

The Burgh House Principles On The Independence Of The International Judiciary

The Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals, in association with the Project on International Courts and Tribunals:

Recognising the need for guidelines of general application to contribute to the independence and impartiality of the international judiciary, with a view to ensuring the legitimacy and effectiveness of the international judicial process;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international rules and standards relating to judicial independence and the right to a fair trial;

Mindful of the special challenges facing the international judiciary in view of the non-national context in which they operate;

Noting in particular that each court or tribunal has its own characteristics and functions and that in certain instances judges serve on a part-time basis or as *ad hoc* or *ad litem* judges;

Considering the following principles of international law to be of general application:

- to ensure the independence of the judiciary, judges must enjoy independence from the parties to cases before them, their own states of nationality or residence, the host countries in which they serve, and the international organisations under the auspices of which the court or tribunal is established;
- judges must be free from undue influence from any source;
- judges shall decide cases impartially, on the basis of the facts of the case and the applicable law;
- judges shall avoid any conflict of interest, as well as being placed in a situation which might reasonably be perceived as giving rise to any conflict of interests;
- judges shall refrain from impropriety in their judicial and related activities;

Proposes the following Principles which shall apply primarily to standing international courts and tribunals (hereafter “courts”) and to full-time judges. The Principles should also be applied as appropriate to judges *ad hoc*, judges *ad litem* and part-time judges, to international arbitral proceedings and to other exercises of international judicial power.

1. Independence and freedom from interference

1.1 The court and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.

1.2 Where a court is established as an organ or under the auspices of an international organisation, the court and judges shall exercise their judicial functions free from interference from other organs or authorities of that organisation. This freedom shall apply both to the judicial process in pending cases, including the assignment of cases to particular judges, and to the operation of the court and its registry.

1.3 The court shall be free to determine the conditions for its internal administration, including staff recruitment policy, information systems and allocation of budgetary expenditure.

1.4 Deliberations of the court shall remain confidential.

2. Nomination, election and appointment

2.1 In accordance with the governing instruments, judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned.

2.2 While procedures for nomination, election and appointment should consider fair representation of different geographic regions and the principal legal systems, as appropriate, as well as of female and male judges, appropriate personal and professional qualifications must be the overriding consideration in the nomination, election and appointment of judges.

2.3 Procedures for the nomination, election and appointment of judges should be transparent and provide appropriate safeguards against nominations, elections and appointments motivated by improper considerations.

2.4 Information regarding the nomination, election and appointment process and information about candidates for judicial office should be made public, in due time and in an effective manner, by the international organisation or other body responsible for the nomination, election and appointment process.

2.5 Where the governing instruments of the court concerned permits the re-election of judges, the principles and criteria set out above for the nomination, election and appointment of judges shall apply *mutatis mutandis* to their re-election.

3. Security of tenure

3.1 Judges shall have security of tenure in relation to their term of office. They may only be removed from office upon specified grounds and in accordance with appropriate procedures specified in advance.

3.2 The governing instruments of each court should provide for judges to be appointed for a minimum term to enable them to exercise their judicial functions in an independent manner.

4. Service and remuneration

4.1 Judges' essential conditions of service shall be enumerated in legally binding instruments.

4.2 No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.

4.3 Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court.

4.4 Conditions of service should include adequate pension arrangements.

5. Privileges and immunities

5.1 Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial function.

5.2 The court alone shall be competent to waive the immunity of judges; it should waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the exercise of the judicial function.

5.3 Documents and papers of the court, judges and registry, in so far as they relate to the business of the court, shall be inviolable.

5.4 The state in which an international court has its seat shall take the necessary measures to protect the security of the judges and their families, and to protect them from adverse measures related to the exercise of their judicial function.

6. Budget

States parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

7. Freedom of expression and association

7.1 Judges shall enjoy freedom of expression and association while in office. These freedoms must be exercised in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect judicial independence or impartiality.

7.2 Judges shall maintain the confidentiality of deliberations, and shall not comment extrajudicially upon pending cases.

7.3 Judges shall exercise appropriate restraint in commenting extrajudicially upon judgments and procedures of their own and other courts and upon any legislation, drafts, proposals or subject-matter likely to come before their court.

8. Extra-judicial activity

8.1 Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the court of which they are members, or that may affect or may reasonably appear to affect their independence or impartiality.

8.2 Judges shall not exercise any political function.

8.3 Each court should establish an appropriate mechanism to give guidance to judges in relation to extra-judicial activities, and to ensure that appropriate means exist for parties to proceedings to raise any concerns.

9. Past links to a case

9.1 Judges shall not serve in a case in which they have previously served as agent, counsel, adviser, advocate, expert or in any other capacity for one of the parties, or as a member of a

national or international court or other dispute settlement body which has considered the subject matter of the dispute.

9.2 Judges shall not serve in a case with the subject-matter of which they have had any other form of association that may affect or may reasonably appear to affect their independence or impartiality.

10. Past links to a party

Judges shall not sit in any case involving a party for whom they have served as agent, counsel, adviser, advocate or expert within the previous three years or such other period as the court may establish within its rules; or with whom they have had any other significant professional or personal link within the previous three years or such other period as the court may establish within its rules.

11. Interest in the outcome of a case

11.1 Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.

11.2 Judges shall not sit in any case in the outcome of which other persons or entities closely related to them hold a material personal, professional or financial interest.

11.3 Judges must not accept any undisclosed payment from a party to the proceedings or any payment whatsoever on account of the judge's participation in the proceedings.

12. Contacts with a party

12.1 Judges shall exercise appropriate caution in their personal contacts with parties, agents, counsel, advocates, advisers and other persons and entities associated with a pending case. Any such contacts should be conducted in a manner that is compatible with their judicial function and that may not affect or reasonably appear to affect their independence and impartiality.

12.2 Judges shall discourage *ex parte* communications from parties, and except as provided by the rules of the court such communications shall be disclosed to the court and the other party.

13. Post-service limitations

13.1 Judges shall not seek or accept, while they are in office, any future employment, appointment or benefit, from a party to a case on which they sat or from any entity related to such a party, that may affect or may reasonably appear to affect their independence or impartiality.

13.2 Former judges shall not, except as permitted by rules of the court, act in any capacity in relation to any case on which they sat while serving on the court.

13.3 Former judges shall not act as agent, counsel, adviser or advocate in any proceedings before the court on which they previously served for a period of three years after they have left office or such other period as the court may establish and publish.

13.4 Former judges should exercise appropriate caution as regards the acceptance of any employment, appointment or benefit, in particular from a party to a case on which they sat or from any entity related to such a party

14. Disclosure

14.1 Judges shall disclose to the court and, as appropriate, to the parties to the proceedings any circumstances which come to their notice at any time by virtue of which any of Principles 7 to 13 apply.

14.2 Each court shall establish appropriate procedures to enable judges to disclose to the court and, as appropriate, to the parties to the proceedings matters that may affect or may reasonably appear to affect their independence or impartiality in relation to any particular case.

15. Waiver

Notwithstanding Principles 7 to 13, judges shall not be prevented from sitting in a case where they have made appropriate disclosure of any facts bringing any of those Principles into operation, and where the court expresses no objections and the parties give their express and informed consent to the judge acting.

16. Withdrawal or disqualification

Each court shall establish rules of procedure to enable the determination whether judges are prevented from sitting in a particular case as a result of the application of these Principles or for reasons of incapacity. Such procedures shall be available to a judge, the court, or any party to the proceedings.

17. Misconduct

17.1 Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the part of a judge that may affect independence or impartiality.

17.2 Such a complaint may, if clearly unfounded, be resolved on a summary basis. In any case where the court determines that fuller investigation is required, the rules shall establish adequate safeguards to protect the judges' rights and interests and to ensure appropriate confidentiality of the proceedings.

17.3 The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.

17.4 The outcome of any complaint shall be communicated to the complainant.

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¹ The Burgh House Principles are issued on the authority of the Co-Chairs and members of the Study Group. They reflect the discussions that took place in the Study Group as a whole, and have been the subject of extensive review, consultation and comment. The members participated in the Study Group in their personal capacity. Additionally, the Study Group has benefited from input from advisers, also acting in their personal capacity. The content of the Principles should not be attributed to any individual member of the Study Group or be taken as representing the view of any institution to which anyone associated with the Study Group's work may be affiliated.

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