# Measures to promote integrity and combat corruption within the judiciary

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Distinguished colleagues,

It is a pleasure to address you on these issues in this beautiful city of Paris where the people have recently so warmly re-embraced internationalism. My role this morning is to address you on measures taken or recommended by judges from independent judiciaries around the world to promote integrity and combat corruption in the judiciary. These were the subject of papers from all the participating countries which were then discussed, and a report compiled as a result of those discussions, at the last meeting of the First Study Commission of the International Association of Judges in Mexico City in October 2016. As the newly-elected President of the First Study Commission, I presented that report to the IAJ annual meeting, and it forms the basis of my paper today.

The First Study Commission concentrated its discussions on best practice to promote transparency of court proceedings, judicial selection, and judicial administration; methods for supporting judicial integrity and non-corrupt practices; and major threats to these ideals.

## *Introduction*

Recent events in Turkey involving the arbitrary detention and dismissal of judicial officers represent the antithesis of the conditions necessary for a stable, independent system for the administration of justice. Those events highlight the importance of the issues raised by the IAJ and the promotion of practices to protect the values of equal, fair and non-corrupt judicial decision-making. These concerns have immediate relevance to us as one of the Vice-Presidents of

the First Study Commission, Judge Mehmet Tank, remains in detention without charge in Turkey.

### *Transparency of Judicial Selection*

The first matter to be considered is appointment of judges. The First Study Commission endorsed two anti-corruption propositions. First, that the process for judicial selection must incorporate merit-based criteria and be publically accessible; that is, that the method by which selection takes place must be known and not secret. Second, that it is desirable for candidates to be short-listed and recommended for appointment by a panel or committee entirely independent of the executive, or at least consisting of a clear majority of judicial members.[1] These approaches are desirable in order to promote a diversified judiciary of the highest order, with selection to be free from discrimination, political influence or other bias[2] and to ensure that those appointed are not corrupt nor susceptible to corruption.

The Commission expressed concern over the use of "short term judges" and the "limited transparency" regarding their appointment.[3]

The appointment of judges at all levels should be open, transparent, merit-based and free from political influence.

### *Transparency of Court Proceedings*

There must be transparency in court proceedings to ensure public confidence and combat corruption. There were two main elements of best practice reported

[1] The preferred or actual composition of such a body varied among responses. Some had a greater role for the Executive than others; some did not specify a preferred composition beyond stating that it should be "independent". However, as a general proposition, many responses expressed a preference for strong representation by the judiciary in the selection process.

[2] Australia; France; Ireland; Japan; United Kingdom. France made the point that "competition" as part of a selection process facilitates equal access to an appointment opportunity.

[3] Norway.

to enhance transparency. First, transparency is enhanced when court proceedings are publicly accessible, as far as possible. Members of the public and the media should be able to attend and report on court proceedings, with only limited exceptions

The next most commonly reported element of best practice amongst courts worldwide was the publication of reasoned judicial decisions.[4] Some respondents elaborated by stating that the reasons ought to be available for easily accessible online download;[5] and others supported the production of case summaries, especially for cases of great complexity or public importance.[6]

The idea of electronically broadcasting proceedings received more cautious endorsement. A number of jurisdictions referenced, with apparent approval, the existence currently of televised broadcast of cases in their countries;[7] others indicated that electronic broadcast might be desirable in limited types of proceedings but drew attention to potential drawbacks (such as cost and negative effects on witnesses or other court participants).[8]

The Study Commission endorsed active steps by courts to engage openly with the media, whether by the appointment of a media spokesperson for the court;[9]

[4] For example, Spain referred, with approval, to the constitutional requirement to publish reasons for decisions in that jurisdiction. Throughout the responses to each item of the questionnaire, many jurisdictions referenced requirements, in law, to put certain best practice measures in place. As noted by Ireland, different ways of guaranteeing such measures are possible: constitutional guarantees (strongest), laws changeable by majority of Parliament, and customary practice (weakest). For each measure referred to in this summary, consideration of how best to ensure it is implemented will be relevant, balancing considerations of strength of protection, flexibility and practicality.

[5] Australia; Bermuda; Croatia; Germany; Israel; Slovenia.

[6] Australia; United Kingdom.

[7] Brazil; Georgia.

[8] Australia; United Kingdom. The Liechtenstein response referred to the desirability of "media coverage in important cases."

[9] Croatia; Slovenia.

pre-trial meetings between the judge and the media in high-profile cases;[10] or training of judges on how to communicate openly with journalists.[11]

All the suggestions made in response to the issue of transparency of court proceedings support undertaking measures that, *as far as possible*, permit the accountability of court participants, including judges, by ensuring proceedings are heard and determined in public and are a matter of public record.

***Transparency of Administration of the Judiciary***

Two of the most significant patterns of responses to this issue included, first, the desirability of making publically accessible the ways in which courts are run and, second, the need for sound procedures for the investigation and disposition of complaints made against judges in a way that balances transparency with protection from frivolous, malicious, or otherwise unfounded complaints.

In relation to the first theme, a number of jurisdictions advocated promoting the public's understanding of the court's work by communicating the roles of different judges within a court;[12] periodically reporting decisions reached regarding operational or governance related issues;[13] and engaging in dialogue with the media about matters of judicial administration.[14] There were also a number of jurisdictions that supported specific public education activities,

[10] Portugal, this response also specifically endorsing the use of "communication cabinets".
[11] Slovenia.
[12] Australia; Brazil; Ireland; Portugal.
[13] Australia; Brazil; Croatia; Georgia; Ireland; Portugal; Serbia; Slovenia; Switzerland. Japan refers to its access to information rules, permitting access to documents relating to judicial administration on request. Israel referred to the practice of annually compiling a public file with statistics capturing the nature of proceedings heard throughout the year. It also proposed that regulations and standards regarding administrative procedure be published and open to the public.
[14] Croatia; Slovenia. Canada referred to the practice of its National Judicial Council engaging in "public education activities". Switzerland suggested that figures and statistics resulting from "court controlling measures" should be accessible, though with safeguards to protect judicial independence.

whether delivered through the use of a Court press office or website;[15] through activities organised by the National Judicial Council;[16] or through the use of public debates and roundtables involving members of the judiciary.[17]

A number of responses made reference to the process by which judges are allocated to hear particular cases. Some responses favoured the allocation process being randomised – one stating that it should be akin to a lottery.[18] Another response saw no difficulty with a practice whereby senior judges assigned junior judges on the basis of perceived skills or experience.[19] Whichever process of case allocation is used, the Commission's view is that the allocation must be based on pre-established objective criteria.[20]

There were also some best practice suggestions made in relation to transparent measures for improving the efficiency of court administration. The Study Commission believes that courts should have a right to propose and manage their own budgets.[21] Judges should be responsible for, and in control of, court administration rather than civilian administrators.[22] This will be the subject of more detailed study by the Commission later this year.

***Supporting Integrity and Preventing Corruption***

Three main themes emerged in relation to this issue. First, there must be secure and adequate working conditions for judges. Second, there should be ongoing judicial education that reinforces standards of appropriate conduct. Third, it is

[15] Brazil.
[16] Canada.
[17] Slovenia.
[18] Brazil. Italy and Spain also thought that there should be a randomisation element to the allocation of judges and, moreover, that the allocation process should strictly adhere to a pre-established allocation protocol.
[19] United Kingdom. This is also the current practice in many Australian courts.
[20] Austria; France; Italy; Ireland; Switzerland. Ireland also suggested that the procedure for allocation of judges should be open to public scrutiny. Norway indicated that there should be "transparent systems for case allocation/reallocation".
[21] Ireland.
[22] France.

desirable to have a fair process for responding to complaints of judicial misconduct.

As regards judicial conditions, judicial salaries, pensions and entitlements should be reasonably generous, in order to reduce the likely effectiveness of bribery.[23] These conditions should be safeguarded from reduction by the executive during the tenure of the judge, in order to avoid threats to judicial independence.[24] Similarly, judges should have security of tenure.[25]

In relation to judicial education and support, this should occur upon appointment to the judiciary and be ongoing and include education for leadership and workshops/seminars covering topics such as conflict of interest, receipt of gifts, etc.;[26] and, in particular, the discussion of case scenarios on such topics.[27] The Commission endorsed the judicial-led development of a code or principles of ethical conduct, incorporating practical advice on appropriate responses to ethical issues, which could be referenced in ongoing judicial education activities, updated to deal with contemporary circumstances such as the use of social media.[28] Indeed, the process of judges working together to develop a code of ethics is valuable in itself.[29] Other suggestions accepted by the Commission refer to the value of advisory or guideline opinions being produced on issues relating to ethics or integrity by a special judicial body and

[23] Armenia; Australia; Austria; Croatia; Denmark; France; Georgia; Germany; Ireland; Liechtenstein; Sweden; United Kingdom. France also noted that judicial remuneration should not be fixed and not associated with performance metrics ("quantitative results"). Norway indicated that a judge's salary and pension should reflect the judge's responsibilities and position.

[24] Australia; France; Georgia; Ireland; Liechtenstein; Japan; United Kingdom. Greece advocated for the establishment of an institutional framework that made provision for all aspects of judicial functioning, including working conditions, salaries and pensions. Israel proposed that financial benefits should be paid directly to the judge, but not as an "employee", to ensure judges are not perceived as beholden to the executive.

[25] Australia; Greece; Ireland; Italy; Japan; Liechtenstein; United Kingdom.

[26] Armenia; Bermuda; Croatia; Denmark; Israel; Italy; Slovenia.

[27] Portugal. Serbia refers to the organisation of debates on matters concerning judicial integrity.

[28] Bermuda; Brazil; Croatia; Denmark; France; Georgia; Germany; Ireland; Israel; Italy; Liechtenstein; Norway; Portugal; Serbia; Slovenia; United Kingdom.

[29] Switzerland.

the use of structured debates on those issues.[30] In addition to formal or structured support of ethical conduct, the Study Commission emphasised the importance of peer group support within the judiciary, where colleagues can feel comfortable sharing experiences and can receive confidential counsel in relation to any concerns they may have.[31]

The Study Commission supported an emphasis on the importance of fostering a culture of integrity within the judiciary and the courts more generally.[32] Informal discussion between judges is often a very good way to encourage that culture. The Commission endorses the practice of declaring conflicts of interest and the avoidance or declaration by judges of any affiliation with public causes which might engender a perceived or actual conflict.[33] If there is any doubt, the judge should formally consult with the judge's colleagues about the issue.

Judges must conform to the highest standards and avoid any inappropriate behaviour in their public and private lives. Being a judge is an obligation to society and not only a job, but a way of life.[34] Finally, the Study Commission endorses that the obligation of judges to take an oath or affirmation to adhere to the fundamental principles of independence and impartiality has more than just ceremonial significance; it is an important practical step in ensuring a culture of independence and integrity be maintained.[35]

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[30] Portugal; Serbia; Slovenia.

[31] Australia; Canada; Croatia; Denmark; Germany; Israel; Liechtenstein; Slovenia; Sweden. France referred favourably to judges having an avenue for seeking advice from an independent, experienced body about any ethical issues they might have.

[32] Australia; Germany. Denmark referred to a longstanding tradition of fostering integrity in its public officials, where merit-based appointments stand in the face of attempts to secure positions by rank or bribery.

[33] Australia; Bermuda; Georgia; Israel; Liechtenstein; Spain; Sweden; Taiwan. Israel expressed the view that private work should only be undertaken by judges if special permission is sought and granted.

[34] Israel. See also Georgia, which noted that judges should act in a manner that promotes public confidence in their integrity.

[35] Bermuda; Israel; Italy.

With regards to establishing a system to handle complaints of misconduct made against judges, the body which deals with complaints should be independent of the executive and legislative branches of government.[36] The Commission expressed the view that to increase transparency and therefore public confidence, one approach, which was generally supported, would be to make the body partly external to the courts.[37] There should be strict treatment of ill-founded complaints against judges;[38] judges should have an obligation to report witnessed corruption or attempts to corrupt;[39] and "sanctions" should be imposed on judges who are subject to well-founded complaints.[40] As to what any sanctions imposed might be, some respondents referred to suspension or removal from office by the executive or the legislative body when very serious complaints (e.g., of corruption) are made out.[41] The penal or criminal codes should apply to judges for corrupt behaviour or behaviour outside their judicial work, in the same way they would be applied to any other citizen.[42]

***Threats to Integrity & Non-Corruptibility***

Many of the major threats identified are implicit from the suggested best practice procedures identified for resolving them.[43] However, two threats, in particular, were explicitly identified.

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[36] Australia; Brazil; Croatia; Georgia; Germany; Ireland; Portugal; Slovenia. Bermuda noted that although the Head of the Civil Service has overall disciplinary responsibility, as an incidence of judicial independence the Registrar of the Courts is operationally responsible for discipline in that jurisdiction. Bermuda also noted an important step in promoting ethical conduct in that country was the voluntary adoption by the judiciary of a Judicial Complaints Protocol to facilitate judicial conduct complaints being made to the judicial and Legal Services Committee for conduct falling short of the constitutional threshold for removal from office.

[37] Australia. Germany supported an independent prosecution service prosecuting cases of judicial corruption.

[38] Croatia; Slovenia.

[39] Austria.

[40] Brazil; Croatia; Ireland; Spain; United Kingdom.

[41] Australia; Brazil; Ireland; Israel; Portugal; Spain.

[42] Denmark; Germany; Israel; Japan; Spain. Bermuda refers to a specific provision in its Criminal Code making judicial corruption an offence punishable by a fine or imprisonment.

[43] Serbia's response to this item illustrates the point well by denoting the following as threats, in counterpoint to its best practice suggestions: interference by the executive and legislative branches of government in the operations of the judiciary; lack of argumentation leading up to decisions affecting the judiciary such as selection and advancement of judges; absence of a judicial code of conduct; lack of training for judges on

The first key threat relates to court resourcing. This could manifest as inadequate working conditions for judges, potentially increasing their susceptibility to bribes.[44] It could also manifest as inadequate resourcing of the court system more generally and an excessive workload for judges.[45] Finally, it might manifest in a lack of financial independence for the courts and the opportunity for the Executive to abuse its power by using decisions around funding as a threat to secure or influence a particular court outcome.[46]

The second key threat identified by the Study Commission relates to attempts by external parties to exert influence over the exercise of judicial functions. There is a particular threat attendant upon excessive proximity between judges and those who exercise political or economic power.[47] The politicisation of judicial appointments is a particular area of concern.[48] The Study Commission also expressed concern about corrosive commentary by politicians or the media, seeking to influence the determination of cases.[49] The Commission identified pressure to conform to a particular ideological view, backed with vigorous press reporting, as an insidious threat which is as much a threat to the integrity of the judiciary as bribery or secret representations.[50] Related to this is the concern about inaccurate publicity of court sessions[51] and the impact of social media.[52]

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integrity and corruption; inadequate working conditions for judges; and, more broadly, lack of systemic measures for prevention of corruption.

[44] Armenia; Austria; Denmark; France; Ireland; Israel; Portugal; Sweden; Switzerland; United Kingdom. The threat Taiwan refers to, of illegal lobbying through offers of money or sexual favours, would be more pronounced if judges were poorly remunerated.

[45] Austria; Denmark; France; Georgia; Ireland.

[46] Georgia; Greece; Ireland; Switzerland; United Kingdom.

[47] Austria; Brazil; France; Greece; Portugal. France referred specifically to concerns expressed by the European Court of Human Rights regarding the lack of independence of French prosecutors, who are appointed, transferred and promoted by the Executive.

[48] Australia; Ireland.

[49] France; Portugal; Slovenia; United Kingdom. Canada referred to the issue of micro-management by government and the media, particularly where the judiciary is not in a position to make public comment on the issues raised. Japan referred to the threat of 'unjustifiable internal or external interference.'

[50] United Kingdom.

[51] Georgia.

A further source of threat was expressed to be the conditions of the society in which the court system operates. For instance, increased consumerism and the rise of a 'society of celebrities' will likely mean that members of that society, from which judges are not a world apart, will be more susceptible to personal temptations.[53] Another example raised was that wide-scale corruption in daily life, especially in politics, can have a flow-on effect to the operation of the courts,[54] perhaps because such behaviour can become normalised.

***Conclusion***

Finally the Commission recommended that steps to improve the transparency of the court system along with the implementation of measures to support and enhance the integrity of judges should continue to be examined and put into practice in order to reduce the risk of corrupt behaviour by judicial officers into the future.

[52] Canada.
[53] Brazil; France.
[54] Germany.