

**IBA MINIMUM STANDARDS
OF JUDICIAL INDEPENDENCE**
(Adopted 1982)

A JUDGES AND THE EXECUTIVE

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 - 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/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.

- 2 The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive

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 - 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.

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 - 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 co-operation with the legal profession subject to parliamentary approval.

- 7 The State shall have a duty to provide for the executive of judgements 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.
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 - 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 independent of executive control.
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 - 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' services 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 interference

- 18 a) The Executive shall refrain from any act or omission which pre-empt the judicial resolution of a dispute or frustrates the proper execution of a court judgement.
- 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 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.
- 23 a) Judges should not be appointed for probationary periods except for legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of the 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.
- 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 final and reasoned disposition of this request by the disciplinary tribunal. Judgements 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 actions 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/she has shown himself/herself 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 members 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 The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F STANDARDS OF CONDUCT

- 35 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.
- 36 Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.
- 37 Judges shall not hold positions in political parties.
- 38 A judge, other than a temporary judge, may not practice law during his term of office.

- 39 A judge should refrain from business activities, except his personal investments, or ownership of property.
- 40 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.
- 41 Judges may be organised in associations designed for judges, for furthering their rights and interests as judges.
- 42 Judges may take collective action to protect their judicial independence and to uphold their position.

G SECURING IMPARTIALITY AND INDEPENDENCE

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

H THE INTERNAL INDEPENDENCE OF THE JUDICIARY

- 46 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and supporters.

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 sessions as circumstances may warrant or require.