

THE ISTANBUL DECLARATION
ON
TRANSPARENCY IN THE JUDICIAL PROCESS

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 declares 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 principles and rights are also recognized or reflected in other international and regional human rights instruments and declarations, in domestic constitutional, statutory and common law, and in judicial conventions and traditions;

AND WHEREAS it is now universally accepted that the principle of transparency is a fundamental element of the judicial process in a State that upholds human rights and the rule of law;

NOW THEREFORE THE CONFERENCE OF CHIEF JUSTICES AND SENIOR JUSTICES OF THE ASIAN REGION, MEETING IN ISTANBUL ON 20 and 21 NOVEMBER 2013, ON THE INVITATION OF THE CHIEF JUSTICE OF THE COURT OF CASSATION OF THE REPUBLIC OF TURKEY AND THE UNITED NATIONS DEVELOPMENT PROGRAMME

DECLARE the following to be the basic requirements to ensure justice and secure transparency in the judicial process:

Principle 1

Judicial proceedings must, as a general rule, be conducted in public.

The public access to court hearings is a fundamental requirement in a democratic society. The principle of public proceedings implies that citizens and media professionals should be allowed access to the court rooms in which judicial proceedings take place. The court should, therefore, ensure that the public and the media can attend court proceedings. For this purpose, information regarding the time and venue of hearings should be made available to the public. Adequate facilities should also be provided for the attendance of the public, within reasonable limits, taking into account the potential interest in the case and the nature of the hearing. Where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings,¹ the judge should ensure that the reasons for so doing are published.

Principle 2

The judicial system should ensure easy access to court premises and to information.

Courthouses should, wherever possible, be located near public transportation hubs to ease the burden of travelling to and from the court. The judicial system should establish an information system and resource centre located in close proximity to the courts. In addition to easily readable signs, courthouse

¹ The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

orientation guides, and court schedules, court personnel should be available at public relations desks. The court buildings should provide adequate facilities for the public to complete forms and conduct negotiations, and amenities for special-need users such as children, victims and the disabled, as well as rooms for legal professional services. Court-users are entitled not only to timely and efficient services, but also to the highest standards of ethical conduct, professionalism and accountability from court personnel.

Principle 3

The judiciary should facilitate access to the judicial system.

The court should provide potential court users with standard, user-friendly forms and instructions, and furnish clear and accurate information on filing fees, court procedures, and hearing schedules. This information should also be disseminated via the internet. Where appropriate, the court should adopt the multi-door courthouse (MDR) concept to inform potential court users of the different doors that could lead to justice, of which litigation is only one, and to provide assistance with legal aid applications. It is the responsibility of the judiciary, where there is no sufficient legal aid publicly available, to consider initiatives such as encouraging *pro bono* representation of poor litigants by the legal profession, or appointing a “friend of the court” (*amici curiae*), or suggesting alternative dispute resolution. Permission may be granted by the court to appropriate non-qualified persons to represent parties before a court.

Principle 4

The judiciary should provide court-users with translation and interpretation facilities, free of charge.

The right of an accused person to be informed of the charge against him in a language which he understands is a fundamental human right. So too is the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. Indeed, the inability of any court-user to understand the languages used in court means the total lack of transparency in

the proceedings as far as that person is concerned. A witness may not be able to testify, nor will it be possible in some circumstances to introduce a document in evidence, without interpretation or translation, as the case may be. It is, therefore, the responsibility of the judge or justice administration to ensure that facilities are available in court, as required, for both interpretation and translation.

Principle 5

The judiciary should ensure transparency in the assignment of cases.

Court systems vary in the procedures they utilize to assign cases to judges. In some countries, the head of the court is responsible for determining the distribution of cases. In others, case assignment is a function managed by court administrators rather than judges. A third option is the random assignment of cases, either manually or automated. Finally, case assignment may be based on informal criteria, such as long established court practices, or more formal rules and laws governing the court. Whichever model is adopted, the division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined, transparent arrangement provided by law or rules of court agreed by judges of the relevant court. Similarly, a case should not be withdrawn from a judge except for such reasons and in accordance with such procedures as are provided for by law or rules of court.

Principle 6

The judiciary should ensure transparency in the delivery of justice.

Integrating justice into society requires the judicial system to open up and learn to make itself known. Subject to judicial supervision, the public, the media and court-users should have reliable access to all information pertaining to judicial proceedings, both pending and concluded. Such access could be provided on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence.

Affidavits or like evidentiary documents that have not yet been admitted in evidence may be excluded. Access to court documents should not be limited to case-related material, but should also include court-related administrative information such as statistics on the caseload and case clearance rates, as well as budget-related data, e.g. collection of court fees and the use of budgetary allocations. Judges should disclose potential conflicts of interest.

Principle 7

The judiciary should have supervisory powers over executive detention.

To ensure that the judicial system is not subjected to unwarranted criticism for trial delays, the judiciary should be conferred by law the power to bring before court persons held in administrative or executive detention. Although this is primarily a human rights issue, it is also a way of ensuring transparency in the public perception of the administration of justice.

Principle 8

The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.

Without reliable access to laws, jurisprudence and other primary legal sources, judges, lawyers, litigants including governments, are left without clear guidance on how the law should operate in any particular case or situation. The publication of judgments allows the public, the press, civil society organizations, lawyers, judges and legal scholars to scrutinize the actions of judges. Submitting judgments to public scrutiny through publication also regularizes the application of the law, and makes judicial decisions more predictable and consistent, thus improving the quality of justice. In judicial systems where higher court decisions are binding precedents, the publication and distribution of appellate and superior court decisions is crucial in ensuring that lower court judges and governments are following the law. Even in countries where higher court decisions are merely persuasive, it is still

important to ensure that judges are interpreting the applicable statutes in a consistent manner. It is desirable to create publicly available databases that store the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals.

Principle 9

The judiciary should promote programmes to orientate students on the judicial process.

The judiciary should promote and participate in school and university programmes aimed at developing an understanding, and thereby contributing to the transparency, of the judicial process. These may include visits to courts, classroom appearances by judges, role playing, the use of audiovisual material, and the active teaching of judicial procedures. Such programmes will serve to avoid or correct ignorance and misapprehension about the judicial system and its operation.

Principle 10

The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.

Transparency involves more than simply providing access to court proceedings and information. To achieve transparency, information must also be disseminated in a format that is easily accessible for the intended audience – especially for court-users who do not have a legal background and may often have limited literacy. Publicising information about court operations and judicial programmes to increase the quality and efficiency of justice also has beneficial effects on public confidence in the judiciary.

Judicial outreach involves proactive measures by judges and direct interaction with the communities they serve. These may include town hall meetings, the production of radio and television programmes, and the dissemination of

awareness-raising materials such as court user guides. These guides, in the form of short pamphlets, may provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

Such programmes of judicial outreach and education concerning court services and procedures are useful from the perspective of both the judiciary and the court users. They help to actively engage a court in a relationship with the community, and to demystify many of the complexities surrounding the operation of a legal system and the conduct of court proceedings. Thus, by educating and involving the public in the court's work through proactive judicial outreach and communication strategies, courts can increase public confidence and strengthen respect for the rule of law in their communities.

Principle 11

The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.

It is the function and the duty of the media to gather and convey information to the public, and to report and comment, on the administration of justice, including cases, before, during and after trial, without violating the *sub judice* rule, the presumption of innocence, and the rights of parties to a dispute. This principle, which includes the freedom to decide which cases are to be brought to the attention of the public and how they are to be treated, and the right to criticize the organization and functioning of the justice system, should only be departed from to the extent set out in the International Covenant on Civil and Political Rights.

Media access to judicial proceedings is not a matter of simply opening doors to the courtroom and providing seats to journalists. Courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence, impartiality and integrity. The training of journalists organized by, or in cooperation with, the courts can

help reduce ineffective reporting. Such training should be designed to provide them with basic knowledge about court procedures and legal issues, and thus contribute to improving journalistic skills and ethics, and building trust between judges and journalists.

Engaging the media may also require that courts actively reach out to journalists by establishing press offices within each court, to facilitate media coverage of judicial proceedings. These offices could liaise with media representatives, respond to and manage requests from journalists, issue press releases and generally provide accurate information about judicial decisions and legal issues. These offices could also provide schedules of upcoming cases, monitor the media for accurate reporting, and design media campaigns that promote public understanding of the judiciary.

Principle 12

The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.

There are a variety of tools for measuring the level of public satisfaction with the delivery of justice. Apart from being sensitive to contributions from academia, the judiciary should encourage court user feedback. An effective and impartial complaint system, regular case audits, periodic surveys of court-users and other stakeholders, and discussions with court-user committees, are means of reviewing public satisfaction with the delivery of justice and identifying systemic weaknesses in the judicial process, especially any that may have created “gatekeepers” seeking gratifications. However, these exercises will be meaningless if lessons are not learnt and remedial action not taken. The publication of an annual report of its activities, including any difficulties encountered and action taken to improve the functioning of the justice system, is one measure to foster public confidence in the judiciary.

Principle 13

There should be transparency in the appointment process of judges.

It is generally agreed that transparency is required in the conditions for the selection of candidates for judicial office. In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment. That will enable procedures for judicial appointment and promotion based on merit to be opened to a pool of candidates as diverse and reflective of society as a whole as possible. Publication of the list of vacant posts and the list of candidates for those posts will also permit public scrutiny of the appointment process.

While there is a diversity of methods by which judges assume office, recent international and regional initiatives are unanimous in their view that it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are not made by the legislature or the executive, but by an independent body such as a Council for the Judiciary, with the formal intervention of the Head of State in respect of higher appointments. Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism. A mixed composition avoids the perception of self-interest, self protection and cronyism, and reflects the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy.

Principle 14

The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.

It is necessary that the judiciary should not only adopt a code of conduct, but that it should also ensure that such code is widely disseminated in the community. However, a code of judicial conduct will do little to improve

judicial performance and enhance public confidence if it is not enforceable. Therefore, a mechanism in the form of a credible, independent *Judicial Ethics Review Committee* should be established to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee so established should not be controlled by the judiciary, but must be one in which there is sufficient lay representation to attract the confidence of the community. Associating persons external to the judiciary (lawyers, academics and representatives of the community) in the monitoring of ethical principles will prevent a possible perception of self-interest and self-protection, and provide the essential element of transparency.

Principle 15

There should be transparency in the disciplinary process of judges.

The power to discipline or remove a judge from office should be vested in an independent body (or in the Council for the Judiciary responsible for the appointment of judges), which is composed of serving or retired judges but which should include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive. Where the Head of State or the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of this independent body. The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published. The complainant, if any, should be informed of the outcome of the investigation into his complaint.