Statement of Principles of the Independence of the Judiciary
by the
Conference of Chief Justices of Central and Eastern Europe
Brijuni, Croatia
14 October, 2015

PREAMBLE

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall have access to a competent, independent, and impartial tribunal for the resolution of civil suits or criminal charges.

WHEREAS the *Universal Declaration of Human Rights* provides that all persons are equal before the law and are entitled to equal protection of the law.

WHEREAS the United Nations Congress on the Prevention of Crime and Treatment of Offenders has stated that the independence of judiciary shall be guaranteed by the state and enshrined in the Constitution or law of the country.

WHEREAS the *European Convention on Human Rights* requires all signatories to guarantee to everyone within their jurisdictions the rights to life, liberty, security and other rights and freedoms enumerated in Section I of the Convention, including the right to a fair trail by an independent impartial tribunal established by law.

WHEREAS the Consultative Council of European Judges has affirmed in its opinions that judicial independence is an essential prerequisite for the operation of justice.

WHEREAS these rights are also protected by other regional instruments and the Constitutions, statutes, legal decisions, and understandings of the participating countries.

WHEREAS judicial independence is not a privilege to the judiciary, but an obligation that stems from every individual right to an impartial tribunal.

AND WHEREAS the implementation and protection of all rights depends on the existence of a competent, independent, and impartial judiciary.

THE FOLLOWING PRINCIPLES establish standards both for the independence of the judiciary as one of the three branches of state power and for the independence of individual judges. These principles represent the full commitment of the Conference of Chief Justices of Central and Eastern Europe to the rule of law and are designed to guide the individual judge in carrying out important judicial responsibilities, to assist the judiciary in self-regulation, to establish the basis for discourse between three branches of state power, and to promote public respect and appreciation for the judiciary.

INDEPENDENCE OF THE JUDICIARY

1. The Judiciary is an institution of the highest value in every society.

2. The Universal Declaration of Human Rights (Art. 10), the International Covenant on Civil and Political Rights (Art. 14(1)), and the European Convention on Human Rights (Art. 6 (1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.

3. Independence of the Judiciary requires that:

    a. The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source;
    b. Independence belongs both to the judiciary as an institution and to each individual judge with respect to a case assigned to the judge; and
    c. No judge can properly adjudicate a case out of fear or anticipation of favor from any source or due to any improper influence.

4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law.

    a. Judges shall exhibit and promote high standards of legal knowledge and judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.
    b. Impartiality and the appearance of impartiality are essential to the proper discharge of the judicial office. They apply not only to the decision itself but also to the process by which the decision is made.

5. The independence of the judiciary and judges shall be guaranteed by the state and enshrined in the Constitution, at the highest legal level in the country. More specific rules should be provided at the legislative level.

6. It is the duty of the institutions of the state to respect and observe the proper objectives and functions of the judiciary.

7. In the decision-making process, the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgment in accordance with Article 3 (a) shall not be subject to inference or influence by any judge not assigned to the case, the council of justice, the ministry of justice, or any other government officer or institution, except that the judgment may be appealed to another court. The judiciary shall exercise its functions in

accordance with the Constitution and the laws. The state should provide procedures and remedies for the protection of judicial independence, including sanctions against those who attempt to influence judges other than through lawful court processes.

8. Judges shall uphold the integrity and independence of the judiciary and gain the trust of the people by avoiding impropriety and the appearance of impropriety in all their official and private activities.

9. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, except that a judge should refrain from political activity.

10. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

OBJECTIVES OF THE JUDICIARY

11. The objectives and functions of the judiciary include the following:

    a. To ensure, within the proper limits of the judicial function, that all persons are able to live securely under the rule of law within a society that is ordered by law;
    b. To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
    c. To administer the law impartially among persons and legal entities and between persons and legal entities and the State.

APPOINTMENT OF JUDGES

12. To enable the judiciary to achieve its objectives and perform its functions it is essential that judges be chosen by merit on the basis of proven competence, integrity and independence.

13. The method of appointment of judges must be such as will ensure the appointment of persons who are best qualified for judicial office. It must provide safeguards against improper influences being taken into account so that only persons of competence, integrity and independence are appointed.

14. In the selection of judges there must be no discrimination against a person on the basis of race, color, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

15. Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience.

16. The process for the selection, appointment, and promotion of judges must be transparent. In order to ensure the transparency of the selection process, the law should clearly define the procedures and objective criteria for the selection of judges.

TENURE

17. Judges must have security of tenure. The terms of office of judges shall be adequately secured by law. The use of a probationary period in the appointment process is not preferred, however where it exists, it should be restricted as much as possible. A judge on probation is entitled to the same protections, privileges, immunities, and individual independence as a judge who is not on probation.

18. It is recommended that all judges exercising the same jurisdiction be appointed for a period to expire upon the attainment of a particular age.

19. Judges should be subject to early resignation only at their own request and subject to removal from office only for proved incapacity, conviction of a crime, or other serious misconduct that renders the judge unfit to be a judge. The adjudication of a case on the merits in good faith based upon the judge's application of the law should not result in removal even though the judge's decision may be mistaken, unpopular or disfavored by government officers or institutions. The appropriate recourse for those dissatisfied with the judgment is to pursue an appeal in accordance with law.

20. Judges who are presidents of chambers should not be removed as president based on an adjudication by the judge or by other judges within the chamber that is deemed to be mistaken, unpopular, or disfavored.

21. Where procedures for the removal of a judge by vote of the people do not apply, procedures for the removal of judges must be under the control of the judiciary.

22. Whenever a judge is sought to be removed, the judge must have the right to adequate notice and to a full and fair hearing. No judge should be disciplined or removed for judicial acts except for gross negligence or intentional disregard of the law.

23. If the law provides for the evaluation of the professional performance of judges, such evaluation must respect judicial independence. Judges may be evaluated to identify areas in which they should improve and to determine who should be promoted. Evaluations must not be abused or used as a pretext to dismiss a judge.

24. All disciplinary, suspension or removal proceedings must be determined in accordance with previously established standards of judicial conduct and be transparent.

25. Except for the purposes of ensuring the proper and timely adjudication of cases, no judge should be transferred by competent bodies responsible for the administration of judicial service from one jurisdiction or function to another without the consent of the judge.

26. If the competent body responsible for the administration of judicial service is a judicial council, a council of justice, or a comparable body, such council or body should be comprised of a majority who are judges.

JUDICIAL CONDITIONS

27. Judges must receive compensation commensurate with their profession and responsibilities and be given appropriate terms and conditions of service. Judges must be provided with adequate training. Judges must also be provided with adequate facilities in which to work that reflect the importance of the rule of law in society. The courts should be provided with a sufficient number of judges and appropriately qualified support staff. The compensation of judges must be protected from reduction by specific legislation. Guarantees should exist for maintaining a reasonable remuneration of judges in case of disability, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. The compensation and conditions of service of judges should not be altered to the disadvantage of judges during their term of office, except in the case of an economic or budgetary emergency.

28. 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 and immunity from paying indemnification, based on allegations of improper acts or omissions in the exercise of their judicial functions. No judge should be subjected to criminal proceedings for criminal conduct without the withdrawal or waiver of the judge's immunity. However, because no judge is above the law, whenever a judge engages in criminal conduct, the waiver of his immunity should be forthcoming.

JURISDICTION

29. The judiciary must have jurisdiction over all issues of a justiciable nature and exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

JUDICIAL ADMINISTRATION

30. The court presidents or chairpersons should not have the exclusive competence to make administrative decisions that can affect substantive adjudication of particular cases. The assignment of cases to judges should be random or on the basis of clear, objective and transparent criteria predetermined by a board of judges of the court.

31. The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary or in a competent body in which the judiciary has a majority representation or otherwise has an effective role.

32. The budget of the courts should be prepared by the courts, or a competent authority in collaboration with the courts or judicial authorities, having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without imposing a workload on individual judges that impairs the prompt and effective administration of justice.

RELATIONSHIP WITH THE LEGISLATIVE AND EXECUTIVE BRANCHES

33. Legislative and executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge, particular judges, or the judiciary as a whole.

34. Executive authorities must not offer to judges inducements or benefits, nor should such inducements or benefits be accepted by judges, if such inducements or benefits might affect the performance of their judicial functions.

35. Executive authorities must at all times ensure the security and physical protection of judges and their families. These measures include the protection of the courts and of judges who may become, or are victims of, threats or acts of violence.

RESOURCES

36. The legislative and executive branches should respect the authority of the judicial branch and, if commenting on judges' decisions, should avoid criticism that would undermine the independence or public confidence in the judiciary. The legislative and executive branches are obliged to respect judges' decisions and should avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.

37. Judges and judicial authorities should have the right to play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system. Any draft legislation concerning the status of judges, the administration of justice and other draft legislation likely to have an impact on the judiciary, independence of the judiciary or guarantees of citizens' access to justice should be considered by the legislative branch only after obtaining the opinion of the competent authority of the judiciary.

38. It is essential that judges be provided with the resources necessary to enable them to perform their functions. The state is obliged to provide the judiciary with such resources

RELATIONSHIP WITH THE MEDIA

39. The media and the judiciary each rely upon the support of the other: just as the courts support the right of the media to investigate and publish information, the media plays an important role in promoting and maintaining public respect for the judiciary. The judiciary recognizes that the public's right to be informed about judicial decisions and public accountability of judges necessitate appropriate media coverage of judicial acts and conduct. To that end judicial processes should be transparent except where confidentiality is required by law.

40. The media should respect and uphold the independence and impartiality of the judiciary and appreciate that public support for the judiciary and judicial decisions is necessary to the judicial function and of great benefit to society.

41. Media criticism of judges, judicial acts and judicial opinions is appropriate, provided that the media does not attempt to persuade a judge or judges to reach a particular conclusion.

42. The media should refrain from unfair and ill-founded criticism of the judiciary. Whenever criticism by the media of a judge or a judge's decision is unfair or ill-founded, a response on behalf of the judge is appropriate. Because a judge is constrained from publicly commenting on the judge's cases, the response should be made by court spokespersons, judges' associations, bar associations and other entities outside the judiciary.

The Brijuni Statement on The Principles of Judicial Independence
agreed to on 14 October, 2015
by the
Conference of Chiefs Justices of Central and Eastern Europe

Name	Affiliation
Mr. XHEZAIR ZAGANJORI, Chief Justice	Albania
Mr. RAMIZ RZAYEV, Chairman	Azerbaijan
Mrs. MEDDŽIDA KRESO, President	Bosnia and Hercegovina
Mr. BRANKO HRVATIN, President	Croatia
Mr. ROMAN FIALA, Vice-President	The Czech Republic
Mr. PETER DARÁK, President of the Curia	Hungary
Mr. AVDI DINA, Justice	Kosovo
Mr. IVARS BIČKOVIČS, The Chief Justice	Latvia
Mr. RIMVYDAS NORKUS, President	Lithuania

Name	Affiliation
Mrs. LIDIJA NEDELKOVA, President	Macedonia
Mrs. VESNA MEDENICA, President	Montenegro
Mr. prof. LECH PAPRZYCKI, President of the Supreme Court	Poland
Mr. PYOTR SERKOV, First Deputy Cief Justice	The Russian Federation
Mrs. DANIELA ŠVECOVA, President	The Slovak Republic
Mrs. MAJA TRATNIK, Justice	Slovenia
Mr. YAROSLAV ROMANYUK, President	Ukraine