



in cooperation with



Hebrew University of Jerusalem
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International Association of Judicial Independence and World Peace International Project on
Judicial Independence

International Conférence on

Judicial Independence: Global Challenges and Appropriate Remedies; and Measuring Justice
and the Rule of Law

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Approved Amendments

to the Mount Scopus International Standards of Judicial Independence

and

to The Bologna and Milan Global Code of Judicial Ethics

Amendments to the Mount Scopus International Standards of Judicial Independence:

Add article 1.5 to the Mount Scopus International Standards

1.5 Foundations of Democracy and the Rule of Law

1.5.1 For culture of judicial independent to be maintained and preserved it is essential to safeguard and protect central foundations of democracy and the rule of law.¹

1.5.2 Further to the resolution and recommendations of leading international organizations², it is significant to require national jurisdictions to respect certain fundamental foundations of democracy and rule of law

1.5.3 These essential foundations of democracy and rule of law include the following foundations:

(a) Legality - Supremacy of the law, Compliance with the law, Relationship between international law and domestic law, Law-making powers of the executive, Law-making procedures, Exceptions in emergency situations, Duty to enforce the law, Private actors in charge of public tasks

(b) Legal certainty - Accessibility of legislation, Accessibility of court decisions, Foreseeability of the laws, Stability and consistency of law, Legitimate expectations, Non-retroactivity, Res judicata

(c) Prevention of abuse (misuse) of powers

(d) Equality before the law and non-discrimination - including Equality in law

(e) Independence and impartiality of the justice system - Independence and impartiality, Independence of the judiciary, Independence of the individual judges, Impartiality of the judiciary, prosecution service: autonomy and control, Independence and impartiality of the Bar

(f) Fair trial - Access to courts, Presumption of innocence, aspects of the right to a fair trial, Effectiveness of judicial decisions

(g) Constitutional and administrative judicial review

(h) Substantive rule of law democracy and respect of democratic minority groups

(i) Maintenance and respect of effective opposition in parliament and in the streets

¹ In recent months and years, serious challenges have emerged to the judicial system ,the position of the judiciary and the rule of law in numerous countries. These challenges took place in countries with different systems of government in different parts of the world. We have witnessed these challenges in such countries as Turkey (after the attempted coup), Hungary (with the legislative changes regarding the judiciary), Poland (the crisis regarding the controversial appointments to the top constitutional tribunal), U.S.A (President Trump critical statement on “so called Judge” and the heated division in the U.S Senate on the confirmation of Justice Neil Gorsuch) and Venezuela (attempted restriction of the activities of the opposition). This and other challenges require careful study.

² Venice commission - European commission through law, rule of law checklist, adopted Venice 11-12 march 2016, endorsed by ministers deputies 6-7 September 2016 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

(j) Protection of the freedom of the press and all forms of electronic and digital and social media and limited government control on private and public media institutions

(k) Protection of activities of civil society groups and non-governmental organisations

(l) Maintenance of the principle of civilian supremacy of military and security authorities

(m) Respect the separation of powers

(n) Respect of human rights, including political and civil rights and social and economic human rights.

1.6 Fundamental values of the justice system

1.6.1 The culture of judicial independent require legal and constitutional environment which insure that the justice system will perform its functions independently impartially and efficiently.³

1.6.2 Every national and international jurisdictions shall insure that the justice system will respect and implement the basic values underlying the operation of the court system and administration of justice.

1.6.3 The basic values of the justice system are: **The Independence** of the Judicial Process and the Independence and the impartiality of the judiciary ,⁴ **high quality** of the adjudicative

³ For detailed analysis see: Louis Blom-Cooper, On Fairness, in Shetreet, Editor ,Culture of Judicial Independence , Rule of Law and World Peace ,at 144-153 (2014) ; Shimon Shetreet, Judicial Independence, Liberty, Democracy and International Economy, in Shetreet, Editor Culture of Judicial Independence : Rule of Law and World Peace , 14-47; (2014), Shimon Shetreet, The Administration of Justice: Practical Problems, Value Conflicts and Changing concepts, 13 UBC L. Rev. 52,1979. Shimon Shetreet, Fundamental Values of the Justice System, 23 EBL Rev. 61-76, 64 (2012). TARUFFO, M., "Globalizing Procedural Justice. Some General Remarks", in Revista de Proceso. Year 39, no. 237, pp. 459-472. Soraya Amrani Mekki, Procedural Economy, delivered at Colloquium Trilingue Gent 2015. H.P. Lee, Comparative Judiciaries (Cambridge University Press 2011); J. Bell, Judiciaries Within Europe: A comparative Review (2006); See detailed review on the Judicial independence in L. Neudorf, "The Dynamics of Judicial Independence", chapter 1, 2017; Shetreet,The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, pp.275-332 (2009); S. O'Connor, "The Threat to Judicial Independence" Wall St Journal (1997); P. Russel and D.N. O'Brien, eds. Judicial Independence in the Age of Democracy (2001); A. Siebert-Fohr, ed. Judicial Independence in Transition (2012). H. P. Lee and Marilyn Pittard, Editors ,Asia-Pacific Judiciaries: Independence, Impartiality and Integrity (2018)

⁴ Andrews, Judicial Independence: The British Experience. (in Shimon Shetreet and Christopher Forsyth , Editors, The Culture of Judicial Independence , chapter 24 (2012) . Markus B. Zimmer, Judicial System Institutional Frameworks: An Overview of

process, **efficiency** of the Judicial Process and Judicial Administration⁵, **accessibility** of the courts and judicial services and ensuring **public confidence** in the courts, **accountability** of the judiciary and the **transparency** of the justice system.

1.6.4 The Independence of the Judicial Process and the Independence and the impartiality of the judiciary as detailed in the Standards listed in the Mount Scopus Standards of Judicial Independent.⁶

1.6.5 High quality of the judicative process, includes keeping high judicial ethics and integrity⁷ and insuring the right of appeal,⁸ insuring justice and fairness and correcting errors in the individual case and developing and maintaining sound rules of law of the legal system.

1.6.6 The Efficiency of the Judicial Process and Judicial Administration⁹ including exercising careful oversight and to keep the cost of litigation reasonable, insuring speedy trial, reducing courts delays and backlogs and efficient management of case assignments and caseload management.

1.6.7 The value of **accessibility** of the justice system requires that the system will ensure full accesses to the courts, including economic access, geographical access, procedural access and substantive access.

(a) **Economic** access means providing legal aid to the needy and reduce cost of services and judicial fees.

(b) **Geographical** access means providing judicial services in rural and remote areas and not only in urban centres.

(c) **Procedural** access means that the rules of procedure allow full opportunities for hearing and presenting of evidence and providing small claims courts to adjudicate small cases at modest cost, and allowing class actions in proper jurisdiction.

(d) **Substantive** access means that the law will provide substantive causes of action to remedy wrongs and injuries.

the Interplay between Self-Governance and Independence, UTAH LAW REVIEW, Vol. 1, 2011, pp. 124-125

⁵ Marcel Storme Best Science, Worst Practice ? in ,Dmitry Maleshin, Editor, Civil Procedure In Cross-Cultural Dialogue:Eurasia Context,IAPL World Conference on Civil Procedure, at 17-25 (2012, Moscow, Russia)

⁶ Andrews, Judicial Independence: The British Experience. (Supra note 3). Markus B. Zimmer, Judicial System Institutional Frameworks: An Overview of the Interplay between Self-Governance and Independence, UTAH LAW REVIEW, Vol. 1, 2011, pp. 124-125

⁷ The Bologna and Milan Global Code of Judicial Ethics of JIWP Association Shereet and McCormack Culture of Judicial Independence, Appendix II pp 414-438 (2016),Neil Andrews, Judging the Independence and Integrity of Foreign Courts, in Culture of Judicial Independence supra note 3 , at 73(ed. Shimon Shetreet), 2014.

⁸ Paul Carrington, Daniel Meador and Maurice Rosenberg, JUSTICE ON APPEAL, West Publishing Co. p. 2-3 (1976); Shimon Shetreet, The Discretionary Power of the Judge General Report-Part Two in DISCRETIONARY POWER OF THE JUDGE: LIMITS AND CONTROL, Kluwer Pub. (ed. Prof. Marcel Storme and Prof. Burkhard Hess)(2003).

⁹ Marcel Storme Best Science, Worst Practice ? in ,Dmitry Maleshin,Editor,Civil Procedure In Cross-Cultural Dialogue:Eurasia Context,IAPL World Conference on Civil Procedure, at 17-25 (2012, Moscow, Russia)

1.6.8 Public Confidence in the Courts , including ensuring publicity of trials, carefully define judicial immunity from injury and ensuring restraint and good taste criticism of judicial decision.

1.6.9 Accountability of judges - judges must be accountable for their conduct of and on the bench and should be subject to proper and adequate discipline when necessary.

1.6.10 Transparency – courts and judges must give a public and the academic community and legal profession full transparency subject to privacy consideration.

1.6.11 In shaping of judicial reforms, careful attention must be giving in order to insure proper balance between the basic values of the justice system, Particular attention should be giving to ensuring proper balance between Efficiency and Quality of Justice.

Explanatory notes

Foundations of Democracy and the Rule of Law.

In recent months and years, serious challenges have emerged to the judicial system ,the position of the judiciary and the rule of law in numerous countries. These challenges took place in countries with different systems of government in different parts of the world. We have witnessed these challenges in such countries as Turkey (after the attempted coup), Hungary (with the legislative changes regarding the judiciary), Poland (the crisis regarding the controversial appointments to the top constitutional tribunal and other reforms giving greater control to the Executive in judicial matters) U.S.A (President Trump critical statement on “so called Judge” and the heated division in the U.S Senate on the confirmation of Justice Neil Gorsuch) and Venezuela (attempted restriction of the activities of the opposition). These and other challenges require careful study.

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

Israel has experienced a very intensive period of legislative initiatives and Executive actions, which , when judged by their cumulative impact, are considered, damaging to the culture of democracy in the Israeli system of government.

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

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

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

regarding the higher judicial council and giving more control to executive over the judiciary. This statement was approved in the 2016 Krakow international judicial independence in 2016.

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

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

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

2.3 Measuring justice and rule of law

2.3.1 Judicial independence and the rule of law are essential requirements for economic growth. This is because they insure businesspersons or employees of certainty and confidence that in case of a dispute their claims will be adjudicated fairly, impartially and independently.

2.3.2 Fair and efficient operation of the justice system must be assessed and evaluated on the basis of indicators and data that can help create reliable measures to judge the quality, efficiency, independence and equality of the justice system.

2.3.3 According to the relatively new and most desirable pattern of data collection and publication which have begun in recent years such as by European Union Scoreboard on Justice published by the European Union and by reports of international and national organizations should be encouraged and followed.¹⁰

2.3.4 Every jurisdiction (domestic and international) shall prepare and make public periodic reports with detailed relevant data and analysis on courts, judges and administration of justice, based on established indicators and scoreboards that assist in measuring the justice system.

2.3.5 The periodic reports shall include data and findings on efficiency, quality, and independence of the justice system.

2.3.6 Efficiency of justice systems shall include: Length of proceedings, Clearance rate, Pending cases, Efficiency in specific areas and introduction of technological and online information system in the courts.¹¹

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

¹⁰ EU Report on: Strengthening Trust, Mobility and Growth within the European Union, 2014 ., EU Report on: The 2016 EU Justice Scoreboard, The 2018 EU Justice Scoreboard https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en

IMF Report on Italy: <https://www.imf.org/external/pubs/ft/scr/2013/cr13299.pdf>. Shimon Shetreet: The Justice System as an Essential Foundation of Economy and Trade, 3 Journal of International and Comparative Law 127-140 (2016)

European Commission for the Efficiency of Justice (CEPEJ), "Report on "European Judicial Systems: Edition 2014 (2012 data): Efficiency and Quality Justice", 2014.

¹¹ <http://network-presidents.eu/sites/default/files/EUJusticeScoreboard2016.pdf>
https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf

2.3.8 The data on independence of the judiciary shall include: Perceived judicial independence, Structural independence and Work of the judicial networks on judicial independence.

Explanatory note on Measuring Justice.

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

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

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

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

The Venice Commission issued a detailed report on checklist of democracy and the rule of law¹².

Approved Amendments of The Bologna and Milan global code of judicial ethics of JIWP

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

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

¹² EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) RULE OF LAW CHECKLIST, 2016, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

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

8.2.10 When regulatory authorities use electronic measures to receive public inputs and comments from interested parties and civil society groups when making rules or deciding on policy by conducting electronic hearings, they must take strict measures to insure that the comments submitted are truly those of the persons that their names are giving and not by other interested parties who misuse their names.

Add article 8.2.9 to Bologna and Milan Global Code of Judicial Ethics and 9E.3 to Mt Scopus Standards

8.2.9 With the expansion of the use of electronic filing of cases, pleadings and case management in the courts, and with the common use of online access to case dockets, pleadings and briefs extreme caution and strict measures of data protection must be taken to ensure the privacy protection of materials and information which are designated to authorized access only and are not supposed to be open to public access.

Explanatory Notes on Justice and Technology.

Ethical rules relevant to justice and technology

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

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

Many U.S. administrative agencies accept or strongly encourage submission of comments on proposed rules electronically rather than in writing. Judicial review of agency rules often focuses on how the agency has responded to comments. Electronic rulemaking can pose a number of significant questions, such as whether submitted comments are genuine or generated by artificial means (this is a variation on the so-called astroturf phenomenon in which supposedly grass-roots activity has been organized by vested interests) and whether comments have been submitted by the persons whose names are attached to them (there is a current controversy involving submissions to the Federal Communications Commission where many of the people whose names have been used now claim that they did not submit the comments and do not agree with the positions taken in their name).

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