

# **Proposed Amendments to the IAJ Constitution and Regulations – Explanatory Memorandum**

The amendments proposed by the IAJ President and the Presidency Committee during the meeting in Dubrovnik on 21<sup>st</sup> and 22<sup>nd</sup> June, 2024, concern following points of the IAJ Statutes (Constitution and Regulations under the Constitution):

- (a) Termination of Membership upon Written Request to the Presidency Committee (Article 5 of the Constitution);
- (b) Premature Ending of Term of IAJ's Officials -- Honorary Presidents and Council of Honorary Presidents (Article 8 of the Constitution);
- (c) Funding (Article 10 of the Constitution);
- (d) Monitoring (Article 13 of the Regulations under the Constitution);
- (e) Transitional Provision (to be deleted);
- (f) Regulations of the IAJ Assistance Fund for Judges (these provisions, however, will not be part of the Statutes).

## **(A) TERMINATION OF MEMBERSHIP UPON WRITTEN REQUEST TO THE PRESIDENCY COMMITTEE**

The envisaged reform aims to add a third Paragraph in Article 5 of the Constitution. So far, no statutory provision allows IAJ member associations to freely leave our organisation, if they wish. Thanks to the proposed alteration, membership will terminate if a member association submits a written request to the Presidency Committee. Just to give an example, the new provision could allow the “swapping” of membership between an association and another, larger and/or more representative, association of the same Country, in case the new prospective member has the requisites to be admitted and the “old” member of the same Country agrees.

## **(B) PREMATURE ENDING OF TERM OF IAJ'S OFFICIALS – HONORARY PRESIDENTS AND COUNCIL OF HONORARY PRESIDENTS**

The question of the consequences of a sudden resignation or death of one of the members of the Presidency Committee or of the Secretary-General has been raised some years ago by the Committee of Honorary Presidents of the IAJ, after the unexpected resignation of the then President of one of the Regional Groups. The solution was then found by the Presidency Committee, in co-operation with the concerned Regional Group, but caused some criticism from some Honorary Presidents, who pointed out that the procedure which had been followed was not envisaged by the Statutes. The proposed provisions aim therefore at filling this institutional gap.

The Council of Honorary Presidents of the IAJ is already an existing reality of our organisation. It was founded in 2013 during the annual meeting which took place in Yalta (Ukraine) by the initiative of some Honorary Presidents attending that event. After more than ten years of life, it appears wise to institutionalise this organ, all the more if we take into account that the very title of Honorary President is not contemplated by our Statutes, but it is the consequence of a tradition which has existed for years and years. Therefore, we propose the formal provision authorising the Central Council to appoint the outgoing

President (or the outgoing Secretary-General) Honorary President, providing as well some rules on the said Council.

### **(C) FUNDING**

One of the main problems IAJ has been experiencing, especially in the last years, is that of disposing of a budget allowing our Organisation to reach the goals of its Statutes. Inflation has rapidly eroded the real value of yearly contributions, whose level is now too low to allow the Presidency Committee and the Central Council to conceive and implement any of the actions which the world wide defence of judicial independence today would require.

Let us think, just for providing some examples, to the much needed visits of IAJ officials in Countries where the principles of the Rule of Law are jeopardized and local Judiciaries require our help; let us think to the also very much needed activity of promotion of our organisation in those countries which have no judicial associations, or whose associations need to personally contact IAJ officials in order to be convinced of the advantages of IAJ membership, and so on.

At the same time, we have in the world a whole array of international and national institutions which are eager to co-operate with us and would be ready to participate in our initiatives simply donating funds allowing us to attain our institutional goals. No risks about a possible jeopardy of judicial independence is at sight, as the envisaged provision foresees that the funding must not be submitted to conditions which might impair the attainment of the institutional goals of the IAJ. In any case, the decision to receive the proposed financing has to be accepted by decision of the Presidency Committee.

### **(D) MONITORING**

As already pointed out in very many Secretary-General's reports, the monitoring system is not working, as it is conceived today. This perception has been shared by the different members of the Presidency Committee during the past years. We must not forget that Article 13, Para. 1-3 of the Regulations under the Constitution already assure the possibility for the PC and a very limited number of members (5) and/or of a given Regional Group, to set in motion a proceeding aiming at checking if another member still has the requested qualities to be part of the IAJ. Should this procedure end with the ascertainment from the Presidency Committee that the association does not meet any more the criteria to be member, then Article 12 of the Regulations under the Constitution applies and the P.C., after consultation with the concerned Regional Group, can set in motion the procedure for exclusion of that association.

The regular monitoring procedure, on the contrary, produces a remarkable quantity of needless activities (both in the Secretariat-General and in the PC, but also within concerned associations), with no concrete results. As already remarked in the past, it is true that the continual compliance of the members of the IAJ to the criteria in Articles 4(2) and (3) of the Constitution is, of course, vital to the integrity of the IAJ. It is vital to its mission of the promotion of the rule of law and of the independence of the judiciary. It is also vital to the ability of the IAJ to be seen as a body comprising members each of which satisfies those criteria. The IAJ has, to that end, established a rigorous process before any association can join. That process continues to be in force and involves reports from two rapporteurs whose task it is to evaluate an application to join. The rigorous process involves undertaking an in-depth, and independent, study of the association and of the country in which the association belongs. It is a good, strong and rigorous process that has served the IAJ well and which robustly guarantees that those associations which are admitted to membership have satisfied the criteria for membership.

A potential risk to the IAJ arises from the circumstance that the situation of an association, or of the country of an association, may have changed after acceptance for membership such that the association should no longer continue to be a member of the IAJ. However, we do not consider that a three yearly monitoring procedure of the kind currently in force adequately, reasonably or proportionately deals with that risk. It is our view that the risk is best dealt with by those provisions in the Regulations which enable an investigation to be initiated with a requirement that an association be required to deal with concerns that may have arisen since first being admitted to membership. Existing members of the IAJ will best come to know about changes of circumstances in the countries of other members by media reports and public discussion. The IAJ will be able to seek the removal by Article 13(2) and Article 12 of the Regulations where it becomes known through media reports and public discussion that the circumstances of a member, or in the country of a member, have so changed that continuing membership should be reconsidered.

For the above-mentioned reasons, the President and the Presidency Committee, after a thorough debate upon the proposal of the Secretariat-General, decided to propose to the Central Council the abolition of the regular monitoring procedure, however under the condition that the entitlement to set in motion the procedure of *ad hoc* monitoring currently described in Paragraphs 1, 2, 3, 5 and 6 of Article 13 of the Regulations be conferred to 1/3 of the IAJ member associations or, as an alternative, to a Regional Group.

Reasons for which a monitoring procedure will be set in motion will be given by possible concerns over the compliance of a member with the criteria set out in Article 4 (2) and (3) of the Constitution, according to which:

“2. All members must be apolitical and independent from executive and legislative powers.

3. All members must promote in their country or region the objects pursued by the International Association of Judges.”

In this framework, also the Commission provided for by Para. 7 of Article 13, should be abolished, as the functions of this body are now foreseen just as a those of a sort of “drive belt” between the associations, on one side, and, on the other side, the IAJ organs which of course will continue to play a decisive role in this work of checking the compliance with IAJ statutory requirements: Presidency Committee, Regional Groups and, eventually, the Central Council.

#### **(E) TRANSITIONAL PROVISION (TO BE DELETED)**

The official text of the Statutes still contains a transitional provision, dating back to the times in which the previous distinction between ordinary and extraordinary membership was abolished. These rules are nowadays of no use; we propose therefore that they be deleted.

#### **(F) REGULATIONS OF THE IAJ ASSISTANCE FUND FOR MEMBERS OF THE JUDICIARY**

This set of provisions aims to equip the new IAJ’s “Assistance Fund for Members of the Judiciary” with rules about its establishment, aims, managing and working methods. Such rules are mainly taken from the already existing norms regulating the activities of the EAJ’s Provident Fund: a regional initiative that has helped so far hundreds of judges and prosecutors, unjustly and unlawfully persecuted for the mere fact of fighting for judicial independence.

Such regulations should be approved by the Central Council upon this proposal of the President and of the Presidency Committee; however they will not be enshrined in our Statutes.