

THE UNIVERSAL CHARTER OF THE JUDGE

APPROVED IN 2017

BY THE INTERNATIONAL ASSOCIATION OF JUDGES

“Public liberty (...) cannot subsist long in any state unless the administration of common justice be in some degree separated both from the legislative and also from the executive power.”
William BLACKSTONE, *Commentaries on the Laws of England*, I, Oxford, 1765, p. 259.

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1. The International Association of Judges; its Role in the Internationalization of the Principles on the Independence of the Judiciary.

In the current process of internationalization of the principles on the independence of the judiciary, an increasingly relevant role is played by the International Association of Judges¹.

The International Association of Judges (IAJ)—founded in Salzburg (Austria) in 1953—is a professional, non-political, international organization, bringing together national associations of judges, not individual judges, approved by the Central Council for admission to the Association. The main aim of this organisation is to safeguard the independence of the judiciary, which is an essential requirement of the judicial function, guaranteeing human rights and freedom². The IAJ currently encompasses 87 such national associations or representative groups, from the five continents³.

¹ All relevant events concerning the International Association of Judges are published in its official web site: <http://www.iaj-uim.org>. Further information (in Italian) on the themes of this article, a comprehensive bibliography on the subject of judicial independence and a full version of this contribution is available in OBERTO, *Un nuovo statuto per un nuovo giudice*, http://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm.

² According to Article 3 of IAJ's Statutes, "1. The objects of the Association are as follows:

(a) to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.

(b) to safeguard the constitutional and moral standing of the judicial authority.

(c) to increase and perfect the knowledge and the understanding of Judges by putting them in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organizations, with foreign laws and, in particular, with how those laws operate in practice.

(d) to study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them."

³ The list of the 87 member associations available here: <http://www.iaj-uim.org/member-associations/>.

The Association has consultative status with the United Nations (with specific reference to the International Labour Office and the U.N. Economic and Social Council) and with the Council of Europe, with specific reference to the Consultative Council of European Judges (*CCJE*) and the European Commission for the Efficiency of Justice (*CEPEJ*).

The IAJ has four Study Commissions, dealing respectively with judicial administration and status of the judiciary, civil law and procedure, criminal law and procedure, public and social law. These commissions are composed of delegates from national associations. They meet annually in the same location as the Central Council, which is the general assembly of member associations and the organ responsible for formulating IAJ's policy. Based on the national reports received, the members of the commissions study and discuss problems of common interest, pertaining to the justice process, on a comparative and transnational basis⁴.

The governing body of the IAJ is its Presidency Committee, comprising the President and six Vice Presidents (plus the last Honorary President, who has a consultative vote only). The President represents the International Association of Judges and directs the IAJ. The Presidency Committee, the Central Council and other bodies of the IAJ are assisted by the Secretariat-General, which is the executive agency of the Association, composed of one Secretary-General and three Deputy Secretaries-General.

The Association has, as well, four Regional Groups: (i) the European Association of Judges—European Regional Group, or EAJ (44 Countries); (ii) the African Group (19 Countries); (iii) the Ibero-American Group (16 Countries); (iv) the Asian, North American and Oceanian Group (12 Countries)⁵.

Between 1993 and 1995 the different regional components of the IAJ adopted charters on the statute of judges namely: (a) the “Judges’ Charter in Europe” adopted by the European Association of Judges in 1993⁶; (b) the “Judges’ Charter in Ibero-America” (*Estatuto del Juez iberoamericano*) adopted in 1995 by the Ibero-American Group of the IAJ⁷; (c) the “Judges’ Charter in Africa” adopted in 1995 by the African Group of the IAJ⁸. Some years later, in 1999, after a long work of reflection, the Central Council of the IAJ, during its meeting in Taiwan, adopted a universal Charter of the Judge⁹.

As of 1999, a complex work on the minimum standards of judicial independence had been done by the IAJ. This was the case, in particular, for the First Study Commission, which examined after the year 2000 practically all subjects pertaining to judicial independence¹⁰. Besides this, the four Regional Groups and the Central Council of the IAJ adopted a number of resolutions that, by referring to such standards, have little by little set up a compilation of rules which are specific to our organisation and at the same time contribute to the creation of an international *corpus juris* on the status of judges all over the world.

The need for a new Universal Charter was made evident by the many changes occurring during the last years: the number of IAJ member countries grew from 43 (in 1999) to 87 (in 2017), bringing in new experiences, legal systems and traditions; at the same time several international organisations issued charters, recommendations and declarations on subjects pertaining to judicial *status*¹¹.

⁴ Further information is available here: <http://www.iaj-uim.org/study-commissions/>.

⁵ Further information is available here: <http://www.iaj-uim.org/regional-groups/>.

⁶ See: <http://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Statuto-Giudice-EAJ.pdf>.

⁷ See: <http://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Estatuto-del-juez-iberoamericano.pdf>.

⁸ See: <http://www.iaj-uim.org/iuw/wp-content/uploads/2013/06/Statuto-Giudice-AFR.pdf>.

⁹ See: <http://www.iaj-uim.org/universal-charter-of-the-judges/>.

¹⁰ All documents and conclusions issued by the IAJ's 1st Study Commission are available here: <http://www.iaj-uim.org/study-commissions/>.

¹¹ See e.g. the following documents:

- UN Basic Principles on the independence of the judiciary, adopted in 1985: <http://www.ohchr.org/Documents/Publications/Handouts/Handout4-2.pdf>;
- Recommendation 94/12 of the Committee of ministers of the Council of Europe, elaborated in 1994 and updated in 2010 (Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities): [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2010\)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true);
- European Charter on the statute for judges, elaborated by the Council of Europe in 1998: <https://rm.coe.int/16807473ef>;
- Various opinions of the Consultative Council of European Judges since 2001 and particularly the “Magna Carta of European judges,” which is a compilation of the above mentioned opinions, drafted in 2010: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE-MC\(2010\)3&Language=lanEnglish&Ver=original&Site=&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&Site=&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true);
- Bangalore Principles on judicial conduct (2002) and the resolution 2006/23 of the Economic and Social Council of the UN: http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf; https://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf;
- Report of the Venice Commission on the independence of the judicial system (study n. 494/2008): [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e);
- Kiev recommendations on the independence of the judiciary in Eastern Europe, adopted in 2010: <http://www.osce.org/odihr/KyivRec>;
- Opinions of the European Network of Councils of Justice: http://www.ency.eu/index.php?option=com_content&view=category&layout=blog&id=24&Itemid=98&lang=en;

Therefore, during the IAJ meeting in Foz do Iguacu in 2014 the Central Council approved the proposal of the Presidency Committee to update the Charter adopted in Taiwan in 1999. During the Barcelona meeting (2015) a working group was set up, with the task of preparing a draft for a new Charter¹². The draft Universal Charter was discussed within the working group during the meeting in Mexico City in October 2016 and during the springtime Regional Groups meetings in April and May 2017. A discussion and validation of the proposals of the working group were carried out in June 2017 by the Presidency Committee. The formal adoption occurred during the annual meeting of the Central Council on November 14th, 2017, in Santiago de Chile.

2. The Contribution provided by the International Association of Judges in the Implementation of the Rule of Law: a Framework for the New Universal Charter.

During its 64 years of existence the IAJ has been constantly deploying its efforts to safeguard judicial independence, as a cornerstone of the rule of law, tackling delicate cases and situations in all parts of the world.

Focusing only on these last months of activity, by way of illustration, we may refer to the numerous initiatives aimed at coping with challenges in countries like Turkey, Bulgaria and Poland.

As far as Turkey is concerned, the European Association of Judges, which is to say the European Regional Group of the IAJ, created a special solidarity fund, gathering donations from member associations, institutions, judges and citizens of any kind, for the assistance of families of Turkish judges and prosecutors unlawfully persecuted by the regime.

To date, the main success in this framework was the initiative taken by EAJ and IAJ to submit and sponsor the candidature of the President and founder of YARSAV Association of Turkish judges and prosecutors (dissolved by the current Turkish regime), Mr Murat Arslan, to the Václav Havel prize. Thanks to the efforts of the European Association of Judges, Judge Arslan, who has been in detention since October 19, 2016, was awarded the prize by the Parliamentary Assembly of the Council of Europe on 9th October 2017. IAJ President Mr Christophe Régnard presented an official speech during the ceremony held in Prague on 11th October 2017 for the Václav Havel prize award ceremony¹³.

Besides this, innumerable letters, official statements, declarations and resolutions were passed and sent to international authorities on the situation of the judicial system in Turkey: they are all available in the official web site of the IAJ¹⁴.

The same is true, just to mention some of the many other examples, for Bulgaria¹⁵ or Poland¹⁶. As far as this latter country is concerned, we must underline that the infringement of the rule of law by some recent judicial reforms, as well as the strong reactions among the international judicial community, have also awakened the attention of the European Union¹⁷.

This is the general framework in which the new Universal Charter of the Judge has been drafted, discussed and adopted by the IAJ.

The document is composed of nine articles, dealing, respectively, with the following subjects: (1) General Principles; (2) External Independence; (3) Internal Independence; (4) Recruitment and Training; (5) Appointment, Promotion and Assessment; (6) Ethics; (7) Discipline; (8) Remuneration, Social Protection and Retirement; (9) Applicability of the Charter.

Other associations, such as the Commonwealth Association of Judges, have adopted as well standards aiming at assuring the independence of the judiciary (in particular the "Victoria Falls Declaration" in 1994, or the statute of Commonwealth judges in 2013). For a full list of such declarations see OBERTO, *Un nuovo statuto per un nuovo giudice*, cit., § 3.

¹² The working group was composed of Mr Christophe Régnard, President of the IAJ (France), President of the working group; Mr Giacomo Oberto, Secretary-General of the IAJ (Italy); Ms. Janja Roblek (Slovenia); Ms. Julie Dutil (Canada); Ms. Allyson Duncan (USA); Mr Walter Barone (Brazil); Mr. Mario Morales (Porto Rico); Ms. Marie Odile Thiakane (Senegal); Mr Scheik Kone (Mali). To this work was also associated Mr Günter Woratsch, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

¹³ See: <http://www.iaj-uim.org/news/president-regnard-in-prague-for-the-vaclav-havel-price-awarded-to-murat-arslan/>.

¹⁴ See: <http://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/>. Worth mentioning is also the decision of the European Network of the Councils for the Judiciary, which was taken in The Hague, on December 8th, 2016, to suspend membership in the Network of the Turkish High Council for Judges and Prosecutors (see https://www.ency.eu/index.php?option=com_content&view=article&id=227%3Ahsyk-suspended&catid=22%3Anews&Itemid=1&lang=en).

¹⁵ See: <http://www.iaj-uim.org/iuw/wp-content/uploads/2017/10/Report-WG-EAJ-Santiago-2017.pdf>.

¹⁶ See <http://www.iaj-uim.org/solidarity-news-and-documents-about-poland/>.

¹⁷ See: http://europa.eu/rapid/press-release_IP-17-5367_en.htm.

The main new features of the 2017 Charter, when compared to its 1999 version, may be summarized as follows:

- Devoting a whole new chapter to the aspect of Internal Independence;
- Recognizing and emphasising the role played by Councils for the Judiciary;
- Focusing on the principles of tenure and security of office;
- Banning the so-called “reappointment procedures”;
- Recognizing the pivotal role played by initial and on service training activities;
- Emphasising the role of judicial efficiency;
- Enucleating a series of autonomous principles of judicial ethics, underlying the role of “Judicial Codes of Conduct”;
- Recognizing the applicability of the main rules of the Charter not only to all persons exercising judicial functions, including non-professional judges, but also to members of the public prosecution service.

3. General Principles, External Independence and Security of Office in the New Universal Charter.

The IAJ new Universal Charter of the Judge¹⁸ begins (see Article 1) with the fundamental rule, according to which “The judiciary, as guarantor of the Rule of law, is one of the three powers of any democratic State.” This principle is immediately followed by a definition of what is the main task of the judge, which is to “ensure the rights of everyone to a fair trial.” A clear reference is also made to “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,” in full accordance with the UN Universal Declaration of Human Rights, adopted in 1948 (Article 10), and the European Convention on human rights, drafted in 1950 (Article 6).

According to the same Article 1, the independence of the judge “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.”

As far as external independence is concerned, first of all Article 2 provides that this principle “must be enshrined in the Constitution or at the highest possible legal level.”

Judicial independence would be jeopardised if judges could be threatened with losing their positions on the basis that they rendered judgments not compliant with government’s wishes. Therefore Judges must “enjoy tenure until compulsory retirement age or termination of their mandate” (see Article 2-2, Para. 1). However, guarantee of tenure would not be enough, if a judge could be transferred to another judicial office without his/her consent. Therefore the Charter provides that “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” (see Article 2-2, Para. 3 and 4).

In some European systems, judicial first time appointments occur for a certain number of years and judges can be reappointed after a second scrutiny. This provision has been criticised, as the reappointment procedure can be used by governments in order to ensure that only “loyal” judges keep their posts. The problem must be viewed also in relation to the practice of “lustration,” widely known in Central and Eastern European countries¹⁹. Therefore Article 2-2, Para. 2 of the new Universal Charter provides that “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 ensure that judicial independence is not endangered.”

4. Councils for the Judiciary in the New Universal Charter.

¹⁸ See <http://www.iaj-uim.org/universal-charter-of-the-judge-2017/>.

¹⁹ See for instance the case of Ukraine and the relevant resolution adopted by the European Association of Judges in 2015: <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/05/EAJ-Resolution-on-the-situation-in-Ukraine-may-2015.pdf>; see also the resolutions issued on Serbia in 2010 (<http://www.iaj-uim.org/iuw/wp-content/uploads/2013/03/AEM-resolution-on-Serbia-2-2010-eng.pdf>) and in 2011 (<http://www.iaj-uim.org/iuw/wp-content/uploads/2013/03/Resolution-concerning-the-election-of-Judges-in-Serbia.pdf>).

The opening statement on the subject of the Councils for the Judiciary marks a clear difference with the existing international documents in the field of judicial independence. Actually, the IAJ Charter provides that “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” (see Article 2-3, Para. 1).

A comparison with Article 26 of the Recommendation No. R 2010/12 of the Council of Europe may be interesting. Whereas the latter document only says that Councils of Justice are organs “that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system,” with no recommendation or prescription to set up such bodies, the new IAJ Universal Charter is closer to recent European developments. For example, Resolution No. 1685 (2009) of the Parliamentary Assembly of the Council of Europe on “Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states”²⁰ calls on Germany to “consider setting up a system of judicial self-administration, taking into account the federal structure of the German judiciary, along the lines of the judicial councils existing in the vast majority of European states, as a matter of securing the independence of the judiciary in future.”

As far as the composition of such bodies is concerned, the new Universal Charter clearly states that they “must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation” (Article 2-3, Para. 3). This provision is more advanced than its equivalent within the already mentioned Recommendation No. R 2010/12, according to which (only) “Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary” (see Article 27). The rule about a majority of judges is also enshrined in the already mentioned resolution of the Parliamentary Assembly of the Council of Europe, which invited, among other things, France to “consider restoring a majority of judges and prosecutors within the *Conseil supérieur de la magistrature* or ensuring that the members appointed by political bodies also include representatives of the opposition and making the *Conseil supérieur de la magistrature*’s opinion binding also for decisions concerning prosecutors.”

Also Article 13 of the “Magna Carta of European Judges” (CCJE) prescribes that “To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions.”

Another important provision of the new Universal Charter approved by the IAJ states that “No member of the Government or of the Parliament can be at the same time member of the Council for the Judiciary” (Article 2-3, Para. 4). Actually, we know that in some legal systems of countries, belonging to the former Communist Block, the Minister of Justice is at the same time member (or even President) of the Council of Justice: a practice which has already been condemned by the European Court for human rights²¹.

Finally, according to the new IAJ Charter, Councils for the Judiciary cannot be merely advisory bodies, as they “must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges” (Article 2-3, Para. 5). The reference to “the largest powers” marks the need for a body which actually, instead of only issuing opinions, takes binding decisions on judges’ careers.

5. Resources for Justice and Protection for the Judge in the New Universal Charter.

The question of resources for justice is addressed in the following way by Article 2-4: “The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function.” This rule reflects a principle already enshrined in the UN Basic Principles dating back to 1985: “It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions” (Article 7).

More importantly, the second Paragraph of that Article stipulates that “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

²⁰ See <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17778&lang=en>.

²¹ See e.g. *Volkov vs Ukraine* (2013), <http://hudoc.echr.coe.int/eng?i=001-115871>; *Gerovska Popčevska v. the former Yugoslav Republic of Macedonia* (2016), <http://hudoc.echr.coe.int/eng?i=001-159769>.

material and human resources allocated to the courts.” Actually, this rule matches a principle which is stated by the Recommendation No. R 2010/12 of the Council of Europe (Article 40).

Always in the framework of the rules on external independence, Article 2-5 of the IAJ new Charter provides that “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.”

On this topic we may point out that, according to Article 8 of the Recommendation No. R 2010/12 of the Council of Europe, in the above mentioned cases judges must “have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.” Among such “effective means” we might mention the “contempt of Court” remedies, which are well known in the Common Law systems and are also explicitly approved by the said Recommendation²².

According to the last Paragraph of Article 2-5 of the new Universal Charter, “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.”

This provision reflects the content of Article 18 of the Recommendation No. R 2010/12 of the Council of Europe, according to which, “If commenting on judges’ decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges’ decisions, other than stating their intention to appeal.”

6. Internal Independence in the New Universal Charter.

Some new and, to a certain extent, revolutionary principles are enshrined in Article 3 of the IAJ’s Universal Charter.

Actually an unprecedented importance is duly bestowed on the very idea of the so-called internal independence, which is to say the “the independence of each individual judge in the exercise of adjudicating functions” (see Article 22 of the Recommendation No. R 2010/12 of the Council of Europe).

Now, according to Article 3-1 of the Universal Charter, “In the performance of the judicial duties the judge is subject only to the law and must consider only the law.” Furthermore, “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.” This rule—which appears to be much stronger than its equivalent within the Recommendation No. R 2010/12 of the Council of Europe (“Hierarchical judicial organisation should not undermine individual independence”)—takes a clear stand *against* the setting up of any form of hierarchical structure within the judiciary; it is inspired by a report of the Venice Commission²³.

Some other rules within the same Article 3 deal with the day-to-day activity of the judge, trying to preserve his/her personal independence. Therefore it is stated that “No influence, pressure, threat or intervention, either direct or indirect, from any authority, is acceptable” (Article 3-2, Para. 1).

Also the practice of bestowing administrative functions on court administrators not belonging to the judiciary is not judged in a positive way by the new Universal Charter. Actually, according to Article 3-3 “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” (Article 3-3, Para. 1 and 2). However, “Judges are accountable for their actions and must spread among citizens any useful information about the functioning of justice” (Article 3-3, Para. 3).

²² See Article 21 of the Explanatory Memorandum of the Recommendation No. R 2010/12: “The Recommendation calls for all necessary measures to be taken to protect and promote the independence of judges. These measures could include laws such as the ‘contempt of court’ provisions that already exist in some member states (Recommendation, paragraph 13).”

²³ See Article 68 of the *Venice Commission Report on Judicial Independence* (2008), according to which “68. The issue of internal independence within the judiciary has received less attention in international texts than the issue of external independence. It seems, however, no less important. In several constitutions it is stated that ‘judges are subject only to the law.’ This principle protects judges first of all against undue external influence. It is, however, also applicable within the judiciary. 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 would be a clear violation of this principle.” See further Article 10 of the “Magna Carta of European Judges” (CCJE): “In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law.” On the issue of internal independence in the works of the Venice Commission see HELGESEN, *The Independence of Judges – and the Judiciary – as seen from Venice*, in ENGSTAD, LÆRDAL FRØSETH and TØNDER, *The Independence of Judges*, The Hague, 2014, p. 122 ff.

Article 3-4 deals with the allocation of cases, providing for that “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.” According to the second Paragraph of such provision, “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.”

Freedom of expression for judges and the right to create judicial associations are granted by Article 3-5. However, as far as the first right is concerned, judges “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.” This rule—which matches some principles already enshrined in Recommendation No. R 2010/12 of the Council of Europe (Article 25), in the UN Basic Principles on the independence of the judiciary (Article 9) and in the “Magna Carta of European Judges” (CCJE) (Article 12)—has experienced in recent years many violations in different parts of the world: from Venezuela (²⁴) to Turkey (²⁵), to Bulgaria (²⁶), etc.

7. Recruitment, Training, Appointment, Promotion and Assessments of Judges in the New Universal Charter.

Recruitment and appointment of judges are contemplated in two different Articles of the new Charter (4-1 and 5-1, respectively), as in many legal systems they may be the effect of two different kinds of procedures, often made by different organs. What matters here is that both proceedings must be inspired by the same basic rules, which is to say they must be “based only on objective criteria, which may ensure professional skills” (Article 4-1), or “carried out according to objective and transparent criteria based on proper professional qualification” (Article 5-1). Both proceedings must be done by (or under the supervision of) the Council for the Judiciary, or another independent body described by Article 2-3.

As for training, Article 4-2 states that “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.” The rule appears to be similar to Article 56 and 57 of the Recommendation No. R 2010/12 of the Council of Europe, according to which member States must ensure judges “theoretical and practical initial and in-service training, entirely funded by the State,” whereas judicial training must be provided by an “independent authority,” in charge of ensuring that “initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.”

As far as promotions are concerned, these must be “exclusively based on qualities and merits verified in the performance of judicial duties through objective and contradictory assessments” (Article 5-2, Para. 1). “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” (Article 5-2, Para. 2). When decisions on promotions are taken by the body referred to in Article 2-3 of the Charter (i.e. by the Council for the Judiciary or by an equivalent body) the judge, whose application for a promotion has been rejected, “should be allowed to challenge the decision” (Article 5-2, Para. 3).

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” (Article 5-3, Para. 1). According to Article 5-3, Para. 2, “Assessment must be based on objective criteria, which have been

²⁴ See Article 256 of the 1999 Chavist Constitution of Venezuela: “Con la finalidad de garantizar la imparcialidad y la independencia en el ejercicio de sus funciones, los magistrados o las magistradas, los jueces o las juezas, los fiscales o las fiscalas del Ministerio Público; y los defensores públicos o las defensoras públicas, desde la fecha de su nombramiento y hasta su egreso del cargo respectivo, no podrán, salvo el ejercicio del voto, llevar a cabo activismo político partidista, gremial, sindical o de índole semejante, ni realizar actividades privadas lucrativas incompatibles con su función, ni por sí ni por interpuesta persona, ni ejercer ninguna otra función pública a excepción de actividades educativas. Los jueces o juezas no podrán asociarse entre sí.” On the dissolution of the formerly existing association of Venezuelan judges see the resolutions adopted by the Ibero-American Group of the IAJ, under the following link: http://www.iaj-uim.org/documents/?post_types=document&s=venezuela.

²⁵ On the forced dissolution of the YARSAV association, member of the IAJ, see <http://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/>.

²⁶ See http://www.iaj-uim.org/iuw/wp-content/uploads/2017/10/Report-WG-EAJ_Santiago_2017.pdf.

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.”

Taking into account the wrong practice of several legal systems, particularly in Central and Eastern Europe, where judges are evaluated also on the basis of the number of judgments upheld or reversed in appeal, the new Charter stipulates that “Under no circumstances can the judges be assessed on the base of judgments rendered by them” (Article 5-3, Para. 3).

8. Ethics and Discipline in the New Universal Charter.

A clear distinction between judicial ethics and judicial discipline is drawn by Articles 6 and 7 of the new IAJ’s Charter.

As to judicial ethics, the golden rule is enshrined in Article 72 of the Recommendation No. R 2012/10 of the Council of Europe, according to which such “principles not only include duties sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.” In other words, principles of judicial ethics do not constitute *per se* rules the breach of which automatically brings with it a disciplinary liability. They are, on the contrary, rules which should inspire the conduct of the judge; they should be laid down in codes of judicial ethics, elaborated by commissions of specialists, among which judges should play a leading role.

Therefore, according to the new IAJ’s Universal Charter (Article 6-1), “In every circumstance, 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.”

Some of these principles are enumerated by the Charter in Articles 6-2, 6-3 and 6-4; they deal with: (a) the duty to be impartial (and to be seen as such); (b) the duty to perform judicial activities with restraint and attention to the dignity of the court and of all persons involved; (c) the duty to refrain from any behaviour, action or expression of a kind effectively to affect confidence in his/her impartiality and independence; (d) the duty to perform judicial tasks “diligently and efficiently (...) without any undue delays”; (e) the duty not to 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; (f) the duty to avoid any possible conflict of interest.

Among such ethical duties we should emphasize the duty of the judge to be efficient, in full accordance with the canons set by the Council of Europe both in the Recommendation No R. 2010/12, where efficiency is defined as “the delivery of quality decisions within a reasonable time following fair consideration of the issues” (Article 31), and in the multiple activities of the *CEPEJ*²⁷. In this framework it is worth mentioning that many local “good practices” have blossomed in these last years in many parts of Europe²⁸.

Disciplinary liability is dealt with by Article 7-1 of the new Universal Charter of the IAJ.

The most important rule on this subject is enshrined in the first Paragraph, according to which “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.” For this reason, disciplinary proceedings “should be carried out by independent bodies, that include a majority of judges, or by an equivalent body” (Article 7-1, Para. 2). Also in order to protect judicial independence, 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, save in cases of malice or gross negligence, ascertained in a definitive judgement (Article 7-1, Para. 4).

²⁷ See https://www.coe.int/T/dghl/cooperation/cepej/default_en.asp.

²⁸ See in particular documents and researches issued by the “Mediation”, “Quality” and “SATURN” working groups of the CEPEJ. They are all available in the above mentioned web site of the Council of Europe. A special mention is deserved by the so-called Strasbourg Programme of the Turin (Italy) first instance Court: see OBERTO, *Study on Measures Adopted in Turin’s Court (“Strasbourg Programme”) along the Lines of “Saturn Guidelines for Judicial Time Management”*, http://giacomooberto.com/study_on_Strasbourg_Programme.htm (the contribution is also available in Italian language under the title *Il «Programma Strasburgo» del Tribunale di Torino e le direttive del Groupe de pilotage SATURN della CEPEJ: Breve raffronto, in Richterzeitung, 2012/3, http://richterzeitung.weblaw.ch/services/login.html?targetPage=http://richterzeitung.weblaw.ch/rzissues/2012/3/2013.html_ONCE&handle=http://richterzeitung.weblaw.ch/rzissues/2012/3/2013.html_ONCE; http://giacomooberto.com/studio_sul_Programma_Strasburgo.htm. See as well OBERTO, *Il Consiglio d’Europa e i temi della giustizia: la Raccomandazione del 2010 sul tema «Indipendenza, efficienza e responsabilità dei giudici»; la CEPEJ e il Centre de pilotage «CEPEJ-SATURN» del Consiglio d’Europa; il «Programma Strasburgo» e il ruolo del Tribunale di Torino nella rete dei tribunali referenti della CEPEJ*, http://giacomooberto.com/oberto_consiglio_europa_temi_giustizia.htm.*

This principle must be seen in relation to Article 70 of the Recommendation No. R 2010/12 of the Council of Europe, according to which judges “should not be personally accountable where their decision is overruled or modified on appeal.”

As for the procedural rules, 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 (Article 7-2, Para. 3).

Article 7-2 deals with the subject of civil and penal responsibility.

As far as civil liability is concerned, the IAJ’s Charter substantially differs from the principles set in the Recommendation No. R 2010/12 of the Council of Europe. Actually, whilst the latter allows legislative solutions in which (like in France or in Italy) citizens can sue the State and, at a second stage, “the State may seek to establish the civil liability of a judge through court action in the event that it has had to award compensation,” (see Article 67 of the said Recommendation), the Universal Charter stipulates that “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.”

This solution is fully compliant with the UN Basic Principles on the independence of the judiciary, whose Article 16 provides that “judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.”

9. Remuneration, Social Protection and Retirement of the Judges in the New Universal Charter.

Questions pertaining to remuneration, social protection and retirement of Judges are dealt with in Article 8 of the New Universal Charter.

As far as remuneration is concerned, Article 8-1 provides that “The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence”.

The second Paragraph of this provision addresses directly the issue of the so-called “performance bonuses,” that have been introduced in the last years in several European countries. Already in 2006 the European Association of Judges condemned this practice²⁹; also Recommendation No. R 2010/12 of the Council of Europe states that “Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges” (Article 55). Now, the second Paragraph of said Article 8-1 of IAJ’s Universal Charter clearly stipulates that “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.”

As to social protection, according to Article 8-2 “The statute provides a guarantee for judges acting in a professional capacity against social risks related to illness, maternity, invalidity, age and death.”

Finally, retirement is described by Article 8-3 as a right of the judge, which must be “in accordance with his or her professional category.” The Charter also allows the judge to exercise after retirement “another legal professional activity, if it is not ethically inconsistent with his/her former legal activity.” Furthermore, the judge cannot “be deprived of his/her pension on the sole ground that he/she exercises another professional activity.”

10. Applicability of the New Universal Charter.

The final provisions of the new Charter are devoted to the subject of its applicability.

According to Article 9-1 the Charter “is applicable to all persons exercising judicial functions, including non-professional judges.” This means that the adjective “universal” referred to the new Charter denotes not only its world-wide extension, but also the fact that it refers as well to all categories of judges, without any distinction.

²⁹ For a resolution adopted in 2006 by the EAJ against such a system see <http://www.iaj-uim.org/iuw/wp-content/uploads/2013/02/AEM-resolution-on-performance-bonus-2006-eng.pdf>. For a reflexion on the *primes de rendement* of French judges see CHELLE, *Une politique de récompense dans la haute magistrature : le cas de la prime de rendement*, in *Droit et société*, 2011/2 (n° 78), p. 407 ff.

One of the most delicate aspects of international charters on the judiciary deals with their applicability to members of the public prosecution service.

This feature, which is almost “natural” in countries like Italy or France—where prosecutors are recruited, trained, managed, felt and treated as members of the judiciary—always stirs controversies and polemics when debated within commissions which gather also representatives of systems in which prosecutors are considered much closer to lawyers than to judges. For this reason, just to give an example, Recommendation No. R 2010/12 of the Council of Europe clearly excludes prosecutors from its scope; actually, quite fruitless was the effort of the author of these lines (who happened to be one of the members of the special expert commission which drafted that text in the year 2009) to have some provisions of the Recommendation relating also to representatives of the prosecution service.

Quite on the contrary, the new Universal Charter of the IAJ not only states that “In countries where members of the public prosecution are assimilated to judges, the above principles apply *mutatis mutandis* to these public prosecutors” (Article 9-2), but stipulates that (without any restriction or exception) the “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” (Article 9-3).

This rule reflects recent changes also within the Council of Europe.

We can compare, for instance, the text of the Recommendation of the Council of Europe of the year 2000 on “The Role of Public Prosecution in the Criminal Justice System”³⁰, on one side, where it is stated, with a disarming truism, that “In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law” (see Article 14)³¹, and the “Rome Charter”, approved in 2014 by the Consultative Council of European Prosecutors, on the other side, whose Point No. IV proclaims that “The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged”³².

³⁰ See <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804be55a>.

³¹ Which means that in countries where the public prosecution is independent, it should really be independent... We must acknowledge that Captain Obvious could not have done better!

³² See <https://rm.coe.int/168074738b>.