



Empowered by us.  
Resident nations.



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

## 4<sup>th</sup> INTERNATIONAL SUMMIT OF HIGH COURTS



11-12 OCTOBER 2018, İSTANBUL

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

This book is prepared and published within the scope of the “Ethics, Transparency and Trust Project of the Court of Cassation” which is financed by the Court of Cassation and implemented by the Court of Cassation and UNDP.

### **Editors:**

**Dr. Mustafa SALDIRIM**, *Deputy Secretary General of the Court of Cassation*

**Gözde HÜLAGÜ**, *The Judicial Reform Department of the Court of Cassation*

**Nihal ERİŞ**, *The Judicial Reform Department of the Court of Cassation*



## DAY I

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

**Irena VOJÁČKOVÁ-SOLLORANO**

UNDP Turkey Resident Representative

*“Opening Speech”*

**İsmail Rüştü CİRİT**

First President of the Court of Cassation

*“Opening Speech”*

**Prof. Dr. Nihal JAYAWICKRAMA**

Coordinator of UN Judicial Integrity Group

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



11 October 2018



## OPENING REMARKS (Main Meeting Room)

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

---

**Honorable 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 **4<sup>th</sup> 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 4<sup>th</sup> 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 3<sup>rd</sup> Summit in 2016, the **Istanbul Declaration on Transparency in Judicial Processes** 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 4<sup>th</sup> 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 to 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 the ownership and adoption of the judiciary. When the judiciary does not have the further resources for the 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 Processes** 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 4<sup>th</sup> 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**.

As 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,**

**Theme-1: 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 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. And 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 are going to show that the important role of human rights, justice, rule of law are very important concepts, and a lot of countries have provided contributions to the development of these concepts and to the values that constitute the fundament of these concepts. “Justice”, “rule of law” and “human rights” are the concepts that have been developed by the 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. And I would like to thank you very much and wish you a very warm welcome.

I also would like to thank 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.

## **Theme-2: The Responsibility of Judges in Ensuring Judicial Integrity and Transparency**

**Distinguished Guests,**

**Esteemed Participants,**

According to Article 13 of Implementation Measures of the Istanbul Declaration, “competent, independent and impartial judges play an indispensable role for strengthening public confidence in the judiciary and to maintain such a confidence in order to ensure integrity and transparency in the judicial process”. We have to strengthen 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 true 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.

## **Theme-3: Istanbul Declaration**

**Distinguished Guests,**

**Ladies and Gentlemen,**

Istanbul Declaration was adopted by Chief Justices, and Justices coming from 13 different countries from Asia-Pacific. Afterwards 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 chair persons of our chambers also provided important contributions, and I think everyone is here except for Honourable Justice Michael Buenger. I would like to thank all the participants for their performance and creativity as a result of this expert meeting, 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 by 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 of 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.

#### **Theme-4: The Future of the Judiciary**

**Distinguished Guests,**

**Ladies and Gentlemen,**

Public confidence, moral authority and integrity of the judiciary are a safeguard of a modern and democratic society. When the judicial system adopts

the fundamental principles, these values can be upheld. 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 the public confidence in the judiciary. So, the standards that are laid down by the Bangalore Principles of Judicial Conduct and the Istanbul Declaration are quite clear. Judiciary has the responsibility to protect and strengthen public confidence, ethics, transparency, effective processes and high quality in proceedings which 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 4<sup>th</sup> Industrial Revolution. There are things such as artificial intelligence, robotics and autonomous cars and 3-D printers and nano-technology, so there are lots of innovative processes that we should understand. Nowadays, the need for expertise has increased and there are more areas of expertise, which are in greater variety. Technological advancements accelerated the process of transition to information society and made individuals more vulnerable to incidents. For the first time in human history, the information about the incidents is communicated very rapidly, there are lots of technologies for communication and those means are more economical at the moment. So, this era is also called as “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 communication strategy, as required by the circumstances of the modern age and they should do it diligently.

### **Theme–5: Conclusion and Acknowledgements**

2018 is the year which marks the 150th anniversary of the Court of Cassation and it is an honour for us to host the 4<sup>th</sup> International Summit of High Courts. We have a lot of guests and colleagues coming from Turkey and from across the world. And I would like to thank you very much for being with us today. I hope that the results of the summit will make significant contributions 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 “**universal culture of law**”.

## **PRESENTATION OF THE ISTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS**

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

---

**The Honourable Chief 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 5 Continents,**

**Representatives of the UNDP in Turkey and**

**Other Offices of UNDP,**

It's a great honour for me to be present here in the concluding stages of an effort that began about 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 Coordinator. Its Implementation Measure 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 Republic 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:**

**Opening of the Session, Introduction of Participants and  
Preliminary Views of the Participants on the Istanbul  
Declaration and the Implementation Measures**

### **MODERATORS:**

**İsmail Rüştü CİRİT**

First President of the Court of Cassation

**Prof. Dr. Nihal JAYAWICKRAMA**

Coordinator of UN Judicial Integrity Group



11 October 2018



Distinguished guests, distinguished participants, I'd like to wish all of you a warm welcome. It's a great honor for me to be here with you, distinguished guests. It's a great pleasure and honor and privilege for me to work on transparency in the judicial process. And it is also the same for my colleagues. I would like to thank all 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. As Turkish Court of Cassation, we uphold all these principles, and we have undertaken significant reforms and developed some projects for the 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 considerations and assessments regarding 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'm 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 have undertaken the following reforms within the scope of Istanbul Declaration as the Turkish Court of Cassation.

**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 audience; therefore, the hearings should be recorded and then published on the internet after the proceedings. Especially in terms of the cases that the public has a high interest, can we improve transparency in this manner? This is a very challenging topic, and we are working on that. On the other hand, we are also enabling the press members to watch 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 the 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 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' fee are exempt for those who benefit from the legal aid, and also the judiciary should not claim any charges from the parties for translation and interpretation services.

**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.***

Division of work in the Court of Cassation is designated by the decision of Grand General Assembly of the Court of Cassation 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 work load or due to the legal regulations related to decreasing the number of chambers. Other than, it is not possible to take a file out of the assignment 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 work load 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 circle, especially from justice actors.

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

The principle of Habeas Corpus is 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 access to all the judgments of the Court of Cassation. These judgments are published on the website after the personal data is cleansed.

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

Through the modules of legal clinics that we developed with the law faculties of the universities, 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 participated in the training and more than 80 of them became 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 scope of the transparency studies, we will start outreach programmes designed to educate the public through the necessary education materials by opening up booths at the court houses with the assistance of the 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 media's work. We give opportunity for them to conduct all their required works here.

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

Now, we apply satisfaction survey for 3000 lawyers in Turkey through the scientific methods in order to measure their satisfaction level related to the services of the Court of Cassation. Thus, we will examine in which areas we are successful and in which areas we need to improve ourselves. Also, this year, we will start to measure satisfaction level of the court users through an applicable software program in the front office.

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

Appointment process of judges and members to the higher judiciary is conducted by the High Council of Judges and Prosecutors. That's 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 developed in consequence of democratic and transparent processes are in line with the standards of the United Nations and the Council of Europe. We developed some training courses for one day or two days, and the total number of our training programs reached nine. I can express with ease that we made a very serious reform in the subject of judicial ethics. In this reform, there are many components from the establishment of Judicial Ethics Advisory Committee to the judicial ethics as a lecture given in the law schools. I think that the educations on judicial ethics through legal clinics are very important within this framework. Now, with the cooperation of Bar Association, we are working on giving education on this subject for the lawyers.

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

Within this framework, we have an independent disciplinary committee in the Court of Cassation. In cases where there is a disciplinary process against a judge, all kinds of defense rights of the judge are 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.

**Syed Mahmud HOSSAIN, *Chief Justice of Bangladesh***

Honourable Chief Justices, esteemed brother judges, ladies and gentlemen, good morning. As salaam aleikum. I want to begin by thanking the Honourable President of the Court of Cassation of Turkey, Mr. 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 Rohingyans in Bangladesh, and find a political solution to the crisis and evaluating it as not only an issue of Bangladesh, but as a humanitarian crisis. In Bangladesh, the Constitutional law is the supreme law of the land. Any law enacted by the legislature may be declared as unconstitutional by the Supreme Court of Bangladesh in cases where the law is invalid. Every person accused of a criminal offense shall have the right to a speedy and public trial. The public have an absolute right to know the decision in the courtroom of Bangladesh. Media have access to the courts of Bangladesh to transmit the decision of the court to the public within few minutes. The Supreme Court of Bangladesh has its own unique relationship with the media and its own comfort level with the media access. We have set media room in the court premises. In 2008, the Supreme Court of Bangladesh 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 online confirmation system. It is also preserving electronic records relating to cases and maintaining personal data sheet for every judge of the district judiciary. These are all kept in electronic environment. By this way, we are trying to further transparency and accountability. In addition, the Government of Bangladesh has taken initiative to implement the judiciary project which is a whole technology based judicial system. In Bangladesh, there are more than hundred and sixty six million people and we have more than 3 million pending cases in the court of first instance. It indicates that people's access to the justice is higher than many countries of the world and it shows public confidence in our judiciary. The government has taken some pragmatic estates in order to provide legal aid to the poor, indigent, especially vulnerable women and children and the fees for the proceedings are covered by the government, so that they can access to justice. In order to promote transparency in the judiciary, the Supreme Judicial Council headed by the Chief Justice of Bangladesh formulated Code of Conduct for the judges of the Supreme Court as a part of the mandate of Article 96 sub-article three of the Constitution of Bangladesh. Flouting any of the Code of Conduct is tantamount to misconduct and some judges may lose their office

for violating the Code of Conduct. 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. Apart from the same judicial discipline rules, 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 exercise of their judicial function. In the framework of Article 116 of the Constitution, they can carry out the necessary disciplinary proceedings during their duties and in this period, they can consult with the Chief Justice of the Supreme Court and at the same time they can perform the necessary controls and inspections over the courts in which they are registered. 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*

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's always a privilege for us to be with you, to be in Turkey in Istanbul. And whenever we are here, we do remind 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. I would like to describe just a little bit about what's the matter in Lebanon. In Lebanon, we do apply the same principles, but we apply them through the code of procedure, civil procedure. In our civil procedure, all those rules are mentioned. I would like to put the point in a few remarks only. Recently we are trying to implement an electronic justice system as a Court of Cassation level and e-justice is now open to be connected not only by the Court of Cassation but the Bureau of the lawyers. We are trying to have a link with the Bureau of the lawyers in Lebanon. The legal aid is implemented and we use it especially whenever we have a need for translation or interpretation. First, we try to call on the embassies if someone is from outside the country and if he doesn't understand Arabic. So, we call on

his embassy to request for someone to come and do translation. Otherwise we have the legal aid to this translation. We are now opening the Court of Cassation to the students of law at the faculties of law, especially for those who are in the fourth year. They come, they visit our court and we will try to find a way so that they would help us also in studying the cases and doing some research. Media is present at the Court of Cassation especially whenever we have a terrorist case. So, we are open to the media and we will find all the media present, taking notes and hearing the hearings. We have an easy access to the court premises and information we've published in a booklet on the procedure 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. They can examine the website. There is, of course, transparency in the assignment of cases. Especially it's a random assignment. Each case has a number, so the cases are assigned by their number in an automatic order. Recently, we've 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's why, we decided to implement this provision and make this report last year. In this report, we can get 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 of cases not only at the level of the Court of Cassation, but at all level of judiciary due to the presence of 1 million Syrian refugees at the Lebanese territory. So, the cases increased by about 35 to 40%, especially at the level of criminal cases. Again, and 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*

I'd like to thank the Chief Justice of the High Court of Lebanon, Mr. Jean, thank you.

It's over to you Mr. Chief Justice.

**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 attended to this important summit to represent Sudanese judiciary and would like to thank especially his excellency İsmail Rüştü, the

President of the Court of Cassation of Turkey and Miss Irena, representative of UNDP for hosting this important summit and organize this important forum and our code we think that our code should ensure transparency and independency and integrity. All our high courts should ensure transparency, independency and integrity in the delivery of justice and we think it is very important 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*

Thank you. Honourable Chief Justice of the High Court of Sudan, thank you. From 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 Miss Irena. The most important structure of the judiciary in the High Court of Bolivarian Republic of Venezuela is represented here by me. I'd like to extend my deepest respects and regards to each and every one of you. And I also think that the strategic meeting is very important for us, I'd 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 have 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 developments in the both global and regional means. 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 is 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 by this way 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. And also, we need to fight against corruption to ensure transparency. Therefore, a policy should be implemented in order to ensure it for the judges to fight against corruption. In Venezuela, a judge is subject to the law on code of conduct, judicial conduct for the judges. If the judges violate the code of conduct, they are warned or dismissed from the office through some disciplinary proceedings, and all the criteria laid down in the code. In addition to that, the anti-corruption law is also implemented for the judges or members of the judiciary, who do not obey the rules or the law. On the other hand, the principle of autonomy also contributes to transparency; a special budget was dedicated for the judiciary for that purpose 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*

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 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, the time of declaration. And I find that 15 principles were declared 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 10 years of very strong armed conflict, which had devastated the whole 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 implement the draft, the new constitution, and it's only three years now that we have a constitution which is accepted by conflicting parties in Nepal. As if it was not sufficient, in 2015, there were two very measured earthquakes that hit Nepal very badly. So, in total, in the conflict, there were 20,000 deaths, and in the next earthquake, there were 10,000 deaths and the economy was totally devastated. Still, the law-making processes continue. Even the Supreme Court and the courts of Nepal, the buildings were damaged, and we conducted our proceedings in the tents for many years. Still 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 the Constitution enacted is the youngest constitution that we have now, and also among the other countries in this conference, we incorporated the 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 our Chief Justice was above impeachment process or was filing as the

Chief Justice because in one of the cases, appointment of the chief of police was done against the government's will. And the Chief Justice of Nepal was prosecuted. Unfortunately, the case was not heard and it was withdrawn by the parties who filed it. The result was that in the next following election for the National Assemblies and the local and municipal level, this question came up very, very strongly. The power of executive side over judiciary in such a manner was not acceptable. So, our commitment for how the Constitution should be implemented stood out in this way. 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 the transparency. So, the issue that we have in that strategic plan is also matching with what we are discussing today. We, in the transparency side, one of the major changes that we are implementing at the moment is in the IT sector. We have a system in the court processes that has been established. We are publishing weekly cost lists and the daily cost lists. The next report that we are presenting at the moment by a committee is headed by me. We will be submitting a report to the Chief Justice and to the full court 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 particular person will be alleviated. And that's the belief. One major issue that we are talking about at the moment is the appointment of judges. Because of high political influence during the constitution making process, the Judicial Council has been formed, which was not there before. Earlier, there were three judges from the Supreme Court and one administrator and one jurist from the bar. There are five members in total, so the majority was at the judiciary side. From the judges' side, there were two members, the judges from the Supreme Court and one administrator, one nominee of the bar and one nominee of the [prime]. There should have been two from the judges' side, and two from the political side. That is a major issue that there is a lot of political influences is what we are still discussing. Having said that, there are major issues that we have not taken much time. Thank you very much for giving this time to me. Thank you for all your arrangements in the country, in this beautiful country. Thank you, sir.

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

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 Cuba, Her Excellency Miss Irena Vojackova-Sollorano, Resident Representative of UNDP Turkey, Honourable President, magistrates of Supreme Courts, some participants of the countries, present participants, ladies and gentlemen. It constitutes a high honour and privilege for me the possibility of attending this first international assignment of high courts and to be able to address you briefly. I also take the 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 judicial system for 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 natural and legal persons' interest. The Cuban Code of Ethics establish values like fairness, independence, impartiality, transparency, probity, humanism, honesty, quality, responsibility and patriotism. It defines the transparency as an open, accessible, understandable and verifiable judicial action for those who participate in the process and for the party 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 need to exercise due diligence for the legal and criminal proceedings and rules of procedure. The management of quality allows the product organization, the improvement of the structure and the functioning of court. In our case, we have identified the essential components of quality management, the rendering of accounts, the expansion and control of compliance with a requirement of due process. The adequate argumentation and the ground for judgement, the attention to the complaint, the notions and disposition of populations, the evaluation of performance, the training of preparation of judicial personnel and the management of their ethical behaviour are what correspond to the spirit. We take into consideration Article 11 of the Convention against Corruption, 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 with clear and simple language. All these are taken into consideration in the inspections and files. Since 2001, mechanisms have been established to deal with and respond to the proposals, complaints and

the notions 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 to continue in the construction of its sovereignty. 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 with new challenges and at the same time, 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*

Thank you very much, acting President of Cuban High 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 every one of you. I'm 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 rule of law. Just like all the other Turkic states established in the 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 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 were 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 compulsory defender to be assigned for the juveniles are among the various amendments that have been introduced so far. In addition to these improvements, as an indication of 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 and also national judicial informatics network was introduced. And for the district courts, the first instance courts, and for the high courts, the judicial informatics network is now fully functional and 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 more swift information concerning the files and the cases to people. Ministry of Justice has been recently engaged in an effort in order to estimate the case conclusion times for the first instance courts. There are some pilot practices now being implemented for the first instance courts. After Mr. İsmail Rüştü Cirit took office, the Court of Cassation of the Republic of Turkey scanned and digitalised 4 million decisions of the Court of Cassation and made them available for public. So that was a 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. And this project is very important in order to be able to contribute to those. With the great contribution of UNDP and Resident Representative of UNDP, we have made great progress. And this is a very important thing and gives us hope, in the name of law, in the name of rule of law, and we're all hopeful as judiciary professionals. The Republic of Turkey is a state of law, and it has a clear commitment for strengthening the rule of law and all these activities have been appreciated by actors and society. The state of the Republic of Turkey attributes importance to human rights and in this respect; reforms have been introduced in 2012 with the amendment in 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. According to our law, we as judges and prosecutors and as the High Court face a very high workload and in order to overcome this problem, under the leadership of Court of Cassation, we have intensified efforts in order to be able to introduce ADR, Alternative Dispute

Resolution. I firmly believe that this meeting has achieved its objective, and it is going to be a very successful and fruitful one. It's 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*

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 think he has words to say, I would like to give the floor to Mr. Jayawickrama. Yes, I pass the ball to you.

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

That was a surprise because I have not asked for the floor. I believe that we have about another 20 minutes and it might be useful if the participants around this table would briefly introduce themselves rather than those have already spoken. It might be helpful to all of us, if you briefly introduce yourselves. Shall we start from? Yes, yes, 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. My name is Kenneth Benjamin. It's 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 present on my left side. I am the only representative from the Caribbean region; say 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's in fact situated in Central America. My jurisdiction is a very small jurisdiction with 350,000 people. We have five judges of the Court of Appeal, 12 judges of the Supreme Court and 18 law judges who are magistrate judges. 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 wanted 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, the results of elections recently, there has been a blurring between the executive and the legislature. And that brings into very sharp focus on the importance of the judiciary and of the rule of law to safeguard the rights of individual people of our

respective countries. I just 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 from the perspective that 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 UN Judicial Integrity Group*

Yes, although the President of the Supreme Court of Azerbaijan didn't say anything very much. 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.

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

Hello colleagues, ladies and gentlemen. As regards to 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 fourth international summit of High Courts. I would like to thank the First President of the Court of Cassation and UNDP resident representative. This is a very important meeting. Thank you professor 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, and I just want to wish the success for our meeting. And I'm not going to take more than this. Thank you very much.

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

We have Chief Justice of Qatar. 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

indicated especially in the Constitution of the Republic of Azerbaijan, increasing the public confidence to the courts are determined as one of the major factors regarding the freedom of information in the constitution of Republic of Azerbaijan, and international agreements and national legislation 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 have important roles and responsibilities in terms of social supervision, which will contribute to the society. 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 shall have the right to legally seek, get, pass, prepare and spread information. At the Article 57 of the Constitution, citizens of the Republic of Azerbaijan shall 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. Other articles of the Constitution contain provisions and principles guiding the activity of courts, as well as provisions aiming to ensuring public control. In compliance with the relevant articles of the Constitution, trial in all courts shall be public. The decisions of Supreme Court of the Republic of Azerbaijan shall be published in accordance with Article 131, the formation of judicial system is a way that meets more than requirements for accessibility to the courts, publicity of judicial procedures and decisions. And this embraces not only the above-mentioned principles, but also other processes emerging from current level of development challenges being an important content of transparency. And this in turn promotes the court of all levels not to function as close government body; conversely, they aim to achieve social satisfaction through provision of comprehensive information on their activity; thus, ensuring transparency of the judicial power. In this point of view, aforementioned provisions are the main factors in the process of further modernization of judiciary system that has been determined as one of the priority decisions in our country. 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 provided by the ICT equipment for testimony of the witnesses, conduction of video conferences also allow direct connection with court proceedings and the Supreme Court.

Employment of such technologies has been achieved through the development of an integrated information strategy. It includes access to the courts and self-government, judiciary bodies and communications bringing together the automation and Information Systems resources. Specified technological system allows accelerating access to legislation database, information regarding generalization of the judicial experience as well as expanding opportunities to make analytical studies. One of the main advantages of the system is the execution of court decisions and clerical work on a top quality. As a result of the successful project carried out jointly with the World Bank and simplifying citizens' access to the courts in order to ensure the functioning of the judicial system, the common internet link courts.gov.az online mode allows to receive and reply on appeals to the courts. Through this portal, the citizens can obtain information regarding all courts and their territorial jurisdiction application forms, necessary documents attached to the application, pending cases as well as decisions. In recent years, many countries in parallel with the implementation of e-government, e-justice has also been actively used. Azerbaijan is trying to keep up in this field and many works have been undertaken in this direction. I would like to note that the President of the country gives a great attention to this process. Since 2010 preparatory work was initiated on the implementation of electronic court proceedings and the law on amendments to the Civil Procedure Code was adopted, which entered into force on the first of January 2017. According to these amendments, the court [sponsoring] economic cases may do it electronically and receive claims. All mentioned processes are recorded and stored on electronic database. A question may arise. Why do we need it? First of all, it is because we achieve maximum transparency and 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 and the framework of legal procedures, the improvement of the judicial process creates new opportunities for achieving the goals of the judicial system with the help of new technologies. 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*

If we take five minutes away from lunch, we'll have time for some quick introductions around the table. So maybe start with Sandra.

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

I am a Canadian judge, but I really think I'm here and 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 annotations to the Bangalore Principles. The principles alone are excellent of course, but they're not as good at teaching to 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'm Vasil Roinishvili, Representative of Georgia. I'm a Deputy Chairman of the High Court. First, I want to say thank you and extend my respect to you, our host organizations and I think that our meeting will be very helpful because sharing the information makes us stronger. Thank you very much.

**Peter CHARLETON**, *Justice, Supreme Court of Ireland*

Hello. Peter Charlton is my name. I'm from the Supreme Court in Ireland, and it's a great pleasure to be here, and to visit Istanbul and to visit Turkey. Later on, perhaps by way of confession, you 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 I suppose we've done well, but for the moment, I simply say hello, and thank you.

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

May I say, we are happy to be in here this morning, Mr. President of the Court of Cassation. My name is Enock Chacha Mwita. May I correct that I represented the High Court, not the Supreme Court? Nonetheless, I'm here to represent my Chief Justice who is unable to be here today. What we're discussing here today is already happening in my country. And I can only go ahead to enhance transparency and accountability, no judicial process by not to start. 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's a great honour. And my goal is basically to continue global collaboration on the introduction of these very important principles. And thank you very much. Appreciate it.

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

Hello, I am Myint Thein, High Court judge from Myanmar. Thank you, your Excellencies, First President of the Court of Cassation of Turkey, Mr. İsmail Rüştü Cirit. I firmly believe that the transparency is the fundamental element of the judicial process for transparency. Constitutionalism and the rule of law should be upheld in the judicial process, 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 and I will 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 and it's 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 judge in the Constitutional Court of Tajikistan. Thank you for inviting.

**Atartsetseg LKHUNDEV**, *Justice, Supreme Court of Mongolia*

Hello, my name is Atartsetseg, and I'm representing the Supreme Court of Mongolia. I would like to express my gratitude for giving 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'm Federal Judge of the United States, Richard Stearns. As a member of our international judicial relations committee, I represent United States judiciary with our Chief Justice John Roberts at this meeting, which we deem its goals are very important. And we extend his best wishes and the best wishes of our judiciary. And thanks to the Court of Cassation for generously hosting this symposium.

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

Abdulhalik Yıldız, I am Deputy President Turkish Court of Cassation. I am also presiding a General Criminal Assembly. I would like to express my honour to be with all Chief Justices from across the world. Thank you.

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

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

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

I am President of 13th Criminal Chamber of Court of Cassation of the Republic of Turkey, and also since 2015, I am head of the Human Rights Commission established upon the instruction of the First Presidency of the Court of Cassation. I would like to give you a brief information about the Human Rights Committee. It was established upon the instructions of the First President, and periodically, the jurisprudence of the European Court of Human Rights is 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 the violations of human rights or minimize the violations of human rights. We produced a book which was also shared with the Court of Human Rights and courts of first instance, and jurists of 47 countries. Thank you.

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

Seracettin Göktaş from Court of Cassation of the Republic of Turkey and I am the chair of the 22nd civil chamber. I'd like to wish you a warm welcome and our success in the summit. Thank you.

**Ahmet ER**, *President of 22nd Civil Chamber of Court of Cassation, Turkey*

Ahmet Er from the Court of Cassation of the Republic of Turkey and the head of 12th criminal chamber of the Court of Cassation. I'd like to wish a warm welcome. It's a great privilege and honour for us to host you here in the summit. I wish a fruitful meeting in the summit. Thank you.

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

I am the President of the 8th civil chamber of the Court of Cassation of Turkey. I'd 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 walls. I would like to thank everyone here for their contribution to 15 principles. Thank you.

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

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

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

Vice President of the Supreme Court from Bangkok Thailand. I'd like to first congratulate our host and co-organizer Honourable Chief Justice Ismail and the First President of the Court of Cassation of Turkey and the UNDP Turkey representative. You made this conference truly global, because you first invited us. You all know we are in a luxurious position in terms of our Constitution in Thailand. We amend the constitution many times. The last one is the 26th amendment and from the very beginning of the change from monarchy system to democracy. The executive never touched upon the judiciary and allow us to handle issues with our efforts independently. We are like the Turkey's system. We have four jurisdictions in the court which are the Constitutional Court, the

Court of Justice, Administrative Court and Military Court. You may know that every time that we have some accident in our country; the Military Court will take charge, so they never touch upon us. Again, for many years, we observe the Bangalore Principles and seriously transform the Bangalore Principles into our judicial code of conduct. And right now, we have the judicial act and enforce the Bangalore Code of Conduct, and actually we are in the processes to transform our system into electronic as many jurisdiction. Many distinguished guests mentioned earlier, because I don't have much time to spend on it. Lastly, I truly believe that the vision of our wisdom gathered from the summit conference here will trigger the ideas, encourage the collaboration among the judiciary community in order to uphold transparency in our traditional roles, to escalate the public confidence and to enforce our judiciary power. Thank you very much.

**Shiranee Hesta TILAKAWARDANE**, *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 and I thank the UNDP for supporting the scenic initiative. 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 myself have been a judicial educator. I gave formal training as such in matters like equality and the environmental law especially for the disadvantaged and the vulnerable. They come before the courts because I truly believe that though we say equality for all, there's much to achieve through initiatives like this, through understanding to inclusion of the disadvantaged and the accommodation of that disadvantage. I am now consultant to the judges, and I continue my teaching in Judges Institute of Sri Lanka. I'm also national and international arbitrator but I also really continue on working for the women the children, the disadvantaged, differently sexually oriented and for the environmental law with my passion. Because, I believe these are the areas of the law that need special attention and I'm sure that we are universally in agreement that these issues 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 of Mr. President of the Court of Cassation of the

Kingdom of Morocco. Besides, 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*

Hello. My name is Melis Tagaev, I represent the Kyrgyz Republic. Thank you very much the First President of the Court of Cassation and United Nations Development Programme, Turkey resident representatives for your warm welcome and wonderful hospitality and organization of international summit of high courts on such a high level, 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 Supreme Court of Kazakhstan here, and it's a great honour to participate in this forum, which is hosted by Turkey as our brother, state and country. Mr. First President, thank you very much for your contribution. And I'm very grateful to all other partner organizations as unity for organizing this discussion. And I truly believe that this discussion of transparency in the judicial process is a very important subject and it's a very important principle and remedy to provide fairness, justice, quality of justice to ensure public trust in justice, thank you very much.

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

Chief Justice Mr. İsmail, I will take just a minute, not more than that. Now, we have a system in India where the Constitution itself provides safeguards and has the feet in the judiciary. It provides us insulation. Our actions cannot be discussed even in Parliament in ordinary debates. There is one of the feature and we have separation of power under Article 50. We have legally equal justice and legal aid under Article 39(a). Nobody can be deprived of justice for economic and other disabilities. And then Supreme Court of India has recently decided to open live streaming of the important constitutional matters. I only started this month. Our judgements can be discussed on TV, television debates and all that you see. Media is also responsible. Everybody can attend to the courts for free even for the Supreme Court. Contempt power is exercised only in exceptional cases, not in general, we are litigant friendly. Most of the courts are now having night shelters for litigants in district courts throughout India. We are having easy access. Even letter petitions are entertained by the Supreme Court even today. I'm a member of that committee. We scrutinize the letters and we just entertain

them. And even on that basis, we give these to thousands and thousands of the incumbents. Looking at the system, every year, we decide millions, several millions of the cases. you see Legal Aid, we are reaching down. Percolating legal evidence is our aim and, the benefit of the government's scheme should also reach to those who are not aware of their legal rights. 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. District judges and rosters are therefore everything, you see. Then, the seals are shared on website. Reasons are given for superseding any individualized personality. We have kiosk, SMS facilities and several better facilities to reach even to the litigant. If the mobile number is available, information of his cases listed and what has happened on a particular date is not only sent to advocate but also to the litigant. So we have recommended litigant friendly system, we have implemented in not only Bangalore Principles, but also this, your Istanbul Declaration in our code of ethics. I would just end with that all transparency would be meaningful if we blend the qualities of a human, human attributes and human heart in the justice. We realize that our soul rises beyond self. We melt our ego. We as high intellect, have fearless mind, purity of thinking, clarity of perception, profound knowledge, total dedication to constitutional values, honesty, impeccable integrity, dignified labour, and then we can balance the powers. 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'm an Attorney General at the Supreme Court of Belgium. And 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 on 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 and European Network of Councils for the judiciary. The Council for the judiciary in Belgium is responsible for the auditing of the judiciary and also for the appointment of every judge and every prosecutor in Belgium. In the European Council, we worked on reports, independence and accountability of the judiciary for many years. 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 became involved as Vice-President of the World Body of the International Commission of Jurists in 2013 and have been involved in this remarkable and unique process. I was once Attorney General for my own state, being a member of government who appointed judges. There was no transparency in those appointments. I imposed on myself a series of protocols to make sure that that discretion was properly exercised, and I didn't have any complaints about it. I wish a successful conference.

**Haider Ahmad DAFFALLA**, *Chief Justice of the Supreme Court of Sudan*

Hello my name is Professor Haider Ahmad Daffalla, the Chief Justice of Sudan and President of the Supreme Court. Again I would like to thank my brother İsmail and Miss Irena, the UNDP and my colleague Justices for this and say congratulation for the success of this forum. We hope that we shall meet again in another program, thank you a lot.

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

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

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

Well, although we exceeded the time given to us, we reached the end of first session. We have listened to very fruitful presentations and I would like to thank all the speakers, if, Mr. Jayawickramadon't have further comments, we can proceed for lunch.

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

Okay, thank you.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 1-8 of the Istanbul Declaration.)**

#### **Group A**

#### **MODERATORS:**

##### **John DOWD**

Former Justice, Supreme Court of New South Wales

##### **Doç. Dr. İbrahim ŞAHBAZ**

President of the 4th Criminal Chamber of the  
Court of Cassation, Turkey



11 October 2018



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

I am John Dowd and will moderate the session with my co-chair Ibrahim Şahbaz. We will go through the details of Principle from 1 to 8. We already have the agreement and we don't have anything to do with it. But now, the topic is its implementation, and of course it will come up with your ideas. Mr. Şahbaz, if we could start our first discussion on the Implementation Measures, it would be appreciated.

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

My name is İbrahim Şahbaz. Mr. Dowd, thank you very much for your opening remarks. As Mr. Dowd also mentioned, we are here to talk about the principles that have been previously adopted. So, we will be working on the Implementation Measures. In accordance with the information I have received, we're not going to debate under principles, but we will just be talking about the Implementation Measures. If there is anything that needs to be amended or changed, the participants could comment taking into consideration the conditions in their country, language, etc. So, if there is any amendment and any major issue, we will get your input, then we will be reporting them. We have a rapporteur here who is taking notes and we will also be taking notes as co-chairs. So according to those notes, the information that has been compiled from all groups will be united and they will be evaluated in a holistic manner. This is the principle of our work today. As Mr. Dowd also mentioned, we want all of our colleagues to take the floor and participate and it is going to be enriching for us. Otherwise it will not be meaningful to conduct such a meeting. Our idea is to have as much as participation as possible and we can, at the end, present certain things as more representative. Mr. Dowd I'd like to leave the floor to you so you can initiate the discussion.

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

Thank you very much for your comments. Do you have any proposal on this item? Because here, we're talking about the procedures for the conducting of the prosecution open to public and the media. These are actually universal principles for certain cases. Of course, they are in camera, they are included in international texts. And it is also included in the United Nations framework. There are certain principles. So, do you have any proposal on this Item 1.1? Do you have any

additional proposal to make on 1.1? Any concrete proposals? Thank you. Could you repeat yourself?

- Thank you Mr. President. I would like to draw your attention to the issue of keeping all or part of the proceedings closed to the public or the press. In particular, cases of human trafficking and closing these cases to especially media representatives are delicate subjects. Because, oftenly they are involved in cross-border crimes. If the victims are identified, they can possibly be punished with a severe sentence as death. So keeping the public and the media out of this process has become an increasingly popular issue.

-Thank you for your presentation. Do you have any suggestions? Because, the concept of conducting the prosecution is open to the public and the media takes place in here. In universal principles, there is already closedness for some cases. As I know, every member state has principal regulations for these in universal papers under the roof of the United Nations. In this regard, do you have any suggestions? What should we do in this? Do you have any concrete suggestion?

- I don't have a concrete suggestion right now.

- I am from the High Court of Bangladesh. I have 29 year of experience as judge. It may be essential to keep the media out of the process in some cases. It should be evaluated as an exemption. For example, a victim of rape may not want to talk about what happened. In this case, the hearing should be closed. In the courts where the children are tried, they may not want to express themselves in front of the crowd. Therefore, it is necessary to have a principle about the closed hearing in the juvenile justice system. In our country, there is clause in the 1995 Law on Family that judge can take spouses with him and observe the dispute one to one. Here, of course, there should be an absolute system. There should be an exemption and we should allow closed hearings. About the basic principle, that is all for now.

- All of what you have said is correct. And they are universal principles and in terms of our country, in our Turkish legislative system, this is already embodied in our implementation. There is confidentiality until 18 years of age in line with the Children's Right Convention and the European Convention of Human Rights. These are already included. I would like to focus on the Implementation Measures on Principle 1, if there is no such concept that you want to delete but of course, all these are going to be enriching, our comments. They are being

recorded. What we wish is to ask you if there is an amendment proposal for deletion or addition of a certain concept from the phraseology. Mr. Dowd?

- Thank you very much. Of course, this is already integrated in the domestic legislation, so this is complimenting each other, in terms of values. So, if you do not have any further proposal, we can skip on to the next one. Any other comments, Mr. Dowd. Do you have any comment?

- If there is no further issue, can we go on to the next item? As you all know here, we're talking about the easy access to courts, mobile services and the judicial information by the judicial system. Here in thirteen different articles, they are included to elaborate on Principle No. 2. Maybe these are here, and you might think of, this might be included here but as we advance, there are answers to many of your questions. But despite of this, if you have any proposal, we can discuss it.

- Yes, you are right, indeed.

- In terms of the mobile courts, I do agree with the comments of my friend from Bangladesh. In Afghanistan, fifteen years ago, we had a thing what we called the mobile courts. But these courts are not foreseen in the current legislation. One aspect that I would like to add here is about the item for night courts. In Afghanistan, according to our legislation, the court should be identified in terms of venue, and timing. Thus, when we are talking about these court services in night courts, they are against our Sharia laws and in those countries where these night courts do not function, it is going to be illegal. And if the night court aspect is reviewed, I think it will be better. Thank you.

- Your explanation is quite correct. In your own countries, you have experienced this, and you have seen the problems. There is no problem pertaining to that, but if you pay attention, there is an alternative here. Some countries establish what we call mobile courts and as Mr. Dowd has mentioned, they include all legal safeguards in that mechanism, for those countries who do not have these, either for mobile courts or for night courts or telephone or video conferences, etc. So, this goes on. Here you have a choice to make. I think those people who prepared the decision on the principle took this impact into consideration and created alternatives. So, if your country has experienced negative aspects and it is against your beliefs, then you have an option not to implement this. This is not something forced, this is just an alternative. What is important is to conduct the prosecution in line with international principles and

establish safeguards. But we will take note of this, since you have proposed it.

- Of course, it might not be proposed for other countries. Each country has a different implementation, and international humanitarian law is, of course, present wherever human beings are. We have human rights and we need to have equal safeguards. We need to be treating human beings in an equal and just manner. This is the procedure. But if you do not wish to implement this in your country, you do not have to implement it. Just because it's here doesn't mean you have to absolutely implement it. That's not how it is interpreted. Anything else?

- Thank you very much Mr. Chair. I was also thinking about the elimination of these mobile courts. Because it continues with video conferences as you know, for those people who do not provide statements etc., we have what we call the SEGBIS system which is a video conference method and I do also support the deletion of a mobile courts.

- Mobile courts, I do believe, are not needed because we have permanent courts and we can establish connection via video conference methods, so that's why we do not need mobile courts.

- Why do you want to include mobile courts? Can you explain your view on that?

- Well, I think we haven't dealt with the mobile court and then skipped to the other training part. I think it would be better if you conclude our discussion on the first one and then continue. Now in the answer given to my question, it was said that if it is in the hospital, then the court can go to the hospital and hear the person there. And in our system as well, the person can be heard at the hospital or in the garden of the court house. When the judge hears the relevant person in the garden or in the hospital, it's not called a mobile court that is just a regular court. But in these kind of exceptional circumstances, they can go and review their cases there, hear them in those different places.

- Well, Mr. Dowd said that it's not in the form of going to those places one by one and then receive their statements. We have a system called SEGBIS, which is stipulated in Article 196 and for that we have problems with regards to technical infrastructure or physical infrastructure or physical means and this system cannot be installed everywhere. So, in those cases where SEGBIS system cannot be used, then we need certain provisions to organize those situations. So, you're saying that let's not put it in a closed sentence form because we are very much involved on this. I was an on-call Head of Chamber at the Court of

Cassation in 2006 and we had great difficulties even at the capital city of Turkey, in Ankara, in the Court of Cassation. We had technical problems with regard to the SEGBİS system which is the online system for taking statements. So yes, you're right. If there are technical problems, we should keep this as a reserve option. But when we refer to the court, I mean, I do not understand it as a court only hearing the person. I understand a court when we refer to the procedure that starts from the beginning until the very end. But these interim steps in the overall proceedings could be done using different methods. For example, rogatory statements. And I wouldn't have any problems about that but as our guest stated when he was referring to the mobile court, I thought he was concerned about a court that would start the proceedings and bring it until the end, and I think that would be the concern of the speaker before me. Otherwise, they wouldn't object to only statement taken.

- I would like to learn what meaning they attached to this work. For example, the first phase of exploration, for example, is a part of the court. For example, how do they comment on that? That's important.

- So, were you able to hear the question? There was a question to you, our colleagues from Bangladesh and Afghanistan. Do you think that what is meant by the mobile court is that the whole judicial proceedings are carried out in a mobile manner from the beginning to the end? Or do you understand it to mean for example, there is a person who is at hospital about to die, or very old or disabled? So, we will go there and take the statement there, ensuring all the safeguards? So, this is how we understand it, this is only for compulsory cases, and this is what I understand from Mr. Dowd's explanation. So, if you do not object, we can skip this article.

- Well, I'd like to extend my regards to everyone, first. Around seventy, eighty years ago, we had what was called the Independence Courts in a non-democratic state and they would be called mobile courts, because they would go to one province and then to the other and carry out the whole trial there. They would be trying the accused in the places that they were located in and we also had a provision in the law on title deeds. There, we would hold the hearings, in where the property was located in the village, for example, and there we had mobile courts in that system. But in our law, we do not have this concept. For example, in the pre-determination stage or hearing, an accused who was very ill and hearing those in the hospital or in the place that they are in should not be considered as mobile courts. These are only certain steps taken in order to

accelerate the trial proceedings and it wouldn't be correct to use the term mobile courts to express these certain situations. And then the word "night court". Night court is not something pleasant actually. Because I was the President of a night court and there were times where we had to hold the hearings until night time around midnight. So, they're not called night courts and in our country, we didn't have night courts. And it is not a pleasant expression and I don't believe it will lead to a beneficial result. So, in summary, the concept of mobile court is not in line with our understanding of the law or our law system. So, the primary principle is to hold the trials in addresses that are very well-known by everyone, like in the court houses or in the court buildings, but hearing a witness or an accused in different places other than the court houses, these are already things that are carried out.

- I guess there are no problems, right? So, we can skip to the other one, we can proceed to the other one.

- Thank you, Mr. Chair. I also think that in Article 11, it says "Permit where circumstances warrant, an appropriate non-qualified person to assist a party in court". What is the aim of this article and what kind of a measure is foreseen or what kind of assistance is foreseen and what is meant by non-qualified person? Could we please elaborate on this? Thank you.

- Okay, but a person who is not a lawyer, or a legal professional, I don't know if that person leads to a wrong practice or, I mean, the consequences. Wouldn't that lead to some damages maybe?

- Now, Mr. Togay, it was a very good question. We discussed this last evening among us and I also worked on it before we came here. Are these people representatives, like lawyers or are they representatives like a guardian or what else could it be or could be a court expert? Is this person of court expert, a specialist on the subject or any other? So, the question is... We actually tried to find a different word for it, but we couldn't find an appropriate word. What came to my mind is, rather than the word which means non-licensed in Turkish; it is a very negative word in Turkish. I mean when you call a person non-licensed, it means the person is not competent and just another regular person on the street, but this is not what is meant here. I know, I know that's not what is meant here. But here as you've explained, what should be considered is another person to assist the individual... For example, in our domestic law, husbands and wives, as you know, can carry out the legal proceedings on behalf of their spouses. So, we have accepted it without knowing whether they are qualified or not in advance in

our law. So, this is something similar which is intended to be introduced here, of course, that would be under the decision of the judge in some countries, which is also valid for my country as well. We thought that this could be misused and it's not like we're not considering any possibility of misuse, but I do not think that a judge will make mistakes intentionally. Maybe this word at the end, "permit", if we say "may permit", then we may bring the judge one step earlier than taking a hasty step. So, if we say "may permit" rather than say, "permit", and then we say "may exercise his discretion in favour of somebody who is competent". I mean rather than using the word which means non-licensed in Turkish, we could maybe say, "another individual who is knowledgeable about these issues" or, and if we say "may permit" at the very end, this could solve the problem because I discussed this with my friends and with my colleagues. But in English, that is also not exact correspondence. So, I think if I can resolve this here, that would be very good.

- Yes, exactly.

- Is there any objection to the addition proposal of Mr. Dowd? Because there is a problem if the courts cannot provide this, that and then the governments should provide for it but regarding governments in the preamble, there is a general statement, I don't know if that covers... Could we check that sentence in the preamble? But it's not a problem for me. We can insert your suggestion. But that would suffice maybe if it is already covered in a preamble part. But in the last sentence it is much wider. But if you like we can insert it.

- Alright, then, five. We can proceed to Principle 5. We're finished with four... So, we're almost more than half way through of the one and a half hours we have.

- Does anyone have any comments about five? Assignment. No? Alright. Six, Item 6.

-[Ms. Şebnem Günaydın]: Şebnem Günaydın is my name. In relation to Article 2, the conditions for withdrawal should be identified in relation to court procedures. I think this should be identified according to legislation. That's not court rules, or it shouldn't be court rules. What type of court rules are we talking about here? So, Principle 5.2, the withdrawn.

- This could, for most governments, require an act of parliament, a law change, whereas in fact, the courts can by rules very easily work out criteria. It's only really going to happen. But you couldn't in legislation work out all the possible contingencies and I think it is better left to the courts.

- In relation to 5.2, this issue of a serious illness or contradiction should be eliminated. The example should be eliminated. If we leave these two examples here, I think this would be a basic principle and misunderstood.

- And this contradiction or conflict of interest in the Afghan legislation is clearly defined.

- If the brother, the elder or younger brother of the plaintiff is a judge then that person might object to this, the judge does not overlook that case. To the contrary, the judge, would not actually require that individual to overlook that case.

- If I delete those two examples... If we accept them as such, this will be become principle and it will be done in accordance with the legislation of each country. Therefore it might create a contradiction. But if we eliminate this example, then we will be eliminating the problem here.

- So, is everyone happy if we delete the two examples which are such as serious illness or conflict of interest? Because it makes sense in any event, if those were to be taken out...

- We have a situation as follows. I don't know how you would translate this into English or in Afghan. We have in Turkey like examples such as that such as is giving an example. But when we go one point down, it says, this is regulated, in the national legislation of all the countries therefore, as Mr. Sayid has explained that it might sometimes be regulated by law that the person cannot be compulsory or should not overlook the case of next of kin. But in some cases, the parties are indicating that there might be an objection that this judge would not be impartial in that case. That objection is either accepted or not. Therefore, I do believe that this is not a problem. So that "such as" concept is saving us. So, it's not just two examples, but there could be numerous examples and countries can identify in accordance with their own legislation. So sometimes, even if it is not in the legislation, if the parliament is slow in reacting, then we develop case law without making any limitation on human rights. We can actually fulfil that loophole with case law.

- [Mr. Ali Seçkin Togay]: Thank you very much Mr. Chair. My name is Ali Seçkin Togay. I would like to focus on what my colleague Şebnem has mentioned in terms of withdrawal. Saying that this is identified in accordance with the rules of the court, instead of saying rules of the court, can we just say in terms of the procedure of each country? Because when we say rules of court,

this might change from one court to another it might not be unification in terms of implementation. It might lead to arbitrariness. But when we say rules as identified in the legislation of the countries. If we bring that addition, I think it will make more sense. This is what I believe.

- I think it is clear. I totally agree with you. Because, in our legislation, there is a clear provision. Under forced circumstances, judges will give the opportunity to withdraw the cases. That, if we did permissible reasons for withdrawal, then the process of withdrawal should be provided by the rules of court. In our jurisdiction, both in civil and criminal matters, there is a clear provision for withdrawal of cases. Even in some cases suo motu can withdraw the cases. So, it does not require to delete it, I think. This is my view.

- Well, I personally have no problems with leaving the words in because the rules of court are general enough to do it. And I'd rather leave it to that, but if you want to take out the words and examples given, I have no problem with them. But if you want to take out "such as serious illness or conflict of interest", would you please indicate by raising your hand? Oh, those against, those who want to leave it as it is. This is to vote on leaving as it is. Right, thank you.

- So, let's do it this way. Can we just say "identified by the rules indicated in the legislation"? I think it is understood as it is, but if we are to start, we can just add "rules identified in the legislation" what would you say Mr. Dowd?

- I don't think it needs to be in legislation. It would be rules, the rules can be disallowed if the Parliament doesn't like them but all rules such as that are exhibited may be disallowed by the Parliament. I think if we leave the words as it is that covers the situation.

- I think this "court rules" terminology is used when we are talking about the customary law. The court identifies its own rules. So, in the Anglo-Saxon system, this has a logic but in the common law system, it might be meaningful, but when we refer to our system, I understand your insistence that this should be included in the legislation, I understand this. So, saying "the court rules", it creates a meaning as if the court identifies its own rules for prosecution. In that case, it's meaningful for the Anglo-Saxon system but for us, as you have seen, this is very dangerous and very risky. Therefore, there is a difference in interpretation in two systems of law. Secondly, in the same sentence, we have this "such as" terminology, which is creating examples, but it doesn't limit it with these two cases. So, if we include "rightful" instead of "valid" reasons, "rightful reasons"

instead of “valid reasons” it will be more meaningful. I’m just a rapporteur here but I just wanted to take the floor to make some logic into the discussion.

- If you don’t like the word “valid”, could we put in the word “proper” reasons? Can I suggest, there is at the end, after “rules of court”, “or legislation”?

- Excuse me. Is that valid or rightful reasons, what is not used in our common law system. Valid reasons or proper reasons.

- Salih has explained it very clearly actually. When we are talking about the common law system, in those courts, there is a different situation. So, I think we need to put it as such. We should continue to have this phraseology here. Because it’s not by the decision of the court, but by rules of court. In some countries, the rules are identified by legislation in some countries it is identified by the custom, the common system so maybe we can add the rightful or suitable terminology but the other finds the average. So, this is a concept that could address everybody, that’s why it has been thought of this way. It would be covering it in this manner.

- So, you’re saying that if we say at the end, we add in the words “by legislation where appropriate”. “By rules of court or legislation where appropriate”.

- We are in Principle 6. In relation to Principle 6, do you have any addition of comments or remarks?

- Is there anything more on five, if not, six. If there’s nothing on six, do anything on seven? This is an important one.

- In relation to Principle 7, I would like to make an explanation here. Those people who are in detention or in custody, the courts should have the authority to make them appear before the relevant procedures. So, we are coming to Principle 7, between Principle 7 and the Implementation Measures 7, there is a contradiction. This is a contradiction. We’re talking about the judiciary, in our case, administrative authorities cannot conduct any detention, cannot conduct any custody, this is not in our legal system. It is under the control of the prosecution and the judge decides, and it’s not any law enforcement but the authorised law enforcement. So, the administration cannot intervene in the judicial proceedings. We would like to get your comments on that. So, the remaining part is also connecting to this. We are talking about, there’s a confusion in terms of the custody and the prison. In our case, I would like to see what is taken into consideration in terms of elaborating prison. Is after the judge decides for the deprivation of liberty of the individual, the individual is

deprived of his liberty in prison where he is in detention during prosecution so he's still innocent. So, the will of the judge sometimes intervenes in that, but the executive cannot intervene in the system at all. We need to elaborate on this, I think because the administration or executive concepts, in my opinion, should be deleted from this otherwise it might be in contradiction. It is in contradiction with the principle already, because the principle is like the Constitution. So, we are procreating an Implementation Measure against the main principle which is like our Constitution.

- Here what we mean by administrative is the police or the gendarmerie. That is the executive. Later on, after the police or the gendarmerie takes the person into custody, we have, many of us, worked as prosecutors. The moment they take the person into custody, they need to inform the public prosecutor. So, it is probably regulated as such in the other legislative and judicial systems. This is what I understand. So, I do believe it should be deleted because this is a contradiction between the terminologies.

- Sorry.

- I do agree with the proposal of the chairman here, because if we delete executive and just leave custody here, it will be much more suitable. And as Madame Şebnem has mentioned, what I understood from administration or executive here is the police or the gendarmerie. And I do believe that this terminology should be deleted from here.

- The terminology is designed to cover non-criminal procedures where people are held by refused bail. Because they're waiting a trial or they've been charged, that's not administrative detention, and that's not executive detention. This is solely aimed where the government puts somebody in jail without charging them. These terms do not mean to be arrested by the police, charged and bail refused. That's not what this terminology is aimed at. It's aimed at governments who put people in jail and don't bring them before the courts. That's the importance of this. This is the British and common law system of habeas corpus whereby the government has to have legal reasons for holding somebody and this gives to countries like Turkey the obligation of the courts to explain, to bring the administration to say, "Why is this person held?" and if not, the courts release them. This is a terribly important matter of principle because a lot of countries don't charge people or bring them, have them bail refuse. They are held in what's called administrative detention, which is in common law terms, unlawful.

- [Mr. Mete Duman]: My name is Mete Duman, I'm the Chairperson of the 3rd Civil Chamber of Court of Cassation. In the first item here, if we delete the administrative or executive, I think instead of that, we should add law enforcement here, instead of the administrative or executive, we should add law enforcement.

- But there's no problem with normal law enforcement because that comes before the court, anyway. This is where someone is held not in breach of law, where a government arrests somebody and put them in custody. That's the importance here. This is not normal law enforcement. This is where the government doesn't, I mean it is suggested that it happened here in Turkey.

- In Turkey, the government cannot detain or take into custody any person or conduct through any administrative proceeding. This can only be done by way of the law enforcement and if there is injustice there, they appear before court. So, when we say law enforcement, we will resolve the problem. This is up to your discussion of course and I would like to have a voting on this.

- I agree with this view. But I should say, "Establish a system of structured prison and police station". Most of the people are detained in the police station beyond the period for 24 hours. In England, it is 72 hours. In many countries, many jurisdictions, the judges may, at any time, they can visit the police station. If they found that somebody has been detained beyond the period of time as provided in the law, he may take action. "Establish a system of structured prison and police station visits by members of the judiciary to ensure the independent oversight of..." "the suggestion made by our judges, prosecutor judges, by law enforcing agencies.

- My name is Mustafa Şahin. I am the Head of the 1st Criminal Chamber. In terms of legal notions, I could not express any meaning here. I think it is presenting the law system of a state of emergency countries. I mean, what does it mean "administrative or executive detention"? I mean, if the administration or the executive can detain people, so there is no rule of law in that country. So, I believe these expressions should be taken out of this sentence and I also do not understand the inclusion of the word "prison". So, the text, the whole text of the first item is not in line with the understanding of rule of law or state where rule of law is applicable. I mean, certain state of emergency regimes have been experienced and they are also experienced from time to time in our countries, then that could happen maybe there, but in normal democratic regimes, this would not happen and I think the whole text should be removed.

- Do you mean 7.1 or 7.2 or both?

- Seven, one.

I think what is suggested for 7.1 is a hopeless situation in terms of administration. We have 13 million people waiting for their trials to be heard and it is hopeless to expect that our prisons would be visited one by one. Is there anyone to bring suggestion on the deletion of 7.1.

- Well, in our country, the administration cannot deprive people of their liberties. There's a general rule applied in our country, so this could be misunderstood in our countries, but for other countries, I'm now waiting for the comments of other participants, because habeas corpus has been, I mean, since 1215, we have this in our constitution. The administration cannot impose measures that deprive people of liberties. There could be certain practices in certain countries and this could also be made in our country, but when we put it in this way, certain people in the executive or in the administration may use this as an opportunity for misuse and we should not give them this opportunity and people would say the UN gave them this opportunity. We are all members of the judiciary we should not allow people to misuse this opportunity. Yes, it may happen from time to time in state of emergencies or in exceptional circumstances, but we've left them behind. So maybe we can take out the words administrative or executive, let's put in other concepts and let's proceed as follows. And also, prisons, or custodial places are visited, periodically by the prosecutors. I also worked as a prosecutor for 10 years, on day or night or on a weekly basis. We can be there, we have controls every 15 days and the inspectors check whether we carry out those controls or not. They ask me, "Why did you not check the police station custody cells or prisons?" So, the administration cannot actually intervene in what is going on in the prisons or in the custody holding house. So, it is under the prosecutors control anyway. If there are any other comments, maybe contributions, I would be pleased. Ms. Şebnem.

- Well, Mr. Chair, Turkey is a democratic country just as the countries of the other participants here. I think that, at the top we should maybe define a democratic country and then put in as sub-paragraph and then say, what would happen in anti-democratic situations. But if it is done in this way, then it would lead to great misunderstandings. There is either a translation mistake, I mean I understand, but the fact that the legal systems, the law systems are different, this may cause some misunderstandings as a consequence. But in Turkey, the administration in no way can detain an individual, cannot limit their liberties.

That is a rule, that is a general rule in our country. But maybe in implementations, there could be some differences, maybe in state of emergency there could be differences; but if you put it in this way, it could cause misunderstandings.

- So, exactly for that purpose, maybe at the beginning, we could say “unlawful practices”. Maybe we could bring in an explanation and elaborate more.

- Are there any other comments or views? I think we’re a little bit... Okay, Mr. Salih is going to take the floor.

- I apologise but I’ve just taken some notes, maybe just to bring some colour into the discussion. That’s why I’ve taken the floor. I apologise for interruption. One is preventive arrest or custody that would be a preventive custody practice or detention by the administration and this is one of the provisions which is frequently used by the way. For example, governors have this authority in the provincial administration law, and there’s also a law where we see these kind of provisions on preventing violence in sports or preventing violence in certain events. So the administration has this authority but I think the words for example, “prison” or “custodial cell”, these are different issues, but especially Ms. Şebnem or other Presidents of the chambers provided some rightful objections, but we could maybe say “as a rule, the decision to detain people could be rendered by the judiciary, but in the case of an arrest of the person by the administration, then the person should be immediately brought before a court or a judge”. I think that would be a better expression, but there’s a dangerous development occurring in the German law, especially in Europe, which is the “gefährder”, a word meaning if a person is dangerous to the society, there should be a preventive arrest of that person before the crime occurs and I think that is a dangerous concept for the habeas corpus principle as well, which would give even the administration to arrest people. That’s why I wanted to bring this explanation.

- I think it would be...

- Yes, that will be okay. I think that would be appropriate and all my colleagues were nodding, so they said okay, but if we take out the word “administrative or executive” then it’s okay.

- And also, if we take out the word “prison”. Because prison is different from custody, because when we say prison, then there is the will of the judge reflected in the implementation because our aim is to refer to unlawful deprivation of liberty, before the will of the judge is consulted. So, we need to take out the word “prison” as well.

- Could I go back to the beginning? Now, the principle itself, Principle 7 refers to some delays in the cases that is why I would like to bring your attention back to what I said at the beginning. Here we are talking about how there are some causes for delay in the deprivation of liberty for the court, but when we're looking at the Implementation Measures, it provides a reference to the administrative or executive rather than the court detention. Because delays in the proceedings are mentioned, but so there's a reference to the court stage. There's no reference to the administrative stage but if we were to consider it under the Implementation Measures we need to write only about this, only about the court proceedings. If that is not our consideration then we need to take out the word "prison" and only leave in "custody" meaning persons who are deprived of their liberty, their situation in the custody cells or eliminate any unlawful practices. So, the principle and the Implementation Measure are different from each other and I really thought about this long and hard in Ankara and there's a great contradiction here. Could we consider it once again?

- So, what are you proposing...

- I took the floor once again. The Principle 7, the totality says, in the judicial system, taking into consideration the prolongation of the prosecution, this means that the case is already referred to the judicial system to the court houses, but when we come to Implementation Measures, there is something else. Here, it says "establish a system of structured prison visits by members of the judiciary..." in the detention. That's actually not the real principle. In the principle, it says the court should not delay the procedures, and if we are taking the person into custody or detention by way of the court decision, the prosecution should continue in a fast manner. That is what the principal indicates. There is a contradiction there.

- That is why I was trying to indicate that there is a big contradiction amongst the terminology. I really worked hard on it when I was in Ankara but since I do not know English, I couldn't go into detail. If it had been in French, maybe I would have been able to contribute. So, the floor is yours Mr. Dowd.

- Thank you very much. Yes, we have resolved the matter. It seems as if we have one more article, but our time is up.





## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 1-8 of the Istanbul Declaration.)**

#### **Group B**

#### **MODERATORS:**

**Sandra OXNER**

Founding President, Commonwealth Judicial Education Institute,  
Canada

**Seracettin GÖKTAŞ**

President of 22nd Civil Chamber of the Court of Cassation, Turkey

---



11 October 2018



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

Well I think we'll have to get started, because we have a very short, attenuated period. We have only one hour to complete 8 resolutions. I'd like to begin by introducing our co-moderator, President, and I'm not going to say it right but, President Göktaş. I'm getting a little help here. And he has kindly agreed that I should start off and then we'll continue on. I'd like to start, if I may, by just reading a few notes, actually a few instructions that were given to our moderators' meeting yesterday. So, I'll just read them very quickly. Each principle in the Istanbul Declaration is followed by a brief commentary and Implementation Measure may supplement but not contradict what is stated in the commentary. And as we're all aware, the purpose today is to examine the Implementation Measures. Hopefully you'll agree with them, if not, you'll express your views of why they should be changed. The message here is that we cannot contradict the principle. Any Implementation Measures must be consistent with that. But we are able to add to the ones that are there or we could even try to vary them, if necessary. But since we only have an hour to debate, please get your thoughts very succinctly in mind so that our fine rapporteur over here will be able to note them down. I'd also ask you and I know that this has changes, but I'd ask you to give your name before you make a comment, which will greatly assist our rapporteur. We have a very distinguished group here today, Chief Justices and other distinguished jurists. I hope you will bear with us slight bit of informality in asking you to give your name. We, I think, recognise all of you as who you are, but just for certainty in the records, that would be helpful. The discussion, I'm reading from my notes of instructions here, is to draw on your knowledge and experience to improve, amend or add to the Implementation Measures. And I think that's enough instructions. Is there anything that you would like to say before we start? Or can we go right into the first?

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

Thank you very much, Mrs. Sandra Oxner, distinguished Chief Prosecutor, distinguished Chief Judges of High Courts. I would like to convey my best regards to each and every one of you and I would like to welcome you to this plenary session on which we are developing upon the transparency on the judicial process in the 4th International Summit of High Courts. I am privileged to be the moderator of this session together with Mrs. Sandra Oxner and we will discuss the Implementation Measures regarding the principles of the Istanbul

Declaration. As you know, the judicial institutions are given the authority for judiciary process by the public and it is necessary for the public, for the people to have trust in the judicial process and the premises. The public, granting the authority to the courts must have authority to supervisory power over the judiciary and therefore judiciary should have scrutiny in all legal and judiciary actions. From the beginning and till the end of judiciary process, transparent actions will facilitate the public supervisory and the judiciary actions will be qualified as ensured by the actions. And the quality will ensure trust, for sure. Transparency, of course, is not only related to the judiciary processes, all the factors that have an influence on judiciary are also within the scope of transparency, starting with the assignment of judges. And the legal cases should be distributed in a transparent manner. But unfortunately, we started with a little delay and we have reached an agreement with Mrs. Sandra to have just one hour, which means that we need to use that economically and we beg your pardon for time limitation but without taking any further of your time, I would like to give the floor to the first delegate to convey his or her opinion. That's all from my side. In advance, I would like to thank you very much for your contributions. So, we can start.

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

We only have 7 minutes for per item. If it is appropriate for you, I'm going to hold up something that you only have 1 minute left to speak. Are you agreeable to being dealt with so severely? Is that alright? Because, otherwise, we just won't get through this today. I don't think I need to read out the principles to you, you have them all written before. You're familiar with them or would you like them read out? Do you like them read out? All who wish them read out, please indicate. No? Fine. Who would like to... You would like them read out?

- Yes, let's read them. Very briefly, very shortly.

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

Judicial proceedings must, as a general rule, be conducted in public. But you have these to follow along with, just to emphasize them in your mind. The public access to court hearings is a fundamental requirement in a democratic society. The principle of public proceedings implies that citizens and media professionals should be allowed access to the court rooms in which judicial proceedings take place. The court should, therefore, ensure that the public and the media can attend

court proceedings. For this purpose, information regarding the time and venue of hearings should be made available to the public. Adequate facilities should also be provided for the attendance of the public, within reasonable limits, taking into account the potential interest in the case and the nature of the hearing. Where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings, the judge should ensure that the reasons for so doing, or the reasons, are published. Everyone clear on that? Is this possibly something we can agree on right away without discussion? Or is this a matter that needs discussion or clarification?

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

Well, I'll be like the auctioneer, going once, going twice... Anyone who wishes to speak to the matter? Alright then I take it that Principle 1 is agreed to. Thank you Chief Justice. I just met a few minutes ago but we are already a wonderful pair, we are doing great partnerships. He already agreed to be a patron of the Commonwealth Judicial Education Institute, so. I'm very grateful to have your help in so many matters. Principle 2, shall we read that one? Alright. "The judicial system should ensure easy access to court premises and to information". Some of these are quite motherhood, aren't they? I mean, you're not going to necessarily differ with a lot of these. Courthouses should, wherever possible, be located near public transportation hubs to ease the burden of travelling to and from the court. The judicial...

- Can I interrupt you? We're not looking at these. We're looking at the Implementation Measures.

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

Oh my goodness, I've been doing the wrong thing. One moment. Thank you so much. The what? Page thirteen of this little booklet. Isn't it wonderful to have him around?

- These are the ones that had to be discussed.

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

There. We are going back now to Number 1, all that good work that we did, we had, because of me, we have to do over again. So, the first principle,

which has been read, and this is on page 13 of the little booklet. Implementation Measures recommended here are: Establish procedures and provide appropriate facilities to ensure that court proceedings are open to the public and the media. Any discussion on that one? That's agreed to? The next one is: "Undertake measures to ensure there is sufficient...", yes?

- We may proceed.

- Thank you. Regarding the participation of the media in the courtroom, I'd like to make a notice. In order to allow the mass media in a courtroom, you have to balance between the interests of justice and the interests of the right of the defendant as well as the right of the witnesses. Also, the other person who may be affected by the mass media. For example, in case of the defendant is a child, the children, the juvenile. If the media is allowed to do anything the like with the children, it might affect the child's welfare. So, it seemed to me that, you have to come up with something that keeps balance between the media and the right of the individual that may be affected by the making of the news.

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

"Where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings, the judge should ensure that the reason for doing so are published". Do you think that takes that concern into account? Alright, so we can go along. So, we'll go on to the second one then. It's to undertake measures to ensure that there is sufficient seating space in courtrooms for the public to attend and witness judicial proceedings. Anyone with a comment on that? Everyone agreed?

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

My name is Seracettin Göktaş. I would like to make a contribution about Item No. 2 under Principle 1. Instead of sufficient seating, can we say appropriate seating? About the second paragraph under Principle 1 that says "undertake measures to ensure that there is sufficient seating".

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

You were making a comment.

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

Yes, yes. Instead of “sufficient seating”, can we maybe write “appropriate seating”? How about replacing “sufficient” with “appropriate” seating? Do you think “sufficient” is better than “appropriate”?

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

In English, I think it is. Because “appropriate” may mean bigger chairs for big people, little chairs... You know, it’ll be more than government can do to provide different kinds of seating. And how would you deem what was appropriate? I think we’re safer with “sufficient” if you agree. It’s your views, not mine, that are important. But “appropriate” has a feeling that it should be commensurate with something. As I understand the word.

- Sufficient is also correct. Because, what is possible to accommodate the number of public in the court. So, I think it is not necessary to amend.

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

Will you accept sufficient? You’re content to leave it as “sufficient”?

- First of all, I would like to thank everyone from the Sixth Criminal Chamber of the Court of Cassation and I agree with Madame Moderator. In our local courts, the capacities can vary compared to central courthouses and the seating arrangement can change from one court premise to another. And sufficient amount of seating should be arranged in every court room depending on the nature of the proceedings and depending on the nature of the court premises. In large, high-profile cases, larger seat amounts are provided, and I also agree with Madame Moderator to keep “sufficient” as it is, rather than replacing it.

- [Mr. Haydar Metiner]: I also convey my best regards to everyone. My name is Haydar Metiner from the Eight Criminal Chamber of Court of Cassation. I come from the Head of the Chamber. Sufficiency is a numerical term. However, appropriateness is mostly referring to the aura, the environment. Therefore, depending on the sufficient number of seats, we are referring to sufficient number of seats that will be enough to accompany all the public members or press members who will be present listening to the hearings. So, I think “sufficient” is okay.

- Thank you, Sandra. I think you have to keep “sufficient seating”, because “sufficient” is more legal than “appropriate”. This is my opinion here, “sufficient” is legally more than “appropriate”. Thank you.

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

Thank you, Chief Justice. Well I have to tell us that we are already 9 minutes behind. So, we’re going to have to try to go through these a little more quickly. Number three is to establish procedures to ensure that the public is well-informed in advance of the time and venue of court hearings. Any discussion on that one? None? Is that agreed? Okay. “Provide access and appropriate facilities...” there is appropriate, “...appropriate facilities for the attendance of members of the media”. Any comment? Agreed. “Establish uniform procedures requiring...”

- This emphasizes, I think, that’s open session for the media.

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

“Provide access and appropriate facilities for the attendance of members of the media” and you wish to add “at open session”?

- Yes, open session. This is, media means open session. Because the media attends.. It’s a court seat...

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

How would you...

- I agree, I agree with this.

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

You wish to agree with it.

- Yes, yes.

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

Thank you, that’s agreed. And the fifth one is “Establish uniform procedures

requiring judges to deliver their judgments in a timely and open manner”. No one disagrees with that? Delay in judgments is the major problem in all Commonwealth jurisdictions. I don’t know about the non-commonwealth ones. So, let’s go to Principle 2. Principle 2 is “Physical access to justice being an essential component in promoting public trust and confidence in the administration of justice, the judiciary then should...”, One: “Wherever possible, and within the limits of resources, ensure that court facilities are located near public transportation hubs”. That agreeable? “Support innovations in delivering court services such as mobile courts or night court programmes, telephone or video-conferencing, or the conducting of pre-trial hearings in online chat rooms, consideration being given to persons who are physically unable to travel to attend court proceedings or access court programs”. No comments? Agreed. “Install clear and easily identifiable signage providing directions to offices within the facility”. Agreed? “Establish information counters or customer service desks at the court entrance to provide information to court users”. Agreed? These are, as I say, pretty motherhood. “Publicly and clearly post, schedules of hearing and proceedings and courtrooms in the courthouse”. “Employ and retain court personnel who can speak the language of court users or, in the alternative, can readily obtain the assistance of interpreters”. “Provide comfortable waiting areas for court users, including areas that offer appropriate security to witnesses, if needed”. Okay? “Provide suitable facilities for the special needs of court users, such as children, victims of sexual violence or domestic violence, and special-needs users”. I’m afraid this is a little boring, but I don’t know any other way to do it. “Maintain a safe, clean, convenient and user-friendly court premises”. “Create a resource centre to provide single-window service delivery”. What does that mean? Create a resource centre to provide... What is it?

- Well you’re asked to elaborate on “single-window” but we also did not understand what it is. What is meant by “single-window”? And in Turkish translation, it’s like “single stop / one stop”.

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

I think it refers to public buildings like post offices. And they have a window and you have to line up with that window. But I don’t know why you couldn’t have a double window. Create a resource centre to provide single-window service... I’ll make a note here to please define “single-window”. Will that do? Define “single-window”. Because, we all have a different view, perhaps. I’ve never heard it used before. So, thank you.

- It means to short the services. To be short. Not to be long. One single service. As short, to cut it short.

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

Oh, and you know Chief Justice...

- Give more facilities.

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

And you know, Chief Justice, it may also be a quality issue. Because maybe you stand one after the other.

- Yes, yes.

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

Important people don't go first. It's the...

- In one place, in one place. All of them, one place.

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

They could still put something in I think, to fix it up.

- It's like one-stop service.

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

Yes, could be. "Publish in simple, clear and accessible formats user guides, posters and other informational material". Alright? "Institute and mandate management training programs for judicial officers and court personnel". Hard to argue with any of these. "Establish a public website containing information useful to court users such as court sitting times, courthouse guides and relevant case information". Can anyone think of another way to do this? This is so boring, reading through them. Is it alright? Your agreement on these is very important. Without your agreement, they can't be adopted. So, I'm grateful to you for staying with it. Alright, Principle 3. How's the time? We have 8 minutes for a principle. Well. Principle 3. The principle is public and litigant understanding

of the judicial process being an essential component of judicial transparency, accountability and the fair administration of justice, the judiciary should develop and implement standard, user-friendly forms and instructions. Any difference? Okay. “Clearly and accurately...”

- What do you mean, excuse me, what do you mean “user-friendly form”?

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

User-friendly forms, I think that word is used to indicate “easy”. Easy to use. Not too complicated for the average person on the street. Forms should not have to have a PhD to understand that the working person would understand. Do you think that’s what it is? Yes. “Clearly and accurately publish information on matters such as filing fees, court procedures and hearing schedules; and if resources permit, disseminate such information via the Internet or automated telephone systems”. Is that alright? “Implement systems that enable court users to download forms from the Internet and make online payments of court fees”. “Implement systems that enable litigants and the public to obtain case information, including judgments, on a website”. Alright? “Establish or encourage the establishment of an office of Public Defender whose intervention may be sought in respect of any criminal matter”. Is that alright? “Require an attorney to provide pro bono services to a litigant who is unable to afford legal representation in court”.

- “Pro bono” should be replaced by “free services”. Because “pro bono” is not known to all.

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

I think it’s an Americanism. Yes, that’s right.

- “Pro bono” is also used by us. But I think many people will not understand it.

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

Lawyer represent someone?

- Yes, yes.

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

So, do we have “Require an attorney”? Should it be request or require?

- To provide pro bono services... Free, free, free. Free service.

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

Pro bono, just free. Is that agreeable? Alright. “Encourage the establishment of Legal Aid Clinics to provide legal services to indigent people”. “Implement a multi-door courthouse approach to dispute resolution that offers a variety of dispute resolution processes, including case evaluation, mediation, arbitration, conciliation and complex case management. These services should be provided by skilled, qualified, experienced mediators, case evaluators and arbitrators, and made available before the filing of a law suit or at any other stage of litigation”. That okay? “Establish an amicable dispute resolution centre that offers litigants a cost- effective alternative to the conventional means of resolving civil disputes, especially in matters such as inheritance, maintenance, custody and matrimonial disputes”. “Enable parties to present evidence through electronic tools”. “Permit, where circumstances warrant, an appropriate non-qualified person to assist a party in court”. Okay? We’ve done the...

- [Mr. Şakir Aktı]: Thank you very much. My name is Şakir Aktı from Fifth Criminal Chamber of the Court of Cassation. What does it mean “appropriate non-qualified person”? Can you elaborate on that? “Appropriate non-qualified person”, eleventh paragraph.

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

Yes, from my own court experience I can. I assume that’s what they mean. A major issue I think in all our jurisdictions is the unrepresented litigant. And if there is a teacher with them, who might help them, or a relative who might be able to help them. Not legally trained, I think non-qualified means non-legally trained. Just someone superior in sophistication to the court premises. But not a lawyer. Does anyone differ with that? Do you think I’ve gotten that right? Yes, I guess.

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

In our legislation as well, in the Law on Cadastre, it is allowed for a relative

or a spouse to litigate. I'm not a criminal judge but arrest, for example, can be proceeded with the non-qualified aids to the litigant as far as I know. So, non-qualified persons refer to such people. Yes, these people are not jurists, they are not qualified by legal education.

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

We're doing well.

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

Sorry, I said we're doing very well. We've made up our lost time. Principle 4: "The judiciary should provide court-users with translation and interpretation facilities, free of charge". "The ability to follow and understand the judicial proceedings to which a litigant is involved being an essential component of transparency of the judicial process and trust in the fairness of judicial decisions, the judiciary should...", One: "Ensure that the parties before the court understand the language in which the proceedings will be conducted". I'm sure there is no issue there. "Provide the free assistance of an interpreter to a court user or a witness if he or she cannot understand or speak the language in which the proceedings will be conducted in court". Agreed? Yes.

- Is this principle only related to people who speak another language? Because I think it's also important that the judgments, the way the judges speak is in an accessible and comprehensible language for people, even if they speak the same language as the judge. You understand what I mean? We need to have comprehensible way of speaking, even if the people who appear in court speak the same language. So, not only for those who speak another language.

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

Another language must be considered. Is that what you're saying? That, people who appear in courts who have less skill in their own language, should also be accommodated by the judge taking care that they understand the proceedings.

- But in general, even if people speak well, they have to understand what the judge says. Am I clear enough?

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

No, you're right. I mean, one of the problems, and I think the Chief Justice has just referred to it, is some judges still like to use Latin terms.

- Yes, yes.

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

And the Chief Justice has cleaned up our act here by taking it out, but I think that's what you're thinking of. It must be comprehensible.

- Yes, yes.

- Suppose that his language, litigant's language is not his mother tongue. Therefore, interpretation should be available in the court. To translate from his language to the court. I think so.

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

Provide an interpreter. Yes, I think that's covered here. Let me just read it to you. "Provide the free assistance of an interpreter...". Thank you. Okay, so, you know, Principle 5: "The judiciary should ensure transparency in the assignment of cases". Alright. "Public confidence in the independence and impartiality of the judge being an essential component in securing and maintaining confidence in the administration..."

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

And it's paragraph 1. "Establish by rules of court, a predetermined objective and transparent system for allocating and assigning cases to judges of each court. Such system may be based upon alphabetical or chronological order or other random selection process that ensures objectivity in case assignments". Is that agreeable to everyone? Alright. "Ensure that a case is not withdrawn from a judge without valid reasons, such as serious illness or conflict of interest. Permissible reasons for withdrawal, and the procedure for withdrawal, should be provided by rules of court". That okay? "Establish a system requiring..."

- [Mr. Mehmet Çamur]: Mehmet Çamur, Ninth Civil Chamber of the Court of Cassation. In the previous article that you have mentioned, instead of the “rules of the court”, can we say “due to”... “Permissible reasons for withdrawal, and the procedure for withdrawal, should be provided by rules of court”, instead of “rules of court”, can we say “by law” which will refer to whatever is stipulated in the law? Because every judge might have different tradition or different proceeding so instead of rules of court, if we say “by law”, which means stipulated by law or according to law, then it will be a more general term that will be binding for all courts in Turkey.

- When we say “rules of court”, of course it refers to either the law or a legal regulation and we need to consider that these texts, this wording is not specific to one single country. It can be adapted according to specific needs of one single country but what matters here is to have a rule in the country. As long as we say rule here, it can be adapted according to whatever rule is present within the country.

- Well, the rules of court is not referring to law. I understand something different here. Because, in all countries, in the world, such rules are regulated by law and published by law. So, rules of court, I think, refer to the rules that are implemented by the judge in any court. So, I think legal arrangements or legal regulations should be stipulated here, otherwise any rule can be identified by any judge in any court. And there are different judges, different courts. Therefore, instead of “rules of court”, maybe we are not referring to the legal infrastructure we have in our country. This is a little vague. This is ambiguous, in my opinion.

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

I think, Judge, that, what you say is right, because I believe “rules of court”, that’s a term. That’s used in common law countries to describe rules made by all the judges in bank that govern procedure. I’m getting a nod here from several common law countries Chief Justices. So, I think what you’re saying is right. Maybe we should suggest they make it wider than that. For those countries that don’t have...

- May I suggest? From Thailand.

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

Yes.

- “Provided by law or rule of court”

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

Ah, the master.

- This should be changed by the word “law”. Provided by law.

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

Because that would include rules of court.

- Everything.

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

Alright.

- Provided by law. Because, without law, cases can all be withdrawn from one court from another court. There must be specific law to that effect.

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

Well, one does include the other, yours made it more... I’ll leave it to... I’ll put both of them forward as suggestions and let the real experts decide. May I ask you? Are you getting people’s names? Because they are not giving them always. Alright, thank you. Alright, now. Number three. “Establish a system requiring a judge, at the time of his or her initial appointment, and thereafter annually, to declare to the court any affiliations, outside activities, and other non-financial interests, and identify any conflicts or potential conflicts of interest, for the purpose of assisting in, and facilitating, the allocation and assignment of cases”. Any problem? No? Okay. “Ensure that a judge discloses to the parties to a case and their legal representatives any real or potential conflicts of interest that might lead a reasonable person to question the judge’s ability to be fair and objective in the matter before the court, and thereby provide the parties and their legal representatives an opportunity to request that the judge recuses himself or herself from the proceedings”. Agreeable? Good. We’re doing very well. We’re on Principle 6 and what’s the time? Two forty. We’re going to make it. “The

judiciary should ensure transparency in the delivery of justice. The appearance and the actuality of transparency being essential in the performance of judicial functions and in the delivery of justice, the judiciary should...”, One: “Require a judge to state the facts, law and legal reasoning that justifies the judge’s decision in his or her judgment”. Yes, Madame. Morocco.

- [Ms. Malika Ibnou Zahir]: Yes, I’m from Morocco. Malika Ibnou Zahir, I’m the President of the First Social Room at the High Supreme Court. I have bad English but I’m going to try to give my idea about that principle. Certainly, if judge, when he wants to sit in a case, he must send his judge in law and legal. Yes, when he sets a decision, he must state as argument, in law and legal, legal and law fact in his decision. It’s normally... It’s not need to write it here. It’s normal, that’s a judge, must send the decision but by giving us fact by law and legal. It’s normal. I see that it’s no need to this...

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

You think it’s already done.

- [Ms. Malika Ibnou Zahir]: Yes.

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

I see. I suppose...

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

I suppose they’ve put it in just to clarify for any place that doesn’t do it, that it should be done. This isn’t suggesting that it’s not done. It’s suggesting that it should be a common matter that it’s done.

- [Ms. Malika Ibnou Zahir]: The question I ask: How I am going to sit at the judge when he’s sent a decision, he is not taking the law and legal thing as argument in his decision? When I ask him. Yes, I’m right to send the decision.

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

I’m afraid I’m not getting it. Chief Justice, I think the Chief Justice of Sudan understands better than I do.

- Yes, I agree. Because it's simple as that. Any judgment, without reasoning, legal reasoning will be null and void.

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

That's right. But doesn't it say that?

- Absolutely.

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

But she's saying that it should stay in. You don't want to make changes.

- No, no, it is just to emphasize the concept.

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

You're just supporting it?

- Yes supporting.

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

Madame judge, you wish it to stay in, do you?

- What's referred here, it is very important.

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

No, I'm not sure that I'm getting this properly. Do you wish to change this principle?

- [Ms. Malika Ibnou Zahir]: Yes...

- She said no need for...

- [Ms. Malika Ibnou Zahir]: I said that no need to write it, because in a reality, the judge must send a decision in legal and law decision.

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

Yes, I see the difficulty. There is a change there, between the courts of cassation and common law courts. So, I think this may be speaking to common law courts. So, but I think we have to leave it in. So that it would cover all jurisdictions. The Chief Justice would insist that all his judges give adequate reasons and their reasoning on their cases. But it may have to be done by law, whereas this will cover the common law and the... I think, we understand that you don't need it, but we do. Let's go to Number 2. "Reorganize the Registry to enable easy access to court records and quick retrieval of information". I don't think anyone would object to that. "Subject to privacy laws, establish systems that provide public access to information pertaining to judicial proceedings, both pending and concluded, including reasoned judgments, pleadings, motions and evidence, other than affidavits and like evidentiary documents that have not yet been admitted in evidence". Is that okay? Okay. "Regularly publish information regarding court caseload statistics and case clearance rates". That okay? "Ensure that information on budget-related data, such as collection of court fees and the use of budgetary allocations, are publicly available".

- [Ms. Ria Mortier]: Sorry, I'm Ria Mortier from Belgium. I want to make a comment on point number one. Because, I think it's necessary to have that implementation of the principle, but I think in order to be transparent, it should be emphasized that the requirement that a judge states the facts, law and legal reasoning that it's been done in a comprehensible way. I think that's the way that the judgment is transparent. It's not because of legal rule or constitutional rule that we have to do it as judges but it's in order to be transparent. The statement of the facts, the law and the legal reasoning should be done in a comprehensible, accessible language that people understand what's in the judgment. I think that's what is meant.

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

Would that be alright to add "Require judge to state, in a comprehensible language..." is that what you're suggesting, that we add that?

- [Ms. Ria Mortier]: Yes, that's what I'm suggesting.

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

Is that agreeable to everybody? Fine? We've taken that. You have that? It's our first change, we are doing very well. There. Principle 7. Was there another issue? No. Principle 7: "The judiciary should have supervisory powers over executive detention". Anyone want to add anything here? "The unlawful or inhumane incarceration of persons being contrary to the rule of law, the fair and open administration of justice, and the principle of due process of law, the judiciary should establish a system of structured prison visits by members of the judiciary to ensure the independent oversight of administrative or executive detention". Is that alright? Agreed. "Require that persons held in administrative or executive detention be brought before the court in a timely manner, and that the authorities be required to disclose to the court the reasons and the legal justification for such detention". That's pretty motherhood. "Order that persons held in administrative or executive detention be released if the authorities fail to provide adequate factual and legal justification for each detention".

- [Mr. Erkan Öztürk]: The article says, "...if the authorities fail to provide adequate factual and legal justification for such detention". Well, who is the one to make the decision for detention? It's an independent authority. So, the decision to detention, well it says, "the justification of such a decision". Here it says the court will have them released. This would cause a chaos in the legal system. So, if we have administrative authorities making such decisions, this will entail really dangerous results. I believe that this piece of text must be omitted.

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

It says administrative or executive detention. Is that the feeling you have from this? Who are the authorities?

- I'd like to ask a question. Do the police detain people? Yes of course, based on the orders by the prosecutor, of course. And also, if they were caught red handed, also.

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

Mehmet Akarca, Prosecutor. What's meant here is mainly for immigrants...

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

So, what's meant here is, for immigrants and for refugees or for temporarily detained people, people who are detained by administrative authorities. If there

are not enough justifications again by the administrative authorities, they can be released. They will be released. Based on our legislation in Turkey, this is something that can even go to the Constitutional Court. You know, deportation of a person or the release of a person, it is already supervised in an administrative or legal sense.

- Thank you very much for your explanations. It's very correct. But if you write it in such a general way, if the wording is so general, it doesn't work. We need to either limit the scope or else we need to omit it all together in my opinion.

- [Mr. Syed Mahmud Hossain]: Justice Syed Mahmud Hossain, Chief Justice of Bangladesh. I would like to say that, authorities, the appropriate order. Detention may be given by many organisations. Detention may be given by the police, by the executive officers. So, proper authorities, the appropriate term and there is no need to change it. Because, there are several authorities to pass order of detention. So, we cannot just identify one. There are maybe other authorities also.

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

- Detaining authorities, that can be done.

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

Would that help you in your understanding? And then we come to you now. Yes, please go ahead.

- In my opinion, the relevant authorities... If we use judiciary authorities it will work. Well, in the Turkish translation it says "relevant authorities". We need to change the "relevant authorities" to "judicial authorities" and then it will be solved.

- I'd like to read the text again. The text says: Jurisdiction... The judiciary should... If, you know, the authorities fail to provide factual and legal justification. It says the judiciary should order... There is no problem in this regard. There is no problem if that's the way we should understand. The subject of the sentence on top it says "jurisdiction". If you read carefully, you will understand. Madame, the main problem is that the subject of the sentence is on top and then the verb is

at the very end. So, there was a confusion, because of the length of the text as to who would, you know, make the decision to release.

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

Thank you for raising it so that we clarified it. We might make a note that this could possibly be misinterpreted and that they should look at the exact wording. But on the other hand, we're prepared to accept it as it is.

- Yes, yes.

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

Now, our last one and then tea break. You've done awfully well and I'm most grateful to you. I saw no way at the beginning we were going to get through eight of these. "The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published". And the little comment is "Consistency in the interpretation of the law and legal principles being an essential component in the fair administration of justice, the judiciary should...", Number One: "Establish procedures that enable court users to access relevant information, including new laws and the decisions of superior and appellate courts with greater ease, including by publishing such material on official websites". Anyone differ from that? It's okay. "Establish procedures for ensuring that judgments of superior and appellate courts are regularly published". Okay? "Establish a publicly available data base that stores the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals". Is that alright? I clap you. We've done it. And I think now, if I may ask my co-chair who will carry on, we can go to tea break? It's time for tea break? What's this?

- Let's break for tea, yes.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 1-8 of the İstanbul Declaration.)**

#### **Group C**

#### **MODERATORS:**

##### **Kashim ZANNAH**

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

##### **Vuslat DİRİM**

President of 13th Criminal Chamber of the Court of Cassation,  
Turkey

---



11 October 2018



- I'd like to open the session. First, we should start with a quick round of introductions starting from the left side. Could you please introduce yourself? Over to you Burhan Bey.

- [Mr. Burhan Karaloğlu]: My name is Burhan Karaloğlu from the Court of Cassation of the Republic of Turkey and Head of Criminal Chamber.

- [Mr. Hüseyin Eken]: Hi, my name is Hüseyin Eken from Turkish Court of Cassation, Eleventh Criminal Chamber. I'm the President of the Chamber. Thank you.

- [Mr. Ahmet Özgan]: My name is Ahmet Özgan from Turkish Court of Cassation, Eleventh Civil Chamber, President. I wish successful discussions.

- [Mr. Mumin Karimoviç Astanov]: My name is Mumin Karimoviç from Uzbekistan Republic.

- [Mr. Myint Thein]: Hello. I'm Mr. Myint Thein. High Court Judge of the Republic of the Union of Myanmar. I'm very pleased.

- [Mr. Vuslat Dirim]: My name is Vuslat Dirim from the Court of Cassation, Thirteenth Criminal Chamber. Head of Chamber. Thank you.

- [Ms. Şükriye Ünal]: Şükriye Ünal from the Court of Cassation, Thirteenth Criminal Chamber. Rapporteur Judge.

- [Mr. Kashim Zannah]: I'm Kashim Zannah from Nigeria. On the invitation of UNDP. Yes, I am Kashim Zannah from Nigeria.

- He has been involved since the beginning of the project.

[Ms. Hande Ulutürk]: Good afternoon, my name is Hande Ulutürk. I'm an academic. In this session, I'm going to be the reporter taking notes.

- [Mr. Jean Daoud Fahed]: My name is Jean Fahed. I'm the first President of the Court of Cassation of Lebanon.

- [Mr. Richard G. Stearns] .... United States Federal Judge representing our committee on international judiciary relations.

- [Mr. Maikel Jose Moreno Perez]: My name is Maikel Jose Moreno Perez from Venezuela Bolivar Republic. President of the High Court and also Head of Criminal Chamber.

- [Mr. Ayhan Tuncal]: Ayhan Tuncal. Twelfth Civil Chamber of the Court of Cassation, President. Thank you.

- [Mr. Halil Özdemir]: Halil Özdemir from Court of Cassation of the Republic of Turkey. Tenth Civil Chamber, President. I wish fruitful discussions. Thank you.

- [Mr. Hüsnü Uğurlu]: Hüsnü Uğurlu from Turkish Court of Cassation, Tenth Criminal Chamber, President. I wish fruitful discussions. Thank you.

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

So, having now known ourselves, may I briefly introduce the ground rules for discussion? The plenary session this morning has already given us a good background. The Istanbul Declaration, the principles themselves have been adopted already. And now we met in Ankara to come up with Implementation Measures. It is now, these Implementation Measures that we are going to look at. Counting on your vast experiences and knowledge to now improve on these Implementation Measures. Amend them or suggest deletions to them. That's the purpose of gathering in this group now. So, we will, as much as possible, try to confine ourselves to the Implementation Measures. These have been sent already to all participants. It is assumed that you've read them and are already familiar. But, be that as it may, a summary of it appears on top of these pamphlets and you can look at them. And it's also projected on the screen. So that should be a good enough background for our discussions. I will now pass on to my co-moderator who will speak in Turkish and please let's be cautious of the fact that we need to wrap up at least eight of these principles in this session. And then go for tea break. Thank you.

- Thank you, Mr. Zannah. We have our representative from Georgia. Could you please briefly introduce yourself to participants, please?

- Okay. I want to thank you host organisations and host persons for so beautiful meeting and having possibility to discuss and have part in this interesting meeting. And, what can I say? I, just, very briefly, will say about the practice in this area, in my country, in Georgia. So, as you know...

- Later, later, not now. Not now. Because we're going to discuss the Implementation Measures soon, not now. In the morning, in the plenary, in the opening remarks, it was already highlighted that, Istanbul Declaration was acknowledged and adopted by thirty countries from five continents. It is the outcome of a very long process. So, High Courts from thirty countries in five continents have different judicial systems, different cultures, socio-economic situations. As a result of very intensive efforts, draft Implementation Measures

were developed. But it may not always be possible to harmonise them with the domestic law. Because what may exist in one system may not be available in another system. For that reason, we should not get stuck with the terms, with the words. What is important is to find a common ground and to develop a certain standard. There is no doubt that we may amend the Implementation Measures as highlighted before. In the first part of this session, we're going to discuss principles from one to eight, including eight. We can get your suggestions for each of these principles if you have any. Of course, the booklet that you have in front of you have Turkish and English version of the Implementation Measures. We will just read the principle and we'll give the floor to those who want to speak about the Implementation Measures related to that principle. Then proceed with the other principles to finalise our discussions in this part. If you allow me, I'm going to read the first principle and I will give the floor to you, if you have any views about this principle. One. Starting from page 13 on the Turkish version. "Judicial proceedings must, as a general rule, be conducted in public". There are five draft Implementation Measures provided for under this principle. So, please raise your hands if you'd like to speak about this principle.

- I think we're on now. I have no quarrel with the principle itself and I believe that this principle of open court proceedings is central to the entire undertaking. There is, however, a recognised exception for times in which court proceedings may be closed by the judge. I think the phrase as provided by the law is too general. I think there should be an Implementation Measure requiring statutory or legislative authority for closing the court room that should specifically define those instances when it's appropriate for a judge to do so. That's my comment.

- Please explain further. Your actual suggestion is that the measures should include such specific instances or that the measures should ask for laws to establish this?

- I think that the law should define for the judge when it is appropriate. Under US law for example, the legislation says a judge may only close the court proceeding, if it involves a sex offense against a minor child, if it involves what we call a grand jury matter which is an investigative matter which is in secret or involves a matter of national security. That's it. There is no other authority.

- So, what is the suggestion to the Implementation Measure?

- It's obviously not the one copy US law, but rather, there should be a sixth principle where there should be a legislative enactment more specifically defining when it is appropriate for the judge to close the court room. The way it's

framed now, it's just whatever the judge thinks the law requires. Not what the law actually requires.

- So, I think his suggestion is clear. Any other comments on that? There should be a sixth principle, sixth Implementation Measure now to be suggested. Requiring laws to specifically state where judges may exclude the public or where proceedings may be held in camera. Any views on that? If not, we will take as one of the suggestions and move on. Yes, go ahead, judge.

- So, I think it's not against the principles of this declaration because I think, in any country, the law has some proceedings which give possibility to do that, to close one separate case by the judge when it is some specific situation. Maybe some national security or some personality things or something like that. The main is that it should be regulated by the law.

- Our concern now here is what should the Implementation Measures contain? And he has clarified that number six, specifically because we have five here. We should have a number six, requiring that laws should be made for the instances where proceedings may be held in camera. And it should not be left to the judge's discretion. That's the point you're making. So, the point is, do we agree to this or we don't agree? Any other suggestions in the light of the... Yes please.

- In our system, there are some exceptions that have to be regulated by law. But, the judge may decide on confidentiality for some exceptional cases that are stipulated in the law. So, it is appropriate for us, I mean the suggestion is appropriate for us. Ahmet Bey would like to speak as well.

- [00:16:05] [Mr. Ahmet Özgün]: First of all, in terms of the discussion, I would like to underline one fact. I think you talked about the first principle?

- No, we are just talking about the Implementation Measures. "Judicial proceedings must, as a general rule, be conducted in public". This is the main principle. There is no mistake in the expression. It says as a general rule. If we're going to discuss what amendments we can introduce to the Implementation Measures, we can make an additional statement to the first Implementation Measure. Stating that "apart from the exceptions laid down in the laws". Of course, there are some exceptions. There must be exceptions which should be stipulated in the law. Therefore, I agree with the suggestion but not as a separate Implementation Measure, but we can add it to the first Implementation Measure, adding "apart from the exceptions laid down in the law".

- That's why I asked quite a few times that you clarify so that we understand exactly the proposal being made.

- No objection to the suggestions.

- Good. So, what would that be then? What would be the draft Implementation Measure number six? Can you word it for us? And then we agree on and present to plenary. Okay, meanwhile, you go ahead.

- I agree with the first Implementation Measure but I'd like to talk about our practice in Venezuela. Judicial proceedings must be conducted in public according to this principle. But Georgia and United States representatives underlined it, in the law, exceptions should be indicated in the law. In Venezuela, we have a similar practice. So, any exceptions include crimes committed against minors and national interests, cases related to national interest, exceptions may be laid down. I mean the judicial proceedings may be closed.

- I think we reached an agreement at this point. Cases related to minors and public safety and security may be exceptions. And confidential proceeding shall be apprehensible as an Implementation Measure. This can be added as an Implementation Measure.

- And that any exception to the general rule that is of the principle be clearly defined in the law. In other words, it's not the judge's discretion. Right? It's agreed? Are we agreed on this? Good. Then we can... Any other on this?

- Only by the law or a public order for example. Do you mean law in a general term, general meaning? Because, sometimes we are in front of a public order. Do you understand? Or security within the room. Should we go back to the law to see if the law has provided the case of security, the case of public order? Mr. President, Your Honour.

- That would seem to fall under the subsequent principle. That is the judge's authority to control order and decorum in the court room. I think it's a somewhat different issue than closing the proceeding to the public as a default principle.

- Okay. Any other suggestions?

- So, any other suggestions? Remember we are to close 3 o'clock and we have seven more principles to go through. So, any other suggestion on this one? If not, then we'll go to the second one. Any other suggestion? Yes, go ahead.

- In the third principle, the public shall be informed about the time and place of the proceedings. It says the public, not the parties. For that reason, as

the judiciary, for informing the public about every hearing or every proceeding, do we have any concrete practice? I really wonder how this Implementation Measure no. 3 can be implemented.

- You're asking, you need a clarification, right?

- Yes. The public, parties to the case, maybe add it as a phrase or should we establish procedures to ensure the public to have information in advance about all the hearings? Because, thousands of hearings in a day in Istanbul, so how can we ensure that? Yes, we indicate this as an Implementation Measure but how can we ensure the relevant parties to be well-informed about the hearings? But if we're going to take measures in order to ensure the entire public in the country to be informed, it will be difficult.

- This is not applicable to all systems, not applicable to all cases. This may be the hearings where the public is interested. This is a kind of obligation to inform the public about the cases that they have interest in. This is not relevant to all hearings, all cases. This is not specific to a certain country, there are 30 countries. Maybe after the adoption by the United Nations Security Council, maybe 190 countries will implement this principle or measure. Therefore, that is not so important, and it does not cover all cases, all hearings.

- Does that satisfy you, the answer? Yes, any other on this same principle? Principle 1? Go ahead please.

- I'm sorry, I agree with Mr. Ahmet Özgan. It says the public. So, it brings an obligation on us. I mean, it may imply that we have to well-inform the entire public about all hearings. But we're already sending the information to the relevant parties. But this statement in this Implementation Measure no. 3 may be incorporated in the next statement. I mean, if they are interested, we can provide information. Informing the public about the time and venue of court hearings and establishing procedures to ensure that... can be done through providing information channels. I think it's not suitable to have this statement, this very wide and broad statement.

- As a matter of the fact that we are still on the first principle. We have eight to go through. That's why I asked if we're all satisfied we'll move ahead. If I knew, we weren't all satisfied, I would have gone further to explain on what... Yes, explain. And that is this. It's not that you must ensure that every case going in court, every citizen in the country must be served a notice telling him a case is going on. It's just reasonable, if there is a court notice board, where you have your court list for the week and it's published, it's placed in there, that's sufficient for

the general public. So that any person in the general public who has an interest to know ahead of time and attend the court. That's all.

- We're writing the sentence, instead of saying "...is well-informed", can "have access". It's not he is informed, he has access. That's it. In Mexico City for example, each week they publish ahead a booklet where anyone would like to know what's going on in hearing in the courts of Mexico City. They can buy the booklet or we can put it in e-mail electronic system, I don't know. We should, we have access rather than we are well-informed.

- Okay. So, what he is suggesting is, in order to make the intention clear, may we say "Establish procedures to ensure that the public has access to information in advance of the time and venue of hearings". Is that okay? Please then let's progress. Right? Okay, good.

- Then, we proceed to Principle 2 and Implementation Measures under Principle 2. I will remind you the Principle 2 once again. The judicial system should ensure easy access to court premises and to information. Under this scope, there are thirteen Implementation Measures. So, do you have any views about these Implementation Measures? I think you don't have any suggestions or criticism about the Implementation Measures. Ahmet Özgün just asked about the budget for it. So, Mr. Moderator, if you allow us, let's proceed with Principle 3.

- We have accepted the measures under Principle 2. Let's proceed to 3 then. Yes, go ahead.

- The last one, the point it is, "Create a resource centre to provide single-window service delivery". For example, in Georgia, we have single-window service but why to bind the bodies to get access to information by this way?

- Some of these Implementation Measures as you can see, are aspirational in nature.

- Sorry?

- It's aspirational, they are not really prescriptive.

- Okay.

- The entire idea is, you cannot have Implementation Measures to bring about the principle without sometimes pointing at what could possibly be done to bring it about. There is nothing like says courts without that should be punished or they are not after this. We should clearly understand that some of these measures are aspirational.

- Okay.

- Let's, any other, or we move on to three then? Or we've already moved on to three actually?

- Yes, we started. "The judiciary should facilitate access to the judicial system". Under Principle 3, we have eleven Implementation Measures. Do you have any views or suggestions about these measures?

- In eleven, "Permit, where circumstances warrant, an appropriate non-qualified person to assist a party in court". What does it mean, "an appropriate non-qualified person"? What does that mean?

- Let me rephrase that because it is really controversial unless it is clearly distinct. I'm glad you brought it out. It was painstakingly drafted in Ankara, I could remember. It's the words used, and I'm glad my colleague, my co-moderator has highlighted that we should be careful about stressing too much on the words. Now, it is not a suggestion of representation. It is assistance. "Permit, where circumstances warrant, an appropriate non-qualified person to assist...", not to represent, the litigant. Now, a case may involve, for example, accounting. Or, yes accounting. A separate represented litigant can come in with a relative who is versed in accounting about book keeping or something who will be assisting him in the court, pointing out this is this. And sometimes also even explaining to him the technical meanings of words that we used in court. That is it. It's an assistance, one, and not representation. It's not that he'll get somebody to come and stand for him to take the place of a lawyer. That is the understanding when drafting this thing. Bet quite a few examples given of situations where this will come.

- I can provide you one example if you like. Thank you very much for bringing up this issue which is very important. We discuss this a lot. In our judicial system, there are two examples. For detention, for instance, mother, father may have an objection to detention in our system, not the lawyer. There is no diplomacy. But for protection measures, such as detention, if there is a relative who is subject to that measure, another relative can assist according to our judicial system. It is not wrong. This is possible in our system as well. So, what is meant by this measure is as follows: Although they do not have any diploma, or any qualification, to the judge or to the person whose rights are claimed to be infringed, any person, non-legal person, any person without any diploma or qualification may assist, may provide assistance during the hearings. So, it's not going to replace the legal professionals or lawyers. We could not find

any other word, that's why we said "non-qualified person". So, don't be irritated about this wording.

- I can add you one point. I understand it is not representation, it does not replace lawyers. I'm not asking from this perspective. I'm working in the field of private law. We have expert opinion concept after the recent amendment to law. In our system, this is legally possible. Expert opinion is possible. But, any person who is irrelevant, who is not specialised, who is not qualified, how can we ensure that person can provide assistance? I have some hesitations and some doubts, but I don't know how you can overcome these doubts.

- I'll say it very short. Actually, it's not we who be sure, this is something that in yours for the benefit of the party, not us. If he thinks that person can assist them, we're happy with that. So, it's not us ensuring that he can render assistance. That determination is made by the party, not by us. Yes, any other observation? Yes.

- One more additional remark I would like to make. Sometimes we had representatives, case councils when we did not have sufficient number of lawyers in the past. In very small settlement areas, people can't find lawyers, can't have access to lawyers. So, this may apply to such situations. Don't think about our own country only. Maybe, there will be 190 countries to implement these measures, not only the thirty countries. This is a universal text. So, from this perspective, as underlined by the co-moderator, it is important to enable people to exercise their right to fair trial. So, if necessary, they can use any non-qualified person to get assistance. I don't think this is something negative.

- In the beginning of my career, I worked in the southeast part of Turkey. You know, the feudal structure has not been totally eliminated in that part of Turkey. So, many people, in the community, local community, religious leaders, community leaders may try to influence the parties to the case. So, they asked help from us on behalf of the litigants or parties to the case. And this was problematic, and we were rejecting it. So, I fear that this Implementation Measure may bring that possibility to those people in that part of the country. I agree that this may be an assistance provided with good intentions. I mean people may bring people who cannot walk and assist them to come to the court house. That is not a problem. But, in Turkey, a community leader, or a religious leader may assist any party to the case during the hearings but they may influence them. This may be problematic. So, look from this perspective as well please.

- I understand the context. I don't understand the explanation. Can you explain further, how it works? How if a party thinks, even if the community

leader is going to assist him in understanding proceedings or in putting his case in court? How, how does that...

- This is not an innocent assistance. I mean, people may not speak the language and they can get language assistance. That's not a problem. But, in the courts of Turkey, people may use their positions in the society, in the community, to influence the parties to the case. This is the danger. I don't know whether I could make myself clear.

- Let's say, I'm the plaintiff, I go to your court and I say... let's assume that my community leader or religious leader is going to assist me in presenting my case. Who do I now influence or who does the community leader influence? The judge? Me? Or my opponent? That's what I want to understand.

- I'll tell you. Although that person does not influence anyone, in the society, people's perception about the independence and partiality of the judiciary may be distorted. For example, the plaintiff may think that if I go alone, I may not win the case, but if I go to the hearing with Mr. Ahmet with the general status and position in the society, I can win the case. I don't know whether this have an impact on the judges, I don't know that but, we should be impartial, but we should also be seen impartial by the community. So, this may damage the impartiality perception.

- Honestly I still don't understand. If the plaintiff thinks going with Mr. Ahmet is going to help him present his case and you stop him? I think that's where the partiality may come from, probably. Because I don't come from the background, that's why I'm asking you this thing. Because, when a party comes with somebody who he thinks is going to assist him, of course, he thinks it's to his advantage. That is why he even brings him. Please, others may come in, I'm just interested in how this thing works out. That's why I wanted... You understand? Because the entire idea of the person coming with the person with the assistance is that, yes, he's going to help his case. So, for us to now say, it will help his case, that will defeat the purpose. Unless he can exert and do influence on the judge or on the other party.

- Sir?

- Go ahead, please.

- Who is going to provide this appropriate non-qualified person to assist the party? Is it the court? Or himself?

- The first word there is "permit". It means...

- Permit, permit to the plaintiff or to...
- Permit to any of the parties who needs it.
- Not the court is going to provide.
- No, no.

- Okay. Why to write it here? Either I'm assisted with a lawyer or to which purpose, anyone is going to come and to assist someone without knowing anything about laws, the law allows him to bring a lawyer with him. Why should we provide this number eleven here? He has a right to bring a lawyer, okay. And he has also the right to bring anyone with him, his parents, his neighbour, his... to which purpose? There is some decent position in front of the court. I will not bring with me anyone to come and assist me.

- Mr. Moderator. I think we negotiated on this Implementation Measure a lot. Lawyers will not be prevented from following up the proceedings. This is not a measure to propose that. If there is no lawyer, if there is low number of people who can assist that person, we just say the court should allow people to assist them. It doesn't necessarily mean that only the appropriate non-qualified persons will be present in the hearings. This is just a recommendation in order to eliminate some negative situations in some of the countries. It provided benefit to some of the countries. In our country, for example, if a child is detained, if the judge prevents the father of that child from bringing an objection, this may not be perceived positively. I think we discussed this a lot, so if you allow us, continue with the Principle 4.

- Let me refer back to the question. Why then permit this? Go back to the principle, the answer is there. The judiciary should facilitate access to the judicial system. This is in... Yes. So that where a person probably is unable to afford a lawyer...

- There is the pro bono...
- Yes, there is a pro bono. And what if he is not satisfied with the pro bono?
- He may ask to change the pro bono.

- Good, that's the point we're making. By restricting him, you are not opening access. What we're saying is, let the judicial system be accessible. Don't say "You must have a lawyer" or "You must have a pro bono". To say you'll have pro bono is still representation you're talking about. All he wants is the assistance of the headmaster in his village to present his case well. Go ahead.

- Just one suggestion. I know in many countries, there are some instances that provide this obligatory to have some qualification, lawyer to represent the people. For example, in UK, in Georgia, there is obligatory to have for example qualified and some lawyers. And it's obligatory. Maybe, it is no problem in this...

- Yes, that is for representation. This one is for assistance in court. Yes, please.

- I follow you, I follow you. I understand you completely but if we're going this far, should we also be enabling the right of a litigant to represent himself or herself if he or she chooses?

- That one is there already.

- You think that's already there?

- Actually, this is for self-represented litigants.

- Okay, then I'm satisfied.

- Yes, they are the ones who need this kind of assistance and the idea of limiting them, that is the point that we probably need to discern. The idea of open access, expanding access, making those who can afford lawyers come to court with those who are maybe... There are... Look, we're talking about our backgrounds, let me give you my background too. There is a place where I come from where to take a lawyer, to engage a lawyer is like an abomination. They don't believe in that. To get somebody to come and represent you in court means you're just doing something wrong. So for such... A headmaster in his village or a retired counsellor who can now understand the language of the court, and talk to him, explain certain things, that's all he wants to tell him to. "Take a lawyer" "No, no, no. I'm honest, what do I need a lawyer for?". So, the whole idea is not to antagonise any... Not to block access to any, expand access. That's the whole. So, but, if it is going to be and do influence then that's a point but then to say that he is going to influence in favour of the person who brings him, that's exactly the purpose, actually. So that he can be assisted to present his case. So, I think we have exhausted this one, right? Good. Any other one on this, third principle?

- So, I continue reading Principle No. 4. The judiciary should provide court-users with translation and interpretation facilities, free of charge. Related to this one, the measures are the following: Ensure that the language is understood, if the language is not understood, there should be a translator, interpreter, free of charge. I think it's all okay.

- The documents should also be translated. Maybe we can write that the documents should also be translated as an additional remark. I mean not only in terms of the speaking skills. Maybe there are some documents that will be put in the file and that should be translated. Maybe we should add that too.

- Well it says language that is used in the court so it covers both written and verbal translation. So, I think it's already covered. It says translation and interpreting.

- You wanted the second measure to include not just let's say interpreter, but also translation of documents. Is that what you're suggesting?

- What I'm trying to say is that, the formulation, the wording is not very important but it only, I think, talks about the spoken language here. When the witnesses are there or when someone speaks in the hearing, there will be an interpreter provided free of charge. But, when there are some documents which must be translated, maybe we can include the translation of documents that will be put in the file. Maybe we can add something as an additional remark.

- Whose document is being translated? Is like, if a litigant comes to court with his documents, the court should now provide him with the translation service? Is that the suggestion? Or is it enough that, if for example, the document is sought to be used against him or by his opponent, then it is read and interpreted to him?

- Yes, when a document is going to be used against him, a piece of evidence for instance, that should be translated.

- So, in that case, interpretation would do. Because it's read and then it's interpreted. Thank you.

- Whenever there is a need. It's not a matter of principle. If he is a rich man, he cannot tell the court I want you to translate documents. We should provide that. This is not a matter of principle. He has the obligation to translate unless he proves that he cannot translate, he has no money.

- So, so then, taking your comment into account means that we leave it as it is. Of course, here it's only about proceedings. Right? So, let's leave this number four as it is and move on to number five.

- Yes, Principle 5. The judiciary should ensure transparency in the assignment of cases. I now have the microphone and I would like to elaborate on this one. A month ago, we had a preliminary meeting and we held a meeting in Ankara, as a preliminary session. And there was one opinion that was raised in that meeting.

In our system, we have UYAP, the National Judiciary Informatics Network. On an electronic format, there is automated assignment of cases through the electronic system. But, some lawyers or some litigants, some parties to the case, file ten cases to make sure that they are assigned to the judge that they want, for civil cases. They do not follow nine of them. When they get the judge they want, they pursue that file. So, what is your recommendation, we ask people, in order to avoid such cases?

- So, all those same type of cases should be to the same judge. I mean, all cases that are filed by the same people should be assigned to the same judge so that they will not be able to be protected. Because they are not good intentioned. So, when the parties are the same, the system should assign it to the same judge. So that their bad intention, bad faith will be reversed. So, I mean this is not the general practice but there might be some people who are not really good faith.

- I mean it seems that there is no problem as regards to this principle. Please.

- Comment. We have the same problem, multiple filings. But we have enacted, we laid a case rule, where ethically a lawyer must disclose a related case filed, which must then be assigned to the original judge who drew the first case.

- Okay, okay, I understand. I think it's okay, Mr. Co-Moderator. I think we can proceed to the next principle.

- Number six. So, let's discuss number six. "The judiciary should ensure transparency in the delivery of justice". So, in this context, there are five Implementation Measures that have been suggested. Anybody who would like to take the floor about these ones?

- I would like to give you a piece of information which is a satisfactory thing. As indicated by the First President of the Court of Cassation, after the case files are anonymised, personal information are deleted, so far more than 4 million rulings of the Court of Cassation have been made available after personal data are deleted and those files are anonymised.

- Well I think everything is okay concerning this principle. So, I would like to proceed to Principle No. 7.

- There is a reservation I have on Principle 2. Sorry, six. Number 2. It says "Reorganize the Registry to maintain, to enable easy access to court records and quick retrieval of information". Does anybody think the word "reorganize" probably is not necessary where a court is already organized in such a way? Should it be recognised? Reorganized?

- Good one, I'd strike it.

- I beg your pardon?

- I think your point is right.

- Yes, rather maintain a registry that enables easy access.

- Right, perfect.

- Right? Then we'll make that one of the suggestions to the plenary. Thank you very much. Maintain.

- Yes, you're right, you're right. Yes, "re-organize", "re-" is unnecessary.

- Thank you.

- Now, Principle No. 7. Can we proceed to Principle No. 7 now? Mr. Co-Moderator? "The judiciary should have supervisory powers over executive detention". While discussing this principle in Ankara, we had some difficulty because detention is something which is under the exclusive mandate of a judge. When a judge takes an order, then that cannot be supervised by another court or by another judge. So, this principle, maybe it doesn't seem to create any problems as regards the Turkish system, concerning supervisory powers. Because there is no such thing. I mean, as I previously indicated, this is the system in Turkey.

- Is this related to transparency or human rights?

- Yes, good question. Honestly.

- Can I answer this, Mr. Co-Moderator? Yes. Looking at these Implementation Measures, we have to consider the visiting system of prisons, we have to consider the detentions, detention houses. If I give you an example from transparency, well of course this is related to human rights but in addition to that, starting from the moment when the person is taken under detention, he has to be under safeguards provided, supervisory powers provided by the judge. But the prisons and the detention houses are under the mandate of public prosecutors. And of course, when people are taken under custody, those custodial places are also supervised by the public prosecutor. Starting from the moment when the person is deprived of his liberty, this talks about supervisory powers of the judge.

- Chief Justice, your question has been anticipated by the principle and answered clearly. Now what we have under the heading, the measures, is a summary of the principles. In the booklet, if you go to page 6, you'll have the Principle 7 clearly stated in detail and it concludes by saying: "Although this is

primarily a human rights issue, it is also a way of ensuring transparency in the public perception of the administration of justice”. So, your point is correct, but that is what the principle acknowledges but it says much as it is, like you have observed, a human rights issue, it also has bearings on matters of transparency. And I agree with them. I wasn’t there for the drafting of the principles but, we just recently implemented something like this, allowing magistrates access to police stations to now inspect themselves and make the necessary orders. Because, much as it was a human rights issue, it was actually affecting the perception of the judiciary. So, I’m really awed by the foresight in seeing the nexus between perception of the judiciary and its transparency, although it is a human rights issue. Your observation is correct. Any suggestions for amendment, deletion of the Implementation Measures? Number seven? Measure number seven? Under Principle No. 7?

- Seems no. Then we can proceed to number eight. “The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published”. At this point, I would like to continue. Court of Cassation of the Republic of Turkey, for decades, has published its rulings, its judgments in its journal of the Court of Cassation when those decisions are very important as setting a precedent. And recently, as we previously indicated, more than 4 million rulings, judgments of the Court of Cassation have been made available to the public after anonymising those judgments.

- It seems there is no problem, Mr. Co-Moderator.

- Yes. Any observation? Alright. Then we must be the best group...

- Well, we are very economical in terms of use of time.

- So, in the absence of any other observation, then we have done our job and done it so excellently despite the time constrict in the start, we have been able to accomplish the task in good time and I congratulate each and every one of you here. And I wish it would be possible to recapture and present at plenary how robust our discussions have been here. Thank you very much and we’ll meet again after the break to consider the rest of the principles and Implementation Measures. Thank you very much.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 1-8 of the İstanbul Declaration.)**

#### **Group D**

#### **MODERATORS:**

**Shiranee Hesta TILAKAWARDANE**

Justice, Supreme Court of Sri Lanka

**Ahmet ER**

President of 22nd Civil Chamber of the Court of Cassation, Turkey



11 October 2018



**Ahmet ER**, *President of 22nd Civil Chamber of Court of Cassation, Turkey*

Presidents of High Courts, Justices of High Courts and Heads of their chambers, I would like to greet you all and I would like to welcome you. Thanks to your experience and know-how, we will be working on Istanbul Declaration on Transparency and Implementation Measures. I know that you will be contributing to these principles, in the best manner possible. I wish that this meeting brings out auspicious results. We are going to be working on the articles or principles one to eight and then later on in the second session, we will be working on nine to fifteenth principles. We will be concluding them in 90 minutes, so I would like to remind you that we need to be a bit practical with time. So let's have a fruitful meeting. I wish you success. I would like to give the floor to Ms. Shiranee.

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

Thank you, Mr. Co-Chair, Justice Ahmet, my Co-Chair, let me begin by saying "Tünaydın", "Namaste", "Bonjour", "Salam Aleikum", Peter, Hello Peter, good afternoon. Welcome everybody, let me just go through the background to this. All of you would by now be having a book called the implementation measures and that is what we are going to be working on. You will also have with you, the Istanbul Declaration and also the codes of conduct. So one of the most important things of this session, is that it is very time sensitive. We have 15 measures to go through 15, we have 15, if you turn to the... We have 15 principles to go through and we have only 90 minutes. So it is six minutes per principle. And we will set off a little timing here, so a little alarm will go, so we know then we have to move into the next principle. Also, it is important for you just for me to say how this is being done. So we have, sorry, 15 principles for which implementation measures are required are set out in the Istanbul Declaration. No new principles can be added. Is it clear? No new principles can be added. Each principle in the Istanbul Declaration is followed by a brief commentary and implementation measure, when we discuss it and implementation measure may be supplemental, but cannot contradict what is stated in the commentary. The purpose is to draw from the experience and to the knowledge of the experts, around the table and we can improve, we can amend or we can add to these implementation measures that are in your book here. Now as I told you, we have only six minutes to add, amend or comment. So, can I start now with the implementation principle number one in this book? Principle No. 1. We have six minutes. , Yes?

- We have two 90-minute sessions. We will first have a little break. Ms.

Shiranee thought that there will be only 90 minutes for the entire session but no. We have a total of 180 minutes all together.

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

Thank you, thank you. So which means, we have ten minutes. So we start with Principle No. 1. “Judicial proceedings must, as a general rule, be conducted in public”. If you would just read that and see if there’s any amendment or anything you’d like to add, improve or supplement. You have Principle No.1 with you? Yes. Is there anything you’d like to add? Can I go around the table? Yes Peter, do you have anything to add?

- [Mr. Charleton]: So we have this in Irish constitution since 1937 and we have to do everything in public. I know Arun will confirm that some of our Constitution was copied by the Indians, when you got your independence. Yes. Open to all. But problems arise for instance in family law. So if husband and wife are having a terrible ding-dong, yes, what do you do? Well, it used to be in camera, but now we are...

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

We’re going one by one. But if you...

- [Mr. Charleton]: Yes I know, I understand. Yeah, we do, the problem, look, this is good and you have to say in general. But there are exceptions. For instance, family law. You can’t have people washing their dirty linen in public. But we’ve changed that so that now, newspapers are allowed in provided they don’t report on who the parties are where they live or any identifying circumstances. And in everything that we do, we always allow in the press on that basis. They are trusted even in in-camera proceedings to report but not identify anything that will identify the parties. But the big issue on something like this is... Let’s suppose, you have a tyrannical government and they want to try somebody in secret. That’s the thing you can’t make an exception for. You must always have proceedings which charge someone with a crime, in a public forum. That’s the only observation I have to offer.

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

Yes, Peter, the thing is, that has been covered by Principle 1? And if you see, where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings, the judge

must ensure that the reasons for so doing are published. Does that meet with your concerns?

- [Mr. Charleton]: Yes, it does. But under the European Convention on Human Rights, judgments must nonetheless, always be published. They can be published again in an anonymized fashion. But I personally, the tradition that we have, we find it obnoxious that there would be any secrecy in court proceedings. And such secrecy is necessary, for instance, to take a benign example, to protect a patent. In other words, the basis for a scientific discovery, we'd only hear that little bit of the evidence in private but the rest is public, so there has to be a good reason and you have to restrict the privacy of proceedings to only that part of the proceedings where privacy is necessary, absolutely necessary for an overriding public good. So those are my only observations. So I'm not sure I'm adding anything to the principle, but I think if you say you can put an exception in law, I think you need to define what you can't do and the exception needs to be as tight as possible.

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

And how would you frame that?

- [Mr. Charleton]: Such exceptions are enabled by law, whereby there is an overriding public interest and only in respect of those parts of the proceedings where that necessity arises.

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

Okay. Any other comment here, please? Around the table? Yes. Recognizing you.

- There is a problem with the fifth. Thank you very much for giving me the floor. I believe that crimes against juvenile, these proceedings should not be public because the children are really in a bad condition with the invitation of the press members, it really has a big impact on the pleadings and the statements of the juvenile. In addition to family law I believe, especially when it comes to the juveniles, it should also be closed to the public or at least press members.

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

Second part of it, which says where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular

judicial proceedings, the judge must ensure that the reasons for so doing are published. It is there in the latter part of Principle 1. Any other comments around the table on Principle 1?

- We are having totally open courts accessible to all, press, everything. Except in family matters. Then we go for this in-camera hearing and in rape cases, we have a law that prosecutors should not be cross-examined openly. So in-camera cross-examination is permitted. Just to preserve the sanctity and dignity of that woman. So, to that extent, our law is providing, but there are certain cases in which judge has to decide on this. When there is very sensitive information, let us get in camera. So we go for that in-camera when very sensitive kind of thing is happening concerning national interest or international relationship between the two countries. Then in that case we can go for in-camera hearing not provided in the law.

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

Okay, thank you. Any other comments on Principle 1? Yes.

- A couple of words. Actually the principle is absolutely clear and understandable and of course I agree with my colleagues when they care about some privacy rights, but for example, from my perspective, from my background, I would, for example, just add some comments like that Local courts and every judge, every president of court should undertake active and effective steps for real access to publicity, to trials. That actually, in fact, it might be like this. This is a very good declaration, very good principle, but we need to care that in practical meaning, courts, judges, justices and presidents of courts or chairs, chairmen of course, they need to focus on a practical application of this principle and to avoid like making some kind of practical barriers for realization of this principle.

- Sorry, may I have the floor, says the speaker. As far as I see, in this booklet, in this book, we are kind of focusing on Istanbul Declaration but we're not going to go through Istanbul Declaration. We're going to look at the draft implementation measures. This is why we've gathered. We are going to go through the draft implementation measures. We are not going to go through principles. In Turkish page 13, in English page 13 as well. Because, Istanbul Declaration has been discussed, it's been adopted, it's been concluded already. Now we only have draft implementation measures. This is why we gathered here.

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

Thank you. So we're on page 13, it's saying judicial proceedings must, as a general rule, be conducted... this was... If you go through the procedures, very fast. There are five procedures and just this... okay?

- Looks like there is nothing, no other comment about one. We've talked about juvenile and family law. Mr. Ramiz.

- According to our law, we would accept it on the website but members of the press and the decisions about that, this is all stipulated on the law. Well okay, we're open to changing the titles and names etc. Well this is like us as well. It's just open to the press. But may they not even ask it? What I mean is that, it's open to the press. It does not mean that they're going to come into the court and take it.

- Without a doubt, privacy of people is important. But states also have some private spheres as well and for example, in Article 1.2 of European Convention on Human Rights, the privacy of state secrets is also covered and if it is necessary according to a democratic society and if it is proportionate, then some hearings will be then carried out in a non-public manner. It's being already stipulated for the interests of the State. The secret proceeding is something that is permitted both for the interests of the defendants to avoid their lynching by the public and also it's important to prevent secrets of the State from being disclosed because otherwise their relations with other countries, may be harmed. So there is a significant public interest in conducting some public, some proceedings. Of course, we also agree with the secrecy and privacy of family-related hearings and juvenile-related hearings. And such cases, of course, carrying them out, conducting them in secret, is something that is stipulated and ordered in our respective law. Thank you. Okay let's pass to Principle 2.

- Sorry. Could I make a comment, Mr. Chairman. Legal Systems are different, social conditions are different. There's no doubt about that. But I would be very worried at the thought that you can do something because the public are angry. I think in a society which is subject to the rule of law, which has a structure, I think there can't be an overriding consideration that you would hear for instance a criminal great case in private because otherwise there would be a lynching. The reason we have the rule of law is to ensure that people get a fair trial. And such punishment as they get is imposed by the state. And in our country, we have a problem, for instance with members of criminal gangs coming forward and giving evidence against other members of criminal gangs and this is a situation

where, for instance, their families may be targeted, but we have, in cooperation with other countries such as Australia, and the United States, a witness protection program whereby we take this family and we send them somewhere else and the witnesses are protected because as you know, the principle of “omerta” as it says in Italian and Spanish is that if you break the bond of secrecy within a criminal gang then you’re dead. So we protect this not by closing the court proceedings or pretending nothing has happened because after all, word would always seep out, but by protecting the witnesses protecting the family, it’s just an observation.

- Thank you very much. We can proceed with Principle 2.

- Timeliness means just met within reasonable time. So that is not open as you see. That is, should be the ethical part of it.

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

But it is put in so that judges cannot just save the reserve judgment without giving a date.

- Reserving is necessary something. In serious constitutional matters, you cannot just deliver the judgment then and there.

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

Not then and there but in the context...

- But within these, it should be a part of the ethical part, not open. We deliver justice open then. We deliver judgment in open then. So it maybe a little confusing there.

- Let’s finish it a Principle 1 and proceed with Principle 2. Because we have to act faster in order to finish on time.

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

Principle 2 is, “the judicial system should ensure easy access to court premises and to information” and it says wherever possible, and within the limits of resources, ensure that court facilities are located near public transport areas; support innovations in delivering court services such as mobile courts or night court programmes, telephones or video-conferencing, or the conducting of pre-trial hearings in online chat rooms, consideration being given to persons who

are physically unable to travel to attend court or access court programs; three: Install clear and easily identifiable signage providing directions to offices within the facility; four: Establish information counters or customer service desks at the court entrance to provide information to users; five: Publicly and clearly post in the courthouse, schedules of hearing and proceedings and courtrooms; employ and retain court personnel who can speak the language of court users or, in the alternative, can readily obtain the assistance of interpreters; provide comfortable waiting areas for court users, including areas that offer appropriate security to witnesses, if needed; provide suitable facilities for the special needs of court users, such as children, victims of sexual violence or domestic violence, and special-needs users; maintain a safe, clean, convenient and user-friendly court premises; create a resource centre to provide single-window service delivery; publish in simple, clear and accessible formats, user guides, posters and other informational material; Institute and mandate management training programs for judicial officers and court personnel; establish a public website containing information useful to court users such as court sitting times, courthouse guides and relevant case information.

- I would like to ask you something, do we need to read the principle? Because we have it in Turkish and in English.] Sorry then. Yes we can get your opinions about Principle 2.

- I just want to say that we have all of these in our courts. Principle two is full in our country. So this is a good provision. We complied with it, currently.

- I find it the application not fully of the judiciary but of the State because most of those facilities has to be funded by the government and judiciary alone cannot do it. And if I go back to my own country's experience in Nepal, the judiciary only has got less than 4.6 percent of the national budget. This does not even cover the entire cost of the salaries of the staff. So, going ahead with all those facilities, principally there is no harm in this to have it in the declaration but can there be any possibility that we also involve the State responsibility here?

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

Yes, if you go back to the preamble at the beginning of the draft implementation, we have said this, not only the judiciary, but it may require for the legislative or executive action for the effective implementation. So it's already there.

- Thank you.

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

Any other comment?

- In India Madame Chairman, we have the system of court that people can stay in rooms for the night, these are the places for people who come from remote and cannot go back the same day. Or there are cases they need to wait for the next day. There are staying places for them we have constructed in most of the courts.

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

Travel to India?

- Travel to India. Mostly now. In several states they have come up very well and they are serving as legal service center also. They are providing legal aid. They are providing night shelters.

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

And is it separate for men and women?

- Separate for women.

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

Has it been implemented?

- Implemented also.

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

Yes.

- Okay. So, I absolutely agree with this points and maybe just couple words again about ideas. So on my mind but it's up to discretion of our distinguished colleagues that, access to court premises, I would for example, mention that maybe courts practically should avoid burdensome or complicated security requirements. So we might provide some kind of balance of course between security in courts and easy access. At the same time, I would also say for example, from the point of view of our background, during several years in my country, unfortunately I wasn't agreeing with that. So we provided access to courts buildings, but through some kind of very complicated procedure of

fixing who is coming in to the court and then restricting to bring mobile phones and tablets, etc. Not even into courtroom, but to the court building. And only this year, our core department decided that we need to leave this restriction. So easy access might mean that not only personal access but also access with a normal property for example, mobile phone to the building. Because maybe it's necessary to me to check some information through my tablet, but of course keeping silence inside the courtroom, there might be some serious restrictions. Just a couple ideas.

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

Peter, do you have anything to say?

- Thank you very much for giving me the floor. Access to court premises and access to judicial information should be easy but we should also think about the rights of the person who is tried. With any reason, I don't want my issues to be spread out. That is why this should be, people should be consulted, maybe I don't want this. What about my personal freedom? Okay everybody should have access but what about my personal freedom?

- [Mr. Charleton]: Yes, all of the principles are good, just... We had a conference last year, Ireland, Britain and France. And one of the things that came up was the whole notion that in the future we're going to have to provide for the online filing of cases, perhaps starting off on a pilot basis in a small area with cases that are perhaps limited to, let's say, 1000 dollars or 5000 dollars. With the possibility of the defendant being contacted and having the ability to online file, and say, no, I don't want to defend this and a court judgment issuing automatically. Now, I had never heard of this prior to the conference which we had. But I think it's possibly something that's going to come in the future as people use the internet more and perhaps travel less. And with the constraints that are on the budgets of all of us, the number of courts in such a huge country for instance, as Turkey is probably decreasing and I think to allow public access. I know India has a very innovative program which Arun has spoken about. It may be that we have to start thinking about internet filing and perhaps the Internet resolution of cases. It's something we're thinking about in the future, it's not here yet, but I think it's coming to us rapidly.

- Chairman, may I just... In India, our Supreme Court has permitted filing on Internet. It can be online, cases can be filed. And they're being filed.

- [Mr. Charleton]: We also have online filing in the Supreme Court but this is different. This is where, for instance, you say that a group of university students organized a meal in a restaurant, but they didn't pay. The restaurant ought to be able to make a complaint online, which is then transmitted to the students, and the students should have the right, to say "We don't contest this" or "We do contest this because the meal was terrible". In which case it goes to a court hearing, but it's a way if you like, of filtering out small, cases at a very early stage and it's something that I know colleagues in Great Britain and France have been thinking about very seriously. It's something in the future, perhaps more than now.

- [Mr. Muhammer]: I mean look at the beginning of the principle, it says "The judicial system should ensure easy access to court premises and to information". I think it should be done in a holistic manner with the acts of the state, the state will assess where to build the courthouse or court premises but as a principle, how will the judicial system ensure easy access? I mean just building the court premises, the judicial authorities don't have the mandate to build the court premises so it's not in line with the text in the letter of the principle. It says, "Wherever possible, and within the limits of resources, ensure that court facilities are located near public transportation hubs". If the judicial system cannot do it, we shouldn't include this as a principle. This is an act of the government in effect, I mean, in reality.

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

Can I just remind you that, if you go back to the beginning of the draft implementations, whilst we have said that the judiciary may have resources, we go on to say "or may require further legislative or executive action for the effective implementation". So here as you rightly point out, perhaps we have put it down that they have to cooperate for the purpose of this implementation. So does that cover it? I think that covers it, doesn't it? Correct? Yes. Thank you.

- It was like a recommendation. Should we proceed with Principle 3? Okay, Principle 3. Do we need to read it?

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

Not reading it, right. Yes, continue. Any questions?

- Okay then, we will not read the principles with your permission. Because we have a certain time limit. Can we get your assessments as to Principle 3?

- No we're making it...

- The last sentence, it says the courts may allow certain parties to represent the parties. There are certain issues that are prescribed by law but people, non-legal people cannot take place to represent the party. Is this what I understand from this? Or will they act like a technical consultant or advisor? Let's don't think about it as our system only, let's think about the world so in many countries there are no attorneys. In our system as well, there was this lawsuit representation system just like that system. There are certain countries which have a similar system so you are trying to benefit from competent people, appropriate people but we should also have the expression that with the condition that there is a legislative provision about it. Otherwise can people just bring somebody to represent themselves? I have certain hesitations there. Peter, yes.

- [Mr. Charleton]: Can I add to the hesitations of my Turkish colleague? In our system, we have what are known as barrack-room lawyers, who are perhaps prisoners and who pretend to have knowledge of law, so when they get out, they then pretend to represent people in court and they give terrible advice, and quite often they're mad. So I don't see how you have a system which says you've got to spend four years or six years at law school and learn the law but some nut-case who's never done that is entitled to come into court and represent people. That's a really, really bad idea in my view. Now, it's enabled in the Irish system and in the British system, as well. For instance, if I am the litigant and Ramiz is my friend, he can sit beside me and whisper some words of advice into my ear, but he cannot represent me unless he's a qualified lawyer. So I think that's a bad idea, actually. And can I also comment on, if I might, please number six? So I don't know how in a free society you can actually force lawyers to give their services for free. Okay, many of us complain lawyers make far too much money, we all agree on that. But why are you forcing them to work for nothing? That's slavery isn't it? Well you could encourage them, yeah. It says require an attorney to provide. You could say encourage attorneys to provide pro bono services. And then the last thing I want to comment on is number five. We don't have a public defender's office in Ireland, but what we have is a legal aid system whereby people can put their name down to do criminal cases and they are paid not very well, but if they do enough, they can make a good living. And we think, because we've looked into it, that's much better than a public defender's system because as you know, and I'm not saying that the United States of America is wrong and we are right, but you will be aware of the problems with public defenders' offices in the United States of America, whereby it is said that they don't do a good enough job. But if you put someone in a job and say this is your job to defend somebody and nothing else and you're on a state salary. Well, maybe they

become lazy and don't actually make an effort, whereas if it's a public enterprise and you're paid case by a case on a private basis, it seems to work better. So those are my comments.

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

I think that, this 11 refers more to the person who is not qualified, not really to represent the person legally, but more to assist like a trial probation officer who may not be qualified as a lawyer, but is knowledgeable and experienced and permitted by law to come and speak for the trial. And in that sense, it has its uses, in that particular provision. I don't think it's really talking about people not qualified and also even in conciliation boards before ADR, that you don't really have to get a qualified lawyer to represent especially in the smaller cases. To people who can't afford them.

- [Mr. Charleton]: It may work for some people but all I can tell you is that it doesn't work at home. People, who are not mentally perhaps very well, find other people who are not mentally, perhaps, very well to sit beside them, to talk for them. Court proceedings go on forever. This is a recipe for a nightmare, if you ask me.

- If I'm mistaken, as far as I know, in the UK, good citizens who do not have any record of convictions can act as a judge in simple cases, right? If I'm not mistaken. If they can render a judgment as a judge, then they can support the parties, in court. So these are appropriate, good people, knowledgeable people, people who have knowledge of law but who haven't graduated from the faculty of law. So they provide help. Not everywhere and all the time, but if you look at the wording, it says, in cases where the conditions and circumstances require. That's not in Istanbul, not in the center of Istanbul. For example in the Southeast of Turkey, in Şırnak or Şemdinli, in such places.

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

...lawyers, qualified lawyers. Sufficient qualified lawyers or their cost... People are so poor that they cannot retain even that minimal fee. So they can be represented by people of course, in such circumstances appropriate and surely if the person is mentally not well as Peter suggested, the judge can just overrule that. That gives the power to the judge.

- Thank you.

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

Yes, yes.

- We have certain experiences and that's my experience back from home. We have a provision that some non-qualified person can also be represented by a party who come to the court. But there has to be a declaration from such party that the party do not have any criminal record or has not been convicted anywhere. So that is a declaration that has to be made and such persons are allowed to accompany and help such needy people at the court. So yes, I fully agree with Justice Peter that there are risks associated with that but certain precautions have to be taken.

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

Thank you.

- Just one comment on this.

**Ahmet ER**, *President of 22nd Civil Chamber of Court of Cassation, Turkey*

Please, Mr. Arun.

- When, access to justice when we talk of, we have an interpretation system by letter even as into the Supreme Court and High Court. And we are interpreting matters just like bonded labors, neglected children, non-payment of minimum wages, exploitation of worker, jail arrestment, police atrocities, environmental issues, family pensions. No forms, simply write a letter, committee will decide if this is confining to take cognizance and issue notice and decided. And then internet... You see, we have now court fees etc. can be paid online. No necessity to parties to wait for taking stamp because sometimes, several days they are not available. So we have devised that. And then you see, cause to... pro bono design advisory. Item six. As rightly pointed out by my colleague Justice Peter. So he was right that lawyers pro bono is expecting... But in our country, it's a cost of a competent lawyer even he can take in case he is notable to do it. And then non-qualified persons, we are, our law prohibits, Madame. So, that would be a debatable issue, Madame. Chairman.

- Thank you.

- Representative power, this is a very broad concept if you're talking about legal representative even though it's a lawyer there is a proxy here, the power

of attorney. Therefore, they have the power to accept or disclaim, a warrant, a waiver from the case. When they abuse their own powers, according to the law of lawyers, they have some responsibilities. So unregistered people, incompetent people when they have the power of representation, what kind of a relation will be there between these two people? And what is going to be the boundaries of representation? I really believe that it's not appropriate, thank you.

- Public defenders, who will they be? Will they be ombudsman? Because criminal law, who will be intervening into criminal law, aside from the judge or the justice? Well, public bureau, what does it mean? Like public defender's bureau, what does that really mean?

- May I answer the question?

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

Yes, of course.

- It's an American system. So let's suppose, God forbid, someone is up on a murder charge, there's a public defender's office in the city, they go in there, they say I'm charged with murder and they meet a lawyer. And the lawyer is paid by the State, and that lawyer works for that person and tries to defend them on the charge. But in the United States of America, they say that system, because it's a salaried system, and maybe sometimes, it doesn't attract the very best lawyers. It is a system which doesn't necessarily work really well. A system of providing perhaps private lawyers with a fixed fee for doing cases means that they try and do them better. It's just, it's an observation as between our system and the American system. We decided not to adopt the American system. We have a private legal aid system for private lawyers. So you choose your own lawyer and the state will pay that person, not really well, but well enough. So I think that's how it works. Does that help you Ramiz?

- Yes, thank you. We have a similar system. It is not called public defender's system, but it's like required defender. So if the defendant is in a situation, financial situation that prevents them from having lawyers, we call them like required defenders. These defenders get paid, not necessarily high amounts of money but certain amounts of money, and especially when it comes to minors and especially to the victimhood of some people, we have these kinds of lawyers. So this is how we can call it, how you can consider public defenders. Its name is different, that's it. Mr. Ramiz, that's it. Let's pass to the fourth principle.

- Well we have a reservation about Principle 4. All the parties of the case, that's right, but the public accessing the information of the case, it may be good for the public itself, but it may be a significant problem for the people. The right to be forgotten is something that's accepted. A person who committed a crime years ago, after doing the time, wouldn't really like to be remembered with his own offense. On the other hand, the right not to be defamed for example, or stained, well it may be similar to some examples in other countries and the cases that are brought are ending up in this charge. A person who commit a crime at worst manner, the right to access to this information may prevent this person from, being forgotten even though he did the time even though he is discharged. This is not even known, maybe this may be applicable to the public cases, but applying to all the cases will rise a significant problem for the personal rights of these people who committed these kinds of crimes. So maybe it would be good to bring in this kind of a restriction to this article. Thank you.

- I would like to thank all the participants. Now, this is Principle 4.

- We have a multi-lingual society in India. At least 20 languages are spoken. So in Appellate Court, High Court and Supreme Court we have borrowed English language for the sake of uniformity. We cannot understand 20 languages. So that's the reason Appellate Court, High Court and Supreme Court have adopted English as for delivery of judgments. You see, in English.

- Yes but Justice Arun Mishra, the problem is that, because the majority of people are poor, they do not understand.

- No, no, we know that. But we cannot be delivering in 20 languages. We are not supposed to know 20 languages.

- No, no, not delivering.

- These are not understood by everybody in the country. In several states, these are not known, so they have Tamil, they have ... language, they have this language, so many languages, multilingual, multicultural secular society. So there is a problem but we cannot stick to one language madame, because it just Hindi. Someone from south does not understand Hindi. And I am from north, I do not understand Tamil.

- The question was about using the assistance of a translator.

- So, Mr. Chairman, could I ask my brother from India? And what if it's a

case that's very important for instance, to the Tamil people, would you provide a translation on the website?

- Translation is provided by officially. It can be translated on payment of nominal charges. Just men can be translated, but it is delivered in English, in the state.

- So what you're saying is there is a translation.

- Media is doing, TV is doing.

- Possibly we are talking about the court proceedings rather than the decision translation. So if it is case proceeding, there might be an expectant, a person from other countries who do not understand the language. So for them in our country, we normally ask the Ministry of Foreign Affairs to provide translator. If they do not have a translator, they actually approach the concerning embassies of the language, and request to provide the translation services.

- But most of the time, we find it too difficult to pay those translators because the courts do not have sufficient funds and that is the reason why, in the very beginning, I say there are certain things that the state has to take responsibility on where financial issues are involved.

- So if it's okay for you, we can skip two, principle five. Let's get to principle five to...

- Okay, alright. Thank you. But okay, I have no problem with... You have to reveal a conflict. Our system is strict enough that if you even have shares for instance, in a major bank and you're doing a small case about the bank which will have no effect on the price of the shares, you can't do that case. But I actually worry about number one and two, can I just explain why?

- Yes.

- Ireland is small, but very highly developed part of the European Union, so we have judges who are experts in contract, in torts, commercial law, in patents, I know it would be the same in India. So, we can't actually have an alphabetical or chronological system of sending cases to people. Now, more and more, it's a case of sending the case to the person who has the knowledge, for instance in public procurement or environmental law, and there's usually one or two of those, and there's nothing sinister or peculiar about that person being chosen to do the case. It happens because they have the specialist knowledge and therefore

the case gets done quicker. I don't see why we necessarily have to have some kind of alphabetical or chronological system, it doesn't make any sense to me.

- In our country also, expertise is considered while repeating roster.

- Can I just ask my brother from India? Do you have a ticketing system whereby you are ticketed to do difficult criminal cases, or you are ticketed to do copyright cases? So, only those people will get to do those cases.

- Those who are expert in income tax state. So, yes, we will just choose them for that purpose.

- It is a very burning question at this moment because the few Chief Justices were accused of siding certain particular cases to particular cases, and there have been a lot of media cry and protest. Now, there is a discussion going on at the Supreme Court whereby the case will be assigned to particular group of panel of law judges, say 3, 4, 5 who have got expertise on certain line on certain subjects and then among them, it will be assigned by certain software rather than by name, by the Chief Justice. So, instead of setting up the names, it will be automatically assigned, it will be allotted. It's a very major question. On there is another school of thought whereby it says that the Chief Justice, he is the Chief Justice of the judiciary, and he or she has to be believed and you cannot simply say that... No, do not believe in the Chief Justice, because there is a long process of appointment of the Chief Justice. And it goes through the Constitution Council that we have. And then it goes through, it has to pass through the Parliamentary hearings ... then, he or she becomes the Chief Justice. So what issues are going on side-by-side? But it is up to the Chief Justice whether he or she wants this thing to assign manually or through software or it is to see... But yes, this is a pertinent question. We're working in Nepal, and I also said during the previous session, I am heading that committee, which is now exploring the possibility of assigning cases automatically, rather than manually.

- Automated?

- Yes.

- For us, assigning the cases in here, in our country is done on a numerical basis by a program. Well, of course, there are some exceptions. It maybe heavy criminal charges, then we do not use the software that's for sure.

- Chief Justices would know that we also have automatic assignment that all these applications are done. Imagine 100 files that are recorded on the screen, you push the button, there is a software and it's automatically assigned or distributed.

Three cases to number two or five cases to number five, etc. Then this goes on like that until it's concluded. There is proportion here; it's not like 50 to one judge and 100 to other. At the end of the year, it is more or less the same. So the difference is only one by 98 to 99. It is not even like 90 to 100 cases.

- It is the case for us with the High Court.

- Well, this is not habitus in our country. We have legal courts and criminal chambers of courts as well. Every chamber, imagine 20 chambers, civil courts and criminal courts have their own expertise. For example, real estate would go to the Civil Court number 20, and then the inheritance law would go to the civil court no. 14 and organized crime would be assigned to Mr. Mevlüt and anti-fraud will be assigned to another senior justice.

- So this is the automatic distribution, we're talking about.

- So the states should be the one who will decide. Will it do it automatically, alphabetically or numerically or chronologically? It will be up to the States.

There are expert courts, courts with specialized themes. Particular cases are assigned to these specialized courts. And we know that this is practised in other countries as well.

- Any other comments as a principle 5?

- This number 1 appears to be losing faith on the Chief Justices of the court, which we should have in Chief Justices of every court. He must exercise his power. In case he's not exercising, it is the end of the day. Nothing can be said, but if everything left to computer, it can lead to disaster in any country.

- It think the problem is...

- I have a little blank, but consider this aspect. Transparency and computer are two different things, computer is a helping hand... But transparency has to come from inside your integrity, your dedication to your constitution. If you don't have it inside, computer won't bring it.

- The old data there president Arun, this assignment system, as left to the discretion of the state. It doesn't have to be automatic, it can be alphabetical, chronological. Before I became a bench member, I was a public prosecutor. They have given the authority for the assignment of cases to certain judges and they are given the authority to the judges to receive the cases. So, these principles are

not only for us or for you, they're established for all the world and the States can select whichever system they want to select. It doesn't say alphabetical only, it doesn't say chronological only, it can be automatic, alphabetical, or chronological. Just select one of them.

- So let's proceed with principle 6.

- ... established by rules instead of to be established by rules, we may change the word to encourage, the court as the case may be, because as Justice Arun just said that the Chief Justice is not going to be a mechanical person and he's not an artificial intelligent artificial intelligent... So there has to be certain systems that depending upon the country situations. So, decide instead of establish or mandatory.

- I share the worries of Arun. Either we have integrity or we don't, and bringing in a computer isn't gonna help us.

- The matter is not the computer, it's not only a computer, it can be alphabetical, chronological order or automatic.

- We can send 5 to Ahmet, 5 to Ayşe, 5 to Mehmet, alphabetical order or automatic assignment? It's an option, it's not all the automatic system, which is obligatory. So just briefly I like to say that after the prosecutor has carried out an investigation, we can start the trial in any of the five courts for the same job because of intensity of work. Should we leave it to the initiative or discretion of the public prosecutor? Should he send it to his friend Ahmet or should the computer assign the case to one of the five courts. This is not a court order or the indictment that will be sent to one of the courts. So which court will he send it to? Let's say there's a civil lawsuit, and we also have jurists among us.

- When the plaintiff brings the lawsuit, the clerk will assign it to the commercial court that he wants. So the mistakes of the people should be compared with the mistakes of the computer. I mean it is not sufficient to be fair. You should demonstrate that you are fair. There may be some suspicions or partiality or bias if the people assign cases.

- We have to finish by 3.30. We have to proceed, it will be nice if can proceed with principle 6.

- Yes please, can we get your opinion about Principle 6?

- It talks about the court record and quick retrieval of information. Does a minute accessible to everybody or to the relevant parties only. That's the question because our cases where the person can declare about his or her property to the

state and may not be advisable to disseminate to everybody in the world, so it would be at the relevant persons or the parties, the court, information, retrieval of the court information?

- Chairman, I can make a comment. We had a system up until very recently; the actual court file was available only to the parties to the case, but now the system has been changed, so that it's available also to the press. It's a very recent change. I don't know whether it's going to work well or work badly, but you would watch the space and find out...

- Because, since these are public hearing, it's almost possible to get that information out. You can read, I close it. These are public hearings. The media can send it out. Any other persons sitting in the court can know about it.

- That's true but what about a situation where you have a case, tried on affidavit, do you have such cases, for instance, in Turkey, where it's a sworn document. And so, the barrister is reading it out at 100 miles an hour, 150 kilometers an hour. If no one can follow it. And then the judge says, who's a speed reader. Okay, I've read the affidavit and he's only half-way through. Well, that's a public document, and it is a good idea for the parties or the press in reality, because it's been laid in front of the court to be able to see you as to whether it's a good idea to see files on cases. I would say I have my doubts, but that's the system we have for good or bad.

- So I would just, my idea is just to care about some kind of balance between the resources of court in providing access to materials and transparency and access to justice.

- Totally agree with your remarks about access for mass media access, maybe for some kind of academics or some kind of persons who are making some studies on the cases maybe...

- I agree with that we cannot open the general public to a certain type of risks because of the countries like ours, here. If you disclose the entire property, there will be people who will come and intimidate and say, "Hey you have to do certain CSR things or donate to the parties because you have got this most of the property and the state is not present everywhere to protect those people. So, I think those types of information would not go through the court. Courts actually have some restraints.

- I would agree if a right of privacy is involved. Often, privileged information that may not be accessible. Otherwise for public document, there is no harm in

making it available to all except privileged documents as well as right of privacy such as medicine bill. You want to know which ailment I am suffering, but you got no right to know it.

- So can we go on to principle 7 then please?

- Yes, President Ramiz. Courts have supervisory powers over executive detention. We have this power. I mean, the public prosecutors have this power in our country. So in our country, as per our law, public prosecutors have this power. Same here, as President Ramiz listed. Let's say, you have committed a crime. It is notified to the public persecutor. The public persecutor detains.

- ... look at the first and second and third part as of the details. The persecutor has the authority to do all of these things to the provisions

- Judge detains, the public prosecutor is not involved in taking the person into custody and arresting them.

- This is the decision and we talk about executive detention here, we talk about the decision of the public prosecutor. Let's say the person complains that I was detained unrightfully and then he goes to the court.

- You are right, he is free.

- We have the exceptions in execution judge power. But that, that is not related with this topic.

- The history of our country was when we had a rebellion in 1798. They tried the leaders of the rebellion under military law. You have to declare a military law. So the leader was able to make an application to the high courts, saying that I'm being illegally detained by the military. Yes, in 1803, the next rebellion, they established civil courts, but of course they were corrupt. But the point is someone who is detained has to have access to the judiciary directly. Okay, there may be very unpleasant people we may dislike them, but that means they have an entitlement to make an application or anyone in our constitution can make an application for habeas corpus to say, "I don't think he's legally detained. We have a second right, which is that any prisoner you may think this is bizarre, but any prisoner can write to a high court judge. He writes to the registrar and it's assigned to a judge and says my teeth are rotting because they won't give me dental treatment. We are obliged to make investigations, and then to issue a recommendation that this person needs a dentist, or this person is unable to sleep

because they're being driven out of their mind by the prisoner, they're sharing a cell with. These things are really important and the third is that we have the right to visit any jail at any time. Because, after all, we put them in the jail, so they should have the right to make an application to us, and we should have the responsibility to see that the jail is actually doing its best for education and rehabilitation.

- So this is, as to my mind, the right of habeas corpus, which was the right granted in Magna Carta, in 12 whenever it was. I see this as all of this has been very basic... Maybe it's not pleasant, maybe we don't like the people, but it ensures that even the worst people in our society get a minimum standard of treatment. Is that a bad idea?

- Absolutely, not a bad idea. In fact, Nepal replaced a couple of laws very recently in criminal courts, and criminal process which was introduced and came into effect in 17 August 2018. It has got a provision that any person who has to be detained by police or quasi-authority, who is authorized to investigate, has to take a prior permission of the court. So it means that the court is open 24 hours. But if there is a necessity then there is a situation that can be issued by the police. But they will have to report to the court within 24 hours that they have detained persons for certain sets of reasons. If a report has to be a part of that application for extension of time for detention, they give information. So those documents have to be very "very secretly kept". Nobody from the court can actually release them to anybody. And then, time is given to the police for investigation and they have to report. So, all these one, two, three are already in place in our laws.

- I think we have a provision in our constitution to say that nobody's liberty can be taken away without having access to a court and on that case, people can make application even by a letter to the Chief Justice as Episcopalian jurisdictions where they can ask for it, because there's a lot of police brutality in our country. So, when people are presented before the magistrate, he looks and sees is there any injuries and especially we are children coming from conflict with the law and they are brought for the care and protection which is apart from the law and punishment or whatever deterrents. And so, whatever one is to provide care and protection, to the children, to vulnerable children.

- I would like to add something. I believe that because of the value attributed to the people in all the states, apprehension and detention of people are important issues. These are legal reasons, legal grounds, and the way of detention by

force for condition of the prison detention to be good. There has to be a legal supervision and inspection and I am sure NGOs are also doing that, because all the states attach importance to people. The public prosecutor can inspect the prison or the public prosecutor or the judges can do it or we also have NGOS.

- They are usually consisting of retired attorney. There are certain boards consisting of NGO members of a board consisting of five people, I'm sure in all the states because of the value attached to the people; all the states are supervising and inspecting the prisons.

- Principle 8. We are going to principle 8 and have a 15-minute break.

- Yes, due process.

- I don't know, Mr. Chairman, Madam Chairman. I don't know if my colleagues from other countries are shocked by the notion that prisoners can write to high court judges, and say I need my teeth done, I don't know if you have any such system that the judge can actually make a ruling and tell the governor of the prison. So, you go to have your dental treatment better. I mean, these complaints are for paltry, but bad teeth can drive a man out of his mind.

- Well, if there is a medical condition, if you're losing a tooth or if you have a decayed tooth, you have it done. But then you don't have dental plantation provided to the prisoner. And in prisons, we have dentists and we have physicians, this is required healthcare, all they don't, they have outside and then they receive operations.

- Okay, principle 8.

- Mr. President, I do not agree with this principle because there is no one ... two equals for inlaw. Sometimes the word that may be a bit flexible when it comes to the roles, a person who doesn't know the information and the content of the file, an external person, a third party may just develop a misperception plus as you know, in other countries, I don't know if you have them or not, but he mentioned a chamber, they bring a wrong verdict, we have the a possibility to have it amended or corrected knowing that the first verdict was wrong. So, having a look at it from outside may cause some misperception that's why I believe that these verdicts should not be announced publicly.

- Because the interim verdict must not, only the final verdict, correct?

- So we call it as the content of the files, normally the subject is the same, but various documentations are available inside; therefore, some contradictory

verdict may be delivered, especially in legal cases, maybe not in criminal cases. The verdicts, when you publish them, all people access to it. I kind of believe that the verdict is incorrect, but they don't really have the know-how content of the file, and I believe that the verdict as a principle based on the subject should be announced as said. As I cited before... If it is a prediction that is incorrect, we have also second review for the application of all the parties. Yes, we did something wrong, related with this project and we can say that this is a correct version. Imagine that we refute or we cancel one verdict and this second time we realize that we want to approve it. So, the first verdict now first cancelled and then it is being approved. So there is this contradiction for a person who sees it from outside, they wouldn't understand why the verdict is being approved afterwards.

- Yes, this is the final version but what these are principle-based verdicts. When you take into account the subject, the content may not be intelligible, understandable, and comprehensible for people. Implementers or practitioners may have a look into that and they would understand it at once, you just open the access to everybody, then you may just arise the impression that all the verdicts are wrong.

- Every order is accessible to all... Everybody can have any copy. And then we are publishing our own supreme court report.

- Well, I say okay to online but to the outside people? No.

- So, all public even to... Everybody has access to our website.

- I believe that there are no other comments. So, discussions have been very fruitful and your contributions are amazing as well.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 1-8 of the Istanbul Declaration.)**

#### **Group E**

#### **MODERATORS:**

**Jeffrey APPERSON**

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

**Fahri AKÇİN**

President of 8th Chamber of the Court of Cassation, Turkey



11 October 2018



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

We are co-moderators, but my friend, Judge Akçin is going to moderate with me. My name is Jeff Apperson and I am the Vice President of National Center for State Courts of the United States. I served in the federal judiciary of the United States for 30 years. So, I've been a public servant for maybe 40 years working for the United States. Also, I managed the United Nations Criminal Tribunal for Yugoslavia and also I have worked in many of your countries. So, it's been a great honour and I was asked by the UNDP and the Turkish Supreme Court to serve as an international expert for the purpose of drafting the measures that we're going to discuss today. I just wanted to state for the record that my position is to serve as a facilitator. We have developed the measures, which I think all of you have in these books. Draft measures to implement the principles are in this book and we want the principles as stated are firm. So generally speaking, our purpose as a work group is not to reconsider the principles themselves, but to consider the Implementation Measures and how we might further address or refine those measures. And we're going to alternate. If I want to turn it over to my co-moderator and you can stay and we also need to, for the record, introduce everyone, so our reporter can accurately capture your name. Can I do that sir? Can I go around the room?

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

Hello everyone. Welcome. This is the outcome of approximately four years of hard work. The Istanbul Declaration has fifteen principles as you know. These were submitted to vote in the previous meeting and came to end and final. They were approved through voting and thus they will not change. In this booklet, there is a brief definition of those principles, a brief explanation of those principles and in the second chapter, second part in the booklet, there is an implementation action plan which serves the purpose of putting those principles into practice. And with your support, we will discuss the final draft today and tomorrow. We have many distinguished colleagues among us here today from various parts of the world. I would like to salute you all and extend my deepest regards to each and every one of you. We met Jeffrey Apperson in Ankara one year ago for the same purpose. He contributed through video conferencing to our work. Now he is here, in person and we are very happy that he is here with us. I wish you a successful discussion. My name is Fahri Akçin. I am the President of the 8th Civil Chamber of the Turkish Court of Cassation.

- [Mr. İlmettin Köklü]: My name is İlmettin Köklü. President of the 20th Criminal Chamber of the Turkish Court of Cassation.

- [Mr. Şahabettin Sertkaya]: My name is Şahabettin Sertkaya. President of the 17th Civil Chamber of the Court of Cassation.

- [Mr. Michael Ingledow]: I'm the Head of the Council of Europe Programme Office in Ankara.

- [Ms. Sophio Gelashvili]: Good afternoon. I am also representing Council of Europe but the headquarters in Strasbourg in. I am the Head of Justice Sector Reform Unit.

- [Ms. Atartsetseg Lkhundev]: My name is Atartsetseg. I'm Justice of the Supreme Court of Mongolia.

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

- Hello, good afternoon. Es selamu aleikum. I'm from Bangladesh. My name is Samina. I'm not practicing recently because of my relation with my husband as Chief Justice of Bangladesh. But before, I used to practice. So, I'm representing Bangladesh as a lawyer. Thank you.

- [Mr. Enock Chacha Mwita]: Good afternoon. My name is Enock Chacha Mwita. Judge of the High Court of Kenya and currently presiding the Constitutional Court and Human Rights Division. Thank you.

- [Mr. Komtharnongchai Chiphairojn]: Good afternoon. My name is Komtharnongchai Chiphairojn. I am judge at the Appeal Court but currently I serve at the Deputy Secretary of the Supreme Court of Thailand. Thank you.

- [Mr. Masoud Mohamed Alameri]: Thank you very much. My name is Masoud, Chief Justice of the Cassation Court of Qatar. Thank you.

- [Mr. Faruk Gök]: Faruk Gök. President of the 23rd Civil Chamber of the Court of Cassation. I wish everyone a fruitful discussion in the afternoon, and I would like to welcome my dear friends coming from various parts of the world.

- [Mr. Mehmet Bülent Selçuk]: I wish you a good day. My name is Mehmet Bülent Selçuk. President of the 19th Civil Chamber of the Court of Cassation. I would like to welcome all guests to our country.

- [Mr. Ramazan Özkepir]: Ramazan Özkepir. I'm the President of the 19th Criminal Chamber of the Court of Cassation. I wish you a fruitful discussion.

- [Mr. Mustafa Kemal Semercioğlu]: Mustafa Kemal Semercioğlu. President of the 17th Criminal Chamber of the Court of Cassation. I wish you a lot of success in this discussion.

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

Hello again. All the best for this work. Dear colleagues, I will read the principles in the booklet and underneath the principles, there is a brief explanation about the relevant principle. Second part, we have an action plan for implementation and as result of significant contribution of our foreign colleagues, we came up with this action plan and we had worked on them for a long time. They are about to be finalised. When we drew these principles and the action plan up, we did not only take into account the rules in Turkey or only the rules in the respective countries of the colleagues. All the countries of the world and their rules and the standards of their societies are very, of course, different. But they were taken into consideration when coming up with the principles and the action plan. Turkish translation of them may not be well. We have been thinking about these concepts for a long time. We tried to come up with a Turkish version but it may not be a literal translation. We tried to use some joint concepts and as I said in my speech in the morning, it will be adopted by the United Nations, but it will be like the Northern star in the world, shedding light on all countries and constitutions and other rules of various countries would be taken into account, as we said before. I'll be expecting you to contribute in that sense. I will chair three, five and seven, and principles of two, four and six will be moderated by my distinguished co-chair. So, let's start with one and we'll continue with three, five, seven. Let's start with one. I will try to read very slowly. We have 90 minutes. We have to do good time management. Principle 1: "Judicial proceedings must, as a general rule, be conducted in public". And there is a brief explanation underneath. "Transparency in the judicial process being essential to secure and maintain public trust and confidence in the administration of justice, the judiciary should..." do this, so citizens and members of the press should be allowed to enter the court room, in a nutshell. So, we don't have the written text as the interpreters, but he is reading the principle and the bullet points under the first principle one by one. "Establish procedures and provide appropriate facilities to ensure that court proceedings are open to the public

and the media”, “Undertake measures to ensure that there is sufficient seating space in courtrooms for the public to attend and witness judicial proceedings”, “Establish procedures to ensure that the public is well-informed in advance of the time and venue of court hearings”, “Provide access and appropriate facilities for the attendance of members of the media”, “Establish uniform procedures requiring judges to deliver their judgments in a timely and open manner”. Is there anyone who would like to contribute to these points? You have the floor.

- [Mr. Şahabettin Sertkaya]: Şahabettin Sertkaya, President of the 17th Civil Chamber. Thank you very much, distinguished Chairman. Well, at the outset, you said that these works started four years ago. The work on these principles started four years ago. I would like to thank each and every one of you separately for your significant contribution to this work. We are discussing Principle 1 now and the bullet points and the articles that you read, these are indispensable for litigation, for trials. Of course, the trials should be open to the public to ensure its transparency. As the necessary prerequisite of transparency, there will be a judgment at the end of litigation, trial. A judgment will be rendered and one of the parties will be affected by that judgment or all parties will be affected depending on the outcome. So, in terms of transparency and trial being public, I think this is very significant. This is indispensable for the judicial system. That's all I wanted to say.

- [Mr. Ramazan Özkepir]: Ramazan Özkepir, President of the 19th Criminal Chamber of the Court of Cassation. Since 1928, we have this Criminal Procedure Code since 1928 and it was translated from a foreign language into Turkish one. It is still valid today. We have three main principles. One of them is publicity. So especially criminal hearings should be public and oral, verbal. So, in terms of transparency, publicity is the prerequisite of the contemporary legal systems of other countries like European countries. It has been an important principle for many years, and it is a requirement of transparency. It is mandatory, so it is compulsory. It instils trust in the legal system and in fact that legal rules are implemented objectively. And the public is supervising, overseeing the system. So, the public can oversee whether or not a criminal procedures are being implemented as they should be or which rules have been implemented in the criminal proceedings, for example, whether the witness statements are recorded or not. So, there will be always sources of suspicion, but these can be done away with true transparency. This principle has been put into practice since 1928 in Turkey. It is a global principle. Only in exceptional circumstances it is not implemented, as required by the court. When it comes to sexual violence or information that are secrets of the State and due to national security, the judge

may decide not to have a public hearing, but it is not fully at the discretion of the judge. The Criminal Procedure Code has rules about publicity only in one out of 1000 cases it is not public, we can say. But every hearing is done publicly, and it is an indispensable rule of transparency, requirement of transparency. So, your comments are very valuable and as a moderator, we have difficulties because we have to keep the time and do some time management so your comments, they're being taken into account and recorded. And we expect you to support us when it comes to time management. Anyone else who would like to take the floor? If not, I would like to very briefly read the action plan of implementation.

- Yes, thank you very much. Regarding the Principle 1, I agree that it's very important to be the procedure open for the public. Unfortunately, I couldn't hear the translation before because the sound is very low.

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

Yes, she needs to speak up a little.

- Yes. That's why maybe I will repeat something they said, so sorry for that. I just want to mention here, I'm actually a judge as from 1983, it's almost all my career life, 35 years now. So, I go through all of these kind of cases and I know that there is kind of cases as very sensitive. Especially the family cases, which usually, the parties ask the court to be in very, I mean it's nothing public. And we understand that. Because it's very, I mean, personal cases. It doesn't make anything with the important of the announcement or the open courts in these kind of cases. And we face it and we have it and our law says the family cases, when the party asks for a closed trial, we do it as they wish. And we know, we understand why is that because of the sensitivity of these kind of cases. There are another cases which we can't, juvenile cases. And there are some sensitive cases regarding the rape or sexuality cases, which usually parties don't want to face it publicly. So, I think this is very important to mention in this article. Thank you very much.

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

For the record, I would like to note that the President is indicating that there are exceptions to the rule, for specific purposes.

- Regarding the principle of Number 1 and Number 4, I want to...

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

Number 4.

- Yes, 1 and 4. I'm from Bangladesh. So, in our country, every person accused of a criminal offense shall have the right to a speedy and public trial. The public have an absolute right to know the decisions in the court room of Bangladesh. Media has easy access to the court of Bangladesh to transmit the decisions of the courts to the common people within a few minutes. So, our media is quite strong in Bangladesh, regarding the cases in Bangladesh. Yes. The Supreme Court of Bangladesh has its own unique relationship with the media and its own comfort level with the media. So, we have set a media room in the court premises in Bangladesh. Yes. And since 2008, the Supreme Court of Bangladesh has been publishing annual report. The objective of this initiative is to analyse the progress, backsliding and current challenges to the judiciary system in Bangladesh. In Bangladesh there are more than 166 million people and we have more than 3 million cases pending from the court of first instance to the the Supreme Court, highest court in Bangladesh. It indicates that people's access to justice is higher than many countries in the world and it shows confidence of the people in our judiciary. The government has taken some pragmatic steps in order to provide legal aid to the poor or disadvantaged. Especially vulnerable women and children, so that they may take shelter of court of law and at the cost of the government. In order to promote transparency in the judiciary, the Supreme Judicial Council headed by the Chief Justice of Bangladesh formulated the code of conduct for the judges of the Supreme Court as per the mandate of the Article 96.3 of the Constitution of Bangladesh. Flouting any code of conduct is tantamount to misconduct and some judges lost their office for violating the code of conduct. So, we're quite serious about it, yes. And the greatest strength of judiciary is the trust and confidence of the people.

- Dear colleagues, excuse me. Nihal Bey, he said in his previous meeting, this goes to Turkish citizens and their hospitality, of course every countries have laws and they have their positive or negative aspects. But this is an international meeting, gathering. So, we should focus on the aspects of principles that could be relevant internationally. So, this should be the spirit, the consciousness that we should act on. So, we should focus on the international aspect of those principles. And this goes to Turkish citizens, my own colleagues. So please do not dwell to long on national practices and that may be relevant for nation but may not be relevant for other nations. Thank you very much.

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

Should we go to two? Ma'am did you have something to...? We need to keep... Yes, we have eight principles to get through in 60 minutes.

- They are only, they are eight articles.

- [Ms. Atartsetseg Lkhundev]: I'm the interpreter and I will interpret in Turkish. About Mongolia, the delegation of Mongolia presented views on, she shared her views on public hearing, sittings. So, there are two types of systems. Public hearings and closed hearings. Public hearings, the criminal court and the civil court, regardless of where they take place, publicity of hearing is based on various rules, specific rules. It depends on who can participate. A group, a civil society group or various citizens, members of the press, the media. They come the initial part and the final part, they join the first, initial part and the final part of the hearing so they are subject to rules, public participation to the court room. And it is at the discretion of the judge. It is not at the discretion of the judge, excuse me, who examines the file. So, depending on the quality of the file, as per the national rules and stipulations we know in advance whether or not a hearing will be public or not. So, it depends on the quality of the case file. The law determines which ones are to be held publicly and which ones are not to be held publicly. And the judgment of the judge or the decisions of the Supreme Court, they are published online and they are distributed to the members of the press and media. As was mentioned this morning, Mongolia is paying attention to these various aspects that are regularly stipulated in the law. Thank you very much.

- So, the action plan of Principle 1. Family cases was mentioned, sexual violence cases which may have an adverse effect on the morals and public order. They may not be public, but they are stipulated by law and maybe we can have an article about them in our action plan.

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

So, should we go to Number 2? Or do we have... Yes. It's up to you.

- [Mr. Komtharnongchai Chiphairojn]: Sorry. Actually, I think, as I understand and accept Principle 1. But, you know, it's not easy to understand that

around the world because it's about the person. Injured person impact from the... For example, like Chief Justice from Qatar says family case. It's not benefit to the public, you know. So, in Thailand, we're concerned about the injured person or the private rights of the people who are impacted from the criminal something, behaviour, something. So, it's depending on the situation. Normally, not every case, just some case, we have to except from this principle. Thank you.

- Yeah, I sensed what you're saying. We have to balance the interests of privacy with public access.

- I just wanted to add that, in our jurisdiction, children in conflict with the law are not exposed to public hearings. That is protecting the privacy of the child and the identity of the child, so cases are conducted in privacy. And that is at discretion of the court, and also to the benefit of the minor we think in conflict to the law. So, we may have to moderate so that we are protecting the children who come in conflict with the law.

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

Okay. It's okay if I go to Number 2?

- Yes.

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

Okay, thank you for your comments. I think that we will have some more comments on some matters than others so I thought number one, would be an intensive discussion. Number 2 is generally, we're advocating in one that are proceedings in general, as a general rule, and I think that captures some of your exceptions to be conducted in public. I think Number 2 is about managing the process of informing the public about the proceeding. "The judicial system should ensure easy access to court premises and to information". "Physical access to justice being an essential component in promoting public confidence and trust in the administration of justice, and the judiciary should..." and if you can briefly review one through thirteen. If you have any other practices in this area that serve to inform the public about access to the system and proceedings as they're scheduled, I would like to hear what your thoughts are on other examples on measures that could be used to implement easy access to core premises and

information. From my first review, it's pretty comprehensive. There's a lot, that probably has the most Implementation Measures included, probably I think of any other principle. So, I can think of... but I'm not here to add my opinion at this point. So, are there any other measures on Component 2 from your experience that would help us implement this measure? Or do you see any problems with the measures that are outlined? There could also be problems with the measures, not just that we add measures, should we change any of the measures that we've listed? There's also an issue, I don't know if you have issues in your country about remote access geographical considerations, you know. I know, these are information access issues, and that's why they're mentioned here, night courts. But it's also about delivering information. Any other thoughts on this area from anyone? Oh, yes sir. My co-moderator has a point.

- For the second element, this talks about physical access to courthouses, court premises, physical access. It was mentioned in detail, but Mr. Jeffrey already said what I was going to say. Physical access, people who do not have a chance to physical access. Through a video conferencing system or through visual recording in addition to voice recording, visual or people who are elderly or are sick, maybe the judges or justice suppliers could go to them to where they are. Thank you.

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

Thank you. Any other? You had something, Michael?

- I want to add something. It's more reflection on the way things happen in my usual home country which is France. The municipality buildings are not inside, but outside, are put on the glass, all the schedules of municipality meetings, things for building construction permits, voters lists, everything. I don't know if inside of the courthouse and outside the courthouse is just is a practical measure, which is a matter of just adding two words in here.

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

Yes, in which one?

- Measure five. Publicly posting...

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

Okay. It just says “in the courthouse”. And you’re saying “and outside”?

- Yes.

- Okay.

- Okay. Those are the kind of things we are looking for too. Yes, any other? Now, if there are no other comments on two, it is pretty comprehensive. We can move on to three. So, I think everybody’s ready for three. So, any other comments on two? Okay, we go to three.

- I know that the Turkish participants are also very knowledgeable, but we are very hospitable as Turks and in order to give more room to our guests, I ask the Turkish participants to allow more time to our guests. But, of course, if they have any experience, they can feel free to share. Now I go to the third principle. The third principle is access to the judicial system, because Principle 2 was about physical access. So, Internet must be used comprehensively. Applications and responses should be sent and received over the Internet. Also filing systems should be available online. The costs and conditions for filing a case should be available online and should be practiced online. Also, people who are to apply to the judiciary, technical aid must be available, legal aid must be available to them, and people who want to use the legal system in addition to legal aids, administrative aids, technical support should also be available to these persons. If necessary, unlicensed people should be, by this we mean people who are not necessarily lawyers, but who are knowledgeable, non-qualified persons should be able to assist. If people do not have the necessary financial means, the State should offer financial aid. And if people have, people should be able to access their own information electronically through the Internet. This is what the third principle is about. If there are any comments on Principle 3, we can receive them.

- Co-chairs, moderators, as I begin my remarks, I greet all the participants. I want to say a few words on the third principle as well as other principles. Ensuring transparency in the judiciary, why do we need this? I think the answer to this fundamental question is the society should be convinced that procedures are run truly in the judiciary. So, transparency in the judiciary, in judicial processes is there to convince society that the judicial processes are delivered correctly, duly. What is the source of this need to be convinced, the society’s need to be convinced? When we look at history, we see that the public, the society has concerns about the processes, about legal processes at a concerning level, which

means the society, when it comes to judiciary being entirely independent from the executive, the public has concerns about whether this is true. In states, at the beginning, judiciary, execution and legislation, they were controlled by a single ruler or a single monarch. But over time and as politics improved and with the advices that developed over time, execution noticed that there could be problems when it is a part of the judiciary, it's a party to the judiciary and it has a high cost on society. So, when it comes to the conflicts between parties within society, the executive didn't want to be a party and abandoned this. So, the judges being independent from the executive was the solution that was introduced. But at the beginning this independence was not authentic. An Italian thinker, Machiavelli, his book *The Prince* mentions this very nicely. A judge who is not truly independent being declared as independent. The society was fooled by this for a while but since people were smart, over time they realised that this independence was not really real, was not authentic. And over time, executive noticed that the so-called independence was not really working well and over time the executive started making compromises on its control on the judiciary. And over time, the checks and balances system which all modern societies have today has been achieved. In Turkey and in many other countries of Europe and the world, judiciaries are actually independent and impartial. I have been a judge for 38 years and so far, I have never received any pressure or instructions from the executive. We only are asked to complete judicial cases, court cases within a reasonable time period and to act kindly to the parties. But when it comes to how the outcome of the court case will be, I have never received any pressure, which I'm proud to say in front of our international guests. So, this has become authentic, but the society has certain concerns coming from history. So, our efforts on transparency are significant. Society has historical concerns which can be addressed through transparency and this is the main goal of all the measures that we're taking here. In order to have our measures successful, we have to understand the core of the issue. And this is all. I mean I spoke long, but I won't take the floor again. Thank you.

- Thank you very much. Everything you said is correct, we agree. Would anybody else like to take the floor? Four, Principle 4.

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

Are there any comments on six, part six on Number 3? Any observations on... Yes ma'am.

- Not particularly on Number 6, but I was wondering because it seems that, maybe it's my understanding of the word judiciary, some of the actions are not in the mandate of the judiciary I think. Such as establishing of public defender's office or establishing of legal aid clinics. So, I think these are directed to the executive rather than to the judiciary. So, I don't know if you want to differentiate what the things are that judiciaries themselves could do and what the things are that are in the mandate of the executive powers to put in place.

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

Yes they're done, it's done in different ways in different countries. Okay. That's a good comment. Yes sir.

- Regarding or relating to her point, I think we have to realise the different judiciary in the world. I mean, some of countries like mine and a lot of other countries are trying to imitate it, judiciary is fully separated from executive. So, there is no relationship between executive and... So, the thing such as translators or the support of the judiciary in terms of employee or buildings, it's under the judiciary. They have to create their own administration for taking care of that. Without doing anything... This is, I mean, in our country, it's maybe the only in the region who is doing this. I mean a lot of countries like our neighbours, Saudi Arabia, Bahrain, Kuwait, they have administrative justice, who is taking care about that. In our case, we don't do that. So, this is the thing which is demandable now and a lot of judiciary, which is the separation, the full separation of judiciary from the executive. So, I think, I just want to relate to this point. Thank you.

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

Yes, we need to distinguish models of governance.

- I just wanted to agree with what my two colleagues have said. In my country, we have a system of proper brief, where a judge, in any criminal matter where there is homicide, no one should be tried without legal aid. So, it is responsibility of the court to appoint legal representative. Now, we've had some situation that we do not pay them, we don't have money to pay, you know for... It is a government issue to pay for legal aid. When you appoint a representative, legal representative, the victim's family will feel the court is against them. The court hired, appointed a lawyer to represent the accused person. They think the

court is going to try with this. See there is now, there appears to be perception, which we are trying to fight, so that the people know the accused has rights, the victim family has rights. But when and now it comes to pay the lawyer will not work for free. We need to pay substantial amount. Who pays this? The State. So, the State does not give you money, it cuts your budget. The proper brief collapses. Legal aid collapses. So, when we have to differentiate so that it is put in such a way that it is not the court's responsibility to establish. The government in conjunction with the courts may help to establish such a program so that it's not fully a responsibility of the court. Thank you.

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

Do any countries provide for waiving fees so that the party can enter the court? So, many countries have a fee for filing. Are there countries that have a fee in the waiver process? For fees? Just a thought. We do. I just wanted to know. Okay, never mind. Never mind, I just wanted to ask.

- Since Turkey is host, we should also make some input. Maybe we'll have some advisory sentences written in our document. Citizens' access to the courthouse. In addition to ensuring, in addition to facilitating, judiciary organs' working conditions should also at least be at a certain standard. I think we have to mention this as well. Physical conditions do not only apply to the access of citizens, but also people who work there including the judges, other staff and lawyers who come. So that they can work in healthy and modern physical environments in terms of premises, which is also a necessary element of a healthy judicial process. I think we also need to allude to this fact.

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

Environment, yes. Okay.

- Okay. Number 4.

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

Number 4 should go quickly. Also, I just wanted to note that as we go through these measures, I see these measures are forming the basis for surveys

of the public. So, many of the principles captured in Number 3, I could see being in a survey and the public could be answering these questions as to whether or not the quality of services meet the Implementation Measures. It's just a thought as we go along. I just wanted to mention that. I think it also applies to Number 4. "The judiciary should provide court-users with translation and interpretation facilities, free of charge". And it's a very simple rule and I know how complicated this is, because in the United States, we have, I don't know, 300 languages I don't know how. I know every country has the language issue. Anyway, it's rather like they need it, we have to provide it and we provide it for free. That's basically what we're saying. Any thoughts on Number 4 as to the Implementation Measures being that they understand the language in which the proceedings will be conducted and they get the free assistance of an interpreter. I wondered if we should use the term... Should we use... Maybe I shouldn't mention this, qualified interpreter? I don't know, anyway.

- Certified? Certified interpreter?

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

Qualified or certified...

- Certified? I don't know, yes.

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

We have both. I didn't know if qualification would have an effect on the measure of implementation. Anyway, I wanted to see what you thought on Number 4. Any thoughts on Number 4? Yes, sir.

- For a fair trial, first of all, people should be able to defend themselves in their own language. If they do not understand or speak the language that the proceedings are going on in, there must be a free-of-charge interpreter who can aid the person and through the aid of this interpreter, the person should be able to express their own side or defend themselves. This is one of the fundamental rules. In our judiciary system, people can communicate through any interpreter, they have the right to use an interpreter which speaks their language and when the court doesn't provide this, the court is limiting the right to defence of this person. And in the higher court, always the rulings are overturned if this wasn't provided. That's all from my side.

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

Thank you for your comment, Your Honour. Any other comments? Yes sir, Mr. President.

- So, I think the term “understand” is good, we don’t have to say “qualified”. Because you sometimes face some problem with the minor group of people living in your country and you have just this guy to translate, you have to get him. Otherwise, yes.

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

It’s up to you to decide whether they understand...

- Exactly. So “understand” I think is better than “qualified”.

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

“Understand” covers it.

- Yes, covers everything. This is one. The second, do we have to make the new term he or she here? In every... I mean yes, when we go to write her... Yes, him or her. He or she.

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

Or we can say “they”.

- Or they, yes.

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

Okay.

- That’s it, thank you.

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

Thank you sir. Okay, Number 5.

- Again, about the transparency of judiciary, in the assignment of cases. Transparency in the assignment of cases. Each country has their own assignment procedures. No matter which method is used, assignment procedures should be set in advance and the society should know, the public should know. And these pre-determined assignment procedures should be reasonable or explicable. They shouldn't be changed without reasoning. And as the assignment, as the distribution is carried out, depending on the type of the case, based on the request of parties in order for the judge to have a more impartial approach. If there is any relation that the parties should be made aware of, it must be declared in advance. Also, another importance of transparency in assignment of cases. Cases which have been distributed, assigned based on previously determined reasoning, without a justified reason, should not be taken away from the previous judge or previous court. This is what Principle 5 is about.

- [Mr. Mustafa Kemal Semercioğlu]: My name is Mustafa Kemal Semercioğlu from the 17th Chamber. Based on my previous experience or based on what we hear in our trips abroad, I want to raise the following comment. Assignment should be transparent and equal and the fundamental goal of this is that a party should not be able to choose their own judge. There should be a neutral judge assigned. But I believe that a problem is prevalent in many countries, some judges are more qualified, some are less. When this is the case, what matters for the parties is an impartial and correct court ruling at the lowest cost. So, when it comes to the competency of our judges, if governments are not able to exert an active effort, should parties have the right to ask that their case be assigned to a more competent judge? What are your opinions on this?

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

So, we would call that a “motion to recuse”, is what we would call that. For the... Because of certain conflicts, so. But motions to recuse are... Does everyone have the procedure of recusal? Okay. Recusal means a party asked the judge to remove themselves from the case due to a bias or conflict.

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

Yeah, a standard procedure.

- We have that in Turkey as well. Recusing of the judge or parties rejecting the judge. If some criminal procedure rules are fulfilled, then the parties may request the judge to recuse himself and not examine their files, if there are concerns that the judge will not be impartial. He may recuse himself. But the rules have been set in advance. So, based on these rules, that should be possible to do. Anyone else?

- The distribution or the assignment of the case file, it has to be determined in advance and it's not only regarding impartiality. I mean, there are some specialised courts on intellectual property or terror courts, so there is just one court in one region which really examines that case file. So, in the distribution of the case files, principle of fairness should be implemented. So, it should not be arbitrary, the assignment. You should not keep a case file waiting for a long time. And if there are several courts in one region or district, if the judge decides in favour most of the time, then people may be concerned. The concerns of the parties should be alleviated, but there are courts of first instance or civil courts and maybe one court in one region where the case file goes to, so. Rather than impartiality, we have to take into account any prejudice in rendering the judgments. That's why, when Court A or Court B sees the file, the citizen should know the duration of when the case file will be concluded or finalised, so. Duration should be set but they should not have any concerns about the judge. If there are no alternatives, I mean, they may be, not only the impartiality is relevant here. Whether or not there is favouritism towards one or the other party, that is also important. That whether or not cases are prioritised over others, that's also important to know. This is important, I think. Article 3 of the action plan is not covering it fully. Yes. Maybe interests, advantages involved, so it mentions that, external financial interests are mentioned but we have to talk about the training and the specialisation maybe of the judge to make assignment easier. We can add an expression here that, training or specialisation of the judge. So this has to be set in advance or known in advance by the parties. Or in some special cases, only the specialised judge should see the file or examine the file. Maybe we can have an expression to the effect. I don't know how exactly we can put it, but this is an important problem in Turkey. Other than the Criminal Code, I mean the private law, I am the head of the Chamber who is looking into appeal cases. There are 183 criminal provisions in the private law. So every judge cannot be specialised in everything. So I think we have to expand the specialisation of judges and some cases should be examined by judges who are specialised in that respective field. We have to have an expression to the sentence.

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

I think the reporter has recorded your comment and I would like to review that again and consider how we approach the Committee on that. But, thank you.

- Okay, six. Number 6.

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

Also I wanted to say that I have been in here many times and I've worked with your former Deputy President of the Constitutional Court, who was my good friend, Sacit Adalı and we worked together on the procedure in Turkey. But I didn't get an opportunity to learn enough about the system of Turkey. So, this is a real opportunity for me to hear more about your thoughts in Turkey. Okay, we're moving right along. And Number 6. "The judiciary should ensure transparency in the delivery of justice. The appearance and the actuality of transparency being essential in the performance of judicial functions and in the delivery of justice, the judiciary should..." basically, submit a reasoned judgment that justifies your decision. This is an interesting one I think, reorganize the registry to enable easy access to court records and quick retrieval of information. That's always a challenge for us. Manual courts and electronic courts. This is a real important one. I think it's about finding the record. Like a lot of countries have an issue just about finding the record. Subject to privacy laws, establish systems that provide public access to information pertaining to judicial proceedings, both pending and concluded... Concluded could also mean archival, archive information. Including reasoned judgments, pleadings, motions and evidence, whatever is not subject to privacy laws. This is particularly important for research, I think, as well. Regularly publish information regarding court caseload statistics and case clearance rates. That's something also that the press and other branches of government are interested in. Kind of one of those checks and balances. Also ensure that information on budget-related data, such as fees and the use of budget allocations are publicly available. In my country, I'm always concerned about the focus on fees now, as being an offset to the budget and I think it's really important that the public understands just how much money we're collecting from the public. Anyway, does anyone have a comment on Number 6? Yes, sir.

- Thank you, Principle 6, Article 1. I'd like to state my opinion on Number 1. Reasoned decisions, judgments. "Require a judge to state in his or her judgment the facts, law and legal reasoning that justifies the judge's decision". So, this is

to the point and when we are appealing or we're examining appeal cases, we sometimes exaggerate. So, we're trying to look into each and every aspect again during the appeal phase to deliver justice and to satisfy both parties in a way. So, they should believe that the justice is delivered to these parties. That's why I think Number 1 is very to the point and a very good article. Thank you.

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

Thank you sir, thank you Your Honour. Anybody else have a comment on Number 6? Okay.

- Principle 7 is very important. "The judiciary should have supervisory powers over executive detention". So, the order is given by the courts to arrest but when it comes to detention, the decision to detain, police or the gendarmerie, executive power is involved. And courts have to intervene in this process. Duration of detention and custody should be overseen, audited and we have to set this duration of detention in advance. And the arrest and detention condition, rules, whether or not they are implemented, we should be able to supervise them. And periodically, in short intervals, we should check whether or not the detained person is brought before the court or has been brought before the court. Detainees and the conditions of detention should be well-known, should be monitored by court officials. And that's why court officials should visit detention centres to supervise the conditions of detention. This is what it means in a nutshell. Any views on that? Yes, please.

- Well, according to Criminal Procedure Code of Turkey, the order to arrest someone is to be rendered by the judge. So, the public prosecutor is issuing an order to take into custody but that's as a result of which the police takes this person or suspect into custody. As regards the custody duration, the detention period should be subject to the judge's discretion. So, whichever court has jurisdiction, the decision to end the detention or start detention is to be rendered by that court. I mean, in terms of the Criminal Procedure Code, this is clear in Turkey and this is aligned with this Principle No. 7 and that's all. Thank you very much.

- So, without the court decision, no one can be arrested, yes. But the problem here is that, once the purpose is realised, I mean, in all countries, in all laws, there are set rules according to which you can arrest a person. Arresting is a stipulated measure. But the enforcement of the crime, I mean, arrest or detention, it's a

measure. It's not execution of punishment. An execution of a sentence. That's what should be clear. And I'm sure the relevant stipulations say under which a person can be detained, and judges are involved, the courts are involved. Other than the conscientious discretion of judges, there is nothing else that can be done, so judges should consider that it's just a measure and when it's time to release that suspect, that person should be released. But, sometimes it is considered as a sentence, detention, as a sentence. So, he will stay in the cell for this and that and the de facto situation is sometimes opposite. It is not an execution of a sentence, detention. It's just a measure and the judges should be very sensitive about this fact. Maybe we can have an expression or have a phrase about that in this principle. But regardless of the conditions, it is at the discretion of the judge to decide and it may, if it's up to the practitioners, it may have negative effects. In our own legislation, we're monitoring the decisions of the European Court of Human Rights, and the first instance courts and Supreme Courts are doing that in Turkey. So, the law may be very good, but even if you have rules for arrest and detention, so in the end, it is the interpretation by judges and the implementation of this law. Maybe a just solution or it turns into a punishment sometimes. So that's why judges should be very diligent about it and they should know the goal, the purpose of arrest and detention. This is in the third article actually, but it doesn't fully cover your statement. "Order that persons held in administrative or executive detention be released if the authorities fail to provide adequate factual and legal justification for such detention". Yes it is a measure, it is not an enforcement of a sentence, it should not go beyond its original purpose. Once purpose of the measure is met, the person is to be released. This can be written in the action plan. I think as such.

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

I don't know if it's time for a break. We did get started 15 minutes late, we got through seven principles, so we're making, I think, pretty good progress and also on this principle, as I read it, I think of the writ of habeas corpus which in my country it protects the person from executive detentions that are illegal and we have a lot of this in our border on the immigration cases right now. We have a lot of litigation in the immigration matters where the President is detaining the immigrants that still have habeas corpus protection. So that's for us becoming a very big issue in the United States So, but Your Honour, would it be okay if we break now and then come back in 15 minutes to finish all the principles?

- Okay, okay.

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

I think that would be good.

- Yes.

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

That's been great, that's basically, we're re-affirming what we've discussed. So that's the purpose of this is for re-affirming all the hard work on these principles by all of us. So, thank you all very much, thank you Your Honour, thank you. So, 15 minutes and then we will finish up. We're taking a break, 15 minutes. Yes, we've got to get the EU to adopt these principles. That's okay, we'll talk.





## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 9-15 of the İstanbul Declaration.)**

#### **Group A**

#### **MODERATORS:**

##### **John DOWD**

Former Justice, Supreme Court of New South Wales

##### **Doç. Dr. İbrahim ŞAHBAZ**

President of the 4th Criminal Chamber of the  
Court of Cassation, Turkey



11 October 2018



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

- Alright, do we have anyone...

- Eight, nine and ten. I really worked hard and then I didn't find any issue. If you just skip it and if you do not want to talk about it, because I really worked hard and didn't find anything.

- Establishing programs for students. Maybe we can do the following. Supporting the programs conducted and higher education institutions. So, it's not just conducting such programs themselves, but also supporting such programs performed by the universities.

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

Distinguished colleagues, once again, İbrahim Şahbaz here. Madame Gülriz proposed an issue which was also raised in ethics because, ethics and transparency are complementing each other. In Ankara, in Faculty of Law in Hacettepe University, we had presentations on ethics and it was really productive, and we gave documents to the students, because they participated in ethics programs. So, if we are going to win the trust of the people, we should start from the students at the universities. Therefore the judiciary should actually support the university practice, on this issue. It's very natural for the judiciary to contribute, and it will not be an additional issue. Mr. Dowd your remarks on this?

- [Mr. Haydar Sami Kuzu]: On nine. My name is Haydar Sami Kuzu. What we mean here with students, are they are students of faculty of law, because, if we are talking about students of faculty of law, we should separate them.

- Distinguished judge attracted my attention to the terminology "student" here. There should be a differentiation between the students of other faculties and students of faculty of law and I just seconded his view.

- Yes, correct.

- In five of twelve, it says, there is a Court-Users Committee in every court. What does the court users committee mean?

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

İbrahim Şahbaz here again. Let me elaborate on this. In 12.2, there are

public complaint boxes that could accept even anonymous complaints. Can the anonymous complaints lead to abuse and create problems for the members of the judiciary? In our internal legislation, maybe our colleagues could also give information on that, we have the right to petition law and this is about accepting petitions in anonymous manner. If the petition provides information about concrete cases, it might be analysed, but here there's no such thing. Is this going to create problems? The fact that there are anonymous complaints, if you share information on your practice maybe we can reach a common point.

- Now, what I understand from this in terms of the anonymous complaints is, this is not a general terminology. Here what is meant by some complaints about the judges, or the administrative staff in courts done in an anonymous manner. This is not bad even if such a complaint is received in an anonymous manner, the court President or the authorised personnel can evaluate this and see if there is any problem in terms of the management. This is not a bad idea. I think it is a correct principle and an article on that.

- Let me say in the ethics principle of the Court of Cassation, we said and adopted that there could be anonymous complaints as well received there.

- It seems there is no problem.

- I wanted this to be evaluated. It is also in the ethics, but we also debated it here and there. In my opinion, we should add antidote to a concrete complaint, otherwise it must be damaging for the judges. There is a committee here, but the committee in this one is different from the ethics committee that we talked about. Because there, we had an academician here, it's talking about lawyers and citizens. It seems that there is a judge, lawyer and citizens. Would this create a problem in the Court of Cassation? We just included one person from outside. It won't be a problem there, but when the citizens are involved and when they are the majority, and in an environment where they are not experts on this issue, I'm just attracting your attention whether this might be problematic, just to take note of this fact.

- Mete, the floor is yours.

- In paragraph one, it is "review applications and/or nominations for judicial office". The Turkish phraseology is not quite right. So, there is a problem with respect to the Turkish of the first paragraph. I couldn't understand what the Turkish meant in terms of the nominations there. It's a problem with the Turkish phrase there. So, it should be receiving applications.

- Mr. Dowd, our colleague is saying, in terms of the application and/or nomination for judicial office, there is a problem with the Turkish grammar. I don't know how the English is. So, it is a problem pertaining to the Turkish text. So, nominees would be better in the Turkish word. The application is performed, but there are also... So that's a problem, pertaining to the Turkish texts, it seems.

- Yes, thirteen-one.

- So, if you translate the first sentence from Turkish to English. The English reads "applications and/or nominations for judicial office". We're just checking the translation sir, one minute. So, there is no problem with the English text but the translation into Turkish has been incorrect. So, they're just correcting the Turkish now, sir.

- In thirteen-four, there is an interview. I think this is stemming from the US system, when there is an appointment to the Supreme Court. I don't know whether this interview would be correct. For instance, we're going to appoint the President of the Court of Cassation. So, will we actually have an interview which is going to be publicised by the press and watched by the public? Is it suitable for all legal systems? Shall we formulate it in a different manner?

- I think we should delete this or we should reformulate it. Because, here we're talking about the people as well as the media following this, and I don't think it would be correct.

- In Turkey, this is done in a confidential manner. We have an asset declaration every five years under the name of asset declaration. Every judge declares it in a confidential manner, and this is only declared to the institution. So maybe we could put in a secrecy clause or a confidentiality clause.

- No, the Chief Justice. This is inserted into the personnel file, own personnel file of the judge. If it is a judge or a prosecutor, it is sent to the Ministry of Justice. Or if it is a member of the Court of Cassation or a President of the Chamber, then it is included in the confidential personnel file at the Court of Cassation.

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

My name is İbrahim Şahbaz. I will make an addition. That's a very correct comment. But in our case, regarding all the public officials as per a law called anti-corruption law, all the public officials are obliged to declare their assets at

certain intervals, and if it is over a certain amount also at interim intervals, they need to declare that increase in the amount of assets. These are very rightful actually legal provisions adopted to fight against corruption. Any outsider does not need to know about these but if there's an investigation to be initiated about that person, if there's any bribery or corruption or embezzlement, so in those cases, they are prepared to be presented to the judicial organs, if not they're just kept on file and they're only submitted to the authorised bodies, and in our case, it is the Chief Justice's Office of Court of Cassation.

- Well, in that case, let me express this. This is periodically at certain periods by the judicial organs and by all the public officials. I think on the years ending with five or every five years, if it's in 2000 and then 2005, 2010, 15. So this is compulsory to declare the assets. And also, in the meantime, if it is four times or five times, I do not exactly remember, but if you have an income that exceeds four times or five times of the monthly salary of the highest degree of civil servant, then you need to declare. In cases where you fail to declare, there are also provisions in the law. The relevant administrative unit, I think within one month or two months, I don't remember exactly the duration but, if you do not declare, an action is taken against you by the administrative unit and if not, and a judge would not do this anyway, but if the judge fails to declare the assets, an action maybe initiated against that judge. And the procedure for that is, it is different for each different judicial member. So, you're asking about the investigation of a prosecutor. For Court of Cassation, there's a special provision in the establishment of law of Court of Cassation for judges. There are also special provisions for other administrative staff, there are special provisions in their particular laws, and the procedures are carried out accordingly.

- So, if there's any divorce case, would the declarations be sent to the court in question? That is the question actually.

- Well, it's a secret document. We haven't had any such practice, but it's a secret document. It should not be possible.

- [Mr. Ömer Uğur Gençcan]: My name is Ömer Uğur Gençcan. I think, in criminal cases, aren't there requests for claims for non-peculiarly damages? And when identifying the amount, we need to know the economy and social status of the parties to decide on the amount of compensation. So as criminal chambers, do you consider this obtained evidence?

- No, let me explain. What is important here is whether a document can

be considered as evidence in the case file or not. In a criminal case how do you determine the amount of compensation? It is determined according to the economic and social status of the parties. It doesn't mean, whether the case is called this type of case or that. I've been working in the 2nd Chamber of the Court of Cassation for so many years, but I've never been presented an evidence in that type, but my personal opinion is that it will not be binding on my institution, if, since we submit these documents in a closed envelope. They are not public and there has not been a claim so far from the other party for their disclosures. So we haven't seen any such practice in the Court of Cassation case law, so far, but if that had been the case, I don't know, I wouldn't consider it proper for a secret document to be publicised in any regular divorce case. Because then, in that case, individuals would also file for information to be provided to them under the law for receiving information with the petitions.

- What happens in your county? I'm curious about it.

- Afghanistan, with regards, is a country who has signed the international convention on anti-corruption. And the procedure is that all state officials, including judges or members of the Supreme Courts or the highest court of the country or all the top-level public officials each year, they have to have their assets recorded and then publicised, and published and the reason for their publication is that they serve as a safeguard for them to avoid corruption in the future. There is a special institution established for this purpose and the records are kept there. But I do not think that, that would be any problem to publish them. This is an important step in favour of transparency. Including myself, and also all the other judges working in my institution, we have to declare and then publish our own assets every year.

- [Mr. Ömer Uğur Gençcan]: My name is Ömer Uğur Gençcan. So, there, is it possible for them to be used as evidence? There's no hesitation about keeping the declarations, but the question is whether they can be used as evidence or not, for example, in a divorce case could they be used as evidence? And actually, all the, if this question is answered by all the representatives of countries here, it would be very interesting for me, for our practices in our chamber.

- In our laws, we have one principle, which means an increase in the... or illegal increase in the amount of assets and if in the amount of recorded assets, there's been such an increase, illegal increase that could be used as an evidence even in a divorce case.

- And also, in our Supreme Court, we have an inspection board and this inspection board is continuously following up the assets of all the judges. If within a period of one year, if the assets of any judge is increased by two folds, in one year, a legal investigation shall be initiated and if it is identified that there has been a corruption then the person will be prosecuted.

- [Mr. Ömer Uğur Gençcan]: My name is Ömer Uğur Gençcan. So, can they be used as evidence in the divorce case? You didn't answer that. In your country?

- [Mr. İbrahim Şahbaz]: My name is İbrahim Şahbaz, again. My regards to each and every one of you, we're coming close to the end of our work. Well here, I don't know whether there is a need to inform the person complained about or not. This is what is expressed by Mr. Dowd, whether any information is provided to the person about whom a complaint is raised in addition to the complainant. So that is what you were raising as a topic of discussion. So, I think if an investigation is launched against the person, there is an obligation to provide information to that person until the investigation is finished. So, let's say that an investigation is initiated and then a non-prosecution or a non-continuation of investigation decision is reached. So, if there are certain rights lost by the individual that person should be informed and for remedies to be applicable, that information or that notification should be done by an official document. If an investigation is launched, and then if the intention is to prosecute or penalize the person then the statement will be taken if there will be trial proceedings. That will be done so the legal remedies will be applicable in that case. Anyway, so in any case, information should be provided to the person against whom a complaint is raised. What could be the exception? We have this in our legal system, the complaint is raised, a preliminary review has been carried out, and nothing is to be done. There's no need to receive the statement of the person, there is no evidence. So, then that would not be necessary to provide information to the complainant. But, if the person, if the case had been public, if this incident had become public, if there are some personality rights that are affected then yes, that person should be informed.

- Then, here, we should add to paragraph five, "and the person who is complained about".

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

So then, my name is İbrahim Şahbaz, because I'm saying this for the record. So, the representatives of participating countries, if they could give us

information about what happened in your countries. I mean, should we add it or should we just leave it as is? Let's decide.

- Okay, anyone else?

- In Afghanistan, in the judicial system, three main institutions are reviewing the complaints. The first institution is that if there's any complaint raised against any judge within the Supreme Court of Afghanistan, we have a board called Inspection of the Judiciary. The first institution at this first stage only reviews whether this issue that is the subject of the complaint is serious. Then, it is referred to the second board and no information is given to the person about whom a complaint is raised at the first stage, but in the second stage. After it is received at the inspection unit, this needs to be regarding both directions. If the complaint has a criminal element to it, then the first path is pursued, but if there's a neglect of a judicial duty, it is considered in a different way. And after this is determined, then it is taken to one higher level, one next stage, which would be to determine whether there are any criminal elements involved, which laws are violated or if there is any neglect in duties, then there will be a review of what type of neglect. And the last and the fourth stage would be the Supreme Judicial Council in Afghanistan. There are nine members who are judges and they make the final decision. If this is only a neglect of duty, only the complainant and the judge about whom a complaint is raised, this is known only by those persons and this is included in the file of the person against whom a complaint is raised. And if it is included in the file of the individual, then this will cause serious problems for the promotion and the salary of that individual. If there's a criminal element involved and if a decision is made accordingly, both the complainant is informed and there will be a penalty imposed with the decision of the Supreme Court. And that decision is published. Finally, because of damages to the public, this will also be referred to the public prosecutor's office and after it is referred to the public prosecutors office, this will be publicised, and the person would also have knowledge as well. The removal of judges, the procedure for removal of judges, first of all, the nine members of the High Judicial Court propose the removal to the President and the President removes the judge.

- Mr. Dowd, thank you very much for your contributions. Distinguished participants, it's been really productive. Every country provided examples from their own practices, which will enlighten our work in the future. So, this is how we conclude. If you have any other additional comments, we will receive them now, if not, this is the end of the meeting. Thank you very much, and my regards once again.





## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 9-15 of the İstanbul Declaration.)**

#### **Group B**

#### **MODERATORS:**

##### **Sandra OXNER**

Founding President, Commonwealth Judicial Education Institute,  
Canada

##### **Seracettin GÖKTAŞ**

President of 22nd Civil Chamber of the Court of Cassation, Turkey



11 October 2018



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

Principle 9... We did Principle 9. Yes principle 9. Nihal is very worried about the time, you know Nihal and he asked if I could keep it going and then turn it over once the time is alright. If that's alright with you. I said if I would continue for next few and then turn it over after.

- Okay.

- Okay, it's okay.

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

That's fine?

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

I think, what I'll get you to do is 13 and 14, is that alright? They are the long ones. Oh no, there is fifteen.

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

I'll get you to do 14 and 15. These last two. I'll do 9, 10, 11, 12 and 13, then you do the big ones, the last two. Is that okay?

- Okay.

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

Alright, can we start again then, please?

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

And we are going to start on Principle 9. My colleague graciously agreed that I will continue for the next few ones and the big ones at the end, my colleague will handle. So, Principle 9, the judiciary should promote programmes to orientate

students on the judicial process. Because it is dependent on a multi-generational understanding of important legal principles and individual rights, the judiciary should establish regular programs of student engagement that include organized student visits to courts, classroom appearances by judges, civics education, and the active teaching of judicial procedures in conjunction with the legal profession and tertiary educational institutions. Any difficulty with that? So, that's Principle 9. Principle 9, it's about engaging the young students in the judicial process, so they'll understand the need to support it. Principle 10, the judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.

- Excuse me, excuse me, may I? I have a little comment. Most of the Western countries, always speak of the right, the individual right, the liberty, but they never speak of the duty to the public. How could we do something to let people concern not only their own rights or liberty but also the duty to society or the public? I think, the key word is the public or the duty...

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

But the judiciary is a service, is that the same thing as you're saying? That the judiciary is a service to people?

- Right. When you discuss about, the right, individual right, you never mention about the duty of the citizen to...

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

Right. The correlative duty, because there is always a duty with the right. Which section, would you like to put that in?

- When you try to promote the right among the student, the new generation.

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

Alright, let me just find the word.

- Principle 9, maybe you can add it somehow, I don't know.

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

Yes, but let's find what the wording is. Establish regular programs of student engagement that include... and the active teaching of judicial procedure. You're saying there is nothing in here...

- Nothing in here.

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

About civil, civil duties, civil rights and duties? Is that what you put in?

- Yes, yes.

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

Can we say here then, try to insert, civil rights and duties. Now, if they say that's difficult, are you still prepared to go ahead with it as it is? Or do you demand that, that go in? Are you asking or demanding?

- Just for consideration.

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

Just for consideration? Justice Mr. President, I should say?

- [Mr. Mehmet Çamur]: Mehmet Çamur, Turkish Court of Cassation, Head of the Ninth Civil Chamber. Here, there is a reference to liability on the part of the jurisdiction, to raise good citizens. So, to remind the duties of a good citizen is the task of an educational institution. As jurisdiction, we are not obliged to educate people on their duties. But here, there is a recommendation that there be such contribution. Well, the duties of a citizen, reminding the citizens of their duties, reminding the youth or the children of their duties or educating them is not the task of jurisdiction, it is among the tasks of the administration and especially the educational departments. So, this is not part of our duties, we can only put some wording about what contributions we could make, perhaps. But, I don't agree with this recommendation. It is not our duty to inform or to remind

citizens of their duties. This is the task of the administration and of education. The only thing we can do is when they come to jurisdiction because of any situation so that they know what jurisdiction is, so that they know what a judge is all about, so that they are not clueless about what the court is about. We can offer some information, that is the only sort of information we are supposed to be delivering but educating people, informing them about their duties would be the task of the administration and of national education. Thank you. I don't think there is a need to add anything.

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

This is such an important point, would you forgive me, if I say something very quickly? Because I feel very strongly on this point. Judiciaries don't have armies, we can't raise taxes, where does our power come from? If we issue an order and the executive decides not to carry out that order, what can we do? And I guess the answer that conventionally jurisprudential theorists have come up with is that it's the public that supports the courts, only if they respect them. But if they respect the courts, and we have many incidents I think in Pakistan, where the bar led the public to rise up against Musharraf when he dismissed all the Supreme Court judges. But there are many instances, there are some in the United States I could quote too. So, if you accept that it's true, and I don't know if you will or not and as I say, I am inserting myself improperly in this discussion. If you accept that it is true that it is the public to which we must look, and if the school system in my country has stopped teaching civics, they no longer teach children their civic duties and their civic rights, although I agree with the gentlemen over here the judge who said they teach them their rights or at least they think they have rights. But nobody teaches civic duties and as judges, we protect the image of justice, don't we? Isn't that a part of our job? And so, if knowing that we have no other protection, we don't try to instil in our young people knowledge of the importance of an independent judiciary, nobody else will do it. So, in many countries, the judiciary has taken on, in an informal way by volunteer judges, this task of trying to teach young people the importance of their understanding the role of an independent judiciary. Why judges have a job that is different from an executive job - that's a big thing to teach. So, as I say, I'm improperly saying this, but I just wanted to make sure we were all on the same wavelength and that we weren't misunderstanding each other. Did I capture what you were saying, judge? Yes, and did my understanding coincide with yours? Mr. President?

- [Mr. Mehmet Çamur]: I agree with you. I agree with your opinions. I totally agree with your views. However, based on the principles here, well it says, younger ones, students, not only students of law, all students in the society need to be educated in relation to the judiciary but you know we are not obliged to teach citizens what their liabilities are, what they have to do in order to be good citizens because, that's what I understand from the text, right? They have their rights, as the judiciary, we will teach them their rights, we will ensure their rights, we will work on developing their rights, but how are we supposed to remind them of their liabilities? Well, that seems to be a bit difficult.

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

If I may just respond to that before going to my colleague... they set out here how we could do it: Establish regular programs of student engagement that include organized student visits to courtrooms, classroom appearances by judges, civics education, and active teaching of judicial procedures in conjunction with the legal profession. So, they have limited the judicial obligation very sharply, it's to allow the students to visit us, it's to allow the students into our courtrooms, to appear when invited to classrooms, to explain the judicial functions, to support civics education by other people and active teaching of judicial procedure in association with the lawyers, the members of the bar and other education institutions. So, they have limited their expectations of the judicial role.

- I don't... Does that respond to your question? Okay. Thanks. So, you no longer disagree with this section.

- I was not disagreeing with it in the first place. There is nothing needed to add. There is no need to add anything, that's what I'm saying. I am saying that there is no need for an extra obligation, extra task. This article is sufficient as it is. It needs to be maintained, we don't need to add anything, is this clear?

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

Thank you very much.

- I totally agree with this article and what the gentlemen says, my colleague says, well we don't need to do anything to integrate something extra regarding the tasks or the duties of the citizens. That's what I was trying to say before.

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

I see, I'm afraid I misunderstood you. Thank you for clarifying that and I'm sorry I took so much of your time. Now my colleague is going to say something.

- I also would like to make a proposal regarding this article. It says education, civics education; this is quite a comprehensive expression. I don't know if it is exactly the same in the English text, but I think it should go as civics education in relation to the judiciary or jurisdiction. So, the judiciary doesn't have to, you know, have a comprehensive task in terms of education. This needs to be limited. So, civics education related to jurisdiction, instead of civics education, civics education related to jurisdiction. So, the proposal is that it becomes a more limited scope with the addition of "in relation of jurisdiction". The civics education here when viewed from a judicial point of view, each citizen must respect law and the judiciary. When we look at this text, we will see, you know, the judiciary is expected to inform students. So the civics education to be delivered by the judiciary will only have to do with the fact that people need to believe in the rule of law and they need to respect the judiciary. I think this is a good text, thank you very much.

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

You don't want any changes to be made. Thank you. But you still like something added? Shall we write in, if possible, try to limit civics to judicial issues, is that what you wanted to narrow down the civics education to education on the role of the judiciary in a democracy. Only that's too many words. But do you want me to write in, if possible, to limit it, it may not be possible, if the number of the words they have, but we could ask that, if possible that they do that. Would that be agreeable? No? You don't want to do anything, you want to leave it as it is? Well, do we put it to a vote, or what do we want to do?

- In my opinion, it's clear enough. It was someone else who was saying in my opinion, it's clear enough, but you know.

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

Do you still wish to write it down like another phrase?

- I respect democracy.

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

You will be a very good teacher. In any event, we will write in and I think Nihal is in the room as well that he will understand the concept that we don't want to be teaching about different ways of electoral process like that, I think. We want to talk about the judicial issues, I'm sure that they'll have a look at that. We really don't know anything about those other things, do we? Alright, the judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system. And, this is what you were speaking of, I think. 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. I'm not too clear on what that means, I don't think that necessarily means the judges go to the town hall, I'm not sure about that. Yes, Justice, Mr. President.

- [Mr. Haydar Metiner]: I'm Haydar Metiner, the Chief of the Eight Criminal Chamber. There is a serious task or serious liability involved here. If there is a dispute that comes before the judge, there is a need to offer information about the future of the court case. This might create difficulties and it might cause damage to the impartiality of the judge. I see this problematic. Thank you very much.

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

Any other comments?

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

I'm Seracettin Göktaş. There is quite a large scope here. It says programs to reach people, civic outreach programs. This could be brief user videos or different ways to inform people using the Internet. I think this is what was meant here. In my opinion, this rule is appropriate, it is relevant. And it's the right measure to take.

- Who will do it? Who will do it? It is not the duty of the judges to address meeting and to educate the people about their right and responsibility. It will be an extra burden to the judiciary if judiciary intends to do it.

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

I said if I, just to illustrate what the Chief Justice has said and better define the situation, I was chatting with a colleague of his, judge of the Supreme Court of India about number two,. A lady came up and talked to us and she said that the Indian Supreme Court demanded a certain size paper that was very hard to obtain. And, you know the Indian court is wonderful because they have that suo moto ability to initiate actions, rest of the common law world have to wait for a case to come. And Justice was able because of that little interaction to have the regulation change so that ordinary size paper could be used in the courts of India. I think that may be the kind of thing this is talking about, I don't think this was ever intended to discuss cases or potential cases. And the judiciary means the judge and the court staff. So, it would be quite possible, I think, under an interpretation of this, court's own staff could be at meetings and just ask what problems are you experiencing with the judiciary? Asking the people this. I didn't draft this, but the way I read it, I think it would be very much improving the service of the court, to find out things that are wrong that the judges have no idea. Judges don't know what size paper that the law regulates perhaps. They didn't in India and that's a wonderful court. So, it seems to me that, if we interpret the judiciary broadly, to mean the not just the judges, who, of course, can't go and discuss things. That may be the intention of the article. Does that help me, or did I lose my argument before you sir?

- The main problem town hall meeting means what?

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

Means a public meeting.

- Public meeting by whom? Who will address the meeting?

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

Well, that's left unnamed. Anyone may come, but it says the judiciary may interact. But the judiciary isn't just the judges. And the judiciary is the court staff. It's a way of attracting the trust of the people of the judiciary are interested enough to want to serve them. That part of the concept of the judiciary being a service to the public. That they don't govern the public, they provide this service, which I think, most countries have come to accept now that it's important for the

judiciary to listen to the public, to see if the judiciary is performing the tasks that the public expects. And in my country, we're not. So, I don't know about other countries, but the courts are very worried about the poor service in civil litigation that we are able to add. So, I'm just trying to explain what this means. I'm not wishing to influence you, you are the ones who have to decide, and it's your vote that counts, I don't have a vote. So, does anyone else share Chief Justice's concerns?

- Maybe the words including town hall meetings have political meaning for some of us. Maybe we can exclude these words? I'm only speaking of "establish civic outreach programs that provide an opportunity", so don't use the words "including town hall meetings", because a town hall is a political place. Maybe that's the problem for some of us.

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

Would you prefer public meetings? Would public meetings be better than town hall meetings? It would take away the feeling that being part of the executive.

-The feeling that, yes, yes. Maybe that's the problem.

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

I think "town hall" is a bit American, that's what they do in the States. We don't have town hall meetings; do you have town hall meetings?

- No.

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

No.

- Town hall meetings, no, I don't...

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

What about public meetings? Would that be any good?

- Public meetings?

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

Is that a synonym that is less offensive? Chief Justice? You don't look convinced.

- I am not convinced.

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

I was afraid that was so.

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

I'm Mehmet Akarca, Public Prosecutor. I find this article positive. It's mutual interaction which helps the communication with the public. The judges, prosecutors, employees in the court who will be part of these meetings will understand what public are suffering when they are trying to help their cases sorted out. And in the general framework, not going into specific details, I'm not talking about specific cases, they will be informed about court procedures. This morning, I came across a citizen, the citizen hands me a piece of paper and tells me "I have a court case, it's in Edirne, it's in a sub-province. I am not able to take a leave from work and I don't have a lawyer either. I told this citizen, send a petition to the bar of Edirne and tell them you're not able to hire a lawyer. You will receive a lawyer; the bar is going to arrange it and it will be paid by the State. This was a very brief piece of information I had to extend to him, so that I could help him in the legal sense. So, this sort of meetings, public meetings, would help us build trust in the judiciary. This will make the judiciary more accountable and make people understand that the function of the judiciary is to serve the people. People will believe more that this is the reason why the judiciary exists, and I think it's a positive article, I think it's a good one.

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

Fine, thank you. I'm not sure if that will leave Chief Justice Hussein happy. Will that be if we take a, we can't do anything, if we recommend, we take out town hall and put in public meetings, will you be happy with that? That's not your problem, is it? Your problem is that you don't want the judiciary interacting. Yes, but Chief Justice, would you object to sending some of your staff like your

protocol staff to interact with the public and just be there for them to receive from the public, that the paper is the wrong size, things like that. You know, common problems that no judge would ever hear about. And as they seek out the problems that the public have with the judiciary, I mean you are the Chief Justice, you are at the top of the pole there, you know, people are frightened of you, they are not going to come and give you their complaints. Would you consider sending your subordinate administrative staff, not judicial staff, because judiciary is not only the judge, it is the staff.

- Subordinate staff.

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

Would that be something you could go along with? Is that a yes?

- Yes.

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

You have the Asian head shake, that's hard to interpret by Westerners. Thank you very much, I really appreciate that. And may I write in and say that, if possible, we would like them to change the word "town hall" because of possible political connotations and I think it was meant to mean public, and if possible, that they put "public" instead of that.

- Meeting, meeting is also problematic. The word meeting is also problem. Judges cannot mix in the general public.

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

But your staff could.

- Our staff could.

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

Yes, and countries where the judges have a problem with that, I think they could. The only thing is to establish a conduit between the needs of the people

and the judiciary. In some countries, I think the judiciary feels to be able to meet directly and others, where tradition is different, the staff could receive those comments and bring them back, perhaps. Is that agreeable to everyone, to leave it there? Thank you. Alright, now...

- Excuse me, there is one comment. Madame Moderator, in the mean time, before we skip the article, I would like to address the Chief Justice from Bangladesh. I agree with him, with his hesitations. Let me introduce myself first of all. Republic of Turkey, the Head of Fourth Civil Chamber, Court of Cassation, my name is Sadık Demircioğlu. So, on behalf of me, imagine, not me, but another court staff will go and be present in the public meetings. He is not allowed to be present there and speak on behalf of me. He can make some general explanations at best, but he cannot speak on behalf of me. So, this duty can be attributed to, for example, Ministry of Justice, instead of judiciary as the subject of this sentence. Maybe the Ministry of Justice and affiliated institutions or organisations can inform the public in terms of the places to apply to for public I mean, you know. But from our perspective, from our public's perspective, some negative outcomes can be derived from, because in the name of assisting public, in some courtrooms, in some court premises, some consultation services are initiated now. The citizens apply to the consultation desks, let's call them, and receive information, not about their own litigation, but about a general question like, "Where is the courtroom? Where can I apply to for bla?" Things and certain legal assistance and information services can be provided. But judiciary as a subject in the sentence, I believe it is risky. Thank you.

- Well this article appears to be discussed harshly even further. Under the Court of Cassation of the Republic of Turkey, some symposiums were organised a few times. And it was recommended, it was actually decided to have symposiums like once a month about civic rights and other general legal issues and these were public symposia. I think this is what is referred here, you know, carrying out some sort of activities, events to inform the public. Maybe we should change the wording, like, "open public meetings" or what else, I don't know. Would it help if we change the wording into like "open public symposiums..." for example, "... shall be organised for the participation of everyone in the public for informing them" or something like that, what would you think? Well...

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

The judiciary should meet in an open meeting and by changing the word to public meeting, that's not going to take away the objections. I'm very familiar

with this problem. Part of my work as a judicial educator is to try to get the judiciaries to solicit from the public what the judges should study, what the weaknesses they perceive are in the justice system, so that judges can then study that. Rather than, you know, judges want to study evidence and sentencing all the time, they don't want to study other things, maybe weaknesses that the public perceive. And a lot of jurisdictions don't want to do that because they don't want to bring criticism they see on themselves. And I try to explain to them that, if you open yourself to criticism, the public appreciates that. They see that the judiciary is really interested in giving them good service and it enhances the reputation. The Chief Justice of Canada made an unfortunate remark in court one day and seventeen references were made to discipline him by the end of the day. And he was very smart, that's why he was Chief Justice. He got on national television and said "I made a terrible mistake, I didn't mean to say that and I'll never say such a thing again". The public loved him. He became the most beloved Chief Justice. The public knows that we're not perfect, that we seek to improve ourselves. That enhances our reputation. So, I think that's the answer that I would have, but it may not meet your needs. So, how many are prepared to go with this section as it is? You know we're not going to be able to spend the rest of the afternoon on this section. So, do you think that, can we come to a consensus or do we have to get a vote?

- Proceed on, proceed on.

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

Proceed on?

- Let it be there.

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

You are magnificent, Chief Justice. Thank you. Are you magnificent too, are you going to allow, can we proceed on? Without changing the matters, is that alright? Justice, Mr. President? I'm sorry, I'm not used to the Mr. President...

- Thank you very much Madame Moderator. Well I see slight problems in the wording but maybe this can be discussed at the plenary sessions at the general assembly and I mean, maybe they can make the final decision. This is all from my side, in terms of my contribution, all I wanted to say was that

regarding Turkey, regarding litigation, regarding judiciary, we are not allowed to guide people. This can be risky in Turkey because when you guide someone into something, some other party can criticise you for losing your impartiality and they can attribute charges to you for losing your impartiality. This is what I deem risky.

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

You might be quite right there. If we put the word “administrative problems they have experienced”, that would totally take away any judicial issue. That would, of course you are quite right, that could be experienced by... Do you have any objection to your staff or a judge going to talk to people about administrative problems they have encountered in the justice system? Nothing to do with cases, just to do with the process of justice. Would that be agreeable to you? Well we could recommend that they... Is that a happier conclusion? Does that suit you?

- Well, here, just a second. I see a contradiction between the principle itself and the measure. Under Principle 10, okay, there is the bold written principle and underneath that, there are measures. Because the principle says the judiciary should initiate and/or support outreach programs that are designed to educate the public on the role of the justice system, that's okay in my opinion. Principle 10, the bold writing. Starting with the “Judiciary should initiate and/or support outreach programs designed to educate the public on the role of the justice system” so this is a limited wording. But when you follow to Article 1, starting with “Establish civic outreach problems...” and so on, the concept is larger. And I think, Article 1 is contradicting with bold written principle itself. They are not in parallel to each other, I believe. I am the Head of Fifth Civil Chamber of Court of Cassation, Erdoğan Buyurgan. When I read the principle, just like mentioned by Mr. Moderator and when I listen to other Chief Judges about their concerns, I understand them. Because, regarding litigations and concrete files, the judiciary cannot provide information or explanations. So, here, the judges will not provide recommendation to litigators or litigants, sorry, about what to do and what to complain about. From this sentence, when I read it, I understand explanations about general issues or legal issues. A judge may not be present in public meetings but some other inferiors can be present there. So, this is not about materials of a case. When they are in the public meetings, they will not provide information about the materials of a case that it being litigated in the court. Of course, “town hall” can be changed into “public”, this is not my concern, but what I understand

from this principle, from this sentence when I read it, is not about a judge talking about the materials and principles and procedures of a case. So, I agree with Mrs. Sandra in this regard. Thank you.

- [Mr. Haydar Metiner]: My name is Haydar Metiner, from the Eight Criminal Chamber of the Court of Cassation and in the beginning, I said this is a problematic sentence because here, something happened, something bad experienced by the public and then you go and give information. Then, you bring extra burden on the shoulders of any personnel of the court and you actually compel the person to do something, to carry out an extra work. This is what I am objecting to. Thank you.

- [Mr. Mehmet Çamur]: Mehmet Çamur, the Ninth Civil Chamber, Court of Cassation. As a method to move on, I think maybe we can change the Article 1 into “Establishing civic outreach programs regarding the problems they have experienced”. And if we move “judiciary” from the wording, then we have a simpler wording here and there is no concrete liability attributed to the judiciary. So, any kind of outreach program can be decided by the judiciary, the method of the outreach program can be decided by the judiciary depending on the nature of their work. So this article will provide some sort of flexibility to have outreach programs. But if we exclude the town hall or public meetings and we exclude the judiciary, you know, “that provide an opportunity for court users to interact with the judiciary”, if we exclude this and if we exclude town hall meeting, then we simplify wording as “Establishing civic outreach programs on the problems they have experienced”, that’s all. And then, any court can decide on the nature of whatever that outreach program will be depending on their work load or depending on their desire.

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

Could you just give me that wording again? You’re suggesting “Establish civic outreach programs...” take out “including town hall meetings”, “...that provide an opportunity for court users...” Is that what you’re saying?

- “Provide an opportunity for court users to interact with the judiciary, including town hall meetings”, let’s exclude this and let’s leave “Establish civic outreach programs for court users regarding the problems they have experienced”. So, we only will have “Establish civic outreach programs for court users on the problems they have experienced”. You got it? And let’s exclude “including town hall meetings that provide an opportunity for interacting the judiciary”.

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

This is such a change to the meaning that I think we need to take a vote on this before we do this. Yes, please, President.

- I call my best regards to all of you. Yes, this is really a problematic article because you cannot attribute such an obligation on the judge because, as it is, the article talks about court users. Who is a court user? Court user is someone who has been to the court and experienced a problem, because he used the court. So, there is a problem he experienced for using the court. And the court member or any judiciary member will go and talk to them about how to solve that problem they experienced that is arising from using the court. No one can do that in any other country. We can only talk about solving court related problems by taking administrative measures. And this can be conducted by the administration about how to decrease the work load of the court, how to improve the physical conditions of the courts, how to lower the waiting time and the queues that are created in court rooms. So maybe, I believe, we can say administration shall take administrative measures for eliminating problems they have experienced that is arising from court usage. Am I clear?

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

I think so, yes. We have another wording provided. Court users that... Establish civic outreach programs for the court users to interact with administrators... So, take out the word “judiciary” and put in “administrators”, is that what you’re saying?

- Yes, exactly. The administration will or shall...

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

Not the executive branch, this still stays within the judicial branch but administrative offices...

- Actually, I mean execution, because execution is carrying out the working condition of the judiciary. Because execution is the party that executes administrative actions, to improve whatever condition is faced during judiciary. So, I mean some measures shall be taken, right, for the peaceful functioning of the courts and while doing that, the citizens should be entitled to have access

to the speediest judiciary. And such measures like decreasing work load, like improving physical conditions, these are not the obligations that can be attributed to the judges or the judiciary. It's a work, it's an obligation for the administration. Even if a problem is encountered regarding court usage by a citizen, it's not the judges or the court personnel to have the authority to overcome this problem.

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

I think that, we have a division of opinion here and the division of opinion is directly on the point that this section asks the judiciary to initiate and support outreach programs. It's not asking the administrative branch to initiate and support, it's asking that the judges give leadership. They are not asking the judges to do it themselves but they're asking that the judiciary take this initiative and it's part of the changing role of the judiciary into a service. , the new view of the judiciary, which was unknown 50 years ago so, is if it's going to win the trust of the people, it has to serve the people. It doesn't know how to serve them if it doesn't hear from the people and whether they have problems going to court. So maybe that they are blind, there is no one to help a blind person, maybe that they're in a wheelchair and there is no access to court for someone in a wheelchair. We don't know what problems they are having because we never hear it. And we don't know what our support is, how they interact. I was once with a Canadian ambassador who had on Bermuda shorts and long knee socks in the court in the Caribbean and he wasn't allowed in. And I was allowed in. My dress was much shorter than his shorts. But I told the judge, we had a laugh about it, but she said we don't know what they tell the people, that's the problem. We don't know what our staff tells people. And the only way we can find out is by asking about it. So again, I don't have a vote and I just want to make sure we are understanding each other. So, I think, with your agreement, that I should find out how many people are happy with it as it is and how many people are happy with an amendment. My friend from Qatar, who is always pouring oil on troubled waters, may I say...

- You know, I might give a solution, amicable solution.

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

Oh, well, that would be awesome.

- Well, judiciaries worldwide... First of all, my name is Omar Ganim. I am

Director of International Cooperation Department, the Chief Justice Office, State of Qatar. We've been always accused that the judiciaries worldwide are people living behind a fortress, behind the high fences. And the amount of interactions with the public is almost zero in the perceptions of the public opinion. So, recently, most of the organisations worldwide started to practice new things called public opinion interaction methodologies, using, as an example, social media to reach the public opinion, using internship programs for student as a ways of outreaching to the public. So, let's not be horrified by our fears of that kind of commitment. We can maybe use, as a proposal from me, a general statement that said: "Encouraging public opinion interaction methodologies". That's it.

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

What was the wording?

- Encouraging public opinion interaction methodologies. That means, judiciaries would encourage, no commitments there, would encourage this kind of outreaching methodologies. Like social media, let's say a judiciary in Qatar, we have a Twitter account, we have Instagram account and we have interactive Facebook account. We didn't fear actually the public opinion. We have internal internship program for training the law school students and this is an outreach. It's one of those methodologies actually. So, if we use this general statement, I think it is going to cover the concerns and encouragement point of view.

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

Okay, just give it to me again. Encourage public...

- Encouraging public opinion interaction methodologies. Or mechanisms.

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

Or what?

- Mechanisms.

- Instead of methodology, we might also use "mechanisms".

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

Mechanisms. That's what happens when you get old, you can't hear.

- Yes, thank you very much.

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

Okay, in my view, this is opposite to what the section is doing, because the section is encouraging interaction with the judiciary. So, I think what we should do, if I may, is to take a vote on those who are happy with what we have, take a vote on those who are happy with this Qatari's suggestion and ask if someone has another suggestion. But we can't spend all afternoon on this. So, we have to find a way to get out of this quagmire we are in. So, did you have another wording suggestion or are you content to go with either as it is or with this? And don't forget the principle which is already been approved is that the judiciary should initiate and/or support outreach programs. So, we are talking about initiating and supporting. Did you have another... Yes, one more wording.

- Yes, maybe we can say, not the members of the judiciary, but relevant authorities or relevant officers. Let me give you a concrete example. We have UYAP system, which means electronical judiciary system. Someone would like to open a litigation, which is subject to a certain time limit and it's the last day to open a litigation on that electronical judiciary system and after 10:00 PM, maybe the system is not functional. This problem should be conveyed to the judiciary somehow. It doesn't have to be like the citizen getting in contact with the member of the judiciary to just convey this information about the not-functioning electronic judiciary system. Maybe we can say, "for court users" to interact with not the judiciary but with related authorities or related officers. So not judiciary, you know Article 1, establishing civic outreach programs including town hall meetings that provide an opportunity for court users to interact with... not the judiciary, but someone else like related authorities. This can also happen.

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

Yes, the principle has been approved. And we know the principle that the judiciary should initiate, or support outreach programs designed to educate the

public on role of the justice system. And I'm not sure as judges if we should try to hide behind wording. I mean if we feel judges should not interact with people, maybe it's best to say it upfront. There is going to be a division of opinion, because many jurisdictions are very interested in providing a service to the public that requires some interaction with somebody in the judiciary. Might be the lower administrative members, doesn't necessarily have to be the judges. The word "judiciary" is very wide and includes all the staff. So, shall we go? How many are happy to go with the Implementation Measure as written down here in our booklet? Could you raise your hands to let me know? Nobody?

- Those who would like to keep it as it is, you say? Those who would like to keep it as it is?

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

Those who would like to keep it as it is.

- Number 10? Principle 10?

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

Those who would like to keep it as it is. What did you say?

- Principle 10, please.

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

I don't understand.

- Principle 10, you keep it as it is? Principle 10?

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

Principle 10, number 1.

- Number 1?

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

Yes.

- What about...

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

Thank you. I've got you. Yes, tell us.

- I would like to say something.

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

Please do. Yes please.

- You know we didn't raise hands, but we are fine with the solution giving to, instead talking about the judiciary, as also proposed to have relevant authorities. I think that it is helpful for the paragraph.

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

Take out judiciary and put relevant authorities.

- Yes, instead of judiciary, to make it to relevant authorities, make it more general.

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

Okay.

- And making clear that we are not talking about judges. That we are talking about, you know, we are going far from specific cases. So, I see value in the proposal maybe.

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

I'm just going to seek some guidance from our great father down there, who has joined our table. What would be most useful for you?

- May I suggest, Madame Chairperson, that you do not take any vote here in this group. But simply, record the views that have been expressed. So that the plenary can take the decisions.

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

Fine, thank you. I think that we have already done that. And that's very good advice, because now we may pass on to number two. Thank you very much for helping us out here. Number two.

- Sandra, I want to add something.

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

Chief Justice of Sudan.

- Yes, here to educate the public on the role of justice system. To educate the public. Educate the public or educate the students relevant to the...

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

Where are you now?

- Education for the faculties of law, in my opinion...

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

Where are you now, are you in Principle 10?

- Yes, Principle 10. Title of the Principle 10. Educate the parties, instead of educate, awareness. Awareness instead of educate. There is a difference between education and awareness.

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

I'm just sorry, I'm not finding that.

- Under Principle 10, the bold writing. Starting with "Judiciary should initiate..."

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

That's already been approved. We're about a year too late for that. Thank you though, Chief Justice.

- Okay.

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

I'm afraid we have been passed by, by the train of time.

- There is a negotiation about title in party, in number one and two, paragraph one and two and three. If the title is approved, how is a discussion, discussion about the relevant authorities. Something like this, it is a part of this.

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

You are still objecting to the judicial input. The personal judicial input in this section. I think, if I could get your opinion, then perhaps the same issue was going to arise in one, two and three. So, we might as well just express your opinion on all of those and go on to number eleven, is that right? Although we really haven't gotten an idea of anybody approves of it, as it, there were some people who spoke too, did you make a note? You just said there is no common agreement, is that what you have? Perfect, great, we have a wonderful rapporteur here. So, let's go to Principle 11. This should be quick. 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. Anything controversial there? No problem? Great. You're getting back into your quick review. 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. Any problem? Great. Now on to twelve. I'm going to hand over to my colleague very shortly.

- Also, sorry, Sandra, this is also relative. I spoke about number ten relative for this. This is a sort of an education for, this is one of the awareness.

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

Yes, yes.

- Training of journalists. Yes. This is a relative result.

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

But you're in full approval of that one, yes. Thank you, Chief Justice. Alright, number twelve. Continuing public confidence in the administration of justice being contingent on the quality of justice, the judiciary should establish a Public Complaints Committee in every court, comprising judges, attorneys and citizens, to receive, review and, where appropriate, refer to the relevant disciplinary body, court users' complaints against judicial officers or court personnel. Pretty motherhood, is that agreeable to... Not? It's okay? Yeah, right, okay. The next one is to install public complaints boxes in every court facility where the public can present anonymous complaints about everything that goes on. Is that okay? I think most people do this. Ensure that the Chief Judge and/or Registrar of every court adopts an "Open Door" policy for complaints. Is that okay? Good. Establish a regular performance evaluation of court personnel. Is that okay? Establish a Court-User Committee in every court. That seems agreeable. Establish a system to meet with, and conduct surveys of, court-users and other stakeholders, to identify systemic challenges or weaknesses. Is that okay? Good. Mandate that judges and court personnel conduct a regular case audit to ensure the timely disposition of cases. I think everybody does that. Establish a program through which judges and court personnel conduct regular reviews and analyses of court user complaints, and develop responses to these complaints when warranted. Okay? Implement a program of conducting court inspections without notice. Is that okay? You're not okay with that.

- Yes, it's okay.

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

That's okay? Encourage critical assessments of its performance by academia. Scholarly writing, I guess is what that refers to. Nothing you can do to stop it anyway, is there? Formulate a comprehensive system-wide... and we learn from it, I mean, it's a very beneficial thing. Formulate a comprehensive system-wide strategy designed to correct negative public perceptions and eliminate inefficiencies or other obstacles in the judicial process that lead to such

perceptions. Is that okay? They are all, these are motherhood. Publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system. Okay? Alright now, thirteen. There should be transparency in the appointment process of judges. Number one: Establish an independent body with broad professional and civic representation to receive and review applications and/or nominations for judicial office. Okay? Is that alright? Is that section alright with you?

- In Belgium, it's not judiciary who has to establish this body. It's by law, established by the constitution, if you establish it. So, I don't think it's a task for the judiciary to...

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

Could we put in here something like, establish, when not already there, an independent body? Would that help? That would fix that?

- What do you mean by independent body, out of the judiciary?

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

An independent body, I think...

- Independent body out of the judiciary?

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

I think, you have now, Chief Justice, you must have a judicial service commission, don't you?

- Yes, we have, yes.

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

That's what they are talking about. An independent body like a judicial service commission.

- Oh, I see.

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

Independent of the executive and of the judiciary. Okay, so establish, when not already there. Require that all judicial vacancies, including for high judicial office, be advertised, with information on the qualities required from candidates for such offices. This was a terrific reformation about 25 years ago in the common law countries, but now everybody advertises. So... This is alright?

- Alright, yes.

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

Is that how judges are chosen here, through an independent... so that's fine. Require that all judicial vacancies, including for high judicial office, be advertised with information on the qualities required from candidates... is that alright? If you say nothing, I'm going to assume that it's alright. I know you're tired of... Yes. Require publication of a list of vacant judicial offices, and the list of candidates who have applied or been nominated for such offices. No? That's fine? 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. Okay. Establish a merit-based recruitment and promotion process that reflects the diversity of society. Okay. Promulgate procedures governing the transfer of judges for regular rotation or on an emergency basis. That's the setting of procedures, is that okay? Alright. Now we're coming to Principles 14 and 15 and my colleague is going to take over moderating for these last two ones. I thank you for your great cooperation and assistance. Whenever you're ready...

- I also would like to thank Mrs. Sandra Oxner, who has been a judge before, and she has a long background as an educator and has acted like a master here as long-term educator so far. So, following her will be difficult for me and it will be difficult for me to moderate, trying to keep up with her pace. I hope I can be as good as her. We have two principles left and 30 minutes left. Principle 14 states that the judiciary should respond to complaints of unethical conduct of judges in a transparent manner. A commitment to the core judicial values as enunciated in the Bangalore Principles of Judicial Conduct being an essential component in promoting public confidence in the administration of justice, the judiciary should;  
One: Develop and promulgate rules or standards of professional and ethical

conduct for members of the judiciary, taking into consideration the Bangalore Principles of Judicial Conduct. Any objections or contributions or any comment? No. Good. Number two: Ensure that each judge is provided with a written copy of such code and any related material, such as a commentary. Any objections for number two? No. Three: Disseminate the code of judicial conduct in the community through written publication or on the Internet. Any objections? No. Well, perfect. We are on track. Number four. Thank you. Number four: Establish a mechanism or procedure by which individual judges may obtain advice on the propriety of proposed conduct. Any objections here? - According to the Constitution, the judges do not receive recommendation or suggestion from anyone, and the judges are entitled to know the code of conduct. So, who will provide this advice to the judge? This advice is not about an ongoing litigation. This advice is about the code of conduct, because there is an Ethics Board under the Court of Cassation that is newly established in Turkey as you know. And the judge, for example, is writing a book. Is it okay for a judge to write a book and then try to sell that? The judge can consult to the Ethics Board under the Court of Cassation about him selling the book. No problem then, okay, great. No problem. For example, a meeting organised by homosexuals, can a judge be a moderator or a keynote speaker in a conference organised by LGBT community? This can be asked as a question to the Ethics Board. So, about the code of conduct, they can receive advice. Thank you very much. Then, number five. Establish an independent mechanism or procedure, with sufficient lay representation, to receive and inquire into complaints of unethical conduct against members of the judiciary, and to take appropriate action, including, if warranted, reference to the independent disciplinary body. Any objections? Yes.

- [Mr. Mehmet Çamur] Mehmet Çamur, the Ninth Civil Chamber of the Court of Cassation of the Republic of Turkey. In Article 5, it talks about the lay representation, who are not members of the judiciary. Disciplining, or disciplinary actions for the judge, for representatives of not judiciary is not possible. I cannot accept this as a judge for 33 years. I place my concern here. I think, establishing a body with members who are not the members of judiciary is not possible.

- Maybe Article 5 refers to the following: As you know, under the Court of Cassation of Turkey, there is a Court of Cassation Ethical Advisory Board. That is established now. And, in this Ethical Board, some academicians can be represented, who are not judges. Because, this is the Ethics Advisory Board. When the Board was being established, it was approved to accept an academician, a professor into the Board, who is not a judge. This is how I read the article and I believe it is not a problematic article.

- Okay, the academician who is accepted in the Board is a jurist academician, a legal academician. But here, the wording here is quite expanded, quite large. A shopkeeper, a footballer, a grocery shopkeeper, a police officer can be a member then, here, if we keep this wording. I can be a little conservative here, but any other person, whose profession is not related to judiciary, should not be a member to this independent disciplinary body regarding the code of ethics or whatsoever. It's not acceptable in my opinion.

- I have given an example of an Ethics Board, not a Disciplinary Board. And the academician that we accepted was not a legal academician. And the General Assembly agreed to accept an academician who is not a legal academician to be represented in the Ethics Advisory Board. Of course, the Ethics Board cannot refer anyone to the Disciplinary Board. So, it's a little vague. The article is not clear. Maybe Mr. Nihal can help us in this regard, what was meant here. Can you please elaborate, the floor is yours.

- I was going to refer you to the commentary in the Istanbul Declaration, which is that "the committee so established should not be controlled by the judiciary". This is ethics review, not disciplinary matters. Ethics review of ethical conduct, unethical conduct. "But must be one in which there is sufficient lay representation to attract the confidence of the community". And it goes on to say "Associating persons external to the judiciary..." and gives examples, "... (lawyers, academics and representatives of the community)..." representatives of the community, "...in the monitoring of ethical principles will prevent a possible perception of self-interest and self-protection, and provide the essential element of transparency". That's what the commentary to the principle in the Declaration says. And this is not for disciplinary purposes, it is complaints of unethical conduct. So, it suggests that someone, a lawyer, an academic or a representative of the community, could be some distinguished person in the community.

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

May I add to what Nihal has said? Of course, he is the one who knows everything about this, but there have been a number of countries that I'm familiar with, where the public sees the judicial discipline done by the judiciary as being very protective. A very closed judicial discipline. And so, that leads to a weakening of the public trust to the judiciary because they don't understand what's being done. Because they don't see what's being done. So, that was the

reason for many countries, I'd say most countries now have gone to this addition of lay people, representatives of the community to offset this feeling that the judiciary protects its own, which has been in history. If you consider our various countries. The judiciary has been very protective of our own. Are they going to agree to it?

- While discussing this article, upon the explanations of Mr. Nihal and as explained by Mrs. Sandra, I agree. When you act with a protective behaviour towards your profession, then comes the trust issues in the eye of the public. Because our final objective here is to build trust in public. This actually reminds me an anecdote. In a hospital, a doctor leaves a gauze in the abdomen of the patient and they stitch up and close the patient with the gauze inside the abdomen. Then they consult to an expert and the expert decides there is no malpractice in the hands of the doctor. Because the expert is a doctor as well and the doctor wants to protect the other doctor who left the gauze, who left the operational medical material inside the abdomen of the patient, although it appears to be an obvious malpractice. So that kind of a protective or overprotective behaviour can lower the trust. Anything from your side?

- Well, there is no obligation here. I only mentioned my concern, which is noted down duly, and the General Assembly will vote on the concerns and there is no further need to discuss even further.

- Yes, your concern has been duly noted. Then I switch to Article 6. Develop courses or modules on judicial ethics and as a mandatory requirement in the initial training for judges. This is such to-the-point article, I don't think anyone will object against this. Number 7: Promulgate procedures that require members of the judiciary to make regular declarations of their assets and liabilities. I think there is no objection against this, which brings us to Principle 15. There should be transparency in the disciplinary process of judges. This is our principle. Closed or obscure judicial disciplinary proceedings being calculated to protect judges from accountability for their conduct, thus undermining public confidence in the integrity of the judicial process, the judiciary should; One: Define conduct that may give rise to disciplinary sanctions. Define, yes, define is the verb here. Define conduct that may give rise to disciplinary sanctions. Yes. Judiciary should define conduct. There is no mistake in the wording. Is there any objection against this? No. Perfect. Number two: Institute and publish a procedure for making a complaint against a judge in respect of his or her professional capacity. Any comment? No. Number three: Establish an independent investigatory board, 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. Yes please.

- [Mr. Mehmet Çamur]: My name is Mehmet Çamur. Can we go back to Principle 14, Article 5? I already conveyed my concern here. It's the same for the Article 3 of Principle 15. My concern stays here. Lay participation here cannot or should not be present in a disciplinary board investigating the actions of the judge.

- Any other comment? Yes please.

- Representative of Cuba. It's just the end of the paragraph we share the concern expressed, you know, from previous colleagues on this paragraph for establishing an independent mechanism. The main concern that we have is in the last part of the paragraph. Because when we said "to take appropriate actions including, if warranted, in reference to the independent disciplinary body". You know, we think that, instead of "to take appropriate measure" or "to take appropriate action", "to propose action", but not to take the action. Probably, you know, this independent body can be fine but at the end of the day, I think actions are supposed to be taken by the different body. It's not the one that is making this independent work would be the one taking the action. So, our suggestion is not to be taken alone, is just to say it, instead of "to take appropriate action", to say "to propose appropriate action", and not "to take". Thank you.

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

Which one is this? Is this three or four?

- Three.

- [Mr. Mehmet Çamur]: My name is Mehmet Çamur. And regarding this suggestion of the representative of Cuba, I can agree with him. Instead of taking actions, recommendations can be made. Because I don't think lay participation is entitled to determine what action, if any, is warranted. So, I agree.

- This independent disciplinary body is not a decision-making body. This is a body providing recommendations for decision making about disciplinary actions. So, they refer to the action or the case to another decision-making body. When I read the sentence, I understand this independent disciplinary body is delivering recommendations for taking actions.

- No, it's not that clear. It's not crystal clear, it's vague. Here, it's talking about an independent disciplinary body to carry out a task, to receive complaints, to investigate and to determine. These are verbs, these are actions attributed to the disciplinary body. Yes, you're right, because it also includes reference, "including reference to bla bla", it says. But I think, when you read the sentence, it is clear. Should we leave it as it is here? Yes, we have made recommendations, duly noted. The General Assembly will make the final decision. So, we can continue.

- We're really sorry, but we prefer to have it there, because you know this is your interpretation, but it's not what is written here, what is written here is something different. You know, we understand the things that you are suggesting, you know the reading. But I think that, you know, it's like taking the disciplinary body is taking an action and this is a problem for us. You know, that is the reason that we can go along with making recommendations, making proposals, making whatever but not taking appropriate action. Because if we take actions, it means take actions and that's supposed to be something really mandatory in this regard. So, it's just as what I'm suggesting. Not taking action, but to recommend, to propose, but not to take.

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

May I give you a little background on this? I think what is referred to is what we call the first layer of the discipline system. There might be, in Canada for instance, there are about a thousand complaints against judges in a year. About 80% of them have no validity at all. They are either properly appellate matters or they are too insignificant to bother with a simple apology by the judge is the way to deal with. So, if you make this suggestion that has been made and I understand the reason for it, you will be preventing this first level committee from dismissing matters. I mean, there has to be a process that works through complaints. So, what the first level committee to have no power at all, they can't dismiss the 80% that are properly dismissible. So, I would just wonder if you wanted to rethink your suggestion in light of the fact that the committee is functus, it can do nothing if it can't dismiss.

- May I say, Madame Chairman that this is precisely what was intended by this provision. Because there could be 90% or 80% of the complaints that may be rejected. So, they determine what action should be taken under complaint, not

what action should be taken against the judge. So, you can dismiss, reject 80% and if it warrants reference to the disciplinary body, then it should be referred to... But this is an investigatory body, the first level that receives complaints. And the disciplinary body will only receive case matters we are facing here, that is some valid complaints against the judge. That is precisely what was intended here.

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

So perhaps, the wording that allows it to dismiss issues would be appropriate.

- Action to be taken is to reject, not action against the judge, but dismiss complaints.

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

To determine... including dismiss... Could we just add “is warranted, including dismissal or reference to the independent...” could you add in “dismissal”? Is that a possibility?

- Madame Moderator and Mr. Moderator, as you know, we cannot make changes. Mr. Nihal also warned us that we cannot make any changes on the wording but we have duly noted these suggestions and that’s all from our part, right? Yes, please.

- Thank you. I, as far as I understand, I don’t see a strong reservation for the proposal. Just a minor one. I know that it is what we have here, but just how to make everybody on board of that. That is a difficulty for a group of us and what we are trying to see, the proposal that we make. We understand the point of our colleague, but at the same time, you know, we don’t want to create a misperception with this draft. So, that’s the reason why, you know, we try to find a suitable way to go into that. You know, if at the end of the day, what we are doing is just to recommend, you know, why don’t we put it like this? It’s not taking an action, it’s recommending to another body to do so. So, we really believe, you know, that, let us try to be as much precise as possible, so more or less, we are satisfied with the whole things. That’s the only submission we are making in the discussion this afternoon, so, if we don’t see a strong hesitance to that, so please, let’s see if that is possible to have it into consideration. We are

ready to take whatever language, you know. Recommend, suggest, think on that, whatever. But “to take”, it’s too mandatory and it could be taking in different ways. So, we want to be, you know, as much precise as possible in this account. So that’s my, our humble request to colleagues, just to take something along this line of recommendation, suggestion.

- Thank you very much. Yes, of course your recommendations have been duly noted. But we need to continue. I only had two principles, Sandra concluded 13 principles in two and a half hours, if I cannot conclude and complete two principles in 30 minutes, then I will look bad. So, let me continue. So, Principle 4: Establish an independent disciplinary body, with lay participation, vested with the power of removal of judges.

- It is open or it’s closed? We were giving the treatment to this paragraph, the same that we did in the past. No agreement on that, no? That’s my understanding. It’s not agreement here, no? On this paragraph, it’s open and we are going to the plenary or how we will be handling this, please? No, no, just to know where we stand on that.

- Let me put it this way: We are not compelled to convince each other. All the suggestions and recommendations and the discussions that have been made are now duly noted, because in your explanation, you also told me that we are actually on the same page, but the article can be misinterpreted or misunderstood by different parties. I’m correct, right? So, what is meant by this article can be misinterpreted, although we understand the same thing. So, your concerns and your suggestions have been duly noted because the wording can be a little poor here. So, let’s move on, if possible. Alright? Thank you very much. I have not completed reading Article 4, if you allow me I will now finish reading Article 4. Four: 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. Is there any objection against Article No. 4?

- [Mr. Mehmet Çamur]: Ninth Civil Chamber of Court of Cassation, my name is Mehmet Çamur. Article 4 actually showcased once again, how right I was in the previous article. Now we have come to Article 4, the first sentence says “establishing an independent disciplinary body, with lay participation”

again, “vested with the power of removal of judges”. I am against this with the same concern, which is lay participation. And then the following part of the article, I agree with them. But I object to the first sentence of Article 4. Because there is a lay participation in the independent disciplinary body. And now, it is a disciplinary body. I don’t agree with this based on my previous concerns, because this body will be vested with the power of removal of judges. I think such concerns should be discussed before the final decision is made by the General Assembly. Thank you.

- Head of the Fifth Criminal Chamber of Court of Cassation, my name is Erdoğan, and what we have called a disciplinary body here is vested with the power of removing judges. So, this is a body, vested with the power to remove a judge. And such body should not have lay participation or lay representation, I disagree.

- [Mr. Haydar Metiner]: Haydar Metiner, the Eight Criminal Chamber the Court of Cassation. Here, by lay participation, should we change this into someone who has been educated legally? These people can be academicians or faculty members from law faculties. If we include such a wording here to expand and elaborate on lay participation by explaining it as professionals who’ve been educated in legal matters. Maybe it can be better.

- Any other comment? Yes, thank you. I also believe that this article is problematic, and the members of Turkish judiciary always objected to the problematic nature of the article. So, I wonder what other representatives, what other Chief Justices think about such matter.

- There are statutory provisions for removal of judges in every country. So, without following that procedure, is it possible to adapt these principles? Because there are specific statutory provisions for removal of judges in every country. And the statutory laws are made by the legislature, not by the judges. We are adopting this principle, who will implement it?

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

If I’m just augmenting what the Chief Justice has said, in the common law countries, we have a problem in that the dismissal of a judge must be done by the parliament, is that so in Bangladesh?

- Not parliament. There are statutory provisions for the removal of the judges of the lower court and there is constitutional provision for removal of judges in the constitution. So, if we adopt this principle, can we impress upon the executive or the legislature to do it?

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

I see, aside from Bangladesh, most of the other common law countries still have to go to the parliament, which is a major issue. What has come into being is an intermediate level of a recommending committee, which is similar to this. I was unaware of the unique situation in Bangladesh, where you don't go to the parliament.

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

Mehmet Akarca. In our country, the disciplinary actions as an authority is attributed to the High Council of Judges and Prosecutors by constitution. High Council of Judges and Prosecutors consists of 13 people, 13 professional judges and prosecutors. Two lawyers and one faculty member are also members to the Council of Judges and Prosecutors, but all the others are judges and prosecutors including Chief Justices from administrative law, from civil law, from different backgrounds. And the head of the Council is the Minister of Justice and the members of the Council include undersecretaries who come from a background of judging, I mean they have been judges before they became undersecretaries. Therefore, I just wanted to give Turkey as an example, for the decisions to remove judges, administrative judiciary remedies are open. So, you can appeal to the decision of removing a judge. Only the decisions of non-appeal and transfer and condemning decisions, for example, these are disciplinary penalties that are excluded from the supervisory power of the administration. But when it comes to the decision of removal of a judge, which is a disciplinary action, then you can have appeal remedies in the eye of the court of... the Council of State.

- Let's put ourselves in the shoes of a citizen making a complaint and that citizen is entitled to believe that his complaint will be reviewed by an impartial and independent body. So, if we have lay participation here, then how is that going to influence the public confidence in that body reviewing the complaint? Here, complainants, the parties who make the complaints should trust the system. The public, who make the complaints, should trust the system. This is what is

aimed here with this principle and we should also remember that here we are talking about an independent body. Lay or not lay participation. Even there is lay participation, that lay participant who is not qualified as a judge will be a member to an independent body. I don't see a problem here.

- Well, our concerns about the article are clear, so let's not lose time. You can take notes duly and refer them to the general assembly. Because, the Higher Council of Judges and Prosecutors in the Turkish judiciary also have academicians members and during their serving time, they only serve to that board and they have been also educated legally and these are the professionals dealing with legal matters, therefore establishing such an independent disciplinary body can create problems for all judiciary systems in almost all countries. So please note duly and confer them to the General Assembly. Yes, then I duly noted, and I switch to the next article. Article No. 5: Establish procedures that ensure a complainant is kept informed of the progress of the investigation. I guess nobody will object against this. So, we can pass this one. Article No. 6: Ensure that the final decision in a disciplinary proceeding against a judge that results in a sanction is published or otherwise made public. I guess there is a problem here as well, I think myself. The judge, informing the public about this disciplinary action might have a negative impact on them afterwards. I have concerns about this. Does anyone want to say anything about this?

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

Alright. I was just going to say that, you noted the principle is that there should be transparency in the disciplinary process of judges. We can't change that. That's something that's already been adopted. I think the committee having the work on this over the night would be very helped, very grateful for any suggestion you might have as to how to introduce transparency into this system, if you don't allow lay people in. Maybe, if you could give some suggestions as to what could be used in place of lay people to give the public confidence, that could then be vowed into the fabric of the implementations.

- Alright, thank you very much.

- [Mr. Melis Tagaev]: Sorry, one note on paragraph 6. My name is Melis Tagaev, I represent the judiciary of the Kyrgyz Republic, Kyrgyzstan. So, in my opinion, the sixth paragraph, it's just my note from myself, so, taking into account that disciplinary proceeding against a judge may result sanction mostly,

so, it could be better to adopt this paragraph as wording like “ensure that the final decision in a disciplinary proceeding against a judge is published or otherwise made public”, so, not only a proceeding with a sanction should be published, but also any kind of proceeding, any kind of decision in proceedings, in my opinion, should be published or otherwise made public. For example, through website of this committee or... For example, in our country, this is a special commission. This is a constitutional commission, this total independent body and then this commission has its own website and almost every decision is public. So, why we should put only results in a sanction? This is my opinion.

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

I think what he is saying is that if the complaint is dismissed, it should be published. I think we need to be clear.

- [Mr. Melis Tagaev]: Yes. The idea was that, if proceeding against a judge was dismissed, so the judge was right, this case also should be published.

- Thank you. Just two observations. It's in the paragraph three and paragraph four. You know, here we have the Deputy Chief of our Supreme Court, we are revisiting again to paragraph three and paragraph four. For example, in the case of Cuba, you know it's not possible any removal of a judge if it's not done by the parliament. You know, the highest level. So, we are creating here something that is not totally, you know, to fix this with our law, with our, you know, standard, is difficult. So, I try to understand how that can be done. Because, for example, we understand that if the removal is temporarily, or something along this line, is easier. But if the removal, if for good, that is more difficult because we have a law, you know. That's supposed to be done by the body that elected the judge. That's the way we have it, that's the difficulty we have with the paragraph. So, we don't know if here we can say something along the line of whatever is appropriate, but just at the end of the first sentence, because this is contrary to our law. You know, justice, judge can be only removed by the bodies that elected these judges, you know, in our case. So that is a difficulty that we have from the paragraphs so we believe that we understand the trust behind this but at the same time, I think we cannot take him for good that would be the proceeding of removing the judges because we have it already in our law, a system to do so. So that's the concern that we have in the first line of the paragraph. I don't know, that's my humble suggestion on that is just to say, at the end, “...vested with the power of removal

of judges, where appropriate according with the law” or something along this line. Because, at the end of the day, that removal is supposed to be done by the parliament, in our case. The second point, and that’s my suggestion, you know, “...vested with the power of removal of judges”, comma, “...according with the respective law”, in order to make it consistent with that. Finally, in the paragraph three, we have it in the same line, “...to determine what action...” here, I also suggest instead of to say “to determine”, “to recommend / to propose what action, if any, is warranted, including reference to the independent disciplinary body”. I think we believe that is too subjective, too prescriptive, what we are putting there. We understand the mechanism but at the same time, I think we need to have it there. It’s faced for having different interpretations in this case. So, that’s the two suggestions that we’re having. It’s just to say, you know as I repeated, after in the fourth paragraph, in the first sentence, to after “removal of judges”, “according with the respective law / according with the law”. And then in the paragraph three, in the same line, instead of “to determine”, “to recommend what action, if any, is warranted”. Okay, that’s the two suggestions that we have and we are fine with the rest, including with the last proposal. Because I think that, if the judge, you know, is proved that nothing happens, so, I think that is important also to make this public. Thank you.

- The statements have been noted down. If there is no other intervention... Yes please.

- Article 6 of Principle 15. In the Turkish practice, the Board of Judges and Prosecutors, when they make a decision to dismiss a judge, from the profession, this can be published and it’s also supervised, it’s audited. But if there is a condemnation, a warning or a displacement, so if there is any other disciplinary action taken against such judge, then only the complaining person, the complainant, the one who is victimised by the situation and the judge or prosecutor, to speak of, is informed of the resolution. This is a benefit. Well, think about someone who has accumulating files or is neglecting their work or making some mistakes regarding procedures. There might be a disciplinary action taken against them such as condemnation or warning. If the entire public is informed of this, nobody will be willing for their case to be processed by that relevant judge or prosecutor. There will be trust that will be hurt by this situation. So, there is a negative aspect to this. This is what I wanted to draw your attention to.

- [Mr. Mehmet Çamur]: Mehmet Çamur from the Ninth Civil Chamber. This reservation was actually considered by the board. Considering the publications

in the website, the name of the judge and the place where they perform their duty is hidden when the concrete situation is being described. For instance, the judge may have a delayed file and the judge may have received a condemnation because of this. Only this information is shared. At least the citizens will know that the Board of Judges and Prosecutors is actually auditing and supervising the judiciary and using sanctions against them when necessary. But based on the law on the confidentiality of the private information, the names of the claimants and the judge and the prosecutor involved will be blurred. They will not be seen. So, the person won't be able to see which judge or which prosecutor made a complaint against whom, or vice versa. So, it's possible to resolve the situation by using this means.

- Yes, thank you very much. Your recommendations have been noted down. I was just saying the same thing. I made my point regarding my concern as I was reading the article. For the judge to work effectively afterwards, if a disciplinary action was taken against them, which is apart from being dismissed, then it shouldn't be published, I said. If I'm not mistaken, the representative from Kyrgyzstan made a very good recommendation, in my opinion. I find it really interesting. Decisions that are in favour of the judge must also be published, he said. I think this is noteworthy, I think this should be considered. I guess, this much is enough for this article. I hope you enjoyed my moderating and after Sandra, this was as good as I could do. Well, I tried to do my best. Thank you very much.





## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 9-15 of the İstanbul Declaration.)**

#### **Group C**

#### **MODERATORS:**

##### **Kashim ZANNAH**

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

##### **Vuslat DİRİM**

President of 13th Criminal Chamber of the Court of Cassation,  
Turkey

---



11 October 2018



- Shall we start? I think we are ready. Okay, let's start. Please. Nine. Yes. So, I would like to declare the second part open. Principle 9: "The judiciary should promote programmes to orientate students on the judicial process". In this context, there is one Implementation Measure. Any interventions? Any observations? Any criticisms? We are ready to listen to you. It's already very clear. They say no problem. I'll read Principle No. Principle No. 10 talks about the following: "The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system". In this principle, we have three Implementation Measures suggested. Any interventions, observations concerning Principle No. 10? Please.

- I don't know how the English text is. In the Turkish translation, it says "court users" because that was the term also used in the previous one. Like committee of court users or panel of court users. What is the court users? I couldn't understand from the Turkish translation of it. What is the court user? Are they parties to the case or any other subjects?

- They include lawyers, litigants, civil society groups that are engaged in the business of, well, in promoting or rule of law sector, these are our court users.

- I agree.

- In Turkish, this is a term which we are not really familiar with. That's why I wanted to clarify that.

- We are all getting familiar with some of these terms. But this is the general group that is identified as court users.

- I have some difficulty with number one. To the extent that it implies like court users, that's litigants, are being encouraged to tell judges about their experience on the cases that the judge may have presided on. If I held one of these meetings, a thousand people who I've ruled against in the last two years would be angry and there to complain about how I handled their cases.

- Yes, you're quite right. Because, I can talk from experience, having done exactly what is now being prescribed, you have all sorts of attendees at these town hall meetings. But by and large, ground rules are set. No, like, case is discussed. But you do have the occasional disgruntled litigant not disclosing that fact and coming out with careless attacks. And I'm glad that you asked the question about who are these court users, because. But from the experiences I've had, the presence of the civil society groups, the presence of lawyers and the

community leaders that really neutralize. Sometimes, you as the judge, usually is the administrative judge who does that as a chief judge, I've been able to do. You may even be unaware, it is actually the community that points out, "No, this one is a disgruntled person". So, it happens but the experience, that is a good one. Actually, it also affords an opportunity for the judiciary to sometimes explain things that may have been deliberately distorted by disgruntled litigants. That has also been the experience. It's proved really very useful in practice. Yes, but that's just out of my own experience.

- As regards to this issue, I would like to inform you about the Turkish practice. On the very same day, the judges, for instance, they hear thirty cases. And unfortunately, some judges schedule all of those as 09:00 a.m. So, parties to the case, all of them, come at 09:00 a.m. And they wait there for long hours. But people should manage their time well. That includes the time of lawyers. And that is leading to a management problem due to the court management. When such problems are mentioned, I think the judge should find solutions to problems as such. Based on his experience, instead of scheduling all cases at 09:00 a.m., the first case can be scheduled for 09:00 to 09:30, the second 09:30 to 10:00. So, he can announce this in advance and such a problem can be solved. I'm going to use your terminology, court users. So, it is not right for the judge to say, "I'm not going to discuss this problem with court users" because this is not about the substance of the case. This is not about the facts. But this is a problem and that can be solved through various means, one of which is exchange of opinion.

- The same idea I can find it in Principle 12, Number 3. Number 4, not Number 3. We should not be defensive. In number 1, we are going to explain and be defensive and we should not have this attitude as if we've done something wrong and we need to explain to the people. The judge explains his opinion if we are speaking about our sentence in his sentence, he has to make all the explanation within the sentence. Now, regarding the way we are dealing the cases, administration of the court, it's Principle 12, Number 4 for example or there is other principles. I don't understand this one going to where, including town hall meeting. I will go to my town and I will tell the village, the people come to the town hall and we will discuss. If they have something to say, they will go to the court. I don't know we are very defensive, trying to as if we have committed something wrong and we need to... Please, please, we are good judges. This is not the case. We are an authority. We have our dignity. We don't need to all time tell people that we are good people. I don't know.

- Well, just as a point of correction, the Principle No. 12, the one, four is a different matter.

- Number four.

- Yes. In fact, the same thing you found in 12, Number 4, we'll come to that when we come to 12. That's about performance evaluation, it's different from this Number 10.

- Okay.

- And then, my experience is, and strictly, we did this thing with UNODC and implemented some of these ideas in all likelihood cropped up from that experience. We did a strengthening of integrity and public confidence. Major project twice with a baseline, subsequently progress assessment and had one interrupted by the infamous Boko Haram. My experience in these town hall meetings is that, actually the public is much... We don't give them enough credit for the degree of their knowledge and understanding of these systems. So, it doesn't erode the confidence of judiciary, it doesn't erode our dignity, from my experience. Actually, it enhances that. That's why early on I was saying, from my own experience, when those... There will be disgruntled elements and all that... It is, you see that the judge doesn't even need to say anything. They will be the ones who like "No, no, no". What this thing addresses are general ways the court impact on the society that for us sitting at the other end, we may not know. I think Vuslat Bey gave a very good example of timing. The public sometimes wonder why they should go to the court, they are told to go at 09:00 o'clock. They go and sit at 09:00 o'clock and their case will not be on court until 02:00 p.m.

- It's provided in other article. That we should schedule...

- This is just an example that I'm giving. To us, at our end, we'll be there sitting at 09:00 and doing the cases continuously up to that 02:00 o'clock he is called. So, we haven't even noticed anything going wrong with that. But, with the interaction, they bring out their concerns. And then, we sometimes address them. It's not an apologetic exercise. But of course, the judiciary is a service institution and we are there to serve the public. To find out whether we rendered without compromising our dignity, without compromising our rules and procedure, I think it's a good, positive thing. That's what's...

- Alright. I completely join in the sentiment. But to the extent it could be read as suggesting that judges should listen and answer questions about cases

they have decided, that would be against our ethic rules. I'm not permitted, so. If I were writing this, I would've written "that provide an opportunity for the public to recommend improvements in the functioning of the judicial process".

- I'll be surprised if any judge anywhere in this world would read this to mean a judge should go to public and answer questions about, specific questions. Honestly, is there any place where this could be remotely understood that a judge should go to the public and answer questions about cases in court? I think we've been... But, to me it's, so.

- It's not a deal breaker.

- Yes, I don't think so.

- So, I think we have been able to consider this quite thoroughly in terms of the Implementation Measures. Now, if you allow me, I would like to proceed to Principle No. 11. Principle No. 11 says the following: "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". Any interventions or observations concerning the Implementation Measures under Principle No. 11?

- I don't want to comment about the principle, but there is something that we encountered quite often. We give our judgments to the press, or they have access through the website. But they don't have enough legal knowledge or because of some other reasons, they cover it in a quite different way. It is not the judgment that we have given but they write something quite different from what is written. So, can the judge do something about it?

- This is a very difficult question, I think. Quite a difficult question. Nobody wants to take it up or answer it.

- In Turkey, based on experience in first instance courts, we assigned some public prosecutors as public prosecutors in charge of press. Court of Cassation has a press office and sometimes we release bulletins in order to inform people correctly. However, unfortunately, the judgments by the Court of Cassation or by first instance courts are covered and in those coverages we don't see accurate terms or accurate expressions. I think this is not specific to Turkey. I think this is a common problem. And we always try to make a counter declaration to explain that, that is not really the case. There has been some misinformation, we try to say when that happens. But of course, we shouldn't turn it into Q&A, argument

and counter-argument. But I think there are ways to avoid misinformation or prevent press from misleading people. But, if we do not offer information, then we would be violating their rights to receive information. The journalists, they have to practice their profession and I think we should do our best to inform them in the best possible way. And if we do our best, maybe we can have fewer problems. But I don't think they will be reduced down to zero. Well, one way or another there will be problems maybe acting on good faith or bad faith, but people try to mislead others.

- Yes, actually this measure is to address what the concern you've raised. It was understood that a lot of the misinformation or inaccurate reporting or wrong reporting may not be because of lack of good faith, but honest inability to understand court procedure and court methods and all this. So, the entire aim of this principle is to correct that by now having a well-informed capable court and capable journalists that understand court proceedings that can now then report accurately. So, it's really a measure designed to address exactly the problem that you've raised. Thank you. Yes, please.

- Thank you, thank you very much Mr. Moderator. It has a good title, but in the content, "respond to requests of journalists", well, don't you think this will put court in a difficult situation? Because then it will have to answer all requests or answer all the questions asked by the journalists and it may cause some influence on the course of the proceedings. It also talks about press campaigns to be organised by the judiciary. So, organising press campaigns, I'm not really sure about the content. I mean, is it like the judiciary is going to try to perceive others, convince others through the campaign? So, the judiciary is like making propaganda for itself, like running itself for the elections. Answer all the questions, if this is misunderstood by people, the judiciary will go out on a campaign to give a clear message. I think this has exceeded the objective we are trying to reach.

- I'm glad you raised the question first. We just now explain the entire purpose of this thing. Whatever is under this principle and is suggested may be just about curing the misinformation and inaccurate reporting and inaccurate perceptions of the judiciary that prevail in our societies. That is all. Nobody is going to mount a campaign to say the Judge so-so-so is very handsome or he does very well. It's just to explain the procedure of the court. How courts work, how the law is, how it impacts on people so that there will be no inaccurate reporting. There could be less chances of being misunderstood. It's never a publicity contest so that, in the

next set of ministers judges may be appointed. I don't think it's ever understood in this context, no.

- Well, maybe we can improve the wording.

- Make a suggestion please. On which ones need to be improved. What words need to be replaced.

- Maybe we can say, the court or the judiciary may offer press releases instead of saying "campaign". Or in order to avoid misunderstanding, that it will answer all the questions asked. I think the wording does not exactly fit the purpose that we are trying to serve.

- Mr. Chairperson, I also would like to make a comment. We talked about unqualified. So, this "campaign" word has some connotations in Turkish. That's what he is trying to say. Instead of campaign, we can say "informing the press and the public". Can we say, instead of "campaign", "informative something..."? Instead of "press campaign", "informing the press and public"?

- Thank you very much. Because, I suspect. I wanted to ask if that "campaign" word doesn't have a translation that is probably giving you concern. I would suggest that, in the Turkish version, it should be translated appropriately. Because, campaign doesn't...

- Exactly, exactly. Information to press.

- So, in the Turkish version, it should be translated as information. But the campaign element comes in, it says that it is concerted and it is focused. Sometimes just a new model comes about, or the court changes its procedures. New rules are introduced or litigants are required to do certain things. In such situations it's not just a matter of one press release. It's a concerted program and that's where the word campaign comes in. But I agree with you. In translating it into Turkish, I think the appropriate thing to do is to translate it appropriately to convey the appropriate meaning.

- Yes, yes, thank you. Maybe the last sentence can be "in order for the public to have a better understanding of the judiciary". Yes, in order to ensure information to the press. It's a very long sentence, he says.

- Well the judge takes a decision and the reasons are already indicated. So, this may be misunderstood by people or by the press, by the journalists. And those cases followed by the press are those that are in the public opinion that are

appealing to everyone. So, not in all cases, but in important cases. So, in such important cases, the courts may offer information to press. So, when those things are made available, those things can be supervised. Well, in very important cases, the court can offer a press release after the decision has been taken. And I think that will solve the problem.

- Can I take the floor? So, we have been discussing the time aspect like telling everyone that the case will be heard at 09:00 for instance, lack of time management. So, we discussed this. And we have been discussing the press releases. We can see Principle 11, in Article 1, everything has been written in detail. If you read it carefully, you will be able to see a press bureau will be established and that information will be offered via the press bureau. It is not going to be by individual judge. So, it is not going to be the judge that is going to write the press release and give that to the press and media. The public relations and press bureau will take care of that. I think it's quite fine.

- I think that clears it. If it does then we can move, Vuslat Bey. Yes, they say...

- Eleven, sorry twelve, twelve.

- Please, about all this article. We are speaking about eleven and the press and media. Okay, I agree on that. We are dealing with media, which is very dangerous area. Media. I would like to see a gentlemen agreement between judiciary and media. I will not put those obligations over the judiciary without telling the media you should, there should be a gentlemen agreement between me and you. They will take this principle against us and they will do nothing from their side. It is a dangerous principle. I agree on the principle, but it should be, in French we say, "We give, you give". We are giving them and they are giving nothing. And the media would like to, everyday, bring a new "boom", "oooh" and later on we check and find there is 10% or what they said is the reality, 90% nothing, zero. So, it is a dangerous area and we are speaking here about judicial process in general. And in the judicial process, there is investigator judges. There is the phase of investigation. This is the most dangerous. They would penetrate into the file while we are investigating and they will want to see what's going in the investigation. If you read now what's happening in Istanbul, every newspaper would like to have its own investigation. And the people finally are lost. Nobody knows what's happening. And where is this gentlemen agreement? Just a simple remark.

- Yes, I understand your concerns, but are they really within these words? Because here what we are talking about is providing or assisting in making sure that there is accurate reporting. How does that, what do we ask in return? Let's say okay, we'll give you information, we'll train you to report accurately about judicial proceedings. And since we're doing you this favour, what can we ask in return? I think it's a one-way thing. We're the ones, it's in our own interest, in the interest of the judiciary, they are doing what they want now.

- I made my remark, so.

- No, no, I'm just trying to understand.

- That's it, this is my own remark. This is out of my own experience, that's it. I want to be in a very good relationship with media. I want to provide them with what is necessary, but they should respect judiciary, respect the secrecy of investigations. Sometimes they would like to lead us in a way which is not related, in concordance with the case. So, media, media, media. Okay, media.

- Mr. Chief Justice, I understand your concerns, but I don't think there is much to correct in the text. I mean, they should cover it in the right way, they should do accurate reporting, that's what we want, that's what you want. So, okay. We are okay with it. Then, Principle 12.

- Let's go to twelve.

- In the translation, in the Turkish text, it says "follow the accuracy of news reports and organise press campaigns for the communication of accurate message". I can't see anything else to add.

- Let's go to number twelve.

- Okay, we will proceed with twelve. "The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice". Under this scope, under this principle, there are twelve Implementation Measures proposed. Any views, any comments?

- I agree with twelve. I just don't understand ten. Oh, I'm sorry, nine. "Implement a program of conducting court inspections without notice". Inspections by whom and for what purpose?

- Okay. Yes, this was controversial. Yes, it's internal by the courts and it's about mostly not, it's about facilities, court facilities. For example, the

availability and the state of the toilets for use by the public and things like that. And it's not an external thing, it's the judiciary, it's of the administrative heads of the judiciary should periodically go inspect these courts to make sure that the public is being served well. Particularly this is, again, emphasis strictly to the physical facilities and amenities available for the public and for court users. Not to do with court processes, not to do with judicial proceedings.

- In the French system, it's related to court process.

- The availability of toilets?

- No, no, no, not the toilets.

- Something to do with court process? Okay.

- For example, they would go to a far court. To see if the judges are coming to the court. Sometimes they would not go without notice.

- That is it. But the distinction we are making is, it's not about how the judge is conducting his case. Yes, but if he doesn't sit on time for example, then the Chief Justice should have a surprise visit there. Judge so-so-so in so-so location doesn't sit on time or the toilets are out of use. Litigants have to leave the court premises and go miles before they can find toilets to use. This is the idea. So, I think it's well understood then. Because now you brought another example that captures... Yes, go ahead please.

- So maybe we should correct the statement in this way. Because this is very generic. So, it may be perceived as if the court may be inspected or audited while they are fulfilling their judicial functions. Maybe we can amend it as, conducting court inspections for the physical infrastructure or physical facilities of the courts.

- May I also add a remark? Yes, please. I think, under ten, it is a similar situation. I don't implement a program? Who is going to encourage critical assessments? Who? Judges? So, judiciary or staff members of the courthouses may be added as subjects and implement a program of conducting court inspections without notice. Who is going to implement it? Judge. It's okay. But if it's not a type of inspection we should indicate the subject of the sentence.

- Still, if we go back to the principle itself, it will become clear. Again, the judiciary, that's where it starts. Nobody else. The judiciary should assess... The entire thing is about the judiciary now assessing the public satisfaction. You understand now? Good.

- It's okay, we don't have an objection to that. But, as regard to terminology, under seven, what does it mean "inspection" or "case audit"? What is the "case audit" in number seven?

- Okay, case audit is a situation whereby, in a court for example, cases get adjourned sometimes, several times and the docket becomes very large. I'll show you, in my state, in my country, I sit on a Performance Evaluation Committee of the National Judicial Council and we have cases where a single judge has one thousand cases outstanding in his docket. So, in these kinds of situations, it becomes necessary for the judge to, it becomes difficult for him even to know what's the state of the cases. So, a case audit happens in bringing out all these cases, going through what is happening, what their position is and then deciding measures accordingly. Maybe at times, witnesses just don't come, parties abandon the cases and the cases just remain there. So, depending on the court rules, the order, the judge may end up striking out such cases, with their liberty to come back if they want. So, this is the idea of the case audit. Usually, again, it takes place for example when you transfer to a new station, you go and take over. Cases are already pending there. You'll need to do a case audit. Go into each case and see what is their position and how you can now manage your case. That's all.

- Actually, I just asked him out the terminological meaning in Turkish. So, we say "file audit" not the "case audit" in Turkish. "Case audit" in Turkish is not so suitable. So, we may amend the Turkish version.

- I didn't want to break the discussion, but I have noted that probably at the end of our discussion, we should decide on whether to recommend that translations of these documents should be carefully done to convey the meaning and not necessarily words. Right? So, we'll do that, we'll report that. You're right.

- So, we can proceed to Principle 13? Principle 13: "There should be transparency in the appointment process of judges". There are six Implementation Measures proposed for this principle. Do you have any views or comments about these measures?

- Nothing on thirteen?

- We wish they are implemented. That's it.

- We strongly wish and pray that they will be implemented. That's a good comment. Thank you. Okay?

- Principle 14.

- In some countries, it's also the politic, not only the judiciary, in appointing judges. For example, in my country, if we put a list of vacant judicial offices and the list of candidates, I don't know how much it's going to work.

- But we should, we should aim to reach this. It's good to have it. It is good.

- Thank you. You've hit the nail on the head. One of the discussions we had in Ankara was that the purpose of this declaration and the Implementation Measures is aspirational in some cases actually to assist judiciaries in different nations and say "Look" to the political class "We are not meeting international standards. This is the international gold standard". So that may be convincing in enabling our colleagues in some jurisdictions to use it to now advance this thing. So, you hit it right on the head. That's the idea, thank you very much.

- Principle 14: "The judiciary should respond to complaints of unethical conduct of judges in a transparent manner". There are seven Implementation Measures under Principle 14. Any views, any comments? Yes please.

- Sorry, I do not want to take much time. Under Implementation Measure No. 4, "Establish a mechanism or procedure by which individual judges may obtain advice on the propriety of proposed conduct". What does that mean? Number four.- To give an example, in our discussions in Ankara last month, the following example was proposed: A judge, in a meeting with a trade union, asked permission from the Council of Judges and Prosecutors to make some disclosures in the meeting of trade unions, asked for a permission to participate in that meeting. And the party to that meeting, I think was engaged in banking sector where there are a lot of litigations. It is one of the challenging issues for that reason they may consult some of the advisory boards or councils. At the Court of Cassation in Turkey, after a very long process, as also highlighted in the morning session, we have Ethics Board at the Court of Cassation. Judicial conduct for High Court, Supreme Court. That council is now operating. For example, a judge posting on social media, how should it be? A judge may ask for advice from the Judicial Conduct Council. So, we need to look from this perspective. Maybe I could answer your question in this way.

- Yes. It's about cases of moral dilemmas for example, where the judge proposes to invest in a company, it's a publicly quoted company. But he knows that a large shareholder in that company is a litigant in his court. Just as an example. So, before going on to do the conduct, that's why it is proposed conduct,

a mechanism whereby a judge can get good advice as to the propriety of his actions. Again, I can say that at the Judicial Integrity Network, we are very soon going to roll out one online program actually of ethics training whereby a judge can log in anonymously and take a test, subject himself to a test so that he is understanding of judicial ethics. He'll be comfortable about his understanding. Anonymous, nobody knows. Nobody sees his own score, he sees his own scores. If he is not scoring very well, he now needs to read the Bangalore Principles for example, read his own code of conduct and then come back and take the test. So that, instead of these reactive procedures whereby judges are in court doing wrong, the system should assist judges to know how to avoid conflicts of interest, how to avoid unethical conduct. This is the idea of this provision. Thank you. Go ahead.

- I have a remark, please. Number three. "Disseminate the code of judicial conduct". Do you mean codification or the principles? Because in some countries, they decided not for a codification.

- If it is not codified, then they can't disseminate it. So those countries that have not codified it, I encourage to do so. If they are reasons not to do it, then...

- Let me explain. Either we choose for a codification, or we can put principles. Written principles, but not as a code. In Lebanon, we've chosen to have, to put eight principles with details but it's not Article 1, Article 2... It's not a codification. There is two schools.

- I understand, I understand you very well. I understood the first time. All I'm saying is you disseminate what you have. Alright?

- If you say we use principles, then those who have codes, what do they disseminate?

- The code or principles, we can use both.

- Yes.

- Just to go back to four, this is a point of information, I assume this would cover legal advice that may have ethical consequences. I'm thinking, some years ago, I wanted to hire a confidential law clerk who was a non-citizen of the US. And we have lawyers in the judiciary who'll answer questions for the judges to whether there were legal or ethical consequences to this kind of hiring that I perhaps have not thought of. It turned out that there were. But I think this could

be broadly read I think as a clause to cover appropriate legal advice as well as ethical.

- Yes, good observation, and then move on to... Vuslat Bey?

- Principle 15: “There should be transparency in the disciplinary process of judges”. There are six Implementation Measures proposed under Principle 15. Any remarks from the audience?

- The number six. “Ensure that the final decision in a disciplinary proceeding against a judge is published”. In Lebanon we distinguish between, if a judge is released, we publish. But if he is still kept in the judiciary, it’s not secret, we use another word. We don’t publish. Nobody should know about the case, since he still is continuing his work. Is it clear what I’m explaining? We distinguish. If we send him home, we publish why we send him home. Sometimes, if he is in grade 10, we put him in grade 8. But we don’t publish. Nobody should know. It’s between him and the disciplinary.

- Yes, we get your point. Yes, what he’s saying is that, in the case where the judges are removed, it’s published because publicised. But where, whatever measure is taken leaves him to continue on the job, on the work as a judge then he is not publicised, right? Well we do the contrary. There are many experiences around. For example, in our own case, we publicise whatever. If he is dismissed, it’s publicised, this is the reason. If he is exonerated, it is also publicised. There are arguments for both sides, I quite respect your point about this judge is going to sit and continue as a judge, so you should be careful about how you publicise his activities to the public or what you have done to him or what... Now where he is exonerated too, we believe he even wants it, he should want it publicised. Many at times, depending on the jurisdiction, in some jurisdictions, rumours have already flown around. Misconceptions are there. So, by publicising that there was an investigation which exonerated him, that clears him, that also enhances the confidence in the judiciary. So, but I agree that there are down sides to both but this is the one that apparently was adopted. I agree.

- I also would like to make a comment. In our discussions last month in Ankara, we stated that the Council of Prosecutors and Judges appoint judges. And those judges provided information about their practice to us. According to that information, disciplinary investigations are carried out by the first instance courts, on behalf of the first instance courts, the Council of Judges and Prosecutors carries out the disciplinary proceedings against judges. The sanctions

and the sentences are published on condition they are anonymised. I mean the personal data are not indicated in the publications. But, as a result of disciplinary proceedings, if that person, I mean the judge is cleared from any charges, it is a natural right for that person to publish the result of the proceeding. As a result of the investigation, if the judge is not dismissed and still continues his work, this should be published in order to clear that person in the eye of the public.

- Yes, any observation? Otherwise we are going to rise very early. We've had a long day. This is the last principle. Okay, it appears there is none and I must say thank you very much. We've had very robust discussions and I will just secretly take it away, I have seen suggestions and observations met from this floor that I'm almost certainly taking home. Whether or not this thing comes through, we are going to implement some of them. Thank you very much for your cooperation, for your experience and incisive observations and comments. Thank you very much.

- I also would like to thank everyone for their views and comments. It has been very useful for us. We learned a lot from one another. Hopefully we will be able to improve our process of delivery of justice. Thank you very much as the views have been very concentrated. We started late but we finished early. Thank you for that as well.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 9-15 of the İstanbul Declaration.)**

#### **Group D**

### **MODERATORS:**

**Shiranee Hesta TILAKAWARDANE**

Justice, Supreme Court of Sri Lanka

**Ahmet ER**

President of 22nd Civil Chamber of the Court of Cassation, Turkey



11 October 2018



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

- A last note. So for us to go to dinner, shuttles will be waiting for us in front of the hotel other. For that reason we will finish by ten past five. Of course, we can finish early than that, but final line is ten past five. Because this is how we can get ready to get prepared for the event.

Thank you for very much for coming on time, let's start from principle 9.

- It looks like we agreed on this principle. No, there is an intervention, from Nepal.

- We have a system and so-called Committee on access to justice and access to justice committees now drafting a revelation for using engaging the students from various localities to the courts, so that it becomes a mandatory requirement. So yes, I endorse this.

- So President Peter... Because you're not talking much.

- We've come here to talk a lot anyway, so I take it. Or why should we bother about the students?

- Can I tell you something, we're doing at home. I'm in the month of June. It started, because we had student visiting from America, but now we've extended it. So we have seven law schools in Ireland, that's Ireland, the whole country, not just north and south. For the month of June, we invite two from every law school so... There are also students from Milwaukee, from Cleveland, from Fordham in New York, from Banger in Wales, they are each assigned to a judge and they spend the entire month with the judge, in the judge's chambers, following what he or she does, and having explained to them how the court works, etcetera. Is that a good idea? That's our initiative and also we organize a series of lectures and every Tuesday and every Thursday, there's a lecture by a judge on some particular issues, so it could be historical or legal. So, I think that's a good system. And the other thing we have possibly, do you have people in Turkey to drive your car?

- Do you have this or I to take care of you? But I, you have it.

- Yes, yes, exactly we have it.

- And we abolished this in favor of giving a job to a student for two years, so he or she can learn on the spot. I just hope they can drive a car well because, I wouldn't let anyone else drive me in a car except my wife who has her own ideas about things.

- Sounds like a system or we're going to try to apply the system to use. No, we're going to make the most of our students right?

- A lot money for that. I just wanted to share her experience. Is our court, the number of court staff has not increased in last 15 years, the government has not provided fund, and our administration and management has been very stagnant, and we are understaffed. What we have found is even just like me at the Supreme Court level, we only have got one staff who not really assist me in research works and which is completely difficult for him to cope with the time. So whosoever we have had interns in the core who are helping us to research in many cases like cases from outside or researching on the legal revisions, so they have been very helpful to us at the moment. So this is just sharing experience.

- In this case, we all agree on principle 9, and now, we are skipping to principle 10-A.

- So in principle 11, we have not talked about it. Media, we are very cautious about it and we have to be, it's very right that we have to train the media. Also in about last 10 years, the Supreme Court of Nepal has trained many journalists to report on the legal matters and now we find that the quality of their reporting has improved a lot. So, yes, I am in favor of creating the journalists. And the first thing we actually tell them is "please avoid the media trails on sensitive cases".

- Any of the commitments or any other comments? Yes.

- Thank you very much. I joined a little bit late. Apologies for that. We have some problems in our county. Especially the judiciary has its own way of dealing with processes, and the judiciary's own ways are difficult to understand for the media or the public. The law has its own language. Just like medicine. But as we convey in this language, we need to be very proportionate. We need to be very meticulous. So I don't know if this applies to countries, but a verdict that we deliver is just circulating on the internet as flash news, breaking news. But media environment. So as far as I understand, they lack a filtering system, to... I'm not saying this is a... It is a necessity, but media, media organs and outlets evaluate this sensitivity should have a department in charge of legal matters or if these departments may have an association or have an exchange with the court, or at these correspondents may be trained on this matter. They have correspondents everywhere, state bodies but they may also have correspondents based in the courts as well, so that they can understand how we use and convey the language of law. So that's why I believe that training is important. Thank you so much.

- We can switch to Principle 1, we are going to comment on that right now.

- Part of what he said it covers on this also. So, a kind of similar to the earlier.

- Let me a little bit. We at the Supreme Court level, and also at all courts in Nepal, we have got media officer who actually deals with the media and they are from among the journalists appointed by the court on contract basis. But they are for the court, they are the ones who actually formed what has to be released and what is the meaning of the decisions and what it intends to say. So, the judges, we do not talk to the media at all.

- So I was like to have a comment as well... When the cases are pending, the opinions circulating on media have an impact on the judges, therefore judges may face the risk of losing their impartiality because of such opinions. So that's why we need to come up with a very important measure here, there are judges who are extremely dominated by the direction of the media. It becomes very difficult for the judges indeed. Therefore, of course there will be some criticism, our verdicts will be on the media, how they were the fact that the media outlets are reporting in a way to direct or steer the judge will have an impact on the impartiality of the verdict. Unfortunately, hearing or imposing articles are published, and even to the extent of witnesses being impacted by these kinds of articles, or reports, so there should be a right balance. I believe that this is very important.

- I make a comment. I agree with your fun also without its disastrous to speak to the media. They have no interest in you, they have no interest in the truth. They have huge interest in making mischief. Do you talk to them? They'll twist your words. It's like dealing with the snake, there's an expression he has us with. The Devil should use a long spoon. And I think whereas I respect journalists, I think they respect you more if you keep your distance.

- I think this is something that right across the world is impacting especially in cases involving people of other races and nationalities. Because I was in Australia and I was sitting on the bench with an Australian colleague of mine and he was telling me that there was a lot of cases where they put all the called him racist because he gave a just decision. So he felt very intimidated, very attacked. So, I think this is something actually we have to deal with next. Social media and the court. We have to have guidelines and things on that. I think we have to deal with it much more in details.

- Any other comments on social media or...

- I would like to thank you for all the comments. And another side of this is as follows: Judges, prosecutors and persons who are in charge similarly, imagine

them on social media. What kind of a presence should they have on social media, Twitter or Facebook? Because once you cross a certain line, any for a post that you like, any comments that you like or post. Even if you have a small circle of friends, it may not really matter, but imagine a huge circle of people, a group of Facebook group, Twitter group. It's really easy for it to be revealed outside .... Then the impartiality, the gender-based attitude etcetera, of the judge is under attack, is jeopardised. So from the perspective of the judge, how should our presence be, to what extent should our presence be on social media... Or maybe, this may be covered as a sub-section in this principle. Thank you.

- I think this came up. Because if you don't give them information, the truthful information anyway, they do it. Then the public falsehoods. So if you tell them and say this is the case that, if you have a more transparent or a media judge or somebody who talks to them who's trained to talk to them and if they have the truth, they cannot dare to go and report something wrong, then you can deal with them for content or anything. That's the kind of idea that was there because at the moment, because Judges as you said, although the world, we don't talk to media, we keep away, but because of that they do whatever they like. So, it is a way of, in a way, educating them.

- We have a principle. I don't know if you have it in Turkey. The principle is that your judgment is your judgment and you don't add anything to it and you don't take anything away from it, so that's it. But the idea that the courts would establish for instance, a training program to explain why procedures are procedures in general, as opposed to specific cases to explain basic principles of law. So they have a good knowledge, because none of them are lawyers, and that's a good idea, I think.

- Thank you, can we go onto Principle 12? So now can we go on to principle 12.

- If you don't mind me making a comment, I don't know if any of us old enough to remember the great tennis player John McEnroe.

- Yes of course. So yes, I think everybody does, so, I easily.

- So he was always having rows with umpires and with linesmen. And his favorite phrase was: you can't be serious, and I'm afraid I would say about principle 12 that you can't be serious. I mean, two people go into court, one of them is going to lose to. Some people who go into court are not necessarily mentally very well. And we have a situation in our country where if you decide

a case against somebody, then you'll be joined in the next case they have and maybe you don't have that yet, in your countries, but we have it. And the thoughts that you have this box where people are writing our comments to say you are the biggest clown on the face of the earth or that the chief judge has to have her time taken up dealing with disgruntled litigants. In every system of law, there's always a disgruntled litigant, and they always have something to complain about, but that's just tough. Again, to keep your distance, it means you can't engage in this kind of thing.

- Can you have a user's Council, which is another thing. Well, for some branches of the courts, we have a user's council, but it's a lawyer's users council to say, if, for instance, the Commercial Court is working properly, are we quick enough, are the judgments coming fast enough so that lawyers are commenting on that and we have a proposal that persons who are not lawyers should be involved in appointing judges. So all of those are good ideas but courts are places of misery, under case, other places where people go away disappointed and disappointed people don't necessarily think logically. And I think this is a really bad idea, so forgive me for saying so, but that's my impression.

- We are having more and more questions of corruption of judges coming up, where do they really make a complaint to? A special process would be a barrier to all ordinary people, especially the kind of poverty you're talking in under-developed countries. They'd be scared but if they have a place where they can put the company, and I don't think you should take every complaint seriously, but maybe if you have the same complaint about the one particular judge, it might be important to hear that if nothing else.

- You could be right. I don't think we have any judicial corruption in our country. I don't mean to say that by way of boasting, I just don't think it exists. And you don't get a pointed until you're at least 45 and usually you've done well as a lawyer, so you may probably have money. I just haven't heard of it. I would have thought you should have a special police bureau to investigate this.

- Another area is sexual harassment by judges. Even that?

- Well, we're not allowed to interact with anybody, we come into the court and we have to go straight to our room and we go straight from our room to the bus or to our car and we're not allowed to talk to anybody during the day, just and in fact, there's a person who's supposed to walk with us all the time to make sure that nobody talks to us in. But I mean, you know what, I'm not against the idea of people being able to make complaints, but if he really is a corruption

problem, usually it's a corruption problem, because it's not just one person, it's endemic in the system and rooting that out is a huge, huge task.

- I don't know how you would go about that, but that's a very, very big task and possibly needs a very strong government backed by a very strong police and it also needs the social consensus that corruption is a bad idea, and the people shouldn't do it. But of course, we have anti-corruption laws as well, but I don't think there are any cases of corruption, the cases where people have behaved in appropriately, yes, but in the case of, I mentioned too in the paper where a judge had a computer on which there were obscene images; another case where a judge intervened in somebody else's case for the best of reasons, both of them ended up losing their job. So, I mean, because we're human beings, we're all liable to do bad things, but I'm not sure that having complaint boxes is the way to sort out that issue or it's only an idea. I like to hear what other people think.

- May I just reflect on what we do. We treat this corruption differently. First thing... definitely we have... rules they are prosecuted with whenever there is any complaint of corruption, to lower and district judiciary.

- I'm sorry, forgive me if I misunderstood. And principle 12, they talk about court house administrative staff like clerks or it's not about judges. 14 and 15 are about judges. This principle 12 is about the staff. Principle 12 is about courthouse staff. The director, clerk and the other administrative staff can be complained.

- So people talk about the judges, the complaints against judges in principles 14 and 15.

- Of course we have to be more diligent. So we have to show more diligence as to complaints about judges, but we have the staff in every system, right? There is no problem about that.

- You always talk about judges. It's not about judges, they are about auxiliary staff or staff other than judges, but it says judicial officers here.

- I just, I just think of one thing. Who are these mysterious court users? So, does that mean someone in case of a crime who has been found guilty or acquitted, does it mean someone who's litigating? Because if you have to litigate more than once in your life, so it seems to me you have the problem, not the system.

- He said, "what is mysterious? I said you were joking about... You said mysterious. He apologized for not understanding your joke.

- Principle 12 is not only about the clerks and etcetera. It says, the satisfaction of the public must be assessed in terms of administration of justice, and the administration of justice is done by judges, not by the clerks and the administrative staff.

- Are you going to give a fair judgement, or will you take a decision which will make somebody happy? If there is a subjective decision and justice cannot be administered, cannot be established, scientific circles will look at them and criticise, okay. But the parties and the court users, I mean, we cannot submit it for the opening of the court users and for them to like it. We can have bad consequences. When you look at the principle 12, the topic, the heading is wrong. I think it says delivery of justice, if they said the judicial services, that will be more correct. It's a delivery of justice, that's wrong. Because there are 12 paragraphs, it talks about the court staff. There is a Ministry of Justice, there is the High Council of Public Prosecutors, I mean establishing commission. You know that in the courts one party is unhappy, one party is happy, it will cause problems. So there is Minister of Justice, High Council of Judges, Public Prosecutors. They can take care of that, they'll be taking care of this. In our system, the superintendent of all the staff is the judge and public prosecutor. So we have to supervise that.

- In our bureaucracy, there's a saying, "Go now, come tomorrow, just in our bureaucracy. So, we are causing problems for citizens. So in order to prevent this as much as possible in order to prevent this bureaucracy and postponement, as much as possible, it's just... So I wish.

- So I see that the assessment of public satisfaction is something quite new for my region, I mean, to east part of Eurasia, and I would, for example, Justice idea I would mention that maybe we could advise to judicial systems, or emphasize importance and relevance and exchange of experience with international institutions on assessment of court excellence, if there are several big international organizations, which provide different systems of court excellence, court assessment. So, I mean, maybe it would be reasonable just to put attention pay attention to these experiences. Therefore, it will be useful also to study methodic systems, and practically implement such systems of court excellence in a daily practice. Thank you.

- Especially these systems provide tools exactly tools for court excellence and process equality.

- Yes, Mr. Ali Selman. I want to continue from where Mr. Peter left off. Just with a questionnaire with a method of getting answers as yes and no, you cannot

identify this quality. It is meaningless, there are two parties of lawsuits, with one of them is happy and the other one is unhappy. In our country, even if the people when they are not so happy because it takes a long time until it is complete, so it's not a very good method. We might have a professional blindness sometimes, we have difficulties in solving our own problems, we need to get a professional support in terms of identifying the problem, putting it forward and which we can also contribute to the solution but we need help in terms of understanding how the outsiders see us, perceive us as so we should understand or find a way. But if we are facing with a complete system which is continuously put in front of us, we cannot work. Justice cannot function with the continuous complaints mechanism..

- So I finished principle 12. Can we pass over to Principle13? Yes, please.

- I wish you didn't show up, you care and you're taking the bar all the time. I'm just joking. I apologise.

- Honestly, we are a kind of lethargic, we are tired, exhausted. For the last seven or eight years, we're looking for a good system. We have amended our constitution, done that, done this. So now we want to stop somewhere, sometime, at some point, because the management or appointment of judges and persecutors and developing policies about them. These are the topics that we have been working on for a long time, I hope we have finished this. I think the recommendations from the other countries and the criticisms from the other countries are welcome. Because we are kind of confused. I'll stop here.

- Now, we expect a good performance from Mr. Peter.

- But it is a good idea. Every country has a different system, like if you go to France and maybe Morocco is the same. You go to a judge school, you start at a particular level, and maybe you go higher in the judiciary in our country. You are a practitioner, until you are maybe 45 or 50 or 55 and then they appoint you for 20 years or 15 years until you have to retire. What makes a good judge what makes a bad judge is actually pretty intangible. I know in the Koran, I think it says that you have to have a perfect knowledge of the Koran and the Hadith and you also have to be not mad. So that's the last principle and it's a very good one, but you know, to allow the public access to trolling over people's CVs, or private letters, as to why you feel, you ought to be appointed surely the attorney general knows who would be good. Surely the Minister for Justice knows this is a person who is sound and is of independent mind. Are those the qualities you're looking for? Does any of this helps? I tend to wonder, so I'm sure in Turkey, there are no mad judges, but we've had the old one. Forget I said that.

- I think we're tired, are we President?

- The people who come to the Supreme Court, what we couldn't hear the first part of the sentence. So being involved in the high courts, this issue I can elaborate on that. What does it mean, it means to step by step? In our country for example, you have high public prosecutors and high judges. There is an appointment procedure. Nobody says I want to be minister, make me a minister. People want what they cannot be. I don't understand this, so I don't understand what this is. Who will be a candidate at the High Courts? Ministry of Justice will decide about it in our country, there is this Supreme Court Board, and we take it to the court of appeals at the first level judges. And then we had the court of appeals and then the Court of Cassation. We don't have an announcement for High Courts as there is no such procedure in our country.

- It is said here that there should be certain criteria. Can all the judges be Supreme Court judges? So there should be a basis of seniority. Their success in their past experience of investigations that they have is subjected to and the level of hard working, they can be such a criteria in the past, or there was no certain amount, working years in the past, but then with the legislation appeared is mentioned like 20 years, and then 17 years, there's a concrete criteria right now, the concrete criteria of being a judge can be put forward. The High Council of Judges and Prosecutors can make a selection. That's why this version was prepared to... We are the same in our country, but there's a 20 years of experience requirement. Be it public prosecutor, be it lawyer or judge. In exceptional conditions, the High Council of Judges and Prosecutors can select. It is their duty. It's not related with this. I can, like I said, I'm a good jurist, I'm a good I judge. Isn't that weird?

- Identifying certain principles is important in terms of explaining this framework. Recently members were selected for the High Court, the public opinion was, I mean, we had Fred Kavanaugh issue. Sometimes it's very important the selection becomes very important. It was in the US, this was a sensational first. We had to draw up the framework, and we should fill inside it.

- Now, we are in principle 14.

- I have comments on principle 13 at the appointment of judges, justices. We have as Justice Mistrá said, we have certain competitions at the lowest level, at the district level, and here it's all the competition only, but at the high court level, we have promotions as well as direct appointment from the law officers, the lawyers, attorney-general officers. So there are selection processes and it is

all done by the Judicial Council and the composition of the Judicial Council has changed in the new constitution, the post-conflict constitution that we call it and the members are two judges, most senior two judges and two are from political parties. One is the law ministry, one is the nominee of the Prime Minister and one is the nominee of the bar association which is mostly influenced by the political parties.

- So three judges, three members of the committee are particular and that is the reason why now we are suffering that. If you are very close to any political leader, their names either are recommended and qualified people are not recommended, or even if you are recommended, their names are kept in the low side and seniority is breached, and that's a very, very big issue at the moment and the question is coming, and dissatisfaction is there in our judiciary, just in three years' time, it is terrible. So we did talk about civic presentation and broad professional and civic presentation. I don't think there are people from completely out of the judiciary, who can contribute to the appointment processes because they are mostly politically aligned. And if this space is given, it is always politically influenced. Now we can even see at the Supreme Court level and the appeal court, there's a small story that when the appointment of high court judges were done, twelve of them happened to be from a political party and immediately after the oath, they went to that political party to say thank you to the president, chairperson of the party. That's a bad history that we have created in our judicial system every time it is quoted. So, I think if we have to keep it away from the political influences, which is now slowly influencing the judgments also especially on political issues or few cases on habeas corpus matters. Whosoever is aligned to the ruling party, they basically try to avoid the issuance of the habeas corpus.

- So, I think this is a very, very bad recommendation to have somebody from outside the judiciary to appoint, to be involved in any case to appoint. Now about going into public, our experiences that also ever have complained or all litigants who have lost their cases, till he has not been any person who has said that I'm independent, but this is the information that I had. It's all subjective type of complaints that have been received at the Judicial Council. Political influence is ruining our judiciary, if something is not done soon.

- So I think I can add to that, because we also are having our judges become very partisan especially in the appellate court, because the judiciary feels a legitimate expectation to go up the ladder. But right now, we're going to have a Chief Justice retire very soon and we can see the loving through the political

parties that is going on openly, one of the contenders is the attorney-general, another is a senior Supreme Court judge and another is not the most senior Supreme Court judge. There is a lot of lobby without any politicians being on actually in the selection committee, they are lobbied directly or indirectly. And it's very sad because then you find judgments being criticised "Oh he was appointed by so-and-so... So they are giving judgments in favor of the party, so it becomes very partisan, and the judge should, in my opinion, really not, if they are seen to be doing it, they should be just not eligible to go up any higher because in South Asia, we really need judges who are not politicized so... So what we do to... Well, I think there has to be a method of selection of the judges, depending on the type of work. Over a period of time, I can remember there was in my time there was a high court judge who had written a judgment in verbatim on the written submissions of one party including saying you honourable judge, the honourable judge and I picked out 32 and I chastised it, I said, "You know, you can't do this in this. Clearly, the judge has not set aside the judgment and sent it for re-evaluation, and she was appointed, she didn't get it for some time. When the government changed, she got it and she was very thoroughly incompetent. So, there's no check and balance and that's what we are trying to say. Bring in some sort of checks and balances because if not the entire judiciary comes down and there are a lot of patterns in South Asia, which is dangerous, which we need to ...

- ... persons were there from civic side without specifying who they will be. So it was considered to be an inroad to snatch with the usual independence and the law minister entry not liked by the court that was two reasons.

- Can I have one comment? I know this is a big problem for everybody and I don't think any system is perfect; it is now in the North of Ireland which is under the British system. You have to go before a board you apply to a board and the board certified you as being competent. If you get on a list of being a competent judge, they have to appoint you at some stage. The government just have to point you in our system. You apply to a board and they certify you as being competent, but you get seven names so if you like, they can pick the one that they like to, but even still, you won't get through the Judicial Appointments Board unless you're actually competent. That's an independent body and even if you are a party person, and that's fine because you're entitled to be involved in politics if you're a lawyer, but it means that you are a competent person involved in politics, and if you are competent, and intelligent, you're probably likely to give as we say, your party, the two fingers if it comes to anything that is often important to them and

do your own thing, but it's essential to have a certification, this person is suitable to be a judge and by people who know like law practitioners, and also some people from outside law like trade unions or those kind of people who maybe think different to us, but of are responsible people.

- I understand her on what Peter says that... Well, you may be a party person, but if you are independent, then it's okay. This is what I understand from you.

- Principle 14.

- Regarding the judges and regarding ... This is about the ethical rules and that needs to be observed by the judges. So for example, we have just published a brochure of ethical rules, we have established a board. The reporter judges, supreme judges, we come out covered in this ethical board. It is in line with the Bangalore system. Yes, any comments.

- I have a very serious reservation to this, because the judicial conduct does not come out of a book or a law that you pass by the parliament or the judicial council or the full court of the Supreme Court that could qualify code of conduct. Code of conduct has to come from within. That are you are just and you cannot do this and you can do this just by writing this one. It is going to be an ornamental document and I would be very good for displaying in the walls, but it's so difficult if somebody does some misconduct, we have about 32 or 33, I don't even remember how many of them are there in our code of conduct passed by the Judicial Council, but those are all as I said it's there, but there is no back up mechanism, to find who's doing what. A corrupt judge will not do a corruption by telling everybody that I'm doing it. There are thousands of ways in this world through Internet; our friends are so many people who will do corruption. And I can differ from Justice Peter about corruption and we have problems of corruption in our country and we cannot hide that there are, but finding out evidence against that is extremely cumbersome process, because whosoever investigate will be open to contempt issue. Again, no problem if evidence could be found. So for me, just limiting it to the Bangalore Principles is fine, just by saying that it has to be published, it has to be written and it has to be delivered to all justices. I don't think those words have got any values here.

- Can I just add? You know, there have been a lot of accusations of sexual harassment across the world. And I take one incident that happened in the US, there was a complaint against a US judge saying that he was harassing his intern, so and what did happen, there was a judicial committee. They took in hand; they said no, there's nothing. And they exonerated the judge. Three weeks later, the

New York Times carried an article where 14 interns had complained against the judge and then the committee took it again, they went in record, and the judge, but whilst the thing was going on, the judge tendered his resignation and said... Now, you can't deal with me because I'm no longer judge. And this is only meant for sitting judges, so it's an overall thing of who guards the guard dogs. You know, I think we need to put these things in because more and more. There are allegations, because today it's very easy corruption over the internet as you said, sexual harassment is taking place; hashtagmetoo has highlighted things like this. And we will say we can never happen but we know it is happening. Isn't it better for the Judiciary to have deal with it rather than somebody outside, bringing it up, and they don't? We increase the code of conduct of judges, the conduct is but especially again, I think, South Asia, this is important we do it. It's important that if the judge has been found guilty that some sort of punishment is given where it is we publish, it's publicly known, that is sufficient sometimes to stop any other judge from even thinking about going there.

- Nobody should be immune from misconduct. If I'm doing it, I should be punished. But there has to be procedure providing safeguard for the independence of the judiciary not by police, not by executive, only by constitutional court.

- I had a friend who was a judge, older than me, unfortunately, he's dead now. But we, of course, I've had this issue of "Should we have a code of conduct? And he says "Do they really, the politicians, do they really think we don't know the difference between right and wrong. I know sexual harassment is bad. Oh, I know corruption is bad. It doesn't actually take nobody has to tell me that.

- The problem is, even if you know it and there are judges who will know it, but we go on doing it. We are making this assessment of the human being as somehow based on a stereotype with stocks of perfection, people are very fallible today. The temptations are multifarious. So don't we need a code of conduct? Don't we need to punish judges found guilty?

- Look, there's no doubt we in our country, as I've said, we've got unfortunately the two had to resign, a one for a very, very bad reason. He was obsessed with pornography of a very unpleasant variety and had a computer taken off on with these images on it and it was ruled inadmissible in court. Actually for a good reason, because we have this law that unconstitutionally obtained evidence can't go in at the... Wasn't just in his favour, it was in favor of everybody. So yes, it does happen. And you have to have a Judicial Council and there has to be hearings, and there has to be a complaints procedure and there has

to be rulings and it has to be fair and I think, if you're a senior judge and you're judging lower judges, unfortunately it doesn't give me any pleasure to say, you have to be tough on them. I think also, in any court system now more and more probably from what I've heard, we have more and more young people working within the courts, beside judges, not just retired army sergeants or whatever. And so there are maybe sexual temptations or whatever, and there should be someone within the courts to whom a person can go on a first time. It happens very, very first time anything happens and the judge can then be warned or told to go on a holiday for a month and have a cold bath. So depending on how bad it is, of course, if it's worse than that, then he has to be kicked out. If you can formulate a good Code of Ethics, I'd love to see it, but it's something intangible. And I just mentioned number 7. I don't want to tell anybody what the value of my house is or that I own a dog. That might be valuable, I don't, by the way, or that I have shares. Why do we need to do this? I won't sit in any case in which I have a personal interest anyway, but they do this in parliaments, and parliaments... And politicians are unfortunately notoriously prone to fall by the wayside, and it's a bit like wallpaper.

- Peter, we do it with every judge in Sri Lanka. A judge has to declare the assets and lives, because they have found a repeated of time, they accumulate a lot, and another thing is we had a Chief Justice, who on the 30th of the month withdrew all assets, declaring the assets, and put it all back. It was so stupid and foolish, but nobody knew about this until some other matter came up when things are being quite... And then this time, said this was a... And then I went into court and it was a clear case of a violation of a provision for non-declaration of assets and that's a punishable offence to every citizen in the country was to give them, but then what they did was halfway through, because it was a very political movement that she was involved in. They withdrew at the stage where her defense had been called for. So there are things happening, these things we have to know.

- Yes, it's become very popular nowadays. So it has this declaration of assets. And I personally don't see the reason for it, but... But there it is. I'm in a minority. When I was involved in our National Archives, I had to fill in such a form and it was a ridiculous form, I had to say, how much land I own, I don't own any by the way.

- Of course, nobody checks so the assets of each other, but the supreme judges should demonstrate where it came from. If it's not in the right proportional with their salary, we understand that there is something else if there is no inheritance,

If we didn't inherit it from our parents. There may be other suspicions as to his assets. There are thousands of some ways of corruption. Here is an example of it. Your salary is 1000 TL. You did not inherit anything from your family and you have 2 trillion liras. How can you explain this? That is why in Turkey, as well, all the public officials should declare it when they own property. And once in every five years, they have to declare all their assets. I think it's a correct method.

- This is not declaring it to the press. We declare it to the institution. So there is no problem about that. The supreme judge declares it to the Court of Cassation, and other judges are declaring it to the institution that they are attached to the Ministry of Justice or High Council of Judges. There is confidentiality. We're not declaring it too just to anybody.

- I agree with the previous speaker in terms of on the rightful, acquiring a property is. That the judge, let's say, is seeing a case of a drug baron or a very interesting case, this can happen, they can earn money in illegal means if my salary is 1000 TL and if I have an asset which is worth of trillions, then it is suspicious... Now, we're not declaring it to the public in general, we only declare it to the institution that we're working for. So it shouldn't be a problem.

- Thank you.

- So thank you very much.

- A complaint relating the 15 that is about dealing with the disciplinary processes when it comes to declaration of assets, I wonder whether or not we need to do it, or whether or not you do it, but somehow consider it to be compulsory. Because we have some confusions about pointing or attaining to that, because it is something that really pushes your will that sometimes you forget about it, sometimes you somehow a delay in declaring it. So we need to strike the right balance here. So, this complaint processes and disciplinary processes among them. The judge, the justice, well the complaints may be about the individual behaviors of the justice or the judge, but if there has been any harm on to a party in our report, in our system, the people who were harmed and I have the right to litigate this, this is why I'm pointing this out in other countries, if the judge due to its own actions, if he has done any harm or is considered to have done any harm... Well, is it like they are open the file against directly by necessary authorities to or is it a... So currently we have the right to open it on file against the state. Now, then there is this right to discretion. Currently, I may be wrong in my wording, but there is also the right to go to this path, so the matter may be called as doing harm, but this is also associated with codes of conduct, and

ethical rules. You may retire them, you may not retire them. This is something else, but if the parties believe that they are harmed, I believe, if in other systems, if there is any way for remedies, this is why I wanted to take the floor. Thank you.

- Just one word, I think this one word here with the participation and I'm slightly confused about the word in item 3, and item 4, the participation. Does it mean that somebody from outside the judiciary or... Okay, not a not a judge. That's one reservation that I will always have because in my jurisdiction, mostly such lay participation, all that come from political line. I just go back to principle 14, my reservation was on item 2, with says that ensure that judge is provided with a recent copy of such code and any related material such as a commentary. And my reservation then the strong reservation that I said was that, does it give or want to give of feeling to the general public that the judge has to be thought that it is an understood matter that he has to understand. Get this... And they have to read. So this is an ornamental thing. That's what I said, number 2 in 14. And item 15, as I said, in case of with lay participation, it is, I'm slightly against participation from outside the judiciary. It may be retired judges of the Supreme Court or some jurist, but lay participation out of the judiciary will be harmful.

- I think, lay participation, I believe refers to a system which also includes them. So, there is judge there is lawyer and there is other people from us from the public, so lay participation, so they want, they want this lay participation in this particular board.

- From outside.

- Is it a civilian?

- Well, of course I'm not talking about drug barons or organized crime perpetrators. I'm talking about well-meaning a university graduate, person who has not committed a crime, a person with good reputation, so a person like that may be in this board consisting of the members of the judiciary, etcetera. This is how I see it, if it's not wrong. So it's not like judges and no judges. It is not only citizens that it may be these citizens, but we're talking about qualified citizens.

- So thank you, Justice.

- So what I understand from the comment is that we have some rot and apples among us, so in order for us to evaluate that such a board should be present in Bangalore Ethical Rules. Well, are they implemented 100% in every country or are we just trying to implement it at a minimum level? So this is completely also the case for the transparency declaration. These are the rules that would be

good to implement. Well, of course, every country has its own circumstances, own conditions, rules that we can fully implement a rule that we can partially implement. An issue here is as follows. Well, there is a general criticism as follows: When a judge or prosecutor commits a crime, they are protected by their circle of professionals, if they don't have the competence to make a decision. It's only one person, among a group of seven people. So, this verdict that will come out of the board will somehow reinforces the trustability and reputation of this verdict, outside the board itself in front of the public opinion. So how is it evaluated by other professions? So is it... It is a step to legitimize our own decision, of course, it's not going to have an impact on the transparency, it is important that the people were appointed to the board. Political representatives, public official, for example or a qualified freelancer may also be included in these boards. So I really, I don't think that it will be a point of reservation for.

- I really appreciate and respect best intentions of our colleagues who drafted the document. It's true, but my idea as a suggestion, maybe this comment these ideas that we provide here in this paragraphs, it would be as an advisory not binding... not imposing because as you know, there are so many different systems, so many different court systems, so many different maybe approaches to ... Understanding is similar and of independence, of justice independence of court. So I mean that the previous speakers mentioned about including lay representation into the commission to investigate judges. So you are senior than me, I am maybe one of the youngest here. But I think that to be a judge is, has some kind of a... It's not only a profession, it's some kind of unique capability to judge a person, to judge people to find them guilty or not guilty, of a crime and some other criminal situations. Why judges cannot decide or cannot judge themselves in. So I mean that maybe we would recommend different models, like for example, to investigate or to investigate situations of unethical conduct of judges just to give to judicial commission, or second model as a representation of lay persons, then what is the transparency of disciplinary process? Maybe we can understand it not only with including representatives of society, but also, so some kind of process with known results with how to see it announced results, when Commission of Judges can, can explain what happened and what was the reason for finding judge guilty in an ethical conduct or un-guilty etcetera. So I would just advise, just offer this idea, these rules and comments should be maybe advisory at just this point, thank you.

- Thank you, thank you very much. We have come to the end of the time. I would like to deliver my concluding remarks, and to give the floor because I've

learned a lot from her, we had the chance to get to know one another in a very, very fruitful meeting. Your contributions are a lot, indeed. So I believe that thanks to these contributions, a lot of things will change in the meetings to be held. The declaration has already been adopted, they are implementation measures. This is a booklet. So, there is law. This is more like a more comprehensive regulation that will help us implement the law. So your contributions and information have been invaluable. So welcome to our country. Thank you very much for your remarks; I hope you are satisfied with our hospitality. I would like to wish you safe and sound flight. I would like to see you soon hopefully in another country hopefully in your countries as well, take good care and I would like to reach you all. By the way, we would like to thank our interpreters a lot like, Ms. Ayşegül for the technical assistance, Ms. Nazli, because they are really tired. Our interpreters have been awesome and her hands are broken right now. They don't function anymore. Our reporter? I would like to thank each and every one of you.

- If you have any comments about, burning comments about Rule 15 please just drop it as you go out so that we can include those. I also want to thank you so. So the problem is, we are having more and more sting operations. The media is scaring it out that our judges in every country are getting corrected not just money, but other things that they're getting corrupted. And I think this whole transparency is extremely important for the credibility of the judiciary. And sometimes you do need checks and balances from our side, and if we have nothing to hide, there should be no fear of having the checks and balances. And I think even the lawyers; we see lots of problems with the lawyers as lots of complaints against the lawyers. So I think we know it is in this field where we can go forward because what is most important is not whether we keep out the gates with the public are going to continue to repose the highest trust in us to deliver justice, which is untainted by any direct or indirect corruption as we note in the code of ethics. I thank you ladies and gentlemen for your valuable contribution, thank you for being here, thank you for speaking candidly, I love the way everybody... If you were in this, not just with your minds in your tongues, but absolutely with your heart because there's nothing anyone of us in this on Golden to more than a good judiciary in the world across all our nations. I wish you luck as you go back and travel safe. Thank you.



## **DAY I**

### **ROUND TABLE DISCUSSIONS ON THE DRAFT IMPLEMENTATION MEASURES**

**(Five groups (A, B, C, D, and E) will review the  
Draft Implementation Measures for  
Principles 9-15 of the İstanbul Declaration.)**

#### **Group E**

#### **MODERATORS:**

##### **Jeffrey APPERSON**

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

##### **Fahri AKÇİN**

President of 8th Chamber of the Court of Cassation, Turkey



11 October 2018



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

- My turn, okay it's my turn. Okay. Thank you for your patience. Also, thank you for coming back, promptly. I also wanted to thank my co-moderator, I think we've been working together well and going through the process. As people walk in, I just wanted to say that, these principles for me are very important. I'm going to introduce them also as I travel the world. I'm meeting for example next month with all the Chief Justices of Latin America and I think they would be very interested in this. And to be a little philosophical, if you don't mind, I've served the judiciary now for forty years in various capacities. And Martin Luther King, in my country, is a very important philosopher on justice. Martin Luther King used to say that "The moral arc of the universe bends towards justice" and I think President Obama used to also mention that. And I believe that these principles help to bend the moral arc towards justice and that's why I'm so honoured to be a part of a global, collective consideration regarding best practices for transparency but also there are ethical components here. It's not just about transparency. But I just think, I'm also part of the big project that's helped by Qatar which was the launch of the Global Judicial Integrity Network, which is also a global project to help to reinforce in fact, I asked for in Vienna, as you may remember Your Honour, I asked for a reconsideration of the Bangalore Principles, basically, an update of the Bangalore Principles. So, in a way, the stronger and the more collective the effort is to establish these principles, I think the easier it is to build capacity to administer our justice systems. So, I just wanted to mention why I'm part of this exercise. Also, I wanted to read Principle 8, which, we have here many of the judges that sit at the superior, at the very highest level of the court systems. So, Number 8 will be particularly relevant. "The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published". "Consistency in the interpretation of the law and legal principles being an essential component in the fair administration of justice, the judiciary should establish procedures that enable court users to access relevant information, including new laws and the decisions of superior and appellate courts..." To a degree we've talked about this in other Principles 1 and 2, but this is for the superior and appellate courts. "Establish procedures for ensuring that judgments of superior and appellate courts are regularly published" and "Establish a publicly available data base that stores the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals". So, I have a feeling most courts here pretty much comply with this. However, do we have any points of consideration from our high courts that are here today? Any comments on Number 8? Yes, sir.

- Thank you sir. I was just wondering about the reasoning or the judgment of the appellate court. Usually which I know, a lot of legal system taking care about the principles of the highest court or the Supreme Court which is almost like laws, these principles and it's almost laws because it's dealing with the legal issues, but in the appellate court usually dealing with facts and legal issues. So, for me like, I'm professional, it's important but it doesn't have the same weight of the principle which came from the Supreme Court of any country. So, I'm just wondering if we go to the Number 2, I mean when you say like it's published regularly, you are talking about, I'm not saying 10.000, it's hundreds of thousands of cases in the appellate court and sometimes it's not important, I mean. This can be changed in another level. So, this is my point in this matter. Thank you.

- You know it is an amazing, that's a very important point because standards of review are different and the nature of the work load is different among countries at the appellate level and I have seen that. Yeah, that's something I would like to discuss with the group. So basically, we know that the Supreme Court is the settled law, the other courts to degree are unsettled, until they finalised. In many countries, I'm amazed, in my experience at how many cases in other countries go through the appellate process, like 90%, where in our system, it's 10%, 20%. So, in a way the appellate courts have a lot of similarity in some countries to trial courts. They re-consider the facts as well as the law and those are issues to distinguish maybe. Okay, yeah, the countries are different at the appellate level. Yes, anything from Turkey? Turkey has on this, yes?

- In Turkey, the appellate court, as the appellate court, the Court of Cassation, in last two, three years, we've had four million judgments that were published. In the last two, three years, this had a positive impact, because the various chambers of the Court of Cassation and they rendered divergent decisions, judgments. We realised that in the academics, scholars realised that as well. So, upon that awareness, last one and a half years, we've used a joinder of case law mechanisms. So, they asked us to join some case laws, jurisprudence and so the request to do that has increased. Why? Because we have had divergent, different case laws in the same matter and the public realised it and they wanted us to join the case law and this was a positive outcome. And on the other hand, the academic scholars took more interest in this matter. So, they started to criticise this more in their articles and their publications. University students, for example, they used it as audio-visual material in their classes. So, I think it helped a lot and your concern was if there are millions of decisions and all of them are published, and how will you find among them what you're looking for? I think technology will help.

When you enter a keyword in Google, you will get tens of judgments that will help you, will benefit you. The same, we can query in the same way. So, this is a kind of checks and balances or internal control mechanism. I think it has a positive impact overall. Thank you.

- Thank you. Supreme Court decisions being published has two main, major implications. Practice or the conclusion reached by the Supreme Courts has to be made known by first instance courts so that first instance courts know what to do when they are confronted with a similar issue. So, this will reduce trial time and on the other hand, citizens or lawyers, attorneys, when they are confronted with the same issue, they will first question if they would file a suit and if they think that they will lose, they will maybe go for not filing a suit, bring it before court. So, this will also reduce the work load, the case load of courts in the end. So, they will question whether or not they will file, litigate a case. So, I think this will have a positive impact. "Establish procedures for ensuring that judgments of superior and appellate courts are regularly published". So, we have different stages and some of the courts, they don't have, in terms of some decisions. So, I think appellate and regional or district courts' decisions and higher-level court decisions should be published, not all of them. For example, precedent cases or case judgments should be published by appellate courts or we call them regional courts. Maybe this statute of limitations, so thousands of decisions cannot be published. And when it comes to criminal cases, criminal case judgments, the names of the parties should be deleted for example and this is a huge workload, lots of time and just these issues, so. I think we should talk about appellate courts, courts of appeal and regional courts, we call them. The precedent ones, the judgments that have a precedent quality should be regularly published. Maybe we can make a correction here. I think it will serve the purpose more.

- Did you catch that? Did you catch his suggestion.

- Well, the co-chair, our guest chair asked about the situation in Turkey which was not answered, I think. Higher court and appellate courts, superior appellate courts' judgments, so the final decision is rendered by the superior courts. "What will be the practical implication of that?" was I think the question and we have a regional court, the appellate court and they are not reviewed by superior courts and that's why they need to be published and the measure should stay the same because most of them of the superior court judgments, they do not go before the Court of Cassation. But they are exceptions. So, they are not being, some of them are not being reviewed by the Court of Cassation. That's why they need to be published.

- [Mr. Faruk Gök]: Faruk Gök, President of the 23rd Civil Chamber. I didn't take the floor so far, but what we are evaluating now is, so we're looking into the final version. This is a draft measure but we're trying to finalise it right now. So, people exerted efforts and many efforts, it has gone through various stages and now we have this draft in front of us which in my opinion is not efficient. I think there are no missing points or deficiencies so far in this text. That's why I did not see the need to take the floor and make a comment but now this discussion centres sent us around the point. When we say superior court, as President Ramazan said, we have criminal courts of first instance and then high levels of criminal courts, which... There may be a confusion about which court is superior to the other. So, I think that's why the correction was to be suggested. How can we overcome this issue? Maybe we can say, when we say regional or district courts and appellate courts, as far as I know in most countries, in some countries there are no appellate courts. They are different practices, different courts. We don't have appellate courts, they are called regional district courts or second level courts in Turkey. So, there may be a confusion of terms. Instead of superior and appellate courts, maybe we can say the courts that are reviewing the first-degree court decisions or judgments so that we can cover that point fully. Thank you very much.

- I think we may have to be careful, from my perspective, the article reads properly. In my jurisdiction, we have three superior courts. The High Court, the Court of Appeal and the Supreme Court. The High Court decisions are binding on the magistracy, so magistrates have to decide the cases according to the principles set by the high court which is also a superior court. The High Court is bound by the decisions of the Court of Appeal and the Court of Appeal is bound by the decisions of the Supreme Court. So, the Supreme Court binds, their decisions bind all courts in the country. So, the way it is framed, as far as I'm concerned, is proper. Because we publish our decisions from the superior courts every seven days. Their decision is to be published within seven days. Because the magistrates have to understand what the High Court have decided on that issue. The High Court has to understand what the Court of Appeal has decided on the issue. All courts have to know if the Supreme Court has pronounced itself on that issue. It's not in every case that finds its way either with the Court of Appeal or Supreme Court from the High Court level so in terms of precedents, the High Court has to be consistent in the decision-making process. So that we do not have two High Court judges deciding differently in the same issue. So that's why our judgments are published at least every decision of the High Court judges is published and every decision of the Court of Appeal is published. When your

decision is appealed, again it's to the Court of Appeal and the Court of Appeal disagrees with you, that is said outside your decision it is pulled down. So, you will not find it in the website. We will find that on one of the Court of Appeal. If the decision of the Court of Appeal is appealed to the Supreme Court and the Supreme Court decides in setting your decision, the one of the Supreme Court is published and the one of the High Court is published. So that they are able to see the consistence between the High Court and the Supreme Court. That's the way we do it and I think for me, that sounds better. Thank you.

- We shift to Principle 9 which is about training, education. "The judiciary should promote programmes to orientate students on the judicial process". From the early ages of education to the last year of university where education ends, there should be a legal training at a level adapted to the student, the age of the student. Not only for jurists, but also people who do not have a legal training should have legal knowledge as part of general education. In order to better understand the transparency of judiciary, every country should increase their standard in legal knowledge. For this purpose, students should take part in court activity, court proceedings and judges can also visit schools to contribute to the education of students. This is one of the principles that, we believe, encourages or entrenches judicial transparency. Now I open the floor to your comments. At the beginning of my speech, after the speech of Samina, Lady Samina covered, I said we should give more time to our guests because we already know about Turkey, ourselves, and that was the suggestion of Nihal Bey to us. I thought we shouldn't, as Turkey, talk about the practices of our country in too much detail because we already know, but we're still curious about Bangladesh.

- Do you have any comments about Number 9?

- Hello, thank you. In Bangladesh, we have institutions regarding legal proceedings, legal studies not only to the students, but also to the junior judges. They take trainings for two weeks or three weeks. We have institutions there to give them the legal proceedings, idea what latest legal proceedings, legal everything so that they can have an advanced legal proceedings in Bangladesh. So, it is mostly funded by the EU's like UNDP and other organisations and also the Government of Bangladesh. That's all, thank you.

- Thank you.

- Let me see. Let me share the situation in Thailand. In Thailand, there are a number of points of interest for student on the judicial process. Students can join

the activity of the courts and they can learn the process of the courts. Because, in Thailand, we prepare for the recognition to be judge, you know. Because, in Thailand, the legal, the law career path is very popular, you know. More people, the kid students always apply for the law school. So, they would like to know the process of the court. So, we have a lot of activity in Thailand.

- Thank you. Yes please.

- My colleagues talked about my colleagues. I think we need all civil people to have more legal knowledge not just the professionals. First, law has a protective function and secondly when laws are violated, it has a repairing function which means jurists also protect their clients, for instance while entering a business relation and what you should pay attention to. When this is complied, in the case of a legal conflict, it's easier to serve and get better outcomes. So, communication starting from student years would help the legal activity be better understood by everyone in the country and I think this is a very helpful principle. In Anglo-Saxon countries for instance, people who join the jury after their activities, they communicate in their environment so being a judge is a very difficult profession and requires a lot of effort, which means the jury system helps spread the word on the prestige of the profession of the judge. So, I think what we mention here in this principle is significant. Thank you. Should we go to Article No. 10?

- Principle 10, which is related to 9, it broadens the definition of outreach to include the general public. "The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system". I think it's also important to distinguish, we don't talk about cases we talk about, we talk about how the system works. Really, this might be one of the most important principles relating to public confidence in the judicial system, and in moral authority, and integrity of the judiciary being contingent on the public understanding of the judicial process. The judiciary should basically... We establish outreach programs in number one, so the court users can interact. I know the Internet is an important tool now, participating in radio and television programs, and disseminating information. I think some judges misunderstand their role in this regard. I think as I travel a lot of judges don't see a duty in this regard. That's why I think this is an important... This is an important principle and clarification of the role of the judge in being sensitive to public support and initiatives. Also, as I said before, publish, including on the Internet, short, clearly worded and easily understandable pamphlets and other materials, basically how-to guides, that provide basic information on arrest, detention and bail,

criminal and civil procedures, and useful contacts for crime victims, witnesses and other users. Another one here that isn't added is what do kids use in the public, what is the public really engaging in now? Social media. Social media is a very interesting engagement development. But it also contains inherent risks if the judges express opinions that may not be appropriate, which the regulation is an issue. However, the public, the public's use of social media, aside from the Internet is a great evolution, it's an important evolution. So, anything that anyone else would like to discuss on Principle 10? I hope I didn't go too far in discussing that, was adding social media, I just didn't see it. So, any other thoughts on public outreach? Do you consider the Judges having a duty in this area in Mongolia? Is this something that judges in Mongolia is working on as well?

- In Mongolia, there are courts of various levels in administrative issues, there is a Mongolian High Council of Judges. This council of judges is around administrative issues in courts through departments in each court. Among these functions, there is public relations function within these departments which have weekly and monthly bulletins and newsletters which they share with the public to share legal information or to declare some court rulings which may form a precedent. But when it comes to judges and prosecutors, they cannot have physical share of information because of their duty. They're not in a position to do so but that function is fulfilled by the public relations functions.

- Anything else on this one? Number 10? Okay. Go to Number 11.

- Okay. We're making progress. As court rulings are transparent, the public should also be informed about the transparency of judicial proceedings, which should be carried out through the media. As checks and balances are defined, we usually say execution, legislation and judiciary. But recently a fourth element, media is mentioned as a fourth element, in order to underline the significance of the media, which is partially true. There is some truth to it. So, transparency by itself is not sufficient but the transparency of judicial proceedings should also be communicated to the public, which should be done through the media. Through the media, as we communicate the transparency of the judicial proceedings. It's not just about physical presence or availability of the court proceedings to the media in physical form, but they should also be given electronic facilities, electronic amenities and in news that cover the judiciary in the media should inform the public more accurately. For this reason, the media should be trained in judiciary, in legal issues. For instance, when a ruling is covered by a journalist in

a story, if the journalist is not legally knowledgeable, it may misguide the public. So, transparency should be communicated through the public, it should be done in a correct way, which is an important aspect of transparency, in my opinion. Now it's open to your suggestions.

- As the Chamber that deals with press crimes, one of the important duties of the media is to enlighten the public about court decisions. If, about the judicial processes, the media doesn't convey correct information to the public, the public or the media may be reflecting in a distorted way which may cause turmoil in society and may decrease the trust towards the judiciary, especially high-level courts. I think many court decisions which concern society should be directly communicated to the media, shared by the courts, relevant departments of the court to the media so that the public can get accurate information about court decisions. Because, in most instances, which, there may be exceptions, in order to reflect court decisions in a more sensational way in order to draw more attention or to sell more, sometimes they misrepresent the court decision to the public which distorts the image of the judiciary and distorts the confidence towards the judiciary. In 1991, for instance, a law was amended in Turkey. It was about probation and for instance, there were some kids who stole some baklava back in the time. I was there at the time, it was not about stealing baklava, but they rather made a hole in the wall of the baklava shop and they stole a high value of baklava and related ingredients of baklava. But the media reflected it in a different way. They reflected it as if children stole some baklava and they were sentenced to 9 years and the public lost its confidence towards the judiciary but the public thought it was too long of a sentence for a small crime. Their probation was ultimately reduced because of all the turmoil, this created in the public. So, I think, courts, various courts should have departments or press bureaus within themselves to convey correct information to the public. That's why I think this principle is significant.

- Bülent Bey is a very valuable person who has dedicated 38 years of his life to law and he is looking to be retired in a couple years. That's why I feel free to joke with him. I want to approach in a different way. Just like we have judiciary ethics, there must be press ethics as well. For instance, if a weapon is held by a soldier, it can give trust to society, it can give security but if it's in the hands of a perpetrator, it may spread fear in society. It can cause mass death during a war, or a camera, if it is used for the benefit of the society, it's good for the society. But when it's abused, the same camera can yield negative results for the society. So, when it comes to the ethics of media, maybe we should make a small change

to the wording in order to touch on the press ethics. Because, some time ago, when there is a gap in the law about press ethics, there was an unlicensed small TV broadcaster which made broadcasts which caused unfair competition among self-employed people and I tried to prevent it. So, my question is, do we need, for instance, a change of wording? Should we just serve press which is accredited, which has a card, or should we offer this service to all press members? And what kind of measures should we add to the wording here in order to prevent this from being abused? Thank you. Press ethics.

- Press ethics is a big issue. Principle 12. We have 12, 13, 14, four more principles and Principle 12 is fairly self-explanatory. "The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice". The great thing about these measures is this many of these measures contain the elements of the surveys. We're kind of building a map here on performance in regard to transparency and that, you know, that survey also helped to build public confidence and in the administration of a judgment. Now, I'm not going to read all thirteen or twelve of these points, but I do believe generally speaking, we're talking about the importance of public surveys and who they include. Also we are continuing surveillance of public opinion. I think that's always important. For me, I always wanted to know what the public thought, whoever I talked to or whoever my staff talked to or whoever anyone in the court, talked to. But I think we helped to form opinion, by the way, we treat the public, in general, like there's an impression we leave as a court that needs to be considered and the open door policy is one, but I don't think it needs to be a scheduled open door, maybe every day needs to be an open door with whoever we meet in the public. The evaluation of court personnel, obviously strengthening internal competence is extremely important. Establishing a court user committee is very important. Of course, I have surveys, regular case audits, to ensure timely disposition of cases. Some countries might say, we have a case management committee that is responsible for reviewing performance and maybe the complaints can go to the Case Management Committee as well. And the program which judges in personnel conduct regularly reviews to analyse the complaints. In some countries, the bar performs public surveys of the courts performance, court inspections without notice. I used to be a member of the Inspector General's office in the United States and that definitely has an effect. Critical assessment of performance by academia, that's a general performance area. A strategy-wide design to a strategy to correct public attitudes. It's important. I know, I was just on CNN Turkey and I was emphasizing the value of the principles to the public. I kept focusing on the people in the public that the principles aren't for

the government, for they're there for the people. But just those little things will translate to the public opinion and in a report of its activities, a lot of countries do annual reports of its activities to showcase publicly, the achievements. Also, there isn't one document here that was mentioned, the strategic plans. I don't know if that was included in here, or not. I think the strategic plans can be an important public opinion document. So anyway, twelve, very important area, any other discussion on Implementation Measures that could be considered in implementing Principle 12? Any other measures that you can think of that could help us with implementing Number 12? Or did I already answer all the questions? Everybody's satisfied? Yes ma'am.

- It's more of a question than a comment, I think. Point 1, "Establish a Public Complaints Committee". Because it also refers to possible complaints about disciplinary issues either with the judges or other court personnel. I think, probably we should be a little bit careful not to really have too many bodies that are dealing with such issues. So, not to confuse also the users or court users or parties to the case. Because, there is, I think, usually a distinct body within the judiciary which deals with such issues. So, I'm wondering what is the value or added-value of the public complaints committee or should we differentiate on the issues that they have to deal or not to deal? Yes.

- Okay. That's a good point. In fact, my adding the Case Management Committee may have added to the complexity of the issue. I was hearing that. Okay. Anything else? Okay. Thank you. Yes sir.- I am a member of Turkish Court of Cassation and in our professional training, we always say, it's important that you make the right decision within the court. But when looked at it from impression of the outside, the citizens, the public, about the correctness of your decisions is equally important. This is something always repeated in our training, vocational or professional training. The public opinion is important. So, based on this fact, of course, court staff or the purpose of the state should be to offer higher quality of life to its citizens. And for the judiciary, the goal of the government or the role of public bodies should be that public court users have the impression that timely, fast and correct mechanisms are functioning in the judiciary. I want to talk about the concern of going to extremes. For instance, sentences 1 and 2. When you look at it through the communication of judicial bodies to other organs, in the second one for instance, "Install public complaints boxes in every court facility where the public can present even anonymous complaints about judicial officers, court staff..." In Turkey, we have this. Anonymous pleadings are also accepted in our current mechanism. But in one hand, there is an anonymous

letter presented about a person for instance, and it may have a very negative impact on the reputation of the person, if there are any claims, accusations in that anonymous letter about a person. This could harm that person's reputation. And if you think of it, was the media's right to cover that story. So, a person, who could be, for instance, a foreign or Turkish for instance member of the court. Imagine there is an accusation that, that person accepted a bribe or had sexual abuse, committed sexual abuse. Imagine an anonymous letter was submitted to such an anonymous box, complaint box. When such a letter is received, the system or judicial bodies have to accept this letter and do what is necessary. And once they do this, a public inquisition, investigation will officially start. And the media will have the right to cover this story. About a member of the court, for instance, there is an accusation about accepting a bribe or committing a sexual crime. Even the fact that the media covers this, regardless of whether this crime was actually committed, even though the media covered what was there, they will have no responsibility. But this anonymous letter was accusing this person about something that did not happen just to harm the person, in that case, aren't the judiciary serving to the detriment of that person's reputation? Of course, we have to ensure the reliability, we have to accept this as a principle globally but as we do this, we should also protect the right of innocent people. In the past, we thought a lot about rights of defendants and once those rights came to a certain level, we noticed. What about the rights of victims? And recently, there is more focus on the rights of victims as we know. So, the reliability of the judiciary in line with this article, how to... as a kind of complaint is handled by the judiciary, what about the right of people who are being accused? Their right to not be smeared. Are we going to handle that after they have already been smeared? I think the way we handle, the way we word this article is dangerous. Thank you.

- Also, this also relates to Article 15. So, on disciplinary processes. So, I was relating some of our discussion to disciplinary processes as well. There's a little bit of an overlap there but we're running out of time. Thank you, Your Honour, thank you for your observation. I do believe, victim witness issues are very important to public confidence and transparency.

- Number 13, Your Honour.

- Okay. We have to pay attention to time of course. "There should be transparency in the appointment process of judges". When a judge is recruited, we have to, he/she has to be recruited according to criteria. The conditions of promotion should be set in advance. And he/she is going to be appointed to a

specialised court, the criteria for that should be well-known. If that person is to be appointed to the appellate court for example, superior court, they should be clear which chamber or which unit that person should work in. So, appointment, promotion should be based on rules and if there are exceptions to the rules, it has to be reasoned, it has to be explained. And people should be convinced why the appointment is made in such a manner. As is true for other professions, objective criteria should play a role in this principle. A merit-based procedure should be instigated. Success and merit, performance and merit should be the basis for appointing judges and promoting judges. This principle is about that. But it's also... So, it's an important article on transparency. Now we would like to listen to your comments. I, we assume that you are adopting the text as is. It was as if we are hearing that you find this text very good. Well, it's up to the countries, the next step.

- This one, when I was asked about on CNN Turkey, was number 13. Because our procedure is different than this procedure. I had a hard time answering it, but I said, we would keep an open mind on anything recommended. So, this is from my United States standpoint, our process does not align with this principle. We don't have an independent body that will... or a merit, we have a merit-based process, but it's also combined with a political-based process and it's a very complicated. This one here for me also represents an opportunity, because I think in the United States, we could review our process so... I know I was interviewed in the United States and there are a lot of discussions in the United States on Principle 13. So, I think it's an important one to review. So, I just went ahead and made a comment, sorry, about Principle 13. Very important to me.

- Okay, Number 14, anything on 13 more? We're okay?

- Well, I would like to wrap up. We have a Supreme Board of Judges and Prosecutors in Turkey and they are independent in their work. Some of them are appointed by the Parliament and by the President, the Head of State. As of their appointment or selection, they have to fulfil certain tenure and they cannot be intervened with during the tenure. Some of them are attorneys, some of them are academic scholars, some of them are from first instance, first degree courts and some of them are from the superior courts, high courts. Distribution is transparent and we also know that in most of the developed countries, there is a similar kind of practice. The principles are here to serve to all of the world countries hopefully. Thank you very much.

- I think we need to move on to Number 14. Did you have a comment, Your Honour? Okay.

- Thank you. Very briefly I wanted to say something about this, the latter. Transparency in the appointment process is very important as mentioned. I would like to give an example. Well, to secure other people, we have to be secured first so this is... The appointment should be done fairly, independent, for the sake of impartiality and independent judgments. So, transparent selection and appointment of judges and bound to rules. Rule-based appointment is very important. This principle has many important aspects to it. Any deviation, any minor deviation from this principle would be significant and it would adversely affect the way judges render judgments and will reduce trust in judges and the judiciary overall. Thank you very much.

- Thank you, Your Honour. So, we'll move on to Number 14. "The judiciary should respond to complaints of unethical conduct of judges in a transparent model". This is, it is an interesting one for judicial councils and Chief Justices and yes, the high courts, but a commitment to the core judicial values as enunciated in the Bangalore Principles, as an essential component in promoting public confidence in the administration of justice. We should promulgate rules of conduct which I'm sure we all have. Ensure that each judge is provided with a copy. Disseminate the code to the community, so the community also has an understanding of the regulations. Establish a mechanism for individual judges that may advise on proposed conduct, which could be a support organisation within the judiciary. A Conduct Committee, we have a conduct committee. Establish an independent mechanism was sufficient lay representation to receive the complaints against members of the judiciary and to take appropriate action included if warranted, reference to independent judiciary, disciplinary body. Develop courses on judicial ethics. So, there's a training component. Promulgate procedures to require, basically, members of judiciary to make asset disclosure. So basically, this principle outlines the structure for complaint, responding to complaints and I think the next one talks about publication. But anyway, are there any comments on the Implementation Measures introduced for implementing Principle 14? Any other considerations as to how to style one through seven, or is there anything added that we should consider? This is a very, this is a really important one. This one speaks, actions speak louder than words, sometimes. Yes, sir.

- I'm not sure if I understand this article very well, but does that mean that the public may have opportunity to intervene? When we get a judge who commit something against the ethics...

- Violation. Yeah.

- Violation. Does that mean, we ask like lawyers or representatives from the community to attend?

- It is...

- Does that mean that?

- It is, it says with sufficient lay representation. Yes, basically it doesn't say much other than lay representation, but basically, now I know most countries don't include lay representation in the complaint review process. However, for transparency purposes, we are including lay representation here. Now, you also have... Well, I don't want to get too complicated here. I think the most important thing is that we create an independent mechanism to review the complaints filed by the public to the greatest degree possible. This also raises the issue of how independent is the review process and how does it affect the independence of the judiciary from outside influence? Many countries are looking at a system wherein an ombudsman within the judiciary, is being considered an independent ombudsman within the independent judiciary. I think as being one of the structures it's being considered. I really think that number five is what you're referring to Your Honour and primarily what you're referring to is number five.

- What is that, the line five you mean, or?

- Yeah, is that mostly what we're talking about? Somewhere in five?

- Yeah. I'm thinking about the associating person external to the judiciary. Lawyers, academic and representative community.

- Yeah.

- And the monitoring of ethic principle will prevent possible presentation, what is it, perception of self-interest.

- Do you think, what do you think of that?

- I don't understand. My English is not that good, but really I'm thinking about, because we have, you know, the committee dealing with the violation of judges to the ethics code. It's within the judiciary. And all of them are judges with very good experience. So, we say and we believe that judiciary must clean itself from within. People, judges usually have imagination in other, ordinary people. We must keep this image to support the thing which coming from the judiciary. It's very important, I mean.

- Yeah, I need to read the Bangalore Principles again on that provision to see how the Bangalore Principles provide for this mechanism. I don't have the Bangalore Principles in front of me. I think I need to refer to the Bangalore principles again, on this provision.

- Just one point, small point. Maybe, this one, maybe it's become possible or reasonable if the department or the committee, who is dealing with the violation of judges' ethic code, are out of the judiciary. Maybe it will be...

- Outside.

- Yes. You can understand it, you can deal with it. Because you want the guarantee. Because, even we don't want pressure coming to the judges through this committee which is outside. But as long as it's in the judiciary, we must be very careful in this decision. Thank you very much.

- Yes sir.

- Well, from the Court of Cassation's point of view, it was very controversial in the beginning and I know your concerns Your Honour I mean, I felt it back when we were discussing that. We had this transparency project for the judiciary. It was discussed in the General Assembly of the Court of Cassation and many people opposed to the fact that a person outside of the judiciary should be part of this process. But, there was an academician in this, he took place in this discussion and he was placed in this mechanism, put in this mechanism. So, now he is a member of that ethics committee. So, we couldn't imagine it at first, when we started out. We thought about a judge, a system, a committee composed of judges. Now, in this ethics committee we have an academician to ensure transparency and to make sure that the eye of the public is watching over us and so he knows what we're doing, he is very competent. We have been working with that person for the last six months and we haven't had any problems with that person. So, and it has had a positive impact on transparency. So, we wish we had more scholars or more lawyers from the outside, members of this ethics committee. This is the way Asia-Pacific Australia work. It's similar to their system actually, our system, but in terms of the ethics committee of the Court of Cassation, it helped that we have a scholar on this mechanism. I wanted to share my experience with you.

- Yes sir. Judge.

- Dear Chairman, Principle 14, Number 4 and 5. I think I have reservations against these from a Turkish point of view. I have to object to 4 and 5. First,

Article 4. According to the Turkish Constitution, no one can issue orders to judges and instruct judges, can't advise or recommend judges to do something. Here, we have a kind of an advice mechanism for judges. Well it's a judicial process so the recommendation should be about the behaviour of the judge not about the colour of the tie of the judge. And this goes against the Constitution by the way and it will be detrimental to the independence of the judge. Because it will impose pressure on judges by way of claiming that some kind of ethical rule was violated. Number 5, ethics and code of conduct, what do we understand from these? They have to be implemented, we know that. But there are other rules that need to be implemented like the legal rules and the discipline rules. So, violating an ethics or code of conduct is not a crime, it's not an offense. But it's not right at the same time. So, if a judge commits a crime, he will be punished very severely in the Turkish system. He will be sentenced by the Council of State and the Supreme Court, so. If there is a disciplinary offense, well there are different bodies for the... First, a warning is issued and then the person, the judge is removed from office in the end, so. But, other than that acts that are not, do not qualify as offense or crimes but are ethics or code of conduct, persons, they are condemned for it or a warning is issued which should only be done by the judicial body, by judiciary itself. Well, we have our own ethics or codes of conduct rules as the Court of Cassation and an Advisory Board was established to supervise these, the codes of conduct. We have one scholar in that board or in that committee, which we are happy about that. But as regards the advisory board, which issues advice on ethics, 5.1 says that you may ask for the opinion of the advisory board regarding the codes of conduct of a judge, but you can't issue a complaint against that person. The advisory board does not act upon complaint, on a complaint basis. That's not possible. So, we have the code of conduct of the Court of Cassation, but contrary to what this principle says and it is not acceptable from Turkish point of view. Then another example from Turkey. So, the parties of the trial, prosecution...for prosecutors and judges, there are such systems and then we have the defence position and the bar association for example. They have their own disciplinary board. And they can't issue disciplinary procedures against the judge. So that's why a lawyer should not be a member of a disciplinary board of the judge. So, I think this will distort the balances. I wanted to draw attention to this fact. If we need to vote on this procedure, if we have the right to vote, if we will have a democratic voting, I think Article 4 and 5 should be removed completely, in my opinion. But if you take into account what we've said as a recommendation, so we've done what we could in this matter.

- Okay. Yes, I guess the membership of the mechanism is an issue. Yes, okay... Sophia. Yes.

- I think it really depends on which the body is responsible for observing or maintaining the ethical court among the judiciary. Because in some of our Member States, Council of Europe Member States, it's within the judicial councils and I think also some of the countries. Member States are moving beyond having a membership of judicial councils limited to the judiciary only. So, we have mixed councils where we have judiciary, executive and majority are judiciary, but we also have countries where we have non-judicial members of the judicial council, so I think that's where probably it, situation applies to.

- Yeah, that lay issue is complicated I think. Because you're right. I know Morocco just appointed a council that includes lay. Yes, I think each country is unique on this process. I don't know, the one area there that I'm wondering if I shouldn't raise, is lay representation being like, it's almost like a requirement. It reads like a requirement. And I don't know, I don't know. I understand what the Court of Cassation is saying. I'm going to raise this issue on lay. I think it's, as circumstances apply, but it looks a little too direct, as far as a recommendation.

- And since I took the floor, may I...

- I think Kenya would have a good point on this too.

- Just on the measures, you say what probably could be missing, because it's too much focused on kind of punishing side of ethic code, but not on the preventive nature of it. Probably we could have also measures such as guiding the judiciary, providing more guidance available to them when they have questions on ethical matters such as having a dedicated person among the judiciary who can answer the questions or having guidelines, guide book available for example to...

- Which we had, we had a guideline to codes of conduct that was interpreted by staff and... Yes sir.

- Thank you. Article 4, I think it means a different thing. When there is a judgment, it is not about recommendation or advice on the rendering of a judgment. It's about advice and/or recommendation on the general behaviour, ethical behaviour of the judge, which is not to do with his judicial work. So, he can obtain advice on his/her ethical behaviour. It's not harsh, I think it's appropriate. Number 5, we already have in Turkey. So, unethical conduct is investigated by

disciplinary units or boards. We have one academic scholar in our board. Maybe we can increase the number of scholars, I don't know, but members who are not judges being part of this mechanism will not harm the judiciary. We have a Supreme Board for Judges and Prosecutors. We have lawyers in that board and so... If we have a board composed of public prosecutors and judges, this will be problematic, because they will take their sides, their own sides. There is a Turkish saying, all of them will be blind and they will not be able to see what is going on. So, but I think the rules should have to be set in advance again in this matter and should be clear to everyone.

- Well, the issue is, it says to obtain advice on the propriety. What kind of advice is that, I mean? Let's say a lawyer goes to the room of the judge and wants to talk to the judge about the case and the judge rejects it. If you have anything to say to me, come and say it in the plenary session. But the lawyer wants to see him in private in his room. So, this matter I mean, people complain about it and then the ethics board, it goes to the ethics board. And the ethics board says you can go and have a private conversation with the lawyer in your room. If the advice is like that, I mean, is it allowable or not? I mean, would it be fair or not? So, we are talking, this is abstract in general provisions, but we don't know what it will mean in practice. So, the kind of advice, quality of advice is important. If you wish we can vote on it. I also would like to propose to vote on Number 4 and 5. So this is a democratic discussion. So, my example, does it cover my example? What does it mean?

- Thank you. Okay, I think, I do think Your Honour, there's an overlap a little bit here on number five with, as a reference point, the Global Judiciary Integrity Network. Principles overlap with some of the Implementation Measures contained herein... I think the... I would like to consider raising, I would like to reconcile the Bangalore Principles recommendations with the Global Judiciary Integrity Network approach to establish an independent mechanism in the advisory process. This is the only section, I'm on the Global Judiciary Integrity Network group with you, judge. There is some overlap here, in this area. I would like to study a little bit what, I want to make sure we are, our opinions are aligned on number five, if that's okay.

- Okay. I think this is the only one I see because we're referencing the Bangalore Principles. Yes, I want to review that. Nihal will be able to help me. After this, yes. Today's like the last day. Well, we haven't made many changes we're doing very well. Little things. This is probably the biggest discussion we've had, yes. Okay, so Your Honour. Number 15.

- Can I say something very briefly? These texts, if they are not open to discussion or to voting, what's the reason that we are here? Thank you.

-Yes, we're going to discuss it. We're not going to leave this. We're not tabling these. There's a few things that I think we should change. Yes, sir.

- Moderators, Turkish is very rich in idioms. There are multiple idioms concerning every situation. And there is one which I think doesn't fit this situation, the idiom said by the previous speaker. The judges and prosecutors who work in Turkey, they are wise people, they are not blind and deaf people. So, the previous idiom doesn't really fit. The punishment system in our judiciary system, our councils are quite strict when it comes to their colleagues who don't comply with the rules. So, there is no solidarity of those who commit crimes with each other. No, that's why. Since we have full confidence in this system, that's why we don't want outsiders to interfere. On the other hand, we talk about ethics. When a judge is going on a vacation, he's no longer a judicial officer. For instance, when I'm on vacation in a village, in a resort, I'm no longer conducting law. It's in line with law, but of course, is it in line with ethics? Am I harming the parties? Yes, there are ethical rules governing this but the punishment, the sanction to this could only be social condemning or shaming. Nobody can make an advice to a Turkish judge. Even if it's reflected in the text, it won't hold any meaning. This is what I wanted to add as a judge.

- I said an idiom. Of course, Turkish judiciary is independent, hardworking and works without influence. But the idiom that I mentioned should not be interpreted that way, it makes me sad. Because it's not what I meant as you know quite well. The fourth sentence is about the shape of the behaviour, which is already included in ethical rules, that's what I meant. Thank you.

- I know quite well what you mean as a friend of ours. But I thought it could be misunderstood by others. I didn't want to offend you personally.

- Yes and even if there is a voting or not, the moderators take into consideration all ideas. We note all of them and I will also note and report your comments, your opinions, both Mr. Kemal's comment and yours. Number 15. The 15th Principle is a continuation of Principle 14. Maybe it is concerning more serious behaviour about the transparency of the disciplinary process of judges. People who can sanction or remove them from their post are people who are not judges, but not to be removed from the profession or having it carried out by a council, by a committee. That's why it says retired judges could take office here.

But it also says it shouldn't be someone from judiciary or executive, legislation or executive. For this reason, the rules should be determined in advance and how it will be carried out and what decisions will be made under what conditions should be set and communicated to the public well and the decisions of this committee should be transparently communicated with the reasoning behind it as well as the rules that have led to that decision. Now it's open to your comments.

- It kind of says the same thing. Okay and you're right about how different governing bodies approach this. Really there are a lot of differences here. This is to serve as I understand it, more as a guideline, that, that's a guideline. So... Yes, sir.

- I mean in our country, we have the same thing. We have a special body, from the judiciary dealing with these kinds of cases. Retirement of judges, punishment of judges, but it's within the judiciary. All of them are judges. Old judges, experienced judges and nobody has any influence in it. The judgment must be enforced.

- Well, you also have another course of action here and that's criminal referral. You know that's in also, you have two investigative bodies. You have the internal and the external.

- The committee decides there are criminal cases and goes through the normal procedures, prosecutors, everything. I mean normal court procedures.

- Yes. I had the opportunity, I managed the disciplinary process in our judiciary. I was part of that, and this was always a very complicated area. Having a lay person avoids the appearance of... You know gives us an appearance that we're including, that accountability is not totally controlled within the judiciary and I see why they're including this. On the other hand, if it gets extreme enough, it becomes part of the Community mechanism in the criminal justice arena. So, I know JLC deals with this too in Kenya, but Your Honour, you have any comments on, in Kenya's approach?

- Yes, I was to say that you must be very careful not to open the judiciary and judges to political pressure. I say this because, as many of you may know, last year we held an election and what happened after that election, a month after that, due to political pressure somebody filed a petition to remove four of the six judges who won election. Looking at it, it was political. But because the matter is handled by JLC, which has only two lay persons and the rest are lawyers and judges, it was able to stand firm on dismissing the petition. So, we might be doing something that is to our detriment because of political pressure.

Now, they are all to the value of the lay persons, our Constitution allows two lay persons. So, just how hard it is wanted. They rather have lawyers and judges in the JLC and not a lay person, because we show the executive is to control JLC and the manner of appointment of judges. That's really the beauty of having a lay person. So, the lay persons in our system are appointed by the President. How and where he picks them of course we have mechanism of public participation and qualifications. He appointed friends, what do you do?

- Well, we go on about this a long time. This is a real philosophical area as well, about separation of power. This is also a separation of powers issue. So, yes.

- This is something that doesn't exist in our country either but as we said at the beginning of the meeting, these are not principles introduced for certain countries. These may be principles that could apply to any country at a minimum level for instance. This is about for instance, the President or legislation having the power to remove a judge. Even if this is the case, the abovementioned organs should have at least an advisory role. In our country, the President doesn't have such an authority, but could be in another country, depending on certain constitutional or legal rules, there could be such a practice. Our goal is to set the minimum that could apply to every party. I think this is a continuation of Principle 14. In the past, we had the Supreme Council of Judges and Prosecutors in Turkey. But, this may not be the right thing to do or cause solidarity of judges between each other and with the referendum and with some constitutional changes, this has been abolished. Now this has many representations from different places, different groups but what is important is, yes, there should be members of other professions. But it should not be at a majority where they could have pressure on the lawyers and judges, which is the case in Turkey, which is not the case in Turkey. But I think it's a good principle to represent the opinions of other professions.

- So that brings us, I guess we are concluding now. And did you want to make concluding remarks, Your Honour?

- I would like to thank guests who made possibly different journeys from far away countries, for honouring us with your participation. It has been very fruitful. I believe this meeting will help us a lot. Also, when it's accepted by the UN, all of us maybe will have left our mark in history. This maybe will be a legal constitution, a judiciary constitution of countries. So, thank you for all of your effort.

- I wanted to say what a great honour it is to work with all of you and to hear your opinions and we will take all of your concerns back to the Advisory Committee. I wanted to say it has been a pleasure. And hope we have many opportunities to work together in implementing the Istanbul Principles. Thank you. Thank you sir, it was an honour. Thank you. I had a good co-moderator too. So, thank you.



## **DAY 2**

**PLENARY SESSION II:**  
**The Moderators of the five Groups will report**  
**to Plenary on the discussions in the Groups and**  
**recommendations, if any.**  
**Discussion on reports**

### **MODERATOR:**

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



12 October 2018



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

Good morning everyone. Can we start the session number two? Now, according to the program, the moderators of the five groups that met yesterday are required to report to plenary on the discussions in the groups and the recommendations. However, also according to the program at 11 o'clock today, in plenary session three, we have to have a final draft of the Implementation Measures ready for adoption. It says formal adoption, in the session beginning at 11. Now, I think we need to change the procedure somewhat in order to meet that target. And what I intend to propose is that we go through the Implementation Measures beginning with principle one, and ask the moderators to indicate whether any amendments have been proposed to the principle to implement measures under each of the principles. Now before we begin that process having set through part of the one of the sessions yesterday, one of the roundtable meetings, I want to make certain methods clear. One is that the Implementation Measures for the Istanbul Declaration are intended to be standard setting. They are not prescriptive; they do not bind any judiciary; they are aspirational in nature in the same way that the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles on Judicial Conduct. These are aspirational. They are not prescriptive, they're not binding. So we've got to remember that some of the provisions may be different from the practices and the constitutional provisions in your own constitutions, but that's perfectly okay; this is something that we aim to establish sometime in the future. The second is that these Implementation Measures are based on best practice. Internationally, so far during the 21st century, they take account of reforms that had been implemented in several countries, within several jurisdictions in the last 16, 17, 18 years. So, some of them are new, some of them may not be possible to implement them immediately. But as I said, we are trying to move from the 20th century to the 21st, because there have been a lot of new ideas, reform programs in a number of countries have generated new practices and we are trying to incorporate them in these Implementation Measures. So, having said that, may I now proceed to the Implementation Measures and the principle one, and ask the moderators for any proposals which have been generated in their committees. It may be easier if I would go through them one by one. Principle one established procedures and provide appropriate facilities to ensure that court proceedings are open to the public, whether any proposals for amendment of that. Sorry, I have to do something here. Okay.

- Good morning, everyone. We just had a simple one. The Chief Justice of Qatar mentioned that under number one, he indicated that in addition to ensuring that court proceedings are open to the public and media, we note the exceptions to the openness standard for the purposes of areas like family law, juvenile justice, sealed proceedings, just a note, he noted that perhaps the necessity of accommodating an exception; that was it.

- What would you think, John?

- This problem was raised. But if you look at the final sentence of principle one, that's already covered. So, the concern was raised, but the final sentence of not the implementation, but the original principles cover that.

- The Implementation Measures have to be read with the principles. So, we should not really contradict the principles, but they will supplement each other. Thank you. 2, 3, 4 and 5. Are there any? Sorry.

- There is a proposal for amendment to...

- In the paragraph one?

- Is to add, well, maybe a six or maybe it will reorder. The suggestion is to add that the exceptions to the public conduct of judicial proceedings shall only be as already defined by law. In other words,

-Or that's a new paragraph.

- That's what I'm saying

- Shall we come to that in order? Shall we go through this in order? We are now in one, paragraph one.

- Yes. The reason why I bring it up now is probably this being a general one and may need to come replace one...

- Right, okay.

- And then the others will follow but it's a matter of choice.

- That's the choice.

- How did you formulate that?

- It's formulated as exceptions to the public conduct of judicial proceedings shall only be as already defined by law. That was the suggestion.

- Exceptions to the public conduct of judicial proceedings shall only be as already defined by law.

- In other words, discretion to exclude should not be given.

- The problem that arises here is which law, national law, international law, covenants?

- National law, because it's going to be, this is a solution that will go into national standards, the nations that implement them.

- Now the Istanbul Declaration paragraph, principle one...

- Yes, please.

- It says we are legitimate grounds as provided by the law exists to exclude the public or the media from the whole or part of particular judicial proceedings. The judge should ensure that the reasons for doing so are published. Then, there's a footnote which brings in the article in the International Covenant on Civil and Political Rights.

- Yes. It's that, that's why their Implementation Measures to the understanding of the group. This goes to further, to implement those provisions by making the granting of exceptions exclusively by that law as emphasized in the principle and not leaving any gap for discretion. That is the whole idea.

- I thank you. Is there a general agreement on that? Are there any?

- This is because when it's compared with the provisions in the declaration it sets, gives it context. I just want to begin by thanking Justice Ahmed, with whom we had a very robust discussion and when I make my comments, I will not be referring to the individual judges. But it was a very robust conversation and I just want to thank Justice Ahmed for his assistance in keeping us to timing, helping us. I think that there was a sensitivity to the extreme situations for instance, if it is a matter of a threat to life of the judge, whether in such instances it may not actually be prescribed by law, in such instances, one should be careful before one actually gave full publicity. So, and I think it's between privacy and transparency, there was a discussion. Some tell certain matters were better kept private and others said there should be transparency, but within that discourse, I think we are covered, if we put it in context with the declarations, it was just a discussion of concerns and I think that sorted itself out.

- Thank you. May I ask you this paragraph one, it reads like this: The judiciary should, that is a national judiciary, establish procedures and provide appropriate facilities to ensure that court proceedings are open to the public and the media. Would that not be sufficient to empower a national judiciary to impose, to prescribe legitimate restrictions on public proceedings; because it's after the judiciary, it's after the national judiciary, the judiciary should establish procedures, the procedures provide for excluding the public in certain matters without; because we're laying down a principle here?

- Yeah, I think that's why when you said the context and in that context because it permits this kind of some sort of balance to be brought into it and through measures that nationally can be developed. I think the overall thing was then the discussions are covered.

- Right, thank you. Paragraph two, undertake measures to ensure that there is sufficient seizing space in courtrooms for the public to attend in. Paragraph three. Sorry,

- There was strong opposition to the mobile courts and night courts. We resolved to exclude mobile courts, because many of the judges had bad experience of mobile court which had been used as instruments of oppression, your opening remarks about these aspirational and guidelines only in a sense cover that, but I thought I should say there is a paragraph two of two that there is...

- We are discussing principle one

- Oh. You'll never get there by 11.

- Paragraph three or principle one. Public to be well informed of the time and venue for provide access and facilities from members of the media. Paragraph three. Sorry about that.

- Yes, there is a suggestion for a slight amendment to paragraph three. As it reads now that procedures have been established to ensure that the public is well informed in advance of the time and venue of hearings, the feeling of the group unanimously accepted. The suggestion accepted is that to say, to impose that duty on the court ensure that the public is well informed about coming cases is rather difficult. It shall be sufficient and it is therefore proposed that the world well informed, the press well informed to be deleted and substituted with access to information so that members of the public, who are interested, can easily have access to this information. But that to proactively and positively impose a duty

on the courts to go ahead and ensure that the entire public is well informed is rather difficult thing.

- Thank you. Is any objection to that change? Established procedures to ensure that the public has access to information in advance of the time and venue of court hearings.

- That's it.

- Okay, fine. Next one. Paragraph four, "provide access and appropriate facilities for the attendance of members of the public". That's okay. Five established uniform procedures requiring judges to deliver their judgments in a timely and open manner. One minute.

- What's happening?

- We have a singular comment in our room, which was about what is this delivery of a judgment in a timely manner that it is difficult to tell judges how long they would take. But, I think in the discourse and as was discussed with all of them that it has to be delivered at least within a reasonable time. That was a matter for interpretation. So, I think that was covered.

- Yes. It's a requirement that the judiciary, the judiciary should establish procedures so that each national judiciary should do that; it's a matter to be interpreted by them. Okay. Thank you. Then you have the six which was proposed about the exceptions, there you get to principle to judicial system should ensure easy access to court premises and to information. Paragraph one, ensure that court facilities are located near public transportation hubs.

- Can I just jump in to say that it was very heartening to note that Azerbaijan has just revised all their laws to be able to be admitted to the EU and they said it is exactly in this kind of format and it's working; so to give, just to inject a positive note to the sections.

- Paragraph two, support innovations in delivering court services such as mobile courts or night court programs, telephone or video conferencing, etc. But are there any comments on paragraph two? Yes, one minute.

- As I indicated earlier in my era at the time, there was opposition to mobile courts and night courts, but as you pointed out, these are aspirational in general guidelines, not binding in any way about the night court, the mobile court had been hug. I think tremendous of oppression and I should pass on that opposition to that.

- What would you propose?

- The deletion of mobile courts and night courts, as I've indicated these are aspirational and not binding.

- Are there any jurisdictions in which mobile courts and night courts have been established? And what's the experience?

- Our experience has been a positive one, yes. It makes it, the text, much closer to the people. There are situations where instead of persons being arrested and taken to police stations, told to go to court the next day, having days in small offices to get treated there and so these positive and, but I understand the issue raised. We have had a few issues like this where in some jurisdictions, certain words or certain actions may have developed some connotations. Our proper approach in group C is that in these instances that are not of, that are specific in this translation sometimes can take care of it or ground rules in implementation can take care of these concerns. But just because something has developed a negative connotation in one part of the globe to generalize it and bury it all over, well in some places, it is positive I think it will be difficult for us to avoid.

- Thank you. Sandra you want to speak?

[Sandra]: We had no complaint with the selection. I was responding to your question that they have positive success anywhere and in the Caribbean, there has been some use of it, in Malaysia very positive.

- May I say this that paragraph was introduced based on reform measures that had been undertaken in certain jurisdictions, things like telephone, video conferencing, pre-trial hearings in online chat rooms and so on, but innovations that had been experimented with in certain jurisdictions, this is not prescriptive, the judiciary should support innovations in delivering code services. So, we are indicating certain reform measures that have taken place in the last 20 years or so, it's open to each jurisdiction to adopt that or not to adopt that but Okay, thank you,

- It's interesting when we just make the overall comment about this in India, the judges have gone even beyond what we are thinking here and actually built rooms for witnesses whose cannot come and go back on the same day that they provide rooms for them to stay. I thought it's a very aspirational thing.

- You have no objection to that? You're not objecting to that?

- No, it can be done. Okay, fine. They have separate quarters to the women and the men. Yes.

- So, you get down to three installed clear and easily identifiable signage. No objection to that established information counters and customer service desk. Yes.

- Yes. One of my colleagues, by the way, also wanted to thank my work group for being so effective yesterday, and if I missed anything to tap me on my shoulder or so. One of my work group members also indicated that many services are provided outside as well as inside; he just thought maybe adding the term outside as well as inside, inside or outside. I just wanted you to know.

- If you have it like this, the judiciary should establish information counters, our customer service desk at the court entrance, that is the first place of access. If they have it outside, so much the better, but we can leave it at least at the court entrance and not in further.

- I guess you could define that as both couldn't you?

- It's entirely the judiciary should do at least at the court entrance and not somewhere inside.

- Okay. Michael, did I cover that? Okay. All right. Thanks.

- Okay. Thank you.

- Then there's five publicly and clearly posted in the courthouse schedule of hearing and proceedings. No objection to that. Six, employ and retain code personnel who speak the language of code users. No objection to that. Thank you. Seven, provide comfortable waiting areas for court users. Okay. Eight, suitable facilities and for the special needs of court users maintain safe, clear, clean, convenient, user friendly court premises, create a resource centre to provide single window service. Yes.

- We all didn't understand what single window service meant and there was a suggestion maybe full service. It was just that it was an idiom that was not familiar to all of us, a couple got it right.

- They said you'd have a single shop, one stop shopping to people separate the rest of us to know. Yes, I think this is very successfully tried out in Nigeria. So perhaps, Justice Zannah.

- The full resource availability through one door. It was just the one.

- How do you suggest it should be amended? Sorry?

- The concept I understood is that all the resources of the court should be available to in one office so people didn't have to go from one building to another. Was that the thinking behind it?

- Yes, this concept of the single window is there in methods of...

- So maybe full service like that.

- It's a concept that has now yes,

- We just suggest that stubborn people may not understand that word and look around for another one. But we were totally approving of the content.

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

We can add a footnote to that. Yes?

- It just responds to your request for me to the. Yes, we implemented and our understanding is that is the single window actually that is much more understood than full service. Yeah, because the moment the word single comes in, the idea is clear that all the services should be available through that window, but where full service is deployed, it's the one that probably in some areas may not be understood. But like I said, in group A, in group C we did come across these terminologies having different connotations in some places or not being understood. It will be very difficult to have a single one that covers all.

- Thank you then. 11 - Publish in simple clear, accessible format, user guides etc. Objection to that? 12. Sorry, yes, that, one minute that.

- Because everyone had this problem with a single window. What does this really mean? It is really a trade facilitation idea, especially in places like customs, and that is the word that is used. So, if we don't understand it, perhaps we can use something which is a little more legalistic. But that is the meaning of single window where they have all the services offered in one place, especially in places like immigration.

- That is exactly what Justice Zannah said. I said it was explained in the Nigerian court and we can add a footnote and explain that. But that concept of a single window I think ought to remain here. Yes.

- Institute and mandate management training programs. Is that the one?

- Yes, the concern raised was the term judicial officers; although in English, it has a fairly clear generic meaning. It was thought that the term judicial officers which could be interpreted restrictively and it should be expanded to say justices, judges and judicial officers just to make it clear that it covers all.

- Thank you. If you said that is, would that be sufficient?

- Yes, it didn't do quite coverage and it just makes it clearer.

- Thank you. Then shall we complete that principle two is completed; can we proceed to principle three? The judiciary should facilitate access to the judicial system, paragraph one. Develop user friendly forms and instructions; no objection to that? May I ask the moderators for comments we wish to make. Let's go down numerically to paragraph 2, 3, 4, 5, 6 pro bono services.

- Group B felt that to be consistent with making the court user friendly, we should get rid of the Latin and say free service instead of pro bono.

- So, is it sufficient if we add a footnote to explain what pro bono services mean?

- Just change it to free or just change it to no cost, free. We're all making efforts to get rid of...

- That would be legally differently, but it doesn't start when you say free services who's going to provide the free service. This is required, attorney to provide pro bono.

- Pro bono is clearly not known throughout the whole world which has a specific program, an unattractive though that may be it does designate something where my people come forward and volunteer their services, Free means free provided by the government and I think that's too confusing; I think we just stick with pro bono.

- I understand your comment, Justice Dowd. But in our group, the view was that pro bono would not be readily understood and they did not wish it there. I know that in some jurisdictions that used; it's not used in Canada, it's used in the United States. But in group B, it didn't seem to be a common use.

- Thank you, so we can add in a footnote and explain what it means.

- We are just making a comment.
- Thank you.
- I just wanted to note in number five...
- You are designated as being from Mongolia
- That's been confusing.
- Well they did adopt me in Mongolia.
- Maybe I see it in the wrong place.

- So yeah, but I'm on number five. There's a little bit of confusion. I just wanted to note that and I think that the sentence encourages the establishment, covers this, but...

- Which one are you referring to?
- Number five, principle three number five.
- Number five, right.
- Yes, because I thought we just talked about okay.

- But they just wanted to maybe, perhaps be more specific regarding the governance uniquely, the public defender is not a judiciary services component in many countries, its component of the Minister of Justice or other branches of the government. So, I gather though encouraging the establishment would be all inclusive and that to that extent.

- Okay if you look at the preamble of the first paragraph, it says that some of the measures may require resources which the judiciary may not currently possess or may require further legislative or executive action for the effective implementation, so all this is if judiciary, perhaps if it feels that there should be a public defender to take appropriate action with the executive branch to do that. Okay. Right. Is that then completed or are there other paragraphs?

- That was raised.

- Paragraph six. Yes. Again, about this problem of service. In many countries, they said who would pay for it, if a judge required an attorney to assist someone with the court which has no funds to pay to that lawyer and no power, really in

most countries that we were representing, to enforce the lawyer to require to do the work for nothing. So, there was just a question about where the power came for the court to order a lawyer to assist someone; again, we didn't disagree with the problem, it was just that we saw a problem in managing.

- Thank you Nigeria.

- Yes, yes, in answer to Sandra. That's why probably the word pro bono should remain that instead of free, because it's understood attorneys provide these services free, but only attorneys do and attorneys understand what pro bono means. Now, in terms of the power what happens is courts do have some power in this regards. Some of these attorneys come up to appointments as we had to be judges and all this. Now, how much pro bono services you render goes into your score and your rating for so many things. So, there is soft power involved in this. That is, at least the way it operates in my place. If you've been in private practice, and you are actively providing pro bono services to indigent persons and citizens when you come up for elevation or to appointment to the bench. That is a very good factor in your favour. I have a couple of Justices that made it to my bench because of their activities in rendering pro bono. So, there is soft power I don't know about the hard power actually.

- Thank you. The remaining paragraphs 7, 8, 9, 10, 11. No, 11 is the last paragraph, in principle three. Okay yes.

- Group A had concerns with the term non-qualified, as I'm sure other groups did and we suggest that if we make a slight amendment to 11 to insert the word "may" at the beginning which is not a big deal and we delete the word non-qualified persons, and that the word appropriate is wide enough to cover the wide range of people you may use. So the suggestion is that it reads just as well. If you take non-qualified out and you stop all debates about whether someone is appropriate or evils, it may come from it and just leave it appropriate persons.

- Thank you. If it leads permit, the judiciary may permit their circumstances warrant and appropriate person to assist a party in court, would be an appropriate person? Would be another lawyer? Other than the lawyer who has been retained?

- In a lot of jurisdictions sometimes because of language or education problems, a friend can come along to put the case.

- So, would you not be an unqualified person?

- No, no. I have no problem with non-qualified.

- I remember this matter was discussed at length during the expert group meeting.

- I remember it well and I'm just saying I have no problems personally with non-qualified but Group A had problems and the suggestion was to leave it out to stop the debate. That's all I want to say.

- Yeah, okay

- Oh, okay. Same with Group C, but after exhaustive discussion, we resolve to leave it as it is, because deleting the non-qualified would make it even more ambiguous and some even interpreted to mean appropriate person is lawyer, and no more. So, after exhaustive discussion, yeah, we decided that, yes, it's good to leave it and that was our agreement.

- Sri Lanka?

- Yes, even we, Group D. Also, this word was discussed and who would be a non-qualified person? So perhaps if there's a footnote to it may be bringing more clarity, because it was like barefoot lawyers coming that you remember the concept of barefoot lawyers coming into court and whether this would...

- Where did barefoot lawyer, where are the concepts?

- Sri Lanka. Remember I said you don't have to have a professional qualification on the matters?

- I'm the one who spoke about that totally misunderstood, no, but if non-qualified means a person who is not qualified indoor, it could be the wife or spouse, it could be a son, it could be any a friend but non-qualified means, it relates to qualifications in law so that non-qualified person. Yes.

- Thank you, very much, yes.

- I agree, shall we then leave it as it is? Thank you. Principle four; incidentally, it's non-qualified person not to appear, but to assist a person, so that's not to appear in court, could be appearing, representing, but it's basically to assist. Principle four, the judiciary should provide court users with translation and interpretation facilities free of charge. Any comments on that principle in the committees, different committees, groups? Yes.

- The question arose in the larger countries which have 30 to 40 or more dialects and more languages where they aren't to be possible to translate it all the language and whether that would be requisite?

- I read the requirement here, ensure that the parties before the court, the particular court, understand the language in which the proceedings in that court are being conducted. So, this set of people from speaking 40 dialects in court on that date, in which case that provision will be made, it will refer to the parties before the court on a particular day, in a particular matter. I noticed my question was raised at another place last weekend by the Chief Justice of the Constitutional Court of Columbia who said that in his country, there are about 140 dialects. But I think this refers to a particular matter in court. Thank you. Can we proceed to principle five?

- It was raised by our colleague, very experienced colleague from Belgium, that even though you can sometimes understand your own language, you're not very sophisticated in it.

- Which paragraph is it?

- This is paragraph two;

- Ensure that the case is not withdrawn from...

- ... understand the language that you could sometimes be categorized as an English-speaking person in an English jurisdiction, but your vocabulary is very limited and you really don't understand the proceedings. I think that was the point by my colleague that he was making and perhaps we should put it in the word, cannot fully understand but we leave it to, we agree with it, we just leave it to that were concerned that there was one aspect that wasn't covered by the word. Again you might find a word which could put into health.

- This is borrowed from the International Covenant on Civil and Political Rights.

- We can improve it.

- We can improve, but fully understand, I don't know.

- But all of us have been trial judges; I understand that people, who speak the language of the court, don't have the vocabulary very often to comprehend what's going on and we were just trying to cover that instance.

- Thank you. Okay. We note that.

- Instead of fully, fully understand, maybe a very high bar, but what about adequately understand? Comprehend? Adequate instead of fully; fully means to the level of expertise and precision probably which is not what is required, but if it is adequate to understand for the purposes of the case, then adequately understand should do that.

- But what is the difference between adequately understand and understand? Aren't you lowering the bar when you say adequately? Understand is a medium, so it's... Comprehend maybe a possibility retreat. "Comprehend" might create for the difficulties; "understand" is; "comprehend" becomes very subjective. Yes. Okay, thank you. Thank you, Principle five, the judiciary should ensure transparency in the assignment of cases. Were there any comments, observations in the committee, in the groups on that, in regard to that principle? Five, two. Yes.

- Group A thought that the word "valid" was a difficult word and suggest "proper" instead of "valid". The second thing is, because of the difference in common law and code systems, it would be better with those that would rather do it by legislation rather than rules of court to add the words after court to say by legislation where appropriate. So, it gives the jurisdictions that use legislation to control the courts. It just provides an alternative so proper for valid and...

- So, it would be provided by legislation or by rules of court? Rules of court are usually made under appropriate legislation.

- I know that yes, but just to make it clear.

- By legislation or by rules of court. Thank you. That's fine. Yes. Valid to be changed to?

- Proper.

- What's the difference?

- It sounds better.

- Okay, fine. Paragraph three, four. Any comment? You support this answer? Yes. Thank you.

- To get down to principle six, the judiciary should ensure transparency in the delivery of justice. You had two sessions yesterday to discuss these 15

principles; we only have one session today this morning to discuss all 15. Thank you.

- Thank you, thank you very much. Should that not come into paragraph one which is established by rules of court, a predetermined objective and transparent system for allocating cases, such system maybe based on alphabetical or chronological order or other random selection process. Should it not come there that it may also take into account specialization, speciality that the judge... Don't you think it'd be more appropriate in paragraph 1? Five, principle five. Yes. Okay. Thank you. Anything further on principle five? One? Okay.

- It's on two. on to principle Yes. Measure number two, there is a slight, it's more like language of language.

- Is this principle five, paragraph two?

- Measure number two. Yes. Under principle five.

- The one that we discussed the word valid and proper.

- No.

- Reasons?

- I'm sorry, I'm talking about principle six. I though we are at six. Sorry.

- Fine, okay we are finished with five, then we get on to six. Then add more to five then. Yes okay, paragraph six, judiciary should ensure transparency in the delivery of justice.

- Yes, thank you. Group B again being concerned about making the court proceedings easily understood by the...

- Which paragraph is that?

- The number one. The concern being that very often the litigants did not understand the decision, after require a judge to state. We wish to recommend you that you insert in comprehensible language. Too much Latin perhaps.

- All the judges here present are willing to accept that requirement that you should write your judgments in comprehensible language? No objection? Okay, so you approve that edition in comprehensible language, okay. Any other comments on principle six?

- Number two, yeah, measure number two, the word reorganize, it was felt by the group that some of the registries may already be organized to the standard required. So, it's suggested that instead of using the word reorganize, it should be, it should read, maintain a registry that enables easy access to court records and quick retrieval of information so that it will be a continuous sort of provision instead of reorganize, which anticipates that all courts before implementation would need to do something in order to meet this standard.

- That whole paragraph will then have to be rewritten because...

- We have already done that, I'm just reading as...

- How to read?

- Maintain a registry that enables easy access to court records and quick retrieval of information.

- Maintain a registry that enables... and then continues as..

- Thank you. That's fine. Any other comments on principle six? Okay, Principle seven. The judiciary should have supervisory powers or executive detention.

- Group A, I'm sure other groups had difficulty with the... There was a variation in the English and Turkish interpretation of the word administrative or executive detention that sometimes the word detention was translated as custody which of course is lawful custody but after some considerable debate, we suggested that paragraph one should be deleted.

- Be deleted? Paragraph one?

- Yes. Anyway, the main part is paragraph two which instead of the words administrative or executive detention, which has different meanings in different jurisdictions that we insert the word unlawful.

- That would create problems, because administrative or executive detention would be lawful and the public security laws and certain other legislature; it would not be unlawful requirement here and incidentally, I should allow to inform this gathering that this proposal is originated from Justice John Dowd himself in 2013 in Istanbul.

- So it's not unlawfully to be lawful, administrative or executive detention, but this requires the court to exercise the supervisory power.

- Yet, I'm expressing the view of Group A, not to view of John Dowd.

- Thank you.

- The problem is that this principle would disappear, if you refer to unlawful detention because that is not the intention of this provision; Why should... Why? Why is paragraph one to be deleted?

- Mainly because of the use of the term administrative, it gets judges in performing judicial functions in the prisons.

- You see now, he had to go back to the principle in the declaration which says that to ensure that the judicial system is not subjected to unwarranted criticism for trial delays, the judiciary should be conferred by law, the power to bring before court persons held in administrative or executive detention. Although this is primarily a human rights issue, it is also a way of ensuring transparency in the public perception of the administration of justice. So, one way in which the judiciary would become aware that persons are being held in administrative, executive detention is by a system of structured visits to prisons, by members of the judiciary. So, I think we need to keep that, if this principle is to remain and we can't delete the principle because it flows from the Istanbul Declaration. So, shall we leave it like that? But? Can you?

- Thank you. The principles seven in the Istanbul Declaration says the judiciary should have supervisory powers or executive detention, so the only word that has been added in the Implementation Measures is executive or administrative detention, we can remain it, keep it as executive detention if you wish and delete the word administrative. Okay. Is that acceptable? It's basically executive, it's the same thing. It can come to the same thing. Okay. Yes.

- There was a discussion about concerns; some concerns were voiced whether this was only detention under the due process of law and where the such should not be mentioned some there to bring that idea out?

- Where the court would not know where they stand to the due process of law and this time, until it examines so that there is administrative executive detention, whether it is done within the law or outside the law can only be ascertained if the court were to exercise its powers of structured prison visits, etc. So, that's a matter to be determined. Thank you. Principle eight. Judiciary should ensure that judicial decisions of the superior appellate courts are regularly published. Any comments about the paragraphs in there? Nothing. Okay, fine, thank you.

Principle nine, the judiciary should promote programs to orientate students on the judicial process. Any comments on that? Thank you. You had one, yes okay.

- We agreed in principle, but wanted to limit civics education to judicial duties and rights of the public and also discussion that, they wanted to limit it, not generally to our public rights, for just a judicial activity. They didn't want to be teaching how to vote in the ballot.

- That include organized student visits to courts classroom appearances by judges?

- It was just the word civic. They want to limit it to judicial duties.

- Okay, that can be done. That does not arise from the declaration, it talks of visits to court, yes, Thank you. The principle 10, the judiciary should initiate and our support outreach the programs designed to educate the public on the role of the justice system. Any comments from the groups?

- Should we make reference in number 10, somewhere to the pervasive utilization of social media? Probably at number three, should we insert social media in number three? Facebook and Twitter and everything are becoming such a predominant social media provider. I just wanted to bring it up.

- You mean, you want to add to participating in radio and TV programs, to add the social media?

- That's a controversial issue.

- It is coming up and becoming very, you know...

- UNODC has convened the meeting in November to discuss the scope of the use of social media by judges in the Bangalore Principles. We are examining the extent to which social media references, social media could be included in that. We say leave it open because without actively promoting, we end up by including it here. We would be actively encouraging or promoting the use of social media by judges. I don't know it's a controversial issue...

- It's controversial because of its regulatory consequences. However, if regulated properly, social media is a very effective integration point with the public.

- Lots of you, participants on this matter...

- I just wanted to break it down.

- Do we still add social media?

- I think we would be surprised at the percentage of the world's population that only get their information from social media and no other means and I think it's right that we should include it in.

- Thank you. You want to speak?

- Yes. This is known, the reality is that the entire principle is about reaching the public and getting them informed about court procedures and letting them correcting false impressions on all this. The reality is that the conventional media, the scope is diminishing, it is the social media that rich people particularly younger ones that are coming up get their information almost hundred percent as just as not saved through social media. So, if we really want to reach the public, then social media is this media, it depends on how you use it and it should be used appropriately, correctly, because we want to reach the people and without using it, you cut out over 50% of the persons you want to reach who don't listen to the conventional media at all. So, I don't see anything wrong. I support Jeff and ...

- How you include that in here? Sorry?

- I was just thinking it could be including on the internet and/or by social media. Right in that language area. And the other thing I wanted to point out, Your Honour from Turkey, judge, if you have an internet connection in your court, you have a vulnerability, no matter whatever application you're using, our case management system itself was hacked several times. I think we have to be very concerned about security as we propose internet access to the court. So, it's just almost that those two security and access need to be balanced and regulated. But I was thinking in the first sentence there, at some point, based on your judgment anyhow that it should be included. As you said, this is a guideline. I think as a guideline; social media is becoming one of the predominant communication points with the public.

- So, should we say participate in radio and TV programs or through other forms of media?

- You could say media there.

- Or other forms of media?

- But social media has a different context than just media. And I realized there's some resistance to social media, but I don't think you can. I don't think you could ignore it.

- ...Thing that informs all the young people around the world. Some are not so young. So social media has a specific meaning that I think we need to address.

- First paragraph two, it says participate in radio and TV programs for what purpose? Disseminate information on the functioning of the judiciary, its civic role and judicial processes so as to an information, informative purpose...

- But we discerned after the word progress, I said word...

- What is the view of the participants on this? You want to speak?

- Absolutely undiscovered. Jeffrey said about this, which is the security of our entire systems, because we did without putting the proper safeguards into our system. We are increasing our vulnerability and for virus attacks, which can damage the entire court system. So, I think with safeguards, we must be saved. There must be some training to the judges as to what and how they're going to be.

- So, what do you mean? What it means is that if you use social media to explain the judicial processes might be hacked, and it may be distorted?

- It may be distorted, they can introduce viruses into it, which can affect all our computers. So, I think, yes, dissemination. It is good to have it, but perhaps through a particular portal that has high security level.

- How many judges who support the inclusion of social media in this paragraph. Can you show by show of hands? 1, 2, 3, 4, 5, 6, 7, 8. Okay. How many against? 1, 2. I think that's it. It's not as close as the Senate vote on justice cabinet, no. Okay. Right, thank you. We leave it for this; it can be improved, maybe in a couple of years' time. You might revise this. Can you get to principle 11? Principle 11. You want to speak?

- Mr. moderator, group B was in accord in principle with section 10, but they didn't like the use of the word town hall meeting. They felt that it was too connected to politics and they suggest a public meeting rather than town hall. This is just a suggestion that they are in accord with the principle

- I think public meeting would add a different connotation, town hall is

meeting with the community. It doesn't mean that you go to a town hall. The concept of a town hall meeting is meeting the community; public meeting is a different thing where you invite the agenda of the group, which was the concept in judicial reform programs. Maybe, this millennial tried out very successfully in Nigeria and is that in other countries.

- I am just reporting the view of the group. The second thing was they understood the judiciary was wide enough to include staff that the word judiciary met not only the judges, but that the court staff would be included in that.

- Which one?

- Judiciary; that would be the wide meaning that would not only be judges who are participating.

- Which one?

- Paragraph one; interact with the judiciary; judiciary not being only judges but being the judges and the support staff, the wide meaning of judiciary.

- Understanding about the judiciary, is that paragraph one?

- Yes.

- Judiciary can be used two ways when just to being judges a month two main judges and the court support staff.

- No, I think in this it means the judiciary because..

- The judges alone...

- They didn't agree with that..

- What they wanted was the judges and support staff for the judiciary.

- Town hall meetings as I understand are places where the community can come and complain about the staff and their treatment by the staff. That will be one complaint that they would have experiences, the experience in court offices, so they would meet the judiciary to discuss the problems they have had that they've experienced in.

- Group B was not so keen on that. They were happy to be at certain topics but they thought their staff would be good to, senior staff would be good to interact another time.

- It's like overseen by the staff have done that the judiciary should do that, they should step out of the bench and then.

- I'm just reporting.

- Thank you. Can we get on to 11 please? Nothing on 11? Okay, 12? Judiciary should assess public satisfaction with the delivery of justice and thereby, seek to promote the quality of justice. Nothing? Ending on that?

- Some participants understood case audit could mean something different than its intended here. But after exhaustive discussion and understanding for example, we realized that in the Turkish translation if file audit is used, it will be understood clearly the intention so for other; this take away from it is that translations should be carefully undertaken to convey the intended meaning.

- Ok, shall we then retain case audit because that's a term we use and add a footnote?

- That's what we all agree in group C, that you should remain but in translation or can be taken care of. You can add a footnote to that.

- Anything else on 12? It says public satisfaction with the delivery of justice. Any comments on 12? No. Principle 13. Transparency in the appointment process of judges. Okay. Yes.

- This morning's New York Times international outlines back in 81 years ago and 27 years ago, the sort of inelegant process which the United States goes through, when balance of the Supreme Court is in issue; to have the interviews available would in fact keep a lot of very good people from coming forward. Because in the interviews, what is talked to the person even though it's denied is there on the record and accusations are enough and it's just not necessary to have the interviews publicly available, because they can be used politically by people on the selection committee to put things to somebody again and again and again, even though denied the danger is done, it's not necessary for this to be in and I suggested a deletion.

- This reflects again, as I said, best practice from certain jurisdictions for example in South Africa, even the appointment of the Chief Justice. The interview is televised and that's transparency. We are now developing a document to promote transparency so that there is no comparison on any jurisdiction on any country to adopt such a procedure, but it's progress made towards transparency in certain jurisdictions.

- I understand your point. I'm just saying, is there more, it's not necessarily best practice, because it's fashionable or its current practice, the use of the word best is subjective term. I think what you've just said doesn't take into account a lot of decent people who are not going to go home to their spouse and say, do what I'm going to stand for this because a lot of people just won't stand. And I think it's very dangerous. But I've heard what you say.

- Any comments on that?

- I guess from my group or personally. Are you asking for a group comment or personal?

- If you wanted to speak that way.

- Well, I just think public hearings are necessary in this day. All the new processes that are coming out of jurisdictions in the Commonwealth are necessary as well. I don't know the other countries are requiring public hearings and I agree they're very unpleasant. But then judges didn't want to have to apply for jobs. I went to that stage too, they thought it was unpleasant to put themselves forward, judges are not special in that way; they have to apply for a job like everyone else and since it's a lifetime appointment, it's quite different from an ordinary job where you couldn't be let go for various causes.

- I wouldn't have commented, but in view of the group C, I had a definite opinion on this but positive one, so I kept quiet for the interests of progress. But since now there is an opposite of view, then that makes it relevant. The group C positively uploaded these provisions. Some members, I'm not mentioning, say this standard is not obtainable in their jurisdictions. But it's good that I should be there that they cannot be used as a tool to bring it about that, this point to eat as the global standard, which their nation should aspire to have. So, in this context of the present discussing the opinion of group C, this is a very good provision that should be met.

- Thank you. As I said, this is aspirational. And we are moving forward. So, yes.

- Because of the comment of aspirational, I will not go deep into the discussions in our group both about publicity and selection of judges; because this felt it must be judge-controlled. There must be no interaction with the media. But if you are talking of transparency, as you said, these are aspirational instruments and perhaps maybe broad guidelines to be followed. I don't think

anybody's really, they just feared the repercussions more than anything else that it sort of impinged upon their autonomy more than anything else. So, I just want to put it out there.

- Fear the repercussions, but I don't know where the countries have adopted this procedure and actually experienced those repercussions. I don't think so, because they're continuing with them.

- Thank you. 14, the judiciary should respond to complaints of unethical conduct of judges in a transparent manner. Justice, you referred to some change of a term disability. Yes. Where is that? Okay fine.

- They are referred to not as disabled, but persons with disability which is giving them respect.

- Thank you, Principle 14, judiciary to respond to complaints.

- We had a comment that number, paragraph one of principle 13 didn't deal with the situation when they already were independent bodies in existence. And I believe, again, this was a recommendation from Belgium and suggested that somewhere, it could be put into say that when they don't already exist, this should happen and we just leave it.

- If it's already in existence, the question doesn't arise; these are measures to be taken to increase transparency, so it is already in place. That's fine.

- Yes. But the wording is that they should establish where they don't need to establish a second one, if there's already one there. There's no need for that. Yes. We just wanted you to consider that in the wording.

- 14? Anything on 14? The judiciary should respond to complaints of unethical...

- Thank you. On the subject of legal representation, may I refer you to the Istanbul Declaration, which was adopted also with the participation of the Court of Cassation? Principle 14 says that the committee so established that is for unethical conduct of judges to respond to complain. The committee so established should not be controlled by the judiciary, but must be one in which there is sufficiently participation, not immaturity, sufficiently participation to attract the confidence of the community. Then in regard to 15, which is disciplinary process. It says, the judiciary, the power to discipline or remove a judge should be vested in an independent body or Council for the judiciary, which is composed up serving

our retired judges, but which should include in its membership persons other than judges provided that such persons are not members of the legislature or the executive so that few one or two lay members in each committee to provide confidence to the community who would otherwise think this is like an old boys club whether judges look after themselves, that's fine. Thank you, yeah.

- A lot of South Asian judges in my group have the only hesitation. What they all voice together from the Asian delegation was this would be a political intervention and that you need power to discipline judges on the one hand, but not through a participation, it is important to protect the independency, otherwise judicial independence will be under threat. I'm quoting it.

- Right.

- But recently formed, even the work done by the consultative Council of European Judges, they all recommend the inclusion of lay members in these bodies precisely for the reason to attack the confidence of the community so that, this will not be regarded as an old boys club where the judges look after them. So, we are moving forward. This is aspirational, countries have constitutions drawn up in the 19th century, 20th century may have provisions in them that are in conflict with that, but that's a different matter. These are aspirational. He's asked standards, it's a standard setting document, so principle 14 or 15, is that anything? Yes?

- What you have said was this was part of our discussion. Group B really preferred the lay members to have legal training and we did have discussion about it.

- How that prevented the roof whatever the group was really being reflective of the community and that many countries wouldn't allow legally trained lay members; the group still wished okay to have that and secondly, if I may just finish off without my comment.

- The last one was that, in number 15, the both positive and negative outcomes of discipline hearing should be published in my own knowledge that data in some countries but the positive outcomes not giving the name of the judge. But certainly, our record that my recommendation was that it should show the website or whatever is chronicling the disciplinary and hearing should show both the positive and negative outcomes, but with the use of the judges' names and negative ones to the question.

- Thank you. With regard to legal training for the lay member as far as I can recall, the new constitution of Kenya had provision for the chairman of the Public Service Commission to be a member of the judiciary service appointments body. Now, would there be any objects into the chairman of the public service commission of a country being a member, because he did not study law?

- I don't know unusual. These are really just recommendations. I have legally trained like members who usually are members of indigenous communities, maybe a police officer, maybe a sociologist, maybe a psychiatrist; they're not usually legally trained in my experience.

- Any? So, do we make any changes to the paragraph 6 or 15? Is that necessary? All it says that where the final decision in the proceedings against the judge that results in a sanction, then that should be published, otherwise made public. If the judge has been dismissed, then that's what we made published, but not if the judge has been cleared, there's no need to do that. But it's open to do that. I don't think we should have a rule of that needs if in a particular, jurisdiction judges may want to do that. But here it should be made public, if there's a sanction. Thank you. I think we have number Six of 15? Yes.

- We publish without mentioning the name of the judge, should we mention the name of the judge while publishing?

- When the judge has been dismissed?

- No, not in all cases here. It's we are not making any distinction. It's a general rule that ensures the final decision in a sanction is published. Are we making this sanction when I say all the decisions are published?

- Istanbul Declaration states the final decision in any proceedings instituted against the judge involving a sanction against that judge whether held in camera or in public should be published.

- And then we also publish his name?

- Yes, yes,

- I have some reasons.

- I know, but we have, the thing is we are constrained by the provisions of the Istanbul Declaration on Transparency which was adopted, so that, Yes.

- Just to come back to paragraph for principle 14 and also in principle 15. I realized that not only in our group you know, I think that the paragraph five

from the establishing the independent mechanisms was controversial. I've seen that this is probably in my view as one of the most controversial part of them or the suggestion of a measure taken. So I think that you will find a way to overcome that, because I realize how we wanted to highlight these is not that simple in the way that we are presenting that to know. My point is that it's a little bit controversial and we need to find a way to know what to do so, you know, I think around for example, paragraph five of principle 14 will be important, what we highlighted in our group and we're highlighting here again is that the same mechanism, independent one. If the capture prejudging the independent of a judiciary power but anyhow we are agree with that, but what we disagree it; having this body taking appropriate action on some things. I think that he could recommend my suggestion, but taken action for us, it's a little bit controversial. In the case of principle 15, at least in the first part of the paragraph, when we have it establish an independent disciplinary body, we filled participation better with a power of removal judges more. We believe that removal of your judges, at least in our case, at the end of the day supposed to be decided by the parliament, supposed to be decided by law. So, something that we want to avoid here is just to create the impression that we have it established, you know, even if it's aspirational that we are establishing something that could be contrary to the law. So, our humble suggestion is just to work after removal of your choice according to the law, at least to keep it all safe. We understand the research rationale and we totally agree with that and we really believe from the whites of a whiter of the dimensions, but we would like to give our contribution in that way, for the benefit of...

- May ask that parliament has the power to remove a judge, will Parliament do that without an inquiry? We do that without an inquiry?

- True but with that safeguard for all of us here. You have to keep the body, because I think we see a body on that and we are even considered that we don't have these in Cuba, yet but at least what is important is wherever we have it supposed to be according to law. We are okay how we're to get from this and you have to be all safe regarding these national laws without here.

- Thank you. I think most Commonwealth countries require empower parliament to remove the judges, but of course then has to be an inquiry when independent tribunal Parliament cannot vote on political and political basis as an inquiry by discipline the body. On the other matter that you refer to which I have forgot, what are the, you refer to, yes, in principle 14, if you have a code

of conduct, a code of judicial conduct, then there it's recommended that you should have two bodies. One is ethics review committee which will do which a judge can refer some problem that has a reason and once advice. The other is a body that to which violations of ethics may be referred by an individual or by federal judge or anyone. Now that's different from a disciplinary body, because a violation of ethics may not require dismissal, may not require strong disciplinary action. So that's the body that is referred to in principle 14.

- Okay yes,

- Sorry, I wasn't able to participate in yesterday, so I just have to read and it's very interesting this participation of lay representatives, but perhaps we could consider if it's possible to ensure that they are independent. Because that's it's one of the most important point if you talk about division of powers that traditionally. If you want to remove the judge, it's only done by independent persons and when we state that there should be a representation of lay representation, and then there should be some regulations which ensure that they are independent and they are not influenced by as other powers for instance, administration.

- Yes, thank you.

- I believe the Istanbul Declaration says that such lay persons should not be members of the executive or the legislature. But I think that that can be elaborated in an appropriate way to make it clear that they are independent persons who are not without a political environment. Thank you very much. Now, it's right. Are there any comments on it, a general agreement on what we have discussed here? Okay. Thank you very much. I think the time is about three minutes to speak.

- I would like to thank you on my behalf. I guess on behalf of my colleagues here for the way you led all this discussion, and I also would like to thank the Turkish judiciary, the President of the Supreme Court for all this conference and for making out of Turkey a leading in the domain of rule of law, so may we applaud Mister Professor.

[applause]



**DAY 2**

**PLENARY SESSION III:**

**Formal adoption of the Measures for the Effective  
Implementation of the Istanbul Declaration.**

**Closing Speeches  
Closing Ceremony**

**MODERATOR:**

**Prof. Dr. Nihal JAYAWICKRAMA**

Coordinator of UN Judicial Integrity Group



12 October 2018



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

As I was saying the draft Implementation Measures were examined in five committees, all the participants or in one of those committees and a number of recommendations were made. Then today in the last session, which was all an hour and half, nearly two hours, we went through the principles and the Implementation Measures and finally agreed upon the text.

Now I can't of course read out the text now, because one thing it's too long to read it out in this session, but all the amendments that were proposed have been noted, the participants in the last session are aware of what the amendments are and I would like to move the formal adoption of the Measures for the Effective Implementation of the Istanbul Declaration on Transparency in the Judicial Process as amended at this 4<sup>th</sup> International Summit.

So, if you can indicate the adoption by acclamation maybe?

- From the Hall: [applause]

Thank you, thank you. So, the Court Cassation will now have to publish the new version of this document with the amended content. I think my task is over here, because the next items are the closing speeches, it is under the President of the Court of Cassation, will proceed.

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

Distinguished guests, distinguished participants, Istanbul Declaration and Implementation Measures on the Istanbul Declaration were the theme of 4<sup>th</sup> International Summit of High Courts, which has been finalized now from five continents, from different parts of the world and jurisdictions in the world, 30 countries' representatives shared their experience, know-how and knowledge which has been very useful and fruitful for us and for the successful journey of the Istanbul Declaration.

On the other hand, 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 experience and knowledge. Thank you very much. This has been a very useful and successful meeting for us in international law, this is going to fill a gap and will provide considerable inputs to national law. From different parts of the world, people who dedicate themselves to law and justice, very valuable legal professionals

contributed to Istanbul Declaration and Implementation Measures in a very short period of time, at global level. I believe that the Istanbul Declaration and Implementation Measures will grab the attention that they deserve. I would like to thank you very much for your outstanding contribution and inputs to the Istanbul Declaration and your outstanding efforts will never be forgotten; Mr. Nihal Jayawickrama and all moderators in the groups, thank you very much for sharing your unique experience and knowledge.

In this way, the principles on the Istanbul Declaration were discussed once again and we modified as needed. The Istanbul Declaration will become a part of universal law, international law, so we are getting one step closer to that ambition; to law, human rights and democracy with legal professionals who believe in these aspects. It is a great honour for us to move forward for the achievement of all these aspects.

In the conclusion part of my speech, I would like to share one statement from Rumi, the philosopher: “Every one of us has single wings only; we can fly altogether if we embrace each other.” So, in this challenging path I would like to thank national, international Chief Justices, Justices, members of high courts, moderators and all jurists and legal professionals for voicing our experience and knowledge. Thank you once again.

[Presenter] I would like to thank the first President of the Court of Cassation, Mr. Ismail Rustu Cirit for his closing remarks. But we are going to keep him on the stage for a while because distinguished guests, Chief Justices will be invited in alphabetic order to the stage and as underlined by the First President for sharing their valuable experience, we are going to give a token of appreciation to Chief Justices, then we’re going to take our family photo. I’m going to read the names in alphabetic order, I will invite them one by one to the stage.

From Afghanistan: Chief Justice of the Supreme Court, Said YOUSUF HALEM

From the United States of America: Vice President of the National Center for State Courts, Jeffrey APPERSON and Member Judge of the United States Judicial Conference Committee on International Judicial Relation, Richard G. STEARNS

From Australia: Former Justice of the Supreme Court of New South Wales, John DOWD

From Austria: Head of the 8th Civil Chamber of the Supreme Court, Gerhard KURAS

From Azerbaijan: President of the Supreme Court, Ramiz RZAYEV

From Bangladesh: Chief Justice, Syed Mahmud HOSSAIN

From Belgium: Attorney General of the Supreme Court, Ria MORTIER

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

From Morocco: President of the Chamber of Commerce, Court of Cassation, Essaid SAADAoui

I would like to invite the President of the Council of State to the stage in order to hand the token of appreciation to the Justices of high courts. Ms. Zerrin Gungor.

From Georgia: Deputy Chairperson of the Supreme Court, Vasil ROINISHVILI

From India: Justice of the Supreme Court, Arun MISHRA

From Ireland: Justice of the Supreme Court, Peter CHARLETON

From Canada: Founding President of the Commonwealth Judicial Education Institute, Sandra OXNER

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

From Kazakhstan: Judge of the Supreme Court, Madiyar BALKEN

From Kenya: Justice of the Supreme Court, Enock Chacha MWITA

From Kyrgyzstan: Chairman of the Issyk-Kul Regional Court, Melis TAGAEV

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

From Lebanon: First President of the Court of Cassation, Jean Daoud FAHED

And Mongolia: Justice of the Supreme Court, Atartsetseg LKHUNDEV

The Chief Public Prosecutor of the Court of Cassation Mr. Mehmet Akarca is kindly invited to the stage to hand in the next series of token of appreciation.

From Myanmar: Judge of the High Court, Magwe Region, Myint THEIN

From Nepal: Justice of the Supreme Court, Anil Kumar SINHA

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

From Uzbekistan: Vice President of Administrative Affairs, Supreme Court, Mumin Karimovich ASTANOV

From Sri Lanka: Justice of the Supreme Court, Shiranee Hesta TILAKAWARDANE

From Sudan: Chief Justice of the Supreme Court, Haider Ahmad DAFFALLA

From Tajikistan: Judge of the Constitutional Court, Gulzor Muhabbat MAMADKARIM

From Thailand: Vice- President of the Supreme Court, Slaikate WATTANAPAN

From Venezuela: President of the Supreme Court of Justice, Maikel Jose MORENO PEREZ

From the Council of Europe: Head of the Justice Sector Reform Unit, Sophio GELASHVILI and Head of the Council of Europe Programme Office in Ankara, Michael INGLEDOW

From the United Nations Development Programme: Programme Analyst, Governance and Peace Building Team, Bangkok Regional Hub, Liviana ZORZI

Finally, From the United Nations Judicial Integrity Group: Nihal Jayawickrama. Could you come on stage please?

Distinguished participants,

International Summit of High Courts which was organized by the Turkish Court of Cassation in collaboration of United Nations Development Programme. All the activities under the summit have been finalized. To deliver the closing remarks, the first President was already invited and after the closing remarks, we mark the end of the Summit. All the Chief Justices are kindly invited to the stage for the family photo.



## COUNTRY PRESENTATIONS:

**(High Courts' Papers on Country Specific Experiences and Lessons Learned Concerning the Issues Addressed the Istanbul Declaration and Implementation Measures)**

- **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
- **Sudan** - Haidar Ahmad DAFFALLA, Chief Justice, Supreme Court
- **Turkey** - Dr. Mustafa SALDIRIM, Deputy Secretary General, Court of Cassation
- **United States of America** - Richard STEARNS, Member Judge, United States Judicial Conference Committee on International Judicial Relations
- **Venezuela** - Maikel Jose MORENO PEREZ, President, Supreme Court of Justice
- **United Nations Development Programme (UNDP)** - Liviana ZORZI, Programme Analyst, Governance and Peace Building Team, Bangkok Regional Hub





# **AUSTRIA**

Gerhard KURAS,  
Head of the 8th Civil Chamber, Supreme Court

**Gerhard Kuras**  
**Judge**  
**Supreme Court of Austria**  
**1016 Vienna, Schmerlingplatz 11**

**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 regards 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.

## **IN RE: 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 debaring 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 (*Bijoyananda 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:

Availability of information

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.

## **IN RE: 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.

## **IN RE: 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.

### **IN RE: 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.

## IN RE: 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.

## IN RE: 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.”

## **IN RE: 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”,<sup>1</sup> 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:

Transparency in the administration of justice is part of the democratic system. Citizens are entitled to scrutinise and, it follows, comment on or respectfully

---

<sup>1</sup> Susan Denham, “The Diamond in a Democracy: An Independent, Accountable Judiciary” (2001) 5 The Judicial Review 31

criticise the decisions of the judicial branch of government. They also have a basic entitlement to know that judges are behaving properly.<sup>2</sup>

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.<sup>3</sup> 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.”<sup>4</sup> 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 judiciary in such jurisdictions significantly more powerful and influential than their civil law counterparts. With a supreme court, as in the United States of

---

<sup>2</sup> *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [21].

<sup>3</sup> Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 55.

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

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.<sup>5</sup>

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.”<sup>5</sup> 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 seen in the Court of Appeal decision of *Bederev v Ireland*,<sup>6</sup> later reversed by the Supreme Court,<sup>7</sup> where the legislation declaring a number of substances illegal was struck down

---

<sup>5</sup> *Curtin v Clerk of Dáil Éireann* [2006] IESC 14, at [94].

<sup>6</sup> *Bederev v Ireland* [2015] IECA 38.

<sup>7</sup> *Bederev v Ireland* [2016] IESC 34.

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.<sup>8</sup>

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.<sup>9</sup>

Of course it can be hard to see judges as independent if all are 'party people',

---

<sup>8</sup> Susan Denham, "The Diamond in a Democracy: An Independent, Accountable Judiciary" (2001) 5 *The Judicial Review* 31, at 58.

<sup>9</sup> Donal O'Donnell, "Some Reflections on the Independence of the Judiciary" (2016) 19 *Trinity College Law Review* 5, at 14.

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.”<sup>10</sup> 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.<sup>11</sup>

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.

---

<sup>10</sup> *The State (Walshe) v Murphy* [1981] IR 275.

<sup>11</sup> 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”,<sup>12</sup> 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*.<sup>13</sup> 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 Article 35.4.1, it was necessary to consider its

<sup>12</sup> Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4<sup>th</sup> edn, Tottel Publishing), at 1008.

<sup>13</sup> *Curtin v Clerk of Dáil Éireann* [2006] IESC 14.

constitutional context.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

Ultimately, the situation was ended when Judge Curtin voluntarily resigned on a pension.<sup>18</sup> 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.<sup>17</sup>

---

<sup>14</sup> *Curtin v Clerk of Dáil Éireann* [2006] IESC 14, at [80].

<sup>15</sup> Oran Doyle, *Constitutional Law: Text Cases and Materials* (2008, Clarus Press) at 379.

<sup>16</sup> Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 58. <sup>18</sup> See Laura Cahillane, “Judicial Discipline: Where Do We Stand? A Consideration of the Curtin Case” (2009) 27 *Irish Law Times* 26.

<sup>17</sup> 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.”<sup>18</sup> 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.<sup>21</sup> 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.<sup>19</sup> 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.<sup>23</sup> 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.<sup>20</sup> Complaints would be made to registrars within three months of the alleged misconduct, who then will determine whether the complaint is admissible or not.<sup>21</sup> The judicial

<sup>18</sup> Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 68. <sup>21</sup>“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).

<sup>19</sup> Laura Cahillane, “Ireland’s System for Disciplining and Removing Judges” (2015) 38(1) *Irish Juris* (ns) 55, at 56. <sup>23</sup> 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).

<sup>20</sup> Judicial Council Bill (Bill 70 of 2017), ss 30-36.

<sup>21</sup> Judicial Council Bill (Bill 70 of 2017), ss 37-40. <sup>26</sup> Judicial Council Bill (Bill 70 of 2017), ss 51-67.

conduct committee would then investigate the matter and propose an appropriate course of action.<sup>26</sup> 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.<sup>22</sup>

## 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”<sup>23</sup> and it envisages the creation of a judicial studies committee to achieve this end.<sup>24</sup> 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.<sup>25</sup> The Irish Law Reform Commission has recommended the introduction of sentencing guidelines in Ireland,<sup>26</sup> and many have called for the introduction of a sentencing council.<sup>27</sup> The guidelines

---

<sup>22</sup> 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).

<sup>23</sup> Judicial Council Bill (Bill 70 of 2017), s7.

<sup>24</sup> Judicial Council Bill (Bill 70 of 2017), s 17.

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

<sup>26</sup> Law Reform Commission, *Report on Mandatory Sentencing* (LRC 108-2013), at 67.

<sup>27</sup> See, for example, Paul Hughes, “A Proposed Sentencing Council for Ireland” (2015) 25(3) *Irish Criminal Law Journal* 65.

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 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.”<sup>28</sup> 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°. <sup>29</sup> One notable way in which the Irish courts have recently

---

<sup>28</sup> 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).

<sup>29</sup> Ailbhe O’Neill, “Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,” presented at the Irish Supreme Court Review Conference on the 6<sup>th</sup> of October 2018.

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.<sup>30</sup>

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 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.<sup>36</sup>

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.<sup>31</sup>

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.<sup>32</sup>

Recently, the Supreme Court has handed down *Gilchrist and Rogers v*

---

<sup>30</sup> 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). <sup>36</sup>*Re R Ltd* [1989] IR 126, at [134].

<sup>31</sup> *Irish Times Ltd v Ireland* [1998] 1 IR 359, at [382].

<sup>32</sup> *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [17].

*Sunday Newspapers*,<sup>33</sup> 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 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.<sup>34</sup>

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."<sup>35</sup> This decision has been interpreted in two further decisions. In *Medical Council v TM*,<sup>36</sup> 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,"<sup>37</sup> citing *Gilchrist* and other cases.

<sup>33</sup> *Gilchrist and Rogers v Sunday Newspapers* [2017] IESC 18.

<sup>34</sup> *Gilchrist and Rogers v Sunday Newspapers* [2017] IESC 18, at [44].

<sup>35</sup> Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6<sup>th</sup> of October 2018, at 11.

<sup>36</sup> *Medical Council v TM* [2017] IEHC 548.

<sup>37</sup> *Hampshire County Council v CE and NE* [2018] IECA 154.

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*.<sup>38</sup> 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, unconstitutional<sup>39</sup> interference with the constitutional requirement that justice be administered in public.”

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.<sup>40</sup> 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.”<sup>41</sup>

There have been other circumstances in which legislation has identified

---

<sup>38</sup> See Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4<sup>th</sup> edn, Tottel Publishing), at 741-2.

<sup>39</sup> Hogan & Whyte, *JM Kelly: The Irish Constitution* (2003, 4<sup>th</sup> edn, Tottel Publishing), at 744.

<sup>40</sup> 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.

<sup>41</sup> *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [26].

a need for proceedings to be held *in camera*. These include the protection of business secrets and confidential information<sup>42</sup> and proceedings involving professional discipline.<sup>43</sup> 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 1<sup>st</sup> of July 2018 onwards, will replace the names of natural persons with initials, and any elements likely to identify the individuals involved are to be removed from judgments.<sup>44 45</sup> 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*<sup>46</sup>, 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

<sup>42</sup> See, for example, s 212(9) of the Companies Act 2014; s 134 of the Bankruptcy Act 1988

<sup>43</sup> 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.

<sup>44</sup> <<<https://uk.practicallaw.thomsonreuters.com/w-015>

<sup>45</sup> ?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1>> (accessed 4 October 2018).

<sup>46</sup> *The Claimain v Board of Saint James’ Hospital* (10 May 1989, unreported), HC, Hamilton P.

that justice be administered in public.<sup>47</sup> A similar approach can be seen in *Roe v Blood Transfusion Service Board*,<sup>48</sup> 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.<sup>49</sup> 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)*<sup>50</sup>, 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."<sup>51</sup>

Recently, the Supreme Court has softened its position through the case of *Gilchrist and Rogers v Sunday Newspapers Ltd*.<sup>52</sup> 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 not be identified."<sup>53</sup> 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."<sup>54</sup>

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,

---

<sup>47</sup> Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6<sup>th</sup> of October 2018, at 3.

<sup>48</sup> *Roe v Blood Transfusion Service Board* [1996] 3 IR 67.

<sup>49</sup> Ailbhe O'Neill, 'Open Justice Revisited – *Gilchrist and Rogers v Sunday Newspapers Ltd*,' presented at the Irish Supreme Court Review Conference on the 6<sup>th</sup> of October 2018, at 3.

<sup>50</sup> *Re Ansbacher (Cayman) Ltd* [2002] 2 IR 517.

<sup>51</sup> *Re Ansbacher (Cayman) Ltd* [2002] 2 IR 517.

<sup>52</sup> *Gilchrist and Rogers v Sunday Newspapers Ltd*. [2017] IESC 18

<sup>53</sup> *Gilchrist and Rogers v Sunday Newspapers Ltd*. [2017] IESC 18, at [37].

<sup>54</sup> *Gilchrist and Rogers v Sunday Newspapers Ltd*. [2017] IESC 18, at [39].

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.”<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup> This is in contrast to the previous position, whereby only interested parties were entitled to access all documents. On these new guidelines, the Chief

<sup>55</sup> *Irish Times Ltd v Murphy* [1998] 1 IR 359, at 409.

<sup>56</sup> *MARA (Nigeria) v Minister for Justice* [2014] IESC 71, at [29].

<sup>57</sup> 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).

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.<sup>58</sup>

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.”<sup>59</sup> 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.<sup>60</sup> 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.<sup>66</sup> 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 as more thorough examination

---

<sup>58</sup> 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).

<sup>59</sup> *D v DPP* [1994] 2 IR 465 (Denham J).

<sup>60</sup> “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). <sup>66</sup> Peter Charleton, “Case Management: Fairness for the Litigant, Justice for the Parties”, Speech delivered to the Munster Bar in Cork City, March 2015.

of witnesses.<sup>61</sup> 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.'<sup>62</sup> 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 Superiors Courts to improve efficiency in litigation, which will make Ireland a much more attractive destination in which to do business.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> 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:

---

<sup>61</sup> Peter Charleton and Saoirse Molloy, "Case Management: Fairness for Litigants, Justice for the Parties" (2015) 20(3) *The Bar Review* 59, at 60.

<sup>62</sup> *Talbot v Hermitage Golf Club* [2014] IESC 57, at [47].

<sup>63</sup> Peter Charleton and Saoirse Molloy, "Case Management: Fairness for Litigants, Justice for the Parties" (2015) 20(3) *The Bar Review* 59.

<sup>64</sup> 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)

<sup>65</sup> See <<[https://www.mccannfitzgerald.com/uploads/7104-Litigation\\_Update\\_\\_New\\_Rules\\_to\\_Improve\\_Litigation\\_and\\_Cut\\_Delay\\_1.pdf](https://www.mccannfitzgerald.com/uploads/7104-Litigation_Update__New_Rules_to_Improve_Litigation_and_Cut_Delay_1.pdf)>> (accessed 4 October 2018)

<sup>72</sup> *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.<sup>72</sup>

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.<sup>66</sup> 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.<sup>67</sup>

## **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 has been identified as “one of the fundamental aspects of the rule of law” by the European Court of

---

<sup>66</sup> See <<[https://www.mccannfitzgerald.com/uploads/7104-Litigation\\_Update\\_New\\_Rules\\_to\\_Improve\\_Litigation\\_and\\_Cut\\_Delay\\_1.pdf](https://www.mccannfitzgerald.com/uploads/7104-Litigation_Update_New_Rules_to_Improve_Litigation_and_Cut_Delay_1.pdf)>> (accessed 4 October 2018)

<sup>67</sup> Peter Charleton, “Case Management: Fairness for the Litigant, Justice for the Parties,” Speech delivered to the Munster Bar in Cork City, March 2015.

Human Rights.<sup>68</sup> 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.<sup>69</sup>

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.<sup>70</sup>

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.”<sup>71</sup> In *M v Minister for Justice*, the Supreme Court explained how the Irish legal system balances certainty and flexibility of the law:

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

---

<sup>68</sup> European Court of Human Rights, case of *Zasurtsev v. Russia*, no. 67051/01, 27 April 2006, paragraph 48.

<sup>69</sup> <<[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.

<sup>70</sup> Takis Tridimas, *Principles of EC Law* (1999, Oxford University Press), 163.

<sup>71</sup> *Blehein v Minister for Health* [2018] IESC 40, at [12].

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.<sup>72</sup>

## 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*,<sup>73</sup> 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.”<sup>81</sup> 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.”<sup>74</sup> 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 29<sup>th</sup> 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.

---

<sup>72</sup> *M v Minister for Justice* [2018] IESC 14, at [10.25].

<sup>73</sup> *O’Byrne v Minister for Finance* [1959] IR 1 <sup>81</sup>*O’Byrne v Minister for Finance* [1959] IR 1, at [38].

<sup>74</sup> *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.'<sup>75</sup> 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."<sup>76</sup>

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!

---

<sup>75</sup> 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.

<sup>76</sup> 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**

Contents

- I. Current Judicial System in Myanmar
- II. Judicial Strategic Plan (2018-2022)
- III. Facilitate and Expand Public Access to Court Services
- IV. Promote Public Awareness
- V. Access and assistance to the media
- VI. Promote and Ensure the Integrity of Judiciary and Promote Efficient Case Management
- VII. Conclusion

**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](http://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](http://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.<sup>77</sup> In this context, we have

---

<sup>77</sup> 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).

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.

## **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 not 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.

# **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 4<sup>th</sup> 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 “eşfâf”. “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.

**Prof. Haidar Ahmed Dafallah**

President of Sudan Judiciary

President of the National Supreme Court and  
Chief Justice of the National Commission for  
Judicial Services



# **TURKEY**

**Dr. Mustafa SALDIRIM,  
Deputy Secretary General, Court of Cassation**

**REPUBLIC OF TURKEY  
COURT OF CASSATION**

**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**

**Dr. Mustafa SALDIRIM**

*Deputy Secretary General of the Court of Cassation*

## **CONTENTS**

### **INTRODUCTION.**

#### **A) SEPARATION OF POWERS**

- 1) Appointments of Judges
- 2) Interference in, Pressures on and Threats against the Judiciary
- 3) Maintaining the Authority of Judicial Proceedings: Comments from the Executive on Pending Procedures
- 4) Security of Tenure of Judges
- 5) Guarantees on Disciplinary Proceedings Brought against Judges Following Public Expression of Views

#### **B) RESPONSIBILITY AND ACCOUNTABILITY OF JUDGES**

- 1) General.
- 2) Judge's Relations with Media
- 3) Protecting Judge's Privacy
- 4) Judges' Personal Religious or Political Views Affecting Their Judicial Role

#### **C) INSTITUTIONAL COMMUNICATION STRATEGY OF THE JUDICIARY**

- 1) General
- 2) Relations of Judiciary and Media

### **CONCLUSION**

## INTRODUCTION

A well-functioning judiciary is the prerequisite to implement laws in their true sense. 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 problem. 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 issues. In recent years particularly, populist policies that are even observed in advanced democracies not only threaten democracy and human rights, but also adversely impact the fundamental principles of the rule of law.<sup>78</sup> Against such exemplified risks, what measures are necessary to take in order to exercise the judicial power for its proper purpose? This issue, no doubt, involves various dimensions on account of its structural difficulty and complexity.

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 not detracts from the importance of others. This paper will examine the functioning of the legal system and exercise of judicial power in the context of main themes of ethics and transparency.

The review in terms of transparency will be based on İstanbul Declaration on Transparency in the Judicial Process<sup>79</sup> developed by the Court of Cassation in cooperation with the United Nations Development Programme (UNDP) Turkey Office and adopted by 20 high courts across the world. Account should further be

---

<sup>78</sup> World Forum For Democracy, *Is Populism a Problem*, Programme, Strasbourg, November 2017 (*Is Populism a Problem*), pg.16.

<sup>79</sup> <https://www.yargitay.gov.tr/sayfa/etik-seffaflik/documents/IstanbulDeclarationBooklet.pdf>

taken of İstanbul Declaration Implementation Measures<sup>80</sup> formulated by valuable contributions and support from highly competent and experienced experts representing the five continents and a wide range of legal system. Addressing the matter in the framework of İstanbul Declaration as the first- ever international text on transparency in the judicial process will allow a review of the issues in the European (Regional) Human Rights System through a global perspective and proposing different solutions.

While reviewing in respect of ethics, the Court of Cassation Code of Judicial Conduct will serve as the basis. Formulated in 2017 in the context of the “Court of Cassation Ethics, Transparency and Trust Project” implemented by the Court of Cassation and UNDP Turkey Office, the most important characteristic of the Court of Cassation Code of Judicial Conduct is that it is a product of broad democratic participation and transparent process. Another characteristic is that as a text, it meets the UNODC evaluation criteria. Formulated in a collective philosophy of ethics, the codes are built as three books, namely “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”.<sup>81</sup> Laying down detailed provisions, the Court of Cassation Code of Judicial Conduct provides guidelines on how to act individually or collectively against the risks encountered during the exercise of judicial power. The Court of Cassation Code of Judicial Conduct is therefore a guide that proposes modern and effective solutions not only to judges, but also to public prosecutors and judicial staff. Further, the Code is, by design, scope and content, not restricted to the exercise of judicial power, but includes codes of conduct on the general functioning of the judicial system.

The present paper consists of an introduction and three sections taking into account the background papers for the ECtHR opening seminar of judicial year. The first section addresses the separation of powers; the second section dwells on the accountability of courts and judges; and the third and final section treats the institutional communication strategy for the judiciary.

## **A) SEPARATION OF POWERS**

A most important safeguard for human rights, democracy and rule of law is the principle of “separation of powers.” This political and legal fact was

---

<sup>80</sup> <https://www.yargitay.gov.tr/sayfa/etik-seffaflik/documents/NJISTANBULDECLARATION.pdf>

<sup>81</sup> <https://www.yargitay.gov.tr/sayfa/code-of-conducts/1139>

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.”

The principle of separation of powers in essence protects the independence of the judiciary against any interference by the legislative and executive. “Judicial independence” is a fundamental principle in all modern constitutions<sup>82</sup> as well as the top of the list in all codes of conduct, national and international.<sup>83</sup> 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 judiciary.<sup>84</sup> 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 day.<sup>85</sup>

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 and lawyers and the public to better understand the judiciary and provide support to the judiciary.”

---

<sup>82</sup> “Are the basic principles of judicial independence, including objective procedures and criteria for judicial appointments, tenure and discipline and removals, enshrined in the Constitution or ordinary legislation?”, See The Rule of Law Checklist, Venice Commission of the Council of Europe, Strasbourg 2016 (The Rule of Law Checklist), pg.33.

<sup>83</sup> See Bangalore Principles of Judicial Conduct, Value 1; European Court of Human Rights Code of Judicial Conduct Article 1, Court of Cassation Code of Judicial Conduct Article 1.

<sup>84</sup> Commentary on the Bangalore Principles of Judicial Conduct, UNODC Publication, Vienna Austria (Commentary), p.33.; Basic Principles on the Independence of the Judiciary, Article 1.

<sup>85</sup> Commentary pg.40.

## 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 dignity.<sup>86</sup> ECtHR treats the matter in the context of right to fair trial in Article 6 of ECHR.<sup>87</sup> 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 independence.<sup>88</sup>

Article 13 of Istanbul 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

---

<sup>86</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, Article 40.

<sup>87</sup> ECtHR decided that the tenure of judges could not be left to the discretion of the executive. (See ECtHR, In *Gurov v. Moldova*, no. 36455/02, §§ 34-38, 11 July 2006).

<sup>88</sup> Commentary pg.41.

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 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. 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 impartial.<sup>89</sup>

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 trial.<sup>90</sup>

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 trial.<sup>91</sup> 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 there from.” 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 in any matter before

---

<sup>89</sup> The Rule of Law Checklist, pg.35, p.71. (See in particular ECtHR *Campbell and Fell v. the United Kingdom*, 28 June 2014, 7819/77 and 7878/77, § 78).

<sup>90</sup> *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002 VII; *Kinsky v. the Czech Republic*, no. 42856/06, 9 February 2012.

<sup>91</sup> *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, 21 January 2016,

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 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.

### **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.<sup>92</sup>

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 started.<sup>93</sup> 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 of protection against defamation” (Article 4.2).

---

<sup>92</sup> CM/REC (2010)12, Article 18.

<sup>93</sup> ECtHR, *Toni Kostadinov v. Bulgaria*, no. 37124/10, 27 January 2015.

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.

#### **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 exists.<sup>94</sup> Limited or renewable terms in office may make judges dependent on the authority which appointed them or has the power to re-appoint them.<sup>95</sup>

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 true.<sup>96</sup>

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 guarantee.<sup>97</sup> 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 exists.<sup>98</sup>

#### **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

---

<sup>94</sup> CM/REC (2010)12, Article 49.

<sup>95</sup> The Rule of Law Checklist, pg.35, p.76.

<sup>96</sup> *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016.

<sup>97</sup> *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016.; Kudeshkina/Rusya.

<sup>98</sup> Commentary pg.34.

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.

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).<sup>99</sup> 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 effect.<sup>100</sup>

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.

---

<sup>99</sup> *Wille v. Liechtenstein* [GC], no. 28396/95, § 70, ECHR 1999-VII.

<sup>100</sup> *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 involvement.<sup>101</sup> 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 court.<sup>102</sup> However, a judge may speak out about the operation of the justice(court), effectiveness and the independence of the justice<sup>103</sup> and criticise the law.<sup>104</sup>

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 training.<sup>105</sup> 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:

---

<sup>101</sup> Commentary, pg.95, p.134.

<sup>102</sup> Commentary, pg.95, p.136.

<sup>103</sup> Commentary, pg.96, p.138.

<sup>104</sup> Commentary, pg.96, p.139.

<sup>105</sup> Consultative Council of European Judges (CCJE 2010)3, Magna Carta of Judges (Fundamental Principles), Article 18.

“4.6 A judge shall avoid taking part publicly in controversial discussions of a partisan political nature.

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

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, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

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

## **B) RESPONSIBILITY AND ACCOUNTABILITY OF JUDGES**

### **1) General**

Ensuring the independence<sup>106</sup> 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 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.<sup>107</sup> However, where a judge conducts judicial work arbitrarily or irresponsibly, s/he should be held accountable for his/her misconduct. Otherwise, the legal

<sup>106</sup> 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], İstanbul 1996, p.28 et seq.; Fendoğlu, H.T.: *Yargının Bağımsızlığı ve Tarafsızlığı* [Independence and Impartiality of the Judiciary], Ankara 2010, pg.161 et seq.

<sup>107</sup> 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.

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 justice.<sup>108</sup> 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 other.<sup>109</sup>

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) Judge's Relations with 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 justice.<sup>110</sup>

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:

---

<sup>108</sup> 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.

<sup>109</sup> Aydınalp, S.: Hâkimlerin Hukuki Sorumluluğu [Civil Liability of Judges], Ankara 1997, pg.98.

<sup>110</sup> *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.

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

A judge shall generally avoid the use of the criminal law and contempt proceedings to restrict legitimate public criticism of judicial performance unless necessary.<sup>111</sup>

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 case.<sup>112</sup> 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 expression.<sup>113</sup> 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 expression.<sup>114</sup>

### 3) Protecting Judge's Privacy

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:

Since the complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial. As knowledge of the community is essential to the sound administration of justice, a judge may, subject to the proper performance of judicial duties:

---

<sup>111</sup> ECtHR made various decisions on this matter. See *De Haes and Gijssels v. Belgium*; *Obukhova v. Russia*, no. 34736/03, 8 January 2009.

<sup>112</sup> *Peruzzi v. Italy*, no. 39294/09, 30 June 2015.

<sup>113</sup> *Wingerter v. Germany* (dec.), 43718/98, 21/03/2002.

<sup>114</sup> *Radobuljac v. Croatia*, no. 51000/11, 28 June 2016.

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

Meet with public bodies, private organizations on matters relating to the law.

Serve as a member of an official body, commission, committee or other body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge.

Engage in civic activities, if 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, 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 defamation.<sup>115</sup> Further, the Code includes special rules in Articles 2.4 and 2.5:

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.

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.

#### **4) Judges' Personal Religious or Political Views Affecting Their Judicial Role**

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

---

<sup>115</sup> *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 judiciary.<sup>116</sup>

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:

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.

A judge shall avoid taking part publicly in controversial discussions of a partisan political nature.

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 colour, 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."

## **C) INSTITUTIONAL COMMUNICATION STRATEGY OF THE JUDICIARY**

### **1) General**

For the rule of law to survive, people should be educated and their awareness raised on this matter. As Konrad Adenauer said, "democracies need democrats."<sup>117</sup> The rule of law can only be fully exercised in a society with a high awareness of law and justice. Therefore, where the public education is held as a priority, and supported by the judiciary which is also actively involved in social

---

<sup>116</sup> Pitkevich v Russia (dec.), no. 47936/99, 8 February 2001.

<sup>117</sup> Is Populism a Problem, pg.46.

life to that end, the potential risks against judicial independence and rule of law will be alleviated.

İstanbul 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.

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, the judiciary should establish regular programs of student engagement that include organized student visits to courts, classroom appearances by judges, civics education, and the active teaching of judicial procedures in conjunction with the legal profession and tertiary educational institutions.”

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 provision.

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- Appear on radio and television programmes 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 education.<sup>118</sup>

#### **4) 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 the 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 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.

---

<sup>118</sup> Commentary, pg.105, p.156,157.

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 İstanbul Declaration Implementation Measures states that “Since the media has the responsibility of gathering and conveying information, and reporting and commenting, 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.”

## 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, the General Coordinator of the United Nations Group on Integrity in the Judiciary which drafted the Bangalore Principles of Judicial Conduct wisely summarises the matter as follows:

“...The second is to say 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 12 th 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.**”<sup>119</sup>

---

<sup>119</sup> 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.

# **UNITED STATES OF AMERICA**

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

**The Honorable Richard G. Stearns**  
**United States District Judge, Massachusetts**  
**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.



# **VENEZUELA**

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



REPÚBLICA BOLIVARIANA DE VENEZUELA  
TRIBUNAL SUPREMO DE JUSTICIA

## GOOD PRACTICES IN THE VENEZUELAN JUDICIAL SYSTEM TO GUARANTEE JUDICIAL TRANSPARENCY

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

\*\*\*\*\*



REPÚBLICA BOLIVARIANA DE VENEZUELA  
TRIBUNAL SUPREMO DE JUSTICIA

### 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.



REPÚBLICA BOLIVARIANA DE VENEZUELA  
TRIBUNAL SUPREMO DE JUSTICIA

## JUDICIAL TRANSPARENCY

### 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.



REPÚBLICA BOLIVARIANA DE VENEZUELA  
TRIBUNAL SUPREMO DE JUSTICIA

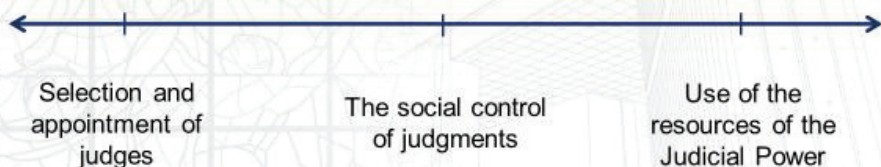
## JUDICIAL TRANSPARENCY

### 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.



# **United Nations Development Programme (UNDP)**

Liviana ZORZI,  
Programme Analyst, Governance and Peace  
Building Team, Bangkok Regional Hub

***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:

Liviana Zorzi, Programme Analyst, Transparency & Accountability, UNDP Bangkok Regional Hub [liviana.zorzi@undp.org](mailto:liviana.zorzi@undp.org)





*Empowered lives.  
Resilient nations.*

# JUDICIAL INTEGRITY SELF-ASSESSMENT CHECKLIST

DRAFT

United Nations Development Programme

## JUDICIAL INTEGRITY CHAMPIONS IN APEC



## WITH THE SUPPORT OF



Information from this publication may be freely reproduced but not sold or used for commercial purposes. At all times, the United Nations Development Programme (UNDP) must be acknowledged as the source when content is extracted from this publication.

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in more than 170 countries and territories, UNDP offers global perspective and local insight to help empower lives and build resilient nations.

The views expressed in this publication are those of the author(s) and do not necessarily represent those of the United Nations, including UNDP, or the UN Member States.

### **For more information:**

**[liviana.zorzi@undp.org](mailto:liviana.zorzi@undp.org), [elodie.beth@undp.org](mailto:elodie.beth@undp.org)**

Copyright © UNDP 2018 All rights reserved

Cover photo credit: Freepik

**DRAFT**



# Acknowledgements

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.

Special thanks go to the members of the Advisory Committee of the Project "Judicial Integrity Champions in APEC", who provided useful and insightful comments in the development of the Checklist: Hon. Justice Michael Kirby, Hon. Judge Murray Kellam, Dr. Nihal Jayawickrama, Prof. Victor Alistar and Dr. Sofie Arjon Schuette. The development of the Checklist benefited from the technical inputs of Ajit Joy who was instrumental in conducting the consultations with the Advisory Committee.

This Checklist was made possible thanks to the support from the United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL).



# Contents

Acknowledgement	iii
Introduction	1
International Framework for Court Excellence	1
Integrity Checklist	1
Undertaking a self-assessment based on the Integrated Framework and the Integrity Checklist	2
Integrity Checklist self-assessment methodology	3
Checklist items and references	3
Implementing improvements	4
Annexes	10
Annex 1: List of the main international standards and guidelines on judicial integrity	10
Annex 2: Additional references by topic	11

## List of Tables

Table 1: Integrity Checklist	5
Table 2: Scoring guide	8
Table 3: Weighted scoring table	8
Table 4: Sample of a completed weighted scoring table	9



# 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 Excellence<sup>1</sup>

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 Checklist<sup>2</sup>

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.

<sup>1</sup> *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>

<sup>2</sup> 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 Conduct*<sup>3</sup> 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*,<sup>4</sup> have formed the foundation of many of the checklist items.

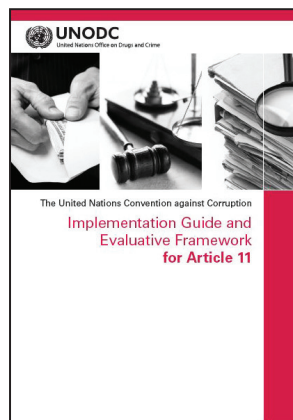
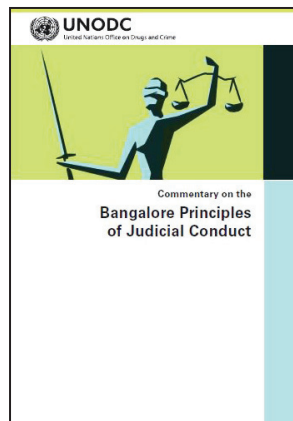
The right of citizens to a fair trial is reflected in Article 10 of the Universal Declaration of Human Rights and in more detail in Article 14 of the International Covenant on Civil and Political Rights. The absence of judicial integrity undermines both this right and the community's respect, trust and 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.

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.



<sup>3</sup> *Strengthening basic principles of judicial conduct*. ECOSOC 2006/23 Annex Bangalore Principles of Judicial Conduct.

<sup>4</sup> *The United Nations Convention Against Corruption Implementation Guide and Evaluative Framework for Article 11*, UNODC, 2015.



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 Framework<sup>5</sup>. 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.

## **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.

---

<sup>5</sup> *Thinking of Implementing the International Framework for Court Excellence*, 2nd Edition, 2012, pp. 2-5.



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					
		0 None	1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
<b>Our System of Government Provides...</b>							
1	Constitutional guarantees of judicial independence. <sup>1</sup>						
2	Transparent process for merit appointment to judicial office and promotion of judges. <sup>2</sup>						
3	Constitutional guarantees of security of tenure of office, remuneration and immunity from suit for judges. <sup>3</sup>						
4	Fair process for removal from office or discipline of judges. <sup>4</sup>						
5	Adequate resources for the court having regard to the financial resources available to government. <sup>5</sup>						
INTERNAL ASPECTS		SCORE					
		0 None	1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
<b>Values</b>							
6	Our judges adhere to a set of values that include the 'Bangalore' values of independence, impartiality, integrity, propriety, equality, competence and diligence. <sup>6</sup>						
7	We observe our Judicial Code of Conduct and enforce it. <sup>7</sup>						

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					
		0 None	1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
<b>Judicial Independence</b>							
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. <sup>8</sup>						
9	Judicial proceedings are open to the public and are conducted impartially, fairly and respectful of the rights of the parties. <sup>9</sup>						
<b>Standards of Judicial Behaviour</b>							
10	We have and comply with a set of Principles of Ethical Conduct and Propriety. <sup>10</sup>						
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. <sup>11</sup>						
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. <sup>12</sup>						
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. <sup>13</sup>						

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					
		0 None	1 Limited	2 Developing	3 Good	4 Very good	5 Excellent
<b>Corruption Prevention</b>							
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. <sup>14</sup>						
15	Our court administration and registry systems and records are designed to minimise the opportunity for corruption. <sup>15</sup>						
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. <sup>16</sup>						
<b>Ethics Training and Support</b>							
17	Judges engage in judicial training that includes ethics and conduct and have access to mentoring or independent guidance on ethical issues. <sup>17</sup>						
<b>Community Confidence</b>							
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. <sup>18</sup>						
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. <sup>19</sup>						
20	Our court regularly surveys court users and the public on perceptions of and experiences with the court and we address any issues. <sup>20</sup>						
<b>TOTAL</b>							

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	RESULTING 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 CHECKLIST 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



*Empowered lives.  
Resilient nations.*

**United Nations Development Programme**

Bangkok Regional Hub  
3rd Floor United Nations Service Building  
Rajdamnern Nok Avenue, Phranakorn  
Bangkok 10200 Thailand