

INTERNATIONAL ASSOCIATION OF JUDGES

THE UNIVERSAL CHARTER OF THE JUDGE

COMMENTS BY THE HON JUSTICE MICHAEL KIRBY AC CMG

Justice of the High Court of Australia
President of the International Commission of Jurists
Member of the International Association of Judges

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Art 1 Independence: The part "partitioned" is not appropriate in the English language. Perhaps it should read "Is not divisible" or "Is non-derogable".

Art 2 Status: The judicial status may be laid down by constitutional law as well as by conventions and time honoured practises. Statutes can readily be changed. An entrenched constitutional statement of judicial status is of greater protection than one provided by statute.

Instead of "even from the judicial establishment" I would suggest "the judge is also independent from other judges".

Art 3 Independent bodies: Please note the spelling of "independent". In most English-speaking countries, the discipline of judges is ultimately reserved to the Parliament or Congress containing the representatives of the people. Judges may only

ultimately be removed for proved incapacity or misconduct by Parliamentary or like resolution. Perhaps you mean "the investigation of complaints against the judiciary shall be carried out ...". I would also suggest that such bodies contain a majority of judges that are not "representative" of judges in the sense of being a trade union to protect miscreant judges. Such bodies should also include, in my view, laymen, ie non-lawyers.

Art 4 - Submission to the law: "Subjected to" is too strong in the English language. It should read "is subject only to the law". Should this not be qualified by an opening phrase such as "In the performance of judicial duties the judge is". I would also suggest there be added at the end of the article "or any other external influence". For example, churches, friends, family, clubs, etc.

Art 6 - Impartiality: Again, this might be opened with "in the performance of the judicial function ...".

Art 7 - Reserve and dignity: I would suggest "restraint" rather than "reserve". The word "dignity" conjures up notions of pomposity which the judiciary can nowadays do without. For my own part I would prefer "restraint", respect for the dignity of those with whom the judge deals, with efficiency and without undue delay".

Art 8 - Incompatibility: This is expressed too widely. Judges today commonly take part in conferences, national and international, which could not be described as "teaching and research in the judicial

field". Many international agencies and offices involve participation of serving judges. National and international arbitration would be regarded as incompatible with the judicial office in most, or all, English-speaking countries. Such activities are left until after the judge has retired from judicial office.

In many countries, there is no "independent body that is representative of the judiciary". Judges are also independent of any such bodies which are purely voluntary. They are also independent of Chief Justices and Chief Judges.

Art 9 - Political neutrality: What is the distinction being drawn between "the law" and "the Constitution"? The Constitution is part of the law. I would prefer "that is authorised by law and by applicable judicial convention".

Art 10 - Irremovability: The word "Inamovable" is not English. It should read "irremovable". The word "displaced" is inappropriate. It should read "stood aside" or suspended. Substitute "except as provided by law". There is the same problem with "an independent body that is representative of the judiciary".

Judges in most countries in the English-speaking world are not now appointed for life. The United States of America is an exception in respect of federal judges. It should read "for life or for an extended term as provided by the Constitution or other law".

It is not only a change in the judicial retirement age but also in salary, pension, remuneration and other benefits of office that should not be altered during judicial service.

Art 11 - Selection and promotion: In most English speaking countries judges are appointed by the Executive Government but according to conventions which respect their ability and integrity. I would not agree to the notion that judges should be appointed by a body representative of the judiciary. That is a formula for monochrome judicial appointments and also, sometimes judicial cronyism.

Art 13 - Penal responsibility: I do not understand this provision. A judge should be no higher nor lower in respect of ordinary crimes and civil wrongs than any other citizen. In most English-speaking countries, the judiciary has nothing whatsoever to do with the investigation of criminal offences. Such investigation is regarded as completely incompatible with the judicial office.

Art 16 - Remuneration and retirement: "The reduction should not occur during judicial service" rather than "working life of a judge".

It should read "annuity or pension" and should be provided in accordance with law. The law can deal with such matters as professional category.

Art 18 - Public Prosecution: I repeat that in most common law speaking countries it is regarded as completely incompatible with the judicial office for judges to have anything to do with public prosecution. I recognise that this is not so in other traditions. Perhaps what is needed is a definition provision which makes it clear that the principles apply to judicial officers however designated ie as judges, magistrates or otherwise and, where a judge serves in the office of public prosecution, to such a judge.



INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNION INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

3627 802

25 February 1998

TO ALL MEMBER ASSOCIATIONS

Dears Colleagues,

I am pleased to send you:

- A. the letter of invitation to the annual meeting of the IAJ, which will be held this year in Porto (Portugal) from 6 to 10 September 1998 with the provisional programme, the registration form and the programmes of the optional excursions;
- B. a letter concerning the payment of the 1998 contribution to the IAJ;
- C. the draft of the Universal Charter of the Judge in English and French. The English version has been revised by the Presidency Committee at its last meeting (Madrid, 22 February 1998). As far as the discussion of this text before the Central Council in Porto is concerned, the Presidency Committee decided that the proposals for amendment prepared by the member associations should reach the Secretariat General in Rome before 15 June 1998. Late proposals will not be examined. The Central Council will vote on each proposal for amendment and finally on the global text.
- D. the collection of the conclusions of the 2nd and 4th Study Commission prepared by the Secretariat General.

The associations which are member of the African Regional Group will find here enclosed the summary report of the last meeting of the Group in Puerto Rico, an invitation letter to the next meeting of the Group, which will be organised by the "Union Nationale des Magistrats de Côte d'Ivoire - UNAMACI" in Abidjan (Ivory Coast) on 16-17 April 1998, as well as the registration form and the agenda of the meeting (The registrations should reach the UNAMACI before 30 March 1998).

The associations which are member of the Iberoamerican Regional Group will find here enclosed the summary report of the last meeting of the Group in Puerto Rico, as well as the agenda of the next meeting of the Group, which will be organised by the "Asociación de Magistrados y Funcionarios de la Justicia Nacional" in Buenos Aires (Argentina) from 30 April to 2 May 1998 and a list of subjects, prepared by the Association of Argentina (The answers should reach the Argentinean Association before 10 April 1998).

Best wishes.


Massimo Bonomo

Draft of
THE UNIVERSAL CHARTER OF THE JUDGE

PREAMBLE

Numerous groups of judges from different countries have worked on the preliminary drafting of this Charter. The present Charter is a consensual amalgamation of this work and constitutes general minimal norms.

* * *

Art. 1 - Independence

The independence of the Judge cannot be partitioned. All institutions and authorities, whether national or international, must respect, protect and defend that independence.

Art. 2 - Status

The Judge must have a juridical status, specifically laid down by a statute, which ensures the judge an independence that is genuine and effective in relation to the other powers of the State, absent of any social, economic and political pressure, and even from the judicial establishment.

Art. 3 - Independent and representative Bodies

The administrative and disciplinary organisation of the judiciary shall be carried out by independent bodies which are representative of the judges.

Art. 4 - Submission to the Law

The judge is only subjected to the law. The judge should not be influenced by the other powers of the State, by the political parties or by pressure groups.

Art. 5 - Personal Autonomy

No-one must give the judge, or attempt to give the judge, orders or instructions of any kind in relation to the decisions a judge must make.

Art. 6 - Impartiality

The judge must be impartial and must so be seen.

Art. 7 - Reserve and Diligence

The judge must perform his or her professional obligations with reserve and dignity and without undue delay.

Art. 8 - Incompatibility

The judge must not carry out any other function, whether public or private, paid or voluntary, except teaching and research in the juridical field, or national and international arbitration.

The judge must not be subject to outside appointments without his or her consent and only with the authorisation of the proper independent body that is representative of the judiciary.

Art. 9 - Political Neutrality

The judge must not be involved in party politics nor in partisan activities nor carry out political functions save where this is authorised under the law and the constitution.

Art. 10 - Inamovibility

A judge is inamovable. A judge must not be displaced, suspended or removed from office unless it is provided by law and then only by decision of an independent body that is representative of the judiciary.

A judge is appointed for life.

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

Art. 11 - Selection and promotion

The selection and promotion of the judge must be carried out according to objective and transparent criteria based on proper professional qualification and by an independent body that is representative of the judiciary.

Art. 12 - Civil Responsibility

No civil suit may be brought against a judge in relation to any act or omission in his or her official capacity.

Art. 13 - Penal Responsibility

No judge may be arrested without a judicial warrant unless the judge is apprehended in the course of committing a serious crime. No extrajudicial proceedings are to be brought against a judge.

The rules of criminal procedure must ensure that any investigation into the conduct of a judge is carried out under effective judicial control.

Art. 14 - Discipline

Disciplinary sanctions against a judge can only be taken in circumstances expressly provided for by law, by an independent body that is representative of the Judiciary and in compliance with predetermined rules of procedure.

Art. 15 - Association

The right of the judge to belong to a professional association must be recognised.

Art. 16 - Remuneration and Retirement

The judge must receive sufficient remuneration to secure true economic independence. The salary must not be reduced during the working life of a judge.

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

Art. 17 - Support

The other powers of the State must provide the judiciary with the means necessary to equip themselves properly to perform their function. The Judiciary must have the opportunity take part in decisions taken in respect to this matter.

Art. 18 - Public Prosecution

The above principles apply mutatis mutandis to the judges that are members of the Public