

ATTACKS ON JUSTICE – GIBRALTAR

Highlights

Fundamental rights are constitutionally enshrined and are respected. The judiciary is independent and judicial actors carry out their duties in an ethical manner. No attacks on judicial actors have been reported. There is a slight shortage of judicial personnel, and a lack of continuous training of judges, lawyers and prosecutors. Gibraltar has as yet no Judicial Council. Although individuals enjoy the right to a fair trial before a competent, independent and impartial tribunal established by law, and in accordance with the principle of equality before the law and the presumption of innocence, there is room for improvement in the provision of legal aid and of *pro bono* work.

BACKGROUND

Gibraltar, a British possession since 1704, is now a self-governing British overseas territory. Although some UK anti-terrorism legislation applies to Gibraltar, the UK's *Anti-Terrorism, Crime and Security Act 2001* through part 6 extends its jurisdiction to British dependencies. Section 57 provides that "Her Majesty may by Order in Council direct that any of the provisions of this Part shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands, the Isle of Man or to any British overseas territory" (http://www.bailii.org/uk/legis/num_act/2001/ukpga_20010024_en_1.html#pt4-pb1-11g32).

Peter Caruana, the leader of the Gibraltar Social Democrats, has been **Chief Minister** since **17 May 1996**. He won another four years in office after the last elections, which were held on **27 November 2003**. It was the third time in succession that the Social Democrats had won, this time with 50 per cent, followed by the Gibraltar Socialist Labour Party and Liberal Party Alliance with 41 per cent.

The *Constitution* adopted in **1969** remains in force (see "Attacks on Justice 2002 – Gibraltar" (http://www.icj.org/news.php3?id_article=2659&lang=en)). Proposals for a constitutional reform have been made by a **House of Assembly Select Committee on Constitutional Reform** envisaging decolonization by creating a modern non-colonial relationship with the UK, and a draft Constitution was published in **2002**; the idea of a Gibraltar "Parliament" with solely elected members was among the proposed changes. At the **end of 2004** a Gibraltar delegation led by Chief Minister Peter Caruana was involved in constitutional reform talks with the British Government (<http://www.answers.com/topic/politics-of-gibraltar>; <http://www.gibnet.com/texts/status1.htm>; <http://www.iberianews.com/cgi-bin/news.cgi?rm=display&articleID=1101423528>; <http://www.falkland-malvinas.com/Detalle.asp?NUM=4625>).

Sovereignty over Gibraltar has been the subject of tension between Spain and the UK. In a **1967 referendum**, the population of Gibraltar overwhelmingly voted for

continued association with the UK. A second referendum in **November 2002** again overwhelmingly confirmed this position, rejecting a proposal for shared sovereignty between Spain and the UK. In **June 2004**, the UK and Spanish governments issued a joint statement to the effect that the *European Constitution* would not modify the status of Gibraltar within the EU or the Spanish sovereignty claims.

Gibraltar is party to the international treaties that the UK has ratified and extended to its overseas territories upon ratification or later on by extension.

JUDICIARY

Although the legal system of Gibraltar is based on that of England, it has evolved differently in that the **House of Assembly** has enacted and amended laws to suit Gibraltar's characteristics. The independence of the judiciary is guaranteed by the state and enshrined in the Constitution as a general principle. Section 84 of the Constitution ensures the independence of the courts.

Chapter 1 of the 1969 Constitution contains provisions that guarantee the protection of fundamental rights and freedoms of the individual. This chapter is similar to the *European Convention on Human Rights* and includes international human rights as reflected in the major international instruments, including the right to a fair trial and related safeguards. There are no provisions in the Gibraltar Constitution or other legislation with regard to special courts and/or military tribunals. The *1998 Human Rights Act* also incorporates the *European Convention on Human Rights* substantial rights. Gibraltar has not got an important record of cases at the European Court to date.

The executive is not completely separated from the judicial branch: the **Attorney General**, a member of the judiciary, forms part of the **Gibraltar Council** which advises the Governor. The judiciary has the final say in the interpretation of existing constitutional provisions or existing laws governing civil liberties and human rights. The court of last resort is **Her Majesty in Council** (the UK Privy Council). Although the court is not established under the Constitution, the right of appeal is.

Decisions of the judiciary can only be reversed by appeal to a higher court. Decisions of higher courts are binding upon lower courts. Both Gibraltar and English precedents are a major source of law. Customary law on the other hand is not binding upon the courts. In cases of conflict or variance between the common law and the rules of equity with reference to the same subject, the rules of equity prevail.

Currently, the systems for updating the laws of Gibraltar are slow but the government, at the instigation of the Bar, has put in place sufficient resources to provide a suitable updating service. This should render access to copies of laws and governmental regulations easier for judges, lawyers and the public than it currently is. Court decisions are periodically compiled and published, although the current system is being improved to ease access.

Independence

Judges have unfettered freedom to decide cases impartially in accordance with the prevailing law. There is reportedly no direct or indirect influence over the decisions of judges by the government or other groups.

Judges enjoy an effective internal independence in their decision-making process vis-à-vis their judicial colleagues and superiors. Court organization is devised in such a way that it prevents other members of the court influencing a judge's decision. Women are represented within the judiciary, but minorities are not.

Judges are free to exercise their right to freedom of association, assembly and expression provided for in sections 10 and 11 of the *Gibraltar Constitution Order 1969* (http://www.gibraltar.gov.gi/constitution/constitution_index.htm). There is however no judges' association, nor any judicial council or equivalent body in Gibraltar.

Judges' remuneration is reportedly adequate and commensurate with the burden of their responsibilities, and they receive pensions upon retirement. Judges' terms of appointment and the provisions of common law prevent judges from combining their work with other professional or political activities.

Discipline

There is no official code of judicial conduct as such. Common law practice governs judicial disciplinary action. Article 60(2) of the *Gibraltar Constitution Order 1969* (http://www.gibraltar.gov.gi/constitution/constitution_index.htm) enumerates the possible grounds for the removal from office of the Chief Justice, the President of the Court of Appeal and other judges. They may be removed by the Governor for inability to discharge the functions of their office arising from infirmity of body, mind or any other cause, or for misbehaviour. A judge can appeal against a disciplinary action to the Court of Appeal, the Privy Council or, if appropriate, through judicial review. Disciplinary proceedings are processed expeditiously and fairly under set procedures, in accordance with established standards of judicial conduct and subject review, in accordance with Principles 17 to 20 of the *UN Basic Principles on the Independence of the Judiciary*.

Accountability and corruption

No law regulates the evaluation and promotion of judges and neither is there a supervisory mechanism to ensure judges' impartiality. Judges are not required to periodically disclose their assets or those of their immediate family members. Provisions against bribing and intimidating judges are to be found in the general criminal law. A procedure for complaints regarding the conduct or functioning of the judiciary exists through the **Office of the Ombudsman**

Court Administration

The **Chief Justice** has the responsibility for the administration of justice and of all courts in Gibraltar. Judges do not have general administrative powers over their courts. Departments of the executive branch of the government manage courts. No judicial managers are appointed. Administrative support staff do not depend on the judges they serve for their recruitment, promotion or discipline but on the relevant department of the executive branch. Court registrars and clerks are responsible for court organization, judges' activities and the assignment and management of cases.

This organization allows the isolation of decision-making from the daily administration of the courts, and judges' independence and impartiality are not influenced.

The **Treasury**, part of the executive branch of government, is formally responsible for setting up the budget devoted to courts. Courts may approach the Treasury with budgeting requirements. The **Chief Justice** then manages the budget with the assistance of the registrar and clerks. Funds are distributed as required. There is slight under-staffing, but this has not impacted on the courts' ability to ensure procedural guarantees. There is no backlog of cases and the length of proceedings is reasonable.

Cases

The prosecution that had been undertaken against **Chief Justice Derek Schofield** and observed by the **ICJ** in **2001** (See http://www.icj.org/news.php3?id_article=2527&lang=en), which had found that the trial had been conducted fairly, has since been resolved. The Chief Justice remains in office and his period of tenure has been confirmed.

LEGAL PROFESSION

Independence

Lawyers are able to perform their professional functions free from intimidation both in theory and practice. Lawyers are in general perceived to uphold human rights and fundamental freedoms recognized by national and international law in protecting their clients' rights, and to act freely and diligently in the exercise of their legal profession.

The *Common Law*, the *Supreme Court Ordinance* and various codes of conduct ensure confidentiality between lawyers and their clients. In practice, lawyers can consult freely with their clients and represent them before courts of law.

Gibraltar's legal profession is fused so that barristers and solicitors enjoy the same rights and privileges as regards appearances in court and direct contact with clients. The **Chief Justice** may approve, admit and enrol as barristers any persons who have been admitted as barristers or solicitors in the UK (see http://www.gibraltarlayers.com/gibraltar_court_system.htm). There is however no formal requirement that lawyers receive a specific amount of continuing legal education. Approximately 15 per cent of lawyers are women and 12 per cent members of minorities.

The General Council of the Bar of Gibraltar

Lawyers are allowed to form and join self-governing professional associations. The profession is regulated under the *Supreme Court Ordinance* and the rules made thereunder. The **General Council of the Bar of Gibraltar** is the governing body of all lawyers in Gibraltar. Any lawyer who has been approved, admitted and enrolled as a barrister or a solicitor in Gibraltar in accordance with the *Supreme Court Ordinance* may become a subscriber to the council, so long as he is in practice or employed in Gibraltar; membership is not mandatory.

The council is made up of the **Attorney General** – the only *ex officio* member of the Council and therefore its only unelected member – an **elected chairman, vice-chairman and treasurer, and ten other elected members**. The Council does not have any disciplinary powers. These are vested in the Chief Justice (<http://www.panorama.gi/law2.htm>). The Council is independent and impartial and its executive body is elected by its members and entitled to exercise its functions without external influence. The Council very rarely takes a public position on individual judicial decisions.

Reportedly, in **August 2004** the government announced that it had partially transposed into local law a *European Union Directive, 2001/19*, on mutual recognition of professional qualifications. This was achieved through the *Recognition of Professional Qualifications Ordinance (amendment) Ordinance 2003* passed in the House of Assembly on **28 July 2003** (<http://www.lowtax.net/lowtax/html/gibraltar/jgilprof.html>).

Disciplinary proceedings

A binding code of professional conduct for lawyers is the basis for disciplinary jurisdiction over lawyers. It is established both by precedent and by the Barristers' and Solicitors' Rules made under the Supreme Court Ordinance. Lawyers have the right to fair and impartial proceedings and have the right to be assisted by a lawyer of their choice. A slight delay in the processing of complaints is sometimes experienced.

PROSECUTORS

Independence

Prosecutors are not part of the judiciary but of the executive, the **Attorney General's Chambers**. The Office of the Attorney General of Gibraltar is a constitutional appointment. Public Prosecutors cannot combine their work with other professions, according to their terms of appointment. They are civil servants; their term of office is governed by contract and civil service rules and practice. The mandatory retirement age is systematically enforced, and prosecutors receive pensions upon retirement.

Prosecutors are able to perform their professional functions free from intimidation, harassments, threats and persecution. If their security is threatened, they receive adequate protection from the appropriate authorities. Common law and practice regulate prosecutors disqualifying themselves from participating in proceedings in which there is a conflict of interest. Reportedly, they always disqualify themselves in appropriate cases.

Prosecutors receive appropriate education and training although there is no system of initial and continuous training for prosecutors. They receive the same legal education curriculum as lawyers and judges. They are made aware of the ethical duties of the prosecutorial function and of international human rights standards through the *Human Rights Act*. The **Attorney General** supervises and accounts for prosecutors.

Role in criminal proceedings

The **Attorney General** has discretion over whether to bring a charge. The Attorney General does not have a role in the initial decision to detain a suspect. He does not

become involved unless the case is referred to the Attorney General's Department. He does not supervise investigations, which are a matter for the **Royal Gibraltar Police Force**, although the police may seek advice from the Attorney General. The Attorney General has the power to appeal to higher judicial authorities against court decisions relating to conviction or sentence.

Disciplinary proceedings

Prosecutors are subject to disciplinary jurisdiction. The code of professional conduct for prosecutors is the same as for lawyers in private practice, with the addition of civil service rules and codes. It is binding upon them. Prosecutors have the right to fair, impartial and expeditious proceedings in complaints made in their professional capacity. They have the right to be assisted by a lawyer of their choice.

ACCESS TO JUSTICE

All individuals enjoy the right to a fair trial before a competent, independent and impartial tribunal established by law, and in accordance with the principle of equality before the law and the presumption of innocence. Only normal appeal procedures and judicial review allow judicial decisions to be reviewed. There is therefore no undue interference with the judicial process. Appeal to a superior jurisdiction is possible in all cases: first instance decisions are all appealable, while second instance decisions in some cases need leave from the court before appeal is allowed. The average length of cases in both criminal and civil systems is approximately five days and there is no reported backlog of pending cases.

The population at large is informed of and aware of their rights. Every person has reportedly effective and equal access to a lawyer of his or her choosing. In accordance with Principles 1 and 2 of the *UN Basic Principles on the Role of Lawyers* no discrimination is carried out in relation to access to justice and legal services. Nevertheless, although legal aid is available there is no *pro bono* assistance for low-income parties and lawyers are not required to offer those services; individual lawyers are free to decide whether or not to accept *pro bono* work.

The rates at which fees were paid to lawyers representing legally aided clients were set by the government in 1981 and not reviewed or increased for a considerable time thereafter. As a result, the **Gibraltar Bar Council** took the view that the rates had fallen below the level that constituted a proper professional fee and in **October 1999** passed a resolution to that effect, making it possible for lawyers to turn down legal aid cases without breaching the rules of the legal profession contained in the *Code of Conduct of the Bar*. Legally aided defendants consequently experienced increasing difficulty in obtaining legal representation. To remedy this problem, the **Gibraltar Government** published an amended schedule to the Legal Aid Fees Rules, establishing new updated rates of legal fees, which were promulgated in **June 2001**.

In a Gibraltar ruling by **Chief Justice Schofield** of **28 August 2002**, it was found that the courts in Gibraltar should follow the new *English Civil Procedure Rules* (the Woolf Reforms). These reforms, designed to provide litigants with better and cheaper access to dispute resolution, came into effect in Gibraltar on **4 May 2000**. The legislation bringing the regime into effect was named the *Access to Justice Act* as the

rationale behind it was to provide readier access to dispute resolution. Contingency fees were “no longer considered unlawful at common law and do not offend public policy” (cf. “*In the Matter of an Application to the Chief Justice pursuant to Rule 2 of the Supreme Court Rules, per Chief Justice Schofield*”

General Country Information

a. Legal system overview

Gibraltar's sovereignty is assured by the *preamble to the Gibraltar Constitution Order 1969* in which Britain assures the people of Gibraltar that Britain "will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes".

By virtue of article 227(4) of the *EEC Treaty*, Gibraltar is within the European Union as a territory for whose external relations Britain is responsible. Article 28 of the **1971 UK Accession Treaty** nevertheless relieves Gibraltar from a number of commitments, viz. the common customs tariff, the common agricultural policy and the harmonization of turnover taxes (see http://www.gibraltar.gov.gi/gov_depts/finance/gib_const_legal_services.htm).

Britain is responsible for Gibraltar's defence and foreign policy. However Gibraltar is self-governing and its democratically elected House of Assembly can enact laws independently of Britain.

The **Head of State** is **Queen Elizabeth II**, who appoints a **Governor** and **Commander-in-Chief** to represent her in Gibraltar. Hence the appointed Governor is a representative of the Crown in Gibraltar. The Head of the executive in respect of "defined domestic matters" is the **Chief Minister**, who is appointed by the Governor as the elected member of the Assembly most likely to command the support of the majority.

The **legislative branch** of Gibraltar consists of the **Governor** and the **Assembly**. The unicameral Assembly is composed of 18 seats. One of these is the appointed **Speaker of the Assembly**, who is appointed by the Governor after consultation with the Chief Minister and the Leader of the Opposition; 15 are elected by popular vote and two seats are taken by the **Attorney General** and the Financial and Development Secretary, who are *ex officio* members of the Assembly appointed by the Governor at the instance of Her Majesty's Government. They serve a four-year term. The Chief Minister is also the leader of the House and sets the agenda.

The **cabinet** of Gibraltar is the **Council of Ministers**, which consists of the Chief Minister and a number of additional ministers, who are appointed from among the 15 elected members of the House of Assembly by the Governor in consultation with the Chief Minister.

1. Rule of law and independence of the judiciary

Gibraltar's legal system, based on the *common law* and *statute law* of England, is comprised of *statute law* (ordinances passed by the House of Assembly) and precedent from the relevant judgments of the English Courts of justice. It specifically applies English statute law and, as a territory within the European Union, Gibraltar transposes applicable EU directives.

In **1962** the *English Law (Application) Ordinance* was passed declaring the extent to which English law is in force in Gibraltar. The common law and the rules of equity in force in England apply to Gibraltar subject to any modifications or exclusions made by Her Majesty in Council, an act of Parliament or an Ordinance passed by the House of Assembly in Gibraltar. Although the legal system is based on that of England, it has evolved differently in so far as the House of Assembly has enacted and amended laws to suit Gibraltar's characteristics.

Chapter 1 of the *Constitution of Gibraltar* contains provisions that guarantee the protection of fundamental rights and freedoms of the individual. This chapter is similar to the *European Convention on Human Rights* and includes international human rights as reflected in the major international instruments, including the right to a fair trial and related safeguards. Gibraltar is party to the international treaties that the UK has ratified and extended to its overseas territories upon ratification or later on by extension.

The judiciary has the final say in the interpretation of existing constitutional provisions or existing laws governing civil liberties and human rights. The court of last resort is **Her Majesty in Council** (the UK Privy Council). Although the court is not established under the Constitution, the right of appeal is. Its jurisdiction is described in section 62 of the Constitution.

The principle of separation of powers is set out in the Constitution through its general structure. Furthermore, Section 84, entitled "Saving for jurisdiction of courts", ensures the independence of the courts. The principle of separation of powers ensures that undue interference by one branch of government in the affairs of another branch is not experienced. Nevertheless, it can be noted that the separation between the executive and the legislative is not so clear-cut. For instance, three of the 18 seats of the **House of Assembly** belong to non-elected but *ex officio* members appointed by the Governor. Also, all the members of the **Council of Ministers** are appointed from among the 15 elected members of the House of Assembly. This structure does not seem to jeopardize the principles of separation of powers as such, but in the *draft constitution* that was put forward in **2002** by the **Select Committee on Constitutional Reform**, the idea of a Gibraltar "Parliament" with solely elected members was among the proposed changes.

The *Human Rights Act*, enacted in **1998** incorporates the *European Convention on Human Rights*. The *Gibraltar Constitution Order 1969* contains guarantees for the protection of individual rights. Gibraltar does not have an important record of cases at the European Court.

The executive is not completely separated from the judicial branch: the Attorney General, a member of the judiciary, forms part of the Gibraltar Council which advises the Governor. This Council plays a role in the creation of policy and in the exercise of all powers conferred upon him by the Constitution under section 46; the Governor of Gibraltar is to consult the Council for those matters.

The House of Assembly determines legislative policy. The **Legislation Support Unit** (a Gibraltar Government Department) drafts the legislation. The **Chief Justice** can propose changes to legislation, either resulting from a judicial decision or generally.

Judicial professional institutions such as the Bar Association are consulted on an *ad hoc* basis by the executive and can on their own initiative propose new legislation or amendments to existing legislation. On the other hand, the media rarely influence the law-making process.

A procedure for complaints regarding the conduct or functioning of the judiciary exists through the **Office of the Ombudsman**. This is legally enshrined in the *Public Services Ombudsman Ordinance* of **1998**. This ordinance provides for the appointment of the ombudsman, his or her terms of engagement, investigation of complaints and reports. Under section 3, the Chief Minister may appoint a person to be the Ombudsman but such an appointment shall only come into effect upon the House of Assembly confirming the appointment by way of a resolution passed within thirty days of the appointment.

2. Sources of law

The sources of law in Gibraltar are **statute law** and **case law**. Reforms take place as required but the legislative agenda is largely driven by EU requirements. Decisions of the judiciary can only be reversed by appeal to a higher court. Decisions of higher courts are binding upon lower courts. Both Gibraltar and English precedents are a major source of law. **Customary law** on the other hand is not binding upon the courts. In cases of conflict or variance between the *common law* and the *rules of equity* with reference to the same subject, the *rules of equity* prevail. The **1962 English Law (Application) Ordinance** further lists in its schedule the *statute law of England* that applies to Gibraltar (see http://www.gibraltar.gov.gi/gov_depts/finance/gib_const_legal_services.htm).

3. Legal publicity and judicial transparency

The **executive branch** is responsible for the official publication of the full text of laws and regulations. Laws of Gibraltar are published by Government Printer, Gibraltar (**1984** onwards; see “Finding the Law: the Micro-States and Small Jurisdictions of Europe”, <http://www.llrx.com/features/microstates.htm#Gibraltar>). Currently, the systems for updating the laws of Gibraltar are slow but the Government, at the instigation of the Bar, has put in place sufficient resources to provide a suitable updating service. This should render access to copies of laws and governmental regulations easier for judges, lawyers and the public than it currently is.

Court proceedings are generally open to the public and the press. If a defendant is under age and tried in the Magistrates’ or the Crown Court, his or her name cannot be reported unless leave of the court is obtained. Also, if the judge prevents the reporting of any particular case, this prohibition has to be complied with.

Case law is published as *Gibraltar Law Reports* (Government Printer, **1979** onwards; <http://www.lawreports.com/gibraltar.htm>). Some cases (of national and territorial, as well as European Union tribunals) relevant to European Union matters appear in *Common Market Law Reports*. Hence court decisions are periodically compiled and published, although the current system is being improved to ease access.

4. New counter-terrorist measures

The Anti-Terrorism, Crime and Security Act 2001 was passed in the UK. It directly applies to Gibraltar through part 6 that extends its jurisdiction to British dependencies

(see above).

b. The judiciary

1. Judicial structure

The judicial system of Gibraltar is based entirely on the English system, except for minor modifications that are required because of its peculiarities (see “Judiciary and Law”, www.gibraltar.gov.uk). The independence of the judiciary is guaranteed by the state and enshrined in the Constitution as a general principle.

Gibraltar has a **Magistrates’ Court**, a **Supreme Court**, both with criminal and civil jurisdiction, and a **Court of Appeal**. Final appeals lie to the **Privy Council**. Provisions relating to the judiciary are contained in Chapter V of the *Constitution Order 1969*, where the composition and jurisdiction of the courts are set out.

The lower courts of Gibraltar consist of the **Court of First Instance**, which is similar to a county court in England and Wales, the **Coroner’s Court** and the **Magistrates’ Court** (see “Update On The Gibraltar Court System”, http://www.gibraltarlawyers.com/gibraltar_court_system.htm). They deal with civil matters including all monetary claims up to £15,000. Some have extra powers which enable them to deal with divorce and other family proceedings, bankruptcy actions, matters relating to children and cases involving ships and boats known as Admiralty actions. The **Magistrates’ Court**, which deals with criminal proceedings and examines the evidence/statements before either dealing with the case itself or committing it to the **Crown Court** for trial or sentence, is presided over by a **Stipendiary Magistrate** or, in his absence, by **lay magistrates**.

The **Supreme Court of Gibraltar** has unlimited jurisdiction to hear and determine any civil or criminal proceedings. Its criminal jurisdiction resembles that of the **English Crown Court**, while its civil jurisdiction is equivalent to that of the **English High Court**. Criminal cases in the Supreme Court are tried by jury, while civil cases are typically tried by judges alone. The Supreme Court consists of two judges. One of these judges is the **Chief Justice**, who is also the head of the Judiciary; the other is appointed by the Governor. The legally qualified **Registrar of the Supreme Court** also holds the offices of **Sheriff** and **Admiralty Marshal** and is in charge of the Admiralty jurisdiction of the Supreme Court, which is a special jurisdiction in Gibraltar (in the UK it is part of the High Court).

The Constitution governs the instances where, as of right, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal and from there to the Privy Council, and the instances where the leave of the Supreme Court or the Court of Appeal is required.

The **Court of Appeal** is not resident, but holds two sessions per year. It consists of a **President** and **two Justices of Appeal**. In convening the Court of Appeal, an uneven number of judges shall sit which shall not be less than three. The **Chief Justice** is an *ex officio* member of the Court of Appeal for all purposes except for appeals against his own decisions. The **Justices of Appeal** are mainly drawn from the **English Court of Appeal**.

There are no provisions in the Gibraltar Constitution or other legislation with regards to special courts and / or military tribunals.

2. Judicial council

There is no judicial council or equivalent body. The Chief Justice, the President of the Court of Appeal and the Justices of Appeal are appointed by the Governor.

3. Court administration

The Chief Justice has the responsibility for the administration of justice and of all courts in Gibraltar. Judges do not have general administration powers over their courts. Departments of the executive branch of the government manage courts. No judicial managers are appointed. Administrative support staff do not depend on the judges they serve for their recruitment, promotion or discipline but on the relevant department of the executive branch. Court registrars and clerks are responsible for court organization, judge's activities and the assignment and management of cases. This organization allows isolation of decision-making from the daily administration of the courts, and judges' independence and impartiality are not influenced.

4. Budget and autonomy

The **Treasury**, part of the executive branch of government, is formally responsible for setting up the budget devoted to courts. Courts may approach the Treasury with budgeting requirements. The **Chief Justice** then manages the budget with the assistance of the registrar and clerks. Funds are distributed as required. There is slight under-staffing, but this has not impacted on the courts' ability to ensure procedural guarantees. There is no backlog of cases and the length of proceedings is reasonable.

5. Enforcement of decisions

Judicial decisions are provided in written form with reasoning. The judiciary and, in criminal cases, the police, have the legal responsibility for the enforcement of judicial decisions.

c. Judicial Actors

c.1. Judges

1. Independence and impartiality

Judges have unfettered freedom to decide cases impartially in accordance with the prevailing law. There is reportedly no direct or indirect influence over the decisions of judges by the government or other groups.

2. Internal independence

Judges enjoy an effective internal independence in their decision-making process vis-à-vis their judicial colleagues and superiors. Court organization is devised in such a way as to prevent other members of the court influencing a judge's decision. Women are represented within the judiciary, but minorities are not.

3. Qualifications, appointment and training

According to Section 58(1) of the *Gibraltar Constitution Order 1969*, the **Chief Justice**, the **President of the Court of Appeal** and the **Justices of Appeal** are appointed by the **Governor** pursuant to instructions given by **Her Majesty** through a

Secretary of State. The **Governor** may, acting on his discretion and after consultation with the **Chief Justice**, appoint additional judges. Section 58(2) specifies the requirements for qualification to be appointed **Chief Justice, President of the Court of Appeal or Justice of Appeal**. The appointee must have been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court, or must be entitled to practise as an advocate in such a court and must have had this entitlement for not less than ten years.

4. Security of tenure

According to Section 60(1) of the *Gibraltar Constitution Order 1969*, the office of the Chief Justice must in principle be vacated at the age of 67. The President of the Court of Appeal or of Justice of Appeal shall vacate his office also upon expiration of such period. However, the Governor may prolong the duration of the office until 72 years under certain circumstances. Section 57(3) guarantees security of tenure by providing that “The Office of a Justice of Appeal shall not without his consent be abolished during his continuance in office”.

Judges’ remuneration is reportedly adequate and commensurate to the burden of their responsibilities, and they receive pensions upon retirement.

5. Freedom of expression and association

Judges are free to exercise their right to freedom of association, assembly and expression provided for in sections 10 and 11 of the *Gibraltar Constitution Order 1969* (http://www.gibraltar.gov.gi/constitution/constitution_index.htm). There is, however, no judges’ association in Gibraltar. Judges’ terms of appointment and common law prevent judges from combining their work with other professional or political activities.

6. Professional secrecy and immunity

The government and judges alike respect professional secrecy. Judges are not compelled to testify as to confidential information acquired while performing their judicial functions. Judges enjoy no effective personal immunity from civil suits for monetary damages in the exercise of their duties.

7. Discipline, suspension and removal

There is no official code of judicial conduct as such. *Common law practice* governs judicial disciplinary action. Article 60(2) of the *Gibraltar Constitution Order 1969* (http://www.gibraltar.gov.gi/constitution/constitution_index.htm) enumerates the possible grounds for the removal from office of the **Chief Justice, the President of the Court of Appeal and other judges**. They may be removed by the **Governor** for inability to discharge the functions of their office arising from infirmity of body, mind or any other cause, or for misbehaviour. If the Governor intends to do so, he must appoint a **tribunal** to inquire into the matter and advise him whether he should proceed. In such cases, under section 4 of the *Judicial Committee Act 1833*, the Governor must request the **Crown** to refer the question of the removal of the judge to the **Judicial Committee of Her Majesty’s Privy Council**. The Judicial Committee then advises the Crown to remove the judge for inability or misbehaviour. A judge can appeal against a disciplinary action to the Court of Appeal, the Privy Council or, if appropriate, through judicial review.

Disciplinary proceedings are processed expeditiously and fairly under set procedures, in accordance with established standards of judicial conduct and subject review, in accordance with Principles 17 to 20 of the *UN Basic Principles on the Independence of the Judiciary*.

8. Accountability and corruption

No law regulates the evaluation and promotion of judges and neither is there a supervisory mechanism to ensure judges' impartiality. Judges are not required to periodically disclose their assets or those of their immediate family members. Provisions against bribing and intimidating judges are to be found in the general criminal law.

c.2. The legal profession

1. Independence

Gibraltar's legal profession is fused so that barristers and solicitors enjoy the same rights and privileges as regards appearances in court and direct contact with clients. Lawyers are able to perform their professional functions free from intimidation both in theory and practice. The *Common Law*, the *Supreme Court Ordinance* and various codes of conduct, for instance in some cases the *Code of Conduct of England and Wales*, ensure confidentiality between lawyers and their clients. Hence confidentiality between lawyers and their clients is respected and lawyers can consult freely with their clients and represent them before courts of law.

2. Qualifications and training

The **Chief Justice** may approve, admit and enrol as barristers any persons who have been admitted as barristers or solicitors in the UK (see http://www.gibraltarlawyers.com/gibraltar_court_system.htm).. There is, however, no formal requirement that lawyers receive a specific amount of continuing legal education.

3. Duties and responsibilities

Lawyers are in general perceived to uphold human rights and fundamental freedoms recognized by national and international law in protecting their clients' rights, and to act freely and diligently in the exercise of their legal profession.

4. Freedom of expression and association

Lawyers do not suffer from professional restriction by reason of their membership in local, national or international organizations. They are allowed to form and join self-governing professional associations.

5. Professional associations

The *Supreme Court Ordinance* and the rules made thereunder govern the functioning of the legal profession. The **General Council of the Bar of Gibraltar** is a voluntary association (i.e. membership is not mandatory), and is the governing body of all lawyers in Gibraltar. Any lawyer who has been approved, admitted and enrolled as a barrister or a solicitor in Gibraltar in accordance with the *Supreme Court Ordinance* may become a subscriber to the Council, so long as he is in practice or employed in Gibraltar. The Council is made up of the **Attorney General** – the only ex-officio

member of the Council and therefore its only unelected member – an **elected chairman, vice-chairman and treasurer, and ten other elected members**. The Council does not have any disciplinary powers. These are vested in the Chief Justice (<http://www.panorama.gi/law2.htm>). The Council is independent and impartial, and its executive body is elected by its members and entitled to exercise its functions without external influence. The council very rarely takes a public position in individual judicial decisions.

6. Disciplinary proceedings

A binding code of professional conduct for lawyers is the basis for disciplinary jurisdiction over lawyers. It is established both by precedent and by the *Barristers' and Solicitors' Rules* made under the *Supreme Court Ordinance*. Part III of the rules provides for disciplinary sanctions on lawyers and empowers the Chief Justice to appoint an **Admissions and Disciplinary Committee**, responsible for investigating any complaints, reporting to the Chief Justice and recommending any action that he should take. The committee consists of the Attorney General, who is the chairman, and two other lawyers of at least ten years' standing, one of whom is nominated by the General Council of the Bar of Gibraltar (<http://www.panorama.gi/law2.htm>). Lawyers have the right to fair and impartial proceedings and have the right to be assisted by a lawyer of their choice. A slight delay in the processing of complaints is sometimes experienced.

c.3. Prosecutors

The legal adviser to the Crown is the **Attorney General**. He combines the functions of Attorney General and Director of Public Prosecutions and is also an *ex officio* member of the House of Assembly. The **Attorney General's Chambers** comprise a number of **Crown Counsel**. There also exists a **Legislation Support Unit**, created for the purpose of legislative drafting (www.gibraltar.gov.uk).

1. Independence

Prosecutors are able to perform their professional functions free from intimidation, harassments, threats and persecution. If their security is threatened, they receive adequate protection from the appropriate authorities. Common law and practice regulate prosecutors disqualifying themselves from participating in proceedings in which there is a conflict of interest.

2. Qualifications, selection and training

Prosecutors receive appropriate education and training although there is no system of initial and continuous training for prosecutors. They receive the same legal education curriculum as lawyers and judges. They are made aware of ethical duties of the prosecutorial function and of international human rights standards through the *Human Rights Act*. The **Attorney General** supervises and accounts for prosecutors.

3. Status and conditions of service

Prosecutors are not part of the judiciary but of the executive, the Attorney General's Chambers. The Office of the Attorney General of Gibraltar is a constitutional appointment. Public Prosecutors cannot combine their work with other professions, according to their terms of appointment. They are civil servants, their term of office is

governed by contract and civil service rules and practice. The mandatory retirement age is systematically enforced, and prosecutors receive pensions upon retirement.

4. Role in criminal proceedings

The **Attorney General** has discretion over whether to bring a charge. The Attorney General does not have a role in the initial decision to detain a suspect. He does not become involved unless the case is referred to the Attorney General's Department. He does not supervise investigations, which are a matter for the **Royal Gibraltar Police Force**, although the police may seek advice from the Attorney General. The Attorney General has the power to appeal to higher judicial authorities against court decisions relating to conviction or sentence.

5. Disciplinary proceedings

Prosecutors are subject to disciplinary jurisdiction. The code of professional conduct for prosecutors is the same as for lawyers in private practice, with the addition of civil service rules and codes. It is binding upon them. Prosecutors have the right to fair, impartial and expeditious proceedings in complaints made in their professional capacity. They have the right to be assisted by a lawyer of their choice.

d. Access to Justice

1. Access to justice

The population at large is informed of and aware of their rights. Every person has reportedly effective and equal access to a lawyer of his or her choosing. No discrimination is carried out in relation to access to lawyers and legal services. This is in accordance with Principles 1 and 2 of the *UN Basic Principles on the Role of Lawyers*. The system of contingency fees is regulated by law. Courts in Gibraltar follow the so-called *Woolf Reforms* in procedure (see above).

2. Fair trial

All individuals enjoy the right to a fair trial before a competent, independent and impartial tribunal established by law, and in accordance with the principle of equality before the law and the presumption of innocence. This is in accordance with Principles 1 and 2 of the *United Nations Basic Principles on the Independence of the Judiciary*. Principle 5, which requires that everyone be tried by ordinary courts or tribunals using established legal procedures, is also respected, as there are no military or special courts trying civilians in Gibraltar. Only normal appeal procedures and judicial review allow judicial decisions to be reviewed. There is therefore no undue interference with the judicial process, in accordance with Principle 4. Appeal to a superior jurisdiction is possible in all cases. First instance decisions are all appealable, while second instance decisions in some cases need leave from the court before appeal is allowed. The average length of cases in both criminal and civil systems is approximately five days and there is no reported backlog of pending cases.

3. Legal aid

There is no *pro bono* assistance for low income parties and lawyers are not required to offer those services. Individual lawyers are free to decide whether or not to accept *pro bono* work.

Legal aid is available. The rates at which legal fees were paid by the government to lawyers who represent legally aided clients were set in 1981 and were not increased for a considerable time thereafter until new rules and rates were promulgated in June 2001.

In this regard, it can be noted that principles 3 and 4 of the *UN Basic Principles on the Role of Lawyers* provide that legal services for the poor and other disadvantaged persons should be ensured, and that professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.