



COMPARATIVE OVERVIEW OF THE BASIC PRINCIPLES RELATED TO THE JUDICIARY

1. Constitution of the Republic of Serbia
2. National Judicial Reform Strategy
3. U.N. Basic Principles on the Independence of the Judiciary
4. IBA Minimum Standards of Judicial Independence
(International Bar Association)
5. Council of Europe Recommendation No. R (94) 12 on the
Independence, Efficiency and Role of Judges
6. European Charter on the Statute for Judges
7. Bangalore Principles of Judicial Conduct

Belgrade, February 21, 2007



ABA CEELI is financed by the United States Agency for International Development (USAID)

“This manual has been produced with the financial assistance of U.S. Agency for International Development (USAID) under the terms of its Co-operative Agreement with the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI). The contents of this document do not necessarily reflect the views of ABA/CEELI, USAID or the United States Government”.



ABA/CEELI, in cooperation with the OSCE Mission in Serbia and the Strategy implementation secretariat (SIS), prepared this comparative overview of general principles related to the judiciary with the aim of contributing to the legal reform process in Serbia through providing technical legal assistance to the Working Group tasked with developing guiding principles for the laws on the judiciary. The overview includes provisions of the following documents:

1. Constitution of the Republic of Serbia proclaimed on November 8, 2006
2. National Judicial Reform Strategy, April 2006
3. U.N. Basic Principles on the Independence of the Judiciary
4. IBA Minimum Standards of Judicial Independence (International Bar Association)
5. Council of Europe Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges
6. European Charter on the Statute for Judges
7. Bangalore Principles of Judicial Conduct, 2002

The provisions contained in the aforementioned documents have been systematized in the following manner:

	Page
Impartiality and independence	4
Qualifications, selection and training	8
Conditions of service and tenure	11
Discipline, suspension and removal	14
Standards of conduct	17
Freedom of expression, association and assembly	20
Relationship with the Executive Branch and Legislature	22
Financial matters	27

ABA-CEELI would like to point out that this systematization is just the starting point. In the future this overview will be adjusted according to the comments, suggestions and needs of the Working Group, in coordination with the OSCE Mission and the Secretariat.

1. IMPARTIALITY AND INDEPENDENCE	
Constitution of the Republic of Serbia	<p style="text-align: center;">Independence of judge Article 149</p> <p>In performing his/her judicial function, a judge shall be independent and responsible only to the Constitution and the Law. Any influence on a judge while performing his/her judicial function shall be prohibited.</p> <p style="text-align: center;">Immunity Article 151</p> <p>A judge may not be held responsible for his/her expressed opinion or voting in the process of passing a court decision, except in cases when he/she committed a criminal offence by violating the Law. A judge may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed in performing their judicial function without the approval of the High Judicial Council.</p> <p style="text-align: center;">The High Judicial Council Status, constitution and election Article 153</p> <p>The High Judicial Council is an independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges. ...</p>
National Judicial Reform Strategy	<p>II. IMPLEMENTATION</p> <p>A. NEW CONSTITUTIONAL AND LEGAL FRAMEWORK</p> <p>...</p> <p>Individual judges' independence will be guaranteed by the new judicial body having the exclusive competence to decide on the final appointment of judges after their initial three year appointment, on the promotion, discipline, dismissal, material position, permanence, immunity and education. ...</p> <p>B. INDEPENDENT COURT SYSTEM</p> <p>1. Self-Governing Structure</p> <p>...</p> <p>The High Court Council is constitutionally recognized. The High Court Council is the guarantor of the autonomy and independence of courts and judges, and is the management and oversight body for the court system. The High Court Council has a decisive role in the process of judicial selection, promotion, discipline, material status, and removal from office. It is also responsible for human resources, organization and oversight, budget, performance measurement, policy and rule-making and operation of</p>

	<p>courts, and strategic planning.</p> <p>...</p>
<p>U.N. Basic Principles on the Independence of the Judiciary</p>	<p>Independence of the judiciary</p> <p>2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.</p> <p>3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.</p> <p>4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.</p> <p>5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.</p> <p>6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.</p>
<p>IBA Minimum Standards of Judicial Independence</p>	<p>1. a) Individual judges should enjoy personal independence and substantive independence.</p> <p>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.</p> <p>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.</p> <p>43. A judge shall enjoy immunity from legal actions and the obligation to testify concerning matters arising in the exercise of his official functions.</p> <p>44. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.</p> <p>45. A judge shall avoid any course of conduct, which might give rise to an appearance of partiality.</p>
<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle I - General principles on the independence of judges</p> <p>1. All necessary measures should be taken to respect, protect and promote the independence of judges.</p> <p>2. a)</p> <ul style="list-style-type: none"> i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law; ii. the terms of office of judges and their remuneration should be guaranteed by law; iii. no organ other than the courts themselves should decide on its own

	<p>competence, as defined by law;</p> <p>iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.</p> <p>d) In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.</p> <p>e) The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.</p> <p>f) A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.</p> <p>3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.</p>
<p>European Charter on the Statute for Judges</p>	<p>General Principles</p> <p>1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality...</p> <p>1.2. In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.</p> <p>4.3. Judges must refrain from any behavior, action or expression of a kind effectively to affect confidence in their impartiality and their independence.</p> <p>Termination of office</p> <p>7.1. A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal pronounced within the framework of a procedure such as envisaged</p>

	<p>at paragraph 5.1 hereof.</p> <p>7.2. The occurrence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3¹ hereof.</p>
--	--

¹ Paragraph 1.3 states

“In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.”

2. QUALIFICATIONS, SELECTION AND TRAINING

<p>Constitution of the Republic of Serbia</p>	<p style="text-align: center;">President of the Supreme Court of Cassation Article 144</p> <p>President of the Supreme Court of Cassation shall be elected by the National Assembly, upon the proposal of the High Judicial Council and received opinion of the meeting of the Supreme Court of Cassation and competent committee of the National Assembly.</p> <p>President of the Supreme Court of Cassation shall be elected for the period of five years and may not be reelected.</p> <p>Term of office of the President of the Supreme Court of Cassation shall terminate before the expiry of the time for which he or she has been elected upon his/her personal request, under the terms stipulated by the Law pertaining to the termination of the term of office of the judge or dismissal for reasons stipulated by the Law pertaining to dismissal of the President of Court.</p> <p>Decision on the end of term of office of the President of the Supreme Court of Cassation shall be adopted by the National Assembly, in accordance with the Law, while the decision on dismissal shall be adopted upon the proposal of the High Judicial Council.</p> <p style="text-align: center;">Election of judges Article 147</p> <p>On proposal of the High Judicial Council, the National Assembly shall elect as a judge the person who is elected to the post of judge for the first time.</p> <p>Tenure of office of a judge who was elected to the post of judge shall last three years. In accordance with the Law, the High Judicial Council shall elect judges to the posts of permanent judges, in that or other court.</p> <p>In addition, the High Judicial Council shall decide on election of judges who hold the post of permanent judges to other or higher court.</p>
<p>National Judicial Reform Strategy</p>	<p>C. TRANSPARENT JUDICIAL SYSTEM</p> <p>1. Open Judicial Selection, Promotion, Discipline and Removal from Office</p> <p>The process of selecting and appointing judges must serve the institutional and individual independence of the judicial system. The new Constitution must establish and guarantee the autonomy and independence of judges. Individual independence of judges will be guaranteed by the High Court Council as the new judicial body in the constitutional system of the Republic of Serbia.</p> <p>The High Court Council will have the sole authority to propose nominees for the first judicial appointment to the National Assembly. The proposed nominees will be appointed by the National Assembly for a limited term of three years. Upon the expiry of such term, the High Court Council, in a procedure prescribed by the law, will decide on the permanent appointment of judges, and the decision declaratively confirmed by the Chairmen of the Serbian National Assembly, before whom the elected judges will take the oath of office.</p>

	<p>Court presidents will be elected by the National Assembly upon the proposal of the High Court Council, in a procedure to be regulated by a separate law.</p> <p>After the establishment of the National Judicial Training Institute, successfully passing the Institute’s final examination will be an important criterion for the appointment to the judiciary. The High Court Council will also develop precise criteria for the new manner of judicial nomination, appointment, promotion, discipline and removal from office.</p> <p>After the promulgation of the new Constitution, i.e. legal framework, a new network of courts with changed jurisdictions and an optimal number of judges will be formed in accordance with the needs and clearly measurable standards, and criteria to be defined by the High Court Council.</p> <p>...</p> <p>This procedure will be regulated in detail by a separate law and carried out by the High Court Council, after having obtained the non-binding opinion of the Judiciary Committee of the National Assembly.</p> <p>E. EFFICIENT JUDICIAL SYSTEM</p> <p>2. Standardized System for Education and Training</p> <p>The enactment of the new Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judges’ and Prosecutors’ Assistants will create conditions for organized acquiring and improvement of theoretical and practical knowledge and skills necessary for the autonomous, professional and efficient administration of justice.</p> <p>The Government will establish the National Judicial Training Institute by 2008. This independent judicial institution, which will operate under the supervision of the High Court Council, will assume the present mandate, functions, and resources of the Judicial Training Center. Both the President of the Supreme Cassation Court and the Minister of Justice will be members of the Institute’s Management Board. The National Judicial Training Institute will administer a standardized multi-level initial and continual education and training program for judicial officers. The training will emphasize case management techniques to address the significant case backlogs in the Republic’s courts.</p> <p>Successfully passing the examination prepared by this Institute will be an important criterion for the first appointment of judicial nominees. Permanent education in the judiciary will be mandatory. Additionally, law faculties will strengthen the departments for the judiciary, and expand clinical and practical training for future legal professionals and leaders of the judiciary.</p>
<p>U.N. Basic Principles on the Independence of the Judiciary</p>	<p>10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national</p>

	of the country concerned, shall not be considered discriminatory.
IBA Minimum Standards of Judicial Independence	26. Selection of judges shall be based on merit.
CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges	<p>Principle III – Proper Working Conditions</p> <p>1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:</p> <p>a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their careers. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts.</p>
European Charter on the Statute for Judges	<p>Selection, Recruitment, Initial Training</p> <p>2.1. The rules of the statute relating to the selection and recruitment of judges by an independent body or panel, base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity. The statute excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin, or by reason of their philosophical and political opinions or religious convictions.</p> <p>2.2. The statute makes provision for the conditions which guarantee, by requirements linked to educational qualifications or previous experience, the ability specifically to discharge judicial duties.</p> <p>2.3. The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programs and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.</p> <p>Career Development</p> <p>4.4. The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof.²</p>

² 2.3 Selection, Recruitment, Initial Training

The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programs and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.

3. CONDITIONS OF SERVICE AND TENURE	
<p>Constitution of the Republic of Serbia</p>	<p style="text-align: center;">Permanent tenure of office Article 146</p> <p>A judge shall have a permanent tenure. Exceptionally, a person who is elected a judge for the first time shall be elected for the period of three years.</p> <p style="text-align: center;">Non-transferability of judge Article 150</p> <p>A judge shall have the right to perform his/her judicial function in the court to which he/she was elected, and may be relocated or transferred to another court only on his/her own consent. In case of revocation of the court or the substantial part of the jurisdiction of the court to which he/she was elected, a judge may exceptionally, without his/her consent, be permanently relocated or transferred to another court, in accordance with the Law.</p> <p style="text-align: center;">Immunity Article 151</p> <p>A judge may not be held responsible for his/her expressed opinion or voting in the process of passing a court decision, except in cases when he/she committed a criminal offence by violating the Law. A judge may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed in performing their judicial function without the approval of the High Judicial Council.</p>
<p>National Judicial Reform Strategy</p>	<p>2. Independent Budget Authority</p> <p>...</p> <p>The state will strive to provide for judges all the funds necessary for the proper performance of their duties, and salaries and material position of judges will in the shortest time possible be defined in such a manner as to provide the protection of judges from any pressure with regard to their decisions.</p>
<p>U.N. Basic Principles on the Independence of the Judiciary</p>	<p>11. The term of office of judges, their independence, security, adequate remuneration, and conditions of service, pensions and the age of retirement shall be adequately secured by law.</p> <p>12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.</p> <p>13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.</p> <p>14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.</p>

	<p>15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.</p> <p>16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or missions in the exercise of their judicial functions.</p>
<p>IBA Minimum Standards of Judicial Independence</p>	<p>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.</p> <p>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 reorganizing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.</p> <p>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.</p> <p>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.</p> <p>24. The number of the members of the highest court should be rigid and should not be subject to change except by legislation.</p>
<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle I - General principles on the independence of judges</p> <p>2. a) The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 80px;">ii. the terms of office of judges and their remuneration should be guaranteed by law;</p> <p>2. c) All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency.</p> <p>Principle III - Proper working conditions</p> <p>1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:</p> <p style="padding-left: 20px;">a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other</p>

	<p>authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;</p> <ul style="list-style-type: none"> b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities; c. providing a clear career structure in order to recruit and retain able judges; d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay; e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts. <p>2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges ...</p>
<p>European Charter on the Statute for Judges</p>	<p>3.1 Appointment and Irremovability The decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, are taken by the independent authority referred to at paragraph 1.3 hereof or on its proposal, or its recommendation or with its agreement or following its opinion.</p> <p>3.4 Appointment and Irremovability A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighboring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof.³</p> <p>4.1 Career Development When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement. Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.</p>

³ Paragraph 1.4 states:
The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

4. DISCIPLINE, SUSPENSION AND REMOVAL	
Constitution of the Republic of Serbia	<p>Termination of a judge's tenure of office Article 148</p> <p>A judge's tenure of office shall terminate at his/her own request, upon coming into force of legally prescribed conditions or upon relief of duty for reasons stipulated by the Law, as well as if he/she is not elected to the position of a permanent judge. The High Judicial Council shall pass a decision on termination of a judge's tenure of office. A judge shall have the right to appeal with the Constitutional Court against this decision. The lodged appeal shall not include the right to lodge a Constitutional appeal. The proceedings, grounds and reasons for termination of a judge's tenure of office, as well as the reasons for the relief of duty of the President of Court shall be stipulated by the Law.</p>
National Judicial Reform Strategy	<p>IV. Judicial Reform framework B. Independent court system 1. Self-Governing Structure</p> <p>...</p> <p>The High Court Council has a decisive role in the process of judicial selection, promotion, discipline, material status, and removal from office.</p> <p>...</p>
U.N. Basic Principles on the Independence of the Judiciary	<p>17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.</p> <p>18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.</p> <p>19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.</p> <p>20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.</p>
IBA Minimum Standards of Judicial Independence	<p>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.</p> <p>b) The power of removal of a judge should preferably be vested in a judicial tribunal.</p>

	<p>c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.</p> <p>27. The proceedings for discipline and removal of judges should ensure fairness to the judge and adequate opportunity for hearing.</p> <p>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. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.</p> <p>29. The grounds for removal of judges shall be fixed by law and shall be clearly defined. All disciplinary actions shall be based upon standards of judicial conduct promulgated by law or in established rules of court.</p> <p>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.</p> <p>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.</p>
<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle VI – Failure to carry out responsibilities and disciplinary offences</p> <p>1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:</p> <ul style="list-style-type: none"> a. withdrawal of cases from the judges; b. moving the judge to other judicial tasks within the court; c. economic sanctions such as a reduction in salary for a temporary period; d. suspension. <p>2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.</p> <p>3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a</p>

	reasonable time and that they should have a right to answer any charges.
European Charter on the Statute for Judges	<p>5.1 Liability The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.</p> <p>5.2 Liability Compensation for harm wrongfully suffered as a result of the decision or the behavior of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties. The submission of the claim to the competent court must form the subject of prior agreement with the authority referred to at paragraph 1.3 hereof.</p> <p>5.3 Liability Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.</p>

5. STANDARDS OF CONDUCT	
Constitution of the Republic of Serbia	<p>Restriction of human and minority rights Article 20</p> <p>Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right.</p> <p>Incompatibility of judiciary function Article 152</p> <p>A judge shall be prohibited to engage in political actions. Other functions, actions or private interests which are incompatible with the judiciary function shall be stipulated by the Law.</p>
National Judicial Reform Strategy	<p>C. TRANSPARENT JUDICIAL SYSTEM 2. Appropriate Access to Court Proceedings</p> <p>The public will be granted access to case information and court decisions while preserving litigant privacy to achieve objective perception of public perceptions of courts, judges, and the adjudicative process through transparent approach.</p>
U.N. Basic Principles on the Independence of the Judiciary	* see annex: <i>Bangalore Principles of Judicial Conduct (UN) 2002</i>
IBA Minimum Standards of Judicial Independence	<p>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.</p> <p>36. Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence taking.</p> <p>37. Judges shall not hold positions in political parties.</p> <p>38. A judge, other than a temporary judge, may not practice law during his term of office.</p> <p>39. A judge should refrain from business activities, except his personal investments, or ownership of property.</p>

	<p>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.</p>
<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle V – Judicial responsibilities</p> <ol style="list-style-type: none"> 1. In proceedings, judges have the duty to protect the rights and freedoms of all persons. 2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently, and speedily. 3. Judges should in particular have the following responsibilities: <ol style="list-style-type: none"> a. to act independently in all cases and free from any outside influence; b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice; d. where necessary, to explain in an impartial manner procedural matters to parties; e. where appropriate, to encourage the parties to reach a friendly settlement; f. except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable; g. to undergo any necessary training in order to carry out their duties in an efficient and proper manner.
<p>European Charter on the Statute for Judges</p>	<p>1.5 General Principles Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion – decisions on which depend the guarantee of individual rights and in preserving the secrecy of information which is entrusted to them in the course of proceedings.</p> <p>4.2 Career Development Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens. This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laid down by the statute.</p> <p>4.3. Career Development Judges must refrain from any behavior, action or expression of a kind effectively to affect confidence in their impartiality and their independence.</p>

6. FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY	
Constitution of the Republic of Serbia	<p style="text-align: center;">Freedom of thought, conscience and religion Article 43</p> <p>Freedom of thought, conscience, beliefs and religion shall be guaranteed, as well as the right to stand by one's belief or religion or change them by choice. No person shall have the obligation to declare his religious or other beliefs. Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public. Freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.</p> <p style="text-align: center;">...</p> <p style="text-align: center;">Freedom of thought and expression Article 46</p> <p>The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner. Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.</p> <p style="text-align: center;">Freedom of association Article 55</p> <p>Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association. Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law. Secret and paramilitary associations shall be prohibited. Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. Judges of Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.</p>
National Judicial Reform Strategy	Does not contain provisions.
U.N. Basic Principles on the Independence of the	8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges

Judiciary	<p>shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.</p> <p>9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.</p>
IBA Minimum Standards of Judicial Independence	<p>41. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.</p> <p>42. Judges may take collective action to protect their judicial independence and to uphold their position.</p>
CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges	<p>Principle IV – Associations</p> <p>Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests.</p>
European Charter on the Statute for Judges	<p>1.7. General Principles</p> <p>Professional organizations set up by judges, and to which all judges may freely adhere, contribute notably to the defense of those rights which are conferred on them by their statute, in particular in relation to authorities and bodies which are involved in decisions regarding them.</p>

7. RELATIONSHIP WITH THE EXECUTIVE BRANCH AND LEGISLATURE -INSTITUTIONAL INDEPENDENCE-

Constitution of the
Republic of Serbia

Rule of law

Article 3

Rule of law is a fundamental prerequisite for the Constitution which is based on inalienable human rights.

The rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of Constitution and Law by the authorities.

Division of power

Article 4

The legal system is unique.

Government system shall be based on the division of power into legislative, executive and judiciary.

Relation between three branches of power shall be based on balance and mutual control.

Judiciary power shall be independent.

Judiciary principles

Article 142

Judicial power shall be unique on the territory of the Republic of Serbia.

Courts shall be separated and independent in their work and they shall perform their duties in accordance with the Constitution, Law and other general acts, when stipulated by the Law, generally accepted rules of international law and ratified international contracts.

...

President of the Supreme Court of Cassation

Article 144

President of the Supreme Court of Cassation shall be elected by the National Assembly, upon the proposal of the High Judicial Council and received opinion of the meeting of the Supreme Court of Cassation and competent committee of the National Assembly.

...

Decision on the end of term of office of the President of the Supreme Court of Cassation shall be adopted by the National Assembly, in accordance with the Law, while the decision on dismissal shall be adopted upon the proposal of the High Judicial Council.

Court decisions

Article 145

Court decisions shall be passed in the name of people.

	<p>Court decisions are based on the Constitution and Law, the ratified international treaty and regulation passed on the grounds of the Law. Court decisions shall be obligatory for all and may not be a subject of extrajudicial control. A court decision may only be reconsidered by an authorized court in a legal proceedings prescribed by the Law. A passed sentence may be fully or partially forgiven without a court decision, by general pardon or amnesty.</p> <p style="text-align: center;">Election of judges Article 147</p> <p>On proposal of the High Judicial Council, the National Assembly shall elect as a judge the person who is elected to the post of judge for the first time. ... </p> <p style="text-align: center;">The High Judicial Council Status, constitution and election Article 153</p> <p>The High Judicial Council is an independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges. ... </p>
<p>National Judicial Reform Strategy</p>	<p>II. IMPLEMENTATION A. NEW CONSTITUTIONAL AND LEGAL FRAMEWORK</p> <p>The new Constitution must stipulate and guarantee the independence and autonomy of the judiciary honoring the principle of the division of power based on the checks and balances between the three branches.</p> <p>Institutional independence of courts must be provided by the establishment of a new judicial body as the constitutional category. The establishment, authority, organization, composition and mandate of this body must be a constitutional subject matter. ... </p> <p>Basic constitutional principles should guarantee:</p> <ul style="list-style-type: none"> • The rule of law as the supreme value in the Constitution; • That the organization of government is based on the division of power between: the legislative, executive and judicial, and their relations based on a system of checks and balances; • That the judicial authority is exercised by courts guaranteeing the rule of law, and that the judiciary has the only right to administer justice pursuant to the Constitution and the law; • That the High Court Council is the guarantor of institutional and individual independence and autonomy of courts and judges, with the establishment, competence, decision-making and composition of the Council constitutionally recognized; • That the courts and judges are independent and autonomous in the administration of justice and subordinate only to the Constitution and the law;

	<ul style="list-style-type: none"> • That in accordance with the principle of the division of power and parliamentary responsibility of the Ministry of Justice, optimal relations are established between the respective competences of the Ministry of Justice and High Court Council, as the institution responsible for the functioning of the judicial system; <p>...</p> <p>B. AN INDEPENDENT COURT SYSTEM</p> <p>1. Self-Governing Structure</p> <p>In accordance with the principle of an independent judiciary, governance responsibility for the court system will, to the greatest extent, be assumed by the High Court Council, while retaining the minimum oversight necessary for the Ministry of Justice to respect the principle of parliamentary responsibility for the administrative functioning of the court system, in order to provide for the constitutional principle of checks and balances between the legislative, executive and judicial powers.</p> <p>The High Court Council is constitutionally recognized. The High Court Council is the guarantor of the autonomy and independence of courts and judges, and is the management and oversight body for the court system. The High Court Council has a decisive role in the process of judicial selection, promotion, discipline, material status, and removal from office. It is also responsible for human resources, organization and oversight, budget, performance measurement, policy and rule-making and operation of courts, and strategic planning.</p> <p>...</p> <p>The High Court Council will be supported by an Administrative Office which will implement activities within its scope of competence. The Administrative Office director will report to the High Court Council on its activities. All details related to the new structure and competences will be regulated by a separate law.</p>
<p>U.N. Basic Principles on the Independence of the Judiciary</p>	<p>Independence of the judiciary</p> <p>1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.</p> <p>4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.</p> <p>7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.</p>
<p>IBA Minimum Standards of Judicial Independence</p>	<p>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.</p> <p>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</p>

	<p>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.</p> <p>b) The power of removal of a judge should preferably be vested in a judicial tribunal.</p> <p>c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.</p> <p>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.</p> <p>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.</p> <p>19. The Legislature shall not pass legislation, which retroactively reverses specific court decisions.</p>
<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle I – General principles on the independence of judges</p> <p>1. All necessary measures should be taken to respect, protect and promote the independence of judges.</p> <p>2. In particular, the following measures should be taken:</p> <p>a) The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law...</p> <p>b) The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.</p> <p>c) ... The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules....</p> <p>d) In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.</p>
<p>European Charter on the Statute for Judges</p>	<p>1.2. In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.</p> <p>1.3. In respect of every decision affecting the selection, recruitment, appointment,</p>

	<p>career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.</p> <p>1.4. The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.</p> <p>1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period.</p> <p>1.8. Judges are associated through their representatives and their professional organizations in decisions relating to the administration of the courts and as to the determination of their means, and their allocation at a national and local level. They are consulted in the same manner over plans to modify their statute, and over the determination of the terms of their remuneration and of their social welfare.</p>
--	--

8. FINANCIAL MATTERS	
Constitution of the Republic of Serbia	Does not contain provisions.
National Judicial Reform Strategy	<p>B. AN INDEPENDENT COURT SYSTEM</p> <p>2. Independent Budget Authority</p> <p>...</p> <p>Until the full capacity for independent financial management is achieved, a transitional budget model under which the High Court Council will present the integrated court budget to the Ministry of Justice, and under which the process of consultations with the representatives of the judiciary will improve, will be an interim solution and preparation for future challenges. Under the transitional model, the Ministry of Justice will continue to represent the judiciary in negotiations with the Ministry of Finance until budgetary authority is completely transferred to the judiciary in 2011, and until the High Court Council has the capacity and authority to develop, approve and apportion the budget for the judicial system, in conjunction with the Republic's Treasury and the Ministry of Finance. The Administrative Office will have an important role in supporting the High Court Council in taking over this huge task, and, by means of the Budget Law, the National Assembly of the Republic of Serbia will approve an independent court budget on the basis of needs and capabilities. The state will strive to provide for judges all the funds necessary for the proper performance of their duties, and salaries and material position of judges will in the shortest time possible be defined in such a manner as to provide the protection of judges from any pressure with regard to their decisions.</p>
U.N. Basic Principles on the Independence of the Judiciary	11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
IBA Minimum Standards of Judicial Independence	<p>10. It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.</p> <p>13. Court services should be adequately financed by the relevant government.</p> <p>14. Judicial salaries and pensions shall be adequate and should be regularly adjusted to account for price increases independent of executive control.</p> <p>15. The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law. Judicial salaries cannot be decreased during the judges' services except as a coherent part of an overall public economic measure.</p>

<p>CoE Rec No. R (94) 12 on the Independence, Efficiency and Role of Judges</p>	<p>Principle I - General principles on the independence of judges 2. a ... II the terms of office of judges and their remuneration should be guaranteed by law;</p> <p>Principle III – Proper Working Conditions 1. Proper Conditions should be provided to enable judges to work efficiently and, in particular, by: b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities; c. providing a clear career structure in order to recruit and retain able judges; d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay.</p>
<p>European Charter on the Statute for Judges</p>	<p>1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period.</p> <p>1.8 The Charter provides that judges should be associated through their representatives, particularly those that are members of the authority referred to in paragraph 1.3, and through their professional associations, with any decisions taken on the administration of the courts, the determination of the courts’ budgetary resources and the implementation of such decisions at the local and national levels.</p> <p>4.2 ...The Charter stipulates that judges should request authorization to engage in activities other than literary or artistic when they are remunerated.</p> <p>6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behavior within their jurisdiction, thereby impairing their independence and impartiality.</p> <p>6.2 Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.</p> <p>6.3 The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.</p> <p>6.4 In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.</p>

**THE BANGALORE PRINCIPLES
OF JUDICIAL CONDUCT**

2002

*(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:
INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:
IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
- Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:
INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:
PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall 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.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not

inconsistent with the perceived impartiality and political neutrality of a judge;
or

- 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"*Court staff*" includes the personal staff of the judge including law clerks.

"*Judge*" means any person exercising judicial power, however designated.

"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.

- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by

way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.