



The Dynamics of Judicial Independence

Undue influence on the judiciary - and how to protect judges against it

Comparative Regional and International Perspective

Workshop Program

**12 September 2018
Lebanon**

Maison Du Futur:
Le Serail, Bickfaya Lebanon
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Rationale

Judicial independence lies at the heart of a well-functioning and impartial judiciary and is the cornerstone of a system based on the separation of powers and the rule of law.

A professional, independent and effective judiciary is an important pillar to rule of law, and a key leverage for positive socio-economic development, long-term investment, innovation and stability.

Independence of the Judiciary naturally includes the independence of the judge. This requires freedom from outside influence or political intimidation when considering cases. Only judges who are insulated from outside intimidation and pressure can fairly administer justice as well as guarantee oversight to ensure that the other branches of the government do not exceed their powers, can declare acts contrary to the constitution void, and can protect the citizen's rights and liberties.

Time and again, governments have not been pleased by decisions of courts that have contravened their interests and put limits to their actions by applying the law. Time and again a variety of means have been applied to stop or prevent courts or judges from doing so. And, not surprising to legal experts, structural deficiencies in the legal framework and creative ways of using them have favoured these practices.

Potential threats to judicial independence are numerous, among them appointment and promotion systems which allow politicians to use their control over this issue to hinder the judicial independence and impartiality. Economic pressure is a less overt, but no less troublesome assault on judicial independence. The failure to adequately fund a court system - whether through neglect or from deliberate action by those who control the attribution of financial resources - is also a major potential threat to judicial independence and impartiality. Interference in judiciary can come from various sources: The executive, the legislature and local governments, individual government officials or legislators, political parties, economic elites, the military, and the judicial hierarchy itself.

What are the structural and legal safeguards to protect the judiciary against undue influence? What are the means to ensure that the judge, once in his position, may exercise his work and render his decisions independently and only subjected to the law?

Taking from experience and lessons learned in the MENA region, and Europe, the workshop will compare different options countries have adopted to protect the individual judge against undue influence or pressure, and to what avail.

This will allow participants to exchange knowledge, discuss experience and discern which means and mechanisms have proven effective, and under which conditions. The aim is to provide an overview of the framework and practice on structural guarantees for continuous professional independence of judges.

The analysis and discussion will concentrate on the different aspects of functional, jurisdictional and personal independence, comparing the regulatory framework and practice in Lebanon, the region, and Europe:

1. Appointment and tenure
2. Promotion system, transfer and dismissal (disciplinary and non-disciplinary)
3. Deliberation processes (incl. hierarchy in courts, expression of dissent)
4. Extra-jurisdictional activities, out-of-court roles and remuneration

Wednesday, 12.09.2018

09.00 – 09.30 Registration

09.30 – 10.00 Welcome Notes

President Amine Gemayel, *Former President of the Lebanese Republic, Chairman of Maison de Futur*

J. Jean Fahed, *President of the Supreme Judicial Council*

Dr. Anja Schoeller-Schletter, *Head of the the Rule of Law Programme Middle East / North Africa, Konrad-Adenauer-Stiftung*

10.00 – 10.30 **Key-note speech** **Dr. Michael Snowadsky**: “Constitutional safeguards against undue political Influence on the judicial appointment process in modern Germany - a lesson learned”

10.30 – 10.45 Coffee break

10.45 – 12.00 **Session I: Appointment of Judges and Tenure**

Moderator: Anja Schoeller-Schletter, Head of the the Rule of Law Programme Middle East / North Africa, Konrad-Adenauer-Stiftung

Ghaleb Ghanem (Lebanon), *Judge, Former President of the Supreme Judicial Council*

Anware Mnasri (Tunisia), *Judge at the Administrative Court*

Khaled Mohamed al-Kandari (Kuwait), *Judge, Head of the Administrative Judiciary Department*

Michael Snowadsky (Germany), *Judge at the Administrative Court, Ministry of Justice Baden-Württemberg, Dept. of Constitutional Law*

Discussion

12.00 – 13.15 **Promotion, Transfer and Dismissal Systems**

Moderator: Mayssam Al-Noueiry, Judge, Director-General of the Ministry of Justice

Roukoz Rizk *Judge, Supreme Judicial Council (Lebanon)*

Anware Mnasri (Tunisia), *Judge at the Administrative Court*

Khaled Mohamed al-Kandari (Kuwait), *Judge, Head of the Administrative Judiciary Department*

Michael Snowadsky (Germany), *Judge at the Administrative Court, Ministry of Justice Baden-Württemberg, Dept. of Constitutional Law*

Discussion

13.15 – 14.00 Lunch

14.00 – 15.15 **Deliberation Processes, Hierarchy, Dissent**

Moderator: Marwan Abboud, Judge, Head of the High Disciplinary Committee Lebanon

Rana Akoum, *Judge, Ministry of Justice - Eliane Saber, Judge, Supreme Judicial Council (Lebanon)*

Anware Mnasri (*Tunisia*), *Judge at the Administrative Court*

Khaled Mohamed al-Kandari (*Kuwait*), *Judge, Head of the Administrative Judiciary Department*

Michael Snowadsky (*Germany*), *Judge at the Administrative Court, Ministry of Justice Baden-Württemberg, Dept. of Constitutional Law*

Discussion

15.15 – 15.30 *Coffee Break*

15.30 – 16.45 **Extra-Jurisdictional Activity, Out-of-Court Remuneration**

Moderator: Roukoz Rizk, Judge, Supreme Judicial Council

Marwan Abboud (Lebanon), *Judge, Head of the High Disciplinary Committee Lebanon*

Anware Mnasri (*Tunisia*), *Judge at the Administrative Court*

Khaled Mohamed al-Kandari (*Kuwait*), *Judge, Head of the Administrative Judiciary Department*

Michael Snowadsky (*Germany*), *Judge at the Administrative Court, Ministry of Justice Baden-Württemberg, Dept. of Constitutional Law*

Discussion

16.45 – 17.15 **Synthesis and Results, Recommendations, Feedback**

17.15 **End of the conference**

Questions to guide experts research & presentations

I. Summarize changes of the past decade

1. What changes, on the legal, judicial and extralegal level, have affected the judiciary's independence and judges' impartiality?
2. Have there been important alterations in the economic situation affecting judicial independence?
3. What are the major internal and external challenges that have affected the judiciary?

II. Description of current situation and identification of challenges

Appointment and tenure

1. What is the process for appointing members of the judiciary?
2. What are the pros and cons of the different appointment models?
3. Are the concepts of merits and efficiency being respected?
4. What are the most flagrant gaps facing the appointment process?
5. What are the threats undermining judges independence and impartiality?

Promotion, transfer and dismissal

1. What are the procedures for promoting, transferring and dismissing members of the judiciary?
2. Does the promotion system ensure that judges are promoted according to professional merits and efficiency? How are these merits evaluated?
3. Is transfer based on a voluntary stand? Is it possible to transfer judges against their will?
4. What are the external factors influencing promotion, transfer and dismissal practices?

Deliberation processes, hierarchy and dissent

1. What are the procedures for a judgement to be rendered ?
2. To what extent does the deliberation process protect the individual judge against pressure from the executive or legislative, from the parties themselves, or superiors and colleagues?
3. What are the qualities of a proper judicial reasoning?
4. What are the different kinds of deliberative practices?
5. How does fostering or hindering deliberation affect in a positive or negative way the legitimacy of the court?
6. Are dissenting opinion permissible or not, why/why not and to what effect?

Extra-jurisdictional activity, out-of-court remuneration

1. Under which conditions are judges entitled to engage in extrajudicial activities and to what extent this might undermine their independence and impartiality.
2. What are the implications of public statements given by judges on their overall professional career?
3. Is there a monitoring mechanism controlling the extra-judicial activities?

III. Evaluate current and future potential reforms

1. Are there current reforms regarding above-mentioned points? In the affirmative, what are they and how do they affect judicial independence and judges' impartiality?
2. What current and/or future potential reforms may be efficient, and how?
3. What are the structural and legal safeguards to protect the judiciary against undue influence?
4. What are the means to ensure that the judge, once in his position, may exercise his work and render his decisions independently and only subjected to the law?