



Back to Basic

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“Exaggerate the essential, leave the obvious vague” (Van Gogh)

When it comes to the UN Basic Principles of the Independence of the Judiciary (UN Principles) - disagreeing with the brilliant Dutch painter - one might think it impossible to exaggerate them, given their fundamental nature.

In light of recent global trends and the Covid-19 pandemic, the UN Principles remain more significant than ever and must be pursued as scrupulously as possible.

While democracy has been in decline in recent years, the Covid-19 pandemic accelerated its downward trend. Since the coronavirus outbreak began, the protection of human rights has worsened in no less than 80 countries. Inevitably, as a cornerstone for the Rule of Law, the independence of the judiciary has suffered similarly.

In a survey among the 44 national associations of judges, or similar bodies, that constitute the European Association of Judges—a regional group within the International Association of Judges (IAJ) comprised of 94 countries—around 50% of European members acknowledged that the situation of justice has worsened. Only

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10% detected an improvement. Today, this number would likely be lower as the pandemic has impacted democracy worldwide.

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“The judiciary shall decide matters before them (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

Amid attacks on judicial independence carried out by the governments of some European Union Member States, these words enshrined in the UN Principles have gained new momentum.

On 27 February 2018, the Court of Justice of the European Union (CJEU) in its Trade Union of Portuguese Judges or “ASJP” judgment issued a landmark ruling defining judicial independence. As set out in the decision, in each country “the body concerned shall exercise its judicial functions with complete autonomy, without being subject to any hierarchical link or any obligation of subordination in relation to any person, and without taking orders or instructions from any source, and shall thus be protected against any external intervention or pressure which might affect the independence of its members in the exercise of their judicial functions and influence their decisions.”

The guidance set forth in the UN Principles is particularly relevant in light of the current state of affairs in the European Union. Unlike in earlier debates about the Rule of Law, judicial independence is now center stage, not only in the European Parliament but also in the European Commission. Sadly, the latter, as well as the European Council, have shown an inability to protect independent judges in desperate need of support, in contrast to the CJEU and the European Court of Human Rights.

Let us be clear: the future of Europe will be defined by the Rule of Law and its ability to uphold and protect it.

As president of the International Association of Judges and previously of the European Association of Judges, I insisted, time and again, on this appeal: the European Union requires “Marshall Plan”-levels of determination to save the Rule of Law.

Judicial independence as outlined by the UN Principles is not negotiable or susceptible to compromises. It constitutes the “genetic code” underlying all impartial judges.

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“ (...) members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”

If a State deprives a judge of his/her independence, one cannot be considered a judge anymore, but rather a qualified expert, skilled in legal sciences. We may no longer have to challenge any litigants that are powerful or politically protected, but, at the end of the day, we would not be judges would not be at the service of all our fellow citizens.

That is why impartial judges have raised their voices each time their independence is at stake. And each time, attempts to inhibit judges’ freedom of expression have multiplied in several regions and different countries.

For authoritarian politicians, judges must be obedient and silent, no matter what. However, the IAJ—anchored on the described UN Principle—has repeatedly denounced imposed gags on the judiciary as unacceptable.

Moreover, the right of freedom of expression of judges to address the functioning of judicial systems provides further cause to speak out each time the Rule of Law is in threat. The rulings of CJEU, in line with Opinion 18 (paragraph 41) of the Consultative Council of European Judges, underline this obligation. Regrettably, the recent Muzzle Laws forced upon the judiciary are not limited to Poland. Autocratic regimes persist in suppressing the voices of those who defy their ambitions of controlling the judiciary. The same phenomena arise in different forms in different regions.

Tunisia is the most recent example of such attacks on the independence of the judiciary, which the Special Rapporteur for the Independence of Judges and Lawyers correctly denounced; the prolonged hunger strike of some of the country's judges has been a terrible consequence of this assault on rule of law.

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“Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.”

Associations are essential to ensure the impartiality of judges; hence, the reason the Universal Charter of the Judge, adopted by the IAJ Central Council in Taiwan on November 17, 1999, and updated in Santiago de Chile on November 14, 2017, stated firmly that “the right of a judge to belong to a professional association must be recognized” (article 3-5).

It is not a mere coincidence that totalitarian regimes are zealous in obstructing the creation or continuance of associations of judges. In Venezuela, a prohibition to form an association of judges was eventually enshrined in the Constitution itself. Article 256 of the Constitution of the Bolivarian Republic of Venezuela mandates that magistrates, judges, prosecutors of the Public Prosecutor's Office and public defenders, from the date of their appointment until they leave their respective posts, may not engage in associations, trade unions or similar activism. And to leave no doubt, further on, it reiterates in plain words: "Judges may not associate with each other."

The concept of associationism, as defined by Alexis de Tocqueville, offers an additional explanation for why autocratic regimes would oppose associations of judges. For Tocqueville, the conditions of life in modern societies tend to alienate people from the collective interest, which facilitates the emergence of tyrannies. Thus, associationism would have the fundamental purpose of enabling social integration, fostering the participation of citizens through cooperation and solidarity.

For the IAJ, judicial associationism must be distinguished from a mere trade union with strict corporatist goals of seeking better wages or defending labor rights. The particular role of judges in contemporary societies requires that our collective intervention is oriented toward the defense of the Rule of Law and judicial independence.

Our motto, defining the main mission for us, is significant: "International Association of Judges: Promoting judicial independence worldwide."

Therefore, keeping in mind the obligation of judicial systems to preserve a proper equilibrium with State powers, the IAJ offered substantive guidelines (available [here](#))

for those who wish to establish judge's associations in a sovereign country to fortify Rule of Law and promote democratic societies based on dialogue and tolerance.

The document outlines the legal background and the different steps to establish an association of judges, provides a draft statute, and presents, as possible models, some statutes coming from consolidated national associations of different legal systems.

With this initiative, IAJ tries to embody this UN Principle by mitigating the common problems faced by judges when creating a judicial association.

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"All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."

Imagine a judiciary where judges are expelled or are disciplined for criticizing judicial reforms or using an international legal mechanism provided by their national law. Imagine a country where thousands of judges were summarily dismissed or arrested. Imagine a country where exile in a foreign country is your only option to escape a criminal sanction, after having condemned corrupt politicians, militaries, or business persons in accordance with the law.

In the world we are living, these are not fictions; in fact, these are only a few examples occurring today across the world from America to Europe, Africa to Asia.

Against this backdrop, indifference cannot be an option.

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"The judge shall have the right to a fair hearing".

This might seem like a simple statement and almost redundant if one lives in a State which obeys the Rule of Law. However, this is an immense challenge under many regimes; judges in those countries know very well the price to be paid if they raise their voices.

For them, a fair hearing is a distant mirage.

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The current state of affairs threatening the independence of the judiciary is troubling. But the difficulties faced by the judiciary must also be seen as an expression of a renewed hope. There is an eagerness to confront those who uphold the Rule of Men over the Rule of Law, as well as an innovative ambition by jurists, in general, to defend fundamental rights.

Globalization brought forth what Antoine Garapon defined as “the mundialization of judges”—a new international judicial sociability that facilitates intellectual trading across borders and the exchange of arguments, ideas, and decisions. One could argue that judiciaries now create transnational answers for large-scale problems.

The International Association of Judges works permanently with its national members on a global level; the conclusion we extracted from our interactions is that the concerns faced by the national judiciaries, although diverse in social, cultural, or political background, are always similar when dealing with our shared obligation to uphold judicial independence.

Regardless of the attacks of autocratic regimes on the UN’s “soft law” rules, impartial judges around the globe want to demonstrate this unwavering commitment to and uphold the Basic Principles of the Independence of the Judiciary. Only through its

implementation can common citizens trust a judicial system that treats each one of them in the same way. Without an independent judiciary, tyrannies will be inexorable, and the well-known Orwellian allegorical statement that “All animals are equal, but some animals are more equal than others” will prevail.

“The Universal Declaration of Human Rights enshrines, in particular, the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

These basic principles cannot be overstated and bear repeating, over and over again.