



The Dynamics of Judicial Independence

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

Comparative Regional and International Perspective

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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, political and economic elites, the military, paramilitary, and intelligence forces, criminal networks, 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, Europe and Latin America, 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 beyond (Germany, the US and/or Latin America):

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