INTERNATIONAL ASSOCIATION OF JUDGES
THE UNIVERSAL CHARTER OF THE JUDGE
Adopted by the IAJ Central Council
in Taiwan on November 17th, 1999
[Link to the 1999 Edition]
Updated in Santiago de Chile on November 14th, 2017
[Presentation of the New Universal Charter]

INTRODUCTION

"*There is no freedom if the power to judge is not separated from the legislative and the executive powers*," wrote Montesquieu in his "Spirit of the Laws."

Very influenced by Montesquieu's philosophy, the famous American stateman and lawyer Alexander Hamilton characterized in the 1780ies by article n°78 of "the Federalist, or the new Constitution" the position of the judiciary vis-à-vis the other state powers by the striking words: "*Whoever attentively considers the different powers must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. (…) The judiciary is beyond comparison the weakest of the three departments of power; It can never attack with the success either of the other two; and all possible care is requisite to enable it to defend itself against attacks*"

An essential part of the rule of law is undoubtedly represented by the independence of the judicial power.

It is therefore imperative to consolidate this power as a guarantee of protection of the civil rights against the attacks of the State and other special interest groups.

Fundamental principles relating to the independence of the judiciary were enacted since 1985 by the United Nations. A special rapporteur in charge of the independence of the judges and lawyers is appointed to ensure the respect of these standards and to make them evolve up to always higher levels, in the interest of the citizens.

International organizations at regional level, in particular the Council of Europe, also enacted in these last years many standards.

"*Noting that, in the performance of their legal duties, the role of the judges is essential with the protection of human right and of fundamental freedoms,"*

and "wishing to promote the independence of the judges, which is an inherent element of the rule of law, and indispensable to judges' impartiality and to the functioning of the judicial system," the Council of Europe, in the preamble of Recommendation 2010/12 on the judges: independence, efficiency and responsibilities, stressed that "*the independence of the judiciary secures for every person the right to a fair trial and therefore is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system*."

Despite the usefulness of this corpus of protective rules, it is up to an organization such as the International Association of Judges to promote its own rules and to strive in order to give them a binding character throughout the world, as well as to pay attention to the evolution of such standards, in order to grant judges and prosecutors more guarantees.

After the adoption between 1993 and 1995 of regional charters, a Universal Charter on the Statute of Judges was unanimously adopted by the IAJ in Taiwan in 1999.

Since then, many subjects appeared, which could not have been considered at that time. This is the case for ethics and deontology, which developed on the base of increased and legitimate requests from the citizens and as a development of the concept of impartiality.

This is also the case for communication, in a world which is more and more open and "connected." Finally, the same is true, in the framework of a difficult economic context, for budgetary matters, as well as for the question of remunerations and workload of judges.

Other subjects were tackled by the IAJ within the works of its First Study Commission. Conclusions of such works are liable to be integrated into the Charter.

At a moment in which, in many countries, the rights of the judiciary are threatened, judges are attacked, prosecutors are blamed, the update of the Universal Charter on the Statute of the Judges adopted in 1999 becomes a need.

During the meeting in Foz do Iguaçu in 2014, the Central Council of the IAJ approved the proposal of the Presidency Committee to update the Charter adopted in Taiwan in 1999.

During the Barcelona meeting a working group was set up, with the task to prepare a draft for a new Charter.

It was composed of

– Christophe REGNARD, President of the IAJ (France), President of the working group
– Giacomo OBERTO, Secretary-General of the IAJ (Italy)
– Janja ROBLEK (Slovenia)
– Julie DUTIL (Canada)
– Alyson DUNCAN (USA)
– Walter BARONE (Brazil)
– Mario MORALES (Puerto Rico)
– Marie Odile THIAKANE (Senegal)
– Scheik KONE (Mali)
– Günter WORATSCH, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

The draft charter was discussed during the springtime Regional Groups meetings in April and May 2017, them during the meeting of the Central Council in Santiago de Chile.

The following Charter, which presents the minimal guarantees required, was unanimously adopted, in the presence of M. Diego GARCIA SAYAN, special rapporteur of the United Nations on the independence of judges and lawyers on November 14th, 2017.

ARTICLE 1 – GENERAL PRINCIPLES

The judiciary, as guarantor of the Rule of law, is one of the three powers of any democratic State.

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them.

The independence of the judge is indispensable to impartial justice under the law. It is indivisible. It is not a prerogative or a privilege bestowed for the personal interest of judges, but it is provided for the Rule of law and the interest of any person asking and waiting for an impartial justice.

All institutions and authorities, whether national or international, must respect, protect and defend that independence.

ARTICLE 2 – EXTERNAL INDEPENDENCE

<u>Article 2-1 – Warranty of the independence in a legal text of the highest level</u>

Judicial independence must be enshrined in the Constitution or at the highest possible legal level.

Judicial status must be ensured by a law creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

Article 2-2 – Security of office

Judges – once appointed or elected – enjoy tenure until compulsory retirement age or termination of their mandate.

A judge must be appointed without any time limitation. Should a legal system provide for an appointment for a limited period of time, the appointment conditions should insure that judicial independence is not endangered.

No judge can be assigned to another post or promoted without his/her agreement.

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only as the effect of disciplinary proceedings, under the respect of the rights of defence and of the principle of contradiction.

Any change to the judicial obligatory retirement age must not have retroactive effect.

Article 2-3 – Council for the Judiciary

In order to safeguard judicial independence a Council for the Judiciary, or another equivalent body, must be set up, save in countries where this independence is traditionally ensured by other means.

The Council for the Judiciary must be completely independent of other State powers.

It must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation.

The Council for the Judiciary can have members who are not judges, in order to represent the variety of civil society. In order to avoid any suspicion, such members cannot be politicians. They must have the same qualifications in terms of integrity, independence, impartiality and skills of judges. No member of the Government or of the Parliament can be at the same time member of the Council for the Judiciary.

The Council for the Judiciary must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges.

It must be foreseen that the Council can be consulted by the other State powers on all possible questions concerning judicial status and ethics, as well as on all subjects regarding the annual budget of Justice and the allocation of resources to the courts, on the organisation, functioning and public image of judicial institutions.

Article 2-4 – Resources for Justice

The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function.

The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to the budget of the Judiciary and material and human resources allocated to the courts.

Article 2-5 – Protection of the judge and respect for judgments

The judge must benefit from a statutory protection against threats and attacks of any kind, which may be directed against him/her, while performing his/her functions.

Physical security for the judge and his/her family must be provided by the State. In order to ensure the serenity of judicial debates, protective measures for the courts must be put in operation by the State.

Any criticism against judgments, which may compromise the independence of the judiciary or jeopardise the public's confidence in the judicial institution, should be avoided. In case of such allegations, appropriate mechanisms must be put in place, so that lawsuits can be instigated and the concerned judges can be properly protected.

ARTICLE 3 – INTERNAL INDEPENDENCE

Article 3-1: Submission of the judge to the law

In the performance of the judicial duties the judge is subject only to the law and must consider only the law.

A hierarchical organisation of the judiciary in the sense of a subordination of the judges to the court presidents or to higher instances in their judicial decision making activity, save for the review of opinions as described below (see Article 3.2), would be a violation of the principle of judicial independence

Article 3-2 – Personal autonomy

No influence, pressure, threat or intervention, either direct or indirect, from any authority, is acceptable.

This prohibition of orders or instructions, of any possible kind, onto judges does not apply to hiher courts, when they quash rulings by previous instances, in compliance with legally established procedures.

Article 3-3 – Court administration

Representatives of the judiciary must be consulted before any decision affecting the performing of judicial duties.

As court administration can affect judicial independence, it must be entrusted primarily to judges.

Judges are accountable for their actions and must spread among citizens any useful information about the functioning of justice.

Article 3-4 – How cases should be allocated

Allocation of cases must be based on objective rules, which are set forth and communicated previously to judges. Any decision on allocation must be taken in a transparent and verifiable way.

A case should not be withdrawn from a particular judge without valid reasons. The evaluation of such reasons must be done on the basis of objective criteria, pre-established by law and following a transparent procedure by an authority within the judiciary.

Article 3-5 – Freedom of expression and right to create associations

Judges enjoy, as all other citizens, freedom of expression. However, while exercising this right, they must show restraint and always behave in such a way, as to preserve the dignity of their office, as well as impartiality and independence of the judiciary.

The right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests and their independence.

ARTICLE 4 – RECRUITMENT AND TRAINING

Article 4-1: Recruitment

The recruitment or selection of judges must be based only on objective criteria, which may ensure professional skills; it must be done by the body described in Article 2.3.

Selection must be done independently of gender, ethnic or social origin, philosophical and political opinions, or religious beliefs.

Article 4-2 : Training

Initial and in-service trainings, insofar they ensure judicial independence, as well as good quality and efficiency of the judicial system, constitute a right and a duty for the judge. It shall be organised under the supervision of the judiciary.

ARTICLE 5 – APPOINTMENT, PROMOTION AND ASSESSMENT

Article 5-1 – Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.

The selection should be carried out by the independent body defined by Article 2-3 of this Charter, or an equivalent body.

Article 5-2 – Promotion

When it is not based on seniorship, promotion of a judge must be exclusively based on qualities and merits verified in the performance of judicial duties through objective and contradictory assessments.

Decisions on promotions must be pronounced in the framework of transparent procedures provided for by the law. They may occur only at the request of the judge or with his consent.

When decisions are taken by the body referred to Article 2-3 of this Charter, the judge, whose application for a promotion has been rejected, should be allowed to challenge the decision.

Article 5-3 – Assessment

In countries where judges are evaluated, assessment must be primarily qualitative and be based on the merits, as well as on professional, personal and social skills of the judge; as for promotions to administrative functions, it must be based on the judge's managerial competencies.

Assessment must be based on objective criteria, which have been previously made public. Assessment procedure must get the involvement of the concerned judge, who should be allowed to challenge the decision before an independent body.

Under no circumstances can the judges be assessed on the base of judgments rendered by them.

ARTICLE 6 – ETHICS

Article 6-1 – General Principles

In every circumstances, judges must be guided by ethical principles.

Such principles, concerning at the same time their professional duties and their way of behaving, must guide judges and be part of their training.
These principles should be laid down in writing in order to increase public confidence in judges and the judiciary. Judges should play a leading role in the development of such ethical principles.

Article 6-2 – Impartiality, dignity, incompatibilities, restraint

In the performance of the judicial duties the judge must be impartial and must so be seen.
The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.
The judge must refrain from any behaviour, action or expression of a kind effectively to affect confidence in his/her impartiality and independence.

Article 6-3 – Efficiency

The judge must diligently and efficiently perform his or her duties without any undue delays.

Article 6-4 – Outside activities

The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge.
He/she must avoid any possible conflict of interest.
The judge must not be subject to outside appointments without his or her consent.

Article 6-5 – Judge's possible recourse to an independent authority in order to get advice

Where judges consider that their independence is threatened, they should be able to have recourse to an independent authority, preferably that described under Article 2-3 of this Charter, having means to enquire into facts and to provide them with help and support.
Judges should be able to seek advice on ethics from a body within the judiciary.

ARTICLE 7 – DISCIPLINE

Article 7-1 – Disciplinary proceedings

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant.
Disciplinary proceedings should be carried out by independent bodies, that include a majority of judges, or by an equivalent body.

Save in case of malice or gross negligence, ascertained in a definitive judgement, no disciplinary action can be instituted against a judge as the consequence of an interpretation of the law or assessment of facts or weighing of evidence, carried out by him/her to determine cases

Disciplinary proceedings shall take place under the principle of due process of law. The judge must be allowed to have access to the proceedings and benefit of the assistance of a lawyer or of a peer. Disciplinary judgments must be reasoned and can be challenged before an independent body.

Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure. Disciplinary sanctions should be proportionate.

Article 7-2 – Civil and penal responsibility

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

ARTICLE 8 – REMUNERATION, SOCIAL PROTECTION AND RETIREMENT

Article 8 – 1 – Remuneration

The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence.

The remuneration must not depend on the results of the judge's work, or on his/her performances, and must not be reduced during his or her judicial service.

Rules on remuneration must be enshrined in legislative texts at the highest possible level.

Article 8-2 – Social protection

The statute provides a guarantee for judges acting in a professional capacity against social risks related to illness, maternity, invalidity, age and death.

Article 8-3 – Retirement

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement, the judge may exercise another legal professional activity, if it is not ethically inconsistent with its former legal activity.

It cannot be deprived of his pension on the sole ground that it exercises another professional activity.

ARTICLE 9 – APPLICABILITY OF THE CHARTER

Article 9-1 – Applicability to all persons exercising judicial functions

This Charter is applicable to all persons exercising judicial functions, including non-professional judges.

Article 9-2 – Applicability to Public prosecution

In countries where members of the public prosecution are assimilated to judges, the above principles apply mutatis mutandis to these public prosecutors.

Article 9-3 – Independence of prosecutors

Independence of prosecutors–which is essential for the rule of law–must be guaranteed by law, at the highest possible level, in a manner similar to that of judges.