

**THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)
AND ITS POSSIBLE CO-OPERATION WITH
THE COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION (CMJA)**

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1. IAJ and CMJA: Similarities and Differences.

The International Association of Judges was founded in Salzburg (Austria) in 1953. It 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 the Association is to safeguard the independence of the judiciary, being an essential requirement of the judicial function, guaranteeing human rights and freedom.

The organization currently encompasses 87 such national associations or representative groups, from five continents and has four Regional Groups. Common Law and Commonwealth Countries mainly belong to the Asian, North American and Oceanian (ANAO) Group (12 Countries): among which are associations from Australia, Canada, and Bermuda. But other associations from Common Law and Commonwealth Countries belong also to other Regional Groups: associations from the UK, Cyprus and Malta belong to the European Group (also called European Association of Judges, or EAJ, which consists of associations from 44 countries) and associations from South Africa, Cameroon, Mozambique and Lesotho belong to the African Group.

There is therefore some representation of judicial associations from common law member States, but unfortunately we lack in our organisation many significant associations from Common Law and Commonwealth countries, such as, just to provide an example, India; although associations from some other common law countries have already applied for membership, or have

indicated and intention to apply for membership, such as the association of judges from New Zealand.

The reason of the predominance of Civil Law countries in the IAJ may be due mainly in the fact that membership of the IAJ is predominantly for national associations of judges, and that in many Common Law and Commonwealth countries, associations of judges do not exist. We have recently set up a working group in the IAJ to develop models of statutes for prospective new associations to encourage application by new judicial associations from jurisdictions where judicial associations did not exist. Such models will be adaptable to the legal environments in which the new associations of judges need to be created and will contain provisions, rules, templates and examples which any new judges associations will be able to adopt and adapt to their needs. We hope in this way to encourage the creation of judicial associations in countries in which they still do not exist and to apply for membership as associations. In our web site (see <http://www.iaj-uim.org/admission/>) we explain the conditions and procedures to be met by an association of judges which desires to become IAJ member.

2. Some of the Most Recent IAJ Achievements: Václav Havel Prize bestowed to Murat Arslan. Approval of the Universal Charter of the Judge.

I invite you to visit our web site (<http://www.iaj-uim.org>) to give you an idea of the most recent IAJ achievements. For some information on such activities I also recommend our newsletter, which we publish at least twice a year (<http://www.iaj-uim.org/iaj-uim-newsletter/>). Among the numerous activities which have occurred during the last months, however, I would like to refer to some main events of crucial importance in the history of our Association.

First, the awarding of the Václav Havel Prize to Murat Arslan. Murat Arslan was the President and co-founder of YARSAV (the Turkish Association of Judges and Prosecutors), who has been in detention since October the 19th, 2016 following what has been reported as the failed coup in Turkey. The IAJ meticulously prepared the material in support of the application for the

award and submitted his candidature during the spring of 2017 to the Parliamentary Assembly of the Council of Europe. The Assembly awarded the prize to Murat on the 9th of October of that same year. Subsequently, our President Christophe Régnard gave an official speech during the conference held in Prague on the 11th of October 2017 which included the Václav Havel prize award ceremony (see: <http://www.iaj-uim.org/news/president-regnard-inprague-for-the-vaclav-havel-price-awarded-to-murat-arslan/>).

In addition, numerous letters, official statements, declarations and resolutions were passed and sent to the international authorities relating to the situation of the judiciary in Turkey. These are all available on the official web site of the IAJ (see: <http://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/>).

Another great milestone for our Organisation was the approval, in November 2017, in Santiago de Chile, of the new Universal Charter of the Judge (<http://www.iaj-uim.org/universal-charter-of-the-judge-2017/>). The document is comprised of nine sections, 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.

The main new features of the 2017 Charter, when compared to the 1999 version, may perhaps be summarized as follows: (a) There is a whole new chapter devoted to what might be described as internal independence; (b) Recognizing and emphasising the role played by Councils for the Judiciary; (c) Focusing on the principles of tenure and security of office; (d) Banning the so-called “reappointment procedures”; (e) Recognizing the pivotal role played by initial and in service training activities; (f) Emphasising the role of judicial efficiency; (g) Articulating a series of autonomous principles of judicial ethics, underlying the role of “Judicial Codes of Conduct”; (h) 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 (for a commentary on the new Charter see http://www.iaj-uim.org/iuw/wp-content/uploads/2018/01/Oberto_The_Universal_Charter_of_the_Judge_2017.pdf; for several languages versions of the Charter see <http://www.iaj-uim.org/universal-charter-other-languages/>).

3. Further Developments of IAJ Activity: Affiliate Membership. Revision of 1985 UN Basic Principles. Prompting a Council of Europe Convention on Minimum Standards of Judicial Independence.

The IAJ is going to hold its 61st annual meeting next October in Marrakesh (Morocco). Among the numerous initiatives to be dealt with at that meeting, I would like to underline one, that may very positively affect relations between our two Associations.

The IAJ Presidency Committee has recommended that the IAJ Constitution be amended to permit limited participation in the IAJ for international associations or representative groups of judges, which would not otherwise be admitted to membership but which the Presidency Committee considers it desirable to invite to participate as affiliate members.

The Commonwealth Magistrates and Judges Association may therefore be a first possible example of an international judges organisation eligible for this kind of membership. The Caribbean Judges Association is another. Each is an association of associations from different countries but with objectives compatible with those of the IAJ, both of which could make valuable contributions to the work of the IAJ on a long term co-operative basis if they were admitted as affiliate members with limited rights to participate in the work of study commissions and regional associations without having voting rights at Central Council.

The Central Council will also meet in Marrakesh, on the basis of the resolutions already adopted by the Regional Groups, to approve a general resolution prompting the UN to update the

1985 UN Basic Principles on the Independence of the Judiciary. The Central Council will also be called to vote on applications for membership from Angola, Bolivia, Ecuador and Guatemala.

The Marrakesh meeting will also see the participation of a number of guests and observers. A key role among those will be that of the UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego Garcia Sayan, who is a strong supporter of the world judiciary and a courageous champion of judicial independence. In addition, there will be representatives from International Association of Prosecutors, International Bar Association, UNODC, Latin-American Federation of Judicial Associations and the International Union of Portuguese Speaking Judges, together with observers from prospective new IAJ members, such as (apart from the already mentioned four applicant associations) Gabon and New Zealand.

4. *Study Commissions*

I have mentioned already the organisation of member associations into four regional groups and have said something about the Central Council. But a crucial part of the work of the IAJ is undertaken by the participation of the members in four study commissions. The members at each annual meeting prepare to work on the topics prepared for discussion in four study commissions.

The IAJ Study Commissions will discuss the following topics in 2018:

- 1st Study Commission: “The trend of public criticism towards judges and judicial decisions in a disrespectful manner by other state powers, the media and in social media”;
- 2nd Study Commission: “Strategies for effective case management”;
- 3rd Study Commission: “: A. Treatment of witnesses, including children, protected witnesses and sexually abused victims. B. Trial Procedures. C. Mandatory sentences”;
- 4th Study Commission: “Rights and obligations of refugees: a risk of modern slavery?”

5. *The European Regional Group*

May I say something, finally, about the European Regional Group (also known as European Association of Judges) with which I am perhaps most closely connected. This Group is very active in fighting to safeguard judicial independence in all European countries where this principle is threatened. During its last meeting in Berlin (24th and 25th May 2018), it approved, among other things, several resolutions on the situations of the judiciaries in Poland, Serbia and Turkey, together with a resolution on the need for the EU to set up an independent standing committee comprised of members of the higher judiciaries of the Member States, academics and jurists of recognised standing, with the task of assessing the level of compliance by EU Member States with principles of the Rule of Law. All such declarations are available in our web site (<http://www.iaj-uim.org/news/five-resolutions-adopted-by-the-eaj-on-25th-may-2018-in-berlin/>).

Another very important subject discussed in Berlin was the need to have at European level a set of binding rules on the minimum standards concerning judicial independence. The current, paradoxical, situation in my Continent is that we have comprehensive and a very refined array of principles on judicial independence, which however are enshrined in recommendations, charters, resolutions and declarations which are not binding on States. The paths which we envisage needs to be followed in order to reach the objective of transforming “soft law” into binding rules is one of two:

- (a) first, a protocol to be added to the European Convention on Human Rights; or
- (b) secondly, a brand new European Convention on the minimum standards on judicial independence.

The first way is surely the most difficult. The contacts that we had with the Parliamentary Assembly of the Council of Europe have not been encouraging. However, the second alternative appears to be more feasible. In the discussions we had with the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, it became evident that many experts recommended a convention, based on Recommendation 12/2010 of the Council of

Europe on Judges, as a better legal instrument. The process to create a Lawyers Convention which is currently being undertaken could be an example to follow.

For such reasons, the EAJ in Berlin (25 May 2018) approved the following next steps:

- Identify and find one or more members of the PACE (Parliamentary Assembly of the Council of Europe) who will table a motion for a recommendation; preferably one who is a member of the 87-member Committee on Legal Affairs and Human Rights of PACE;
- File a draft resolution of the EAJ (to be approved in October 2018 in Marrakesh) for the motion;
- The text would be handed over to the PACE “motioners”;
- The Committee on Legal Affairs and Human Rights appointed will then appoint a rapporteur who will present his/her report to the PACE;
- If PACE adopts the motion it will pronounce a corresponding recommendation to the Committee of Ministers to examine the case (internal rapporteur etc.) and, hopefully, to work out a Convention on the basis of the Council of Europe Recommendation No. R12 of 2010 on Judges.

So, dear colleagues, this was just a very brief sketch about what is going on in my Association. My hope is therefore that we may in the future closely co-operate in defence of judicial independence in all parts of the world.

Thank you.