الأمم المتحدة

A/73/831–E/2019/56

الجمعية العامة
المجلس الاقتصادي والاجتماعي

Distr.: General
10 April 2019
Arabic
Original: English

الجمعية العامة
الدورة الثالثة والسبعون
البند ١٠٩ من جدول الأعمال
منع الجريمة والعدالة الجنائية

المجلس الاقتصادي والاجتماعي
دورة عام ٢٠١٩
٢٦ تموز/يوليه ٢٠١٨ – ٢٤ تموز/يوليه ٢٠١٩
البند ١٩ (ج) من جدول الأعمال
المسائل الاجتماعية ومسائل حقوق الإنسان: منع الجريمة والعدالة الجنائية

رسالة مؤرخة ٣ نيسان/أبريل ٢٠١٩ موجهة إلى الأمين العام من الممثل الدائم لتركيا لدى الأمم المتحدة

بناء على تعليمات من حكومتي، يشرفني أن أحيل إليكم طيه إعلان إسطنبول المتعلق بالشفافية في الإجراءات القضائية (انظر المرفق الأول)* والتدابير من أجل التنفيذ الفعال لإعلان إسطنبول (انظر المرفق الثاني)*.

وقد اعتُمدت الوثيقتان المذكورتان أعلاه في تشرين الثاني/نوفمبر ٢٠١٣ وتشرين الأول/أكتوبر ٢٠١٧، على التوالي، من أجل تعزيز الجهود الرامية إلى جعل السلطات القضائية مستجيبة وخاضعة للمساءلة ومتسمة بالشفافية على الصعيدين الوطني والعالمي. وأُرفقت أيضا مذكرة توضيحية بشأن آلية اعتمادهما (انظر المرفق الثالث)*.

أرجو ممتنا تعميم هذه الرسالة ومرفقاتها باعتبارها وثيقة من وثائق الجمعية العامة، في إطار البند ١٠٩ من جدول الأعمال، ومن وثائق المجلس الاقتصادي والاجتماعي، في إطار البند ١٩ (ج) من جدول الأعمال.

(توقيع) فريدون هـ. **سينيرلي أوغلو**
الممثل الدائم

* عُمم باللغة التي قُدم بها فقط.

160419 150419 19-06098 (A)

الرجاء إعادة استعمال الورق

المرفق الأول للرسالة المؤرخة ٣ نيسان/أبريل ٢٠١٩ الموجهة إلى الأمين العام من الممثل الدائم لتركيا لدى الأمم المتحدة

Istanbul Declaration on Transparency in the Judicial Process

Whereas the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge;

Whereas the International Covenant on Civil and Political Rights declares that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law;

Whereas the foregoing principles and rights are also recognized or reflected in other international and regional human rights instruments and declarations, in domestic constitutional, statutory and common law, and in judicial conventions and traditions;

Whereas it is now universally accepted that the principle of transparency is a fundamental element of the judicial process in a State that upholds human rights and the rule of law;

Whereas the Conference of Chief Justices and Senior Justices of the Asian Region, meeting in Istanbul on 20 and 21 November 2013, on the invitation of the Chief Justice of the Court of Cassation of the Republic of Turkey and the United Nations Development Programme developed and adopted fifteen principles designed to secure transparency in the judicial process;

Whereas the Conference of Chief Justices and Senior Justices of the Balkan Region, meeting in Bursa from 1 to 4 June 2016, on the invitation of the Chief Justice of the Court of Cassation of the Republic of Turkey and the United Nations Development Programme reaffirmed these fifteen principles;

And whereas the Chief Justices and Senior Justices of thirty countries of North and South America, the Caribbean, Europe, Africa, Asia and the Pacific, representing the major legal systems of the world, meeting in Istanbul on 11 and 12 October 2018, on the invitation of the Chief Justice of the Court of Cassation of the Republic of Turkey and the United Nations Development Programme, having reaffirmed the fifteen principles and developed and adopted measures for the effective implementation of these principles;

Now declare the Istanbul Declaration on Transparency in the Judicial Process, and the measures for the effective implementation of these principles to be the basis requirements to ensure justice and secure transparency in the judicial process.

Principle 1

Judicial proceedings must, as a general rule, be conducted in public.

The public access to court hearings is a fundamental requirement in a democratic society. The principle of public proceedings implies that citizens and media professionals should be allowed access to the court rooms in which judicial proceedings take place. The court should, therefore, ensure that the public and the media can attend court proceedings. For this purpose, information regarding the time and venue of hearings should be made available to the public. Adequate facilities should also be provided for the attendance of the public, within reasonable limits, taking into account the potential interest in the case and the nature of the hearing. Where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings,[1] the judge should ensure that the reasons for so doing are published.

Principle 2

The judicial system should ensure easy access to court premises and to information.

Courthouses should, wherever possible, be located near public transportation hubs to ease the burden of travelling to and from the court. The judicial system should establish an information system and resource centre located in close proximity to the courts. In addition to easily readable signs, courthouse orientation guides, and court schedules, court personnel should be available at public relations desks. The court buildings should provide adequate facilities for the public to complete forms and conduct negotiations, and amenities for special-need users such as children, victims and the disabled, as well as rooms for legal professional services. Court-users are entitled not only to timely and efficient services, but also to the highest standards of ethical conduct, professionalism and accountability from court personnel.

Principle 3

The judiciary should facilitate access to the judicial system.

The court should provide potential court users with standard, user-friendly forms and instructions, and furnish clear and accurate information on filing fees, court procedures, and hearing schedules. This information should also be disseminated via the internet. Where appropriate, the court should adopt the multi-door courthouse (MDR) concept to inform potential court users of the different doors that could lead to justice, of which litigation is only one, and to provide assistance with legal aid applications. It is the responsibility of the judiciary, where there is no sufficient legal aid publicly available, to consider initiatives such as encouraging *pro bono* representation of poor litigants by the legal profession, or appointing a "friend of the court" (*amici curiae*), or suggesting alternative dispute resolution. Permission may be granted by the court to appropriate nonqualified persons to represent parties before a court.

[1] The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

Principle 4

The judiciary should provide court-users with translation and interpretation facilities, free of charge.

The right of an accused person to be informed of the charge against him in a language which he understands is a fundamental human right. So too is the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. Indeed, the inability of any court-user to understand the languages used in court means the total lack of transparency in the proceedings as far as that person is concerned. A witness may not be able to testify, nor will it be possible in some circumstances to introduce a document in evidence, without interpretation or translation, as the case may be. It is, therefore, the responsibility of the judge or justice administration to ensure that facilities are available in court, as required, for both interpretation and translation.

Principle 5

The judiciary should ensure transparency in the assignment of cases.

Court systems vary in the procedures they utilize to assign cases to judges. In some countries, the head of the court is responsible for determining the distribution of cases. In others, case assignment is a function managed by court administrators rather than judges. A third option is the random assignment of cases, either manually or automated. Finally, case assignment may be based on informal criteria, such as long established court practices, or more formal rules and laws governing the court. Whichever model is adopted, the division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined, transparent arrangement provided by law or rules of court agreed by judges of the relevant court. Similarly, a case should not be withdrawn from a judge except for such reasons and in accordance with such procedures as are provided for by law or rules of court.

Principle 6

The judiciary should ensure transparency in the delivery of justice.

Integrating justice into society requires the judicial system to open up and learn to make itself known. Subject to judicial supervision, the public, the media and court-users should have reliable access to all information pertaining to judicial proceedings, both pending and concluded. Such access could be provided on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence. Affidavits or like evidentiary documents that have not yet been admitted in evidence may be excluded. Access to court documents should not be limited to case-related material, but should also include court-related administrative information such as statistics on the caseload and case clearance rates, as well as budget-related data, e.g. collection of court fees and the use of budgetary allocations. Judges should disclose potential conflicts of interest.

Principle 7

The judiciary should have supervisory powers over executive detention.

To ensure that the judicial system is not subjected to unwarranted criticism for trial delays, the judiciary should be conferred by law the power to bring before court persons held in administrative or executive detention. Although this is primarily a human rights issue, it is also a way of ensuring transparency in the public perception of the administration of justice.

Principle 8

The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.

Without reliable access to laws, jurisprudence and other primary legal sources, judges, lawyers, litigants including governments, are left without clear guidance on how the law should operate in any particular case or situation. The publication of judgments allows the public, the press, civil society organizations, lawyers, judges and legal scholars to scrutinize the actions of judges. Submitting judgments to public scrutiny through publication also regularizes the application of the law, and makes judicial decisions more predictable and consistent, thus improving the quality of justice. In judicial systems where higher court decisions are binding precedents, the publication and distribution of appellate and superior court decisions is crucial in ensuring that lower court judges and governments are following the law. Even in countries where higher court decisions are merely persuasive, it is still important to ensure that judges are interpreting the applicable statutes in a consistent manner. It is desirable to create publicly available databases that store the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals.

Principle 9

The judiciary should promote programmes to orientate students on the judicial process.

The judiciary should promote and participate in school and university programmes aimed at developing an understanding, and thereby contributing to the transparency, of the judicial process. These may include visits to courts, classroom appearances by judges, role playing, the use of audiovisual material, and the active teaching of judicial procedures. Such programmes will serve to avoid or correct ignorance and misapprehension about the judicial system and its operation.

Principle 10

The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.

Transparency involves more than simply providing access to court proceedings and information. To achieve transparency, information must also be disseminated in a format that is easily accessible for the intended audience – especially for court-users who do not have a legal background and may often have limited literacy. Publicising information about court operations and judicial programmes to increase the quality and efficiency of justice also has beneficial effects on public confidence in the judiciary.

Judicial outreach involves proactive measures by judges and direct interaction with the communities they serve. These may include town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides. These guides, in the form of short pamphlets, may provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

Such programmes of judicial outreach and education concerning court services and procedures are useful from the perspective of both the judiciary and the court users. They help to actively engage a court in a relationship with the community, and to demystify many of the complexities surrounding the operation of a legal system and the conduct of court proceedings. Thus, by educating and involving the public in the court's work through proactive judicial outreach and communication strategies, courts can increase public confidence and strengthen respect for the rule of law in their communities.

Principle 11

The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.

It is the function and the duty of the media to gather and convey information to the public, and to report and comment, on the administration of justice, including cases, before, during and after trial, without violating the *sub judice* rule, the presumption of innocence, and the rights of parties to a dispute. This principle, which includes the freedom to decide which cases are to be brought to the attention of the public and how they are to be treated, and the right to criticize the organization and functioning of the justice system, should only be departed from to the extent set out in the International Covenant on Civil and Political Rights.

Media access to judicial proceedings is not a matter of simply opening doors to the courtroom and providing seats to journalists. Courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence, impartiality and integrity. The training of journalists organized by, or in cooperation with, the courts can help reduce ineffective reporting. Such training should be designed to provide them with basic knowledge about court procedures and legal issues, and thus contribute to improving journalistic skills and ethics, and building trust between judges and journalists.

Engaging the media may also require that courts actively reach out to journalists by establishing press offices within each court, to facilitate media coverage of judicial proceedings. These offices could liase with media representatives, respond to and manage requests from journalists, issue press releases and generally provide accurate information about judicial decisions and legal issues. These offices could also provide schedules of upcoming cases, monitor the media for accurate reporting, and design media campaigns that promote public understanding of the judiciary.

Principle 12

The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.

There are a variety of tools for measuring the level of public satisfaction with the delivery of justice. Apart from being sensitive to contributions from academia, the judiciary should encourage court user feedback. An effective and impartial complaint system, regular case audits, periodic surveys of court-users and other stakeholders, and discussions with court-user committees, are means of reviewing public satisfaction with the delivery of justice and identifying systemic weaknesses in the judicial process, especially any that may have created “gatekeepers” seeking gratifications. However, these exercises will be meaningless if lessons are not learnt and remedial action not taken. The publication of an annual report of its activities, including any difficulties encountered and action taken to improve the functioning of the justice system, is one measure to foster public confidence in the judiciary.

Principle 13

There should be transparency in the appointment process of judges.

It is generally agreed that transparency is required in the conditions for the selection of candidates for judicial office. In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment. That

will enable procedures for judicial appointment and promotion based on merit to be opened to a pool of candidates as diverse and reflective of society as a whole as possible. Publication of the list of vacant posts and the list of candidates for those posts will also permit public scrutiny of the appointment process.

While there is a diversity of methods by which judges assume office, recent international and regional initiatives are unanimous in their view that it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are not made by the legislature or the executive, but by an independent body such as a Council for the Judiciary, with the formal intervention of the Head of State in respect of higher appointments. Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism. A mixed composition avoids the perception of self-interest, self-protection and cronyism, and reflects the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy.

Principle 14

The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.

It is necessary that the judiciary should not only adopt a code of conduct, but that it should also ensure that such code is widely disseminated in the community. However, a code of judicial conduct will do little to improve judicial performance and enhance public confidence if it is not enforceable. Therefore, a mechanism in the form of a credible, independent Judicial Ethics Review Committee should be established to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee so established should not be controlled by the judiciary, but must be one in which there is sufficient lay representation to attract the confidence of the community. Associating persons external to the judiciary (lawyers, academics and representatives of the community) in the monitoring of ethical principles will prevent a possible perception of self-interest and self-protection, and provide the essential element of transparency.

Principle 15

There should be transparency in the disciplinary process of judges.

The power to discipline or remove a judge from office should be vested in an independent body (or in the Council for the Judiciary responsible for the appointment of judges), which is composed of serving or retired judges but which should include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive. Where the Head of State or the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of this independent body. The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published. The complainant, if any, should be informed of the outcome of the investigation into his complaint.

المرفق الثاني للرسالة المؤرخة ٣ نيسان/أبريل ٢٠١٩ الموجهة إلى الأمين العام من الممثل الدائم لتركيا لدى الأمم المتحدة

Measures for the effective implementation of the Istanbul Declaration

This Statement of Measures is offered as guidelines or benchmarks for the effective implementation of the *İstanbul Declaration on Transparency in the Judicial Process*. These Measures are required to be adopted by the Judiciary. However, some of the Measures may require resources which the Judiciary may not currently possess or may require further legislative or executive action for their effective implementation. Accordingly, the other agencies of the State should co-operate with the Judiciary, and actively assist the Judiciary, to ensure the full and expeditious implementation of these Measures.

Principle 1
Judicial proceedings must, as a general rule, be conducted in public.

Transparency in the judicial process being essential to secure and maintain public trust and confidence in the administration of justice, the judiciary should:

1. Establish procedures and provide appropriate facilities to ensure that court proceedings are open to the public and the media.

2. Undertake measures to ensure that there is sufficient seating space in courtrooms for the public to attend and witness judicial proceedings.

3. Establish procedures to ensure that the public has access in advance to information of the time and venue of court hearings.

4. Provide access and appropriate facilities for the attendance of members of the media.

5. Establish uniform procedures requiring judges to deliver their judgments in a timely and open manner.

6. Ensure that exceptions to the public conduct of judicial proceedings shall only be as defined by law and not inconsistent with Article 14(1) of the International Covenant on Civil and Political Rights.

Principle 2
The judicial system should ensure easy access to court premises and to information.

Physical access to justice being an essential component in promoting public trust and confidence in the administration of justice, the judiciary should:

1. Wherever possible, and within the limits of resources, ensure that court facilities are located near public transportation hubs.

2. Support innovations in delivering court services such as mobile courts or night court programmes, telephone or video-conferencing, or the conducting of pre-trial hearings in online chat rooms, consideration being given to persons who are physically unable to travel to attend court proceedings or access court programs.

3. Install clear and easily identifiable signage providing directions to offices within the facility.

4. Establish information counters or customer service desks at the court entrance to provide information to court users.

5. Publicly and clearly post in the courthouse, schedules of hearing and proceedings and courtrooms.

6. Employ and retain court personnel who can speak the language of court users or, in the alternative, can readily obtain the assistance of interpreters.

7. Provide comfortable waiting areas for court users, including areas that offer appropriate security to witnesses, if needed.

8. Provide suitable facilities for the special needs of court users, such as children, victims of sexual violence or domestic violence, and special-needs users.

9. Maintain a safe, clean, convenient and user-friendly court premises.

10. Create a resource centre to provide single-window service delivery.

11. Publish in simple, clear and accessible formats user guides, posters and other informational material.

12. Institute and mandate management training programs for judges and court personnel.

13. Establish a public website containing information useful to court users such as court sitting times, courthouse guides and relevant case information.

Principle 3

The judiciary should facilitate access to the judicial system.

Public and litigant understanding of the judicial process being an essential component of judicial transparency, accountability and the fair administration of justice, the judiciary should:

1. Develop and implement standard, user-friendly forms and instructions.

2. Clearly and accurately publish information on matters such as filing fees, court procedures and hearing schedules; and if resources permit, disseminate such information via the Internet or automated telephone systems.

3. Implement systems that enable court users to download forms from the Internet and make online payments of court fees.

4. Implement systems that enable litigants and the public to obtain case information, including judgments, on a website.

5. Establish, or encourage the establishment of, an office of Public Defender whose intervention may be sought in respect of any criminal matter.

6. Require an attorney to provide *pro bono* services[2] to a litigant who is unable to afford legal representation in court.

7. Encourage the establishment of Legal Aid Clinics to provide legal services to indigent persons.

8. Implement a multi-door courthouse approach to dispute resolution that offers a variety of dispute resolution processes, including case evaluation, mediation, arbitration, conciliation and complex case management. These services should be provided by skilled, qualified, experienced mediators, case

[2] *Pro Bono* is a Latin phrase for professional work provided without payment by an attorney.

evaluators and arbitrators, and made available before the filing of a law suit or at any other stage of litigation.

9. Establish an amicable dispute resolution centre that offers litigants a cost-effective alternative to the conventional means of resolving civil disputes, especially in matters such as inheritance, maintenance, custody and matrimonial disputes.

10. Enable parties to present evidence through electronic tools.

11. Permit, where circumstances warrant, an appropriate non-qualified person to assist a party in court.[3]

Principle 4

The judiciary should provide court-users with translation and interpretation facilities, free of charge.

The ability to follow and understand the judicial proceedings in which a litigant is involved being an essential component of transparency of the judicial process, and trust in the fairness of judicial decisions, the judiciary should:

1. Ensure that the parties before the court understand the language in which the proceedings will be conducted.

2. Provide the free assistance of an interpreter to a court user or a witness if he or she cannot understand or speak the language in which the proceedings will be conducted in court.

Principle 5

The judiciary should ensure transparency in the assignment of cases.

Public confidence in the independence and impartiality of the judge being an essential component in securing and maintaining confidence in the administration of justice, the judiciary should:

1. Establish by rules of court a predetermined objective and transparent system for allocating and assigning cases to judges of each court. Such system may be based upon alphabetical or chronological order or other random selection process that ensures objectivity in case assignments.

2. Ensure that a case is not withdrawn from a judge without valid reasons, such as serious illness or conflict of interest. Permissible reasons for withdrawal, and the procedure for withdrawal, should be provided by law or by rules of court.

3. Establish a system requiring a judge, at the time of his or her initial appointment, and thereafter annually, to declare to the court any affiliations, outside activities, and other non-financial interests, and identify any conflicts or potential conflicts of interest, for the purpose of assisting in, and facilitating, the allocation and assignment of cases.

4. Ensure that a judge discloses to the parties to a case and their legal representatives any real or potential conflicts of interest that might lead a reasonable person to question the judge's ability to be fair and objective in the matter before the court, and thereby provide the parties and their legal representatives an opportunity to request that the judge recuses himself or herself from the proceedings.

[3] A 'non-qualified' person is a person who is not qualified to practise law and may include a friend or relative who is willing to assist a party.

Principle 6

The judiciary should ensure transparency in the delivery of justice.

The appearance and the actuality of transparency being essential in the performance of judicial functions and in the delivery of justice, the judiciary should:

1. Require a judge to state in his or her judgment, in comprehensible language, the facts, law and legal reasoning that justifies the judge's decision.

2. Maintain a Registry that enables easy access to court records and quick retrieval of information.

3. Subject to privacy laws, establish systems that provide public access to information pertaining to judicial proceedings, both pending and concluded, including reasoned judgments, pleadings, motions and evidence, other than affidavits and like evidentiary documents that have not yet been admitted in evidence.

4. Regularly publish information regarding court caseload statistics and case clearance rates.

5. Ensure that information on budget-related data, such as collection of court fees and the use of budgetary allocations, are publicly available.

Principle 7

The judiciary should have supervisory powers over executive detention.

The unlawful or inhumane incarceration of persons being contrary to the Rule of Law, the fair and open administration of justice, and the principle of due process of law, the judiciary should:

1. Establish a system of structured prison visits by members of the judiciary to ensure the independent oversight of administrative or executive detention.[4]

2. Require that persons held in administrative or executive detention be brought before the court in a timely manner, and that the authorities be required to disclose to the court the reasons and the legal justification for such detention.

3. Order that persons held in administrative or executive detention be released if the authorities fail to provide adequate factual and legal justification for such detention.

Principle 8

The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.

Consistency in the interpretation of the law and legal principles being an essential component in the fair administration of justice, the judiciary should:

1. Establish procedures that enable court users to access relevant information, including new laws and the decisions of superior and appellate courts with greater ease, including by publishing such material on official websites.

2. Establish procedures for ensuring that judgments of superior and appellate courts are regularly published.

[4] 'Administrative or executive detention' is the arrest and detention of an individual by the State without trial, usually under public security, immigration or mental health laws.

3. Establish a publicly available data base that stores the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals.

Principle 9

The judiciary should promote programmes to orientate students on the judicial process.

Promoting and entrenching respect for the Rule of Law and the role of the judiciary being dependent upon a multi-generational understanding of important legal principles and individual rights, the judiciary should:

1. Establish regular programs of student engagement that include organized student visits to courts, classroom appearances by judges, and the active teaching of judicial procedures in conjunction with the legal profession and tertiary educational institutions.

Principle 10

The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.

Public confidence in the judicial system and in the moral authority and integrity of the judiciary being contingent on public understanding of the judicial process, the judiciary should:

1. Establish civic outreach programs, including town hall meetings, that provide an opportunity for court users to interact with the judiciary on the problems they have experienced.[5]

2. Participate in radio and television programmes to disseminate information on the functioning of the judiciary, its civic role, and judicial processes.

3. Publish, including on the Internet, short, clearly worded and easily understandable pamphlets and other materials that provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

Principle 11

The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.

The media being a primary source through which the public receives information and comments on the administration of justice, the judiciary should:

1. Establish a press or public affairs office to facilitate media coverage of judicial proceedings by liaising with media representatives, responding to and managing requests from journalists, issuing press releases, and generally providing accurate information about judicial decisions and legal issues. This office should provide schedules of upcoming cases, assist the media in accurate reporting, and design media campaigns that promote public understanding about the judiciary.

2. Establish a program that builds trust between the media and the court by providing training of journalists that includes basic education on court structure, court procedures, methods of accessing court information, and legal issues.

[5] A ‘town hall meeting’ is a meeting with members of the community, whether in the town hall or a school hall or other appropriate location.

Principle 12

The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.

Continuing public confidence in the administration of justice being contingent on the quality of justice, the judiciary should:

1. Establish a Public Complaints Committee in every court, comprising judges, attorneys and citizens, to receive, review and, where appropriate, refer to the relevant disciplinary body, court users' complaints against judicial officers or court personnel.

2. Install public complaints boxes in every court facility where the public can present even anonymous complaints about judicial officers, court personnel or court procedures.

3. Ensure that the Chief Judge and/or Registrar of every court adopts an "Open Door" policy for complaints.

4. Establish a regular performance evaluation of court personnel.

5. Establish a Court-User Committee in every court.

6. Establish a system to meet with, and conduct surveys of, court-users and other stakeholders, to identify systemic challenges or weaknesses.

7. Mandate that judges and court personnel conduct a regular case audit to ensure the timely disposition of cases.[6]

8. Establish a program through which judges and court personnel conduct regular reviews and analyses of court user complaints and develop responses to those complaints when warranted.

9. Implement a program of conducting court inspections without notice.

10. Encourage critical assessments of its performance by academia.

11. Formulate a comprehensive system-wide strategy designed to correct negative public perceptions and eliminate inefficiencies or other obstacles in the judicial process that lead to such perceptions.

12. Publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.

Principle 13

There should be transparency in the appointment process of judges.

Competent, independent and impartial judges being essential to establish and maintain the public's trust and confidence in the administration of justice, the judiciary should:

1. Establish an independent body with broad professional and civic representation to receive and review applications and/or nominations for judicial office.

2. Require that all judicial vacancies, including for high judicial office, be advertised, with information on the qualities required from candidates for such offices.

[6] A 'case audit' is the examination of a case record by reference to the law relating to civil, criminal or appellate procedure, to identify the stage or stages of a proceeding where delay has occurred.

3. Require publication of a list of vacant judicial offices, and the list of candidates who have applied or been nominated for such offices.

4. Promulgate procedures that ensure the public and the media have access to candidate interviews by the body responsible for appointing or nominating persons for judicial office.

5. Establish a merit-based recruitment and promotion process that reflects the diversity of society.

6. Promulgate procedures governing the transfer of judges for regular rotation or on an emergency basis.

Principle 14

The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.

A commitment to the core judicial values as enunciated in the Bangalore Principles of Judicial Conduct being an essential component in promoting public confidence in the administration of justice, the judiciary should:

1. Develop and promulgate rules or standards of professional and ethical conduct for members of the judiciary, taking into consideration the Bangalore Principles of Judicial Conduct.

2. Ensure that each judge is provided with a written copy of such code and any related material, such as a commentary.

3. Disseminate the code of judicial conduct in the community through written publication or on the Internet.

4. Establish a mechanism or procedure by which individual judges may obtain advice on the propriety of proposed conduct.

5. Establish an independent mechanism or procedure, with sufficient lay representation, to receive and inquire into complaints of unethical conduct against members of the judiciary, and to take appropriate action, including, if warranted, reference to the independent disciplinary body.

6. Develop courses or modules on judicial ethics and as a mandatory requirement in the initial training for judges.

7. Promulgate procedures that require members of the judiciary to make regular declarations of their assets and liabilities.

Principle 15

There should be transparency in the disciplinary process of judges.

Closed or obscure judicial disciplinary proceedings being calculated to protect judges from accountability for their conduct, thus undermining public confidence in the integrity of the judicial process, the judiciary should:

1. Define conduct that may give rise to disciplinary sanctions.

2. Institute and publish a procedure for making a complaint against a judge in respect of his or her professional capacity.

3. Establish an independent investigatory body, with lay participation, to receive complaints against a judge in his or her professional capacity; to investigate such complaints; and to determine what action, if any, is warranted, including reference to the independent disciplinary body.

4. Establish an independent disciplinary body, with lay participation, vested with the power of removal of judges. A judge subject to removal shall be entitled to full rights of defence before such body, including legal representation; an inquiry conducted by reference to established standards of judicial conduct; and the expeditious conclusion of such inquiry. In the event of a decision to remove a judge, the judge is entitled to appeal to an appropriate court or tribunal.

5. Establish procedures that ensure a complainant is kept informed of the progress of the investigation.

6. Ensure that the final decision in a disciplinary proceeding against a judge that results in a sanction is published or otherwise made public.

المرفق الثالث للرسالة المؤرخة ٣ نيسان/أبريل ٢٠١٩ الموجهة إلى الأمين العام من الممثل الدائم لتركيا لدى الأمم المتحدة

Explanatory note

Transparency is a fundamental element of the judicial process. The Universal Declaration of Human Rights states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The International Covenant on Civil and Political Rights, while reaffirming the right to a fair and public hearing, recognizes that the press and public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic state, or when the interests of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. The Covenant, however, states that every judgment rendered in a criminal case or in a suit at law shall be made public except where the interests of juvenile persons otherwise require, or the proceedings concern matrimonial disputes or the guardianship of children.

The principle of judicial independence articulated in the UN Basic Principles on the Independence of the Judiciary has now been complemented by the principle of judicial accountability enunciated in the Bangalore Principles of Judicial Conduct. The Magna Carta of Judges, which summarises and codifies the Opinions adopted by the Consultative Council of European Judges, emphasizes the importance of access to swift, efficient and affordable dispute resolution, and of reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing. The Conference of Presidents of European Supreme Courts meeting in Slovenia under the auspices of the Council of Europe formulated a statement on “The Supreme Court: Publicity, Visibility and Transparency”. That statement recognized “the necessity to satisfy the expectations of contemporary society with regard to justice” and stressed the importance of courts “demonstrating their openness and sensitivity”. The statement noted that judgments “based on clear and easily understandable reasoning” should be accessible to the general public; that there should be transparency in the nomination of judges; that the Supreme Court should “participate in the democratic debate in society with the aim of making better known the issues of justice in a state governed by the rule of law”; and underscored the relationship between the judiciary and the media as an important element in the educational role of the Supreme Court in a democracy.

In early 2013, noting that a fundamental element in the judicial process in a state that upholds human rights and the rule of law, namely, the principle of transparency, had yet to be addressed in a comprehensive manner, the United Nations Development Programme in Turkey, at the request of the Court of Cassation of Turkey, commissioned the preparation of a draft statement on transparency in the judicial process. That draft, prepared by the Coordinator of the UN Judicial Integrity Group, was shared, in the first instance, with all the Heads of the Judiciaries of the Asian and Pacific Region, and was then revised in the light of comments and suggestions received from them.

Conference of Chief Justices of the Asian-Pacific Region

In November 2013, on the invitation of the President of the Court of Cassation of Turkey and the Resident Representative of the United Nations Development Programme in Turkey, the Chief Justices and/or senior Justices of the Supreme Courts

of 12 countries of the Asian-Pacific region, together with the Heads of Chambers of the Court of Cassation of Turkey, met at Ciragan Palace in Istanbul for a mutual exchange of experience and knowledge on best practices and lessons learned in securing transparency in the judicial process; to identify the essential elements of the multi-faceted concept of judicial transparency; and to consider the development of a detailed statement on transparency in the judicial process. Assisting them as Moderators were four experts drawn from three other countries of the region.

The participating Chief Justices and Justices were Abdul Salam Azimi, Chief Justice of the Supreme Court of Afghanistan; Ramiz Rzayev, Chief Justice of the Supreme Court of Azerbaijan; Farid Madatli, Head of International Relations, Supreme Court of Azerbaijan; Hassan Arif Sheikh, Judge of the Supreme Court of Bangladesh; Konstantin Kublashvili, President of the Supreme Court of Georgia; Vasil Mshvenierdze, Head of the Mtskheta Federal Court of Georgia; Roki Panjaitan, Judge of the Supreme Court of The Republic of Indonesia; Feruza Zulumbekovna Djamasheva, President of the Supreme Court of the Kyrgyz Republic; Tun Arifin bin Zakaria, President of the Federal Court of Malaysia; Mohd Aizuddin bin Zolkeply, Head of International Relations, Federal Court of Malaysia; Gotovdorj Tsagaantsooj, Vice-President of the Supreme Court of Mongolia; Dolgorsuren Namjil, Head of International Relations, Supreme Court of Mongolia; Tha Htay, President of the Supreme Court of Myanmar; Damodar Prasad Sharma, Judge of the Supreme Court of Nepal; Bharat Bahadur, Judge of the Supreme Court of Nepal; Lohit Chandra Chah, Judge of the Supreme Court of Nepal; Kulratna Bhurtel, Judge of the Supreme Court of Nepal; Ramesh Prasad Rijal, Judge of the Supreme Court of Nepal; Eakachai Chinnapongse, Vice-President of the Supreme Court of Thailand; Soopanit Chinnawat, Judge of the Supreme Court of Thailand; Supachart Thinpangnga, Judge of the Supreme Court of Thailand; Bui Ngoc Hoa, Deputy Chief Justice of the Supreme People's Court of Vietnam; Huu Quan Tran, Chief Judge of the People's Court of Ha Nam Province, Vietnam; Chu Trung Dung, Head of International Cooperation, Supreme People's Court of Vietnam; and Ha Tuan Hiep, Head of International Relations, Supreme People's Court of Vietnam.

The experts who served as moderators were Justice John Dowd, Vice-President of the International Commission of Jurists, Geneva (Australia); Malathi Das, President of the Law Association for Asia and Pacific (Singapore); Dato' Param Cumaraswamy, Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and Prof. Dr. Nihal Jayawickrama, Coordinator of the UN Judicial Integrity Group (Sri Lanka).

Speaking at the opening session of the conference, the UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, observed that a detailed statement on transparency in the judicial process, as the intended outcome of the conference, would be a valuable contribution to the reform initiatives embarked upon by several judiciaries throughout the world. At the end of the three-day conference, the participants adopted the *İstanbul Declaration on Transparency in the Judicial Process*. It was the first comprehensive statement of principles relating to transparency in the administration of justice.

Conference of Chief Justices of the Balkan Region

In June 2016, at a three-day conference in Bursa, the capital of the former Ottoman Empire, the *İstanbul Declaration on Transparency in the Judicial Process* was submitted to, reviewed, and endorsed without amendment by the Chief Justices and Senior Justices of the Balkan Republics.

The participating Chief Justices and Justices were: Xhezair Zaganjori, Chief Justice of the Supreme Court of Albania; Charalambos Macheras, Judge of the

Supreme Court of Greece; Fejzullah Hasani, President of the Supreme Court of Kosovo[1]; Elena Gosheva, President of the Constitutional Court of the Former Yugoslav Republic of Macedonia; and Vesna Medenica, President of the Supreme Court of Montenegro. Participants from the Republic of Turkey included İsmail Rüştü Cirit, President of the Court of Cassation of Turkey; Zerrin Güngör, President of the Council of State of Turkey; Abdullah Arslan, President of the Military High Administrative Court of Turkey; and Ahmet Zeki Liman, President of the Military Court of Cassation of Turkey. The experts who served as moderators were Dato' Param Cumaraswamy, Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and Prof. Dr. Nihal Jayawickrama, Coordinator of the UN Judicial Integrity Group (Sri Lanka).

International Expert Group Meeting

In October 2017, an international expert group was convened in Ankara to develop a draft *Action Plan on the Implementation of the İstanbul Declaration on Transparency in the Judicial Process*. The experts who participated at that meeting included Justice John Dowd (Australia); Justice Shiranee Tilakawardane (Sri Lanka); Justice Kashim Zannah (Nigeria); Jeffrey A. Apperson (USA); Michael Buenger (USA); Wojciech Postulski (Poland); and Prof. Dr. Nihal Jayawickrama, (Sri Lanka). Representatives of the Court of Cassation included İsmail Rüştü Cirit, President of the Court of Cassation; Justice Fahri Akçin, Justice Ahmet Er, Justice Seracettin Göktaş, and Deputy Secretary-General, Dr. Mustafa Saldırım. Following that meeting, the draft Action Plan was further revised. The final draft version was introduced by President Cirit at the High-Level Opening Session of the Launch of the Global Judicial Integrity Network in Vienna in April 2018, and copies made available to all the participants.

Final Conference of Chief Justices from North and South America, the Caribbean, Europe, Africa, Asia and the Pacific

In October 2018, on the invitation of İsmail Rüştü Cirit, President of the Court of Cassation of Turkey, and Irena Vojackova-Sollorano, UNDP Resident Representative in Turkey, Chief Justices and Justices of thirty countries from five continents, together with the Heads of Chambers of the Court of Cassation of Turkey and representatives of international, regional and national organizations, met in Istanbul to review and adopt the *Measures for the Effective Implementation of the İstanbul Declaration*.

The participating Chief Justices and Justices were: Said Yousuf Halem, Chief Justice of the Supreme Court of Afghanistan; John Dowd, Former Justice of the Supreme Court of New South Wales, Australia; Gerhard Kuras, Head of the 8th Civil Chamber of the Supreme Court of Austria; Ramiz Rzayev, President of the Supreme Court of Azerbaijan; Syed Mahmud Hossain, Chief Justice of Bangladesh; Md Zakir Hossain, Senior District Judge of Bangladesh; Ria Mortier, Attorney General, Supreme Court of Belgium; Kenneth A. Benjamin, Chief Justice of the Supreme Court of Belize; Sandra Oxner, former Judge and Founding President, Commonwealth Judicial Education Institute, Canada; Maricela Sosa Ravelo, Vice President of the Supreme People's Court of Cuba; Vasil Roinishvili, Deputy Chairperson of the Supreme Court of Georgia; Arun Kumar Mishra, Justice of the Supreme Court of India; Peter Charleton, Justice of the Supreme Court of Ireland; Madiyar Balken, Judge of the Supreme Court of Kazakhstan; Enock Chacha Mwita, Justice of the Supreme Court of Kenya; Melis Tagaev, Chairman of the Issyk-Kul Regional Court of Kyrgyzstan; Jean Daoud Fahed, First President of the Court of Cassation of

[1] The reference to Kosovo shall be understood to be in the context of Security Council Resolution 1244 (1999).

Lebanon; Atartsetseg Lkhundev, Justice of the Supreme Court of Mongolia; Essaid Saadaoui, President of the Chamber of Commerce, Court of Cassation of Morocco; Malika Ibnou Zahir, President of the Social Chamber, Court of Cassation of Morocco; Myint Thein, Judge of the High Court, Magwe Region, Myanmar; Anil Kumar Sinha, Justice of the Supreme Court of Nepal; Kashim Zannah, Chief Justice of Borno State of Nigeria; Masoud Mohamed Alameri, Chief Justice, Supreme Judiciary Council of Qatar; Shiranee Tilakawardane, Former Acting Chief Justice of the Supreme Court of Sri Lanka; Haider Ahmad Daffalla, Chief Justice of the Supreme Court of Sudan; Mohamed Ahmed Ibrahim Hussein, Justice of the Supreme Court of Sudan; Badereldien Mohamed Ahmed Nimir, Justice, Deputy Director of The Chief Justice's Office, Supreme Court of Sudan; Gulzor Mukhabbat, Judge of the Constitutional Court of Tajikistan; Slaikate Wattanapan, Vice President of the Supreme Court of Thailand; Zerrin Güngör, President of the Council of State of Turkey; Engin Yıldırım, Vice President of the Constitutional Court of Turkey; Richard G. Stearns, Member Judge, United States Judicial Conference Committee on International Judicial Relations; Mumin Karimoviç Astanov, Vice President of Administrative Affairs, Supreme Court of Uzbekistan; and Maikel Jose Moreno Perez, President of the Supreme Court of Justice of Venezuela.

The participating Chief Justices and Justices of the Court of Cassation of the Republic of Turkey were: İsmail Rüştü Cirit, First President; Mehmet Akarca, Chief Public Prosecutor; Abdulhalik Yıldız, First Vice President; Ahmet Özgan, President of the 11th Civil Chamber; Hüseyin Eken, President of the 11th Criminal Chamber; Erdoğan Buyurgan, President of the 5th Civil Chamber; H.Nesrin Yılmazcan, President of the 14th Civil Chamber, Muammer Öztürk, President of the 15th Civil Chamber; Ömer Uğur Gençcan, President of the 2nd Civil Chamber; A.Şahabattin Sertkaya, President of the 17th Civil Chamber; Erkan Öztürk, President of the 6th Criminal Chamber; İbrahim Şahbaz, President of the 4th Criminal Chamber; Haydar Metiner, President of the 8th Criminal Chamber; Sadık Demircioğlu, President of the 4th Civil Chamber; Ramazan Özkepir, President of the 19th Criminal Chamber, Ali Seçkin Togay, President of the 1st Civil Chamber; İlmettin Köklü, President of the 20th Criminal Chamber; Mustafa Şahin, President of the 1st Criminal Chamber; Methiye Şebnem Günaydin, President of the 3rd Criminal Chamber; Hüsnü Uğurlu, President of the 10th Criminal Chamber; Mehmet Çamur, President of the 9th 9th Civil Chamber; Fahri Akçin, President of the 8th Civil Chamber; Mete Duman, President of the 3rd Civil Chamber; Mehmet Berber, President of the 15th Criminal Chamber; Şakir Aktı, President of the 5th Criminal Chamber; Faruk Gök, President of the 23rd Civil Chamber; Burhan Karaloğlu, President of the 9th Criminal Chamber; Vuslat Dirim, President of the 13th Criminal Chamber; Ahmet Er, President of the 12th Criminal Chamber; Mustafa Kemal Semercioğlu, President of the 17th Criminal Chamber; Halil Özdemir, President of the 10th Civil Chamber; Seracettin Göktaş, President of the 22nd Civil Chamber, Eyüp Yeşil, President of the 16th Criminal Chamber; Ali Selman Erkuş; President of the 13th Civil Chamber, Ayhan Tuncal, President of the 12th Civil Chamber; Mehmet Bülent Selçuk, President of the 19th Civil Chamber; and Haydar Sami Kuzu, President of the 2nd Criminal Chamber.

Assisting the Chief Justices and Justices were: Farid Madatli, Head of International Relations, Supreme Court of Azerbaijan; Luis Alberto Amoros Nunez, Ambassador of Cuba; Ahmad Alkuwari, Deputy Secretary, Supreme Judiciary Council of Qatar; Omar Ganim Mohamed, Director of International Cooperation Unit, Supreme Judiciary Council of Qatar; Mohammed Almalki, Head of Coordination and Follow-up Section, Supreme Judiciary Council of Qatar; Komtharnongchai Chiphairojn, Deputy Secretary, Supreme Court of Thailand; Jaiber Isaac Nunez Jimenez, Legal Assistant to the President of the Supreme Court of Justice of

Venezuela; and Julio César Zamora, Chief of the Information and Communication Office, Supreme Court of Justice of Venezuela.

Representatives of international, regional and national organizations included: Prof. Dr. Nihal Jayawickrama, Coordinator, UN Judicial Integrity Group; Sophio Gelashvili, Head of the Justice Sector Reform Unit of the Council of Europe; Michael Ingledow, Head of the Council of Europe Programme Office in Ankara; Liviana Zorzi, Programme Analyst, Governance and Peace Building Team, UNDP Bangkok Regional Hub; and Jeffrey Apperson, Vice President, National Center for State Courts, USA.

Representatives of UNDP Turkey included Irena Vojackova-Sollorano, Resident Representative; Sukhrob Khojimatov, Deputy Country Director; Seher Alacaci, Assistant Resident Representative (Programme); Sezin Üskent, Inclusive and Democratic Governance Portfolio Manager; Görkem Bağcı, Project Associate; and Nazlı Ersoy, Project Assistant.

The Project Team of the Court of Cassation of the Republic of Turkey were Mustafa Saldırım, Project Manager, Judge, Deputy Secretary General; Gülşah Sibel Akbulut, Judge; Gözde Hülagü, Project Specialist; Özlem Karaman, Project Coordinator; Seda Dural; Project Assistant; Cem Şenol, Project Assistant; Selma Dalkılıç, Project Assistant; and Nihal Eriş, Project Assistant.

At the conference held at the CVK Park Bosphorus Hotel on 11–12 October 2018, the participants reviewed in detail in two simultaneous Round Table Meetings the following issues in the Draft Implementation Measures:

(i) Public proceedings, Access to court premises, Access to the judicial system, Interpretation facilities, Assignment of cases, Transparency in the delivery of justice, Executive detention, and Publishing of judgments (Principles 1–8).

(ii) Student engagement, Outreach programmes, Relations with the media, Assessing public satisfaction with the delivery of justice, Appointment of judges, Complaints against judges, Disciplinary proceedings (Principles 9–15).

The amendments proposed by the participants were considered in plenary, and the final version of the Implementation Measures was presented by the Moderator, Prof. Dr. Nihal Jayawickrama, and was unanimously adopted by acclamation.

On the evening of 12 October 2018, at a ceremony held at Dolmabahce Palace, in the presence of His Excellency Recep Tayyip Erdoğan, President of the Republic of Turkey, the *İstanbul Declaration on Transparency in the Judicial Process* and *Measures for the Effective Implementation of the İstanbul Declaration* were formally presented by The Honourable İsmail Rüştü Cirit, President of the Court of Cassation of the Republic of Turkey.