

**Amendment 1.3A to the Mount Scopus
International Standards of Judicial Independence**

**As approved in
Jerusalem JIWP conference 4-6 January 2022**

The rule of universality and particularity

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

(b) A central challenge of drafting international standards of judicial independence is to formulate standards which will reflect the values of universal desired standards. At the same time the standards must take into account the particular circumstances of the domestic jurisdictions and the different legal cultures and traditions in the various countries This challenge is met by careful deliberation.

(c) It was decided¹ that in order to properly analyze compliance with judicial independence in matters of judicial process and judicial terms, we must consider two main approaches, universality and particularity.² Universal Theory, or “universality,” holds that an independent judiciary is necessarily a shared value of all legal systems, essential to the Rule of Law. Universality calls for defining a universal model of judicial independence, reflected in legal rules and other formal institutional arrangements—including judicial appointments process and the rules for terms of appointment, review, retention, and recall of judges.³

¹Elsewhere this issue is examined in detail in: Shimon Shetreet, *The Rule of Universality and Particularity*, in: CHALLENGED JUSTICE: IN PURSUIT OF JUDICIAL INDEPENDENCE, 68-119 (Shimon Shetreet, Hiram E. Chodosh and Eric Helland Eds., Brill 2021).

² Ibid., p. 116.

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

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

(f) Measures taken by government in countries that changed the system of governments⁴ must meet the test of predominantly valid aims to prevent actions with predominant improper aims.

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

⁴ Such as the legislation and court decisions in the new democracies in Europe which changed from communist rule to democratic system of government.