

New-Delhi Standards 1982

New Delhi Code of Minimum Standards of Judicial Independence

The Jerusalem Approved Standards as adopted in the Plenary Session of the 19th IBA Biennial Conference held on Friday, 22nd October 1982, in New Delhi, India.

A. Judges and the Executive

- 1.(a) Individual judges should enjoy personal independence and substantive independence.
 - (b) Personal independence means that the terms and conditions of judicial service are adequately secured, so as to ensure that individual judges are not subject to executive control.
 - (c) Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.
2. The judiciary as a whole should enjoy autonomy and collective independence vis-a-vis the Executive.
3. (a) Participation in judicial appointments and promotions by the Executive or Legislature is not inconsistent with judicial independence, provided that appointments and promotions of judges are vested in a judicial body, in which members of judiciary and the legal profession form a majority.
 - (b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.
4. (a) The Executive may participate in the discipline of judges, only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.
 - (b) The power of removal of a judge should preferably be vested in a judicial tribunal.
 - (c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.
5. The Executive shall not have control over judicial functions.
6. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.
7. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.
8. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.
9. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
10. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

11. (a) Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
(b) In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.
(c) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12. The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.

13. Court services should be adequately financed by the relevant government.

14. Judicial salaries and pensions shall be adequate, and should be regularly adjusted to account for price increases independently of Executive control.

15. (a) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.

(b) Judicial salaries cannot be decreased during the judges' service except as a coherent part of an overall public economic measure.

16. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges, or of the Judiciary as a whole.

17. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.

18. (a) The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute, or frustrates the proper execution of a court -t.

(b)---The Executive shall not have the power to close down, or suspend, the operation of the court system at any level.

B. Judges and the Legislature

19. The Legislature shall not pass legislation which retroactively reverses specific court decisions.

20. (a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation, unless the changes improve the terms of service.

(b) In case of legislation reorganising courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21. A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before ad hoc tribunals.

C. Terms and Nature of Judicial Appointments

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

(b) Retirement age shall not be reduced for existing judges.

23. (a) Judges should not be appointed for probationary periods except for in legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment.

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

24. The number of the members of the highest court should be rigid and should not be subject to change, except by legislation.

25. Part-time judges should be appointed only with proper safeguards.

26. Selection of judges shall be based on merit.

D. Judicial Removal and Discipline

27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.

28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to a final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.

29. (a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

(b) All disciplinary action shall be based upon standards of judicial conduct promulgated by law, or in established rules of court.

30. A judge shall not be subject to removal unless, by reason of a criminal act or through-gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

31. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of member of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E. The Press, the Judiciary and the Courts

33. It should be recognised that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34. Subject to Standard 41, judges may write articles in the press, appear on television and give interviews to the press.

35. The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F. Standards of Conduct

36. Judges may not, during their term of office, serve in Executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.

37. Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

38. Judges shall not hold positions in political parties.

39. A judge, other than a temporary judge, may not practice law during his term of office.
40. A judge should refrain from business activities, except his personal investments, or ownership of property.
41. A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.
42. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.
43. Judges may take collective action to protect, their judicial independence and to uphold their position.

G. Securing Impartiality and Independence

44. A judge shall enjoy immunity from legal actions, and the obligation to testify concerning -matters arising in the exercise of his official functions.
45. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.
46. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H. The Internal Independence of the Judiciary

47. In the., decision-making process, a judge must be independent vis-a-vis his judicial colleagues and superiors.

Note—The above standards are subject to periodic review by the appropriate committee or committees of the International Bar Association and amendment from time to time by the International Bar Association in plenary session as circumstances may warrant or require.

APPENDIX

Text of Jerusalem Approved Standards which were Amended in New Delhi

(Remaining Jerusalem Standards were approved without change.)

3. (a) Judicial appointments and promotions by the Executive are not inconsistent with judicial independence.
- (b) Except for countries where by long historic and democratic tradition judicial appointments operate satisfactorily, judicial participation in the process of judicial appointments and promotions, whether by judicial commission or otherwise, is imperative for the maintenance of judicial independence.
15. (a) The position. of the judges, their independence, and their adequate remuneration shall be secured by law.
20. (b) in case of legislation abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.
28. The procedure for discipline should be in camera; however, judgments in disciplinary proceedings may be published.

44. A judge shall enjoy immunity from legal actions in the exercise of his official functions.

Participants of the Project of Drafting of the New Delhi Code of Minimum Standards of Judicial Independence (1980-1982) and Montreal declaration

Anres Andersson, Judge, Svea Court of Appeal, Sweden; graduate of the Faculty of Law, University of Lund, Sweden; formerly, Judge of the Stockholm City Court.

Geoffrey David Andrew, attorney, Johannesburg, South Africa; University of Capetown; Dip. Juris, University of the Orange Free State.

Celci Agricola Barbi, Professor of Law and practicing lawyer in Brazil; graduate of Federal University of Minas Gerais, Brazil.

Marc-Andre Bedard, Minister of Justice of Quebec, Canada.

Mauro Cappelletti, Professor of Law, Stanford University, California, and Professor of Law, University of Florence, European Institute; studied at the University of Florence and Freiburg im Breisgau; has been visiting Professor at various universities, including Harvard University, University of California at Berkeley and Paris 1; member and officer of numerous academic organizations honorary degrees: Universities of Aix/Marseilles and Gent; author and editor of several books; numerous articles in, legal journals; served as General.

David B. Casson, Dean and Professor, University of Buckingham School of Law, formerly Head Of the Law Section, University of Surrey, Guilford, Surrey, England.

Jules Desehenes, Justice of the Superior Court of the Province of Québec, formerly the Chief Justice: of the same court, 1973-1983; legal studies University of Montréal, M.C.L., F.R.S.C. Held high judicial offices in Québec, including Justice of the Court of Appeal of Quebec, (March 1972 - August 1973); Knight of the Order of Malta; honorary doctoral degree: Concordia university member, United Nations Sub commission on the Prevention of Discrimination, and Protection of: Minorities; General Coordinator, the First World Conference on the Independence of Justice; Chairman, Ad Hoc Committee, the, World Organization on the independence of Justice; author of a number of books, including *Les Plateaux de la Balance - The Sword and the Scales* (1979); *Ainsi Parlent les Tribunaux*

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Conflits Linguistiques au Canada (1981); *Maitres Chez Eux - Masters in Their Own House* (with -Carl Baar, 1981), *Justice et Pouvoir - A Passion for Justice* (1984); numerous publications in legal and lay journals; numerous papers in academic and professional conferences.

Hans W Fasching, Professor of Procedural Law, University of Vienna; a graduate of University of Graz, Doctor of Laws, 1950; Chairman of the Commission of Civil Procedure of the-Federal Ministry of Justice of Austria.

J.M. Ganado, Professor of Law, and attorney, Valetta, Malta;.B.A., Ph.D. (London).

Peter Gilies, University Professor of civil law, procedural -law and comparative law, and: Co-Director of the Institute of Comparative Law, Johann Wolfgang Goethe University, Frankfurt. Studied law and economics, 1958 -1962; doctoral degree, 1965; Professor of civil law and procedural law at Goethe University, Frankfurt, 1972-1975; Professor of civil law and procedural law, University of Hannover, 1975 -1979; since

1979 at Goethe University in Frankfurt.

Walther J. Habscheid, Professor of Law, University of Zurich, Switzerland, Doctor of Laws, University of Bonn; formerly Rector, Dean and Professor of Law University of Wuerzburg, Germany; Professor of Law, University of Geneva, honorary doctoral degree, University of Caen, France; Chairman, VIIth International Congress of Procedural Law, Wuerzburg, 1983 Author of several books and numerous publications in legal journals.

Haakon I. Haraldson, Attorney-at-Law, Oslo, Norway; graduate of the Faculty of Law, University of Oslo; formerly, deputy judge at the County and the City Court of Lillehammer

David K. Hease, Judge, Family Court of Australia, Adelaide, South Australia, Chairman, International Bar Association Committee on the Administration of Justice. 1980. 1984; General Coordinator, IBA Project on Minimum Standards of Judicial Independence, since 1981.

Joseph M. N Kakooza, Advocate, Kampala, Uganda.

Leonard James King, Chief Justice of South Australia since 1978; served in R.A.A.F., 1943-1946, in Australia and New Guinea; Bachelor of Laws, University of Adelaide, 1950; admitted to the bar, 1950; Queen's Counsel, 1967; elected to House of Assembly, 1970 served, as Attorney-General, Minister of Community Welfare; and, later, Minister of Prices and Consumer Affairs; Judge of Supreme Court of South. Australia 1975.

Michael D. Kirby, President, Court of Appeal, New South Wales, Australia; formerly, Chairman, Law Reform Commission of Australia; Justice, Supreme Court of New South Wales; Author of books and articles in legal publications.

K. D. Kerameus, Professor, Athens University Law School since 1982; LL.B., University of Thessaloniki, 1960; Ph.D., Free University of Berlin, 1962; Professor of Civil Procedure at the University of Thessaloniki Law School 1970 - 1982; Dean of the University Of Thessalonica Law School, 1979 - 1980; Visiting professor of law, Free University of Berlin, Hamburg I, Louisiana State University, Baton Rouge, Thrace University in Komotini Greece, Ohio State University Columbus and Tulane University, New Orleans; member of the Special Supreme Court (Constitutional Court) in Athens.

F. Grivart de Kerstrat, member, Faculty of Law and Political Science, University of Aix/Marseilles.

Enoch D. Kom, Solicitor of the Superior Court of Judicature and Notary Public, Accra, Ghana; LL.B. (Land.), Barrister at Law, Gray's Inn.

Nobuo Kumarnuto, Professor of administrative law at Hokkai-Gakuen University since 1974, LL.B., LL.M., LL.D, Hokkaido University and LL.M., University of California at Berkeley; Fulbright Visiting Scholar at the University of Michigan Law School 1968–1970; Visiting Professor, Hebrew University of Jerusalem, 1981 and Tulane Law School, 1982; Author and editor of books and articles.

Irma Anikki Lager (Kepila), Acting Professor of Law, University of Helsinki since 1974; Bachelor of Laws, 1954; Licentiate Examination of Laws, 1958; Assistant Judge, 1959; Juris. Doctor. 1972; referendary in the Supreme Administrative Court, 1959 - 1966

Baron Lane, (Life Peer), of. St. Ippollitts; Geoffrey Dawson Lane; Lord Chief Justice of England since 1980; PC, 1974; Knight, 1966; AFC, 1943. Education: Trinity College, Cambridge, (Hon. Fellow, 1981); served in RAF, .1939 - 1945; called to Bar, Gray's inn, 1946; Bencher, 1966; Queen's Counsel, 1962; Deputy Chairman, Bedford Quarter

Session, 1960 -1966; rector of Bedford, 1963- 1966; Judge of the High Court of Justice, Queen's Bench Division, 1966 - 1974; Lord Justice of Appeal, 1974 - 1979; Lord of Appeal in Ordinary, 1979 - 1980.

Mark MacGuigan, Judge of the' Federal Court, Appeal Division; formerly, Federal Minister of Justice, Canada.

Robert B. McKay, President, Bar Association of New York City; Professor of Law, New York University; B.S., 1940, University of Kansas; J.D., 1947; Yale University; Dean of New York University, School of. Law, 1969-1975; Director of the Institute of Judicial Administration at New York University Law School; Visiting Professor of Law at a number of universities, including University of California at Berkeley, University of Kansas, University of Texas, University of California at Hastings; honorary, degrees: LL.D., 1973, Emory University; D.H.L., 1973, Mount Saint, Mary College; LL.D., 1975, Seton Hall; numerous public and professional positions author of a number of books and numerous articles in legal journals; numerous papers in academic and professional conferences.

M. A. Mutaleb, Advocate, Supreme Court Bar of Bangladesh and Mymensingh District Bar; in practice since 1965; regular contributor to legal journals in his region, past Vice President of the National Bar Association of Bangladesh and past member of the Bangladesh Bar Council; Director of the Asian Legal Research Institute.

Fali S. Nariman, Senior. Advocate, Supreme Court of India, New Delhi; B.A. (Hon.) St. Xavier's College, Bombay; LL.B., Government Law College, Bombay; Vice President, LAW ASIA, the Law Association for Asia and Western Pacific; Chairman, LAW ASIA Human Rights Committee.

James M. Parkison, Court Administrator, State of New Jersey; formerly, associate Director Institute of Judicial Administration at New York University, School of Law; member, Ad Hoc committee of the World Organization on the Independence of Justice; Special Rapporteur on Justice, First World Conference on the Independence of Justice.

Antonio Beltran Pelayo, Government Secretary Granada, Spain; B.A. and Doctorate in Law, Granada University, Spain; author of several legal publications.

Alexandre M. Pessoa .Vaz, Professor of Law, University of Coimbra, Portugal. Lows Edmond Pettiti, Lawyer, Paris, and Judge, European Court of Human Rights, President, Le Mouvement International des Juristes Catholiques .

Alessandro Pizzorusso, Director of the Comparative Law institute, Florence University since 1983; magistrate, 1958 1972; Professor of Constitutional Law, Pisa University, 1972 -1983.

Anand Piakash, Senior Advocate of the High Court and Supreme Court of India since 1973; M.A., LL.B., Delhi University; B.Sc (Econ.) and Ph.D. (Econ.), London School of Economics, London University; Barrister-at-Law, Lincoln's Inn, London.

Simone Razes, President, Cour de. Cassation, France; formerly, Judge, Court of Justice of the European Communities.

Peter Sehlosser, Professor of Law, LMU, Munich, Germany.

I. R. Scott, Barber Professor of Law, Faculty of Law, University of Birmingham; LL. B. (Melb.), Ph.D (London); Chairman, Committee of Management, Institute of Judicial Administration, University of Birmingham, Executive Director, Victoria Law Foundation,

1982 - 1983.

Shimon Shetreet, Faculty of Law, Hebrew University of Jerusalem; LL.B., LL.M., Hebrew University; M.C.L., D.C.L, University of Chicago; Visiting Professor of Law at a number of universities; including New York University, University of Manitoba, Canada, Wuerzburg University (Germany), University of San Diego and New York. Law School; clerk to Mr. Justice Witkon of the Supreme Court of Israel; Member of Chief Justice Landau Commission on the Israeli Court System, 1980; General Rapporteur, International Bar Association Project on Minimum Standards of Judicial Independence, since 1981; Special Rapporteur (on national judges), First World Conference on the Independence of Justice, 1983; General Rapporteur, XIIth Congress of Comparative Law, (on transnational protection of human rights) to be held in 1986; author and editor of a number of books including "Judges on Trial". (1976) and numerous articles: in legal journals; delivered many papers at international conferences and before academic audiences.
Manfred Simon, retired Presiding Judge, Court of Appeal, Paris, LL.D, Bologna, LL.D., Paris.

L. M. Singhvi, senior Advocate Supreme court of India; J.S.D.; Special Rapporteur, United Nations Study on the Independence and Impartiality of Judges, Lawyers, Juror and Assessors.

Sir Ninian. Stephen, Governor-General of the Commonwealth of Australia since, 1982 ; A.K., G.C.M.G., G.C.V.O., K.B.C., KSt.J.; Justice of the High Court of Australia, 1972 - 1982; LL.B.; education: Edinburgh Academy, St. Paul's School Chillon College, Switzerland, Scotch College, Melbourne and Melbourne University; Honorary Master of the Bench of Gray's Inn.; held numerous legal and public positions.

Marcel Storme, Dean Faculty of Law, university of Gent, Belgium; General Secretary, International Association of Procedural Law.

Yasuhei Taniguchi, Professor of Law, Kyoto University; LL.B., Kyoto University; LL.M., University of California at, Berkeley; J.S.D, Cornell University.

Niki Tobi, Reader in Law, Faculty of Law, University of Maiduguri, Nigeria; LL.B., LL.M, University of Lagos, member, Nigerian Bar; formerly, Dean of Faculty of Law, and Deputy Vice Chancellor, University of Maiduguri.

B. J. Van. Heyst, Advocate, Utrecht, The Netherlands; General Secretary, Dutch Association of Procedural Law.

Eurique Vescovi, Professor of Law and attorney, Montevideo, Uruguay, Doctor of Law, Faculty of Law and Social Sciences, University of Montevideo, Uruguay; General Rapporteur, 7th International Congress of Procedural Law, Wuerzburg, 1983, on Judicial Independence.

Manfred Wolf, Professor of Civil Law and Law of Procedure, Johann Wolfgang Goethe University, Frankfurt, since 1972; Judge of the Appellate court, Frankfurt, since 1977; Visiting Professor at the University of Kobe, Japan, 1978.