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THE İSTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS AND MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE İSTANBUL DECLARATION

4th INTERNATIONAL SUMMIT OF HIGH COURTS



11-12 OCTOBER 2018, ISTANBUL

**“ETHICS, TRANSPARENCY AND TRUST PROJECT OF
THE COURT OF CASSATION”**

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FOREWORD

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

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. As it is stated in Bangalore Principles of Judicial Conduct, protection of human rights along with all the other rights depends upon proper administration of justice and especially existence of a competent, independent and impartial judiciary. As we know, the responsibility of ensuring fair and efficient functioning of the judiciary belongs to the judiciary. Chief justices, who came together from all around the world, developed and approved the İstanbul Declaration with the sense of this responsibility. The İstanbul Declaration has also very similar development process to Bangalore Principles which were prepared and finalized by judges. The Declaration and its Implementation Measures are drafted and adopted by judges, for use by judges. It is clear that, this procedure is a requirement of judicial independence.

Starting its journey in 2013, the İstanbul Declaration, which was developed with intent to define the concept of “transparency in the judicial process” for the first time, the importance of which has long been known, to determine and detail its content, completed this journey with the decision of UN Economic and Social Council on 23 July 2019. One of the milestones of this process is 4th International Summit of High Courts which was held on 11-12 October 2018 with the participants from 30 countries of 5 continents representing different geographical regions and judicial systems. I believe that this book which is a concrete indicator of productivity and efficiency of dialogue between judges will facilitate İstanbul Declaration and its Implementation Measures to be understood and implemented properly.

I would like to express my gratitude to the esteemed Chief Judges and Supreme Court Representatives from Afghanistan, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Belize, Canada, Cuba, Georgia, India, Ireland, Kazakhstan, Kenya, Kyrgyzstan, Lebanon, Mongolia, Morocco, Myanmar, Nepal, Nigeria, Qatar, Sri Lanka, Sudan, Tajikistan, Thailand, United States of America, Uzbekistan, and Venezuela. It was a great privilege for me to become a part of this work together with them and to produce a value for humanity.

Also, I would like to thank to the esteemed representatives of the Council of Europe and the United Nations Development Programme. We would like to move towards a better justice system together with them. I hope that this cooperation will continue.

Mr. Nihal Jayawickrama, who has been with us since the beginning of this study, has made a great contribution with his profound knowledge and experience in managing this process correctly and successfully. I would like to take this opportunity to express my special thanks to Mr. Nihal Jayawickrama.

Honorable Moderators and international experts;

Honorable Kashim ZANNAH,

Honorable John DOWD,

Honorable Sandra OXNER,

Honorable Shiranee TILAKAWARDANE,

Honorable Jeffrey APPERSON

came from very distant places. They have made invaluable contributions with their extraordinary efforts and creativity. Words will be insufficient to express how I am grateful to them.

I would like to extend my gratitudes to the chamber presidents of the Court of Cassation, my dear colleagues who carried out their duty of moderating with great success and commitment;

Honorable Assoc. Prof. Dr. İbrahim ŞAHBAZ,

Honorable Seracettin GÖKTAŞ,

Honorable Vuslat DİRİM,

Honorable Ahmet ER,

Honorable Fahri AKÇİN.

I would also like to express my sincere thanks to our chamber presidents for participating in team works and general assemblies, and sharing their invaluable opinions and suggestions with us.

PREFACE

Prof. Dr. Nihal JAYAWICKRAMA, *Coordinator of the UN Judicial Integrity Group*

This is an edited version of the proceedings of the 4th International Summit of High Courts held in Istanbul, Turkey, on 11th and 12th October 2018. The Conference was convened by the President of the Court of Cassation of Turkey and the Resident Representative of the United Nations Development Programme in Turkey for the purpose of adopting the Measures for the Effective Implementation of the Istanbul Declaration on Transparency in the Judicial Process.

The verbatim record of the five round table discussions on the draft Implementation Measures, and of the plenary session II at which the reports of the round table discussions were presented and the draft Implementation Measures finalised, have been omitted. However, the papers presented on country-specific experiences and lessons learned on issues addressed in the Istanbul Declaration and in the draft Implementation Measures have been included.



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DAY I

OPENING REMARKS & PRESENTATION OF THE ISTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS

Irena VOJÁČKOVÁ-SOLLORANO

UNDP Turkey Resident Representative

Opening Remarks

İsmail Rüştü CİRİT

First President of the Court of Cassation, Turkey

Opening Remarks

Prof. Dr. Nihal JAYAWICKRAMA

Coordinator of the UN Judicial Integrity Group

*Presentation of the Istanbul Declaration on Transparency in the
Judicial Process*



11 October 2018

OPENING REMARKS

Irena VOJÁČKOVÁ-SOLLORANO, *Resident Representative, UNDP Turkey*

Honourable President of the Court of Cassation of Turkey, Mr. İsmail Rüştü Cirit,

Chief Justices and Justices,

Distinguished Representatives of the International Community,

Members of the Media and Turkish Judiciary,

Distinguished participants,

Allow me to begin by saying what a privilege it is to address you at the 4th International Summit of the High Courts on Transparency in the Judicial Process. I wish to express my appreciation to the Court of Cassation of Turkey for our longstanding close cooperation and for its leadership in organizing this event.

The 4th Summit, being another platform for exchanging national and international experiences, knowledge, best practices and lessons learned in securing transparency in the judicial process, this time has a very special agenda. At the 3rd Summit in 2016, the Istanbul Declaration on Transparency in the Judicial Process was endorsed. In October 2017, an international expert group developed a draft Action Plan on the Implementation of the Istanbul Declaration on Transparency in the Judicial Process.

Being further revised and also introduced by President Cirit at the High-Level Opening Session of the Launch of the Global Judicial Integrity Network in Vienna in April 2018, today at the 4th Summit, the Draft Implementation Measures are to be finalized as guidelines or benchmarks for the effective implementation of the Istanbul Declaration on Transparency in the Judicial Process.

Ladies and Gentlemen,

Transparency in judicial processes is fundamental to the strengthening of the rule of law. It is essential in the delivery of justice that all necessary measures to secure open and accessible involvement of the public and the media in judicial proceedings, with enough knowledge, accurate communication and adequate services, should be taken. Both the public and the media should be provided with regular, quality and accessible facilities into the court houses and all information about judges and judicial proceedings including appointments, disciplinary processes and court decisions should be processed openly.

The Draft Implementation Measures present details of the ways and instruments whose adoption will operationalize the principles. These measures necessitate their ownership and adoption by the judiciary. When the judiciary does not have the further resources for their effective implementation, the cooperation of the other agencies of the state with the judiciary seems essential for the exact implementation of the measures.

Distinguished Guests,

Recalling the 2030 Agenda for Sustainable Development, principles framed by the Istanbul Declaration and Implementation Measures as guidelines and benchmarks, introduces a framework for how to promote a transparent and accountable judiciary to deliver justice for all.

The agenda provides a renewed impetus for developing institutions and processes that are more responsive to the needs of ordinary people, including the poor and marginalized, and that promote sustainable development. It includes key targets on reducing corruption, improving access to justice, and protecting a number of human rights. SDG 16, especially, seeks to achieve peaceful and inclusive societies for sustainable development, universal access to justice and effective, accountable, and inclusive institutions. A key imperative is to develop integrated solutions involving a range of actors working in justice systems, while exploring new pathways to involve communities.

The SDGs advocate that an independent, transparent and impartial judiciary is a cornerstone of the rule of law and of a democratic state. It serves to protect human rights and people's liberties, provides a check on other branches of government, and helps secure an environment conducive to economic growth and social progress. In that respect, promotion and implementation of the

Principles in the Istanbul Declaration on Judicial Process can be an important guidance for all countries seeking independent, transparent and accountable judicial institutions.

The overall aim of judicial reform processes in Turkey is to reach a fully accountable and transparent judiciary. It is believed that strengthening of judicial institutions and judicial transparency play a vital role in steering the country along a path of sustained human development. In that respect, the principles adopted as part of the Istanbul Declaration presented the path to be followed for improvement of transparent judicial processes and systems in Turkey. The Implementation Measures to be further reviewed and developed during the 4th International Summit of High Courts, bringing almost 30 countries' experiences here today, present the necessary steps for achievement.

The strong partnership between UNDP and the Court of Cassation in Turkey started in late 2009 with the aim of improving the institutional and administrative capacity of the high courts in Turkey to conform to international standards. The series of International Summits of the High Courts were therefore intended to contribute to on-going reform initiatives in Turkey and internationally as well as to serve as a platform for sharing knowledge, experiences and best practices, inter alia, on fundamental aspects of judicial reform processes around the world.

I hope that this Summit will again serve to take countries one more step closer to the recognition and implementation of a set of guiding principles for reforms and improvement in transparency in judicial processes and systems.

At UNDP, we are excited about the possibility of contributing to ongoing endeavors in the field of judicial reform in Turkey and all over the world. We remain committed to continuing to facilitate policy dialogues and exchanges of experiences, including through events such as this Summit of High Courts.

Thank you for your attention. I wish you a very successful Summit.

Distinguished Guests,

Esteemed Participants,

Distinguished Members of the Press,

Introduction

We are here in the beautiful city of Istanbul where civilizations met, and it is a great pleasure for me to be here with you today. I would like to welcome you to the 4th International Summit of the High Courts in which we are going to discuss the Measures for the Effective Implementation of the Istanbul Declaration on Transparency in the Judicial Process. It is an honour for me to be with you here today. I would like to extend my deepest regards to Honourable Chief Justices, Justices, our moderators, distinguished guests from Turkey and abroad and the distinguished representatives of international organisations who are here today. I also would like to extend my deepest regards to my fellow legal professionals.

We have guests from 30 countries across the world, and we are very honoured that we have guests from five continents which are Africa, America, Asia, Europe and Australia.

We have Chief Justices and Justices and international experts among us, which is a clear indication that friendship is not limited to time and space. This has a special meaning for me. In this summit, once again we will demonstrate the important role of human rights, justice, and the rule of law. Many countries have contributed to the development of these concepts and to the values that underpin them. “Justice”, “rule of law” and “human rights” are concepts that have been developed by humankind itself and have arisen from its history and culture. They are not monopolized, and cannot be monopolized, by any country or ideology. We are here to uphold these very important values. I would like to thank you very much and wish you a very warm welcome.

I also would like to thank the United Nations Development Programme for their contributions so far and I would like to thank Ms. Irena for her interest in cooperation and hope that this will continue.

The Responsibility of Judges in Ensuring Judicial Integrity and Transparency

According to Principle 13 of the Implementation Measures of the Istanbul Declaration, “competent, independent and impartial judges” are essential to establish and maintain the public’s trust and confidence in the administration of justice. We have to strengthen the accountability and professionalism of members of the judiciary. We have a common goal. Therefore, we have to come together more often, and we have to look for measures in order to improve the situation concerning judicial integrity. As indicated in the Bangalore Principles of Judicial Conduct and its preface, judicial organs in every country have the responsibility of upholding and preserving high standards in judicial ethics. We as the judges have both individual and collective responsibility concerning the independent and impartial administration of justice. This responsibility is not limited to the boundaries of our own territories. We also have to contribute to international efforts. We have to exchange our knowledge and experience. Today, we have an important role which is not limited to time and space. We have to maintain these important values of the humankind. We have to enrich the content and adopt a human-focused approach in order to safeguard the implementation of these values; because otherwise, these concepts will be mere slogans and international documents on human rights will not go beyond being a matter to be praised in vain.

The Istanbul Declaration

The Istanbul Declaration was adopted by Chief Justices, and Justices coming from 13 different countries from Asia-Pacific. Thereafter, the Declaration was endorsed by the Chief Justices and Justices of the Balkan region. Finally, on 20 October 2017, with the participation of Honourable Nihal Jayawickrama, Honourable Kashim Zannah, Honourable John Dowd, Honourable Shiranee Tilakawardane, Honourable Jeffrey A. Apperson, Honourable Michael Buenger, we developed the Implementation Measures of the Istanbul Declaration. Distinguished chairpersons of our chambers also provided important contributions. I would like to thank all the participants for their performance and creativity at this expert meeting. The Istanbul Declaration became more concrete and detailed as a result of this meeting. These principles will be further discussed, and we will enrich the meaning of these principles in the next two days. We will also learn more about country

practices and in this way, we will take a step forward towards a “universal culture of law” where justice and human rights are implemented equally.

High courts need to assume new roles within the scope of the Istanbul Declaration on Transparency in the Judicial Process. To this end, what the High Courts have to accomplish are as follows:

- Improving confidence in the judiciary,
- Assessing satisfaction levels of court users,
- Raising awareness for people,
- Supporting outreach programs,
- Developing communication and transparency strategies,
- Contributing actively to the making of justice policies,
- Publishing decisions taken.

All these are indicated in the Implementation Measures of the Istanbul Declaration. We, as the Court of Cassation of the Republic of Turkey, have implemented some very significant reforms in order to be able to fulfil these objectives. We will also share our technical knowledge and experience with you throughout the next two days.

The Future of the Judiciary

Public confidence, moral authority and integrity of the judiciary are the safeguards of a modern and democratic society. When the judicial system adopts the fundamental principles, these values can be upheld. The rule of law and right to a fair trial are constitutional rights; the individuals should know about their rights and they should also trust that these rights are safeguarded. Therefore, we have to strengthen public confidence in the judiciary. The standards that are laid down by the Bangalore Principles of Judicial Conduct and the Istanbul Declaration are quite clear. The judiciary has the responsibility to protect and strengthen public confidence, ethics, transparency, effective processes and high quality in proceedings. These are important things that we should try to improve, and we also have to reach out to the people to raise awareness.

As we already know, this is an “information era”. We are in the “digital age” now; we are going through the 4th Industrial Revolution. There are

innovations such as artificial intelligence, robotics and autonomous cars and 3-D printers and nano-technology. These are innovative processes that we should understand. Today, the need for expertise has increased and there are more areas of expertise, in greater variety. Technological advancements have accelerated the process of transition to an information society and made individuals more vulnerable to events. For the first time in human history, information about events is communicated very rapidly. There are many technologies for communication, and these are more economical at the moment. So, this era is also called the “communication age”.

While fulfilling its constitutional obligations, the judicial organs should also take into consideration these new circumstances. The institutions should plan for their future. If as an institution, you do not plan your future, you cannot fulfil your objectives. In this context, as indicated in the Istanbul Declaration, the judicial organs should devise a communication strategy, as required by the circumstances of the modern age, and they should do it diligently.

Conclusion

2018 is the year which marks the 150th anniversary of the Court of Cassation and it is an honour for us to host the 4th International Summit of High Courts. We have many guests and colleagues coming from Turkey and from across the world. I would like to thank you very much for being with us today. I hope that the results of the summit will make a significant contribution to justice, law and human rights.

We have very valuable guests among us, and I firmly believe that we will make use of their experience and knowledge. I would like to thank all the participants for being here to share their knowledge and experience. This will be a significant step forward towards the ideal of a “universal culture of law”.

THE ISTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS

Prof. Dr. Nihal JAYAWICKRAMA, *Coordinator of the UN Judicial Integrity Group*

**The Honourable First President of the Court of Cassation of the
Republic of Turkey,**

Other Justices of the Court of Cassation,

**Your Excellencies the Chief Justices and Justices from Five
Continents,**

Representatives of the UNDP in Turkey and

Other Officers of UNDP,

It is a great honour for me to be present here in the concluding stages of an effort that began five years ago.

In 1948, the Universal Declaration of Human Rights recognized the right of everyone to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. In 1966, the International Covenant on Civil and Political Rights elevated this right to the status of a treaty obligation.

Since then, several international instruments have addressed different aspects of the right to a fair trial. For example, we have the UN Basic Principles on the Independence of the Judiciary 1985; the Basic Principles on the Role of Lawyers 1990; and a Statement of the Essential Duties and Rights of Prosecutors 1999. More recently, in 2006, the UN endorsed the Bangalore Principles of Judicial Conduct, prepared by the Judicial Integrity Group - a representative group of Chief Justices - of which I am the Co-ordinator. Its Implementation Measures stress the importance of transparency in the judicial process. However, no attempt was made, at any level, to comprehensively address this fundamental element of the judicial process, namely, the principle of transparency. That is until 2013 when the Court of Cassation of the Republic of Turkey and UNDP Turkey took the initiative to do precisely that.

Of course, there have been judicial pronouncements on certain aspects of transparency in the judicial process. For example, the UN Human Rights Committee has held that trials conducted in Peru by special tribunals established under anti-terrorist legislation composed of anonymous judges who were allowed to cover their faces violated the right to a public hearing. Similarly, the anonymising of a witness; i.e. withholding his or her name and address or screening the witness so that his or her face cannot be seen even when being cross-examined, have been the subject of judicial decisions in the United Kingdom and the United States. In Canada, the Supreme Court has considered the question whether a witness can wear a niqab while giving evidence. These issues concern the rights of accused persons, rather than of the public generally.

Transparency of the judicial process means more than a trial held in public, or televising court proceedings and thereby opening them to the public. It means providing information regarding the time and venue of hearings and ensuring that adequate facilities exist within the courtroom for the attendance of the public. It means locating courts within easy access of transportation hubs, with readable signs, orientation guides and court schedules. It means providing court users with user-friendly forms and assistance with legal representation. It means providing the free assistance of an interpreter if a litigant cannot understand the language used in court. Transparency means all that and more.

There should be transparency in the assignment of cases, by ensuring that it is performed under a predetermined arrangement. Transparency requires that all information relating to judicial proceedings, both pending and concluded, is available to the public and the media through a court website or accessible records. Transparency requires that judicial decisions, especially of the superior courts, are regularly published, so that the public, the media, civil society, lawyers and legal scholars may subject them to scrutiny. Public scrutiny makes judicial decisions more predictable and consistent, and thereby improves the quality of justice. It is also a powerful deterrent against judicial corruption.

Transparency involves something more than providing access to, and information relating to, court proceedings. The judiciary ought to reach out to the community and demystify the judicial process. Reaching out to the community, whether through town hall meetings, or radio and television

programmes, or through the dissemination of printed material such as court user guides, and educating the public, including students and the media, on the role of the justice system, is necessary to earn public confidence in the independence of the courts, in the integrity of its judges, and in the impartiality and efficiency of its processes. These are what sustains confidence in the judicial system of a country. As a corollary to the demystification process, the judiciary should regularly assess public satisfaction with the delivery of justice, whether through a complaint system, case audits, surveys of court users, or discussions with court user committees, and thereby seek to promote the quality of justice.

Finally, transparency is required in the appointment process of judges, in responding to complaints of unethical conduct of judges, and in the disciplinary process of judges. In this way, transparency prevents the perception of self-interest and self-protection, and addresses the fears that the community may entertain of corruption, and of undue influence by the executive branch of government.

The Istanbul Declaration on Transparency in the Judicial Process seeks to address these, as well as other relevant issues. In early 2013, a draft declaration was submitted by the Court of Cassation of Turkey and UNDP to the Chief Justices of the Asian and Pacific region. After their comments were received, including suggestions for the improvement of the Draft, they were invited to a Conference, here in Istanbul, in November 2013 to share and document “best practice” and identify the essential elements of the multi-faceted concept of judicial transparency from their own jurisdictions. At that conference - the Conference of Chief Justices and Senior Justices of the Asian Region - each principle in that draft declaration was discussed in detail in different committees, and amendments incorporated where necessary. Finally, on 21 November 2013, the Istanbul Declaration was unanimously adopted at the final plenary session of the conference.

In June 2016, on the invitation of the Court of Cassation and UNDP, the Chief Justices and Senior Justices of the Balkan Republics met in Bursa, the capital of the former Ottoman Empire, to review the Istanbul Declaration. At the end of a three-day conference, the Justices endorsed the Declaration without amendment.

In October 2017, an international expert group was convened in Ankara by the Court of Cassation and UNDP to develop a draft Action Plan for the

implementation of the 15 Principles of the Istanbul Declaration. Following that meeting, the draft Action Plan was revised, and Draft Measures for the Effective Implementation of the Istanbul Declaration was prepared. It is that document that will be placed before this Conference in the hope and expectation that it will be reviewed, and revised if necessary, and finally adopted by this distinguished gathering of eminent judicial personalities drawn from all the continents and representing the diverse judicial systems that exist today, meeting in this historic and beautiful city, on the banks of the Bosphorus, where the East meets the West.

In conclusion, I wish to add one important observation. The early international instruments relating to the administration of justice were drafted by representatives of governments. Consequently, they were of a quasi-political nature. For example, the UN Basic Principles on the Independence of the Judiciary 1985 were conceived, formulated and fashioned by the representatives of the executive branch of governments. As the draft progressed from one level to another within the UN system, it was also subjected to the pressures of the cold war at its height, and the need to compromise to achieve a consensus among widely divergent political systems. On the other hand, the Bangalore Principles of Judicial Conduct were initiated by judges and were crafted by judges based on their own experience and are intended for use by judges. When it was endorsed, first by the UN Commission on Human Rights, and then by the UN Economic and Social Council, it became the first instrument not drafted by representatives of governments to be published in a compendium of United Nations standards and norms relating to the administration of justice.

The glass ceiling was broken. I am confident that the Istanbul Declaration on Transparency in the Judicial Process, and the Measures of its Effective Implementation, also drafted and adopted by judges, for use by judges, and addressing a vital, but hitherto unexplored, aspect of the judicial process, will be able to follow that same path to global acceptance.



DAY I

PLENARY SESSION I: Introduction of Participants and Preliminary Views of the Participants on the Istanbul Declaration and the Implementation Measures

MODERATORS:

The Hon. İsmail Rüştü CİRİT

First President of the Court of Cassation, Turkey

Prof. Dr. Nihal JAYAWICKRAMA

Coordinator of the UN Judicial Integrity Group



11 October 2018

Distinguished guests, distinguished participants, I would like to wish all of you a warm welcome. It is a great honour for me to be here with you, distinguished guests. It is a great pleasure and honour and privilege for me to work on developing and implementing the concept of transparency in the judicial process. It is also the same for my colleagues. I would like to thank all the participants.

Today, judges play a very important role and should assume more responsibility in order to ensure transparency in the judiciary. The basic principles and guidelines on this matter were all incorporated into the Istanbul Declaration and Implementation Measures. At the Turkish Court of Cassation, we uphold all these principles, and we have undertaken significant reforms and developed some projects for other reforms. The Heads of the Chambers will provide further information on these reforms and future projects in their respective sessions. Also, on the website you can find further material on the principle of transparency. We have participants from 30 countries, and we have 90 minutes to use time efficiently. I am going to limit my speech to three minutes only. And I am going to give the floor to those who would like to speak on this subject. So, I will try to finish my presentation in three minutes.

We at the Turkish Court of Cassation have undertaken the following reforms within the scope of the Istanbul Declaration;

Principle 1 - *Judicial proceedings must, as a general rule, be conducted in public.*

According to this universal principle, I assume that judicial proceedings are conducted publicly in all judicial systems. There may be some space limitation for the public; therefore, the hearings should be recorded and then published on the internet. Especially in terms of the cases in which the public has a high interest, can we improve transparency in this manner? This is a very challenging task, and we are working on that. On the other hand, we are also enabling the members of the press to observe the hearings.

Principle 2 - *The judicial system should ensure easy access to court premises and to information.*

We are providing front office services in order to facilitate access to judicial information. Also, the parties can follow all the stages of the proceedings electronically and the lawyers can have access to any kind of information from the National Judicial Network. We are trying to improve information services provided for our citizens. Because the use of electronic services reduces our workload, we prefer to use this both easy and safe method.

Principle 3 - *The judiciary should facilitate access to the judicial system.*

In the Turkish judicial system, it is possible to apply for legal aid even at the stage of appeal. If the parties meet the necessary conditions, they can have access to legal aid. All proceedings and filing charges including lawyers' fees are exempt for those who benefit from legal aid.

Principle 4 - *The judiciary should provide court-users with translation and interpretation facilities, free of charge.*

We provide translation and interpretation services free of charge.

Principle 5 - *The judiciary should ensure transparency in the assignment of cases.*

The division of work in the Court of Cassation is determined by the decision of the Grand General Assembly of the Court which is published in the Official Gazette in every new year. It is completely transparent. As a rule, we do not make any change in the assignment of chambers. However, there can be changes in the division of work in order to balance the workload or due to the legal regulations related to decreasing the number of chambers. Other than that, it is not possible to take a file out of the assigned area of a chamber.

Principle 6 - *The judiciary should ensure transparency in the delivery of justice.*

We share the statistics on budget-related data and workload with the public through our website in every new year. If there are regulations or regulatory acts, we obtain opinions from a wide range of circles, especially from justice actors.

Principle 7 - *The judiciary should have supervisory powers over executive detention.*

The principle of Habeas Corpus has been recognized in the Turkish law for a long time. All processes of custody and detention are under the supervision of the court.

Principle 8 - *The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.*

In the last three years, we have enabled the public to have access to all the judgments of the Court of Cassation. These judgments are published on the website after the personal data is deleted.

Principle 9 - *The judiciary should promote programmes to orientate students on the judicial process.*

Through the modules of legal clinics that we have developed with the law faculties of the universities, the President and the members of the Court of Cassation, the rapporteur judges and public prosecutors collaborate with the students in the law faculties. Until today, 600 students have participated in the training and more than 80 of them have become trainers. The trainers are registered in the Court of Cassation and we are orientating them to relevant training courses. We aim to improve the legal clinics which were launched in the areas of judicial ethics and transparency.

Principle 10 - *The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.*

Under the program of transparency studies, we will begin outreach programmes designed to educate the public through the relevant educational materials by opening up booths at the court houses with the assistance of law students next month. This will be an incredible experience for us.

Principle 11 - *The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.*

We have a media and press office in order to facilitate the media's work. We provide an opportunity for them to conduct all their work there.

Principle 12 - *The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.*

We will conduct a satisfaction survey for 4000 lawyers in Turkey through

scientific methods in order to measure their satisfaction level related to the services of the Court of Cassation. Thereby, we will examine in which areas we are successful and in which areas we need to improve ourselves. Also, this year, we will begin to measure the satisfaction level of court users through an applicable software program in the front office.

Principle 13 - *There should be transparency in the appointment process of judges.*

The appointment process of judges and members to the higher judiciary is the responsibility of the High Council of Judges and Prosecutors. That is why, I will pass this principle.

Principle 14 - *The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.*

In the last quarter of last year, we developed judicial codes of conduct for the rapporteur judges, public prosecutors and the staff members of the Court of Cassation. The codes of conduct were developed following democratic and transparent processes and are in line with the standards established by the United Nations and the Council of Europe. We developed one or two-day training courses, and the total number of our training programmes have reached nine. I can express with confidence that we have undertaken very serious reform in the matter of judicial ethics. In this reform programme, there are many components, ranging from the establishment of a Judicial Ethics Advisory Committee to the introduction of judicial ethics as a lecture subject in the law schools. I think that education on judicial ethics through legal clinics is very important. Now, with the cooperation of Bar Associations, we are working on providing education on this subject for the lawyers.

Principle 15 - *There should be transparency in the disciplinary process of judges.*

We have an independent disciplinary committee in the Court of Cassation. In the disciplinary process, the right of defence of the judge is respected.

I would like to extend my deepest respect to each and every one of you. I would like to welcome you once again, thank you.

Honourable Chief Justices, esteemed brother judges, ladies and gentlemen, good morning. As salaam alaikum. I want to begin by thanking the President of the Court of Cassation of Turkey, Honourable İsmail Rüştü Cirit, for inviting me to this great occasion, and also extending a warm reception and general hospitality to my spouse as well as my entourage. I am also taking the privilege to extend my heartfelt gratitude to the world community, especially the Turkish Government, for their support for Rohingyas in Bangladesh, and hope that a political solution to the crisis would be found since it is not only an issue of Bangladesh, but is a humanitarian crisis.

In Bangladesh, the Constitution is the supreme law of the land. Any law enacted by the legislature may be declared as unconstitutional by the Supreme Court of Bangladesh. Every person accused of a criminal offense has the right to a speedy and public trial. The public have an absolute right to know the decision made by the court. Media have access to the courts of Bangladesh to transmit the decision of the court to the public within a few minutes. The Supreme Court of Bangladesh has its own unique relationship with the media and its own comfort level with media access. We have established a media room in the court premises.

Since 2008, the Supreme Court of Bangladesh has published annual reports. The objective of this initiative is to analyse the progress and current challenges to the judicial system in Bangladesh. The Supreme Court has also introduced online law reports and an online confirmation system. It is also preserving electronic records relating to cases and maintaining a personal data sheet for every judge of the district judiciary. These are all kept in an electronic environment. In this way, we are trying to further transparency and accountability. In addition, the Government of Bangladesh has taken the initiative to implement a technology based judicial system.

In Bangladesh, there are more than 166 million people and we have more than 3 million pending cases in the courts of first instance. It indicates that people's access to justice is higher than in many other countries of the world and it shows public confidence in our judiciary. The government has taken some pragmatic steps in order to provide legal aid to the poor and indigent, especially vulnerable women and children and the fees for the proceedings are covered by the government, so that they can access justice. In order to

promote transparency in the judiciary, the Supreme Judicial Council headed by the Chief Justice of Bangladesh formulated a Code of Conduct for the judges of the Supreme Court. Flouting any provision of the Code of Conduct is tantamount to misconduct and some judges may lose their office.

The greatest strength of the judiciary is the trust and confidence of the people in it. Moreover, 17 principles were enunciated for the judges of the subordinate judiciary of the country. In 2017, these principles were formulated to keep the subordinate judiciary transparent and to sustain the independence, impartiality, integrity and equality of the judicial system. All persons employed in the judicial service and all magistrates are independent in the exercise of their judicial function.

I strongly believe that the Istanbul Declaration on Transparency in the Judicial Process will shed light to the world of judiciary and thereby they will be benefited to secure the human rights and the rule of law. I wish this summit to be successful. Thank you.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Chief Justice of the High Court of Bangladesh, Syed Mahmud Hossain, thank you very much for your remarks. Chief Justice of High Court of Lebanon, Mr. Jean Fahed the floor is over to you.

Jean Daoud FAHED, *First President of the Court of Cassation, Lebanon*

Thank you, Mr. President. It is always a privilege for us to be with you, to be in Turkey, in Istanbul. And whenever we are here, we are reminded of the historical relationships between Lebanon and the Ottoman Empire. Before 1919, the Court of Cassation of Lebanon was implemented in Istanbul. And thank you, Mr. President, for your hospitality. Thank you for this important conference.

In Lebanon, we do apply these same principles, but we apply them through the code of civil procedure. Recently we have begun to implement an electronic justice system at the Court of Cassation, and e-justice is now open to be connected not only by the Court of Cassation but also by the Bureau of the lawyers. We are trying to have a link with the Bureau of the lawyers in Lebanon. Legal aid is implemented, especially whenever we have a need

for translation or interpretation. First, we call on the embassies if someone is from outside the country and if he doesn't understand Arabic. We call on his embassy for someone to come and do the translation. Otherwise we provide legal aid to this translation.

We are now opening the Court of Cassation to the students of the faculties of law, especially for those who are in the fourth year. They visit our court and we will try to find a way so that they could help us also in studying the cases and doing some research. The media is present at the Court of Cassation, especially whenever we have a terrorist case. So, we are open to the media and we find the media present and taking notes of the hearings. We provide easy access to the court premises, to provide information we have published a booklet on the procedure and that is available in front of the Court of Cassation, how to proceed in front of the Court of Cassation. This booklet is also published on the website of the Court of Cassation.

There is, of course, transparency in the assignment of cases. It is a random assignment. Each case has a number, so the cases are assigned by their number in an automatic order. Recently, we published a yearly report regarding the work of the Court of Cassation. The law provides that there should be a yearly report, but it had never been implemented. That is why we decided to implement this provision and make this report last year. In this report we provide information about what's happening in the Court of Cassation, and about the most important cases and sentences. But we are, of course, facing a problem, which is the increasing number of cases not only at the level of the Court of Cassation, but at all levels of judiciary due to the presence of one million Syrian refugees on Lebanese territory. The cases have increased by about 35 to 40%, especially criminal cases.

Again, I would like to thank you Mr. President of the Court of Cassation and thank all Honourable Chief Justices of High Courts present here and may this conference bring a big fruit to each one of us. Thank you, sir.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

I would like to thank the Chief Justice of the High Court of Lebanon, thank you. It's over to you Mr. Chief Justice of Sudan.

Haider Ahmad DAFFALLA, *Chief Justice of Sudan*

Thank you. First of all, I would like to thank Your Excellency. It is my pleasure to be with you here. I attend this important summit to represent the Sudanese judiciary and would like to thank especially His Excellency İsmail Rüştü Cirit, the President of the Court of Cassation of Turkey and Ms. Irena, representative of UNDP for hosting this important summit and organizing this important forum. We think that our code should ensure transparency and independence and integrity. All our high courts should ensure transparency, independence and integrity in the delivery of justice and we think it is very important that we gather together to finalize all these outputs. Thank you very much for organizing this event and for your hospitality. God bless you, thank you.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Thank you. Honourable Chief Justice of the High Court of Sudan, thank you. From the High Court of Venezuela, Honourable Chief Justice, the floor is over to you.

Maikel Jose Moreno PEREZ, *President of the Supreme Court of Justice, Venezuela*

Thank you very much, Honourable Chief Justice of the Turkish Court of Cassation İsmail Rüştü Cirit and Distinguished Resident Representative of the United Nations Development Program Ms. Irena. The most important structure of the judiciary in the High Court of the Bolivarian Republic of Venezuela is represented here by me. I would like to extend my deepest respects and regards to each and every one of you. I also think that this strategic meeting is very important for us. I would like to thank you very much for your invitation to this summit. This is going to be a mutual exchange environment for us. So, between these countries, the principle of reciprocity is vital in terms of contributing to protect the rights and benefits and interests of our citizens through this summit. This time is vital. Thank you for your invitation.

It is a great honor for me to represent Venezuela in the Republic of Turkey which has thousands of years of history and where the principle of “peace at home, peace in the world” is proudly adopted and all the religions and civilisations meet. Living together in a geopolitical environment in the 21st century should be considered as an example of sustainable peaceful

development in both global and regional terms. This should be seen as a pioneer of a module with multiple polars which enables equalitarian development and be appreciated that rights of the citizens are safeguarded through this module. Throughout history, Venezuela, as a free and independent country, has been based on the rule of law, human rights, separation of powers, the public autonomy, and also complementary respect for our citizens, social equality and welfare at the highest level to the public and transparent and sovereign delivery of justice in the political system. Therefore, the judiciary system should be based on these pillars. Similarly, the Constitution of Bolivarian Republic of Venezuela was enacted in 1990, and through it a democratic and social state model was established. Thereby, the Constitution became a fortress of multinational and multipolar society based on rights and justice which ensures the right to live, work, the right of education and culture and social justice. Its rights were safeguarded through participatory approach in a multinational country.

Even though all these safeguards are accepted as universal and recognized by different national and international instruments, they cannot be effectively implemented alone. They have to be supported with an effective judiciary and they have to be defended. For the equal and fair delivery of justice, we need independence and impartiality among the judges, and the appropriate compensation of the victims should be safeguarded through some primary procedures and transparent judicial process. As a part of transparency in the judicial process, it contributes to the highest interest of the state of law, because the state of law provides access to information and judicial proceedings. And this stage of the law should enable the parties to exercise their rights, and also all the activities for the management of the judiciary should be carried out transparently.

Transparency is important in the appointment of judges and assignments of cases and also for the well-functioning of the judiciary. Transparency should also be provided in the allocation of resources and budgets as well. In the Venezuela judiciary, parties are heard by the judges through fair trial. For transparency in the judiciary, another indispensable element in the evolution of such a judiciary is the publicity. Judgments are provided electronically, and people can use those mechanisms to have access to the judgments. With the help of this mechanism, public can communicate with the judiciary for any mistakes or errors made in the judicial system or process.

We need also to fight against corruption to ensure transparency. Therefore, a policy should be implemented in order to enable the judges to fight against corruption. In Venezuela, a judge is subject to the law on the code of judicial conduct. If the judges violate the code of conduct, they are warned or dismissed from the office through disciplinary proceedings, in accordance with the criteria laid down in the code. In addition to that, the anti-corruption law is also implemented for members of the judiciary. On the other hand, the principle of autonomy also contributes to transparency; a special budget was dedicated for the judiciary to ensure the administrative and financial independence of the judiciary. The principle of compensation is also implemented. I have to underline one point that the High Court of Venezuela is the highest-level court to ensure and safeguard transparency in the judiciary. Thank you very much.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Thank you very much, Honourable Chief Justice of the High Court of Venezuela, Maikel Perez, thank you. Over to you Mr. Anil Kumar Sinha, Justice of the Supreme Court of Nepal.

Anil Kumar SINHA, *Justice of the Supreme Court of Nepal*

I would like to thank the Honourable Chief Justice of the Turkish Court of Cassation, Representative of UNDP Turkey and all Chief Justices, Justices and Dignitaries. It's such a pleasure to be here. I recall that our President, the Chief Justice of the Supreme Court of Nepal was a participant of the conference in 2013 when the Istanbul Declaration was adopted. The 15 principles were declared at that time, and most of them have been incorporated in our Constitution and our laws.

Let me give you a little background of Nepal. We had ten years of very strong armed conflict which devastated the whole of Nepal. Then there was a domestically drawn peace process which suspended the old constitution and there was an election of the Constituent Assembly. It took 10 years to draft the new constitution, and it is only three years now that we have a constitution which is accepted by all the conflicting parties in Nepal. As if that was not sufficient, in 2015 there were two very serious earthquakes that hit Nepal very badly. So, in total, in the conflict there were 20,000 deaths,

and in the earthquake there were 10,000 deaths, and the economy was totally devastated. Still, the law-making processes continue. Even the buildings of the Supreme Court and the courts of Nepal were damaged, and we conducted our proceedings in the tents for many years. Even now we do not have proper infrastructure in many of the district courts and high courts. Thankfully, the Supreme Court's building is almost complete now.

After having said these, I would like to state that our Constitution is the youngest constitution among the countries in this conference. We incorporated most of the provisions of the Istanbul Declaration on Transparency in the Judicial Process in our Constitution. Previously new criminal courts and civil courts went through a reform process on 17 August 2018. I will not go into the details of what we have done or achieved. Statutorily these declarations have been accepted by judges as a follow up of the 2013 Istanbul Declaration. Few things that I would like to add here is the role of the executive. We have had certain problems in the past, and even the Chief Justice of Nepal was prosecuted. Unfortunately, the case was not heard, since it was withdrawn by the parties who filed it. The result was that in the next election for the National Assembly and the assemblies at local and municipal level, this question came up very strongly. The power of the executive over the judiciary in such a manner is not acceptable.

At the court level, we are now running the third strategic plan; we have five-year plans and we are at the third level. It will be finished in 2019 and we are reviewing the plan. First of all, we need to ensure justice and transparency. So, the issue that we have in that strategic plan is also matching with what we are discussing today. In regard to transparency, one of the major changes that we are now implementing is in the IT sector. We are publishing weekly case lists and daily case lists. The next report that we are presenting is by a committee headed by me. We will be submitting a report to the Chief Justice of the Supreme Court of Nepal. It will be on a fully automated daily case list system whereby the cases will be assigned on the court basis rather than on a name basis. So, the question of backstopping or question of assigning certain cases to a particular person will be avoided. One other major issue that we are talking about at the moment is the appointment of judges. Because of political influence during the constitution making process, a Judicial Council has been formed which was not there before.

Thank you for all your arrangements in the country, in this beautiful country. Thank you, sir.

Thank you very much. Mr. Anil Kumar Sinha, the High Court Justice of Nepal and I would like to say that I'm very sorry about the earthquake that occurred.

Maricela Sosa RAVELO, *Vice President of the Supreme People's Court of Cuba*

Good morning, Mr. Excellency İsmail Rüştü Cirit, First President of the Court of Cassation of Turkey, Her Excellency Ms. Irena Vojackova-Sollorano, Resident Representative of UNDP Turkey, Honourable Presidents of Supreme Courts, ladies and gentlemen. It constitutes a high honour and privilege for me to attend this international conference of High Courts and to be able to address you briefly. I also take this opportunity to convey greetings from the President of the Supreme People's Court of the Republic of Cuba, Rubén Remigio Ferro. The central theme of this meeting is transparency which is of outstanding importance due to its significance for the effective functioning of the judicial system in all the States, including Cuba. In Cuba, we need this principle in order to ensure satisfaction of the individuals, guarantee the quality standards during the processes, facilitate the rapid and effective access to justice and enable the parties to have access to their rights and to protect the interests of natural and legal persons.

The Cuban Code of Ethics establishes the values of fairness, independence, impartiality, transparency, probity, humanism, honesty, quality, responsibility and patriotism. It defines transparency as an open, accessible, understandable and verifiable judicial action for those who participate in the process and for the citizens in general. Justification of the court decision also takes place under this framework. Judges render decisions impartially and according to their inner conscience. While doing this, they exercise due diligence for the legal and criminal proceedings and rules of procedure. We have identified the essential components of quality management, the rendering of accounts, and compliance with the requirement of due process. Adequate argumentation and the grounds for judgement, the attention to the complaint, the notions and disposition of populations, the evaluation of performance, the training of judicial personnel and the management of their ethical behavior, are what correspond to the spirit.

We take into consideration Article 11 of the Convention against Corruption, the Doha Declaration and the Istanbul Declaration. In accordance with the Cuban Constitution, there are principles of accountability and equality, and for all these, the judicial proceedings should be completed in time and the rights of the parties should be respected. The adoption of well-founded and well-argued decision is needed to be written in clear and simple language. Since 2001, mechanisms have been established to deal with and respond to the proposals and complaints of natural and legal persons. The governance of the Cuban Court is endeavoring to enhance the quality of their works and in this context, all judges, prosecutors and court staffs are aware of their responsibilities. Cuban society is currently going through a process of constitutional reform. It is already an independent, social, democratic, prosperous and sustainable nation. We will apply changes and transformation in the judicial system and will impact on the procedure of our laws and will impose the need to have a new organic law for the courts. Therefore, it is very important for me to share my opinion and experience in here. Because, we believe in the transparency in the judicial process, we will endeavour to confront new challenges and at the same time the Supreme People's Court of Cuba will continue to provide service in compliance with the principles indicated in here. Thank you very much.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Thank you very much, Vice President of the Cuban Supreme People's Court. Thank you very much, madam. Chief Public Prosecutor of the Court of Cassation from the Republic of Turkey, the floor is yours.

Mehmet AKARCA, *Chief Public Prosecutor of the Court of Cassation, Turkey*

Thank you very much Distinguished President of the Court of Cassation, Distinguished Resident Representative of UNDP and Fellow Colleagues. I would like to extend my deepest regards to each and everyone of you. I am a member of the Court Cassation and one of the justices of the Court of Cassation. The Republic of Turkey as indicated in its constitution is a secular, democratic social state of law. And it takes us to the foundation of the rule of law. Just like all the other Turkic states established in history, the Republic of Turkey considers this as the fundament of the system. Therefore, since the proclamation of the Republic, many reforms in the field of law and in

numerous areas have been implemented. Since 2005, we have been engaged in a reform process and we introduced amendments in the Turkish code of commerce, code of obligations, civil law, legal proceedings, criminal law, criminal procedure law and laws regarding the execution of sentence. At this point, improvements in parallel with the developments in human rights are foreseen. Very important improvements have been achieved especially in the field of victims' rights. Legal Aid for the people who do not have financial power and a compulsory defender to be assigned for juveniles are among the various amendments that have been introduced so far.

In addition to these improvements, as an indication of the importance attributed to the judiciary, the state and the government has offered and provided a lot of assistance to the courthouses to improve the facilities. A national judicial informatics network was also introduced. For the district courts, the first instance courts, and for the high courts, the judicial informatics network is now fully functional. The electronic system is available to people, which is important for everyone, especially for the lawyers because they can follow the files on this judicial informatics network, UYAP system. That has been a great impetus for the judiciary. We have the law on information and that is related to individuals' right to information. So, this judicial informatics network (UYAP) is very important for offering swift information concerning the files and the cases to people.

The Ministry of Justice has been recently engaged in an effort to estimate the case conclusion times in the first instance courts. There are some pilot practices now being implemented in the first instance courts. After Mr. İsmail Rüştü Cirit took office, the Court of Cassation of the Republic of Turkey scanned and digitalised four million decisions of the Court and made them available to the public. That was great progress in terms of transparency. First instance courts, court of appeals and high courts and all judicial organs should comply with accountability, transparency and codes of ethics in the judicial process. This project is very important in order to be able to contribute to these. With the great contribution of UNDP and the Resident Representative of UNDP, we have made great progress. This is very important since it gives us hope, in the name of law, in the name of the rule of law, and we are all hopeful as judiciary professionals.

The Republic of Turkey is a state of law, and it has made a clear commitment to strengthening the rule of law. The Republic of Turkey attributes importance

to human rights and in this respect reforms have been introduced in 2012 with the amendment to the Constitution. Individual application to the Constitutional Court was introduced after exhaustion of domestic remedies. If individuals consider that their fundamental rights are violated, they can go to the European Court of Human Rights. But before that, they have to apply to the Constitutional Court. That is their right of individual application, and any act and action of the administration is subject to judicial review. We, as judges and prosecutors in the High Court, face a very high workload and in order to overcome this problem, under the leadership of the Court of Cassation, we have intensified our efforts to introduce ADR, Alternative Dispute Resolution. I firmly believe that this meeting will be a very successful and fruitful one. It is an honour for me to be with you here today. With due respect, I would like to thank you very much.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Chief Public Prosecutor of the Court of Cassation, thank you very much. We have very distinguished experts among us. One of our experts and our moderator, I would like to give the floor to Dr. Jayawickrama.

Nihal JAYAWICKRAMA, *Coordinator of the UN Judicial Integrity Group*

Thank you. I believe that we have about another 20 minutes and it may be useful if the participants around this table who have not yet spoken would briefly introduce themselves. Shall we begin from the right?

Kenneth A. BENJAMIN, *Chief Justice of the Supreme Court of Belize*

I am the Chief Justice of the High Court of Belize in Central America. It is my pleasure to be in this very distinguished gathering. I wish to extend my gratitude to the First President of the Court of Cassation of Turkey, and to UNDP through its resident representative. I am the only representative from the Caribbean region; save for my colleague from Cuba, who I see on my left waving very vigorously. I represent the English-speaking Caribbean and I also represent Central America because Belize, although it is on the rim of the Caribbean Sea, it is in fact situated in Central America. My jurisdiction is very small with 350,000 people. We have five judges of the Court of Appeal, 12 judges of the Supreme Court and 18 magistrates. I emphasize the size of

my jurisdiction, because you will appreciate that implementation has a direct bearing upon the resources that are available.

I just want to highlight one particular cause for concern in the judiciary. Having regard to the separation of powers, we are now very concerned that because of the way elections have been held, the results of recent elections, there has been a blurring between the executive and the legislature. That brings into very sharp focus the importance of the judiciary and of the rule of law to safeguard the rights of individuals of our respective countries. I also want to highlight that one of the concerns that we are addressing at this very moment through a project with the assistance of the government and people of Canada is public outreach, the importance of access to justice. If the individual is unable to understand the proceedings and to have access to the process, then there is absolutely no transparency. So, with those few comments and emphasizing that the public trust and confidence are the hallmarks of a good judiciary, I'm pleased to be here and to contribute to these discussions. Thank you.

Nihal JAYAWICKRAMA, *Coordinator of the UN Judicial Integrity Group*

Thank you, Chief Justice Kenneth Benjamin. We next have the Chief Justice of Qatar. Thank you.

Masoud Mohamed ALAMERI, *Chief Justice of the Supreme Judiciary Council of Qatar*

Hello colleagues, ladies and gentlemen. As regards transparency in the judicial process, I would like to say a couple of words. But before I do that, I would like to thank our host, and I would like to greet all the participants of the 4th International Summit of High Courts. I would like to thank the First President of the Court of Cassation and the UNDP Resident Representative. This is a very important meeting. Thank you Prof. Nihal. My name is Masoud Alameri. I am the Chief Justice of Qatar, the President of the Court of Cassation. I want to take this opportunity to thank you very much for the invitation. My brother Ismail, the President of the Court of Cassation, UNDP, I just want to wish the success for our meeting. I am not going to take more time than this. Thank you very much.

Thank you, Chief Justice Alameri. We next have the President of the Supreme Court of Azerbaijan. I would like to mention that the Supreme Court of Azerbaijan was one of the first countries to translate the Bangalore Principles, the Commentary and the Implementation Measures into the Azerbaijani language, and that was several years ago. Thank you.

Ramiz RZAYEV, *President of the Supreme Court of Azerbaijan*

Fair trial is very important for the protection of civil, political, economic, social, and other rights of the individual. The freedom of information which is guaranteed in the Constitution of the Republic of Azerbaijan is one of the factors that ensures confidence and trust of the public in the courts. Courts have important roles not only in terms of trial, but also in terms of social supervision. In the whole court system, transparency should be one of the main principles. Of course, the freedom of information is an important aspect in that. According to the Azerbaijan Constitution, every person has the right to legally seek, get, pass, prepare and spread information. Citizens have the right to personally address as well as the right to send individual and collective written petitions to government bodies. The court is a state body, so of course, individuals may also ask for information from the courts.

In compliance with the relevant articles of the Constitution, the trial in all courts shall be public. The decisions of Supreme Court shall be published. The process of further modernization of the judicial system has been determined as one of priority. So, what has been done in Azerbaijan to fulfil this objective? Comprehensive legislative and institutional measures were developed. Particular attention is paid to the development of judicial infrastructure. Modern buildings have been constructed in accordance with its high status. The courtrooms have been equipped with systems of audio and video recording with IP security cameras. Electronic document management system, Femida system, has been established. Also, the necessary infrastructure allowing video conferencing has been installed. Courtrooms are provided with the ICT equipment for testimony of the witnesses. Employment of such technologies has been achieved through the development of an integrated information strategy.

As a result of a successful project carried out jointly with the World Bank, citizens' access to the courts has been simplified. A common internet link – courts.gov.az – allows citizens to receive information on cases filed in courts. Through this portal, the citizens can obtain information regarding all courts and their territorial jurisdiction, application forms, necessary documents to be attached to an application, information on pending cases as well as decisions.

Since 2010, preparatory work was initiated on the implementation of electronic court proceedings and amendments to the Civil Procedure Code were adopted. These entered into force on the first of January 2017. All processes are recorded and stored on an electronic database. A question may arise. Why do we need it? First of all, it is because we achieve maximum transparency in the administration of justice. Maximum transparency ensures public control over the judicial process, which in turn would lead to a sharp decrease in corruption. In conjunction with the fight against corruption, the electronic court also performs many other important functions. The advantage of e-justice is the acceleration of the turnover of documents, the simplification of the right to judicial protection, the electronic submission of claims, appeals and other documents. Thank you very much for your kind attention.

Nihal JAYAWICKRAMA, *Coordinator of UN Judicial Integrity Group*

Thank you, President Rzayev. If we take five minutes away from lunch, we will have time for some quick introductions around the table. Let us begin with Sandra.

Sandra OXNER, *Founding President, Commonwealth Judicial Education Institute, Canada*

I am a Canadian judge, but I really think I am here in my role as founding President of the Commonwealth Judicial Education Institute. As a judicial educator, may I say how very helpful these Implementation Measures will be when adopted. We have made great use of the Commentary on the Bangalore Principles. The principles alone are excellent of course, but they are not as good for teaching as the Implementation Measures. May I just close by saying how grateful I am to the First President and the UN Representative for the invitation to be here with you in this wonderful city that I have always longed to visit. Thank you.

Vasil ROINISHVILI, *Deputy Chairperson of Supreme Court of Georgia*

Hello. I am Vasil Roinishvili, Representative of Georgia. I am a Deputy Chairman of the High Court. First, I want to say thank you and extend my respect to you, our host organizations. I think that our meeting will be very helpful because sharing information makes us stronger. Thank you very much.

Peter CHARLETON, *Justice, Supreme Court of Ireland*

Hello. Peter Charlton is my name. I am from the Supreme Court in Ireland. It is a great pleasure to be here, and to visit Istanbul, to visit Turkey. Later on, perhaps by way of confession one might say, I will share with you some of the problems which we have in our country, concerning the judiciary, and also some of the things we have done well, but for the moment, I simply say hello, and thank you.

Enock Chacha MWITA, *Justice, High Court of Kenya*

May I say, we are happy to be here this morning, Mr. President of the Court of Cassation. My name is Enock Chacha Mwita. I am here to represent my Chief Justice who is unable to be here today. What we are discussing here today is already happening in my country. We can only go ahead to enhance transparency and accountability, not to start the process. Thank you very much.

Jeffrey APPERSON, *Vice President, National Center for State Courts, United States of America*

My name is Jeffrey Apperson, and it's good to be here. Thank you, Mr. President, and also UNDP and it is a great honour. My goal is basically to continue global collaboration on the introduction of these very important principles. Thank you very much.

Myint THEIN, *Judge, High Court of Magwe Region, Myanmar*

Hello, I am Myint Thein, High Court Judge from Myanmar. Thank you, Your Excellency, First President of the Court of Cassation of Turkey, Mr. İsmail Rüştü Cirit. I firmly believe that transparency is the fundamental element of the judicial process for transparency and for upholding constitutionalism and

the rule of law. We endeavour to fulfil the basic requirements for ensuring transparency in the judicial process as mentioned in the Istanbul Declaration. Thank you.

Kashim ZANNAH, *Chief Justice, Borno State of Nigeria and Chairman of Information Technology Policy Committee, National Judicial Council, Nigeria*

Thank you very much. My name is Kashim Zannah and I am a judge from Nigeria. I extend my gratitude and thanks for the immense hospitality extended to me by the Court of Cassation under the President İsmail Rüştü and also UNDP. It has been a great pleasure that I found a good reason to come to my favourite city Istanbul. Thank you very much.

Gulzor Mukhabbat MAMADKARIM, *Judge, Constitutional Court of Tajikistan*

Thank you very much. My name is Mukhabbat Gulzor. I am from Tajikistan. I am a judge in the Constitutional Court of Tajikistan. Thank you for inviting me.

Atartsetseg LKHUNDEV, *Justice, Supreme Court of Mongolia*

Hello, my name is Atartsetseg, and I am representing the Supreme Court of Mongolia. I would like to express my gratitude for giving me this opportunity to attend this summit, and I wish success for our meeting. Thank you very much.

Richard G. STEARNS, *Member Judge, United States Judicial Conference Committee on International Judicial Relations, United States of America*

Good morning, I am a Federal Judge of the United States. As a member of our international judicial relations committee, I represent the United States Judiciary and our Chief Justice John Roberts at this meeting. We deem its goals to be very important. I extend his best wishes and the best wishes of our judiciary. Thanks to the Court of Cassation for generously hosting this symposium.

Abdulhalik YILDIZ, *First Vice President of the Court of Cassation, Turkey*

Abdulhalik Yıldız, I am First Vice President of the Turkish Court of Cassation. I also preside at the General Criminal Assembly. I am honoured to be here with all the Chief Justices from across the world. Thank you.

İbrahim ŞAHBAZ, *President of the 4th Criminal Chamber of the Court of Cassation, Turkey*

Associate Professor İbrahim Şahbaz, President of the 4th Criminal Chamber of the Turkish Court of Cassation, I am also an associate professor in constitutional law. I think that the outcome of this summit will be very useful for everyone. I would like to wish success to all the speakers and moderators. Thank you.

Vuslat DİRİM, *President of the 13th Criminal Chamber of the Court of Cassation, Turkey*

I am the President of the 13th Criminal Chamber of the Court of Cassation of the Republic of Turkey, and also since 2015, I am the Head of the Human Rights Commission established on the instructions of the First Presidency of the Court of Cassation. I would like to say very briefly that in the Human Rights Committee the jurisprudence of the European Court of Human Rights is periodically discussed with the jurists, legal professionals and judges. We share all our results with all the stakeholders including the first instance courts in order to prevent or minimize the violations of human rights. We produced a book which was also shared with the European Court of Human Rights and courts of first instance and jurists of 47 countries. Thank you.

Seracettin GÖKTAŞ, *President of the 22nd Civil Chamber of the Court of Cassation, Turkey*

Seracettin Göktaş from the Court of Cassation of the Republic of Turkey. I am the Chair of the 22nd Civil Chamber. I would like to wish you a warm welcome and success in the summit. Thank you.

Ahmet ER, *President of 12th Criminal Chamber of the Court of Cassation, Turkey*

Ahmet Er from the Court of Cassation of the Republic of Turkey. I am the Head of the 12th Criminal Chamber of the Court of Cassation. I would like to wish a warm welcome. It is a great privilege and honour for us to host you here in the summit. I wish a fruitful meeting. Thank you.

Fahri AKÇİN, *President of the 8th Civil Chamber of the Court of Cassation, Turkey*

I am the President of the 8th Civil Chamber of the Court of Cassation of Turkey. I would like to wish a warm welcome. I believe the outcome of these discussions will be very fruitful and it will shine light on all the countries and the world. I would like to thank everyone here for their contribution to the preparation of the 15 principles. Thank you.

Mumin Karimoviç ASTANOV, *Vice President of Administrative Affairs, Supreme Court of Uzbekistan*

I am from the Uzbekistan Republic. I would like to thank and congratulate the host of this event. I would like to thank you very much for your invitation to share our knowledge and experience with you. Thank you.

Slaikate WATTANAPAN, *Vice-President of the Supreme Court of Thailand*

I would like to first congratulate our host and co-organizer Honourable Chief Justice Ismail, the First President of the Court of Cassation of Turkey, and the UNDP Turkey Representative. You have made this conference truly global. We have amended our Constitution many times. The last one was the 26th Amendment. We have changed from a monarchical system to democracy. The executive has never interfered with the judiciary, and we are allowed to handle issues independently. We are like the Turkey's system. We have four jurisdictions: Constitutional Court, Court of Justice, Administrative Court and Military Court. For many years, we have observed the Bangalore Principles. We have seriously transformed the Bangalore Principles into our judicial code of conduct. We are now in the process of adopting an electronic system in our courts. I truly believe that the wisdom gathered from the summit conference here will trigger ideas and encourage collaboration among the judiciary community in order to uphold transparency in our traditional roles, escalate the public confidence and to enforce the power of the judiciary. Thank you very much.

Shiranee Hesta TILAKAWARDANE, *Former Justice, Supreme Court of Sri Lanka*

First President of the Court of Cassation, thank you for your wonderful hospitality and kindness to me at all times. I have worked as the international consultant of the UNDP. I have been the first woman prosecutor in my country many years ago, and then I became the first woman judge in the High Court, and after 37 years I ended up as the Acting Chief Justice in the Supreme Court. I have been a judicial educator. I am now a consultant to the Judges Institute of Sri Lanka, and I continue my teaching in Judges Institute of Sri Lanka. I am also a national and international arbitrator, but my passion is to continue working for the women and the children, the disadvantaged, differently sexually oriented and for protecting the environment. Because, I believe that these are the areas of the law that need special attention because these are the issues that ultimately help us to achieve the promise that we make to the people of our different nations in delivering justice. Thank you.

Essaid SAADAoui, *President, Chamber of Commerce, Court of Cassation of Morocco*

I am Essaid Saadaoui from the Court of Cassation of Morocco. First of all, I would like to extend greetings from the President of the Court of Cassation of the Kingdom of Morocco. I would like to thank you for your hospitality. I also thank you for choosing this subject because it is a current issue.

Melis TAGAEV, *Chairman, Issyk-Kul Regional Court of Kyrgyzstan*

My name is Melis Tagaev. I represent the Kyrgyz Republic. Thank you very much, the First President of the Court of Cassation and the United Nations Development Programme, Turkey Resident Representatives, for your warm welcome and wonderful hospitality and organization of such a high level international summit. Thank you very much.

Madiyar BALKEN, *Judge, Supreme Court of Kazakhstan*

Dear friends, distinguished colleagues, and friends, I would like to express my gratitude. I represent the Supreme Court of Kazakhstan here, and it is a great honour to participate in this conference, which is hosted by Turkey, our brother, state and country. Mr. First President, thank you very much. I am very grateful to all the other partner organizations for organizing this discussion.

I truly believe that transparency in the judicial process is a very important subject and it is a very important principle that provides fairness, justice, equality of justice, and ensures public trust in justice, thank you very much.

Arun Kumar MISHRA, *Justice, Supreme Court of India*

Chief Justice Mr. Ísmaíl, I will take just a minute, not more than that. Now, we have a system in India where the Constitution provides us insulation. Our actions cannot be discussed even in Parliament in ordinary debates. This is one feature of the separation of powers under Article 50. We have equal justice and legal aid under Article 39(a). Nobody can be deprived of justice for economic or other disabilities. The Supreme Court of India has recently decided to open live streaming of the important constitutional cases. Our judgements can be discussed in television debates. Everyone can attend the courts for free, even the Supreme Court. The contempt power is exercised only in exceptional cases. We are litigant friendly. Many courts now have night shelters for litigants in districts throughout India. We have easy access to courts. Even letter petitions are entertained by the Supreme Court. I am a member of that committee that scrutinizes the letters and we entertain them. Every year, we decide millions, several millions of cases. Assignment of the cases is done as per roster. It is made public in High Courts, also District Courts and now even in the Supreme Court and are shared on website.

We use SMS facilities to reach even the litigant. If the mobile number is available, information of the listing of his case and what has happened on a particular date is sent not only to the advocate but also to the litigant. So we have a litigant friendly system. We have implemented not only the Bangalore Principles, but also your Istanbul Declaration in our code of ethics. I would just end by saying that transparency would be meaningful if we blend the qualities of a human, human attributes and human heart, in the justice system. We realize that our soul rises beyond self. We melt our ego. If we have high intellect, fearless mind, purity of thinking, clarity of perception, profound knowledge, total dedication to constitutional values, honesty, impeccable integrity, dignified labour, then we can balance our powers to deliver justice. Thank you very much. You have organized such a wonderful conference. Thank you very much again.

Ria MORTIER, *Attorney General, Supreme Court of Belgium*

Dear colleagues. My name is Ria Mortier. I am the Attorney General at the Supreme Court of Belgium. On behalf of that court, I would like to thank

Mr. First President for this kind invitation to this summit. Personally, I am very interested in this topic of transparency, because for many years I was, on behalf of the Supreme Court, a member of the High Council of Justice of Belgium. I was also a representative of Belgium on the European Network of Councils for the judiciary. The Council for the Judiciary in Belgium is responsible for the auditing of the judiciary and for the appointment of every judge and every prosecutor in Belgium. In the European Council, we worked on reports on independence and accountability of the judiciary. We worked on transparency, assignment of cases, appointment of judges, discipline, and ethical conduct. And I think that the principles that we developed can be very useful and very valuable to this summit. Thank you.

John DOWD, *Former Justice, Supreme Court of New South Wales, Australia*

Congratulations to the First President of the Court of Cassation and the UNDP on this conference. My name is John Dowd. I first became involved in 2013 as Vice-President of the International Commission of Jurists, and have since then been involved in this remarkable and unique process. I was once Attorney General for my own state, being a member of the government who appointed judges. There was no transparency in those appointments. I imposed on myself a series of protocols to make sure that discretion was properly exercised, and I did not have any complaints about it. I wish a successful conference.

Said YOUSUF HALEM, *Chief Justice, Supreme Court of Afghanistan*

Salaam alaikum everyone. My name is Said Yousuf Halem, Chief Justice from Afghanistan. Thank you.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Although we have exceeded the time given to us, we have finally reached the end of the first plenary session. We have listened to very fruitful presentations and I would like to thank all the speakers. If Dr. Jayawickrama does not have any further comments, we can proceed for lunch.

Nihal JAYAWICKRAMA, *Coordinator of the UN Judicial Integrity Group*

Thank you.



DAY 2

PLENARY SESSION III: Formal adoption of the Measures for the Effective Implementation of the Istanbul Declaration.

MODERATOR:

Prof. Dr. Nihal JAYAWICKRAMA

Coordinator of the UN Judicial Integrity Group



12 October 2018

Distinguished participants,

We have now reached the concluding stage of this Conference. Everyone here has participated in one or the other of the five Round Table Discussions on the Draft Implementation Measures. You have examined the Draft in great detail, and you have made recommendations for its improvement. This morning, the Moderators of each Round Table presented their reports and their recommendations. For the past two hours, in the last session, all of you participated in examining these recommendations very carefully, and we were able to finally agree upon the text of the Implementation Measures. Just as the longest river must finally wind itself into the sea, we have reached the end of a journey that began five years ago in this same historic and beautiful city of Istanbul. Our journey has taken us through Bursa, the capital of the Ottoman Empire, and it has ended here on the banks of the Bosphorous. It has been a great privilege for me to have had the opportunity of participating in this pioneering effort. To all of you who actively contributed, with your knowledge and experience, towards its fruition, may I say, “Thank You”.

I do not propose to read the full text now. Having participated in the last session this morning, you are aware of the amendments that were made. I now move the formal adoption of the Measures for the Effective Implementation of the Istanbul Declaration on Transparency in the Judicial Process as agreed upon at this 4th International Summit.

May I suggest that you indicate your approval by acclamation?

Thank you, thank you very much. The Court of Cassation will now have to publish the final text that you have adopted. I believe my task is now over, and I have great pleasure in handing over to the Honourable Ismail Rustu Cirit, President of the Court of Cassation of the Republic of Turkey.

İsmail Rüştü CİRİT, *First President of the Court of Cassation, Turkey*

Thank you very much to Dr. Nihal Jayawickrama. Distinguished guests, distinguished participants, the Istanbul Declaration and Implementation Measures on the Istanbul Declaration were the theme of 4th International Summit of High Courts, which has now been finalized. Acquiring the experiences and

the knowledge of different jurisdictions of 30 countries from five continents, all over the world was immensely fruitful for us and the successful journey of the Istanbul Declaration. The Presidents of the High Courts in Turkey, and the Heads of the Chambers contributed to all the discussions.

For two days, we have worked very intensively. I would like to thank everyone who shared their experiences and knowledge. It has been a very useful and successful meeting. I believe that this successful and productive meeting will make a significant contribution to fill a gap in international law. From different parts of the world, people who dedicate themselves to law and justice, very eminent legal professionals, all contributed to the formulation of the Istanbul Declaration and its Implementation Measures. I would like to thank you very much for your outstanding contribution and inputs. Your outstanding efforts will never be forgotten. Dr. Nihal Jayawickrama and all the Round Table Moderators, thank you very much for sharing your unique experience and knowledge.

In conclusion, I would like to share one statement: “We are, each of us angels with only one wing; and we can only fly by embracing one another.” To everyone who joined us on this challenging journey, Chief Justices, Justices, Moderators and all jurists and legal professionals who shared their experiences and knowledge, I say, “Thank you” once again.



THE EXPLANATORY NOTE



EXPLANATORY NOTE

Transparency is a fundamental element of the judicial process. The Universal Declaration of Human Rights states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The International Covenant on Civil and Political Rights, while reaffirming the right to a fair and public hearing, recognizes that the press and public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic state, or when the interests of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. The Covenant, however, states that every judgment rendered in a criminal case or in a suit at law shall be made public except where the interests of juvenile persons otherwise require, or the proceedings concern matrimonial disputes or the guardianship of children.

The principle of judicial independence articulated in the UN Basic Principles on the Independence of the Judiciary has now been complemented by the principle of judicial accountability enunciated in the Bangalore Principles of Judicial Conduct. The Magna Carta of Judges, which summarises and codifies the Opinions adopted by the Consultative Council of European Judges, emphasizes the importance of access to swift, efficient and affordable dispute resolution, and of reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing. The Conference of Presidents of European Supreme Courts meeting in Slovenia under the auspices of the Council of Europe formulated a statement on “The Supreme Court: Publicity, Visibility and Transparency”. That statement recognized “the necessity to satisfy the expectations of contemporary society with regard to justice” and stressed the importance of courts “demonstrating their openness and sensitivity”. The statement noted that judgments “based on clear and easily understandable reasoning” should be accessible to the general public; that there should be transparency in the nomination of judges; that the Supreme Court should “participate in the democratic debate in society with the aim of making better known the issues of justice in a state governed by the rule of law”; and underscored the relationship between the judiciary and the media as an important element in the educational role of the Supreme Court in a democracy.

In early 2013, noting that a fundamental element in the judicial process in a state that upholds human rights and the rule of law, namely, the principle of transparency, had yet to be addressed in a comprehensive manner, the United Nations Development Programme in Turkey, at the request of the Court of Cassation of Turkey, commissioned the preparation of a draft statement on transparency in the judicial process. That draft, prepared by the Coordinator of the UN Judicial Integrity Group, was shared, in the first instance, with all the Heads of the Judiciaries of the Asian and Pacific Region, and was then revised in the light of comments and suggestions received from them.

Conference of Chief Justices of the Asian-Pacific Region

In November 2013, on the invitation of the President of the Court of Cassation of Turkey and the Resident Representative of the United Nations Development Programme in Turkey, the Chief Justices and/or senior Justices of the Supreme Courts of 12 countries of the Asian-Pacific region, together with the Heads of Chambers of the Court of Cassation of Turkey, met at Ciragan Palace in Istanbul for a mutual exchange of experience and knowledge on best practices and lessons learned in securing transparency in the judicial process; to identify the essential elements of the multi-faceted concept of judicial transparency; and to consider the development of a detailed statement on transparency in the judicial process. Assisting them as Moderators were four experts drawn from three other countries of the region.

The participating Chief Justices and Justices were **Abdul Salam Azimi**, Chief Justice of the Supreme Court of Afghanistan; **Ramiz Rzayev**, Chief Justice of the Supreme Court of Azerbaijan; **Farid Madatli**, Head of International Relations, Supreme Court of Azerbaijan; **Hassan Arif Sheikh**, Judge of the Supreme Court of Bangladesh; **Konstantin Kublashvili**, President of the Supreme Court of Georgia; **Vasil Mshvenierdze**, Head of the Mtskheta Federal Court of Georgia; **Roki Panjaitan**, Judge of the Supreme Court of the Republic of Indonesia; **Feruza Zulumbekovna Djamashveva**, President of the Supreme Court of the Kyrgyz Republic; **Tun Arifin bin Zakaria**, President of the Federal Court of Malaysia; **Mohd Aizuddin bin Zolkeply**, Head of International Relations, Federal Court of Malaysia; **Gotovdorj Tsagaantsooj**, Vice-President of the Supreme Court of Mongolia; **Dolgorsuren Namjil**, Head of International Relations, Supreme Court of Mongolia; **Tha Htay**, President of the Supreme Court of Myanmar; **Damodar Prasad Sharma**, Judge of the Supreme Court of Nepal; **Bharat Bahadur**, Judge of the

Supreme Court of Nepal; **Lohit Chandra Chah**, Judge of the Supreme Court of Nepal; **Kulratna Bhurtel**, Judge of the Supreme Court of Nepal; **Ramesh Prasad Rijal**, Judge of the Supreme Court of Nepal; **Eakachai Chinnapongse**, Vice-President of the Supreme Court of Thailand; **Soopanit Chinnawat**, Judge of the Supreme Court of Thailand; **Supachart Thinpangnga**, Judge of the Supreme Court of Thailand; **Bui Ngoc Hoa**, Deputy Chief Justice of the Supreme People's Court of Vietnam; **Huu Quan Tran**, Chief Judge of the People's Court of Ha Nam Province, Vietnam; **Chu Trung Dung**, Head of International Cooperation, Supreme People's Court of Vietnam; and **Ha Tuan Hiep**, Head of International Relations, Supreme People's Court of Vietnam.

The experts who served as moderators were **Justice John Dowd**, Vice-President of the International Commission of Jurists, Geneva (Australia); **Malathi Das**, President of the Law Association for Asia and Pacific (Singapore); **Dato' Param Kumaraswamy**, Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and **Nihal Jayawickrama**, Coordinator of the UN Judicial Integrity Group (Sri Lanka).

Speaking at the opening session of the conference, the UN Special Rapporteur on the Independence of Judges and Lawyers, **Gabriela Knaut**, observed that a detailed statement on transparency in the judicial process, as the intended outcome of the conference, would be a valuable contribution to the reform initiatives embarked upon by several judiciaries throughout the world. At the end of the three-day conference, the participants adopted the Istanbul Declaration on Transparency in the Judicial Process. It was the first comprehensive statement of principles relating to transparency in the administration of justice.

Conference of Chief Justices of the Balkan Region

In June 2016, at a three-day conference in Bursa, the capital of the former Ottoman Empire, the Istanbul Declaration on Transparency in the Judicial Process was submitted to, reviewed, and endorsed without amendment by the Chief Justices and Senior Justices of the Balkan Republics.

The participating Chief Justices and Justices were: **Xhezair Zaganjori**, Chief Justice of the Supreme Court of Albania; **Charalambos Macheras**, Judge of the Supreme Court of Greece; **Fejzullah Hasani**, President of the Supreme Court of Kosovo¹; **Elena Gosheva**, President of the Constitutional

¹ The reference to Kosovo shall be understood to be in the context of Security Council Resolution 1244 (1999)

Court of the Former Yugoslav Republic of Macedonia; and **Vesna Medenica**, President of the Supreme Court of Montenegro. Participants from the Republic of Turkey included **İsmail Rüştü Cirit**, President of the Court of Cassation of Turkey; **Zerrin Güngör**, President of the Council of State of Turkey; **Abdullah Arslan**, President of the Military High Administrative Court of Turkey; and **Ahmet Zeki Liman**, President of the Military Court of Cassation of Turkey. The experts who served as moderators were **Dato' Param Cumaraswamy**, Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and **Nihal Jayawickrama**, Coordinator of the UN Judicial Integrity Group (Sri Lanka).

International Expert Group Meeting

In October 2017, an international expert group was convened in Ankara to develop a draft *Action Plan on the Implementation of the İstanbul Declaration on Transparency in the Judicial Process*. The experts who participated at that meeting included **Justice John Dowd** (Australia); **Justice Shiranee Tilakawardane** (Sri Lanka); **Justice Kashim Zannah** (Nigeria); **Jeffrey A. Apperson** (USA); **Michael Buenger** (USA); **Wojciech Postulski** (Poland); and **Nihal Jayawickrama** (Sri Lanka). Representatives of the Court of Cassation included **İsmail Rüştü Cirit**, President of the Court of Cassation; **Justice Fahri Akçin**, **Justice Ahmet Er**, **Justice Seracettin Göktaş**, and Deputy Secretary-General, **Mustafa Saldırım**. Following that meeting, the draft Action Plan was further revised. The final draft version was introduced by **President Cirit** at the High-Level Opening Session of the Launch of the Global Judicial Integrity Network in Vienna in April 2018, and copies made available to all the participants.

Final Conference of Chief Justices from North and South America, the Caribbean, Europe, Africa, Asia and the Pacific

In October 2018, on the invitation of **İsmail Rüştü Cirit**, President of the Court of Cassation of Turkey, and **Irena Vojackova-Sollorano**, UNDP Resident Representative in Turkey, Chief Justices and Justices of thirty countries from five continents, together with the Heads of Chambers of the Court of Cassation of Turkey and representatives of international, regional and national organizations, met in Istanbul to review and adopt the *Measures for the Effective Implementation of the İstanbul Declaration*.

The participating Chief Justices and Justices were: **Said Yousuf Halem**, Chief Justice of the Supreme Court of Afghanistan; **John Dowd**, Former Justice

of the Supreme Court of New South Wales, Australia; **Gerhard Kuras**, Head of the 8th Civil Chamber of the Supreme Court of Austria; **Ramiz Rzayev**, President of the Supreme Court of Azerbaijan; **Syed Mahmud Hossain**, Chief Justice of Bangladesh; **Md Zakir Hossain**, Senior District Judge of Bangladesh; **Ria Mortier**, Attorney General, Supreme Court of Belgium; **Kenneth A. Benjamin**, Chief Justice of the Supreme Court of Belize; **Sandra Oxner**, Former Judge and Founding President, Commonwealth Judicial Education Institute, Canada; **Maricela Sosa Ravelo**, Vice President of the Supreme People's Court of Cuba; **Vasil Roinishvili**, Deputy Chairperson of the Supreme Court of Georgia; **Arun Kumar Mishra**, Justice of the Supreme Court of India; **Peter Charleton**, Justice of the Supreme Court of Ireland; **Madiyar Balken**, Judge of the Supreme Court of Kazakhstan; **Enock Chacha Mwita**, Justice of the Supreme Court of Kenya; **Melis Tagaev**, Chairman of the Issyk-Kul Regional Court of Kyrgyzstan; **Jean Daoud Fahed**, First President of the Court of Cassation of Lebanon; **Atartsetseg Lkhundev**, Justice of the Supreme Court of Mongolia; **Essaid Saadaoui**, President of the Chamber of Commerce, Court of Cassation of Morocco; **Malika Ibnou Zahir**, President of the Social Chamber, Court of Cassation of Morocco; **Myint Thein**, Judge of the High Court, Magwe Region, Myanmar; **Anil Kumar Sinha**, Justice of the Supreme Court of Nepal; **Kashim Zannah**, Chief Justice of Borno State of Nigeria; **Masoud Mohamed Alameri**, Chief Justice, Supreme Judiciary Council of Qatar; **Shiranee Tilakawardane**, Former Acting Chief Justice of the Supreme Court of Sri Lanka; **Haider Ahmad Daffalla**, Chief Justice of the Supreme Court of Sudan; **Mohamed Ahmed Ibrahim Hussein**, Justice of the Supreme Court of Sudan; **Badereldien Mohamed Ahmed Nimir**, Justice, Deputy Director of The Chief Justice's Office, Supreme Court of Sudan; **Gulzor Mukhabbat**, Judge of the Constitutional Court of Tajikistan; **Slaikate Wattanapan**, Vice President of the Supreme Court of Thailand; **Zerrin Güngör**, President of the Council of State of Turkey; **Engin Yıldırım**, Vice President of the Constitutional Court of Turkey; **Richard G. Stearns**, Member Judge, United States Judicial Conference Committee on International Judicial Relations; **Mumin Karimoviç Astanov**, Vice President of Administrative Affairs, Supreme Court of Uzbekistan; and **Maikel Jose Moreno Perez**, President of the Supreme Court of Justice of Venezuela.

The participating Chief Justices and Justices of the Court of Cassation of the Republic of Turkey were: **İsmail Rüştü Cirit**, First President; **Mehmet**

Akarca, Chief Public Prosecutor; **Abdulhalik Yıldız**, First Vice President; **Ahmet Özgan**, President of the 11th Civil Chamber; **Hüseyin Eken**, President of the 11th Criminal Chamber; **Erdoğan Buyurgan**, President of the 5th Civil Chamber; **H. Nesrin Yılmazcan**, President of the 14th Civil Chamber; **Muammer Öztürk**, President of the 15th Civil Chamber; **Ömer Uğur Gençcan**, President of the 2nd Civil Chamber; **A. Şahabattin Sertkaya**, President of the 17th Civil Chamber; **Erkan Öztürk**, President of the 6th Criminal Chamber; **İbrahim Şahbaz**, President of the 4th Criminal Chamber; **Haydar Metiner**, President of the 8th Criminal Chamber; **Sadık Demircioğlu**, President of the 4th Civil Chamber; **Ramazan Özkepir**, President of the 19th Criminal Chamber; **Ali Seçkin Togay**, President of the 1st Civil Chamber; **İlmettin Köklü**, President of the 20th Criminal Chamber; **Mustafa Şahin**, President of the 1st Criminal Chamber; **Methiye Şebnem Günaydın**, President of the 3rd Criminal Chamber; **Hüsnü Uğurlu**, President of the 10th Criminal Chamber; **Mehmet Çamur**, President of the 9th Civil Chamber; **Fahri Akçin**, President of the 8th Civil Chamber; **Mete Duman**, President of the 3rd Civil Chamber; **Mehmet Berber**, President of the 15th Criminal Chamber; **Şakir Aktı**, President of the 5th Criminal Chamber; **Faruk Gök**, President of the 23rd Civil Chamber; **Burhan Karaloğlu**, President of the 9th Criminal Chamber; **Vuslat Dirim**, President of the 13th Criminal Chamber; **Ahmet Er**, President of the 12th Criminal Chamber; **Mustafa Kemal Semercioğlu**, President of the 17th Criminal Chamber; **Halil Özdemir**, President of the 10th Civil Chamber; **Seracettin Göktaş**, President of the 22nd Civil Chamber; **Eyüp Yeşil**, President of the 16th Criminal Chamber; **Ali Selman Erkuş**, President of the 13th Civil Chamber; **Ayhan Tuncal**, President of the 12th Civil Chamber; **Mehmet Bülent Selçuk**, President of the 19th Civil Chamber; and **Haydar Sami Kuzu**, President of the 2nd Criminal Chamber.

Assisting the Chief Justices and Justices were: **Farid Madatli**, Head of International Relations, Supreme Court of Azerbaijan; **Luis Alberto Amoros Nunez**, Ambassador of Cuba; **Ahmad Alkuwari**, Deputy Secretary, Supreme Judiciary Council of Qatar; **Omar Ganim Mohamed**, Director of International Cooperation Unit, Supreme Judiciary Council of Qatar; **Mohammed Almalki**, Head of Coordination and Follow-up Section, Supreme Judiciary Council of Qatar; **Komtharnongchai Chiphairojn**, Deputy Secretary, Supreme Court of Thailand; **Jaiber Isaac Nunez Jimenez**, Legal Assistant to the President of the Supreme Court of Justice of Venezuela; and **Julio César Zamora**, Chief of the Information and Communication Office, Supreme Court of Justice of

Venezuela.

Representatives of international, regional and national organizations included: **Nihal Jayawickrama**, Coordinator, UN Judicial Integrity Group; **Sophio Gelashvili**, Head of the Justice Sector Reform Unit of the Council of Europe; **Michael Ingledow**, Head of the Council of Europe Programme Office in Ankara; **Liviana Zorzi**, Programme Analyst, Governance and Peace Building Team, UNDP Bangkok Regional Hub; and **Jeffrey Apperson**, Vice President, National Center for State Courts, USA.

Representatives of UNDP Turkey included **Irena Vojackova-Sollorano**, Resident Representative; **Sukhrob Khojimatov**, Deputy Country Director; **Seher Alacaci Ariner**, Assistant Resident Representative (Programme); **Sezin Üskent**, Inclusive and Democratic Governance Portfolio Manager; **Görkem Bağcı**, Project Associate; and **Nazlı Ersoy**, Project Assistant.

The Project Team of the Court of Cassation of the Republic of Turkey were **Mustafa Saldırım**, Project Manager, Judge, Deputy Secretary General; **Gülşah Sibel Akbulut**, Judge; **Gözde Hülügü**, Project Expert; **Özlem Karaman**, Project Coordinator; **Seda Dural**, Project Assistant; **Cem Şenol**, Project Assistant; **Selma Dalkılıç**, Project Assistant; and **Nihal Eriş**, Project Assistant.

At the conference held at the CVK Park Bosphorus Hotel on 11-12 October 2018, the participants reviewed in detail in two simultaneous Round Table Meetings the following issues in the Draft Implementation Measures:

(i) Public proceedings, Access to court premises, Access to the judicial system, Interpretation facilities, Assignment of cases, Transparency in the delivery of justice, Executive detention, and Publishing of judgments (Principles 1 - 8).

(ii) Student engagement, Outreach programmes, Relations with the media, Assessing public satisfaction with the delivery of justice, Appointment of judges, Complaints against judges, Disciplinary proceedings (Principles 9 - 15).

The amendments proposed by the participants were considered in plenary, and the final version of the Implementation Measures was presented by the Moderator, **Nihal Jayawickrama**, and was unanimously adopted by acclamation.

On the evening of 12 October 2018, at a ceremony held at Dolmabahçe

Palace, in the presence of **His Excellency Recep Tayyip Erdoğan**, President of the Republic of Turkey, the *Istanbul Declaration on Transparency in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration* were formally presented by **The Honourable İsmail Rüştü Cirit**, President of the Court of Cassation of the Republic of Turkey.

United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ)

In May 2019, the Twenty-eighth session of the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) met in Vienna and unanimously recommended to the Economic and Social Commission (ECOSOC) the adoption of a draft resolution sponsored by the Republic of Turkey entitled “Enhancing transparency in the judicial process” ([E/CN.15/2019/L.12/Rev.1](#)). The draft resolution, inter alia:

(a) Noted the combined efforts of the chief justices and senior justices of 37 countries who have, over a period of six years, developed principles designed to achieve transparency in the judicial process, together with measures for the effective implementation of those principles;

(b) Noted that the Istanbul Declaration on Transparency in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration are aimed at enhancing and strengthening public confidence in the right of the individual to a fair process by a competent, independent and impartial tribunal established by law; and

(c) Invited Member States, consistent with their domestic legal frameworks and international obligations, to take into consideration all relevant good practices and documents, including the Istanbul Declaration on Transparency in the Judicial Process, when formulating their programmes and legislative reforms in the administration of justice.

Participating in the two-week session of CCPCJ in Vienna, which included both formal and informal meetings, was the project team of the Ethics, Transparency and Trust Project of the Court of Cassation: **Mustafa Saldırım**, Deputy Secretary General of the Court of Cassation and Project Manager; **Gözde Hülalü**, Senior Project Expert; and **Nihal Eriş**, Project Expert; and officials of the Ministry of Foreign Affairs: **Ahmet Muhtar Gün**, Ambassador of the Permanent Mission of Turkey to the United Nations Office in Vienna;

Cenk Ünal, Deputy Ambassador; and **Hüseyin Hançer**, Counsellor.

United Nations Economic and Social Council (ECOSOC)

On 23 July 2019, the Economic and Social Council 2019 adopted resolution [E/RES/2019/22](#), entitled “Enhancing transparency in the judicial process”, without a vote.



COUNTRY PRESENTATIONS:

(Papers on Country Specific Experiences and Lessons Learned Concerning the Issues Addressed in the Istanbul Declaration and Implementation Measures)

- ♦ **Turkey** - Dr. Mustafa SALDIRIM, Judge, Deputy Secretary General, Court of Cassation
- ♦ **Austria** - Gerhard KURAS, Head of the 8th Civil Chamber, Supreme Court
- ♦ **Georgia** - Vasil ROINISHVILI, Deputy Chairperson, Supreme Court
- ♦ **India** - Arun MISHRA, Justice, Supreme Court
- ♦ **Ireland** - Peter CHARLETON, Justice, Supreme Court
- ♦ **Myanmar** - Myint THEIN, Judge, High Court, Magwe Region
- ♦ **Venezuela** - Maikel Jose MORENO PEREZ, President, Supreme Court of Justice
- ♦ **Sudan** - Haidar Ahmad DAFFALLA, Chief Justice, Supreme Court
- ♦ **United States of America** - Richard STEARNS, Member Judge, United States Judicial Conference Committee on International Judicial Relations
- ♦ **United Nations Development Programme (UNDP)** - Liviana ZORZI, Programme Analyst, Governance and Peace Building Team, Bangkok Regional Hub



TURKEY

Dr. Mustafa SALDIRIM

Judge

Deputy Secretary General, Court of Cassation

REPUBLIC OF TURKEY
COURT OF CASSATION

Dr. Mustafa SALDIRIM
Judge
Deputy Secretary General of the Court of Cassation

**A REVIEW OF CURRENT ISSUES OF JUDICIAL POWER IN THE
FRAMEWORK OF ETHICS AND TRANSPARENCY**

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A REVIEW OF CURRENT ISSUES OF JUDICIAL POWER IN THE FRAMEWORK OF ETHICS AND TRANSPARENCY

1. INTRODUCTION

A well-functioning judiciary is the prerequisite to implement laws in their true sense. As stated in the Bangalore Principles of Judicial Conduct, protection of human rights, as well as all the other rights, depends upon the proper administration of justice. Despite advances in the international arena and developments in comparative law, concerns and debates on the exercise of judicial power continue in the European (Regional) Human Rights System as in the rest of the world.

Risks today on the effectiveness and functioning of the judicial power have increased and changed in character. A plethora of political, economic and social changes or shocks such as terror incidents, political crises, riots, wars, migration, domestic disturbance, economic crises, revolutions and counter-revolutions pose serious risks to the high standards of justice afforded by modern legal systems. Challenges in the exercise of the principle of separation of powers persist as a general, long-standing problem¹.

Populism, which we encountered even during the trial of Socrates in ancient Greece, has become an important threat by increasing its influence over the ages. Especially in recent years, populist policies that can also be observed in developed democracies threaten democracy and human rights and negatively affect the basic principles of the rule of law². The fact that was expressed by Plato with the statement “Until kings are philosophers, or philosophers are kings, cities will never cease from ill.” is a problem which has remained unsolved by the humanity for 2500 years.

In addition, pressures from the press-media, public reactions and formal or informal civil society organisations have the potential to influence external and internal independence of judges. In a world developing and changing at dizzying speed, the influence by cartels and corporations or other interest groups may sometimes produce circumstances that may lead to ethical issues³.

¹ Saldırım, Mustafa: A Review of Current Issues of Judicial Power in the Framework of the Court of Cassation Judicial Code of Conduct and İstanbul Declaration on Transparency in the Judicial Process, European Court of Human Rights Seminar Opening of Judicial Year 2018 Presentation by the Turkish Court of Cassation (Saldırım-Yargı Yetkisi), p.3.

² World Forum For Democracy, Is Populism a Problem, Programme, Strasbourg, November 2017 (Is Populism a Problem), p.16.

³ Saldırım-Yargı Yetkisi, p.3.

In addition to the usual threats against the judiciary that may come from outside the judiciary and the current problems related to globalization that I mentioned above, the question of how judges will resist their desire to protect their individual and collective interests is also a problem that cannot be underestimated. We should be certain about how the judiciary which was established in order to protect all rights, mainly human rights, is conducted. At this point, the importance of the debates on the question “how transparent is the judiciary?” increases. Because we know that the guarantee of the independence and efficiency of the judiciary is judicial transparency. The degree of the transparency of the judiciary is also an indicator of the degree of accountability. Without transparency, we cannot be sure about how the judiciary operated, and if we are not sure how the judiciary operates, we cannot trust in the judiciary.

What are the measures that should be taken for the proper and effective use of the judicial power against all these risks which are briefly described and exemplified above? Doubtlessly, there are different aspects of the problem due to its structural difficulty and complexity. This study addresses the current problems of the judiciary at first, and then it explains the reforms that are undertaken by the Court of Cassation in order to increase the effectiveness of the judiciary and that also have the potential to affect the justice policies in the world.

The work consists of three main titles following the introduction. First of all, information on the usual threats against the use of judicial power and current risks will be provided and the problem will be revealed. In addition, these current problems will be evaluated within the framework of the Court of Cassation Code of Judicial Conduct, the İstanbul Declaration on Transparency in the Judicial Process (İstanbul Declaration) and the Measures for the Effective Implementation of the İstanbul Declaration (Implementation Measures). Secondly, information will be given on the “Court of Cassation Code of Judicial Conduct System” which is the best implementation example of the United Nations and Council of Europe standards. In particular, the process of establishing ethical principles which have been developed in accordance with collective understanding of ethics and the Judicial Ethics Advisory Board will be explained. In the third and the last part, the concept of “judicial transparency” will be explained in the context of the İstanbul Declaration and the Implementation Measures. In addition, examples of the best practices carried out by the Court of Cassation will be explained.

2. A REVIEW OF CURRENT ISSUES OF JUDICIAL POWER IN THE FRAMEWORK OF THE COURT OF CASSATION CODE OF JUDICIAL CONDUCT AND İSTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS

2.1. SEPARATION OF POWERS AND JUDICIAL INDEPENDENCE

Law is a system of values and principles. While these values and principles may at times overlap, they are complementary, not alternatives to one another. Some principles and values may stand out in certain periods, but this situation does not detract from the importance of others.

One of the most important safeguard for human rights, democracy and rule of law is the principle of “separation of powers”. Opinions on the principle of separation of powers can be traced back to ancient times. However, Montesquieu is considered to be the first philosopher to have expressed this principle in a concrete way. Although the principle of separation of powers may appear in different forms according to the culture, traditions and constitution of each state, it remains fundamentally unchanged that the judiciary is independent and has effective mechanisms to protect this independence. The protection of fundamental rights and freedoms depends on a judiciary which is free and independent from the executive and the government. This political and legal fact was expressed in Article 16 of the French Declaration of the Rights of Man and of the Citizen that “Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution”. Democracy and the rule of law and human rights can only come true in the systems of administration where the principle of separation of powers is applied. More precisely, the principle of separation of powers is the most important guarantee of democracy, the rule of law and human rights.

The principle of separation of powers provides essentially that the judiciary protects the judicial independence against any interference by the legislative and executive. “Judicial independence” is a fundamental principle in all modern constitutions or laws⁴ as well as the top of the list in all codes of conduct, national and international⁵. As a matter of fact, in the Article 9 of the Constitution of the Republic of Turkey, it is stated that judicial power shall be exercised by independent and impartial courts. Paragraph 4 of the Preamble

⁴ According to the European (Region) Human Rights System, sufficient constitutional and legal guarantees of judicial independence is the prerequisite for judicial independence, See The Rule of Law Checklist, Venice Commission of the Council of Europe, Strasbourg 2016(The Rule of Law Checklist), s.33.

⁵ See. Bangalore Principles of Judicial Conduct, Value 1; Ethical Principles of the European Court of Human Rights art.1, Court of Cassation Code of Judicial Conduct art.1.

in the Constitution states that the separation of powers, which does not imply an order of precedence among the organs of the State, but refers solely to the exercising of certain state powers and discharging of duties, and is limited to a civilized cooperation and division of functions; and the fact that only the Constitution and the laws have the supremacy. The justification of the regulation on the judicial power in Article 9 of the Constitution of 1982 was emphasized that “the judicial power shall be exercised by independent bodies, independent courts as recognised since the time when the issue of individual rights and freedoms emerged.”

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary⁶. The adoption of constitutional proclamations of judicial independence do not automatically create or maintain an independent judiciary. Judicial independence must be recognized and respected by all three branches of government. The judiciary, in particular, must recognize that judges are not beholden to the government of the day⁷.

Article 1 of the Court of Cassation Code of Judicial Conduct states that “Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.”

A code of conduct, as a rule, lays down the standards of conduct for judges and require judges to comply with such standards. However, the potential of judges to fulfil some of their ethical obligations may depend on the legislative’s and executive’s taking the necessary care on code of conduct. Therefore, Bangalore Principles of Judicial Conduct and Court of Cassation Code of Judicial Conduct, considering the said fact, states in their preambles that the code of conduct has, among others, a function to “enable ...the members of the legislature and executive ... to better understand the judiciary and provide support to the judiciary...”

⁶ Commentary on the Bangalore Principles of Judicial Conduct (Commentary), UNODC Publication, Vienna Austria, s.21.; The United Nations Basic Principles on the Independence of the Judiciary, art. 1.

⁷ Commentary s.28.

2.1.1. Appointments of Judges

A most fundamental requisite for the separation of powers is that the selection, appointment and retention of judges be guaranteed against the interference by the executive. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity⁸. ECtHR treats the matter in the context of right to fair trial in Article 6 of ECHR.⁹ In order to establish whether the judiciary can be considered “independent” of the other branches of government, regard is usually had, among other things, to the manner of appointment of its members, to their term of office, to their conditions of service, to the existence of guarantees against outside pressures, and to the question whether the court presents an appearance of independence¹⁰.

Article 13 of İstanbul Declaration states that “There should be transparency in the appointment process of judges”. This principle is further elaborated as follows:

“It is generally agreed that transparency is required in the conditions for the selection of candidates for judicial office. In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment. That will enable procedures for judicial appointment and promotion based on merit to be opened to a pool of candidates as diverse and reflective of society as a whole as possible. Publication of the list of vacant posts and the list of candidates for those posts will also permit public scrutiny of the appointment process.

While there is a diversity of methods by which judges assume office, recent international and regional initiatives are unanimous in their view that it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are not made by the legislature or the executive, but by an independent body such as a Council for the Judiciary, with

⁸ Recommendation CM/REC (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (CM/REC (2010)12), art.44.

⁹ ECtHR decided that term of office of judges cannot be determined by the executive. See. ECtHR, *Gurov v. Moldova*, no. 36455/02, §§ 34-38, 11 July 2006)

¹⁰ Commentary s.29.

the formal intervention of the Head of State in respect of higher appointments. Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism.

A mixed composition avoids the perception of self-interest, self protection and cronyism, and reflects the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy.”

Article 13 of İstanbul Declaration Implementation Measures clarifies the provisions in İstanbul Declaration. Accordingly, “The election procedures of independent and imparital judges is essential to establish and maintain the public’s trust and confidence in the administration of justice. The measures should be taken in this frame are as follows:

1. Establish an independent body with broad professional and civic representation to receive and review applications and/or nominations for judicial office.

2. Require that all judicial vacancies, including for high judicial office, be advertised, with information on the qualities required from candidates for such offices.

3. Require publication of a list of vacant judicial offices, and the list of candidates who have applied or been nominated for such offices.

4. Promulgate procedures that ensure the public and the media have access to candidate interviews by the body responsible for appointing or nominating persons for judicial office.

5. Establish a merit-based recruitment and promotion process that reflects the diversity of society.

6. Promulgate procedures governing the transfer of judges for regular rotation or on an emergency basis.”

In case of high or critical posts such as a judge and particularly a bench member at high courts, the society has the right to know who, why, on account of what personal characteristics has been appointed to or selected for that post. Transparent processes will ensure that authorities in charge of making the appointment or selection be accountable to the society.

2.1.2. Interference in, Pressures on and Threats against the Judiciary

The European Court of Human Rights highlights four elements of judicial independence: manner of appointment, term of office, the existence of guarantees against outside pressure - including in budgetary matters - and whether the judiciary appears as independent and impartial¹¹.

ECtHR decided that the interference by the executive in the ongoing judicial proceedings or trials might impair the reputation of the judiciary which in turn would undermine the guarantees of fair trial. The statements by high-ranking politicians in the government on the ongoing proceedings, calls on the courts to return a certain decision even if for justified reasons are not compatible with the notion of an “independent and impartial tribunal” in Article 6 of ECHR that guarantees the right to fair trial¹².

ECtHR decided that even if there were no tangible evidence that the statements by high-ranking politicians influenced the court, the “appearance of impartiality” was of utmost importance and the said statements might violate the right to fair trial¹³. This is also of utmost importance in respect of judicial conduct. Therefore, Article 1.5 of the Court of Cassation Code of Judicial Conduct states that “A judge shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government, and also demonstrate to a reasonable observer to be free therefrom.” This is very important not only for judges, but also for judicial staff. The preamble of the Court of Cassation Code of Conduct for Staff states that “WHEREAS public confidence in the judicial system is dependent on the perceived integrity of judicial staff who play any role in the administration of justice.”

The Court of Cassation Code of Judicial Conduct includes more elaborate rules on the pressure and threats against the judiciary. Article 1.1 reads “A judge shall reject any attempt to influence his or her decision regarding a case before the judge where such attempt arises outside the proper performance of judicial duties.” It may be debatable what procedure a judge who encounters such an act should follow. In certain cases, the fact that the judge has not been influenced by such an attempt cannot by itself be considered sufficient. It is also necessary to dispel the risks that such an interference with the judiciary

¹¹ The Rule of Law Checklist, s.35.(See in particular ECtHR *Campbell and Fell v. the United Kingdom*, 28 June 2014, 7819/77 and 7878/77, § 78).

¹² *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002 VII; *Kinsky v. the Czech Republic*, no. 42856/06, 9 February 2012.

¹³ In *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, 21 January 2016,

will create on the appearance of independence and impartiality. It may be useful to communicate the issue to the court administration which in turn will communicate to the relevant representative of the executive (or of the legislative, whoever may be) that the act is improper so that similar acts will not be repeated in the future.

2.1.3. Maintaining the Authority of Judicial Proceedings: Comments from the Executive on Pending Procedures

If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.¹⁴

ECtHR considers the violation of the presumption of innocence in the context of the right to fair trial pursuant to Article 6.2 of ECHR. Accordingly, the Court found there had been a violation of the right to fair trial when a suspect was declared guilty by the Minister of Interior at a press conference one day before the court trial started¹⁵. ECtHR indicated that the infringement of the presumption of innocence could arise not just from statements made by a judge but from other public officials and authorities as well, including the President of Parliament, the public prosecutor, the Minister of the Interior, or police officers.

Increased means of communication today, particularly the increased impact of internet and social media, pose serious risks to the right of protection against defamation and presumption of innocence. Therefore, it is now necessary for the relevant persons or organisations to act more carefully and sensitively.

The Court of Cassation Code of Conduct for Public Prosecutors explicitly treats the matter laying down an ethical rule that “the public prosecutors shall respect the presumption of innocence and the right not to be labeled as criminal” (Article 4.2).

Further, Articles 2.4, 2.5 and 2.6 of the Court of Cassation Code of Judicial Conduct lay down certain rules of conduct to reduce potential risks associated with the matter.

¹⁴ CM/REC (2010)12, art.18.

¹⁵ AİHM, *Toni Kostadinov v. Bulgaria*, no. 37124/10, 27 January 2015.

2.1.4. Security of Tenure of Judges

Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists¹⁶. Limited or renewable terms in office may make judges dependent on the authority which appointed them or has the power to re-appoint them¹⁷. According to ECtHR, an important element of the judicial guarantee of the judge's term of office is that it is not arbitrarily terminated by the executive and legislative body before the date prescribed by law. It is against ECHR that a judge's term of office is terminated by unjustified reasons. ECtHR decided that allegations by the president of a high court that his mandate was terminated for criticism on the reforms must be examined seriously and Articles 6 and 10 be considered infringed if the allegations were true¹⁸.

In modern legal systems, the security of tenure of judges is usually guaranteed in the constitution under the title of independence of the judiciary. ECtHR case-law explicitly indicated that the inclusion of the security of tenure of judges in the constitution and laws would not alone constitute adequate guarantee¹⁹. The terms of office of judges, their independence, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their terms of office, where such exists²⁰.

2.1.5. Guarantees on Disciplinary Proceedings Brought against Judges Following Public Expression of Views

ECtHR decided that judges, like other people, should enjoy freedom of expression. The exercise by a judge of the freedom of expression particularly on matters of administration of justice or functioning of the judiciary is a necessity to the separation of powers. Imposing sanctions on judges for such cases may have a chilling effect on judges in defending judicial independence and impartiality.

¹⁶ CM/REC (2010)12, m.49.

¹⁷ The Rule of Law Checklist, p.35, para.76.

¹⁸ *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016.

¹⁹ *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016.; Kudeshkina/Rusya.

²⁰ Commentary s. 12.

ECtHR found that a letter sent to the applicant, who was the President of the Liechtenstein Administrative Court, by the Prince of Liechtenstein announcing his intention not to reappoint him to a public post constituted an infringement of the right to freedom of expression (ECHR Article 10)²¹. ECtHR held that a judge's making public statements upon removal from office should be considered in the context of freedom of expression. If disciplinary proceedings were to be brought, there must be certain procedural guarantees. Disproportionate disciplinary penalties lead to judges avoiding from participating in public debate in the effectiveness of the judiciary and make a chilling effect²².

Istanbul Declaration provides significant procedural guarantees for judges. Article 15 of the Declaration reads "There should be transparency in the disciplinary process of judges." And Article 15 of Istanbul Declaration Implementation Measures include the following provisions:

"Closed or obscure judicial disciplinary proceedings being calculated to undermine public confidence in the integrity of the judicial process, the judiciary should:

1. Define conduct that may give rise to disciplinary sanctions.
2. Institute and publish a procedure for making a complaint against a judge in respect of his or her professional capacity.
3. Establish an independent investigatory body, with lay participation, to receive complaints against a judge in his or her professional capacity; to investigate such complaints; and to determine what action, if any, is warranted, including reference to the independent disciplinary body.
4. Establish an independent disciplinary body, with lay participation, vested with the power of removal of judges. A judge subject to removal shall be entitled to full rights of defence before such body, including legal representation; an inquiry conducted by reference to established standards of judicial conduct; and the expeditious conclusion of such inquiry. In the event of a decision to remove a judge, the judge is entitled to appeal to an appropriate court or tribunal.

²¹ In *Wille v. Liechtenstein* [GC], no. 28396/95, § 70, ECHR 1999-VII.

²² *Kudeshkina v. Russia*, no. 29492/05, 26 February 2009

5. Establish procedures that ensure a complainant is kept informed of the progress of the investigation.

6. Ensure that the final decision in a disciplinary proceeding against a judge that results in a sanction is published or otherwise made public.”

In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge’s involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement²³. A judge should not involve himself or herself inappropriately in public controversies. The reason is obvious. The very essence of being a judge is the ability to view the subjects of disputes in an objective and judicial manner. It is equally important for the judge to be seen by the public as exhibiting that detached, unbiased, unprejudiced, impartial, open-minded, and even-handed approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates – either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government – he or she will not be seen to be acting judicially when presiding as a judge in court²⁴. However, a judge may speak out about the operation of the justice (court), effectiveness and the independence of the justice²⁵ and criticise the law²⁶.

Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training²⁷. The Court of Cassation Code of Judicial Conduct does not bar any judge from expressing views on the justice system or the effectiveness of the judiciary. On the contrary, it generally protects the freedom of expression of judges including social media. Any restrictions introduced are the fundamental principles to preserve the impartiality of a judge.

The Court of Cassation Code of Judicial Conduct lays down the following rules on a judge’s expression of his or her views to the public:

²³ Commentary, s.89, p.134.

²⁴ Commentary, s.89, p.136.

²⁵ Commentary, s.90, p.138.

²⁶ Commentary, s.90, p.139.

²⁷ See. Consultative Council of European Judges (CCJE 2010) 3, Magna Carta of Judges (Fundamental Principles) Art. 18 entitled “Ethics and responsibility”.

“4.6 A judge shall avoid taking part publicly in political or controversial discussions and expressing an opinion.

4.7 A judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language.

4.14.1 (A judge shall) Write, lecture, teach or participate in other activities concerning the law.

4.14.2 (A judge shall) Meet with public bodies, private organizations and participate in open sessions on matters relating to the law.

4.18 A judge shall primarily speak through his or her judgments. Unless required by his or her duty, a judge shall not criticize his/her own decisions or those of his or her colleagues, communicate with such critics in a manner to influence decisions. Unless s/he is so authorized, a judge shall not make statements on such news and comments in the media.”

It is important to grant and protect the freedom of association for the genuine enjoyment and exercise of the freedom of expression. To that end, the Court of Cassation Code of Judicial Conduct provides the following rules on the freedom of association of judges:

“4.14.4 Engage in civic activities, on condition that such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.17 A judge may form or join professional associations or participate in other organisations representing the interests of judges provided that such act does not break the law.”

2.2. RESPONSIBILITY AND ACCOUNTABILITY OF JUDGES

2.2.1. General Information

Ensuring the independence²⁸ and security of tenure of judges is a requirement for the rule of law (Article 2 of the Constitution). To that end, modern legal systems have certain legal guarantees as well as special rules. Such privileges accorded to judges are intended for their objective and rational conduct on the

²⁸ In the doctrine, emphasis is placed on “*impartiality*” along with “*independence*”; and it is indicated that independence alone is not sufficient to ensure impartiality, and that the principles of rule of law and right to fair trial constitute a constitutional basis for impartiality. See Centel, N.: Hâkimin Tarafsızlığı [Independence of Judges], Istanbul 1996, p.28 et seq.; Fendoğlu, H.T.: Yargının Bağımsızlığı ve Tarafsızlığı [Independence and Impartiality of the Judiciary], Ankara 2010, pg.161 et seq.

job. This serves the public good, rather than the judge's interest. When the judiciary is fair, the state and citizens and all other persons feel secure. The purpose of the security of tenure is to ensure that judges make fair decisions in an environment free of any and all material or moral fears and pressures.²⁹ However, where a judge conducts judicial work arbitrarily or irresponsibly, s/he should be held accountable for his/her misconduct. Otherwise, the legal security of individuals will be jeopardised and the rule of law, human rights and particularly the right to fair trial (ECHR Article 6) that need to be protected will be infringed. Securities accorded to judges are not privileges accorded to their persons, but put in place with a view to protecting the legal security of the public and administering justice³⁰. Further, it would be contradictory to adopt penal and disciplinary accountability of judges who deliberately or grave professional misconduct violate the lives, property, honour and reputation of persons, and not to adopt civil (financial) liability on the other³¹.

The public trust in the judicial system and moral authority and integrity of judges is the most important thing in a modern democratic society. In that sense, the members of the judiciary should be open to account and subject themselves to mechanisms of checks and balances as a method of maintaining transparency, integrity and accountability. The bench members of high courts should particularly have the highest standards of ethics and integrity, and ensure institutional transparency and accountability. It is crucial to put into effect the code of judicial conduct and include the training on ethics so that all members of the judiciary be aware of code of conduct and professional standards and consequences of non-compliance.

2.2.2. Judge's Relations with the Media

In case of criticism of the judicial system and judges, ECtHR interprets the freedom of expression broadly and holds that restrictions on freedom of expression are not necessary in a democratic society. Freedom of expression should not be restricted to protect the authority of the judiciary or limit legitimate criticism of justice³².

²⁹ Özer, A.: Türkiye'de ve Çeşitli Ülkelerde Mahkemelerin Bağımsızlığı ve Teminatı [Independence and Security of Tenure of Courts in Turkey and Various Countries], Ankara 2009, pg.22, 23.

³⁰ Saldırım, M.: Hâkimin Hukuki Sorumluluğuna İlişkin Yargıtay Büyük Genel Kurulu ve Yargıtay Hukuk Genel Kurulu Kararları [Decisions of the Grand General Assembly and General Assembly of Civil Chambers of the Court of Cassation on the Civil Liability of Judges], Ankara 2014, pg.7.

³¹ Aydınalp, S.: Hâkimlerin Hukuki Sorumluluğu [Civil Liability of Judges], Ankara 1997, pg.98.

³² *De Haes and Gijssels v. Belgium*, 24 February 1997, Reports of Judgments and Decisions 1997-I and *Morice v. France* [GC], no. 29369/10, ECHR 2015). In *Morice v. France* [GC], no. 29369/10, ECHR 2015.

The Court of Cassation Code of Judicial Conduct includes the following rules holding that criticism against judges should be tolerated in the sense of freedom of expression:

4.18. A judge shall primarily speak through his or her judgments. Unless required by his or her duty, a judge shall not criticise his/her own decisions or those of his or her colleagues, communicate with such critics in a manner to influence decisions. Unless s/he is so authorized, a judge shall not make statements on such news and comments in the media.

4.19. A judge shall generally avoid applying administrative, criminal and legal sanctions to restrict legitimate public criticism of judicial performance unless necessary.³³

In some cases however, penal and civil sanctions may be imposed to protect the reputation of the judge and the authority of the judiciary. ECtHR decided that there was no infringement of the freedom of expression where an attorney was condemned to fine and compensation because of filing a complaint involving libel against the judge hearing a case³⁴. In another case, ECtHR decided that even if there were legal errors, the disparaging of all judges and prosecutors should not enjoy tolerance under freedom of expression³⁵. Questioning the competency of a judge, using disparaging words, making false statements about the judge or wilfully distorting the fact shall not be protected under freedom of expression. Statements not in the nature of assault on the personality or general qualities of a judge, but relating to how a judge conducted a case or his/her performance are in the scope of freedom of expression³⁶.

2.2.3. Protecting Judge's Private Life

A judge has a private life as everyone else does which must be respected by all. Therefore, the Court of Cassation Code of Judicial Conduct upholds this basic tenet and lays down the following rules:

“4.14 The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. As understanding the community is essential to the sound administration of justice, provided that s/he does not adversely affect his/her judicial duties, a judge may:

³³ ECtHR made various decisions on this matter. See *De Haes and Gijssels v. Belgium*; *Obukhova v. Russia*, no. 34736/03, 8 January 2009.

³⁴ *In Peruzzi v. Italy*, no. 39294/09, 30 June 2015.

³⁵ *In Wingerter v. Germany* (dec.), 43718/98, 21/03/2002.

³⁶ *In Radobuljac v. Croatia*, no. 51000/11, 28 June 2016.

4.14.1 Write, lecture and teach or participate in other activities concerning the law.

4.14.2 Meet with public bodies, private organizations and participate in open sessions on matters relating to the law.

4.14.3 Serve as a member of an official body, commission, committee or other body, on condition that the judge does not contradict with impartiality and political neutrality and give such an impression.

4.14.4 Engage in civic activities, on condition that such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.”

There may however be certain limitations on a judge’s private life due to his/her obligations of professional conduct. Private life should not undermine the image and reputation of the judiciary. This matter is treated in Article 2.6 of the Court of Cassation Code of Judicial Conduct as follows:

“A judge shall not knowingly and willingly, while a proceeding is before, or could come before, the judge, make any public or implicit comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process.” Here, public or implicit comment does certainly cover the presumption of innocence and the right of protection against defamation³⁷. Further, the Code includes special rules in Articles 2.4 and 2.5. According to Article 2.4, “A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, members of the judiciary and litigants in the impartiality of the judge and of the judiciary.” According to Article 2.5, “A judge shall, so far as is reasonable, so conduct himself or herself, and organize the judge’s own and the judge’s family’s personal and economic activities in such a way as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing, deciding, appeal or otherwise dealing with, cases.”

2.2.4. Judicial Role Being Affected by the Judge’s Religious or Political Views

ECtHR holds that a judge’s personal religious views shall not get in the way of their impartial judicial role. A judge shall not be allowed to promote the church to the detriment of the state protected by the rule of law. Such a case

³⁷ In Lavents v. Latvia, no. 58442/00, §§ 118 and 119, 28 November 2002.

requires a judge's suitability as a judge and calls into question the authority of the judiciary³⁸.

Judges may, as all other individuals, have freedom of religion and conscience or political views. While the Court of Cassation Code of Judicial Conduct upholds this fundamental principle, it includes the following rules under "Propriety" to maintain the reputation and impartiality of the judiciary:

"4.5 A judge shall, in exercising freedom of expression, belief, association and assembly, 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.

4.6 A judge shall avoid taking part publicly in political or controversial discussions and expressing an opinion.

4.7 A judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language."

This matter is also important in terms of the principle of equality. The Court of Cassation Code of Judicial Conduct includes the following rule under "Equality":

"5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources and not grounds for the case such as race, colour, political view, sex, religion, conscience, belief, culture, dress, language, place of birth, ethnic or social origin, disability, age, marital status, sexual orientation, social or economic status or other like causes and not allow such diversities to influence his/her decision."

3. COURT OF CASSATION REFORM ON JUDICIAL ETHICS

3.1. GENERAL INFORMATION

It is stated in the Preamble of Bangalore Principles of Judicial Conduct that "The primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country." In particular, high courts have responsibilities such as actively contributing to the creation of justice policies and increasing public confidence in the judiciary. The development of ethical principles by the Court of Cassation and the fact that they are knowable and visible to the public through their

³⁸ In *Pitkevich v Russia* (dec.), no. 47936/99, 8 February 2001.

implementation with appropriate mechanisms is an important contribution to the justice system.

The most important feature of Court of Cassation Code of Conduct adopted in 2017 within the scope of the “ Ethics, Transparency and Trust Project of the Court of Cassation” is that it has been prepared through a broad and democratic participation and in consequence of transparent processes. Another feature is that it is a text which meets the United Nations Office on Drugs and Crime (UNODC) Evaluation Framework. Court of Cassation Codes of Conduct prepared with a collective ethical understanding consists of three books such as “Court of Cassation Code of Judicial Conduct”, “Court of Cassation Code of Conduct for Public Prosecutors” and “Court of Cassation Code of Conduct for Staff”³⁹. Court of Cassation Codes of Conduct includes guidelines and rules on how to act individually or collectively against the risks encountered during the exercise of jurisdiction. With these features, Court of Cassation Codes of Conduct is in the nature of a guide that provides contemporary and effective solutions not only for judges but also for public prosecutors and judicial staff. In addition, codes of conduct do not only regulate the issues related to the exercise of jurisdiction in terms of design, scope and content, but also include codes of conduct regarding the functioning of the judicial system in general.

3.2. CHARACTERISTICS OF THE COURT OF CASSATION CODES OF CONDUCT

Court of Cassation Codes of Conduct represents the highest standards of United Nations and Council of Europe in terms of the methods followed during its development and adoption. The prominent qualities of Court of Cassation Codes of Conduct are as the following:

a) Vertical and horizontal collectivism: Ethical principles have been prepared separately but simultaneously for judges, public prosecutors and staff, and there is a consistency among them in terms of values, concepts and terminology. Thus, codes of conduct refer to a collective understanding which involves every person serving in the Court of Cassation. Furthermore, collectiveness has been ensured in horizontal means, since each professional group has widely participated in the process of developing ethical principles.

³⁹ <https://www.yargitay.gov.tr/documents/ek1-1528371097.pdf>

b) Transparency and accountability: Drafts and scientific meetings at all stages regarding formulation and development processes of Court of Cassation Codes of Conduct were published as books and also made available to public access on the official website of the Court of Cassation. In addition, drafts of codes of conduct, prior to the adoption phase, were offered to more than 90 institutions and organizations for their consideration, their opinions were evaluated, and evaluation results were published as books and on the institution's website. The fact that an academic from outside the institution becomes a member of "Judicial Ethics Advisory Committee" is an important development in terms of transparency. In this way, both internal and external transparency and accountability have been ensured.

c) Gender equality: Regulations were made by taking into consideration gender equality while developing codes of conduct. Article 4.7 of Court of Cassation Code of Judicial Conduct states that "A judge shall exercise self-restraint in using the social media to avoid posts that involve political, ethnic, sectarian, sexist or similar language.", and Article 5.1 states that "A judge shall be aware of, and understand, diversity in society and differences arising from various sources and not grounds for the case such as race, colour, political view, sex, religion, conscience, belief, culture, dress, language, place of birth, ethnic or social origin, disability, age, marital status, sexual orientation, social or economic status or other like causes and not allow such diversities to influence his/her decision." Article 1.10 of Code of Conduct for Public Prosecutors supports the works of this on gender equality as stating that "Avoid any speech or behaviour that may be perceived as sexual harassment by a reasonable observer, and not allow persons under their supervision to engage in such speech or behaviour" Article 2.4 of Court of Cassation Code of Conduct for Staff contains similar provisions. One of the most important measures to ensure gender equality is the obligation that at least two members of the Judicial Ethics Advisory Board should be women.

d) United Nations Sustainable Development Goals (SDG) 2030: The ethical system developed in the Court of Cassation meets the criteria in the evaluation guide established by the UNODC in accordance with Article 11 of the United Nations Convention against Corruption, and is full compatibility with SDG's subgoal 16.5 (reducing all forms of bribery and corruption).

Measures required in terms of ensuring sustainability has been taken and mechanisms have been established: 1-Judicial Ethics Advisory Committee

came into operation and rendered 9 decisions. 2- The adoption of judicial ethics was ensured in the universities upon the recommendation of Advisory Board for Higher Education regarding introduction of judicial ethics courses in the law faculties. 3- With the aim of collectively educating students in the field of judicial ethics, programs on law clinics were established and are being implemented. 4- Specially developed ethical training programs for judicial staff of Court of Cassation are widely implemented.

e) Judicial Ethics Advisory Committee which has a strong democratic legitimacy and is independent of administrative and disciplinary bodies:

In addition to codes of conduct, many mechanisms have been established in order for the judicial ethics system to function properly. The most important of these is the “Judicial Ethics Advisory Committee”. The Committee which is formed in a transparent and democratic way, is one of the most important guarantee of the power of codes of conduct to comply with changing conditions. 7 out of the 11 members of the Committee are elected by Grand Plenary Assembly among the members of the Court of Cassation. The academic member from outside the Court of Cassation is the guarantee of transparency of the Assembly. 2 rapporteur judges assigned from among 20 rapporteur judges with longest tenure in the Court of Cassation and 1 public prosecutor elected from among 10 Public Prosecutors with longest tenure in the Chief Public Prosecutor’s Office of the Court of Cassation represent the collective understanding of ethics in the Court of Cassation.

Bangalore Principles of Judicial Conduct, the Commentary on these principles, guidelines and publications of United Nations and relevant institutions, also practices in comparative judicial systems are referred in the decisions of Ethics Committee. The reason for this is that Court of Cassation Codes of Judicial Conduct are an harmonization of Bangalore Principles of Judicial Conduct.

3.3. DISSEMINATION OF THE COURT OF CASSATION CODES OF CONDUCT

One of the most important components of the ethics studies of the Court of Cassation is the dissemination of these principles horizontally and vertically to all segments of society. Through the initiative of the Court of Cassation, judicial ethics courses began to be taught in law faculties and Court of Cassation Codes of Conduct was included in the course curriculum of judicial ethics. More than 1,000 law school students have been given ethical training

through law clinics. The Court of Cassation strives to secure future of our justice system by making an intensive effort to ensure that future jurists are raised with the awareness of judicial ethics. In addition, students who take judicial ethics courses are also trained as law clinic trainers with additional training programs and are registered in a special record held in the Court of Cassation.

A large trainer pool of bench members, rapporteur judges, public prosecutors and staff of the Court of Cassation has been established. In addition, 9 different training modules and ethical trainings are given to judicial staff of the Court of Cassation at all levels.

4. RECENT DEVELOPMENTS ON TRANSPARENCY IN THE JUDICIARY

4.1. GENERAL INFORMATION

For the rule of law to survive, people should be educated and their awareness should be raised on this matter. As Konrad Adenauer said, “democracies need democrats.”⁴⁰ The rule of law can only be fully exercised in a society with a high awareness of law and justice. Where the public education is held as a priority, and supported by the judiciary which is also actively involved in social life to that end, the potential risks against judicial independence and rule of law will be alleviated. At this point, “transparency in the judiciary” plays a key role for the judiciary. The judiciary should strive to raise the level of public consciousness and seek to guarantee independence of judiciary, the rule of law and democracy.

4.2. COMMUNICATION STRATEGY OF THE JUDICIARY

Istanbul Declaration includes important guidelines on the communication strategy that should be formulated by the judiciary to raise public awareness on the work of the judiciary and promote public trust in the judiciary. If the judiciary does not explain itself to the community, this field will remain vacant. We cannot be sure that this vacant field will not be filled by questionable people in terms of competence, integrity and professionalism. To this end, the Court of Cassation established its Communication Strategy and Transparency Strategy with the support of both national and international experts within the scope of the “Ethics, Transparency and Trust Project of the Court of Cassation”. With the implementation of these strategies, it is aimed for the public to better

⁴⁰ Is Populism a Problem, p.46.

understand the judiciary, to be informed of reform efforts carried out and thus increase the public confidence in the judiciary.

Article 9 of İstanbul Declaration states that “The judiciary should promote programmes to orientate students on the judicial process.” It is further elaborated as follows in the Declaration:

“The judiciary should promote and participate in school and university programmes aimed at developing an understanding, and thereby contributing to the transparency, of the judicial process. These may include visits to courts, classroom appearances by judges, role playing, the use of audiovisual material, and the active teaching of judicial procedures. Such programmes will serve to avoid or correct ignorance and misapprehension about the judicial system and its operation.”

Article 9 of İstanbul Declaration Implementation Measures emphasises that promoting and entrenching respect for the Rule of Law and the role of the judiciary being dependent upon a multi-generational understanding of important legal principles and individual rights. According to this article, “The judiciary should establish regular programs of student engagement that include organized student visits to courts, classroom appearances by judges, and the active teaching of judicial procedures in conjunction with the legal profession and tertiary educational institutions.”

In this context, members of the Court of Cassation, rapporteur judges and public prosecutors give lectures in the law faculties and the Justice Academy of Turkey, gives great importance to attend seminars and conferences organized by universities in regard to their specialty. In addition, law school students in particular visit the Court of Cassation systematically.

Article 10 of İstanbul Declaration states that “The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.” The elaboration of the Article includes detailed provisions.

Article 10 of İstanbul Declaration Implementation Measures elaborates the matter as follows:

“Public confidence in the judicial system and in the moral authority and integrity of the judiciary being contingent on public understanding of the judicial process, the judiciary should:

1- Establish civic outreach programs, including town hall meetings, that provide an opportunity for court users to interact with the judiciary on the problems they have experienced.

2- Participate in radio and television programs to disseminate information on the functioning of the judiciary, its civic role and judicial processes.

3- Publish, including on the Internet, short, clearly worded and easily understandable pamphlets and other materials that provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.”

The Commentary on the Bangalore Principles of Judicial Conduct highlights judge’s involvement in public education and legal education⁴¹.

4.3. RELATIONS OF JUDICIARY AND MEDIA

Article 11 of İstanbul Declaration lays down the following rules on the relations of the judiciary and media:

“The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.

It is the function and duty of the media to gather and convey information to the public, and to report and comment, on the administration of justice, including cases, before, during and after trial, without violating the sub judice rule, the presumption of innocence, and the rights of parties to a dispute. This principle, which includes the freedom to decide which cases are to be brought to the attention of the public and how they are to be treated, and the right to criticize the organization and functioning of the justice system, should only be departed from to the extent set out in the International Covenant on Civil and Political Rights.

Media access to judicial proceedings is not a matter of simply opening doors to the courtroom and providing seats to journalists. Courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence, impartiality

⁴¹ Commentary, p.85, p.156, 157.

and integrity. The training of journalists organized by, or in cooperation with, the courts can help reduce ineffective reporting. Such training should be designed to provide them with basic knowledge about court procedures and legal issues, and thus contribute to improving journalistic skills and ethics, and building trust between judges and journalists.

Engaging the media may also require that courts actively reach out to journalists by establishing press offices within each court, to facilitate media coverage of judicial proceedings. These offices could liaise with media representatives, respond to and manage requests from journalists, issue press releases and generally provide accurate information about judicial decisions and legal issues. These offices could also provide schedules of upcoming cases, monitor the media for accurate reporting, and design media campaigns that promote public understanding of the judiciary.”

Article 11 of Istanbul Declaration Implementation Measures states that “The media being a primary source through which the public receives information and comments on the administration of justice, the judiciary should:

1. Establish a press or public affairs office to facilitate media coverage of judicial proceedings by liaising with media representatives, responding to and managing requests from journalists, issuing press releases, and generally providing accurate information about judicial decisions and legal issues. This office should provide schedules of upcoming cases, assist the media in accurate reporting, and design media campaigns that promote public understanding about the judiciary.

2. Establish a program that builds trust between the media and the court by providing training of journalists that includes basic education on court structure, court procedures, methods of accessing court information, and legal issues.”

In accordance with this principle, the Bureau of Media and Public Relations was established within the Court of Cassation. In addition, knowledge sharing meeting were held with court reporters in order that news related to judiciary is accurately expressed, judicial terms are correctly used and effective communication is established with press members and this meeting is targeted to be repeated periodically.

4.4. GRANTING PUBLIC ACCESS TO HIGH COURT DECISIONS

Article 8 of the İstanbul Declaration states that “Without reliable access to laws, jurisprudence and other primary legal sources, judges, lawyers, litigants including governments, are left without clear guidance on how the law should operate in any particular case or situation...In judicial systems where higher court decisions are binding precedents, the publication and distribution of appellate and superior court decisions is crucial in ensuring that lower court judges and governments are following the law.” The Court of Cassation, with the awareness that public access to decisions is one of the most essential requirements in a transparent judicial system, has been publishing all of its decisions that omit the personal information on its website. The Court of Cassation, which has so far opened around 5 million decisions to public access, enables development of a more coherent and predictable judicial system and all jurists to benefit from the guidance of the Court of Cassation.

4.5. ASSESSMENT OF PUBLIC SATISFACTION

As clearly stated in Article 12 of the İstanbul Declaration, the judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice. In democratic societies, high courts should implement the most advanced standards of justice that are universally accepted, and to this purpose, contribute to justice policies and be guiding when necessary. According to the principle of “developmentalism” which is one of the core values, it is inevitable that the Court of Cassation will constantly renew itself and develop new and universal strategies for solving problems related to justice. With the awareness of this high responsibility, the Court of Cassation first conducted focus group studies with the lawyers and then applied a “Court of Cassation Satisfaction Survey” to 1725 lawyers throughout the country. In this context; it is aimed to measure the satisfaction level of lawyers and to take the necessary measures in accordance with the feedback from the lawyers regarding the general functioning of the Court of Cassation. Again in this context; The Court of Cassation establishes a questionnaire system that constantly measures public satisfaction in the Front Office, which is the first stop of citizens when they come to the Court of Cassation. In line with feedbacks from citizens and lawyers, identifying systemic weaknesses or damages caused by the misuse of the system and taking the necessary precautions both provides a better functioning justice system and increases public confidence in the judiciary.

CONCLUSION

When ECtHR decisions are examined in the framework of the Court of Cassation Code of Judicial Conduct and İstanbul Declaration on Transparency in the Judicial Process, we see that the fundamental principles and values of justice are common. Dr. Nihal Jayawickrama, Coordinator of the United Nations Judicial Integrity Group which drafted the Bangalore Principles of Judicial Conduct wisely summarises the matter as follows:

“What a humbling experience it was for me, when preparing the draft Principles, and thereafter the draft Commentary, to learn that these core judicial values and principles and even detailed statements of their applicability were already to be found in the texts of ancient Egypt and in Hindu Law in or around 1500 BC.; in Buddhist philosophy in 500 BC; in the Twelve Tables of Rome in 450 BC (which contains the injunction that “The setting of the sun shall be the extreme limit of time within which a judge must render his decision”); in Chinese law around 312 BC; in the legal systems that flourished in Africa at the same time as they did in Greece and Rome; in the writings of Jewish scholars in or about the 12th century AD; in the teachings in the Old Testament; and, in very specific and comprehensive terms, in Islamic Law. **The judicial values are not only global; they are also eternal. They are part of our common heritage.**”⁴²

⁴² See Nihal Jayawickrama: Yargı Bağımsızlığından Yargının Hesap Verebilirliğine [From Judicial Independence to Judicial Accountability], (Opening Symposium of the Court of Cassation Ethics, Transparency and Trust Project 13-14 April 2017, pg.23-32), pg.31-32.

AUSTRIA

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Tools for transparency and demystification

It is a great pleasure for me to contribute some experiences of an Austrian judge. I would like to concentrate on practical tools, which help to improve transparency and demystify the work of the courts. Both is very important to ensure and increase the acceptance of judicial decisions. I am well aware, that the situation in our respective States is very different. But as the approach of the Network is to provide a platform for accessing good practices and promoting peer learning, I want to share with you, some institutions in areas of practical importance, which in my view are very successful.

The first one is the **Legal Information System** of the Republic of Austria, an internet based database open to the public. It is not only a computer-assisted information system on Austrian statutes it also includes the full text of all decisions given by the Supreme Court at least since 1980. However, the most innovative and beneficial part of this scheme is the electronic collection of **short summaries of the legal reasoning** of Supreme Court decisions since 1945. The collection of these summaries is the result of the analyses of court decisions by the so called Research and Documentation Office of the Supreme Court. Young judges who are temporarily assigned to this office extract from the decisions the sentences containing the main legal reasoning – the legal essence. This is then reviewed by the presiding judge of the relevant panel. The summaries – which are called “Rechtssätze” – are entered into **virtual file cards** which are indexed by the relevant statutory provisions. In **every new decision**, the Judges compare the main legal reasoning with the already existing files. In case of similarities, dissents or confirmations, Judges of the Research and Documentation Office add a short statement to the existing file. If there are substantially new arguments they create a new file. These short-files – today there are more than 130.000 - are very important for the legal practice.

They ensure the full **transparency of the case law** of the Supreme Court. So it is very easy for everyone to check whether we decide in accordance with our precedents or not, and it is also very often possible to **predict the outcome of pending** legal proceedings, at least as far as questions of law are concerned. The website with the database is open to the public without any fees. It has about 100 million hits every year. The Research and Documentation Office does not only analyse national decisions but also the most relevant decisions of the European Court of Human Rights (ECHR). Therefore the database also ensures that national decisions are in accordance with the case law of the ECHR.

The second tool I want to mention is to open courts and the process of decision shaping to the interested public. One way to do so is to integrate lay judges. In Austria, we have a very long tradition of such **lay judges** in labour cases. First instance panels are composed of one professional judge – who is the presiding judge – and two lay judges. At the Courts of Appeal and at the Supreme Court, the panels consist of two lay judges and three professional judges, so the latter have the majority. Lay judges enrich the decision making with their experience from their work place and help to make decisions **more acceptable** to the parties. Sometimes it is reported, that lay judges are not objective, but this is not my experience. In my experience they have a very high standard of impartiality.

Another import aspect is to open up the process of decision shaping by strengthening the **contact with universities** - law schools - and by **taking into account relevant legal literature**. Due to my experience this improves the acceptance of court decisions in many ways. The academic world of universities has got a lot of resources to place the relevant provisions of law in a **systematic context** and to understand the law as a cohesive whole. This helps to interpret law. Quoting legal literature also improves the acceptance of decisions in the academic world. Law professors are important **stakeholders** in the public discussion of difficult court decisions. As academic “experts” they are also shaping the perception of judgments in public media.

Furthermore we have several forms of cooperation with universities which enable us to give **young academics access to the Supreme Court**. They do some research on questions of general importance in specific cases. This helps us in our research and helps the universities to concentrate their research on problems of practical relevance. It also gives young academics insight in our court.

GEORGIA

Vasil ROINISHVILI,
Deputy Chairperson, Supreme Court

Judicial strategy 2017-2020

2017 has been marked as a year inimitable in the history of the Georgian judiciary by the decision to adopt the judicial reform strategy.

The specific strategic committee had been formed to identify the gaps in the judicial system and relevant legislation. Representatives of the judiciary, related government agencies and international and local non-governmental organizations took part in development of this strategy.

The ensuing discussions singled out all the strategic areas of the judicial reform process. Adoption of the strategy has been the response to the high expectations of the Georgian society for an independent, transparent, and efficient judiciary. As a result of the above mentioned the draft strategy and the action plan for 2017-2018 has been created. The action plan is divided into five strategic directions (Independence and Impartiality; Accountability; Quality; Effectiveness; Access to Justice, Transparency and Public Trust).

In 2017 Judiciary has adopted a first comprehensive Judicial Strategy 2017-2021 and its two-year Action Plan that was considered as the progressive development of the judicial reforms in Georgia by the association agenda implementation report.

The strategy envisages institutional independence of the judiciary that is enshrined in the constitution of Georgia under the article 59 and defines that Judiciary shall be independent and exercised by the Constitutional Court of Georgia and the common courts of Georgia. For ensuring individual independence of judges, constitution refers that judges enjoy with immunity. According to the constitution, judges are appointed for the life term until the retirement age by the High Council of Justice. As for the members of the Supreme Court they are elected by the parliament of Georgia for life, until the retirement age, by the nomination of High Council of Justice.

According to the strategy transparency of High Council of Justice has grown that is provided through openness of the sessions, publication of audio records of the sessions on the website and promptly deliver information for the society and publishing annual reports and statistical data for the public. It is notable that Council is in close collaboration with international/donor organisations and representatives of the civil society and they can monitor the appointment and promotion procedure of the judges. Additionally, to

increase transparency of the performance of the council strategy defines that council will be publishing reports on Justice concerning to the fight against corruption, on effectiveness of implemented measures and will be elaborating annual reports and statistical data to the public;

In order to develop the institutional independence of the courts strategy considers that should be strengthened financial-budgetary independence of the judiciary that requires to ensure sufficiency of actual budgets based upon objective criteria and resolution of conflicts related to budgets. Strategy determines that organic law should regulate issue on annual budget, that cannot be less than the budget of previous year and should be established the right of the judiciary to present its budget to the Parliament directly, when the government refuses to approve the request to increase its amount;

Judicial strategy envisages to improve the criteria and procedure for selecting judges and the trainees of the High School of Justice together with elaboration a clear and transparent system for the promotion of judges, which will be based on objective criteria and will be interconnected with the results of permanent periodic evaluation of judges; However, will be assured to elaborate recommendations on the appointment rules, competence and terms of office for the Presidents of courts, will be provided recommendations based on the analysis of existing legislation and practice. According to the strategy will be implemented effective mechanisms on the substantiation assessment of candidate judges and listeners of the High School of Justice and for challenging decisions in terms of selection candidate judges and the listeners at the High Council of Justice, also to substantiate an assessment and challenge a decision on candidate judges and the listeners of the High School of Justice.

In regard to strengthen accountability of individual judges institute of Independent Inspectors was launched from February 8, 2017. An independent inspector may consider claims and complaints of trial participants, information spread by the media or information or recommendation issued in the Public Defender's report, and will submit his/her opinion to the High Council of Justice. The decision on initiating a disciplinary prosecution against a judge is made by the High Council of Justice.

According to the strategy it is necessary to review and improve existed scope and definitions in the laws and/or regulations on civil, criminal, administrative and disciplinary responsibilities of the judges so that the independence and

freedom of judges shall not become subject to unnecessary pressure. It is important to review the disposition on excessive official authority and abuse of power. Norms of criminal code regulating judicial liability during the exertion of their judicial actions shall be revised in order to determine clearly when the judicial action exceeds disciplinary scope. Disciplinary grounds that exclude the judicial responsibility in case of performance of judicial power, reasoning of judicial decision or legal errors should be established. Maintain balanced and just grounds of liability, excluding judicial liability caused from administration of justice, content of a decision or judicial failing. Gross failings shall not be left without reaction.

Strategy considers to develop mechanisms of prevention of misconduct of the judges and court officials in order to be more oriented on identification, analysis of conditions and reasons of violations and their prevention rather than on punishment. It is important to strengthen the training components on standards of conduct and ethical norms, periodically organize training activities for judges on frequently occurred disciplinary infringements and failings; implement confidential counseling within judiciary on ethical standards.

Strategy defines that preventive mechanisms should be developed in order to avoid corruption in the Judiciary: Updated procedure for filling the property declarations shall be introduced in accordance with the Law on “conflict of interest and corruption in public service” Besides, it is important to receive information periodically and organize trainings regarding corruption in order to strengthen accountability mechanisms at Judiciary.

INDIA

Arun MISHRA,
Justice, Supreme Court

BY:
HON'BLE MR. JUSTICE ARUN MISHRA
JUDGE, SUPREME COURT OF INDIA

The bedrock of every successful democratic State is the empowered judicial system. While on one hand political stability and healthy politics free from the mixture of corruption and crime is integral to the progress of a democratic State, a vibrant judiciary which is transparent, accountable, affordable and reachable is the hallmark of the efficient justice delivery system. India being one of the greatest democracies of the world, inheriting one of the oldest civilizations and having a deep culture of equitable dispute resolution entrenched in its grass-roots society offers a detailed legislative, judicial as well as policy framework on '*transparency in judicial process*'.

Colonial justice was dividing and no more a uniting force. In the post-independence era, as colonial countries attained independence, they inherited and borrowed the British-style courts for those in Presidency Towns. The Constitution had been drafted in English and still the constitutional practice is in English legal language. However, in India, day-to-day interpretation of the Constitution by the High Courts and the Supreme Court, though in the English language, gets communicated to all citizens in the vernacular, through print and electronic media, which are broad-based.

Constitutional practice in India has evolved the doctrine of the basic structure in *Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr.*, (1973) 4 SCC 225 encompassing certain fundamental features such as free and fair elections, secularism, democracy and independence of Judiciary, which are unamendable by Parliament. India is a socialist, secular, democratic Republic, which embraces religious diversity, personal laws, and multiculturalism.

Article 39A of the Constitution of India mandates to promote a legal system that ensures that free legal service is extended so that nobody is deprived of justice due to economic or other disability. Economic justice requires non-discrimination of people on the basis of economic factors. To provide legal service to the needy is the bounden duty of the State, an efficient lawyer and cost of litigation are to be borne by State so that none is deprived of access

to justice. The cry for justice of marginalised section cannot be ignored and overlooked. Justice delivery system has been made accountable to the socially and economically disadvantaged class of people. Access to justice has been made easy by entertaining letter petitions by the Supreme Court and the High Courts in India. By way of Public Interest Litigation (PIL), Court reaches out to the lower strata and masses for whom litigation is not affordable, in order to preserve their rights and to percolate down the benefits of social schemes. Legal literacy campaigns help to generate wide-ranging awareness in order to develop and nurture a just and equitable social order in which one is Lord of his fate and shaper of his destiny.

In the wake of globalization and new global architecture technology is the weapon of power. Our living Constitution can respond to these moments of history in an age of revolutionary global transformation. We have to balance IPRs with the right to life. We face problems in IPR regime of making life-saving drugs available at affordable prices to the have-nots. The brooding sense of injustice may have international implications and ramifications if not taken care of by the judicial transparency.

India is a responsible member of the international community. It has international obligations to the world as constitutionally envisaged.

INDEPENDENT JUDICIAL CHARACTER- HALLMARK OF JUSTICE

My dear friends, independence of judicial character is another hallmark of justice and we cannot strive in achieving transparency in the judicial process unless we have judges with an independent character. The unique function that members of the judiciary perform in a State makes it imperative that they should be segregated from the other organs of the state. The judicial structure and the adjudicatory process should be so designed as to insulate the judges from influences of all kinds except those needed for reaching a correct and impartial decision of the disputes that come before them.

Justice P. N. Bhagwati, who wrote the dissenting note for himself and Justice Untwalia, observed in *Union of India v. Sankalchand Himatlal Sheth* (1977) 4 SCC 193:

“the independence of judiciary is a fighting faith of our Constitution. Fearless justice is a cardinal creed of our founding document... Justice, as pointed out by this Court in Samsher Singh

v. State of Punjab can become 'fearless and free only if institutional immunity and autonomy are guaranteed.'"

Justice Bhagwati again in *S.P. Gupta v. Union of India* 1981 Supp. SCC 87 affirmed that:

"The concept of independence of the judiciary is noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity.

Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, 'Be you ever so high, the law is above you.'"

WHAT IS JUDICIAL TRANSPARENCY AND WHY IS THERE A NEED FOR IT

- In a democracy committed to the Rule of Law and to the ideal of Government of, by and for the people, all institutions must work in a transparent manner in the proverbial 'light of day'.
- Judges neither have the power to the purse nor of the sword. Acceptability of judicial opinions rests, in a large measure, not on the contempt power but on public confidence.
- Almost all significant judicial business is conducted in open Courts, i.e., places accessible to the public at large.
- Judges have to write legal opinions and decisions. Therein, they painstakingly explain their rationale for arriving at a particular decision.
- The written word, accessible to the public at large, and allowed under law to be criticised without the fear of punishment, acts as a significant check on a Judge in India.

India's Judiciary believes in the concept of stare decisis *i.e.*, prior decisions have to be followed.

The founding fathers of the Indian Constitution did not start from a premise of distrust and suspicion of the Judicial Institutions they had set up. Numerous provisions of the Constitution, therefore, attempt to shield the Judiciary, including an express provision that conduct of the Judges, acting judicially,

would not be the subject matter of discussion in the ordinary legislative debates.

COMMUNICATING JUDICIAL DECISIONS

The openness of judiciary, as we understand it, means a transparent decision-making process, where the verdict is shared with as well as explained to the public. As the number of societal issues dealt with by courts increases, there is an objective need to inform the public about judicial decisions. They are guided by reasons and decisions are publicly pronounced.

PUBLICITY, TRANSPARENCY, AND LEGITIMACY OF THE JUDICIARY

Transparency involves disclosing the way the judge reached his or her decision to the public. The elements of transparency include: public hearings (additionally web streaming of the hearings), justification of decisions (including extra-legal arguments), publication of dissenting opinions, information about decision-making process and identity of judge-rapporteur, presentation of judges (including photos and biographical information), access to documents and possibility of obtaining information about particular steps taken by a court in an individual case according to the law on the free access to information, and, eventually, disclosure of the opinions of the judicial panel. The Supreme Court of India last month has permitted live transmission of Constitutional Bench cases on television to the public at large.

The basis of publicity is a public announcement of the operative part of the judgment and its justification.

Openness strengthens the legitimacy and overall public trust in courts. Transparency allows the public to control the judiciary, thus making it more accountable. The issue of the right to privacy of the parties is also related, as openness may sometimes run counter to the parties' interests.

There is an established consensus on minimal standards of judicial openness which stems from the principles of the right to a fair trial, other Fundamental Freedoms, as well as freedom of information.

Judicial communication with the public and media in various countries depending upon applicable ethical standards may involve (i) judicial spokespersons, (ii) audio-visual recording of proceedings, (iii) online

publication of judgment, (iv) press guidelines and (v) proactive approach to communication with the media.

COURTS OPEN TO PUBLIC AND MEDIA IN INDIA AND INTERACTION WITH MEDIA

On the basis of the concept of openness of the Government, freedom of speech helps the formation of public opinion and makes those in power more accountable. It helps in the discovery of truth, at the same time strengthening the decision-making process.

However, freedom is not absolute, it is subservient to the interest of the nation and society. The freedom enjoyed by Press, Media and internet is not greater than that of an individual.

The relationship between media and judiciary has to be of mutual respect with a safe distance. The ideal situation would be if reporting of decision is without naming of judges. A lawyer should not give wrong, incorrect news and should eschew self-projection.

It is said by a spiritual leader that “Newspapers are meant for Religion (Dharma). And for the purpose of protecting Religion (Dharma), we have to live our Dharma.”

With regard to the newsmen, their ‘Dharma’ clearly requires them to discharge their professional duties with courage and integrity, reporting things as they are objectively and accurately, eschewing all extraneous considerations. Press and Media should project issues of public importance of downtrodden, violation of human rights etc.

In *Sanjeev Nanda* case in which a B.M.W killed six persons, a sting operation was conducted by a T.V. channel showing Nanda’s lawyer was attempting to bribe a witness. The High Court passed an order against two senior errant lawyers debarring them from practice for four months.

With the advent of investigative journalism, we have come to face a situation where Press and Media are no more regarded as people friendly. There should be an objective analysis, misinformation should be avoided at all costs.

There is an urgent need to balance the right to know with the right against information and privacy and fiduciary relationship as one cannot violate the rights of others in the garb of the right to information.

There is fierce competition between Media houses, the competition of breaking news, distorted attractive headlines to achieve attention. In this scenario, lack of knowledge and right against information with a person deputed for legal reporting compound problems and worsen the situation, there are complaints of paid news, politically motivated cases. Hence, more responsibility lies in the press. The immense power of media should not be used by a journalist to cater the ends elsewhere.

If Media prejudges guilt of an accused, it affects him very badly, even honourable acquittal from the court is not going to give him back image, which has been destroyed in the eye of the public. The right of privacy of accused is often violated.

The reporting of sub-judice/decided cases and court proceedings must be on the objective basis not on subjective satisfaction, there is no room to further a particular ideology. Plain duty of the journalist is to report, not to adjudicate. Media has an immense responsibility to ensure that it does not jeopardise fair administration of justice. Media should not close the door of justice to a litigant or damage image of a respectable person (*Bijayananda Patnaik vs Balakrushna Kar And Anr.* AIR 1953 Odisha 249).

Circulation of quick information in social media is sometimes misleading if part of the relevant information is omitted. Incorrect tweets may create a blunder.

Contempt is a reasonable restriction on freedom of speech as laid down in **C.K. Daphtary v. Shri O.P. Gupta & Ors.**, AIR 1971 SC 1132. Fair criticism of a decision is permissible; however, it is not open to present a one-sided picture of court's order, distort or misrepresent the same. There is no room for making unfounded and baseless allegation against the judiciary and its independence is one of the cherished features of the Constitution.

There is the difference in various countries as per ethical standard for Judges in talking to media and with the public. In India, we have a conservative approach i.e. Judges are not supposed to talk to media and public directly, with respect to legal issues pending with them.

LITIGANT FRIENDLY COURT

After all, the judicial system exists for the sake of litigants. It has corresponding obligation to provide respectable space and proper dignified facilities. In India in various States along with the courts, Nyaya SevaSadan (Legal Services Centres) have been opened. In that, there is adequate space kept for providing night shelters to the poor litigants to stay. For disabled person ramps etc. and other facilities are provided. In the Supreme Court of India, we have a crèche facility. Separate Bar room for women lawyers is also provided.

EASY ACCESS TO JUDICIAL SYSTEM

In India, the rule of *locus standi* has been liberalised and public interest litigation (PIL) has been devised as a tool to reach out to people. Any person of public or group may approach the court seeking a legal remedy where the public interest is at stake. Even letters and e-mails addressed to the court are being taken up as PIL and heard. There is a Letter Petition Cell consisting of Judges in the Supreme Court, which scrutinises various letters received as per the guidelines. The appropriate letters are taken up by the Supreme Court on judicial side such as related to bonded labourers, neglected children, non-payment of minimum wages to workers, exploitation of workers at workplaces, petitions from jail complaining harassment, matters related to speedy trial, police harassment, other social evils, environmental issues, riots victims, family pensions etc.

In *Husaainara Khatoon v. State of Bihar* 1980 (1) SCC 81 on a petition filed by a public-spirited individual, Supreme Court has directed release of the under-trial prisoners on bail. 40,000 undertrial prisoners were benefitted by the said judgment. The under-trial prisoners who had completed their maximum term for which they could have been sentenced including the ones who were not able to furnish the bail bonds were ordered to be released. The right of a speedy trial is a well-recognised one.

The concept of Lok-Adalats has been devised in India where various kinds of cases including accidental claims, family disputes etc. are settled. Millions of cases are decided every year in Lok-Adalats by the consent of the parties. Thus, people become a part of the actual dispensation of justice by settling cases amicably, thereby avoiding proverbial delay and cost of litigation. A large number of matrimonial cases succeed by way of mediation. The alternative dispute resolution mechanism has been successfully implemented as per the statutory framework provided under section 89 of the Code of Civil

Procedure, the provisions of the Legal Services Authorities Act, 1987 and the Arbitration and Conciliation Act, 1996.

Under the Legal Services Authorities Act, effective network of legal services has been created at the grassroots level throughout the country. We have National level, State level, and District level authorities and Para Legal Volunteers at the village level in the said Act. They help in filing litigation to the needy and poor, make them aware of their rights and all the expenses, in case litigation is filed, are borne by the State for the people belonging to the marginalised sections of the society.

Every tear has to be dealt with as per the constitutional perception by ensuring equal justice to all. Law is not the respecter of persons even if highly placed, it aims at humane treatment equally to all. In *Charles Sobraj v. Supdt., Central Jail*, (1978) 4 SCC. the Court removed the bar fetter from under-trial prisoners. Prisoners do have rights to be protected and are informed of their rights by holding camps in jail.

COURT LANGUAGE AND TRANSLATION

India is a multilingual society, where it is absolutely necessary to make the available judgment in vernacular language. The Lower Courts and the District Courts deliver the judgments mostly in vernacular language easily understandable by litigants. The judgments of the High Courts and of the Supreme Court are delivered in English but they are emanated effectively by the media and journals in the vernacular language also. The Supreme Court/ High Courts also have a cell providing translation facility.

India is a country of diversity. Regional language plays a prominent role in a multilingual society. Preparation of judgments, a reference to documents and recording of evidence many a time requires reference to the local or regional languages so we have translation facilities in the High Court and Supreme Court.

TRANSPARENCY IN ASSIGNMENT

Assignment of the cases is done at the district level by the District Judges, by the Chief Justices of the High Courts at the High Court level and Chief Justice of India at the Supreme Court. The High Courts and the Supreme Court are guided by the rosters and it is for the repository of the faith to exercise the power of proper assignment of the cases as per the expertise of the judge and to adopt transparency. However, I wonder whether the time has come when

we have to rely on the computer alone for allotment of cases but still, the software is generated by human skill. Ultimately, we must have faith in the system.

COMPUTERISATION OF COURTS IN INDIA

A Case Management System is developed by the National Informatics System (NIC) where the tactical skills of Indian software developers have been utilised in almost all the courts.

EASY ACCESS TO JUDICIAL SYSTEM

Access to justice and transparency in the judicial process are intertwined. Kiosks and information centres have been established. Websites of High Court, District Courts, and Subordinate Courts, SMS alerts, Interactive Voice Recognition System (IVRS) have been introduced to know the status of cases. In many courts, how many cases of a particular Advocate are listed on a particular day is informed by sending SMS. In case, any of the matter has been dismissed, in default of his appearance, is also informed. Mobile technology has been successfully used. The utilisation of internet banking, credit and debit card and payment of the court fee by that are permitted. Maximum use of e-banking system is also being promoted.

VIDEO CONFERENCING AND JUDICIAL ADMINISTRATION

Video conferencing facility and teleshopping are now playing a prominent role in the present-day world. Video conferencing works like a telephone call. To begin with, the link between jail and courts was established. At High Court level, we have a link with Andaman & Nicobar Islands and the Calcutta High Court. The cases are heard using a video conferencing facility. The National Green Tribunal has also started using the video conferencing facility between Delhi and Benches at various places. Video conferencing system is now put in place to active use at district headquarters in bringing about an effective justice delivery system.

E-COURT AND PAPERLESS ADMINISTRATION

The e-Court concept is further developed to bring about a paperless court and, in this context, we now have paperless courts at various places. Of course, the use of laptops, I-pads, e-books has brought in a concept of having mobile libraries

by using the digital media and thereby it has reduced the burden of ecological imbalance. Reorientation programs of an effective nature are called for.

TRANSPARENCY IN DELIVERY OF JUSTICE

Judgments are delivered in the open court. They are reasoned and are uploaded online on the same day. Legal tools are used to draft a judgment. Journals are accessible online.

Publicity without transparency contributes to a deity-like perception of judiciary where judges decide cases from an inaccessible divine position.

Transparency without publicity defeats its own purpose. Even when court documents are broadly accessible, the public has a difficult time perceiving what information is significant and how to interpret it. That may result in misrepresentations capable of damaging the relationship between courts and the public and diminution of faith in the system. People have faith in the system as its last resort and cannot fail them.

EFFECTIVE COURT MANAGEMENT SYSTEM

Apart from certainty in the decision-making process and quick disposal of cases, lawyers and litigants are concerned with two key areas of Court administration. These are:

1. Availability of information
2. Preparation of documents

The active cooperation of Bar and Bench is imperative.

Court management cannot succeed without the support of the staff and its Registry.

RIGHTS IN THE CASES OF EXECUTIVE DETENTION

We have various Acts in which there is a power of detention with the executive. However, under the Acts, there is safeguard provided. We invariably have Advisory Boards at the level of High Court etc. to advise on administrative side to keep a vigil on such detentions and advise the Government whether a person is legally detained, which advice is binding. Detenu has right of judicial review. The meaning of the right to life and liberty has been expanded in *Maneka Gandhi* case. The procedure of law under

Article 21 of the Constitution of India has been qualified with due process of law. There is no room for any arbitrary detention of an individual. A case of detention is dealt with by the courts on a priority basis.

DUE PUBLICATIONS OF DECISIONS OF THE SUPERIOR/ APPELLATE COURTS

We have a system of Supreme Court and High Courts printing their own judgments in Supreme Court Reports and Indian Law Reports respectively published as early as possible. There are a number of journals having a fierce competition of reporting the latest judgments. Judgments delivered in written form are made available online on the Supreme Court and High Court websites the same day they are delivered.

Bench and Bar are two wheels of the chariot of justice. The office of each advocate should be computerised and the advocate to become computer friendly to make use of the systems. Now they are able to use the technology to have cause list and to know by the display board position on mobile, which case is being heard in which court.

It may be useful to communicate important judgments to the public. There is a great risk that inappropriate coverage could undermine the public picture of the court. The freedom of the internet and its power of dissemination of information requires urgent attention of policymakers to check the misuse by providing law with clarity. It is required to be considered whether there should be courts' spokesperson to prevent misinformation.

TRAINING OF STUDENTS AND LAWYERS ORIENTATION OF STUDENTS IN THE JUDICIAL PROCESS

There are various such programmes and the training is imparted by the Judges to the law students while they are undertaking their education. They work with the judges for the requisite period, obtain the experience of the court functioning by attending at and learn how the judiciary functions. They also prepare the notes of the cases listed for hearing which help them in developing their legal acumen. Moot Court competitions are held. The Judges deliver lectures in University. The students are called to attend conferences. Young lawyers are also engaged as Law Clerks in Supreme Court and High Courts.

They help the Judges in the matter of research work, preparation of the briefs and notes about the cases which are listed for hearing. They also attend the Court hearing and they are paid adequately for that.

REACHING OUT TO THE PUBLIC

Articles 14 and 39A of our Constitution makes it obligatory for the State to ensure equality before the law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. In 1987 Legal Service Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. There cannot be empowerment without knowing the rights, welfare schemes and remedy for enforcement. Under the auspices of various authorities and blend of the judiciary and executive efforts, legal awareness camps are organised. Legal literacy is being achieved by several programs at the grassroots level and for removing social evils.

ASSESSMENT OF PUBLIC SATISFACTION

The assessment of public satisfaction as to the impact of judgments is presently gathered by press and media and social sites. The assessment of public satisfaction so far is not made by the courts in an authoritative manner. However, problems of delay, arrears, and speedy justice are continuously addressed.

APPOINTMENT OF JUDGES AND TRANSPARENCY

In this debate of making judicial institutions more transparent in keeping with the abundant faith the people repose in the judiciary, I must proudly mention that only last year, the Indian Supreme Court decided to publicize the minutes of the meetings of the '*Supreme Court Collegium*' on website which is a highest judicial body in the country to decide on sensitive matters of appointment of judges to the Supreme Court and appointment and transfer of judges in the High Courts across the country. The '*Supreme Court Collegium*' now uploads its reasoned decisions on the website of the Supreme Court of India and put it in the public domain.

Judicial appointments at the lower level i.e. to the District Courts and Courts subordinate to such District Courts, are effectuated by a holistic formula of

both intra-cadre promotion and direct recruitment, with the direct recruitment being on the basis of academic examinations, which are in their nature open competitive and merit-based.

In *National Judicial Appointments Commission case*, the Supreme Court in order to provide transparency in the appointment of Judges the Supreme Court and the High Courts has held as under:

SCAOR Association v. Union of India 2016 (5) SCC 1:

“1255. In view of the above, the Government of India may finalize the existing Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the Collegium comprising the four seniormost puisne Judges of the Supreme Court. They shall take the following factors into consideration.

1256.1 Eligibility criteria: The Memorandum of Procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the Collegium (both at the level of the High Court and the Supreme Court) for the appointment of Judges, after inviting and taking into consideration the views of the State Government and the Government of India (as the case may be) from time to time.

1256.2 Transparency in the appointment process: The eligibility criteria and the procedure as detailed in the Memorandum of Procedure for the appointment of Judges ought to be made available on the website of the Court concerned and on the website of the Department of Justice of the Government of India. The Memorandum of Procedure may provide for an appropriate procedure for minuting the discussions including recording the dissenting opinion of the Judges in the Collegium while making provision for the confidentiality of the minutes consistent with the requirement of transparency in the system of appointment of Judges.

1256.3 Secretariat: In the interest of better management of the system of appointment of Judges, the Memorandum of Procedure may provide for the establishment of a Secretariat for each High Court and the Supreme Court and prescribe its functions, duties, and responsibilities.

1256.4 Complaints: The Memorandum of Procedure may

provide for an appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment of a Judge.

1256.5 Miscellaneous: The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee(s) by the Collegium of the Supreme Court, without sacrificing the confidentiality of the appointment process.”

TRANSPARENCY RESPONDING TO ETHICAL BEHAVIOUR

No office is sacrosanct beyond the fundamental necessity of responsible use of power in discharging their constitutional obligations. The institutionalisation of accountability is thus, at the core of just governance.

What qualities make an individual as “excellent Judge”? An excellent judge adheres to high standards of integrity, honesty, and fairness. An excellent judge also possesses a decent judicial temperament, hallmarked by civility, courtesy, dignity, patience, understanding, compassion and a personality-free from arrogance, bias, and prejudice.

We must collectively think about measures to improve this facet of our judicial personalities and inherit it as a strength to garner greater public confidence and trust for our work and services as the messengers of justice in the society.

We have an in-house procedure for inquiring into allegations against the Supreme Court and the High Court Judges, which protect the independence of system.

For Judges of District Courts and Lower Courts, the complaints are examined and a departmental enquiry is held if found necessary after preliminary inquiry as per the Statutory Service Rules. Full transparency is maintained in the proceedings. A delinquent is given full opportunity to defend himself. Supply of documents is necessary and the decision taken by a reasoned order and supply of enquiry report is necessary. There are various safeguards to ensure the transparency of the proceedings so that nobody is punished unnecessarily and the guilty are not spared. The proceedings are subject to judicial review. There is a provision of compulsory retirement in Service Rules for the screening of Judges whether they are serving effectively

and useful to the system. In case a person is unfit for service, his ACRs are not up to the standard or integrity is doubtful, then the person can be retired in the public interest on the completion of 20 years of service or 50 years of age. We have yet another screening, though the extended age of retirement is 60 years, on completion of 58 years, suitability to further continue in service is evaluated on being found fit from all the angles and then he is given chance to serve up to the age of 60 years. There is no room for dead wood in the system. Full transparency in disciplinary proceedings is observed as provided in the Statutory Rules.

My dear friends, let me also share with you all, that on the Indian side, we have taken a series of other measures for enhancing the quotient of transparency in the judicial process. These include promoting fair criticism of judicial work and judicial conduct in the public domain which is usually led by the responsible media in our country. Judiciary has absolutely nothing to hide by very nature of its activity. Every act is in public gaze and open to scrutiny and correction if required. We have embraced the mandate of the Right to Information Act to further strengthen the transparent working culture in the judicial institutions which have a strong bearing on the judicial process.

To make the principles of transparency vibrant and worthy the real justice has to be untainted, free from human failings. For achieving transparency of justice delivery system, the blending of various qualities in a Judge is imperative i.e. attributes of human heart, realisation of the soul, rising beyond self, melting of ego, fearless mind, high intellect, purity of thinking, clarity of perception, profound knowledge, total dedication to constitutional values, dead honesty, impeccable integrity, irrigated with dint of hard labour may bring balancing of powers which otherwise are ever ready to taint the course of justice and its divinity.

IRELAND

Peter CHARLETON,
Justice, Supreme Court

Transparency in Judicial Decision Making

An Irish Perspective

Peter Charleton, Judge of the Supreme Court

The Istanbul Declaration on Transparency in the Judicial Process, done at Ankara in 2018, is a document of the highest importance. Strengthening, as it does, the heart of systems which separate out the powers of legislation and executive from judicial processes, it stresses the independence of court proceedings as a check on the power of government and as a guarantee that the citizen will always have an unbiased forum to which to turn. Judges are a last resort. Without us, there is no power that cannot be trammelled by an over enthusiastic government. In times of crisis, the judiciary act as a stabilising force. On so many occasions in the past, where national crises, the judiciary as a body removed from the pressures that might trammel civil liberties, remains a potential bulwark of objectivity. We promote the rule of law. This principle says that no matter what happens, those guaranteed rights, those who have obligations and those who seek the freedom that our various constitutions promulgate, will have substance given to what otherwise might be empty declarations.

In Western systems, as far back as 1215, this was recognised in Magna Carta and since then written constitutions have guaranteed the right for a prisoner to approach the High Court and to claim illegal detention. In that way, no matter what the turmoil of political battle, it will only be through valid means that government can prosecute its enemies and only then on the basis of existing laws and a substantial body of proof.

Introduction

Revered as a “diamond’ in a democracy”,⁴³ an independent and accountable judiciary is an integral component of a fair and just society. Today, in accordance with the Istanbul Declaration, we can add to this standard the requirement of transparency, which is a concept that covers many elements of justice system. On this requirement for transparency, the Irish Supreme Court has asserted that:

⁴³ Susan Denham, “The Diamond in a Democracy: An Independent, Accountable Judiciary” (2001) 5 The Judicial Review 31

Transparency in the administration of justice is part of the democratic system. Citizens are entitled to scrutinise and, it follows, comment on or respectfully criticise the decisions of the judicial branch of government. They also have a basic entitlement to know that judges are behaving properly.⁴⁴

Some say that to have respect, you have to earn respect. It would seem that the Irish courts are widely respected, and in a way that is not surprising. According to the oath of office, judges in Ireland are required to sign up to the highest standards of independence and judicial integrity. Sometimes, that can merely be a shibboleth; a phrase promulgated for distribution as part of deception. However, in 2014 a survey carried out by the European Commission ranked Ireland the second highest in Europe for perceived judicial independence.⁴⁵ Others may have issues. Recently, a decision of the Irish High Court queried the reliability of another European Union system. Whether that is right or wrong, the judge sought guidance from the CJEU as to whether she was permitted to refuse to extradite a Polish national accused of drugs offences to Poland, where she had assessed that “there is a real risk connected with a lack of independence of the courts of Poland, on account of systemic or generalised deficiencies, of the fundamental right to a fair trial being breached.”⁴⁶ In due course we will see what the answer is or whether the comment of this judge was right or wrong.

Role of the judiciary in Bunreacht na hÉireann

The Irish Constitution provides at Article 34.1 that “Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and save in such special and limited cases as may be prescribed by law, shall be administered in public.” Similarly, the Istanbul Declaration in Principle 1 describes this as a “fundamental requirement in a democratic society.” What is being overseen by public access and media scrutiny is no less than an almost legislative power since in systems based on precedent, case law can be developed into new areas.

As is the case in most common law jurisdictions, some are of the perception that the Irish courts in effect have the power to ‘make law.’ This renders the

⁴⁴ *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [21].

⁴⁵ Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 55.

⁴⁶ *Minister for Justice and Equality v Celmer (no 4)* [2018] IEHC, at [44]. ⁵*M v Minister for Justice & Equality* [2018] IESC14, at [10.24].

judiciary in such jurisdictions significantly more powerful and influential than their civil law counterparts. With a supreme court, as in the United States of America, having the power to declare abortion legal, strike down the Roosevelt economic policy and authorise same-sex marriage, scrutiny and criticism of such a fundamental law generating organ is critical. This phenomenon can be extreme. In our system, there is a lot more restraint as was recently elucidated by the Supreme Court:

If it is correct to say that a decision of the court can make law – and it can be said it does so not least because a decision of a Superior Court binds everyone in a similar position unless and until altered by legislation, the decision of the People in referendum, or subsequent judicial decision – then it is equally important to recognise that courts make law in a way which is significantly different from the manner in which legislation is made by the Oireachtas. Courts may only decide cases brought before them by parties. The parties must themselves have a legitimate interest, grounded in the facts, in the resolution of their dispute. A court cannot itself initiate a legal issue, still less issue of its own accord a generally binding statement of law. Furthermore, a court may only decide (in the sense of giving a binding determination) those legal issues which are *necessary* and *essential* to resolve the legal dispute between the parties. While courts may and do say other things in the course of a judgment which may be of benefit both in the development of the law and in the assistance of the resolution of future disputes, it is only that portion of the judgment that contains what is considered to be essential and necessary for the actual decision in the case which can be said to be binding on subsequent courts.

One of the core duties of the judiciary is to uphold the provisions of the Irish Constitution. As Murray CJ notes, “the courts are required to act as custodians of the Constitution and as such, to act as a check on the actions of the other two arms of government and to ensure that they act in accordance with the rule of law, respect individual constitutionally protected rights and observe the provisions of the Constitution.”⁴⁷ This means that the Courts have the power to strike down legislation enacted by the Oireachtas as unconstitutional, a power that does not exist in the United Kingdom on account of the doctrine of parliamentary sovereignty. A particularly dramatic example of this power was

⁴⁷ *Curtin v Clerk of Dáil Éireann* [2006] IESC 14, at [94].

seen in the Court of Appeal decision of *Bederev v Ireland*,⁴⁸ later reversed by the Supreme Court,⁴⁹ where the legislation declaring a number of substances illegal was struck down as in breach of the non-delegation of legislative functions doctrine. Courts, after all, make mistakes

Independence of the judiciary

A fundamental tenet of the Irish Legal System is that the judiciary is independent. The Istanbul Declaration recognises this even in the preamble. Writing extra-judicially, former Chief Justice Denham explains this idea:

The concept of the independence of the judge exists so that he or she may fulfil his or her duties freely. The concept exists to guard the impartiality of the judge, to protect the judge from interference... Both the institutional judiciary and the individual judiciary are independent... The independence of the judiciary is for the benefit of the community, not the judges. It is a duty not a privilege for a judge.⁵⁰

The independence of the judiciary is especially important in light of their function in upholding the provisions of the Constitution. In France, there are administrative courts and civil courts entirely separate from each other. This can be a recipe for being sent from one court to another. There are perhaps advantages to a unitary system. Unlike in many civil law jurisdictions, there is only one legal order in Ireland so all legal proceedings are dealt with by a single hierarchy of Courts. O'Donnell J has argued that this fact means that the judicial independence standard is upheld across all courts regardless of the magnitude of the legal issue that comes before it, and in fact ensures that the Courts are better equipped to evaluate questions of Constitutionality. As he puts it:

The independence of the judiciary in the Constitutional area is facilitated by the fact that constitutional issues are dealt with by the same courts which deal with private law issues of contract, tort, and property, and also with public law issues such as crime, and latterly, review of administrative action... the technique of explaining why a particular issue amounts to a breach of contract, a tort, or why a piece of evidence is admissible or not is a valuable discipline to bring to bear on constitutional issues.⁵¹

⁴⁸ *Bederev v Ireland* [2015] IECA 38.

⁴⁹ *Bederev v Ireland* [2016] IESC 34.

⁵⁰ Susan Denham, "The Diamond in a Democracy: An Independent, Accountable Judiciary" (2001) 5 *The Judicial Review* 31, at 58.

⁵¹ Donal O'Donnell, "Some Reflections on the Independence of the Judiciary" (2016) 19 *Trinity College Law Review* 5, at 14.

Of course it can be hard to see judges as independent if all are ‘party people’, which could be seen as a guarantee that they might toe the government line. So, appointment of the right people is key, thus the Istanbul Declaration in Principle 13 calls for basic principles to be adhered to.

Appointment of judges in Ireland

A key consideration of the integrity and independence of a judiciary thus necessarily includes an examination of the manner in which judges are appointed to the bench. Article 35 of Bunreacht na hÉireann stipulates that “the judges of the Supreme Court, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.” Article 13.9 of the Constitution clarifies that this is not an act of complete judicial discretion, but must be done ‘only on advice of the government.’ Finlay P has noted that the appointment of judges is an act “requiring the President’s intervention for its effectiveness in law, but in fact it is the decision and act of the executive.”⁵² Indeed, O’Donnell J notes the argument that, in effect, these provisions of the Constitution prohibit an independent appointment process as this presidential function cannot be delegated.⁵³

In our system, unlike in Roman law based jurisdictions, there is no judges’ college. You become a judge in your mid-40s to mid-50s, having spent a life in practice. In that way, you become known as safe, as sound or as dangerous to appoint. Although the Government’s power remains formally unaffected since the enactment of the Constitution, it must be noted that the Court and Court Officers Acts 1995-2002 prescribe important procedures that must be followed and mean that the Government must have regard to the recommendations of the Judicial Appointments Board before appointing a person to judicial office. All judges must make a formal application and no one is eligible unless their career path, publications and competence have been independently assessed. Only then can their names go forward to government. As in many jurisdictions, there has recently been discussion of amending the way in which judges are appointed in Ireland, making that independent scrutiny even more stringent, but it remains to be seen whether any significant change to the current regime will be brought about.

⁵² *The State (Walshe) v Murphy* [1981] IR 275.

⁵³ Donal O’Donnell, “Some Reflections on the Independence of the Judiciary” (2016) 19 Trinity College Law Review 5, at 26.

Removal from judicial office

Of course, there must be a disciplinary process. Under the Istanbul Declaration in Principle 15, that should be “vested in an independent body”. As this recognises, perhaps equally as important as the way in which judges are appointed is the way in which they can be removed from office. Essentially, you are not independent if tomorrow, a ministry or a government can decide that they don’t like your decisions and pension you off. Our constitution recognises that in quite an extreme way.

Article 35.4.1 provides that “A judge of the Supreme Court, the Court of Appeal or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.” That guarantee applies by legislation to judges of the Circuit Court and District Court. To date, no judge has been removed pursuant to this article, although it has been considered in a few notable instances. Of course, there have been problems. In what is known as the ‘Sheedy Affair’, the Chief Justice found that a Supreme Court judge had for the best of reasons, but nonetheless, improperly, intervened in a case. A judge of the Circuit Court had also mishandled the case. Having concluded in his report that the judges’ interventions were “damaging to the administration of justice”,⁵⁴ the Government was considering removing the judges under Art 35.4.1° as the behaviour contained in the Chief Justice’s report amounted to misbehaviour under that provision of the Constitution. However, before any action could be taken, both judges resigned.

The most significant problem in this area was the arrest of a judge for obscenity offences. This was later reported as *Curtin v Clerk of Dáil Éireann*.⁵⁵ Following the acquittal of a Circuit Court judge on a very serious offence, public concern prompted both Houses of the Oireachtas to adopt a new procedure to allow investigations into judicial conduct. Both houses established a joint selection committee to take evidence in relation to the applicant’s conduct. Effectively, this was an investigation and reporting body. The committee ordered the applicant to produce his computer for examination, one seized by police but later ruled inadmissible in court thus collapsing the prosecution against him, and the judge then sought judicial review. On appeal to the Supreme Court, Murray CJ noted that given the brevity of

⁵⁴ Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4th edn, Tottel Publishing), at 1008.

⁵⁵ *Curtin v Clerk of Dáil Éireann* [2006] IESC 14.

Article 35.4.1, it was necessary to consider its constitutional context.⁵⁶ He identified three elements of particular relevance: the function and standing of the judiciary in the Constitutional scheme, the express power conferred on the Oireachtas and the obligation to respect principles of fairness and justice in the exercise of that power.⁵⁷ Ultimately, the Court concluded that the actions of the Houses of the Oireachtas were not clearly in disregard of the Constitution and that the committee was entitled to organise materials and evidence into a manageable form. The Court did not interpret the expression “stated misbehaviour or incapacity”, but it is apparent from the judgment that accessing adult pornography does not come within this standard, however accessing child pornography most certainly does.⁵⁸

Ultimately, the situation was ended when Judge Curtin voluntarily resigned on a pension.¹⁸ Despite this, the judgment remains the most comprehensive analysis of this provision of the Constitution to date.

Disciplining of judges

Another contentious issue is that of reprimanding and disciplining judges. Again, Principle 15 of the Istanbul Declaration refers by requiring “transparency in the disciplinary process” by “an independent body” and that the “decision should be published”. Of course, if these principles are not adhered to, it could be a case of: we don’t like her, so let’s ditch her. Due to the nature of the judicial function, the establishment of any disciplinary procedure must be handled with caution. As O’Donnell J puts it:

it should not be forgotten that the courts are full of unhappy litigants. At one level, it is the task of the court to make at least one party unhappy. It is also the case that some people who come before the courts have an interest in delay, obstruction, obfuscation or simply causing trouble. There are also legitimate concerns about the impact of any public criticism or reprimand on the capacity of a judge to continue to carry out his or her function, and the cost that such a procedure could involve, particularly where the complaint is dismissed as ill-founded.⁵⁹

⁵⁶ *Curtin v Clerk of Dáil Éireann* [2006] IESC 14, at [80].

⁵⁷ Oran Doyle, *Constitutional Law: Text Cases and Materials* (2008, Clarus Press) at 379.

⁵⁸ Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 58. ¹⁸ See Laura Cahillane, “Judicial Discipline: Where Do We Stand? A Consideration of the Curtin Case” (2009) 27 *Irish Law Times* 26.

⁵⁹ Donal O’Donnell, “Some Reflections on the Independence of the Judiciary” (2016) 19 *Trinity College Law Review* 5, at 34.

A number of scholars have also identified conceptual difficulties with the notion of imposing sanctions on judges. Cahillane remarks that “it could be argued that imposing a legal sanction on a judge effectively takes away her independence and means that members of the public will not have the same respect for the judge.”⁶⁰ There have been very few instances where the need to discipline a member of the judiciary has arisen. One example occurred in 2013 on foot of allegations that a family court judge had an improper approach to a family law case that had come before him.²¹ A joint investigation was conducted by the President of the High Court and the President of the Circuit Court it was decided that no wrongdoing had occurred. Some may have wished for procedures other than those followed.⁶¹ It should also be remembered by the sceptical that a judge is as much entitled to be presumed innocent until stated misbehaviour is actually proven.

At present, the provisions of the Irish constitution do not provide a remedy for judicial behaviour that warrants a sanction of lesser magnitude than removal from the bench. One proposed solution to this is the establishment of a judicial council. It is important to note from the outset that the scope of this council will be much greater than the disciplining of judges. Defined disciplinary procedures will, however, be undoubtedly one of its key functions. In 2000, a high-level group of members of the judiciary, headed by Keane CJ, recommended the establishment of such a council with a significant disciplinary function.²³ Calls for the establishment of this body have been echoed by former Denham CJ and her successor Clarke CJ. In 2017 the Judicial Council Bill was proposed. This bill envisages the establishment of a judicial conduct committee, which will consider all complaints relating to judges and have the power to act on them.⁶² Complaints would be made to registrars within three months of the alleged misconduct, who then will determine whether the complaint is admissible or not.⁶³ The judicial conduct committee would then investigate the matter and propose an appropriate course of action.²⁶ One area of particular controversy surrounding the bill has been the proposal that the identities of judges who have been the subject of disciplinary proceedings will not be made public knowledge.⁶⁴

60 Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 68. ²¹ “A quite improper ruling on the judiciary” *The Irish Examiner* (6 November 2013) <<<https://www.irishexaminer.com/viewpoints/analysis/a-quite-improper-ruling-on-the-judiciary-248603.html>>> (accessed 4 October 2018).

61 Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 56. ²³ Eugene Moloney, “Watchdog needed to oversee judiciary” *The Irish Independent* (26 January 2001) <<<https://www.independent.ie/irish-news/watchdog-needed-to-oversee-judiciary-26100495.html>>> (accessed 4 October 2018).

62 Judicial Council Bill (Bill 70 of 2017), ss 30-36.

63 Judicial Council Bill (Bill 70 of 2017), ss 37 40. ²⁶ Judicial Council Bill (Bill 70 of 2017), ss 51-67.

64 Fiona Gartland, “Judges not named if censured under proposed judicial council bill” *The Irish Times* (26 August 2017) <<<https://www.irishtimes.com/news/crime-and-law/judges-not-named-if-censured-under-proposed-judicial-council-bill-1.3198571>>> (accessed 4 October 2018).

Education of judges in Ireland

Judicial training and development is key in ensuring that the highest standard of judicial determination is reached. As aforementioned, the judicial council will alter the way in which judicial training is developed and delivered. The Bill provides that among the functions of the Council is the “continuing education of the judges”⁶⁵ and it envisages the creation of a judicial studies committee to achieve this end.⁶⁶ At present, judicial education is facilitated by the Committee for Judicial Studies, which was established pursuant to the enactment of section 19 of the Courts and Courts Officers Act, 1995. The Committee has very limited financial resources and its training is often limited to the organisation of one day annual conferences. In addition, judges are often sent to other jurisdictions to receive specialised training, often in areas such as mediation and family law.

It is especially important that judges are well trained with regard to issues involving sentencing, and indeed a transparent sentencing regime is integral to a fair justice system. At present, there is no sentencing body or council in Ireland, and the judiciary has a large discretion subject to the relatively broad parameters imposed by legislation. Sentencing in Ireland has been noted as very individualised, with sentences taking account of the facts of each case and the personal circumstances of the offender.⁶⁷ The Irish Law Reform Commission has recommended the introduction of sentencing guidelines in Ireland,⁶⁸ and many have called for the introduction of a sentencing council.⁶⁹ The guidelines produced by the Sentencing Council in the UK can be useful to Irish judges, and indeed some judges have attended training sessions in Scotland on judging generally.

In 2012, the Judicial Research Office, directed by a Supreme Court judge, established as one of its priorities to gather information as to sentencing in serious cases. In a prior Central Criminal Court decision, Charleton J and his judicial assistant had examined and classified dozens of rape sentences to establish the sentencing response garnered by different circumstances. An initiative was then set up to replicate the success of this judgment, and resulted

⁶⁵ Judicial Council Bill (Bill 70 of 2017), s7.

⁶⁶ Judicial Council Bill (Bill 70 of 2017), s 17.

⁶⁷ Paul Hughes, “A Proposed Sentencing Council for Ireland” (2015) 25(3) Irish Criminal Law Journal 65, at 77.

⁶⁸ Law Reform Commission, *Report on Mandatory Sentencing* (LRC 108-2013), at 67.

⁶⁹ See, for example, Paul Hughes, “A Proposed Sentencing Council for Ireland” (2015) 25(3) Irish Criminal Law Journal 65.

in the production of a number of detailed sentencing analyses. There is now data on sentencing practices in relation to matters such as manslaughter, robbery, burglary, drug dealing, dangerous driving and tiger kidnapping, and other issues. These have introduced a new level of transparency, and fairly painlessly and non-prescriptively at that.

The Irish judiciary also participates in many conferences and networks with judges from other jurisdictions. An example of this is the ‘Comité franco-britanno-irlandais de coopération judiciaire’ which unites judges from Ireland, France and the UK in the discussion and analysis of issues in both private and public law, with particular emphasis on differing practices within each jurisdiction.

Publicity and the courts

The philosopher Jeremy Bentham is credited with remarking that “publicity is the very soul of justice. It keeps the judge, while trying, under trial.”⁷⁰ This is key to the Istanbul Declaration as are the provision of media facilities. As in the majority of jurisdictions, the requirement that justice not only be done but also be seen to be done is a fundamental principle of the Irish justice system, and is enshrined in Article 34 of the Constitution. The principle also comprises a requirement that details of court proceedings not be withheld from the public, stemming from the freedom of expression of “organs of public opinion” enshrined in Article 40.6.1°. ⁷¹ One notable way in which the Irish courts have recently sought to increase the possibility for spectators to see justice being administered is through holdings sittings of the Supreme Court in Limerick, in the southwest of Ireland and in Cork in the south. It has also been announced that the Supreme Court will sit in Galway in the west of Ireland next Spring.⁷²

This requirement has received much judicial attention, and some comments warrant mention. In *Re R Ltd*, Walsh J held that

... the actual presence of the public is never necessary, but the administration of justice in public does require that the doors of the courts must be open so that members of the general public may come

⁷⁰ Jeremy Bentham, “Bentham’s Draught for the Organisation of Judicial Establishments, Compared with that of the National Assembly, with a Commentary on the Same,” (1790).

⁷¹ Ailbhe O’Neill, “Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,” presented at the Irish Supreme Court Review Conference on the 6th of October 2018.

⁷² Mary Carolan, “Apple Athenry data centre goes to Supreme Court” *The Irish Times* (2 May 2018) <<<https://www.irishtimes.com/business/technology/apple-athenry-data-centre-appeal-goes-to-supreme-court1.3481513>>> (accessed 4 October 2018). ³⁶*Re R Ltd* [1989] IR 126, at [134].

and see for themselves that justice is done. It is in no way necessary that the members of the public to whom the courts are open should themselves have any particular interest in the cases or that they should have business in the courts, Justice is administered in public on behalf of all the inhabitants of the State.³⁶

Other notable comments include those of Hamilton CJ, who has observed that

Justice is best served in an open court where the judicial process can be scrutinised. In a democratic society, justice must not only be done, but be seen to be done. Only in this way, can respect for the rule of law and public confidence in the administration of justice, so essential to the workings of a democratic state, be maintained.⁷³

More recently, Charleton J has remarked that

The courts are obliged to maintain open doors. Attendance by the public can be notional, in the sense that the court admits all comers subject to the proper running of any hearing, but experience indicates that it is rarely merely only a theoretical exercise. Members of the public can and do attend in court, witnesses from each side and their family members will be present and the press, radio, and television, take a professional interest in litigation, while reporting only on a fraction of cases.⁷⁴

Recently, the Supreme Court has handed down *Gilchrist and Rogers v Sunday Newspapers*,⁷⁵ which marks a more flexible approach in Ireland in this area than the *R* case. In this case, the Supreme Court held that a departure from the requirement to conduct proceedings in public was permissible in light of the public interest in protecting the Witness Protection Programme. The following passage from O'Donnell J's judgment merits reproduction:

Since any departure from the rule of hearing in public is an exception which must be strictly justified, it is in my view necessary to consider the matter incrementally and to ask whether any lesser steps would meet any legitimate interests involved. That may involve considerations of anonymising witnesses or orders that witnesses may

⁷³ *Irish Times Ltd v Ireland* [1998] 1 IR 359, at [382].

⁷⁴ *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [17].

⁷⁵ *Gilchrist and Rogers v Sunday Newspapers* [2017] IESC 18.

not be photographed or identified in any way, or whether any part of the hearing may be conducted in public, or whether it is possible in respect of any hearing in private, that a redacted transcript of proceedings can be released to the media... Nothing more should be permitted than is demonstrated to be necessary to avoid the damage to the public interest involved.⁷⁶

The Court then proceeded to set out guidelines for any departure from Article 34.1. O'Neill welcomes this decision. She remarks that "by departing from what was described as the "overcorrection" in *Re R Ltd*, the Court has indicated to lower courts that they should be more receptive to applications to depart from public hearings. While O'Donnell J was careful to emphasise that such orders are not available for the asking, much will depend on how lower courts interpret this signalling from the Supreme Court."⁷⁷ This decision has been interpreted in two further decisions. In *Medical Council v TM*,⁷⁸ Kelly P held that there was a power under common law to hear applications under the Medical Practitioners Act 2007 otherwise than in public, provided that the conditions laid out in *Gilchrist* were met. In addition, the Court of Appeal took a more restricted approach of *Gilchrist*, with Hogan J holding that reporting restrictions could only be imposed by statute law or "(exceptionally) the exercise of the inherent power of the Court where this is necessary to protect a constitutional right,"⁷⁹ citing *Gilchrist* and other cases.

Of course, in some cases it is not desirable to allow a trial to proceed in circumstances that allow open access to the public. So some exceptions to this general principle have been recognised. A number of trials are conducted *in camera* for a variety of reasons, most commonly to protect the identity of parties involved with litigation. This concept is usually associated with family law proceedings. In Ireland, a number of statutory provisions provide for the holding of proceedings in the domain of family law *in camera*.⁸⁰ The constitutionality of this practice is a source of debate – the leading text on Irish Constitutional law pronounces that the statutory provisions for the mandatory holding of family law cases in camera "go significantly further than is necessary to protect this public interest and, accordingly, constitute a disproportionate – and, accordingly, unconstitutional⁸¹ – interference with the constitutional requirement that justice be administered in public."⁴⁵

⁷⁶ *Gilchrist and Rogers v Sunday Newspapers* [2017] IESC 18, at [44].

⁷⁷ Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6th of October 2018, at 11.

⁷⁸ *Medical Council v TM* [2017] IEHC 548.

⁷⁹ *Hampshire County Council v CE and NE* [2018] IECA 154.

⁸⁰ See Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4th edn, Tottel Publishing), at 741-2.

⁸¹ Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4th edn, Tottel Publishing), at 744.

In 2004, section 40 (3) of the Civil Liability and Courts Act 2004 (later amended by section 5 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013) took steps towards a relaxation of the *in camera* rule. This provision allows for solicitors and barristers, as well as other persons as approved by the Minister for Justice, to attend family proceedings on the strict condition that the anonymity of the parties involved is protected in any documentation or correspondence that results from their attendance. The categories of persons permitted to attend by the Minister include family mediators, persons engaged in family law research, and persons engaged by the Courts Service to prepare court reports of proceedings.⁸² The rationale of this approach is succinctly explained in *MARA (Nigeria) v Minister for Justice*. Here, Charleton J proposed that “any restriction [on the requirement for hearings to be held in public] should be as limited as the protection of these rights necessarily demands; targeting particular pieces of testimony rather than an entire hearing, unless this is necessary, and favouring restrictions on anonymity over a completely closed hearing, unless this is essential.”⁸³

There have been other circumstances in which legislation has identified a need for proceedings to be held *in camera*. These include the protection of business secrets and confidential information⁸⁴ and proceedings involving professional discipline.⁸⁵ There are also a number of exceptions in the field of criminal law. Section 20(3) and (4) of the Criminal Justice Act 1951 empowers a court to exclude the general public from any hearing which is ‘in the opinion of the court of an indecent or obscene nature.’ In addition, section 6 of the Criminal Law (Rape) Act 1981 requires the judge in all trials of sexual offences to exclude all persons except officers of the court from the hearing, but requires that the verdict be pronounced in public.

Anonymising of parties to proceedings

A subsection of the area of publicity and the courts is that of the anonymising of parties to proceedings, particularly where the proceedings are of a sensitive or delicate nature. This is particularly topical at present in light of the recent announcement the CJEU, from the 1st of July 2018 onwards, will replace the names of natural persons with initials, and any elements likely to identify the

⁸² Anne Egan, “The In Camera Rule: A Barrier to Transparency or a Necessity in Irish Family Law?” (2012) 15(3) Irish Journal of Family Law 59, at 62.

⁸³ *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [26].

⁸⁴ See, for example, s 212(9) of the Companies Act 2014; s 134 of the Bankruptcy Act 1988

⁸⁵ See, for example, s 44(2) of the Nurses Act 1985; s 51(2) of the Medical Practitioners Act 1978; s 47(2) of the Teaching Council Act 2001.

individuals involved are to be removed from judgments.^{86 87} As we will see, the Irish approach is slowly warming to this idea, but is still very far removed from practices in other EU jurisdictions. Unfortunately, you end up with a kind of alphabet soup and no case can be remembered.

The Irish Courts have long been unwilling to allow for replacing the identities of parties with initials or pseudonyms. In *The Claimant v Board of St James' Hospital*⁸⁸, an application for an order to issue a plenary summons and serve a statement of claim without disclosing the names and addresses of the plaintiffs, who had contracted HIV as a result of using infected blood products supplied to them, was rejected by Hamilton P, who held that there was nothing in the law or the rules of court that could justify such a departure from the requirement that justice be administered in public.⁸⁹ A similar approach can be seen in *Roe v Blood Transfusion Service Board*,⁹⁰ where Laffoy J refused to allow a claimant who had used infected blood products and been infected with Hepatitis C to use an assumed name. These cases show a preference on the part of the courts for the preservation of the public administration of justice to the private interests and wishes of parties.⁹¹ Indeed, the requirement to administer justice in public has also been recognised as superior to an applicant's right to a good name: in *Re Ansbacher (Cayman Ltd)*⁹², McCracken J held that "it is often said that justice must not only be done, but must also be seen to be done, and if this involves innocent parties being brought before the Courts in either civil or criminal proceedings, and wrongly accused, that is unfortunate, but is essential for the protection of the entire judicial system."⁹³

Recently, the Supreme Court has softened its position through the case of *Gilchrist and Rogers v Sunday Newspapers Ltd*.⁹⁴ O'Donnell J commented that the *In Re R Ltd* has been unfortunately interpreted as imposing "an almost blanket rule which precluded even minor adjustments of the obligation such as permitting a litigant to use a pseudonym, or initial, or direct that the parties

⁸⁶ <<<https://uk.practicallaw.thomsonreuters.com/w-015>

⁸⁷ ?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1>> (accessed 4 October 2018).

⁸⁸ *The Claimant v Board of Saint James' Hospital* (10 May 1989, unreported), HC, Hamilton P.

⁸⁹ Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6th of October 2018, at 3.

⁹⁰ *Roe v Blood Transfusion Service Board* [1996] 3 IR 67.

⁹¹ Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6th of October 2018, at 3.

⁹² *Re Ansbacher (Cayman) Ltd* [2002] 2 IR 517.

⁹³ *Re Ansbacher (Cayman) Ltd* [2002] 2 IR 517.

⁹⁴ *Gilchrist and Rogers v Sunday Newspapers Ltd*. [2017] IESC 18

not be identified.”⁹⁵ He advocated an approach that sees a departure from the principle of open justice as an exception, and notes that courts should instead “consider steps short of a hearing *in camera* such as directing that the parties are not identified.”⁹⁶

As a final observation on this issue, it is worth remarking that super-injunctions do not appear to be a regular feature within the Irish legal system. Although, by their very definition, there can be no data on the issuing of super-injunctions, their usage is certainly not as frequent as in the UK and other jurisdictions, that jurisdiction has recently stepped back from them, further highlighting the commitment of the Irish Courts to administering justice in public.

The press and the judiciary

The media are essential in informing the public of how the courts system operates and of the decisions handed down by the judiciary. Principle 1 of the Istanbul Declaration of course recognises this in a concrete way. In this era of ‘fake news’ and dissemination of news through social media and other technological outlets, the access of media to the courts and their responsibility to the public to inform them of judicial matters is under constant scrutiny. This requirement took on a constitutional dimension in *Irish Times Ltd v Murphy* where the Supreme Court held that Article 34.1 was not respected in proceedings where there was an order prohibiting the media from contemporaneous reporting of the proceedings. Keane J held that the essence of Article 34.1 “would be eroded almost to vanishing point if the public had to depend on the account which might be transmitted to them by such people as happened to gain admission to the court room for the trial in question.”⁹⁷

The place of the media within the framework as defined by Article 34.1 of the Constitution was considered by Charleton J in *MARA (Nigeria) v Minister for Justice*. He stated that:

It follows that Article 34.1 requires that proceedings in court be open to the public and this entails the attendance of print and broadcast media as part of the scrutiny which judicial conduct and judicial decisions are subject to in a democratic society. The media are entitled to issue, and perform a public service in circulating, fair and accurate reports of litigation.⁹⁸

⁹⁵ *Gilchrist and Rogers v Sunday Newspapers Ltd.* [2017] IESC 18, at [37].

⁹⁶ *Gilchrist and Rogers v Sunday Newspapers Ltd.* [2017] IESC 18, at [39].

⁹⁷ *Irish Times Ltd v Murphy* [1998] 1 IR 359, at 409.

⁹⁸ *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [29].

Recently, as part of the Data Protection Act 2018, journalists are entitled to clear and uncontested access to court documents as laid out in new guidelines from the Courts Service of Ireland, which have been effective since 1 August 2018.⁹⁹ This is in contrast to the previous position, whereby only interested parties were entitled to access all documents. On these new guidelines, the Chief Executive of Court Service stated that:

The changes are a transparent measure to support the role of an independent courts system in our democracy, while respecting both the restrictions which apply to certain categories of court proceedings, and the control which a court exercises over proceedings before it.¹⁰⁰

There is also an ongoing debate as to whether television cameras should be permitted into Irish courtrooms. The most commonly cited reason for refusing the broadcasting of proceedings is the potential for unfair pre-trial publicity, with the Supreme Court asserting in *D v DPP* that “on the hierarchy of Constitutional rights there is no doubt that the applicant’s right to fair procedures is superior to the community’s right to prosecute.”¹⁰¹ In 2017, however, cameras were permitted into the Supreme Court for the first time to film the delivery of judgments, with the Chief Justice expressing hope that this would lead to a wider filming of court proceedings in the future.¹⁰² In realm of tribunals, the Disclosures Tribunal was first in February 2017 to allow the filming of the judge’s opening address pleading for the public’s help in the solution of the matters of public moment referred for judicial decision.

Case management and efficiency of proceedings

A further salient element that we will consider is case management. At present, there are many issues surrounding the costly nature of taking proceedings in Ireland – indeed, Ireland is now listed at the third most expensive country in the world in which to litigate globally.⁶⁶ Possibly, the situation is worse since proceedings may take longer. Since the 1980s, litigation in Ireland has become significantly lengthier and more costly, owing in part to increased European legislation, a dramatic increase in the frequency of lay litigants, and changes in the way that counsel may approach a case, such

⁹⁹ Peter Murtagh, “‘New measures to aid ‘justice being administered in public’ *The Irish Times* (28 July 2018) <<<https://www.irishtimes.com/news/crime-and-law/new-measures-to-aid-justice-being-administered-in-public1.3579589>>> (accessed 4 October 2018).

¹⁰⁰ Peter Murtagh, “‘New measures to aid ‘justice being administered in public’ *The Irish Times* (28 July 2018) <<<https://www.irishtimes.com/news/crime-and-law/new-measures-to-aid-justice-being-administered-in-public1.3579589>>> (accessed 4 October 2018).

¹⁰¹ *D v DPP* [1994] 2 IR 465 (Denham J).

¹⁰² “Supreme Court proceedings to be broadcast for the first time” *RTE News* (23 October 2017) <<<https://www.rte.ie/news/courts/2017/1023/914644-courts-cameras/>>> (accessed 4 October 2018).
⁶⁶ Peter Charleton, “Case Management: Fairness for the Litigant, Justice for the Parties”, Speech delivered to the Munster Bar in Cork City, March 2015.

as more thorough examination of witnesses.¹⁰³ An important call for change can be read in the Supreme Court judgement of *Talbot v Hermitage Golf Club*, where the Chief Justice suggested that the laissez-faire approach to litigation prevalent in Ireland could be in breach of Article 6 of the ECHR, and that a litigant's rights had to be considered 'in the context of the other demands on court time.'¹⁰⁴ This case also lays out guidelines as to how much time should be spent on a case.

Principle 2 of the Istanbul Declaration states that "court users are entitled to timely and efficient services" and also to "the highest standards of ethical conduct, professionalism and accountability from court personell."

Charleton J advocates interpreting *Talbot* as permitting the first stage of judicial case management, and advises reform of the Rules of the Superior Courts to improve efficiency in litigation, which will make Ireland a much more attractive destination in which to do business.¹⁰⁵ This call for change has been heeded in part, as two pieces of legislation enacted in 2016 amending the rules of court have gone some way towards abating this problem.¹⁰⁶ The Rules of the Superior Courts now give judges the power to set strict time tables and present the parties with directions to identify issues and reach trial stage sooner, as well as ordering staged hearing in an effort to make proceedings less cumbersome.¹⁰⁷ The rules promise to reduce delays and cost, and improve the conduct of trials, but further inspiration from procedures in the UK (where the length of time from lodging of papers to release of judgement stands at 437 days as opposed to 650 in Ireland) could still be sought. The commercial court in Ireland does even better with 90% of cases completed well within 365 days.

A particular area of concern is in relation to inefficiency and costliness surrounding expert witnesses. Charleton J discusses the potential consequences of this inefficiency in relation to one case that came before him:

¹⁰³ Peter Charleton and Saoirse Molloy, "Case Management: Fairness for Litigants, Justice for the Parties" (2015) 20(3) *The Bar Review* 59, at 60.

¹⁰⁴ *Talbot v Hermitage Golf Club* [2014] IESC 57, at [47].

¹⁰⁵ Peter Charleton and Saoirse Molloy, "Case Management: Fairness for Litigants, Justice for the Parties" (2015) 20(3) *The Bar Review* 59.

¹⁰⁶ The Rules of the Superior Courts (Conduct of Trials) 2016 (SI 254 of 2016); the Rules of the Superior Courts (Chancery and Non-Jury actions and Other Designated Proceedings: Pre-Trial Procedures) 2016 (SI 255 of 2016)

¹⁰⁷ See <<https://www.mccannfitzgerald.com/uploads/7104-Litigation_Update_New_Rules_to_Improve_Litigation_and_Cut_Delay_1.pdf>> (accessed 4 October 2018) ⁷²*James Elliott Construction Limited v. Irish Asphalt Limited* [2011] IEHC 1.

This trial lasted 58 days: 6 days for submissions and the rest for testimony; expert evidence being the vast majority of it. Another case on pyrite heave ran before the Commercial Court for 159 days and then settled. Counsel proofed this case very carefully. They cannot be faulted, but must rather be praised. Calling several experts on the one topic, however, may be an issue that will require the trial judge to be involved in directing appropriate proofs, a step beyond case management, if delay and expense are not to be allowed to potentially defeat the right of access to the court guaranteed in Bunreacht na hEireann.⁷²

The new rules of court mentioned above also goes some way towards creating a fairer playing field for expert testimonies. It requires parties to disclose written summaries of the evidence of those that they intend to call, and discourages unnecessary expert evidence. Unless there are special circumstances, the rules provide that each party may only have one expert in a particular field on a particular issue. It also allows for a practice that is known as ‘hot-tubbing’ whereby both parties’ experts meet before the trial to try and narrow or agree on disputed issues relating to their expertise in the case.¹⁰⁸ Charleton J describes how this process operates:

This was developed in Australia. Its efficacy depends on there being only one expert on each side for each issue. An expert will give a presentation; no examination in chief. Her or his opposite number will give a presentation; no examination in chief. Or, the expert statements can be taken as read. Before the experts are sworn, they have to produce the dreaded joint statement about what are the fundamentals, what is agreed, what is in dispute. When the experts have been in the hot tub, then with the leave of the judge, certain questions may be asked or issues addressed by counsel; cross examination, in other words, but limited and focused.¹⁰⁹

Legal and procedural certainty

In ensuring a wide and transparent access to justice, it is important that the state of the law and the procedures that litigants must follow to take proceedings is clear and easily ascertainable. The principle of legal certainty

¹⁰⁸ See <<https://www.mccannfitzgerald.com/uploads/7104-Litigation_Update__New_Rules_to_Improve_Litigation_and_Cut_Delay_1.pdf>> (accessed 4 October 2018)

¹⁰⁹ Peter Charleton, “Case Management: Fairness for the Litigant, Justice for the Parties,” Speech delivered to the Munster Bar in Cork City, March 2015.

has been identified as “one of the fundamental aspects of the rule of law” by the European Court of Human Rights.¹¹⁰ The European Commission for Democracy through Law has identified the following functions of the principle of legal certainty:

... it helps in ensuring peace and order in a society and contributes to legal efficiency by allowing individuals to have sufficient knowledge of the law so as to be able to comply with it. It also provides the individual with a means whereby he or she can measure whether there has been arbitrariness in the exercise of state power. It helps individuals in organising their lives by enabling them to make long-term plans and formulate legitimate expectations.¹¹¹

Professor Takis Tridimas explains this concept in a general fashion:

The principle of legal certainty expresses the fundamental premise that those subject to the law must know what the law is so as to be able to plan their actions accordingly. The affinity of the principle with the rule of law is evident. In *Black Clawson Ltd v. Papierwerke AG*, Lord Diplock stated that ‘the acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it {[1975] AC 591 at 638}’. ... The principle acquires particular importance in economic law. Economic and commercial life is based on advance planning so that clear and precise legal provisions reduce transaction costs and promote efficient business.

Legal certainty may thus be seen as contributing to the production of economically consistent results.¹¹²

Recently, the Irish Supreme Court has discussed this concept on two occasions. In *Blehein v Minister for Health*, Charleton J remarked that “the principle of the pursuit of “true social order” as a declared aim of the Constitution in the Preamble, places certainty of law at the heart of the legal system.”¹¹³ In *M v Minister for Justice*, the Supreme Court explained how the Irish legal system balances certainty and flexibility of the law:

¹¹⁰ European Court of Human Rights, case of *Zasurtsev v. Russia*, no. 67051/01, 27 April 2006, paragraph 48.

¹¹¹ <<[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)014-e)>>, at 7.

¹¹² Takis Tridimas, *Principles of EC Law* (1999, Oxford University Press), 163.

¹¹³ *Blehein v Minister for Health* [2018] IESC 40, at [12].

The fact that it is only the central reasoning leading to the particular decision (in Latin the *ratio decidendi*) which forms a binding part of the court's decision having effect beyond the individual case is of course, a familiar part of the principle of *stare decisis* which itself is an essential part of the common law system of law. The fact that a *ratio* is binding provides the element of certainty and predictability: the limitation of the binding nature of a decision to the *ratio* provides some necessary flexibility.¹¹⁴

Judicial remuneration

The way in which judges are remunerated has fundamental implications for the integrity and independence of the judiciary. In respecting the doctrine of the separation of powers, it is imperative that the decisions of judges cannot be manipulated by either financial rewards or punishment stemming from the government or private parties. According to the original wording of the Constitution, Article 35.5° stated that “the remuneration of a judge shall not be reduced during his continuance in office.” This article was considered by the Supreme Court in the case of *O’Byrne v Minister for Finance*,¹¹⁵ where the widow of a Supreme Court Justice argued that the paying of tax by her husband was contrary to this provision. The Supreme Court rejected this argument. Maguire CJ held that “the purpose of this article is to safeguard the independence of judges. To require a judge to pay taxes on his income on the same basis as other citizens and thus to contribute to the expenses of government cannot be said to be an attack on his independence.”⁸¹ Kingsmill Moore J added that “if the object of the constitutional provision is to safeguard the independence of the Judiciary from pressure or interference by the Executive, this object is attained so long as the tax is not used to discriminate against the judges as such.”¹¹⁶ However, judges remuneration could not be reduced in any other circumstances, even in instances of cuts to the pay of all other public sector workers.

Following much public unrest over this position in the wake of the 2008 financial crisis, the 29th Amendment to the Constitution was passed by referendum in 2011. This amended Article 35.5 to the following:

5 1 The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

¹¹⁴ *M v Minister for Justice* [2018] IESC 14, at [10.25].

¹¹⁵ *O’Byrne v Minister for Finance* [1959] IR 1 ⁸¹ *O’Byrne v Minister for Finance* [1959] IR 1, at [38].

¹¹⁶ *O’Byrne v Minister for Finance* [1959] IR 1, at [73].

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

In essence, the provision now allows the government to reduce judges' pay in line with reductions imposed on others paid from the public purse. Some have criticised this amendment, with Kelly noting that 'the lack of specificity in the provision results in a failure to protect against the possibility of an unscrupulous government using reductions as a means of undermining judicial independence.'¹¹⁷ However, the amendment is largely unchallenged and is not widely regarded as an affront to the integrity of the judiciary.

We also must consider the importance of remuneration in attracting top legal talent to the bench. Becoming a member of the judiciary is the pinnacle of the legal profession, and it is important that it is financially viable for leading lawyers to accept a posting. As Winston Churchill once remarked "the Bench must be the dominant attraction to the legal profession... heavily will our society pay if it cannot command the finest characters and the best legal brains which we can produce."¹¹⁸

With that in mind, it's good that we're all here together to support the bedrock on which our powers are effective and at the same time are subject to public scrutiny!

¹¹⁷ Clare Elizabeth Kelly, "Ireland and Judicial (In)dependence in light of the Twenty-Ninth Amendment to the Constitution" (2015) 18 Trinity College Law Review 15, at 19.

¹¹⁸ Robert Rhodes James (ed.), *Winston S Churchill: His Complete Speeches, 1897-1963* (vol 8, 1974, Chelsea House Publishers), at 8548.

MYANMAR

Myint THEIN,
Judge, High Court, Magwe Region

High Court of Magwe Region

Presented by

High Court Judge Myint Thein

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I. Current Judicial System in Myanmar

The recent judicial system was started on 30.3.2011 in accordance with the Union Judiciary Law 2010 and the Constitution of the Republic of the Union of Myanmar 2008. Under the Constitution, legislative power, executive power and judicial power as the three main powers of the state are separated and they have to control, check and balance themselves. Then, judicial power is vested by the Constitution in the Supreme Court of the Union, High Courts and in such lower courts as may be established by Law.

A transparent and an independent judiciary is one of the crucial requirements in the time of striving towards a modern and developed the democratic country by the Government. In the meantime, the rule of law is important for peace and tranquility all over the country. Regarding the rule of law, it is important that all people are equal before the law and judiciary is independent. Thus, we are exercising judicial functions without influence from others. Therefore, the judicial system in Myanmar is absolutely independent.

The primary function of the judicial branch is to fairly and impartially settle disputes according to the law. To do this, a number of courts have been established in the country by the Constitution and by the Union Judiciary Law. There are several types of courts in Myanmar. They are the Supreme Court of the Union, the High Courts of the Region and High Courts of the State, the District Courts, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts, Other Courts constituted by law, Courts-martial, Constitutional Tribunal of the Union.

The Supreme Court of the Union is the highest organ of the State Judiciary in Myanmar without affecting the powers of the Constitutional Tribunal and the Courts-martial. The Supreme Court of the Union exists as an independent entity alongside the legislative and executive branches. It is the highest and final court that handles appeals filed against judgments rendered by the High Courts of the State and Region. Under the Constitution, Judges of the Supreme Court of the Union including the Chief Justice of the Union may be appointed in the Supreme Court from a minimum of seven and a maximum of 11 in number. At present, it is composed of the Chief Justice and 8 Judges, who are appointed by the President with the approval of the PyidaungsuHluttaw (Parliament). The Supreme Court of the Union sits in Nay Pyi Taw. If it is necessary, it may also sit at any other suitable place within the country.

According to Section 305 of the 2008 Constitution, the High Court of the Region or State is the second highest level of Courts and is located in each Region or State of the Union. There are 7 High Courts of the Region and 7 High Courts of the State. Each High Court has one Chief Judge and the number of judges varies from a minimum of 3 to a maximum of 7 depending on the respective workload.

The President shall, in coordination with the Chief Justice of the Union, relevant Chief Minister of the Region or State, appoint a person who fulfils the qualifications under section 310 of the 2008 Constitution and section 48 of the Union Judiciary Law 2010 as the Chief Justice and Judge of the relevant Region or State, with the approval of the Region or State Hluttaw. (Principle 13: There should be transparency in the appointment process of judges.) (Principle 15: There should be transparency in the disciplinary process of judges.)

The High Courts have the original jurisdiction to hear both civil and criminal cases and have appellate and revisionary jurisdiction over the judgments, decrees, and orders passed by the Subordinate Courts. All cases in the High Courts are adjudicated by the single judge or by a bench consisting of more than one judge when necessary. High Courts have the responsibility to administer and supervise all Subordinate Courts regarding their judicial functions and administrative duties. The High Courts of the Region or State shall have the following jurisdictions in accordance with the law: (a) adjudicating on the original case; (b) adjudicating on appeal case; (c) adjudicating on the revisional case; (d) adjudicating on matters prescribed by any law.

II. Judicial Strategic Plan (2018-2022)

Nowadays, the Supreme Court of the Union of Myanmar has published a Judicial Strategic Plan (2018-2022) on 11 January 2018. The plan will guide the works and activities of the Myanmar Judiciary over the course of next five years and it will set forth a framework to enhance the public trust and confidence in the Judiciary by improving services, accessibility, and accountability.

In this Strategic Plan, the core strategic areas; Area 1: Facilitate and Expand Public Access to Court Services, Area 2: Promote Public Awareness, Area 3: Enhance Judicial Independence and Administrative Capacity, Area 4: Promote and Ensure the Professionalism, Accountability and Integrity of Judiciary and Area 5: Promote Efficient Case Management and Court Specializations are organized and integrated with their related objectives and initiatives prioritized to realize our goal of moving steadily **“Towards Improving Justice for All.”**

Here, our national best practices regarding the transparency in the Judicial Process implemented under the Judicial Strategic Plan. We believe that the principles of the Istanbul Declaration on Transparency in the Judicial Process will also be included accordingly by pointing out the specific implementations in Myanmar.

III. Facilitate and Expand Public Access to Court Services

Nowadays, the Judiciary of Myanmar is committed to providing equal access, ensuring fairness, and upholding the rule of law for everyone. Judges and court staff take pride in providing all people with the help and information they need to resolve their cases in the best way possible. Myanmar courts

strive to provide a safe and user-friendly environment in which all persons are able to have equal access to judicial services and to obtain the information from the courts that they require. Judiciary welcomes inquiries from the public and will provide timely and appropriate responses.

In Myanmar, all cases must be heard in an **open court** before the public which is in accordance with section 19 (b) of the Constitution 2008, section 3 (b) of the Union Judiciary Law 2010 and section 352 of the Criminal Procedure Code. Regarding the open court system, there are some **exceptions**. Under the Child Law, any juvenile cases are not tried in the usual courtroom but in the chamber of the presiding judge in the presence only of the parents, relatives and lawyers engaged for the case.

Recently, Myanmar courts are endeavoring to improve **court user accessibility** by establishing modern public information counters and intake centres, waiting areas for lawyers and witnesses; setting up the signage system, child-friendly interviewing rooms; distributing the brochures of court information and brief explanation of criminal and civil proceedings to the public; providing facilities for ensuring the safety and security of the court, legal aid services, and disabled persons; developing automated case information system for the public; improving public information services at courts; and providing court information to community in local languages.

To disseminate the **information** of the court operation, Supreme Court of the Union has launched the website of the Supreme Court of the Union, (www.unionsupremecourt.gov.mm) which provides rulings, judgments, laws and directives, criminal/civil cause lists, warning lists for the bench at the Supreme Court and High Courts of States and Regions. Furthermore, cause list, warning list and order dates of the Supreme Court and High Court have been announcing via the Facebook page of the Public Relations Department of the Supreme Court. Hence, people can easily access and understand the court's work on their cases.

In addition, the Union Supreme Court issue a **judicial journal** once a year which includes legal articles and court procedures as a useful tool not only for legal professionals but also for the public who do not have the legal background. Furthermore, the Supreme Court of the Union regularly publishes the selected judgment of the Supreme Court of the Union once a year and even ordinary people can access easily.

Besides, with the objectives of to be transparent and accountable the process of the judiciary, to have a realistic assessment on the activities of the courts, to have a better performance of the court, and to raise public awareness about judicial reform process, the **Annual Report** of the Supreme Court has been published in 2016, 2017.

We affirm that the facilitation of public access to court services and judicial proceedings which are concerned with the principles 1, 2 and 3 of the Istanbul declaration. The Myanmar Judiciary is implementing those performances mainly under Area 1 and 2 of the Strategic Plan.

IV. Promote Public Awareness

Educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law is one of the judicial principles under Judiciary Law 2010. In order to implement the principle, conducting **public awareness program and outreach programs** become crucial. The following activities are some practices for ensuring transparency in our judiciary regarding the public awareness.

The Supreme Court of the Union made necessary arrangements to provide court information so as to improve the access to justice and public awareness. News about the courts, cases lists, decided-cases lists of the Supreme Court of the Union including the cause lists, warning lists and decided-cases lists have been posted in a timely manner through the website www.unionsupremecourt.gov.mm and judicial information has been distributed through the social network page. Name and address of the registered domestic and international law firms and lawyers' associations are also posted on the website.

The book of Judicial Strategic Plan, Annual Reports, Code of Judicial Ethics for Myanmar Judges, Handbook for Media Access to the Court, Case Flow Management Program and the different kinds of leaflets-explaining about criminal cases, civil cases, writs and Courts for you were posted on the website. Press Conference on the performances of the Supreme Court of the Union has been held yearly at the Ministry of Information.

Under the **legal awareness** program, judges of township-level participate in seminars organized by township law enforcement bodies to talk about legal matters in order to educate the people.

To promote programs to orientate students on the judicial process, the Public Relations Department has been arranging study excursions to the Supreme Court from different universities around the country. At present, the judiciary has been endeavoring to support appropriate **outreach programs** under the Judicial Strategic Plan such as developing guidelines for outreach programs and public outreach materials; conducting a campaign for the court system and the role of the Judiciary and complaint procedure; performing various outreach programs at all courts.

In Myanmar, when the witness is unable to speak Myanmar language the evidence can be taken down through the interpreter. Where there are no interpreters paid by Government, interpreter's fees shall be paid.¹¹⁹ In this context, we have court manual to engage translator and interpreter to ensure the accused's right to inform. At present, Myanmar judiciary is initiating the action plan to provide court information to the community in local languages according to the Strategic Plan.

V. Access and Assistance to the Media

Myanmar courts are engaging with the **public and the media**, providing important and essential information on court services. It is convinced that media is the ears and eyes of the public. The media should also be welcomed as an aid to the judiciary in its endeavors to let the public know that here in court they can get equal justice under the law. It is firmly believed that the judiciary relies on the media for the smooth flowing of the administration of justice.

In Myanmar, Handbook for Media Access to the Courts was published in 2015 and Public Information Officers and Court Information Officers were assigned at different levels of courts for improving access to court information in accordance with the Media Law. The officers have met with the media and the reporter occasionally. For those who want to obtain the information from courts have to contact with them and easily accessible by following the concerned guidelines. However, media must pay attention that the publication should not be contrary to the provisions of any enactment for the time being in force and it should not be the one which is expressly prohibited by the court in virtue of public policy. Moreover, any issue in the proceedings relating to a secret process, discovery or invention should not be published.

¹¹⁹ Para 35 and 37 of BCM, High Court General Letter No. 6 of 1952, dated tile 28th April 1952, and GeneralLetters referred therein as Nos. (1), (2) and (4).

VI. Promote and Ensure the Integrity of Judiciary and Promote Efficient Case Management

The Myanmar Judiciary is committed to delivering the highest level of judicial quality and integrity to all who appear in court. The Supreme Court of the Union is implementing the newly adopted **Code of Judicial Ethics** and appropriate enforcement mechanism to assure that the decisions and actions of the court adhere to the appropriate law. With a professional and accountable judiciary that follows the law and render decisions fairly and free of undue influences, the Judiciary will deservedly earn the trust and respect of all people in Myanmar. Administering the business of the courts with fairness, efficiency and transparency are important factors to develop our Judiciary into a trusted and independent pillar of the Government. Judges and court staff will continue to be trained to attain the highest standards of ethics and professionalism.

To promote the ethical and professional advancement of judges and court staff, the Supreme Court is scrutinizing and taking action upon the **complaints** against them. The Complaint Reviewing Committee makes inquiry for the complaints which have correct descriptions and which should no go under proper judicial route and take action when it finds improper demeanour. The number of the complaints received, complaints under inquiry, complaints closed for judicial recourse, complaints closed for false accusation and taking action are stated transparently in the Annual Report. Complaint Reviewing Committee is undertaking to conduct the investigative methods of the judicial complaint and complaint manual for complaint process under the Strategic Plan.

In addition, courts will manage the cases brought before them using the most effective and modern technique of data collection, organization and efficient case management. At present, the courts throughout Myanmar are adopting new tested methods of **case management system**. Efficient case flow management techniques aided by a modern automated case management system minimize the burden on victims, witnesses, attorneys, and the court staff. With these modern case management processes, wasted time caused by postponements will be significantly reduced. To deal with disputes caused by a rapidly growing and modernizing economy, the Judiciary in Myanmar will also identify and develop specialized divisions and chambers in the courts as well as adopting new case resolution procedures utilizing modern and effective international standards of adjudication.

VII. Conclusion

In Myanmar, the Supreme Court and its subordinate courts have been working the best for achieving the trust and confidence of the public by means of the independent judiciary, absence of corruption, dispensing the criminal and civil cases fairly and speedily. Judges and court staffs at different levels are performing all functions of judicial mechanism in accordance with the Judicial Principles laid down in the Constitution, the Union Judiciary Law, and the Strategic Plan.

All Courts dispense justice in open court unless otherwise prohibited by law and administer justice independently according to law. And these principles guarantee fair and justice and are the basic requirements for transparency. As we firmly believe that the transparency is a fundamental element of the judicial process that upholds constitutionalism and the rule of law, we endeavor to fulfill the basic requirements for ensuring transparency in the judicial process as mentioned in the Istanbul Declaration.

VENEZUELA

**Maikel Jose MORENO PEREZ,
President, Supreme Court of Justice**

GOOD PRACTICES IN THE VENEZUELAN JUDICIAL SYSTEM TO GUARANTEE JUDICIAL TRANSPARENCY

Magistrate Maikel Moreno Pérez
President
of the Supreme Tribunal of Justice
of Venezuela



JUDICIAL TRANSPARENCY

VENEZUELAN LEGAL SYSTEM



DEMOCRATIC AND SOCIAL STATE OF LAW AND JUSTICE

- Constitutional Supremacy
- Respect for human rights.
- Separation and autonomy of public powers.
- Safeguarding the principle of legality.
- Right to life, to work, to culture, to education and to social justice, as a bulwark of a participative, protagonist, multi-ethnic and multicultural society.

**THESE
CONSTITUTIONAL
PRINCIPLES
REQUIRE**



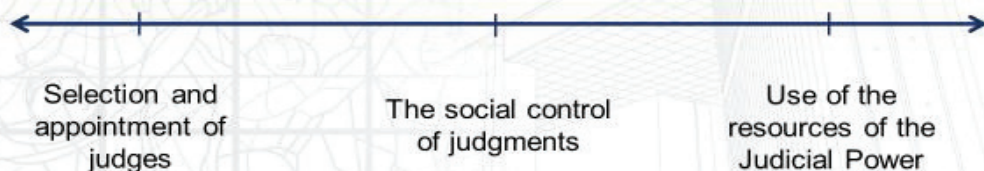
- A transparent judicial process covered by certain essential formalities.
- Impartiality and independence of judges.
- Effective judicial protection.
- Right to defense.
- Timely restitution to the victim.
- Due legal process.

**JUDICIAL
TRANSPARENCY**

- It responds to the supreme interest of a state of law to provide what is indispensable so that every person has timely access to information and dissemination of judicial acts.

JUDICIAL TRANSPARENCY

TRANSVERSAL AXIS IN THE WHOLE JUDICIAL SYSTEM



TRANSPARENCY IN THE VENEZUELAN JUDICIAL POWER

- Venezuela adopted the orality in the acts of the Judicial Power, since it has been demonstrated that the presence of the parties in front of the judges favors a fair process.
- Another element is the publicity of the trials, which consists in making available to the public, mechanisms that facilitate the publication and electronic consultation of the decisions issued by the courts.

*TRANSPARENCY
IN THE VENEZUELAN
JUDICIAL POWER*

- Combat corruption, through the implementation of a regulatory framework that regulates the jurisdictional actions of judges, including:
 - *Code of Ethics of the Venezuelan Judge.*
 - *Law Against Corruption.*

*TRANSPARENCY
IN THE VENEZUELAN
JUDICIAL POWER*

- Assignment of an exclusive budget for the Judicial Power, which guarantees its functional, financial and administrative independence.
- Compliance with the Principle of Accountability, through a set of mechanisms that show society the results of judicial and administrative management.

SUDAN

Haidar Ahmad DAFFALLA,
Chief Justice, Supreme Court

In the Name of Allah, the Most Beneficent, the Most Merciful

All praise is due to Allah, who has sent down upon His Servant the Book and has not made therein any deviance. O Allah shower blessings and peace upon our master Muhammad and upon the family of Muhammad and his companions.

The foregoing document was presented at the 4th International Summit of High Courts organized under the auspices of the Court of Cassation on October 11-12, 2018 in İstanbul, within the framework of the partnership with the United Nations Development Fund (UNDP).

The concept of “transparency in judicial process” has been a fundamental question throughout the history of mankind as it pertains to human rights and the rule of law. I pray to Allah that He blesses the deeds of those who took part in the organization of this meeting, and endows us with success in our efforts to consolidate the collaboration among all State Parties as well as regional and international competent organizations and bodies.

Initially, an individual’s right to a fair and public trial before an impartial and independent court in accordance with the applicable laws was guaranteed under international instruments such as the Universal Declaration of Human Rights. Later, many states adopted similar internal procedures. It is clear that the judiciary could not function in isolation from other governmental bodies. This is because, the judiciary depends on them for funding. In most cases, judges are appointed and placed in office by the executive body; it also defines their working conditions to a certain degree, at least. The legislative body may have a direct influence over the way how the courts work with it. All these matters affect the independence of the judicial process. Although it may not possible to completely prevent such effects, it is imperative to mitigate their impact and protect the rights of citizens. All in all, an independent judiciary “is a prerequisite for economic development”.

Concepts of accountability and independence indeed involve a controversy: Accountability may impair independence; and therefore, impair impartiality and the rule of law. On the other hand, this depends on how accountability is formed, because the concept of independence does not mean leaving the judgment free from accountability. Some believe that accountability strengthens independence. They suggest that accountability enhances the integrity of the judicial process, and therefore, helps safeguard this process against potential

violations. Rather than a group or majority of citizens, the judiciary is primarily predicated on the rule of law. However, lack of accountability would inevitably result in a lack of public trust which is a requirement for protecting the efficiency of the judiciary. In addition, independence and accountability in the judicial process are designed to enhance the quality of decisions, and increase the overall acknowledgement of the decisions made. Yet, this also points out to another goal of accountability. This would be about the way the democratic idea of “no authority must submit to control” is practiced. The question is how to strike a balance not only between these goals, but also among the requirements impartiality and independence involve.

Transparency came along following the rise and spread of corruption within the society in a number of different forms. In order to address the corruption, transparency must act as a safeguard against its metastasis and try to prevent it. Recognized as a key standard in management, transparency is one of the most essential tools for ensuring justice and integrity in each governmental body and the greatest adversary of corruption and the agents of corruption. This is how control and follow-up activities can be performed properly; it consolidates control and accountability in these bodies and guarantees the rights of those who use and are processed by these bodies. The need for managing the judiciary has always been an essential one in order to prevent corruption and battle against the agents of corruption through the delivery of transparency.

From a linguistic perspective: The word “transparency” in Arabic has been derived from a certain verb which translates as “being transparent”. If a fabric is fine, it means it is transparent. It means it is so fine that it shows what is behind it, and it does not conceal anything beyond it.

As a term, it refers to the openness between the government and the public, between the society and non-governmental organizations through their representatives sitting in the parliament.

And in practice it means the following: It is the openness and explicitness which all governmental agencies and community groups should have in terms of their financial and administrative structures to fight against corruption.

Dictionaries address the concept of “transparency” from different perspectives. In dictionaries, the concept of “transparency” and its meaning are as follows:

In the modern Arabic dictionary, the meaning of “transparency” is to be in line with the origins of the word “to be transparent”. Lightness – evidence of state – slight-slightly. In plural form it is “eşfaf”. “Şeffe” means slightly covered, subtle.

In the “Long Man Dictionary” dictionary, the meaning refers to: (State of transparency and visibility).

“Oxford English Roaders Dictionary” has the following meaning: (The notion that can be easily assimilated and the conception that is easily explained and revealed).

In the dictionary of Al-Mawrid: (Lucid thing, that is, according to the characterization, such as the shape seen on a glass that is exposed to the eye through propagation of light from the rear).

In the “Webster Dictionary” dictionary: (Transparency is defined as “clarity-clearness” with a single word).

The United Nations defines “transparency” as described below: it is a defined flow of information in its broadest sense. In other words, it is an attempt to provide information in an open way, which allows the persons to acquire the necessary information to protect the interests of the persons concerned, to take the required decisions and to reveal the errors and mistakes. At the same time, what is meant by transparency is the principle of creating an environment where knowledge regarding current circumstances, decisions, and actions are available, monitored, understood and better defined, providing information about society and making political decisions, and it is known for all parties involved and is timely revealed.

In general, transparency and particularly the judicial transparency aim to achieve the following objectives:

- 1- Improving the local and international image of the state in the field of reform (administrative, judicial, political, etc.).
- 2- Consolidating the values that require opposing and withstanding against corruption such as honesty and trust.
- 3- Developing culture that fosters not to abuse authority.
- 4- In general, the determination of legal deficiencies in the field of reform.

5- Investigating, researching and offering some solutions for corruption in the society.

6- Emphasizing the supremacy of law, and ensuring that it is applied to everyone, without any exceptions.

Any meaningful economic, social and administrative development process in any way requires the establishment of a state of law, justice and the rehabilitation of community members. Human and moral factors also have an impact on this. These factors are reflected in the attitudes of some people in the form of education, behaviors, mental background and upbringing environment, socially aberrant behaviors and corruption. This leads to an abnormal phenomenon that requires improvement and correction by society and family.

Transparency has the following dimensions for the purpose of implementing transparency within the judicial system and providing a coherent environment for accountability as a right of citizenship:

1) Supremacy of Law:

Regardless of its political affiliation, position or social position, it primarily means the application of laws on the society. That is to say, the law applies not only to citizens, but also to the holders of power and influence, seats and authorities. Because the lack of supremacy of law inevitably leads to oppression and tyranny in the society. In the States, the holders of high authority, position and the influence are the sole decision-makers. Therefore, citizens do not have the right to agree with these decisions or to know how the decisions are taken. Naturally, this situation paves the way for spreading the attack on the rights of citizens, corruption and oppression for the reinforcement and consolidation of the decisions and laws in the cause of serving in the favor of a minority group and strengthen their power and influence.

2) Separation of Powers:

This dimension aims to guarantee the distribution of authority resources in society for the purpose of emerging a balance between the three authorities, namely the legislation, enforcement and jurisdiction and thus, ensuring a mutual opportunity of control and supervision.

3) Anti-corruption laws:

Anti-corruption laws include more than penal laws. Because these comprise the laws governing the information, liberty of expression and press. Penal laws are concerned with the regulation of individual rights and fair trials. Having said that, the laws that are required for fighting against corruption require the right to initiate legal proceedings and provide special structures against individuals and the government in order to hold individuals accountable for sources of wealth and monitor proceeds of corruption.

Furthermore, the principles of justice should be encouraged by means of transparency in the jurisdiction, through the establishment of both courts and the principles of responsibility and transparency. Judicial review should be conducted in a fair, transparent and honest manner, and all judicial and technical capacities should be put in place quickly by eliminating the barriers. Thus, the courts can contribute to the full development of judicial and administrative affairs. Implementation of new strategies and policies adopted by the state may become feasible accordingly. The judicial authority also continuously endeavors to provide better judicial services to those in relationship with the courts. Furthermore, efforts should be undertaken to accelerate the processes, curtail the length of the proceedings and complete the services provided by the judicial authority of the country in accordance with the judicial standards, durations and performance criteria of the world. Thus, the position of the state would be consolidated in terms of implementation and execution of contracts and the civil proceedings dealt by civil courts. This would reflect on the judicial proceedings in the courts whereby the cases would be concluded more quickly, and the length of the proceedings in all courts would be curtailed accordingly. Nevertheless, it is compulsory to secure justice and to provide assurance that accurate and fair verdicts are rendered on the ones committing felonies against the internal and external security of the state that are directly associated with the interests of the state, and on the ones committing crimes of forgery of official documents and seals.

Furthermore, effectiveness and efficiency of jurisdiction should be measured by means of adopting innovative and international instruments and mechanisms, making comparisons with international criteria and practices, promoting and encouraging scientific researches that are placing emphasis on the requirements of segments of the society -particularly the ones related to the judicial authority- with regards to the most innovative and best practices

at local, regional and international level, organizing workshops, conducting interviews and researches related to jurisdiction. On the other hand, the judicial authority is required to be in contact with the relevant parties and strategic partners to support the steps towards improving the jurisdiction and holding up the developed and developing countries as an example. Mutual assistance should be provided in penal matters within the scope of legal practices protecting human rights and transparency in the process of judgement for extradition, transportation of inmates and convicted, disputes in civil and commercial law and in the axis of the principles of law as provided for by Istanbul Declaration for the purpose of reinforcing and promoting a reciprocal collaboration in various areas of law and jurisdiction. Efforts should be made to develop projects in the field of law and reciprocal jurisdiction or collective jurisdiction.

In conclusion, we do hope that we have contributed to this vision in the form of an abstract that is explicitly presented to the specialists regarding the principles of transparency and thus accomplished the objective.

Ultimately, I would like to extend my greetings and gratitude.

Finally, my profound thanks to you. In the beginning and at the end the praise belongs to Allah.

May Allah's salute, mercy and blessings be upon you.

UNITED STATES OF AMERICA

Richard STEARNS,
Member Judge, United States Judicial
Conference Committee on International
Judicial Relations

The Honorable Richard G. Stearns
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Committee on International Judicial Relations
United States Judicial Conference
Brief Reflections on the Topics of Judicial
Independence, Transparency, and Accountability

It is a special privilege for me to represent the United States on behalf of our federal judiciary's International Judicial Relations Committee at this Fourth International Summit of High Courts. In my official capacity, I wish to extend the greetings of our Chief Justice, The Honorable John Roberts, and his best wishes for the success of this important symposium.

The principle of judicial accountability is, of course, interwoven with that of judicial independence. If a judiciary and its judges have no actual autonomy, the concept of accountability has so narrow a meaning that there is no use in even attempting to give it definition.

At the outset, it may be useful to distinguish institutional independence, by which we mean a judiciary free from interference by other branches of government, from the independence of judges, by which we mean the protection of the judge from extraneous influences on his or her decision-making.

The independence of the United States federal courts is owed in large part to three men who played seminal roles in shaping its structure and functions. The first was the French philosophe, Baron de Montesquieu, whose influential treatise *De l'Esprit des Lois*, inspired the Framers of our Constitution to build on the principles of separation of powers and checks and balances, thereby defining the judiciary as a wholly separate branch of government rather than as an administrative extension of the State. The second was our first Chief Justice, John Marshall, who in a seminal High Court decision, *Marbury v. Madison* (1803), laid the cornerstone that undergirds the Supreme Court as the ultimate guarantor of the United States Constitution: the doctrine of judicial review. And finally, Chief Justice Charles Evan Hughes, who led the resistance to President Roosevelt's plan to pack the Supreme Court and the lower federal courts with judges subservient to the Executive Branch. Of even greater significance was Chief Justice Hughes's success in 1939 in persuading Congress to grant our federal courts administrative and financial independence from what was until then supervision by the United States Attorney General.

The components of a guarantee of the independence of individual judges are familiar: insulation from extraneous influences both external and internal, security of tenure and remuneration, and personal and family security. In the United States, the security of tenure and remuneration is written into the Constitution itself with its guarantees of a lifetime appointment, a prohibition against any reduction of salary or benefits, and a ban from removal from office except in instances of only the highest of crimes. Judges and their families and our courthouses are under the physical protection of the United States Marshals Service, a federal law enforcement agency that works directly under the supervision of the Federal Court Judicial Conference. And while we often do not think of it in terms of judicial independence, the necessary tools and accouterments of doing the task of judging – decent working conditions, adequate and competent support staff, manageable caseloads, and access to continuing education are also essential components of a judge's autonomy. On this latter subject, the Federal Judicial Center, with a budget of nearly \$30 million provides ongoing training and instruction to judges and their staff on subjects ranging from new developments in the law to training in the latest computer technology.

Turning more directly to the question of accountability itself, an initial consideration is whether one looks to the judiciary as an entity or to the judges themselves. And by accountable do we mean, as Professor David Kosar asks, accountability as a singular virtue, that is, a normative construct of desired behaviors, or do we mean by accountability the development of institutional arrangements that are intended to insure public confidence in the performance of the judiciary as a collective whole? And finally to whom is the judge or the judiciary to account? To the Executive, to the Legislature, to the higher courts, to chief judges and disciplinary bodies within the judiciary itself, to his or her peers, to the litigants and lawyers who appear before the judge, or to the public at-large?

To some degree, the answer is shaped by whether a judiciary is based on a continental administrative law model or on the Anglo-Saxon common-law tradition. Dr. Sophie Boyron draws an interesting contrast between judicial accountability in France and in England. Her thesis is that while the French judiciary is structured as a collective entity which tends to deny a public personality to individual judges, in England individuality prevails and the name and office of the judge is linked for better or worse to the judicial outcome for which he or she is personally responsible. As a result, when one speaks of

judicial accountability in France, the reference is typically to the perceived successes or failures of the judiciary as a whole, while in England the praise or blame falls on the judge herself.

The United States, of course, has historically copied and followed the English model, such that our rules of accountability are more often concerned with the normative behavior of the individual judge. Significant among our “rules of virtue” is the requirement that judges file annually comprehensive and publicly accessible financial statements detailing their investments and their personal or family financial dealings, including gifts and loans. By law a judge may earn no outside income, except for a limited amount for teaching and writing. Each judge must maintain a conflict list requiring his or her recusal from any case in which he or she has any financial or personal interest, no matter how miniscule. A weakness of our system, from my perspective as a judge, is the relative absence of any formal mechanism of judicial evaluation, a concept that is resisted in a system in which the judge is largely accustomed to working as a solitary actor. The one exception is a requirement imposed by Congress that judges report every six months any civil case to which they are assigned that is more than three years old, and any motion that has gone undecided for more than six months. As the reports are made public, they do provide some measure to the judge of how he or she is performing relative to his or her peers, at least on a level of decisional efficiency.

The mechanisms that are intended to insure accountability on the part of the United States federal judiciary as an institution are for the most part intended to instill public confidence. And I would argue that they have largely succeeded in the sense that, in spite of often heated debate over constitutional decisions and judicial nominations, opinion polling consistently ranks the federal judiciary, along with the military, as the most trusted of American institutions. I would identify among the successful confidence-building mechanisms the following:

The first is transparency. With the exception of cases involving sexual crimes against children, all proceedings, criminal and civil, are noticed in advance and fully open to the press and public. All judges’ decisions, no matter how minor, are electronically posted on the court’s docket where they may be electronically accessed by members of the public.

The second is neutrality. Some years ago, after several publicized instances in which Chief Judges were accused of assigning cases among their colleagues

for ideological or political reasons, the authority of Chief Judges to assign cases was eliminated. Now all cases, civil and criminal, are assigned to judges by a random computer selection.

The third is redress. Each of the Circuits into which our courts are organized is required to maintain a neutral panel of trial and appellate judges to hear complaints by citizen-litigants of inappropriate behavior by the judge assigned to their case.

The fourth is less a mechanism than the expectation permeating our judicial culture – and reinforced by our Courts of Appeals - that judges will not only make reasoned decisions, but will explain at sufficient length in writing the thought processes by which a decision was reached. A reasoned decision serves as an effective check on arbitrariness, and a guarantee of the right to an effective appeal.

Finally, and this is the crown jewel of accountability in the United States system: citizen involvement through our system of juries. In civil or criminal cases of any significance, any litigant can insist that findings of ultimate fact, including guilt or innocence, be made not by the judge, but by a panel of randomly selected citizen-jurors. Each year millions of citizens are called to the state and federal courts to serve as jurors. As a result, most adult citizens have acquired a first-hand and by and large positive experience with the courts. As well as a practical understanding of how the court and its judges function on a daily basis. Collectively, these five mechanisms have well-served the public interest and the perpetuation of the independence of our federal courts.

United Nations Development Programme (UNDP)

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A new tool to strengthen transparency in the courts: the UNDP – IFCE Judicial Integrity Checklist

The *Istanbul Declaration on Transparency in the Judicial Process* highlights the importance of transparency in the delivery of justice. The Declaration is an outcome of the Second International Summit of High Courts, hosted by the Presidency of the Court of Cassation in Turkey in cooperation with UNDP.

UNDP has been promoting transparency and accountability in the delivery of justice as part of its mandate to promote access to justice and foster sustainable development. The 2030 Agenda for Sustainable Development highlights the central role of transparent, effective and accountable institutions in promoting peaceful, just, and inclusive societies and the importance of delivering *justice for all*.

In 2016 UNDP published the report “A Transparent and Accountable Judiciary to Deliver Justice for All”, which highlights experiences from countries around the globe that demonstrates that opening up judicial systems foster integrity and increase public trust without impeding independence of the judiciary.

In addition, UNDP supports judiciaries in strengthening transparency and accountability in courts based on performance management tools such as the International Framework on Court Excellence, which has been used by 33 judiciaries in all continents. It is within the context of the UNDP Project “Judicial Integrity Champions in APEC”, that UNDP has partnered with the International Consortium for Court Excellence to develop the Judicial Integrity Checklist.

The *Judicial Integrity Checklist* aims **to support judiciaries in taking active steps to promote transparency, integrity and accountability within their courts**. The Integrity Checklist is intended for use by Courts to promote judicial integrity while recognising that **judicial integrity measures are most effective when they are embedded into broader quality management systems that promote court excellence**. The Integrity Checklist has been designed to complement the Checklist version of the International Framework for Court Excellence, which is a quality management system to improve court

performance. The Integrity Checklist provides a focused approach that will enable a court to readily identify measures for improving court integrity. To guide judicial and court officers in completing the Integrity Checklist several references have been included to provide additional guidance. The Istanbul Declaration on Transparency in the Judicial Process was included among these key resources.

The Checklist can be used by judiciaries to **undertake a self-assessment to identify areas for improvement and develop an improvement plan** on this basis. Judges and court officers should then work collaboratively to develop an *Improvement Plan* that sets out in detail the actions to be taken and the outcomes to be achieved. Implementing these actions will lead to increased public trust and confidence in the court.

The Judicial Integrity Self-Assessment Checklist has been unveiled to the public for the first time at the *International Conference “Judicial Excellence in Response to Today’s Challenges”*, hosted by the Supreme Court of Thailand on 13-14 September 2018 in Bangkok. Upon the request of the Chief Justice of Malaysia, the International Framework on Court Excellence (IFCE) and the complementary Integrity Checklist are being piloted to develop a reform plan to improve transparency, integrity and court excellence in the Malaysian judiciary.

The results of the pilot application of the IFCE, including the Integrity Checklist, will be presented during the second meeting of the *UNDP network of Judicial Integrity Champions in APEC*, planned in March 2019 in cooperation with the Supreme Court of Indonesia, when the Integrity Checklist will be widely disseminated, after incorporating feedback from its piloting.

For more information:

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JUDICIAL INTEGRITY SELF-ASSESSMENT CHECKLIST DRAFT

United Nations Development Programme



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This Judicial Integrity Self-Assessment Checklist was commissioned by the United Nations Development Programme's Bangkok Regional Hub and was developed in cooperation with the International Consortium on Court Excellence.

The Integrity Checklist was written by Laurence Glanfield, Deputy President of the Australasian Institute of Judicial Administration and member of the Executive Committee of the International Consortium for Court Excellence (IFCE). The development of the Checklist also benefited from guidance from Daniel Hall, Vice President in the National Center for State Courts in the United States, and Jennifer Marie, Deputy Chief District Judge and Registrar of State Courts of Singapore, who are also members of the Executive Committee of the IFCE.

The development of the Checklist is one of the deliverables under the Project "Judicial Integrity Champions in APEC", led by Elodie Beth, with assistance from Liviana Zorzi, David Kern-Fehrenbach and Kamolwan Panyasevanamit from UNDP Bangkok Regional Hub. Visual editing and design was provided by Pundaree Boonkerd.

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Judicial Integrity

Self-Assessment Checklist

Introduction

The 2030 Agenda for Sustainable Development highlights the central role of transparent, effective and accountable institutions in promoting peaceful, just, and inclusive societies and the importance of delivering justice for all.

This Judicial Integrity Checklist (Integrity Checklist) has been developed by UNDP as part of the Project “Judicial Integrity Champions in APEC”. The UNDP Project provides support to judiciaries in the region that are taking active steps to promote transparency, integrity and accountability with a view to delivering justice for all. The Integrity Checklist is intended for use by Courts to promote judicial integrity while recognising that judicial integrity measures are most effective when they are embedded into broader quality management systems that promote court excellence.

International Framework for Court Excellence¹

Many courts worldwide have used the International Framework on Court Excellence (IFCE) as a quality management system to improve court performance. The IFCE has proved to be a helpful methodology for conducting a review of a court’s general performance and identifying areas for improvement.

The Framework is a widely recognised and used continuous improvement process that incorporates integrity considerations through its use of court values and the seven areas of court excellence. However, there are courts that want to be particularly proactive on integrity and corruption prevention issues and to meet this need the Integrity Checklist has been developed.

Integrity Checklist²

Corruption and a lack of integrity strike at the very foundation of court systems and the absence of fairness, due process of law, impartiality and due accountability fosters a lack of public trust and confidence in those courts.

The Integrity Checklist provides a more in-depth and focused approach that will enable a court to readily identify measures for improving court integrity. Implementing these improvement measures will lead to increased public trust and confidence in the court.

¹ Thinking of Implementing the International Framework for Court Excellence, 2nd Edition, 2012, Available at: <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/Thinking%20of%20Implementing%20E%202014%20V3.ashx>

² The development of the Integrity Checklist has drawn upon the IFCE. It is not an official version of IFCE for which the National Center for State Courts, USA- holds copyright for the use and protection of the members of the International Consortium of Court Excellence (ICCE). Modification of the IFCE by courts and organizations has been encouraged by the ICCE to facilitate innovation.



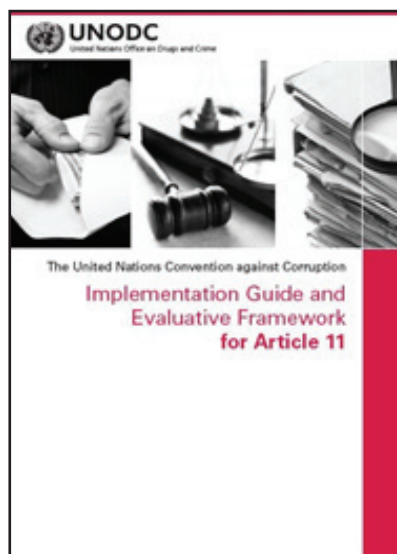
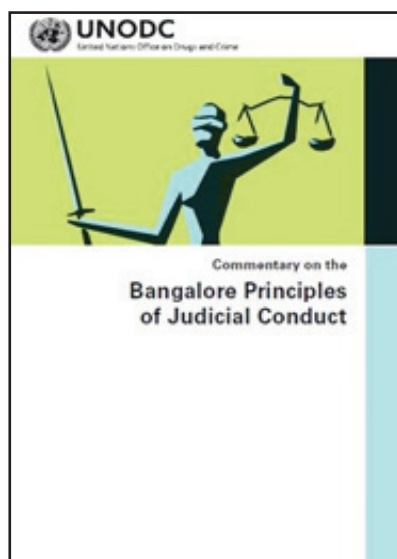
There are many internationally accepted and implemented principles and standards supporting judicial integrity and corruption prevention. The Bangalore Principles of Judicial Conduct³ is a pre-eminent authority and its principles and standards have been incorporated into the Integrity Checklist. Article 11 of the UN Convention against Corruption requires State parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the Judiciary. An extensive suite of principles and measures, included in the Implementation Guide and Evaluative Framework for Article 11,⁴ have formed the foundation of many of the checklist items.

The right of citizens to a fair trial is reflected in Article 10 of the Universal Declaration of Human Rights and in more detail in Article 14 of the International Covenant on Civil and Political Rights. The absence of judicial integrity undermines both this right and the community's respect, trust and confidence in the courts and government more generally.

This Integrity Checklist will provide judges of a court with a process for identifying areas of the court's procedures and functions that could be reviewed to strengthen the court's integrity and eliminate corrupt or undue influences on the court. The Integrity Checklist has been designed to complement the Checklist version of the International Framework for Court Excellence (the Framework), including through a consistent scoring methodology.

Undertaking a self-assessment based on the Integrated Framework and the Integrity Checklist

As with any organisation, a court can face both internal and external pressures that may distort values, direction, culture and performance. The Framework is a continuous improvement methodology that enables a court to identify, through a process of guided self-assessment, those areas, processes and procedures in need of improvement.



³ Strengthening basic principles of judicial conduct. ECOSOC 2006/23 Annex Bangalore Principles of Judicial Conduct.

⁴ The United Nations Convention Against Corruption Implementation Guide and Evaluative Framework for Article 11, UNODC, 2015.



There are two versions of the Framework: the original version (Edition 2) and a simplified Checklist version. The Integrity Checklist has been developed to allow a court to follow the same methodology as the Checklist version of the Framework and to undertake the Framework and the Integrity Checklist as a single self- assessment process.

By adopting an integrated approach to the Framework and the Integrity Checklist, a court can delve deeply into issues of integrity and at the same time achieve a self-assessment outcome as a ‘whole of court’ score. The benefit of this is it enables a benchmark to be set for both a court’s general performance against the Framework and the state of its Judicial integrity. When the process is undertaken at a later time, the benchmark will allow a court to compare the result against the previous base scores and to identify progress that has been made.

Courts and their judicial and court officers face significant challenges to their integrity and impartiality and need to be constantly vigilant to ensure the level of public trust and confidence is not eroded by actual or perceived lack of integrity in all aspects of a court’s performance. The Checklist identifies a range of issues for consideration by a court including both external and internal challenges. Many of the Checklist items may be matters a court can address internally by new practices or procedures. Some of the items may require a court to raise its concerns externally with other public officers or institutions outlining the court’s expectations or needs that are essential to maintaining respect and confidence in the rule of law and the court’s judicial administration.

Integrity Checklist self-assessment methodology

The Integrity Checklist should be completed by using the Scoring Guide in a similar manner to the self- assessment process outlined in the Framework⁵. An individual or a committee should be appointed to oversee the process of distribution, collection, analysis and development of an improvement plan. The process will require active support from the court’s leadership to ensure all judicial officers and court officers understand the purpose of the process and have an opportunity to undertake the Integrity Checklist self-assessment.

A court may decide to engage an independent consultant or adviser to assist in the process and the analysis of the results. The Integrity Checklist involves scoring on a 0 to 5 scale where ‘0’ represents no evidence of compliance through to ‘5’ representing compliance at a level of excellence that requires no improvements. The Scoring Guide below sets out descriptions for each score level to assist courts to apply the scoring method in a consistent manner.

⁵ Thinking of Implementing the International Framework for Court Excellence, 2nd Edition, 2012, pp. 2-5.



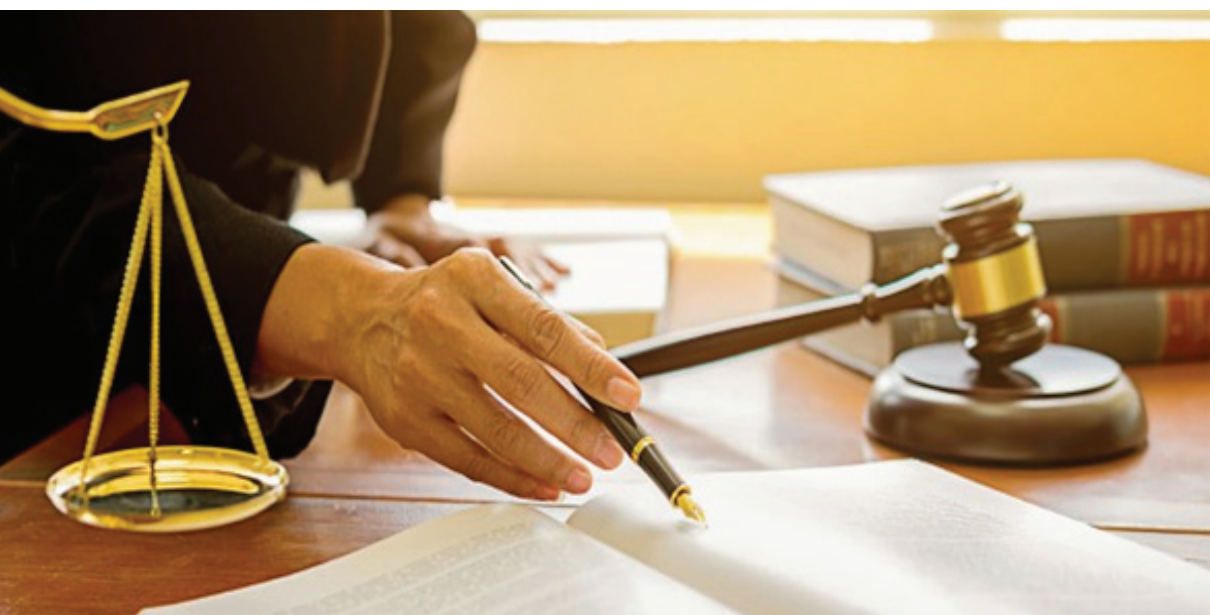
Checklist items and references

While the Integrity Checklist identifies 20 key areas vital to ensuring a high level of judicial integrity, there are many other areas of a court's practices and procedures that also have an impact on a court's integrity and the public's confidence in a court. There are many helpful internationally recognised and published statements and documents that will be of assistance and some of these are included in Annexes 1 and 2 of this Integrity Checklist document.

To guide judicial and court officers in completing the Integrity Checklist a number of sources and references have been included to provide detail on particular items. Each item has a footnote that contains further references to key sources of information relating to that item. For example, item 8 identifies the need for a Judicial Code of Conduct and, although the court may have a Code, by referring to the reference material the judges of the court may decide their Code of Conduct needs to be updated and strengthened. In assessing that item the judges would note the existence of their Code but see the need for improvement and the score they assess may be a 3 or 4 but not 5 (see Scoring guide).

Implementing improvements

The outcome of the self-assessment will be the identification of areas for improvement. A court's judges and court officers should then work collaboratively to develop an Improvement Plan that sets out in detail the actions to be taken and the outcomes to be achieved. In developing an Improvement Plan each area that has been identified for improvement should be carefully considered and options identified that can be taken to address the issue. Responsibility for each action should be allocated to an individual or group and appropriate timeframes set and outcomes specified. It is customary for courts to undertake a self-assessment on an annual basis to measure progress and identify other opportunities for improvements but ultimately the timing of self-assessments is a matter for each court to settle.





Integrity Checklist

EXTERNAL ASPECTS		SCORE				
		1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
Our System of Government Provides...						
1	Constitutional guarantees of judicial independence. ¹					
2	Transparent process for merit appointment to judicial office and promotion of judges. ²					
3	Constitutional guarantees of security of tenure of office, remuneration and immunity from suit for judges. ³					
4	Fair process for removal from office or discipline of judges. ⁴					
5	Adequate resources for the court having regard to the financial resources available to government. ⁵					
INTERNAL ASPECTS		SCORE				
		1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
Values						
6	Our judges adhere to a set of values that include the 'Bangalore' values of independence, impartiality, integrity, propriety, equality, competence and diligence. ⁶					
7	We observe our Judicial Code of Conduct and enforce it. ⁷					

¹ The United Nations Convention against Corruption, *Implementation Guide and Evaluative Framework for Article 11*, UNODC, 2015 (IGEF Art 11) Ch 1: pp 4-5; *UN Basic Principles on the Independence of the Judiciary 1985* (UNBP) No.1

² IGEF Art 11 Ch 2: pp 25-28; UNBP No.10 & 13

³ IGEF Art 11 Ch 2: pp 29-31 30, 32 & 36; UNBP No. 11, 12 & 16; *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct*. Judicial Integrity Group. 2010 (MEIBP) p.11 Items 9.1-9.5

⁴ Fairness is generally strengthened by the existence of an independent or external body that investigates serious misconduct and recommends sanctions. IGEF Art 11 Ch 2: pp 34-36; UNBP No. 17-20

⁵ IGEF Art 11 Ch 2: pp 38-39; UNBP No. 5

⁶ *Strengthening basic principles of judicial conduct*. ECOSOC 2006/23 Annex Bangalore Principles of Judicial Conduct (BPJC)

⁷ This Checklist has distinguished between an enforceable Code of Conduct and a set of Principles of Ethical Conduct and Propriety, which provide guidance on matters of propriety and ethics (see item 10). IGEF Art 11 Ch 1: pp 14-18; BPJC: Value Integrity: 3.1 and 3.2; Value Propriety: 4.1-4.3; MEIBP p.6 Items 1.1-1.3 & 2.1-2.2

INTERNAL ASPECTS		SCORE				
		1 Limited	2 Develop- ing	3 Good	4 Very good	5 Excellent
Judicial Independence						
8	Judges exercise their judicial function impartially, transparently and free from influence from other judges, the executive and legislative branches of government, the business sector, parties, media or citizens. ⁸					
9	Judicial proceedings are open to the public and are conducted impartially, fairly and respectful of the rights of the parties. ⁹					
Standards of Judicial Behaviour						
10	We have and comply with a set of Principles of Ethical Conduct and Propriety. ¹⁰					
11	Our court maintains a register of each judge's financial interests and affiliations and judges declare conflicts of interest and do not sit on matters relating to family, friends or financial interests. ¹¹					
12	Judges exercise their freedom of expression and assembly in a manner that preserves the dignity of their office and the impartiality and independence of the judiciary. ¹²					
13	Our court has a complaints policy and a fair and expeditious system for investigation of complaints against judges and court officers and discipline where necessary. ¹³					

⁸ Judges should have free from direct and indirect interference and be free to enter judgments against governments, businesses and individuals. IGEF Art 11 Ch 2:pp 40-41; BPJC: Value Independence: 1.1,1.2; Impartiality: 2.2; UNBP No. 2 & 4

⁹ IGEF Art 11 Ch 2: pp 53-56; BPJC: Value Independence: 1.3; Impartiality: 2.1, 2.2 and 2.5; and UNBP: No.6

¹⁰ Principles of Ethics and Propriety provide clear guidance to judges. They could be incorporated into a Code of Conduct, but it should be made clear what is enforceable and what is merely guidance. IGEF Art 11 Ch 1: 21-22; UNBP No. 2; UNBP No. 4.1-4.16; MEIBP p.6 Item 1.3

¹¹ Financial interests and affiliation registers should be kept up to date and reviewed annually. IGEF Art 11 Ch 1: pp 20-22 and BPJC: Value Impartiality: 2.3 and 2.5; Value Propriety: 4.4, 4.7, 4.8 and 4.14; UNBP No. 4.7-4.9

¹² IGEF Art 11 Ch 2: pp 37-38; BPJC: Value Propriety: 4.6

¹³ IGEF Art 11 Ch 2: pp 31-33; MEIBP p.8 Items 4.4-4.5

INTERNAL ASPECTS		SCORE				
		1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
Corruption Prevention						
14	Our court has a pre-determined open and fair process for allocation of work which is either random rotation or according to specialty skills or experience. ¹⁴					
15	Our court administration and registry systems and records are designed to minimise the opportunity for corruption. ¹⁵					
16	By promptly publishing our reasons for decisions and our court lists, policies and annual report we ensure community confidence in the integrity of our practices and decision-making processes. ¹⁶					
Ethics Training and Support						
17	Judges engage in judicial training that includes ethics and conduct and have access to mentoring or independent guidance on ethical issues. ¹⁷					
Community Confidence						
18	Judges actively ensure the court's officers, facilities, procedures and fees support the right of all citizens to open access to justice, a fair hearing and reasonable support for disabilities or language difficulties. ¹⁸					
19	Our Court encourages media access to and reporting of our proceedings and recognises this reinforces confidence in the impartiality of the court, judges and staff. ¹⁹					
20	Our court regularly surveys court users and the public on perceptions of and experiences with the court and we address any issues. ²⁰					
						TOTAL

¹⁴ IGEF Art 11 Ch 2: pp 45-46; UNBP No. 14; MEIBP p.7 Items 3.1-3.3

¹⁵ IGEF Art 11 Ch 2: pp 44-49; MEIBP p.7 Items 4.1-4.2

¹⁶ IGEF Art 11 Ch 2: pp 56-58

¹⁷ IGEF Art 11 Ch 1: pp 16—20; UNBP No. 6.3-6.4; MEIBP p.10 Items 7.1-7.7

¹⁸ IGEF Art 11 Ch 2: pp 49-53; UNBP No. 5; UNBP No. 5.1-5.5; MEIBP pp.8-9 Items 5.1, 6.1, 6.3-6.4

¹⁹ IGEF Art 11 Ch 2: pp 57-58; MEIBP p.9 Items 6.2 & 6.6

²⁰ IGEF Art 11 Ch 2: pp 56-57

Scoring guide

LEVEL	EVIDENCE OF COMPLIANCE	SCORE
None	No evidence of compliance	0
Limited	Awareness of issue but no action to comply	1
Developing	Evidence of action being taken to comply	2
Good	Some compliance but work to be done	3
Very Good	Strong compliance but some refinements needed	4
Excellent	Compliance at the highest level – no improvement needed	5

Weighted scoring table

WEIGHTED AREAS		MAXIMUM SCORE	SCORE ACHIEVED	MULTIPLIER	RESULTING SCORE	SCORE
1	Court Leadership and Management	70		1.6		112
2	Court Planning and Policies	40		2.4		96
3	Resources (Human, Material and Financial)	80		1.6		128
4	Court Proceedings and Processes	50		1.6		80
5	Client Needs and Satisfaction	50		2.4		120
6	Affordable and Accessible Court Services	60		2.4		144
7	Public Trust and Confidence	50		2.4		120
SUBTOTAL						
INTEGRITY CHECKLIST SCORE		100		2.0		200
TOTAL						1000

Sample of a completed weighted scoring table

WEIGHTED AREAS		MAXIMUM SCORE	SCORE ACHIEVED	MULTIPLIER	RESULT-ING SCORE	SCORE
1	Court Leadership and Management	70	70	1.6	112	112
2	Court Planning and Policies	40	30	2.4	72	96
3	Resources(Human, Material and Financial)	80	50	1.6	80	128
4	Court Proceedings and Processes	50	30	1.6	48	80
5	Client Needs and Satisfaction	50	25	2.4	60	120
6	Affordable and Accessible Court Services	60	30	2.4	72	144
7	Public Trust and Confidence	50	30	2.4	72	120
SUBTOTAL		400	265	2.0	516	800
INTEGRITY CHECK-LIST SCORE		100	25	2.0	50	200
TOTAL					566	1000

Annexes

Annex 1: List of the main international standards and guidelines on judicial integrity

Basic Principles on the Independence of the Judiciary. Adopted at the Seventh UN Congress, Milan, 1985

Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region. Beijing, 19 August 1995

Commonwealth (Latimer House) Principles on the Three Branches of Government
Draft Principles on the Independence of Judiciary - “Siracusa Principles”

ECOSOC, Strengthening Basic Principles of Judicial Conduct, 2006/23

Global Programme Against Corruption, Strengthening Judicial Integrity Against Corruption, 2001 Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts

International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors. Practitioners Guide No. 1, 2007

International Commission of Jurists, Judicial Accountability - A Practitioners’ Guide, 2016 Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct

Opinion No. 3 of the Consultative Council of European Judges (CCJE). Strasbourg, 19 November 2002

Plan of Action for Africa on the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government

Recommendation No. R (94) 12 of the Committee of Ministers to Member States of the Independence, Efficiency and Role of Judges. Adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers’ Deputies

The Cairo Declaration on Judicial Independence

[The Commentary on the Bangalore Principles of Judicial Conduct](#)

[The Istanbul Declaration on Transparency in the Judicial Process](#)

[The Universal Charter of the Judge](#)

Transparency International, [Global Corruption Report 2007: Corruption in Judicial System](#), 2007

Transparency International Romania, [Enhancing Judiciary’s Ability to Curb Corruption – A Practical Guide](#), 2015

U4 and UNDP, [A Transparent and Accountable Judiciary to Deliver Justice for All](#), 2016

UNODC, [UN Convention against Corruption - Implementation Guide and Evaluative Framework for Article 11](#), 2015

UNODC, [Resource Guide on Strengthening Judicial Integrity and Capacity](#), 2011

Annex 2: Additional references by topic

Independence:

- Council of Europe's Recommendation on the Independence of Judges, Principle 2 (b)
- Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (the Beijing Principles), no. 3.a
- The Universal Charter of the Judge, article 1

Judicial Service Conditions:

- The European Charter on the Statute for Judges, no. 1.6, 2.1 – 2.2
- Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (the Beijing Principles), no. 13, 17 – 21, 41 - 42
- The Latimer House Guidelines, no. II.1, II.2
- Universal Charter of the Judge, no. 8 - 9
- Council of Europe, Recommendation No. (94) 12, principle I.2; I.3
- European Charter on the Statute for Judges, no. 1-3, 4.1

Code of Conduct:

- UNCAC - Technical guide; I pg.19
- The Bangalore Principles for Judicial Conduct; Value 3.1
- Procedures for Basic Principles; Procedure 1 and 3
- GRECO Evaluation; R2: Part 2: 6.1 R4: 14.1; R2: Part 2: GPC10; 5; R4: 12.2
- The Cairo Declaration; Pg. 2
- Plan of Action for Africa on the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government; P. 3 ,2.2.2; P. 4 ,2.3.2

Conflict of Interests:

- UNCAC - Technical guide; II.7.pg. 18, 201; IV pg.25
- GRECO Evaluation; R1: Part2:GPC3 R2:Part2: 4.4; R4:13.2
- Montreal Declaration; 2.02; 2.31
- Opinion no. 3 of CCJE; P. 4, p. 17; P. 6, p. 37; P. 7, p. 39
- Siracusa Principles; A.23, A.28
- The Universal Charter of the Judge; P.1, a.4

Judicial Misconduct:

- UN Basic Principles on the Independence of the Judiciary 17 – 20
- Bangalore Principles 3.1 – 4.17
- Council of Europe, Recommendation No. (94) 12; and VI.3
- The European Charter on the Statute for Judges
- Beijing Principles, no. 22 – 26

