup>
- 4.4. Promotion of judges shall<sup>33</sup> be based on objective factors, in particular merit,<sup>34</sup> integrity and experience.<sup>35</sup>
- 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.

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In order to try to prevent situations such as those that occurred in Ecuador in April 2007 when Congress removed all nine judges of<sup>30</sup> 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).

Montréal Declaration.<sup>31</sup>

See Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in Shetreet and Descenes<sup>32</sup> *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.

In order to make this mandatory.<sup>33</sup>

"Merit" is broader than "ability".<sup>34</sup>

UN Basic Principles.<sup>35</sup>

- 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."

- 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.<sup>36</sup>
- 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 modeled 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

- 5.1. The proceedings for discipline and removal of judges<sup>37</sup> shall be processed expeditiously and fairly<sup>38</sup> and shall ensure fairness to the judge including adequate opportunity for hearing.
- 5.2. With the exception of proceedings before the Legislature<sup>39</sup>, the procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public<sup>40</sup> 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.<sup>41</sup>
- 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 removal<sup>42</sup> actions shall be based upon established standards of judicial conduct.<sup>43</sup>
- 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

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Scottish temporary judges cases *Starrs and Chalmers v. D. F. Linlithgow* 2000 S. L. 2 ; *Clancy v. Caird* 2000 Scottish Law Times <sup>36</sup>  
 ,The Bailiff Judicial Appointments ( Scotland ) Act 2000  
 The UN Basic Principles adds "in his/her judicial and professional capacity." This wording was not added here to prevent personal <sup>37</sup>  
 suits being lodged against judges as a back-door method of interfering with their independence.

UN Basic Principles.<sup>38</sup>  
 Montréal Declaration section 2.36.<sup>39</sup>  
 Montréal Declaration section 2.36.<sup>40</sup>  
 Montréal Declaration section 2.36.<sup>41</sup>  
 Inclusive.<sup>42</sup>  
 Montréal Declaration section 2.34. Broad. <sup>43</sup>

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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

## 7. STANDARDS OF CONDUCT<sup>47</sup>

7.1. Judges may not serve in Executive or Legislative functions, including as:

7.1.1. Ministers of the government; or as

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UN Basic Principles.<sup>44</sup>  
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).

Bangalore Principles<sup>46</sup>  
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.

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,<sup>48</sup> 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 members<sup>49</sup>, 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.

7.7. Judges may take appropriate action to protect their judicial independence.<sup>50</sup>

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

<sup>51</sup>

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ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).<sup>48</sup>  
ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.<sup>49</sup>  
This is how the section appears in the Montréal Declaration, section 2.09.<sup>50</sup>  
Bangalore Principles<sup>51</sup>

- 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.<sup>52</sup>
- 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.<sup>53</sup>

## 8. SECURING IMPARTIALITY AND INDEPENDENCE<sup>54</sup>

- 8.1. A judge<sup>55</sup> shall enjoy immunity from legal actions in the exercise of his official functions.<sup>56</sup>
- 8.2. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.<sup>57</sup>
- 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, threats<sup>58</sup> 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 judiciary<sup>59</sup>

## 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.<sup>60</sup>

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

This Article 7.12 was added as an Amendment in Vienna in 2011.<sup>53</sup>

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

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

<sup>56</sup> 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).

"It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear <sup>57</sup> 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).

Including physical threats to injure or to kill <sup>58</sup>

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

## **9A. ADMINISTRATIVE ADJUDICATORS<sup>61</sup>**

### **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

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 JUDGES<sup>62</sup>**

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

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This Article 9A was added as an Amrndment in Vienna in 2011.<sup>61</sup>  
This Article 9B was added as an Amendment in Ghent in 2012.<sup>62</sup>



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.<sup>63</sup>**

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**

1 In this section:

- a) "lawyer" means a person qualified and authorized to practice before the courts, or to advise and represent

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This section was added in the Osnabruck Conference, 2014.<sup>63</sup>

his clients in legal matters;

- b) "Bar association" means the recognized professional association to which lawyers within a given jurisdiction belong.

## **General Principles**

2 The legal profession is one of the institutions referred to in 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 and 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.2** When 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.

## **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.<sup>64</sup>**

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.

## **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.

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**Professor Shimon Shetreet**, Greenblatt Professor of Public and International Law, Hebrew University of Jerusalem, former Director, Sacher Institute of Comparative Law

**Professor James R. Crawford**, Faculty of Law, University of Cambridge

**II. Officers of the International Conference on Judicial Independence for the Drafting of the International Standards of Judicial Independence, Zurich Area Conference, 30 November - 1 December 2007**

**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 Christopher F Forsyth**, Co-Chair of the Conference, Director Centre of Public Law, Faculty of Law, University of Cambridge

**Professor Marcel Storme**, Emeritus Professor, Ghent University, Past President of the World Association of Procedural Law, Leader of the Discussions

**H.E. Markus Buechel**, Chair of the Local Organising Committee

**III. Co-Chairs of the International Conference on Judicial Independence and the Constitutional Position of the Judiciary, Jerusalem, 18-20 March 2008**

**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 Christopher F Forsyth**, Co-Chair of the Conference, Director Centre of Public Law, Faculty of Law, University of Cambridge

**IV. Co-Chairs of the International Conference on Judicial Independence: The Challenge of Implementing the International Standards, Krakow, November 2008**

**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 Dr. Fryderyk Zoll**, Faculty of Law, Jagelonian University, Krakow

**V. Co-Chairs of the International Conference on the The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges, University of Cambridge. 14-16 August 2009**

**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 Christopher F Forsyth, Co-Chair of the Conference**, Director Centre of Public Law, Faculty of Law, University of Cambridge

**VI. Co-Chairs of the International Conference on Judicial Independence: Challenges For Judicial Independence, Implementing Judicial Independence in Multi-cultural Societies and in Times of Crisis, University of Utah, 1-3 October 2010**

**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

**Dean Hiram Chodosh, Co-Chair of the Conference**, Dean, School of Law, University of Utah

**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**

**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  
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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 fur Rechtsvergleichung, Johann Wolfgang Goethe Universitat  
The Late Professor Stephen Goldstein, Emeritus Professor, Hebrew University of Jerusalem  
Professor Peter Gottwald, Universitat 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  
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Professor Moshe Hirsh, Faculty of Law, Hebrew University of Jerusalem  
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The Late Professor John Anthony Jolowicz, Trinity College, University of Cambridge  
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Professor Nikolas Klamaris, University of Athens  
Professor Ruth Lapidot, Faculty of Law, Hebrew University of Jerusalem  
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Professor Stephen Marks, Francois-Xavier Bagnoud Professor of Health and Human Rights, Department of Population and International Health, Harvard School of Public Health.  
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Professor James Nemeth, Eotvos Lorand University, Hungary  
Professor Dr. Paul Oberhammer, University of Vienna  
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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  
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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 Garry D. Watson, Osgoode Hall Law School, York University  
Prof Joseph Weiler, New York University  
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Professor Pelayia Yessiou-Faltsi, Faculty of Law, Aristotle University of Thessaloniki  
Professor Andrey J. Zoll, Former President of Constitutional Court of Poland  
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**International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals  
on the Independence of International Judges**

**Co-Chairs**

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Campbell McLachlan, Professor, Deputy Dean, School of Law, Victoria University of Wellington

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Hans van Houtte, Professor of International Law, Katholieke Universiteit Leuven

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Davis Robinson, LeBoeuf, Lamb, Greene & MacRae,

Soli Sorabjee, Attorney General of India,

Margrete Stevens, Senior Counsel, International Centre for Settlement of Investment Disputes

## **Appendix 2:**



International Association of Judicial Independence and World Peace  
International Project on Judicial Independence  
International Conférence on  
Judicial Independence: Global Challenges and Appropriate Remedies;  
Measuring Justice and the Rule of Law  
20-22 June 2018, London  
**Approved Amendments**  
**to the Mount Scopus International Standards of Judicial Independence**  
**and**  
**to The Bologna and Milan Global Code of Judicial Ethics**

**Amendments to the Mount Scopus International Standards of Judicial Independence:**

**Add article 1.5 to the Mount Scopus International Standards**

**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.<sup>65</sup>

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<sup>65</sup> 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

**1.5.2** Further to the resolution and recommendations of leading international organizations<sup>66</sup>, 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**

**(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.**

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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.

<sup>66</sup> 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)

## 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.<sup>67</sup>

**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 ,<sup>68</sup> **high quality** of the adjudicative process, **efficiency** of the Judicial Process and Judicial Administration<sup>69</sup>, **accessibility** of the courts and judicial services and ensuring **public confidence** in the courts, **accountability** of the judiciary and the **transparency** 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.<sup>70</sup>

**1.6.5 High quality** of the judicative process, includes keeping high judicial ethics and integrity<sup>71</sup> and insuring the right of appeal,<sup>72</sup> insuring justice and fairness and correcting errors in the individual case and developing and maintaining sound rules of law of the legal system.

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<sup>67</sup> For detailed analysis see: Louis Blom-Cooper, On Fairness, in Shetreet, Editor ,Culture of Judicial Independence , supra note 1, at 144-153; Shimon Shetreet, Judicial Independence, Liberty, Democracy and International Economy, in Shetreet, Editor Culture of Judicial Independence ,supra note 1 , 14-47 ;Shimon Shetreet, The Administration of Justice: Practical Problems, Value Conflicts and Changing concepts, 13 UBC L. Rev. 52,1979. Shimon Shetreet, Fundamental Values of the Justice System, 23 EBL Rev. 61-76, 64 (2012). TARUFFO, M., "Globalizing Procedural Justice. Some General Remarks", in Revista de Proceso. Year 39, no. 237, pp. 459-472. Soraya Amrani Mekki, Procedural Economy, delivered at Colloquium Trilingue Gent 2015. H.P. Lee, "Comparative Judiciaries" (Cambridge University Press 2011); J. Bell, "Judiciaries Within Europe: A comparative Review" (2006); See detailed review on the Judicial independence in L. Neudorf, "The Dynamics of Judicial Independence", chapter 1, 2017; The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, pp.275-332 (2009); S. O'Connor, "The Threat to Judicial Independence" (1997); P. Russel and D.N. O'Brien, eds. Judicial Independence in the Age of Democracy (2001); A. Siebert-Fohr, ed. Judicial Independence in Transition (2012). H.B.Lee and Marilyn Pitar

<sup>68</sup> Andrews, Judicial Independence: The British Experience. (in Shereet and McCormack Culture of Judicial Independence, chapter 24). Markus B. Zimmer, Judicial System Institutional Frameworks: An Overview of the Interplay between Self-Governance and Independence, UTAH LAW REVIEW, Vol. 1, 2011, pp. 124-125

<sup>69</sup> Marcel Storme Best Science, Worst Practice ? in ,Dmitry Mareshin, Editor, Civil Procedure In Cross-Cultural Dialogue: Eurasia Context, IAPL World Conference on Civil Procedure, at 17-25 ( 2012, Moscow, Russia )

<sup>70</sup> Andrews, Judicial Independence: The British Experience. (Supra note 8). Markus B. Zimmer, Judicial System Institutional Frameworks: An Overview of the Interplay between Self-Governance and Independence, UTAH LAW REVIEW, Vol. 1, 2011, pp. 124-125

<sup>71</sup> The Bologna and Milan Global Code of Judicial Ethics of JIWP Association Shereet and McCormack Culture of Judicial Independence, Appendix XXXXXX (2016)

Neil Andrews, Judging the Independence and Integrity of Foreign Courts, in Culture of Judicial Independence (ed. Shimon Shetreet), 2014.

<sup>72</sup> Paul Carrington, Daniel Meador and Maurice Rosenberg, JUSTICE ON APPEAL, West Publishing Co. p. 2-3 (1976); Shimon Shetreet, The Discretionary Power of the Judge General Report-Part Two in DISCRETIONARY POWER OF THE JUDGE: LIMITS AND COTROL, Kluwer Pub. (ed. Prof. Marcel Storme and Prof. Burkhard Hess)(2003).



**1.6.6 The Efficiency** of the Judicial Process and Judicial Administration<sup>73</sup> including exercising careful oversight and to keep the cost of litigation reasonable, insuring speedy trial, reducing courts delays and backlogs and 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.

Explanatory notes

to the Mount Scopus International Standards of Judicial Independence

Foundation of Democracy and the Rule of Law.

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<sup>73</sup> Marcel Storme Best Science, Worst Practice ? in ,Dmitry Maleshin, Editor, Civil Procedure In Cross-Cultural Dialogue: Eurasia Context, IAPL World Conference on Civil Procedure, at 17-25 ( 2012, Moscow, Russia )

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 and other reforms giving greater control to the Executive in judicial matters) 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). These and other challenges require careful study.

The Court of Justice of the European Union had to deal with numerous cases regarding challenges to the rule of law and judicial independence in European countries. In these cases, the CJEU emphasized the importance of the rule of law and the duty of the member states to respect the various aspects of the rule of law, including human rights and judicial independence. The cases relates to a number of countries including Hungary, Poland and Romania.

Israel has experienced a very intensive period of legislative initiatives which are considered, judged by their cumulative impact, damaging to the culture of democracy in the Israeli system of government. These legislative initiatives and Executive actions relate to a long list of issues regarding many aspects of legal and constitutional matters. These include the attempts to limit criminal investigation of the prime minister during his term of office, legislation regarding police recommendation for criminal charges, a law regarding the reporting by non-governmental organization, changing of the system of judicial review of legislation from a adjudicative model to a declaratory model giving a final word to the parliament in constitutionality issues.

Attempts to intervene in the seniority tradition in the supreme court of the appointment of the president, a very intensive effort of the Justice Minister to influence judicial appointments in the court system including the Supreme Court.

Very aggressive attack on the police and of the chief inspector of the police and the state prosecutor, serious interference in the public broadcasting services including closing down the public Israel broadcasting authority and establishing a new broadcasting corporation.

The JIWP issued a statement of concern on the events in Turkey:

In view of numerous reports and complaints received by the JIWP association regarding dismissal and detention of judges and law officers in Turkey as well as other serious violations of political freedom and human rights the JIWP association expresses its concern over these events and calls upon its members to bring the concern to the attention of relevant authorities in their home countries with a view that the authorities will convey a message of concern to the Government of Turkey to respect judicial independence and human rights .

Earlier in 2016 the JIWP issued a statement of concern regarding the activities and actions of the newly elected government in late 2015 in Poland which included numerous measures regarding the higher judicial council and giving

more control to executive over the judiciary. This statement was approved in the 2016 Krakow international judicial independence in 2016.

In view of all this developments and challenges to the rule of law, democracy and judicial independence it is important to emphasize the essential foundations of the democratic government

In this regard it is noteworthy to refer to the Venice commission standards of democracy.

At article 2.3 to the Mount Scopus International Standards of Judicial Independence

## **2.3 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.<sup>74</sup>

**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.<sup>75</sup>

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

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<sup>74</sup> 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](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.

<sup>75</sup> <http://network-presidents.eu/sites/default/files/EUJusticeScoreboard2016.pdf>  
[https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf)

**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.

### **Explanatory note on Measuring Justice.**

The importance of the justice system and its impact on economic trade and economic growth can be seen from the different organizations which report on the impact the justice system has on economic trade and economic growth. The World Bank publishes an annual report called Doing Business. Each year the report details the changes and movements of different countries with regards to the economic regulation reforms. These publications are a tool for finding effective measurements for business around the globe while exploring many of the key development questions of our time.

The 2014 report was entitled ‘Understanding Regulations for Small and Medium-Size Enterprises’. The 2015 report entitled ‘Going Beyond Efficiency’ was devoted to explore the economy behind the regulations while the 2016 report is entitled ‘Measuring Regulatory Quality and Efficiency’. We see that the impact of the economy on the justice system and vice versa is an important topic of discussion in today’s world.

The European Union commission began to publish annual report on the justice system and the rule of law including justice scoreboard. The European Commission for the Efficiency of Justice (CEPEJ) published the report in 2014 entitled ‘European Judicial Systems: Efficiency and Quality of Justice’. The purpose of the commission was to promote the effective implementation of existing instruments for the organisation of justice; to ensure that public policies concerning the courts account for the needs of the justice system users and to offer effective solutions for conflict resolution in order to reduce congestion in the Courts on the national and international levels. Other organisations have also seen the importance the justice system has on the economy. The World Justice Project Open Government Index publishes findings on the openness of governments with regard to their policies and their overall civic participation in government.

The International Association of Procedural Law is an important academic society of the legal world on these issues. An important conference in Gent,Belgium,was recently held in 2015 to honour Professor Marcel Storme, the association’s honorary president, and to discuss the fundamental values of the justice system and the practical challenges facing the court system and the justice system.

The Venice Commission issued a detailed report on checklist of democracy and the rule of law.

## **B. Approved Amendment**

### **Of The Bologna and Milan global code of judicial ethics of JIWP**

**Add article 8.2.8 to Bologna and Milan Global Code of Judicial Ethics**

**8.2.8** Without banning altogether the use of general and social media by judges, subject to the standards laid down in this Code, such as in article 7, judges may not maintain their own blogs or comment online on an ordinary basis.

**Add article 8.2.10 to Bologna and Milan Global Code of Judicial Ethics and 9E.2 of the Mt Scopus Standards**

**8.2.10** When 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**

**8.2.9** 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.

**Explanatory Notes on Justice and Technology.**

Ethical rules relevant to justice and technology

The advance of digital technology has had substantial impact on justice and on judicial ethics. Attention must be paid to study online justice, remote justice and recourse to social media by judicial officers, and code of ethics relative to digital realities. Electronic fulling, privacy protection of online court data.

The advance of digital technology has had substantial impact on justice and on judicial ethics. Attention must be paid to study online justice, remote justice and recourse to social media by judicial officers, and code of ethics relative to digital realities.

According to the report of our colleague Prof. Jonatan Entin a number of issues arose as a result of the digital culture. A number of U.S. judges have their own blogs on which they comment about a wide variety of legal issues. This has generated some discussion. To some extent, the issues here are similar to those that arise when judges write articles or books, but blogs are less formal and much more immediate. Meanwhile, many judges have social media presence, which also raises at least ethical issues. Several U.S. jurisdictions (along with the ABA) have suggested ethical guidelines for judges on social media, but many of those guidelines are so general that they afford limited guidance. There could be a useful paper on either or both of these aspects of judicial use of social media. The Bologna and Milan Global Code of Judicial Ethics of the JIWP address these issues.

Many U.S. administrative agencies accept or strongly encourage submission of comments on proposed rules electronically rather than in writing. Judicial review of agency rules often focuses on how the agency has responded to comments. Electronic rulemaking can pose a number of significant questions, such as whether submitted comments

are genuine or generated by artificial means (this is a variation on the so-called astroturf phenomenon in which supposedly grass-roots activity has been organized by vested interests) and whether comments have been submitted by the persons whose names are attached to them (there is a current controversy involving submissions to the Federal Communications Commission where many of the people whose names have been used now claim that they did not submit the comments and do not agree with the positions taken in their name).

The U.S federal courts and many state courts in the U.S and other countries now use electronic filing in cases. Not only is it possible to see case dockets online, but it is possible (and often necessary) to submit pleadings and briefs online. There have been some well-publicized incidents in which sensitive personal information has been made available to the public through such systems.

### **Appendix 3:**



**International Project of Judicial Independence of the  
International Association of Judicial Independence and World Peace**

**JIWP**

*Bologna Milano Global Code of Judicial Ethics 2015*

*Approved at the International Conference of Judicial independence held at the University of Bologna and at Bocconi University of Milano June 2015*

**Preamble**

The Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights and regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions, recognize as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice, and is also essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society and it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

The Global Code of Judicial Ethics is intended to clarify standards for ethical conduct of judges. The Code is designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct.

Parallel to the development of national codes of judicial ethics it is very important that a global code of judicial ethics should be adopted. The text is based on and adopted from standards contained in Mt Scopus International Standards of Judicial Independence 2008 , The New Delhi Code of Minimum Standards of Judicial independence 1982 ,Montreal Universal Declaration of The Independence of Justice 1983 , The Bangalore Principles of Judicial Conduct November 2002, the United Nations Basic Principles of Independence of the Judiciary, Mount Scopus Standards of Judicial Independence, 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, and the American Bar Association's revision of its ethical standards for judges. The Draft Global Code is also based on the Code of Judicial conduct for the United States Judges 1973, California Canon of Ethics 2003, Canadian Judicial Council, *Ethical Principles for Judges* (1998),<sup>76</sup> Council of Chief Justices of Australia *Guide to Judicial Conduct* (2002),<sup>77</sup> the Guide to Judicial Conduct (for General Courts)<sup>78</sup>, the Guide to Judicial Conduct 2009 (UK Supreme Court).<sup>79</sup>

The Global Code of Judicial Ethics is adopted as additional essential and complimentary code to the Mount Scopus International Standards of Judicial independence .

## **Part one: National Judges**

### **1. BASIC PRINCIPLES<sup>80</sup>**

1.1 The Global Code of Judicial Conduct reflects and expresses fundamental values and morals which constitute the basis of the acts of judicature and the behaviour and conduct of a judge.

The rules of the code are a crystallization of essential guiding principles which draw from ancient tradition and adapt themselves to contemporary times and place.

A judge shall direct his ways according to the law and in accordance with these rules, and shall at all times place before his eyes the need to maintain the confidence of the public in the judicial branch.

1.2 A judge shall be seen as having breached a rule of the Code of Judicial Conduct in a way allowing submittal of a complaint to the Disciplinary Authority if his conduct constitutes intentional or gross violation of the code reaching the extent of improper conduct in fulfilling his role or conduct which does not befit the status of a judge.

1.2.1 The procedure of disciplinary measures shall be conducted in full transparency including the final judgement.

1.3 Every jurisdiction should establish citizens' complaints procedure to allow citizens to submit complaints against misconduct or improper conduct of judges. The panel of the review body of the complaints must include lay-people who are not judges or former judges; they shall be the majority of the panel.<sup>81</sup>

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Accessed at [www.cjc-ccm.gc.ca/cmskib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmskib/general/news_pub_judicialconduct_Principles_en.pdf)<sup>76</sup>  
Accessed at [www.aija.org.au/online/GuidetoJudicialConduct.pdf](http://www.aija.org.au/online/GuidetoJudicialConduct.pdf). For the practise in Australia see Mr Justice Thomas' study,<sup>77</sup>  
*Judicial Ethics in Australia* (2<sup>nd</sup> ed., 1997).

Accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf).<sup>78</sup>  
HCJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54.<sup>79</sup>  
Israel Rules of Judicial Ethics (2007).<sup>80</sup>

This amendment must be put in the Mt Scopus Standards of Judicial Independence as well.<sup>81</sup>



1.4 To assist in the implementation and interpretation of the code it is strongly recommended that each jurisdiction shall establish advisory committee on ethics which shall receive enquiries from judges and other professional authorities regarding questions of ethics and conduct.

## **2. JUDICIAL INDEPENDENCE<sup>82</sup>**

2.1. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas it is in fact a cornerstone of the system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary, whether viewed as an entity as a judicial branch or by its individual membership, is and must be seen to be, independent of the legislative and executive branches of government.

The relationship between the judiciary and the other branches should be one of mutual respect, each recognising the proper role of the others. Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

2.2 The judicial oath normally provides: “I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will.” In taking that oath, the judge has acknowledged that he or she is primarily accountable to the law which he or she must administer.

2.3 The oath plainly involves a requirement to be alert to, and wary of, subtle and sometimes not so subtle attempts to influence judges or to curry favour. Moreover, in the proper discharge of duties, the judge must be immune to the effects of publicity, whether favourable or unfavourable. That does not of course mean being immune to an awareness of the profound effect judicial decisions may have, not only on the lives of people before the court, but sometimes upon issues of great concern to the public, concerns which may be expressed in the media.

2.4 Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.

## **3. GENERAL ETHICAL STANDARDS<sup>83</sup>**

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Adopted from the Mt Scopus Standards of Judicial Independence 2008. As amended. See 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 Isaias Rodriguez in May 2004 allegedly described how the country’s top

UK<sup>82</sup>

<sup>83</sup>

3.1 Judges may not serve in Executive or Legislative functions, including as:

3.1.1 Ministers of the government; or as

3.1.2 Members of the Legislature or of municipal councils.

3.2 Judges shall not hold positions in political parties

3.3 A judge, other than a temporary or part-time judge, may not practise law.

3.4 A judge should refrain from business activities and should avoid engaging in other remunerative activity,<sup>84</sup> 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 members<sup>85</sup>, or that judge's teaching at a university or a college.

3.5 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.

3.6 Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

3.7 Judge may take appropriate action to protect their judicial independence.<sup>86</sup>

3.8 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.

3.9 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.<sup>87</sup>

3.10 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.<sup>88</sup>

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administrative court in the past established set fees for resolving different kinds of cases.

ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).<sup>84</sup>

ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.<sup>85</sup>

This is how the section appears in the Montreal Declaration, section 2.09.<sup>86</sup>

Bangalore Principles of Judicial Conduct<sup>87</sup>

Recommendation N.R(94)12 of the committee of Ministers of the Council of Europe to Member States.<sup>88</sup>

3.11 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.

3.12 Except in cases of legitimate consultations a judge shall not approach other judges not sitting with him on the same panel on pending cases.<sup>89</sup>

#### 4. SECURING IMPARTIALITY AND INDEPENDENCE<sup>90</sup>

4.1 A judge<sup>91</sup> shall enjoy immunity from legal actions, except for intentional or gross violations, in the exercise of official functions.<sup>92</sup>

4.2 A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.<sup>93</sup>

4.3 A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

4.4 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, threats<sup>94</sup> 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 judiciary.<sup>95</sup>

4.5 Ensuring impartiality of chairpersons and members of commissions and committees of inquiry and other quasi-judicial institutions.<sup>96</sup>

4.5.1 All officers exercising judicial and quasi-judicial 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

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This article was added as an Amendment to the Mt Scopus Standards of Judicial independence in Vienna in 2011. See analysis of<sup>89</sup> the background of the amendment in Christopher Forsyth, 'Accountability of Judicial Service Commission to the Law', in Shimon Shetreet Ed., *Culture of Judicial Independence Rule of Law and World Peace*, 48 (2014)

See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi.<sup>90</sup>

This does not exclude the possibility that the state may be liable for the gross negligence of a judicial office.<sup>91</sup> 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).

"It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear<sup>93</sup> 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).

Including physical threats to injure or to kill.<sup>94</sup>

Recommendation N.R(94)12 of the committee of Ministers of the Council of Europe to Member States.<sup>95</sup>

This section was added as an Amendment to the Mt Scopus Standards of Judicial independence in the Osnabruck Conference,<sup>96</sup> 2014.

of inquiry shall maintain impartiality and demonstrate independence in conduction inquiries and in making fact-finding and recommendations.

4.5.2 The general rules applicable to national judges in case of circumstances requiring disqualification of judges, shall also apply to administrative adjudicators and members of commissions of inquiry and to quasi-judicial institutions.

4.5.3 The general rules applicable to national judges in case of circumstances requiring disqualification of judges shall also apply to internal auditors and state auditors.

4.5.4 Impartiality<sup>97</sup>: a judge shall treat the parties equally, shall neither be partial to the poor nor defer to the rich and powerful, shall not be gracious to one party and ungracious to another, and shall judge with an open mind, with no prejudice or partiality.

4.6 Public Inquiries by judges:<sup>98</sup> 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 capacity of a judge but as a public servant in public administration.

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

4.6.2 A serving judge who chairs a public inquiry is entitled to insist that all matters of the 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.

4.6.3 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.

4.6.4 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.

4.6.5 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.

## **5. INTEGRITY, PROPRIETY AND EQUALITY<sup>99</sup>**

5.1 Integrity: Integrity is essential to the proper discharge of the judicial office.

5.1.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

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This article was added as an Amendment to the Mt Scopus Standards of Judicial independence in Ghent 2012.<sup>98</sup>  
Israel Rules of Judicial Ethics (2007)<sup>97</sup>  
**BANGALORE Principles of Judicial Conduct**<sup>99</sup>

5.1.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

5.2 Propriety: Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.

5.2.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

5.2.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

5.2.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

5.2.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

5.2.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

5.2.6 A judge, as any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

5.26a A judge should not cast appropriations on the bona fides of other judges except when filing an appropriate grievance.

5.2.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

5.2.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

5.2.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

5.2.10 confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

5.2.11 Subject to the proper performance of judicial duties, a judge may:

5.2.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

5.2.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

5.2.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

5.2.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

5.2.12 A judge shall not practise law whilst the holder of judicial office.

5.2.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

5.2.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

5.2.15 A judge shall take steps to prevent court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

5.2.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

5.3 Equality: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

5.3.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.3.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.4.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.3.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.3.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## 6. Conduct in Court<sup>100</sup>

6.1 Conduct of hearings: It is important for judges to maintain a standard of behaviour in court that is consistent with the status of judicial office and does not diminish the confidence of litigants in particular, and the public in general, in the ability, the integrity, the impartiality and the independence of the judge.

6.1.1 It is the duty of a judge to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour.<sup>101</sup>

6.1.2 A judge must be firm but fair in the maintenance of decorum, and above all be even-handed in the conduct of the trial.<sup>102</sup>

6.1.3 A judge must be strict in the observance of the principles of natural justice, and in the protection of a party or witness from any display of racial, sexual or religious bias or prejudice.

6.1.4 A judge must not convey an impression that the judge and counsel are treating the proceedings as if they were an activity of an exclusive group.<sup>103</sup>

6.2 Participation in the trial: It is common and often necessary for a judge to question a witness or engage in debate with counsel, but the judge should keep the proper level of such intervention to a moderate measure.

6.2.1 A judge must be careful not to descend into the arena and thereby appear to be taking sides or to have reached a premature conclusion.

6.3 Private communications: The principle that, save in the most exceptional circumstances, there should be no communication or association between the judge and one of the parties (or the legal advisers or witnesses of a party) otherwise than in the presence of, or with the previous knowledge and consent of, the other party (or parties) once a case is under way is, of course, very well known.<sup>104</sup>

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Council of Chief Justices of Australia, *Guide to Judicial Conduct* (2002)<sup>100</sup>

The entitlement of everyone who comes to court, litigants and witnesses alike, to be treated in a way that respects their dignity<sup>101</sup> should be constantly borne in mind. The trial of an action, whether civil or criminal, is a serious matter but that does not mean that occasional humour is out of place in a courtroom, provided that it does not embarrass a party or witness. Indeed it sometimes relieves tension and thereby assists the trial process.

The absence of any intention to offend a witness or a litigant does not lessen the impact.<sup>102</sup>

Informal exchanges between the judge and counsel may convey an impression that the judge and counsel are treating the proceedings as if they were an activity of an exclusive group. This is a matter to be borne in mind particularly in a case in which there is an unrepresented litigant, but the caution extends to all cases.<sup>103</sup>

The principle is referred to by McInerney J in *R v Magistrates' Court at Lilydale*; *Ex parte Ciccone* [1973] VR 122 (at 127) in a<sup>104</sup> statement approved in *Re JRL*; *Ex parte CJL* (1986) 161 CLR 342 by Gibbs CJ (at 346) and Mason J (at 350- 351).

6.3.1 An approach to a judge in chambers by the lawyers for one party should not be made without the presence, or the knowledge and consent of, the lawyers for the other party.<sup>105</sup>

6.4 Criminal trials before a jury: The nature or extent of judicial intervention in the course of evidence or argument in a jury trial must not convey to the jury a judicial view of guilt or innocence.

6.5 Revision of oral judgments

6.5.1 Oral judgments: A judge may not alter the substance of reasons for decision given orally.<sup>106</sup>

6.5.1.1 Subject to that basic principle, a judge may revise the oral reasons for judgment where, because of a slip, the reasons as expressed do not reflect what the judge meant to say, or where there is some infelicity of expression. Errors of grammar or syntax may be corrected. References to cases may be added, as may be citations for cases referred to in the transcript.

6.5.2 Summing up to a jury: Apart from errors of spelling or punctuation which may alter the meaning if uncorrected, there should be no change to the transcript of a summing up unless it does not correctly record what the judge actually said.<sup>107</sup>

6.5.2.1 Where time and opportunity permit, a judge must prepare written notes of the intended charge to the jury, particularly with respect to directions on the law, which may help to validate any proposed change to the transcript of the summing up. If the transcript is corrected, and a fresh transcript of the summing up incorporating the corrections is to be prepared, the original transcript should be retained on the court file.

6.5.3 It is the duty of a judge to insure accurate accounts of the protocol of the proceedings .

6.6 Reserved judgment: A judge should aim to prepare and deliver a reserved judgment as soon as possible. In case of a delay, a judge should speak to the head of the jurisdiction about the situation before it becomes a problem.<sup>108</sup>

6.7 The judge as a mediator: Many judges consider that the role of a mediator is so different from that of a judge that a judge must not to act as a mediator.<sup>109</sup>

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It is important to bear in mind that breaches of the principle can occur through oversight, sometimes when attempts are made to<sup>105</sup> adopt what may seem to be practical, convenient, or time-saving measures. Care should be taken, for example, on country circuits if suggestions are made about shared travel that seem sensible at the time, but may in fact involve a breach of the principle.

That is the basic principle.<sup>106</sup>

This is because the transcript of a summing up to a jury is, like the transcript of evidence, intended to be a true record of what was<sup>107</sup> said in court.

It sometimes happens that circumstances lead to an unacceptable accumulation of reserved judgments.<sup>108</sup>

The difference lies in the interaction of a mediator with counsel and parties, often in private – i.e. in the absence of opposing<sup>109</sup> counsel or parties, which is seen to be incompatible with the way in which judicial duties should be performed, with the risk that public confidence in the judiciary may thereby be impaired. Many judges would see this as a matter of court policy. In some courts, the Rules of Court with respect to mediation specifically recognize the appointment of a serving judge as a mediator. The success of judicial mediation in those jurisdictions appears to justify the practice. The statutory obligation of confidentiality binding upon a mediator, and the withdrawal of the judge from the trial or an appeal, if the mediation fails, should enable a qualified judge to act as a mediator without detriment to public expectations of the judiciary.



## 7. ACTIVITIES OUTSIDE THE COURT AND EXTRAJUDICIAL ACTIVITIES

### 7.1 The Media

7.1.1 Judges should exercise their freedom to comment in the media, with ‘the greatest circumspection’.<sup>110</sup> A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press.<sup>111</sup>

7.1.2 Judges must be careful when they are factually misrepresented or where the judges are aware, particularly when sentencing in a criminal case.<sup>112</sup>

### 7.2 Participation in Public Debate

7.2.1 There is no objection to such participation in public debate provided the issue directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice.<sup>113</sup>

7.2.2 A judge must take care to not cause the public to associate the judge with a particular organization, group or cause. The participation should not be in circumstances which may give rise to a perception of partiality towards the organization (including a set of chambers or firm of solicitors), group or cause involved or to a lack of even handedness.

7.2.3 Dialogue may not take the form, and the judge cannot expect to assume the role, which the judge would consider appropriate in court proceedings. The judge cannot expect to join in and leave the debate on the judge’s terms.<sup>114</sup>

7.2.4 A judge must consult with Heads of Division, the presiding, resident or designated judge, as the case may be (the “head of the appropriate jurisdiction”). A judge must also consider the risk of expressing views that will give rise to issues of bias or pre-judgment in cases that later come before the judge must also be considered.<sup>115</sup>

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Lord Bingham has commented that ‘a habit of reticence makes for good judges.’<sup>110</sup> In his speech in the House of Lords on 21 May 2003, Lord Woolf CJ referred to “the very important convention that judges do not discuss individual cases”.<sup>111</sup>

Guidance as to how to react when a judge is factually misrepresented or where the judge is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters, is contained in the guidance on dealing with the media available on the judicial intranet at: [http://judiciary.sut1.co.uk/info\\_about/media\\_issues.htm](http://judiciary.sut1.co.uk/info_about/media_issues.htm).<sup>112</sup>

However, and subject to the above, many aspects of the administration of justice and of the functioning of the judiciary are the subject of necessary and legitimate public consideration and debate in the media, legal literature and at public meetings, seminars and lectures, and appropriate judicial contribution to this consideration and debate can be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the judiciary. At the least, it may help to dispel misunderstandings and correct false impressions.<sup>113</sup>

The risk of different judges expressing conflicting views in debate must also be borne in mind in that a public conflict between judges, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.<sup>114</sup>

There are plainly risks in a judge, whether exercising a criminal or a civil jurisdiction, who may have to deal with a wide range of people in his or her jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined.<sup>115</sup>

7.2.5 A judge must consider the dignity of judicial office before participation in public protests and demonstrations.

### 7.3 Commercial Activities

7.3.1 There must be requirements of office clearly in place with severe restraints upon the permissible scope of a judge's involvement with commercial enterprises.<sup>116</sup>

7.3.2. The risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked and the factors involved need to be weighed carefully before office is accepted.<sup>117</sup>

### 7.4 Involvement in Community Organisations

7.4.1 Care must be taken with involvement in community organisations to not compromise judicial independence or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his or her duties and the judge's role should not involve active business management.

7.4.2 Judges generally should not be involved in fund raising .Care should be taken in considering whether, and if so to what extent, a judge's name and title should be associated with an appeal for funds, even for a charitable organization.<sup>118</sup>

7.4.3 It is necessary to limit and regulate the nature and extent of personal involvement in contentious situations. Any conflict of interest in a litigious situation must be declared.<sup>119</sup>

### 7.5 References

7.5.1 A judge may give references for character or professional competence for persons who are well known to the judge.<sup>120</sup>

7.5.2 A judge may give character evidence in court or otherwise.<sup>121</sup>

7.5.2.1 This task should be undertaken only exceptionally and for a limited purpose.<sup>122</sup>

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Guidance appears in the cases as to the extent to which a judge is entitled to pursue commercial activities and further detailed<sup>116</sup> guidance, save by reference to the cases, is inappropriate in this document. Reference to the judge's terms of service is appropriate.

The management of family assets and the estates of deceased close family members, whether as executor or trustee, is<sup>117</sup> unobjectionable, and may be acceptable for other relatives or friends if the administration is not complex, time consuming or contentious

Judges may properly be involved in the management of educational, charitable and religious organizations and trusts subject to the<sup>118</sup> reservation already stated in relation to community organizations. It could amount to an inappropriate use of judicial prestige in support of the organization and may also be seen as creating a sense of obligation to donors. There will be occasions, for example in the case of charities supporting the work of the Courts, where the objection would not apply.

Many judges hold or have held high office in governing bodies of universities and similar institutions without embarrassment<sup>119</sup> notwithstanding that the management and funding structures of such organizations are complex, and are often the subject of public debate and political controversy. Moreover, in considering whether to accept office and what role to play, consideration should be given to the trend of some such bodies to be more entrepreneurial and to resemble a business. The greater the move in that direction, the less appropriate judicial participation may be. Consideration should be given as to whether the judge is the appropriate person to give the reference requested, the principle being<sup>120</sup> that someone should not be deprived of a reference because the person best able to give it is the judge. Plainly judges should guard against inappropriate requests.

Particularly where it may seem unfair to deprive the person concerned of the benefit of such evidence<sup>121</sup> This is because of the risks inherent in the judge entering the arena, and the pressure such evidence may put on the trial judge or<sup>122</sup>

7.5.2.2 A judge must consult with the head of the appropriate jurisdiction advisable before taking a decision to give evidence.

7.6 Remuneration: Judges holding full-time appointments are barred from legal practice. In addition to a judicial salary, a full-time judge should not receive any remuneration except for fees and royalties earned as an author or editor. A judge may of course receive money from investments or property.

7.6.1 Lectures, and teaching in an institution: It is possible to allow a judge to engage in legal lectures, and the remuneration for the teaching is subject to two standards, which both must be met:

7.6.1.1 The level of remuneration shall not exceed the level practised in that institution for similar work.

7.6.1.2 The payment received by the judge shall not exceed the equivalent of maximum 25% of his judicial salary .

7.6.2 The acceptance by the judge of delivering a single lecture or teaching position in a higher educational institution or giving a lecture is subject to the grant of permission by a proper judicial authority.

7.7 Business cards .

7.7.1 A judge should be very cautious in describing his position in business cards or letterheads.<sup>123</sup>

7.8 Gifts, Hospitality and Social Activities

7.8.1 Gifts and Hospitality. A judge must be cautious when accepting any gift or hospitality that may be offered.<sup>124</sup>

7.8.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example a judge who makes a speech or participates in some public or private function may accept a small token of appreciation.<sup>125</sup>

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<sup>123</sup> E.g. It is not appropriate for someone who sits as a deputy high court judge, a recorder or as a deputy district judge, to describe him or herself as such on a business card, cheque book or letterhead. Entries of a biographical nature in, for example, a firm's or chambers' brochure, are acceptable.

magistrate.

It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from <sup>124</sup> family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

It may include a contribution to charity in the manner explained in the Memorandum on Conditions of Appointment and Terms of <sup>125</sup> Service (October 2000). "The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture.

However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, e.g. accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar."

7.8.3 A judge may accept invitations to lunches and dinners by legal and other professional and public bodies or officials.<sup>126</sup>

7.8.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers' chambers or solicitors' firms, or professional associations.<sup>127</sup>

7.8.5 A judge must not exploit the status and prestige of judicial office to obtain personal favours or benefits.

7.8.6 A judge should seek the advice of the head of the appropriate jurisdiction when in doubt as to the propriety of accepting any gift or hospitality.

7.8.7 Contact with the Profession. A judge must avoid direct association with individual members of the profession who are engaged in current or pending cases before the judge.<sup>128</sup>

7.8.8 Other Social Activities. A judge is under the duty to maintain the dignity of the office and not to permit associations which may affect adversely the judge's ability to discharge his or her duties.

7.8.9 A judge should be very careful to avoid a situation of suspicion of bias in case of close social relations with a lawyer or a witness or party in the case, which could become grounds for disqualification.

7.9 Use of Equipment: A judge should not use equipment, including IT equipment, provided by the Court Service for his or her use as a judge.<sup>129</sup> Detailed guidance upon the use of IT equipment, including the importance of not compromising its security should be detailed in the relevant rules

7.10 Judicial Office-holders' duty to notify legal proceedings and other matters relating to conduct

7.10.1 All judicial office-holders have an obligation to notify the appropriate senior judicial officer if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.

7.11 Criminal proceedings (including minor offences)

7.11.1 Without prejudice to the generality of the above, they must also notify the Lord Chief Justice or the Senior President if they are cautioned for, or charged with, any criminal offence other than a parking or minor traffic offence without aggravating circumstances.

7.11.2 Special rules should apply in respect of minor offenses.

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Also where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.<sup>126</sup>

The object of judicial participation may be perceived to be the impressing of clients or potential clients.<sup>127</sup>

There is a long-standing tradition of association between bench and the bar and the solicitors' profession. This occurs both on formal occasion, such as dinners, and less formal ones. There will be cases in which retaining too close a social relationship with a practitioner who regularly has litigation before the judge's court may create a perception of bias but the particular circumstances, which will vary widely, must be addressed.<sup>128</sup>

Other purposes could bring the judge or the judiciary in general into disrepute.<sup>129</sup>

7.11.3 Office-holders should advise the Senior Judicial Officer on court proceedings relating to a charge against them. This is to ensure that full and timely consideration can be given to the listing of the case and whether or not it would be appropriate for the office-holder to continue sitting while court proceedings are pending.

## 7.12 Civil proceedings

7.12.1 All judicial office-holders have an obligation to report to the senior judicial officer their involvement in legal proceedings which are coming to court. This includes all civil proceedings (including family proceedings) and is to ensure that the senior judicial officer can give full and timely consideration to the listing of the case and whether or not it would be appropriate for the office-holder to continue sitting in that area or jurisdiction whilst proceedings are ongoing.

## 7.13 Other proceedings

7.13.1 Judicial office-holders must also notify the appropriate senior judicial officer if they are the subject of any complaint or disciplinary proceedings by any professional body to which they belong; or if they get into serious financial difficulties particularly where legal proceedings are or are likely to be initiated.

7.13.2 Failure to report proceedings as set out above could result in disciplinary action.

7.14 It is the duty of a judge to engage in continued judicial education.

## 8. SOCIAL NETWORKING AND BLOGGING

8.1 A judge may use social networking, or use social media.

8.1.1 Judges must follow the guidance that the relevant authority in his or her jurisdiction has issued on the security aspects of this medium.<sup>130</sup>

8.2 A judge should follow the following suggested rules:

8.2.1 A judge must ensure that information about his or her personal life and home address is not available online.<sup>131</sup>

8.2.2 A judge must be wary of publishing more personal information than is necessary.<sup>132</sup>

8.2.3 A judge must not post information that could put personal safety at risk.<sup>133</sup>

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Although there is no specific guidance on this matter, judges are encouraged to bear in mind that the spread of information and use of technology means it is increasingly easy to undertake 'jigsaw' research which allows individuals to piece together information from various independent sources.

A simple way of checking can be by typing your name into an internet search engine such as Google. You may also want to talk to your family about such social networking systems as Facebook where personal details which carry some risk-such as holiday absences-can unwittingly be put into the public domain.<sup>131</sup>

In particular phone numbers, dates of birth and addresses are key pieces of information for security fraudsters. Other users probably don't need to know such details – if any contacts do need them send them to individuals separately.<sup>132</sup>

For example, personal address, details of holiday plans and information about your family could be used for criminal purposes.<sup>133</sup>

Photographs could enable home addresses or car numbers to be identified.

8.2.4 A judge must check privacy settings and restrict access to their profile to ensure information is kept to a restricted group.

8.2.5 A judge must check the terms and conditions of any sites to which he or she signs up and ensure they are aware of who owns data posted on the site and what the owners of the site can do with their data.

8.2.6 A judge may blog.

8.2.6.1 Judicial office-holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary.

8.2.6.2 A judge must not express an opinion, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This also applies to blogs which purport to be anonymous.

8.2.7 Failure to adhere to the guidance could ultimately result in disciplinary action.

## 9. POST-JUDICIAL ACTIVITIES<sup>134</sup>

9.1 Professional and commercial activities: Judges may avoid the sometimes difficult and controversial decisions that have to be taken by those who seek a more active and remunerative role.<sup>135</sup>

9.2 A judge may receive a judicial pension.<sup>136</sup>

### 9.3 Professional legal activities

9.3.1 Practice at the Bar: A judge contemplating retirement should consult the local Bar Association or Law Society for relevant rulings.<sup>137</sup>

9.3.2 Practice as a solicitor: A judge may have active association with a firm of solicitors, whether as a partner, consultant, or in some other capacity.

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<sup>134</sup> Council of Chief Justices of Australia, *Guide to Judicial Conduct (2002)*. The purpose of this chapter is not to dictate to retired judges, but to give guidance to serving judges who are contemplating or planning for their retirement.

Particularly those who have remained in office to the age of statutory retirement, who choose to undertake only recreational <sup>135</sup> activities in retirement.

<sup>136</sup> Most judges on appointment make a substantial financial sacrifice in terms of earning capacity. Nor does it seem necessary, in the discussion that follows, to draw any distinction in principle between:

Those who have reached the statutory age of retirement;

Those who, after quite lengthy judicial service, have chosen to retire early for reasons other than ill-health;

Those relative few who have found themselves ill-suited to the judicial role and have resigned after a short term in office.

If there is one guiding principle, a former judge should be satisfied that any proposed professional or commercial activity is not likely to bring the judicial office into disrepute, or put at risk the public expectation of judicial independence, integrity and impartiality.

All however proscribe appearance as counsel in a court of which the judge was formerly a member, for various periods ranging <sup>137</sup> from two to five years. This is a "grey area" in which it is not possible to formulate uniform guidelines. Australian experience suggests, however, that this topic is most likely to concern those who have resigned soon after appointment.

9.3.2.1 Preferably this will not be sooner than a year or so after retirement.<sup>138</sup>

9.3.3 Alternative dispute resolution – mediation and arbitration: Judges may be appointed or offer their services as mediators or arbitrators.<sup>139</sup>

9.3.4 Appointment as an acting or auxiliary judge: A retired judge who sits from time to time as an acting or auxiliary judge must consider carefully the appropriateness of other activities that the retired judge might be undertaking.<sup>140</sup>

9.3.4.1 The exercise of the judicial office on a part-time basis may require the observance of, or at least consideration of, some of the restrictions identified in this publication.

9.3.4.2 A just must take particular care in relation to activities undertaken concurrently with part-time judicial work.

9.4 Commercial activities: A retired judge may engage in commercial activities.

9.4.1 A retired judge must consider whether his or her activities might harm the standing of the judiciary, because of a continuing association in the public mind with that institution.

9.5 Political activity: A retired judge may have involvement with politics.

9.5.1 A retired judge should consider whether the particular activity undertaken might reflect adversely on the judiciary.<sup>141</sup>

9.6 Participation in public debate: A retired judge may engage in public debate, and in many cases is well qualified to do so, particularly in matters touching the administration of justice generally.

9.6.1 A retired judge should not act in such a way as to create the impression that he or she is speaking with judicial authority.<sup>142</sup>

9.6.2 A retired judge should not use the former title "Justice" or "Judge" in connection with activities of a political nature.

9.7 Community and social activities: A retired judge may engage in chosen recreational and other community and social activities.

9.7.1 Any activity that might tarnish the reputation of the judiciary should be avoided.<sup>143</sup>

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Some judges consider that care should be taken to ensure that the firm does not take active steps to promote itself by overt reference to the judge's former judicial status.<sup>138</sup>

It has become quite common for judges who have retired, whether early or at full retirement age, to be appointed or to offer their services as mediators or arbitrators. Although some judges do not approve of such activities, they are not at present subject to any legal or professional restraint.<sup>139</sup>

Many countries make provision for a retired judge to return to the court, for temporary or intermittent periods, as an acting judge.<sup>140</sup>

The public might continue to associate the retired judge with that institution.<sup>141</sup>

A retired judge should consider whether a contribution to public debate is appropriately identified as coming from a retired judge.<sup>142</sup>

Even in retirement a former judge may still be regarded by the general public as a representative of the judiciary.<sup>143</sup>

## Explanatory Notes

During the conferences of the International Association of Judicial Independence and World Peace at the University of Ghent October 2012 and at the University of San Diego in September 2013 it was resolved at the proposal of Prof. Marcel Storme to embark upon a project to develop a global code of judicial ethics. It should deal with two major parts. One part will deal with conduct on the bench and the other on the conduct off the bench, i.e. the rules governing the conduct outside the official judicial duties.

In most common law jurisdictions there has been a shift from a practice of non-written judicial traditions on judicial conduct to a practice of written codes. In the United States, the American Bar Association (“ABA”) drafted a code of judicial conduct in 1924.<sup>144</sup> The ABA's updated code of judicial conduct is currently embodied in the 2011 Model Code of Judicial Conduct.<sup>145</sup> A written judicial code for Federal Judges was adopted in 1973<sup>146</sup> and there are additional codes for judicial conduct in various American states such as California and Texas.<sup>147</sup>

In Canada, judges adopted the Principles of Judicial Ethics in 1998.<sup>148</sup> While in Australia, the judiciary adopted a Code of Judicial Conduct in 2002.<sup>149</sup> England has adopted two codes of judicial conduct, and the Guide to Judicial Conduct adopted in 2008 by the Judges' Council of England and Wales, also applies to the English

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<sup>144</sup> American Bar Association 1924 Canons of Ethics – accessed at [www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924\\_canons.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924_canons.authcheckdam.pdf).

<sup>145</sup> See the Model Code of Judicial Conduct 2011 – accessed at [www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_table\\_of\\_contents.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_table_of_contents.authcheckdam.pdf).

<sup>146</sup> See the Code of Conduct for US Judges 1973, as amended – accessed at [www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf](http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf)

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the "Code of Judicial Conduct for United States Judges." See: **JCUS-APR 73**, pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code: March 1987: deleted the word "Judicial" from the name of the Code; September 1992: adopted substantial revisions to the Code; March 1996: revised part C of the Compliance section, immediately following the Code; September 1996: revised Canons 3C(3)(a) and 5C(4); September 1999: revised Canon 3C(1)(c); September 2000: clarified the Compliance section; March 2009: adopted substantial revisions to the Code. This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies.

<sup>147</sup> See the California Canons of Ethics 2003 – accessed at [www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf), as well as the Texas Code of Conduct – Accessed at [www.legalethictexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx](http://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx)

<sup>148</sup> Canadian Judicial Council, *Ethical Principles for Judges* (1998) – accessed at [www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)

Council of Chief Justices of Australia, *Guide to Judicial Conduct* (2002) – accessed at <sup>149</sup> [www.ajja.org.au/online/GuidetoJudicialConduct.pdf](http://www.ajja.org.au/online/GuidetoJudicialConduct.pdf). For the practice in Australia see Mr Justice Thomas' study, *Judicial Ethics in Australia* (2nd ed., 1997).



judiciary.<sup>150</sup> Barely a year later, in 2009, the United Kingdom (“UK”) Supreme Court adopted a new Guide to Judicial Conduct.<sup>151</sup>

In Israel, a code of judicial ethics was adopted by Chief Justice Shamgar in 1993. Israel is the only country in the common law world to have declared its code of judicial ethics to be *not* legally binding as they were not issued by virtue of an express authority and judges have discretion to decide how to conduct themselves regarding disqualification, such as, on account of a very close friendship with a lawyer or party in a matter.<sup>152</sup> In just such a case, the lawyer joined the legal team only at the appeal stage. It took another 14 years, until 2007,<sup>153</sup> before a code of judicial ethics was issued under an express authority. The Israeli Parliament reversed the ruling on the specific issue providing that a judge must not sit in a case where there is a special relation with a lawyer representing a party. Later it provided for an express authority to issue judicial ethical rules and such were issued under the newly enacted statutory power in 2007. About the same time, legal controversy arose in India concerning the duty to disclose to the public certain types of information under the freedom of information rules of the declarations of assets submitted by judges of the Supreme Court on a fiduciary and voluntary basis by virtue of a resolution of the judges.<sup>154</sup>

The shift from unwritten ethical rules to a written code prevails also in the regulation of conduct of the officers of other branches of government, such as ministers and members of the legislature.<sup>155</sup> Regarding teaching by judges, after a long debate the international association of judicial independence at the conferences held in Italy in June, 2015, it was resolved that judges are permitted to hold lectures, and teach in higher learning institution. While it is possible to allow a judge to engage in legal lectures, the remuneration for the teaching is subject to two standards. Firstly, that the level of remuneration shall not exceed the level practised in that institution for similar work and secondly, that the payment received by the judge shall not exceed the equivalent of maximum 25% of his official salary . Both conditions must be met. In addition, the acceptance by

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<sup>150</sup> See the Guide to Judicial Conduct (for General Courts) – accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf)

<sup>151</sup> See the Guide to Judicial Conduct 2009 (UK Supreme Court) – accessed at [www.supremecourt.gov.uk/docs/guide\\_to\\_judicial\\_conduct.pdf](http://www.supremecourt.gov.uk/docs/guide_to_judicial_conduct.pdf)

HCJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54 .<sup>152</sup>

<sup>153</sup> The Judicial Ethical Rules are drafted by the President of the Supreme Court in consultation with the Minister of justice and are approved by the Law and Justice Committee of the Knesset ,The Israeli parliament .

CPIO (Central Public Information Officer) Supreme Court v. Subhash Chandra Agrawal CLXII Delhi Law Times 135 (2009) Per <sup>154</sup> Judge S. Ravindra Baht .

<sup>155</sup> See the Ministerial Code approved in 2010 by Prime Minister Cameron following previous Ministerial Codes – accessed at [www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf).

In the US written rules were enacted by the Ethics in Government Act of 1978 (Public Law 95-251), or by a subsequent amendment to that Act.

the judge of delivering a single lecture or teaching position in a higher educational institution or giving a lecture is subject to the grant of permission by a proper judicial authority.

Since ancient times, judges have enjoyed a unique status in the community. The fundamental assumption is that the judiciary as a collective, and each and every judge, individually are independent in adjudicative proceedings and in their decisions, and that the judicial branch in general is an autonomous branch, decent and fair in its conduct, and has the ability and skills to interpret and apply the law properly.

Naturally, the judges hold their appointment in trust, for the benefit of society at large. They act as trustees, who have nothing at all of their own, and all they do, they do as the public's agents.

A precondition of the judge's ability to act as a judge is the community's confidence in the judicial branch, its recognition of the judicial branch's exclusive authority to adjudicate, and its acceptance of judicial rulings. This status of the judicial branch and of its members, the judges – a status of autonomy, independence, and benefit from the public confidence – requires, almost inherently, that judges uphold especially high ethical standards.

It follows that it is necessary to create unique rules of conduct obliging the individual judges in their conduct and their ways – on the bench and off the bench – in order to preserve the special status of the judge and the judicial branch as a whole.

Thus it always has been. As Jethro advised Moses in the Bible regarding the way to choose judges: "You should ... look for able men among all the people, men who fear God, men of truth, who are not avaricious . . ." (Exodus 19:21). The emphasis on the personal good character of the judge remains to this day a central requirement for judicial appointment. Indeed, a judge is a person – first and foremost a person – however, by agreeing to hoist the burden of a judge upon his shoulders, he has obliged himself with the duties and burdens of a member of the judicial branch.

In the past, rules for judicial conduct were as the oral traditions, and the law, morality, logic, common sense, tradition and life experience were what guided judges' conduct. As the days and years passed, individual and community life became increasingly complex, and even the judicial system grew, expanding and absorbing many members. A need thus arose to put the oral traditions into writing and create a written code of conduct for judges.

Indeed, in many countries codes for judges' conduct have been compiled. Thus was also the case in Israel, when in 1993 President of the Supreme Court Meir Shamgar published *The Judicial Code of Ethics, 1993*, prepared on the basis of the report by a committee chaired by former President (of the Supreme Court) Moshe Landau. (

The purpose of the Code of Ethics for Judges is to guide the conduct of the judges of Israel along their path, and to serve them as an aid, by which they can be assisted and from which they can learn. The code includes rules of various types: fundamental rules which stem from the judge's status, and express fundamental values, which are the basis for judicature; rules regarding the act of adjudication itself; rules regarding the personal conduct of judges; and specific norms dealing with practical issues that arise in daily life. Together, these norms constitute a wide codification in which judges – both young judges in need of guidance at the start of their path, and senior judges in need of solutions to specific issues – can, and should seek assistance. A judge who runs into a dilemma whether to do or refrain from doing can refer to the code and find solutions in it to many of the questions which judges confront and with which they struggle on a routine basis. Thus, for example, in extrajudicial activity, in public activity, in contact with the media, and more.

Last, the Code of Ethics for Judges does not take on a life of its own, and is not detached from its surroundings. The law, morality, logic, common sense, tradition and life experience, which have guided judges in the past, will continue to guide us in the future as well. Thus, for example, a judge should take the decisions of the Ombudsman of the Israeli Judiciary, pursuant to the Ombudsman of the Israeli Judiciary Law, 5762-2002<sup>156</sup>, into account in fulfilling his role. Furthermore, the rules in the code will be interpreted not solely by their language, but by the spirit moving within them. Further yet, operating beside the written rules, and in their framework, is the Judicial Ethics Committee; and without derogating from the authority of the President of the Supreme Court on ethical and other issues, the Committee's role is to discuss, recommend and decide on issues of judicial ethics. A judge who runs into an ethical problem which is not clearly answered in the code should turn to the committee, or the President of the Supreme Court, and request an answer and guidance.

## II. The Binding Force of National Codes of Judicial Ethics

The English Guide to Judicial Conduct is generally considered persuasive. However, there are a number of lines of thought that support the view that the Guide to Judicial Conduct is not merely persuasive, but actually rather binding. These lines of thought are detailed over the course of several interviews conducted with distinguished jurists and judges for the preparation of the 2<sup>nd</sup> edition of Shetreet *Judges on Trial* (1976)<sup>157</sup> published by Cambridge University Press. One such line of thought is that most of the rules contained in the guide to judicial conduct are declaratory of the existing law and of existing standards of judicial conduct.<sup>158</sup>

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*Sefer HaChukim*, 590.<sup>156</sup>

Shetreet and Turenne, *Judges on Trial: Independence and Accountability of the English Judiciary* (2nd ed. 2013).<sup>157</sup>

<sup>158</sup> For reliance on the existing law, please see Paragraph 3.7 of the UK Supreme Court Guide to Judicial Conduct. Recent UK cases include *Porter v Magill* [2002] 2 AC 357, *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *Re Medicaments and Related Classes of Goods (No.2)* [2001] 1 WLR 700 and *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416., *R. v. Bow "Street Metropolitan Stipendiary Magistrate and others" ex parte Pinochet Ugarte* (No. 2), House of Lords, [1999] 1 All ER 577,

Similarly, one can argue that the proper rules of judicial conduct are implied conditions of the judicial office. An additional argument that supports the view that the Guide to Judicial Conduct is binding and not merely persuasive is that the duty of obeying the rules of the Guide are in fact part of the judicial oath of office that is taken by every judge on appointment to the bench. In fact the Guide to Judicial Conduct emphasises the judicial oath as an important basis for the implementation of the rules of judicial ethics, as part of the judicial oath.<sup>159</sup>

The view that the duty to obey the rules of ethics contained in the Guide of Judicial Conduct derives from a contractual basis is not a valid view, for judges are not considered to be "persons in Her Majesty's Service ", but rather statutory officers. This was the basis of the judges' position in the heated controversy over whether or not the salary cuts of the 1930s would be applied to judges. The judges argued that they were not to be included in the category of "persons in His Majesty's Service" and therefore they were not subject to the salary cuts under the National Economy Act of 1931.<sup>160</sup> In the end, the Judges prevailed and the cuts were not applied to the judiciary branch.

There has been a shift from oral traditions to written codes of judicial ethics .One can make a good argument that the rules embodied in the codes are actually an expression of the pre-existing norms and therefore legally binding rather than persuasive. However, there remains a need to bolster public confidence in the judiciary by applying the codes of ethics in a consistent and equitable fashion.

### III. The Need for a Written Code

The need for a written code of judicial ethics has become necessary due to the substantial increase in the size of the judiciary. With this increasing size, the judiciary's diversity has also enlarged. The result has been that the rules of conduct which were previously well known to a small, tight knit judiciary have become less intuitive to the now much larger, more diverse judiciary. This effect has been exacerbated by the fact that the tribunal judiciary has now been included in the general judicial system, side by side with the mainstream judiciary.

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[1999] 2 WLR 272. *see also* S. Shetreet, Standards of Conduct of International Judges: Outside Activities, 2 The Law and Practice of International Courts and Tribunals 127 (2003).

The reference to the judicial oath is found in Chapter 1 of Australia's Guide to Judicial Conduct, Paragraph 1.1; in Paragraph 2.2 of <sup>159</sup> the UK Supreme Court Guide to Judicial Conduct; in the Guide to Judicial Conduct, England Judges' Council, Forward and Paragraphs 2.2 and 2.3.

Judges on Trial; A Study of the Appointment and Accountability of the English Judiciary ,34-36 ( North See Shimon Shetreet ,<sup>160</sup> Holland 1976 )

Beyond the issue of the size of the judiciary there is a need to clarify the rules of judicial conduct.<sup>161</sup> Particularly, there is a need to clarify the correct resolution of the balance between conflicting schools of thought on the proper judicial conduct in certain situations. The need to strike the correct balance between proper judicial conduct and necessary involvement in community experience can be seen in Australia's guide to judicial conduct. This need was met by drafting written and detailed codes of conduct. The standards reflect changes as suggested by the Preface of CJ Murray Gleeson, Chief Justice of Australia, to the Guide of Judicial Conduct.<sup>162</sup>

The Australian Chief Justices decided that it was time to provide members of the judiciary with some practical guidance about conduct expected of them as holders of judicial office, and that such guidance should reflect the changes that have occurred in the community standards over the years.

The need for a written code of ethics is also called for due to the changes in the standards that have taken place over a span of decades. For example, formerly it was acceptable for a son to appear as a barrister before his father acting as a judge. Today, this is clearly unacceptable, and even unthinkable.<sup>163</sup>

In shaping standards one should mention the Impact of the ECtHR jurisprudence and it is referred to in the Guide to Judicial Conduct.<sup>164</sup>

#### IV. Enforcement of Judicial Ethics

In England, the Constitutional Reform Act of 2005 transferred certain disciplinary powers over judges from the Lord Chancellor to the Lord Chief Justice, who is now the head of the judiciary. The Lord Chancellor and the Lord Chief Justice are assisted in the implementation of the Guide to Judicial Conduct by the Office of Judicial Conduct, which was established following the Constitutional Reform Act of 2005.

In Israel, one can observe a very negative effect from the Yoav Yizthak case<sup>165</sup>, which declared the judicial code of ethics issued by Chief Justice Shamgar in 1993 to be legally invalid. This case sent the message that individual judges are able to make their own ethical rules.

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For the need for written standards see paragraph 1.2, Judges' Council Guide to Judicial Conduct.( England )<sup>161</sup>  
Chapter 1, page 1. CJ Forward Guide to Judicial Conduct, page 1<sup>162</sup>

<sup>163</sup> For theoretical considerations in connection with ethics of judges it is stated that judges are entitled to exercise rights of citizens, see paragraph 4.1 of the UK Supreme Court Guide to Judicial Conduct. As to the duty of disclosure, see paragraph 3.15 and 3.16 of the UK Supreme Court Guide to Judicial Conduct.

<sup>164</sup> See eg *Procola v. Luxemburg* .for a detailed analysis see *Shimon Shetreet* , The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, pp.275-332 (2009)

*Yitzhak v President Barak* 54 (2 ) P D 54 ,See *Shetreet*, The Status of Judicial Code of 1622/00HCJ See *Yoav Yizthak case*<sup>165</sup>  
Ethics ,in Medina, Fassberg and Weisman ,Eds. Festschrift in Honour of Prof Avigdor Levontin, (Sacher Institute 2013).

## V. From National Codes to a Global Code of Judicial Ethics

Parallel to the development of national codes of judicial ethics it is very important that a global code of judicial ethics should be adopted. The text is based on and adopted from standards contained in Mt Scopus International Standards of Judicial Independence 2008 , The New Delhi Code of Minimum Standards of Judicial independence 1982 ,Montreal Universal Declaration of The Independence of Justice 1983 , The Bangalore Principles of Judicial Conduct November 2002, the United Nations Basic Principles of Independence of the Judiciary, 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, and the American Bar Association's revision of its ethical standards for judges. The Draft Global Code is also based on the Code of Judicial conduct for the United States Judges 1973, California Canon of Ethics 2003, Canadian Judicial Council, *Ethical Principles for Judges* (1998),<sup>166</sup> Council of Chief Justices of Australia *Guide to Judicial Conduct* (2002),<sup>167</sup> the Guide to Judicial Conduct (for General Courts)<sup>168</sup>, the Guide to Judicial Conduct 2009 (UK Supreme Court).<sup>169</sup>

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Accessed at [www.cjc-ccm.gc.ca/cmskib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmskib/general/news_pub_judicialconduct_Principles_en.pdf)<sup>166</sup>  
Accessed at [www.aija.org.au/online/GuidetoJudicialConduct.pdf](http://www.aija.org.au/online/GuidetoJudicialConduct.pdf). For the practise in Australia see Mr Justice Thomas' study,<sup>167</sup>  
*Judicial Ethics in Australia* (2<sup>nd</sup> ed., 1997).  
Accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf).<sup>168</sup>  
HCJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54.<sup>169</sup>

