

Modelling judiciary independence: risks and safeguarding mechanisms

Findings from the study "Judiciary independence in the French-speaking world: risks and safeguards"

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The independence of the judiciary has been extensively documented in the French-speaking world, and it is clear that although this independence is generally enshrined in constitutional and international texts, it remains exposed to

Ongoing and recurring vulnerabilities. Contemporary societal changes are contributing to a corresponding shift in the forms of influence to which the justice system is exposed. **Given the diversity and complexity of risk factors, safeguards must be designed to be flexible and adaptable to an evolving situation. For this reason, we propose a modelling tool that enables risks and safeguards to be analysed in a systematic, cross-cutting and interrelated manner.**

The results of this modelling are drawn from a study conducted by the Institut Robert Badinter (IRB) and the Centre de recherches et d'études en droit et institutions judiciaires en Afrique (Centre for research and studies on law and judicial institutions in Africa - CREDIJ), which were commissioned by the

Organisation internationale de la Francophonie (OIF) to contribute to its work as part of the "Renforcement de l'État de droit, des droits de l'homme et de la justice" (Strengthening the Rule of Law, Human Rights and Justice) project. CREDIJ and IRB have been tasked with producing "a general report on best practices and obstacles relating to the independence of the judiciary", with the aim of compiling the key analyses and recommendations on this subject drawn from academia, the recommendations of international intergovernmental organisations, and the practical experience of professionals.

Three types of data were used in this study: institutional, theoretical and empirical data. The empirical study was conducted through interviews with professionals working in the justice system in twelve French-speaking countries. Their input made it possible to gather information from the field and to provide additional material to support doctrinal analyses. The findings of this multi-partner, multidisciplinary study – which brings together law, sociology and political science – provide a basis for reflection on the risk and protection factors relating to judiciary independence in Francophone countries.

WHAT ARE THE OBJECTIVES OF MODELLING?

This approach aims to anticipate risks, strengthen response capabilities and improve experience-sharing in the French-speaking world.

It enables us to identify vulnerabilities and areas for action, to detect both weak and strong signals and to organise institutional assessments.

In legal and societal spheres, the independence of the judiciary – the infringements on it and the safeguards in place – is subject to a constant process of evolution and adjustment, which can be either reactive or preventive. This dynamic approach is based on three key elements: specific instances of infringements on independence, their repercussions and their cost to a given system, and finally the responses of stakeholders and their capacity to act. This approach to viewing judiciary independence as a cycle has prompted us to propose two models for examining risks and safeguards.

The modelling can be interpreted in two ways.

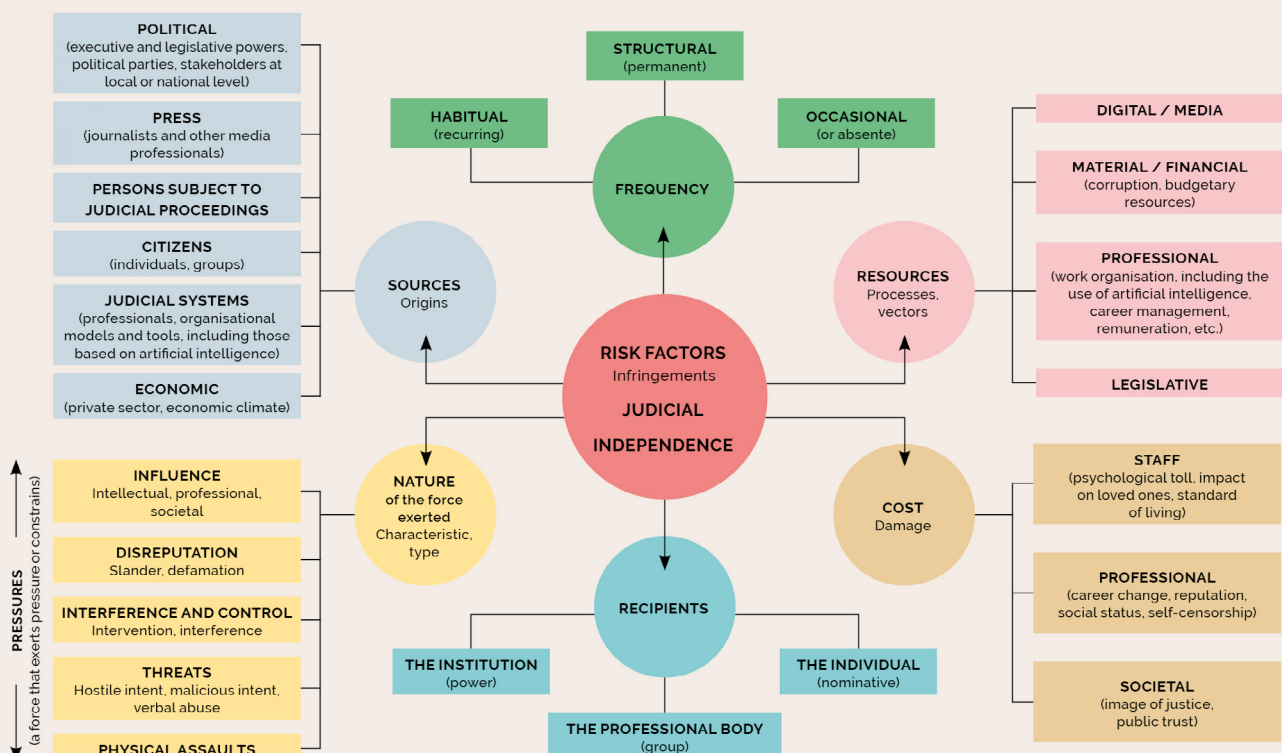
- A strategic analysis to help understand the broader dynamics of infringements on and safeguards for judicial independence.
- A tactical analysis aimed at identifying best practices that can be applied locally.

It aims to anticipate risks, strengthen response capabilities and promote the sharing of experiences within the French-speaking world. The models are designed as open-ended, evolving frameworks.

Modelling makes it possible to identify vulnerabilities and areas for action, to detect both weak and strong signals, and to structure institutional assessments. It can be used to support the development of assessment tools and public policies aimed at strengthening judicial independence.

It establishes a common analytical framework that facilitates comparisons between legal systems and the exchange of experiences. In the French-speaking world, it can strengthen cooperation between judicial institutions, researchers and legal professionals.

— Modelling of risk factors



WHAT IS MODELLING?

The modelled approach views independence not only as a legal principle, but also as a social and personal reality that is experienced, context-dependent and constantly evolving.

The modelling also shows that its protection does not rely on a single safeguarding mechanism. Instead, it results from the interplay of a range of mechanisms, deployed at various levels of the judicial system.

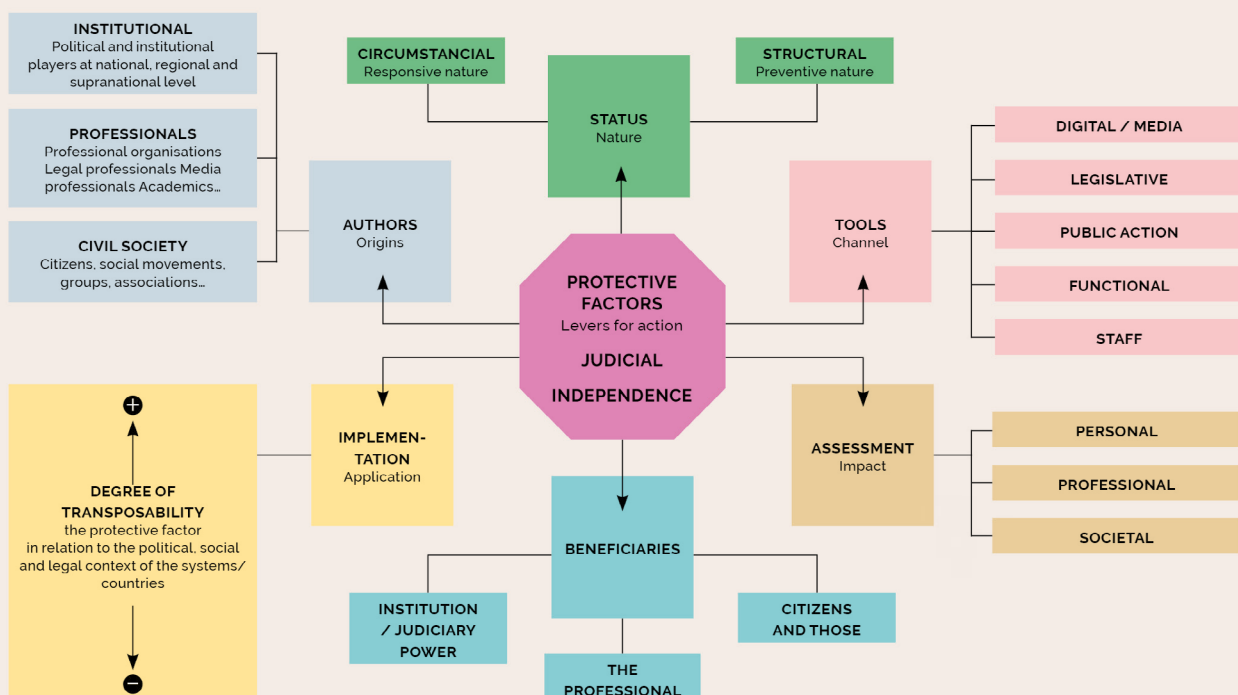
The modelled approach views independence not only as a legal principle, but also as a social and personal reality that is experienced, context-dependent and constantly evolving. Consequently, models presented here break down the architecture of infringements and safeguards to examine their structuring mechanisms component by component. These components, which are descriptive and non-exhaustive, have been identified based on the situations and practices experienced by stakeholders in the justice sector interviewed as part of the study, and provide a basis for analysis from a number of different perspectives.

Of the six components that structure the infringements on judiciary independence, four are descriptive in nature: the source, the means, the nature, and the recipients. These components help us to understand the mechanics of these infringements. The other two components, frequency and cost, are, however, of an evaluative nature. They classify the infringements and the severity of their impact. The

term 'severity' is not an absolute assessment but must be considered in the specific context of each situation. With regard to safeguarding factors, it is important to understand not only their sources and whether they are structural or circumstantial in nature, but also the mechanisms through which they operate, the extent to which they can be transposed and adapted to different situations, the degree to which they can be applied in practice, the beneficiaries involved, and their impact on independence.

The two models are not mirror images of one another; there is no one-to-one relationship between risks and safeguards. The modelling also shows that protecting independence does not rely on a single safeguard. It results from the interplay of multiple mechanisms, which are brought into play at various levels of the judicial system. Several safeguards may coexist for a single type of risk, as protection can come into play at various levels.

— Modelling of safeguarding



— Further reading

This work has highlighted new gaps in knowledge and understanding. Firstly, it calls for more targeted qualitative empirical research, whether focusing on specific geographical areas, particular professions, specific segments of the judicial system, magistrates' perceptions of infringements, public confidence in the justice system, or developments in safeguarding mechanisms.

Quantitative surveys that cover a much larger sample are needed, for example, to gauge the views of judges or citizens at a national level, or to assess how the general public perceives the main sources of infringements on judiciary independence, and to consider, in parallel, how the dynamics of safeguarding are evolving.

Furthermore, the proposed modelling can help to assess the targeted and contextualised severity of an infringement by combining descriptive and evaluative components.

The proposed modelling would benefit from further research and from being used in a reflective manner by the stakeholders themselves.

The proposed modelling would benefit from being tested and refined through further research – incorporating the temporal dimension, cumulative effects, and the direct or indirect nature of infringements and safeguards – as well as through its reflective use by the stakeholders themselves. In this regard, the French-speaking world provides an ideal framework for continuing this collective effort to promote understanding, prevention and the strengthening of judiciary independence.

The text and templates provided are intended to be interpreted as inclusive of everyone, regardless of gender.

The Institut Robert Badinter (formerly the Institut des Études et de la Recherche sur le Droit et la justice – IERDJ) aims to foster knowledge and dialogue on law and justice by initiating original and forward-looking discussions, by funding and supporting research, and by widely disseminating knowledge on the standards, regulation and functioning of the justice system across all academic disciplines. Founded in 2022 as a public interest group, the Institut Robert Badinter was formed through the merger of the Institut des hautes études sur la justice and the Mission de recherche droit et justice, two internationally recognised bodies created in the early 1990s.

The **CREDIJ** (Centre de Recherches et d'Études en Droit et Institutions Judiciaires en Afrique) is an academic research centre within the Faculty of Law and Political Science at the University of Abomey-Calavi, specialising in African judicial law. Established in 2010, its aim is to conduct and coordinate research with a view to providing updates on African law and judicial institutions, as well as to publish an academic journal and produce scholarly works. CREDIJ also provides training and contributes to both basic and applied research in the Centre's key areas of expertise.



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