

High-Level Meeting of the Global Judicial Integrity Network

(25-27 February 2020, Doha, Qatar)

JUDICIAL INDEPENDENCE: NEW CHALLENGES AND JUDICIAL GOVERNANCE INNOVATIONS

The CEELI Institute
The Justice Studies Center of the Americas (JSCA)

I. SESSION ORGANIZERS

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Organizations:	Justice Studies Centre of the Americas, CEELI Institute

II. RAPPORTEUR¹

Name:	Leonel González
Position:	Training Director
Organization:	Justice Studies Centre of the Americas
Topic of presentation:	Judicial independence and judicial governance in South America

III. MODERATOR AND PANELLISTS:

Moderator:	Christopher Lehmann
Position:	Executive Director
Organization:	The CEELI Institute

PANELLISTS

Name:	Hon. Ivana Hrdlickova
Position:	President (and Judge)

¹ Responsible for drafting the session report.

Organization:	Special Tribunal on Lebanon (The Hague)
Topic of presentation:	Judicial independence: external and internal challenges

Name:	Hon. Madan Lokur
Position:	Justice
Organization:	Supreme Court of India
Topic of presentation:	Maintaining judicial integrity

Name:	Hon. Luz del Carmen Ibáñez Carranza
Position:	Justice
Organization:	International Criminal Court (ICC)
Topic of presentation:	Judicial independence in the experience of the ICC

Name:	Hon. Lozan Panov
Position:	President
Organization:	Supreme Court of Cassation, Bulgaria
Topic of presentation:	Government interference with the independence of the judiciary

IV. SUMMARY OF THE SESSION:

Judicial independence is critical to maintaining the integrity of the judiciary. Judges must feel free to fairly evaluate the matters before them based on the evidence presented and the relevant law, secure from external pressures. Judges who are subject to such outside pressures and interests will feel constrained in their decision-making powers. Limits on judicial independence corrupt the function of the judiciary, subject it to external pressures, and undermine the transparency of the judicial function.

Increasingly, however, judges are subject to outside interference and pressures that reduce their independence, in both subtle and direct ways. Obvious but common threats to judicial independence include very public political attacks on the judiciary, as currently seen in the United States, Poland and Ukraine, often involving personal threats against individual judges. Similarly, in some instances one faction of judges gains administrative control of a court and uses the accompanying power to limit, punish or demote opposing factions. One particularly notable practice in recent years is the use of legislative “reforms” to manipulate the membership of high judicial councils in such a way as to increase control of the government or of a ruling political party over the council, and by extension over the national judiciary - effectively ending self-governance of the judiciary and removing judicial control of the council.

More common, however, are the use of incremental legislative and administrative steps, implemented by governments and designed to directly limit the jurisdiction of judges and courts, or to make judges more directly accountable to political and governmental authorities. Such incremental changes often seem relatively innocuous to the casual observer, the public or the media, and the impact of such incremental changes is not always immediately apparent. Recent examples of such incremental limits on judicial independence include: giving the Ministry of Justice the ability to reassign court presidents without cause; reducing retirement ages (with the aim of forcing judges out of office early); increased use of contract judges, whose term is limited and whose reappointment is discretionary; the creation of additional layers of review, so that a decision of a first instance court can be set aside, even before the appeal process begins; budget cuts, which undermine working conditions; and changes in criteria for performance evaluations, including the use of non-transparent performance criteria.

This session also looked at steps courts and judges themselves can undertake to protect and preserve their independence. The session examined and discussed possible guidelines to improve the role of the Supreme Courts and Judicial Councils in key dimensions for judicial independence and prevention of corruption within the judiciary, including disciplinary rules and procedures; judicial selection process; participation of judges in the election of the head of the judiciary; and the institutional management of the social and media pressures. In particular, the session incorporated discussion of the findings and insights produced by the empirical study *Judicial Government. Independence and strengthening of Judiciary in Latin America*, conducted by JSCA. The Latin American examples are particularly useful in demonstrating how the judiciary itself can take greater control judicial governance, and assert its role with the aim of developing the set of actions directed to preserve judicial independence.

Other key issues addressed during the session were the lack of support from the heads of certain institutions, the increase of nationalism and its impact on the judiciary. The session also pointed the need of external support for the judiciary (for the national and international courts) through the building of public support; from other governmental institutions; and the importance of relying on international standards. The session also called for the need of being aware of the gender issues and of increasing the presence of female judges in complex cases.

V. HOW THE SESSION SUPPORTS THE OVERALL OBJECTIVE OF THE GLOBAL JUDICIAL INTEGRITY NETWORK OF STRENGTHENING JUDICIAL INTEGRITY AND PREVENTING CORRUPTION IN THE JUSTICE SYSTEM:

The session examined ways in which the judiciary itself can protect and promote judicial independence. The institutional structure with the aim of developing the set of actions directed to preserve judicial independence has been known as *Judicial Government*. This responsibility usually rests in the High Courts and Judicial Councils. By shining light on these practices, this session assisted the Global Judicial Integrity Network in promoting its overall goals.

VI. PROPOSED OUTCOME(S) OF THE SESSION AND THEIR ACHIEVEMENT:

1. To facilitate broader understanding as to how judicial independence is currently being undermined, both through political attacks and through more subtle legislative and administrative efforts that limit the powers, function and discretion of judges.

2. To inform participants about actual examples of current efforts to restrict judicial independence, and how seemingly small administrative changes can have large impacts
3. To establish the link between lack of judicial independence and the increased susceptibility of the judiciary to external influences and increased corruption.
4. To highlight effective responses—by judicial associations, individual judges, NGO’s and the public—to such political and governmental efforts at limiting judicial independence
5. To discuss the findings of an empirical study, prepared by JSCA, highlighting the contributions of different institutional actors in enhancing judicial independence.
6. To discuss issues and factors that have a key role in enhancing judicial independence.
7. To construct -from a collaborative approach- key aspects of judicial governance and function that have been identified by empirical research as key for maintaining and securing judicial independence: Disciplinary rules and institutions; judicial selection processes; participation of judges in the election of the head of the judiciary; and the institutional management of the social and media pressure.

The original outcomes above were broadly achieved by the panellists who provided insights from their respective jurisdictions as to how the role and function of the judiciary and the independence of judges is being compromised, and who identified ways that the judiciary and its supporters can effectively respond to such attacks on judicial independence. The panel noted the need for international judicial collaboration and they very much welcomed opportunities such as the present conference to share experiences, demonstrate solidarity and to unite learn from the different jurisdictions as to how best and address more recent challenges related to social media.

Actual examples were provided of efforts to restrict judicial independence, including some hard hitting instances of harassment of judges in Bulgaria. These example included misleading, negative press reports aimed at members of the judiciary who supported the Polish judges and recently marched in solidarity with them in Warsaw. Panellist Lozan Panov, the President of the Bulgarian Supreme Court of Cassation spoke of how he was pictured in a leading Bulgarian paper with the headline ‘Our servants of Soros’. Judge Panov also detailed a campaign of intimidation against judges, which involved public posters with his image and scrawled underneath were the words ‘foreign agent’. Another bizarre and unsettling public protest outside the Bulgarian courts involved masked protesters bearing skinned and bloodied lambs heads. These examples highlight the difficulties faced in attempting to achieve any effective response to such attacks. Political attacks by those aligned with the far right and nationalist populist movements manifest in personal attacks designed to inflict negative reputational damage and in so doing undermine the integrity of the judiciary. Unfortunately, Bulgarian judges have received little support or intervention from their own Supreme Judicial Council, leaving the judges on their own to deal with the intimidation.

Panellists provided other such examples of subtle malign conduct of certain organisations and outside interference and pressures that aim reduce or limit their independence. These ranged from the practices in India as outlined by Justice Lokur in relation to the National Judicial Appointment Council. He recounted that there are instances of significant delays of up to 18 months in the selection and appointment of judges and the use of a veto power to discriminate against judicial nominees on the basis of sexual orientation.

Judge Ibáñez Carranza and Judge Hrdlickova both noted the external and internal challenges to judicial independence in the course of their roles as judges in international tribunals. Evidence from the ICC would suggest that female judges are assigned less important cases and the perception is they are

worthy of less meaningful work. Of the 18 judges on the ICC, six are women and the opinions of women are suppressed and ignored. More is required of the administrative function of the court to increase transparency and implement a rotation system to address the inequalities. Interestingly, Judge Hrdlickova shared that there was less of an issue in terms of gender inequality in the judiciary in Czechia as a result of communist legacy where judicial positions were not considered to be of high status or well-paid and these positions were filled by women by in large.

VII. CONCLUSIONS OF THE SESSION AND RECOMMENDATIONS TO THE GLOBAL JUDICIAL INTEGRITY NETWORK:

- There are ongoing needs for external support for the judiciary at both the national and international level. At the national level, this can be provided by the judges themselves, as well as by judicial associations, civil society organizations, independent domestic NGOs, journalists and the public at large. At the international level, this support can be provided by UNODC and other international bodies (e.g. OSCE, OAS, AU), by large international organizations and by NGOs.
- Bring to bear relevant international standards protecting the independence of the judiciary. Many international instruments memorialize judicial independence. Both domestic and international supporters need to be familiar with these instruments and need to use them in their efforts to support the independence of the judiciary.
- Judicial independence relies on public trust. The judiciary must take steps to build and increase the level of public trust in the judiciary. This can be done through acts of transparency, through public outreach about the work of the judiciary, by drafting clear and easily understood decisions, and even by effective use of social media and other forms of communication with the public about the work and role of judges. Judicial allies—civil society, associations, etc.—must also take an active role in such public education efforts, designed to build public support for the role of judges.
- The judiciary should reflect all of the population at large, and will this have more credibility and public trust. To do this, an increased effort should be made at raising awareness of gender issues, and at encouragement of the presence of female judges in all levels of the courts including in handling complex cases.
- Judges must take personal responsibility to be accountable for their own decisions and actions. Judges must hold themselves to the highest ethical standards.
- International organizations, NGOs and others are encouraged to provide networking opportunities and opportunities for peer-to-peer knowledge sharing sessions (such as the UNODC Global Judicial Integrity Network) to provide support for individual judges and to further empower them.
- Continued work and research should be undertaken on the implementation of best practices, together with data gathering and analysis to evidence and improve monitoring and evaluation.