**European Charter** **on** **the statute for judges**

*Activities for the development and consolidation of democratic stability*

*THEMIS PLAN*

*Project n 3*

***European Charter******on******the statute for judges***

*and*

***Explanatory Memorandum***

*Strasbourg, 8 - 10 July 1998*

**FOREWORD**

The activities carried out in the Council of Europe for many years now, on the organisation of  Justice in a democratic State governed by the rule of law, have allowed the various aspects of  the issue of the status of judges to be addressed on numerous occasions. These meetings over the past years have been devoted to the recruitment, training, career and responsibilities of judges, as well as the disciplinary system governing them. The number of these meetings has increased since the end of the eighties due to the profound changes that have taken place in Eastern Europe.

In 1997, the idea developed to maximise the results of the work and discussions in order to give this work better ‘visibility’ and above all to give a new impulse to the continuing effort to improve legal institutions as an essential element of the rule of law.

The need to draft a European charter on the statute for judges was confirmed in July 1997, following a first multilateral meeting in Strasbourg devoted to the Status of Judges in Europe. The participants at this meeting came from 13 Western, Central and Eastern European countries, as well as from the *Ecole Nationale de la Magistrature* of France (*ENM*), the European Association of Judges (EAJ) and the European Association of Judges for Democracy and Freedom (MEDEL).  The participants expressed a wish for the Council of Europe to give the necessary framework and support to the elaboration of the Charter.

On the basis of these conclusions, the Directorate of Legal Affairs entrusted three experts from France, Poland and United Kingdom with the realisation of a draft charter.

This draft, created in Spring 1998, was laid before the participants of a second multilateral meeting, also held in Strasbourg, on 8-10 July 1998. At the end of the three days of discussion, the text, after having been improved by a certain number of amendments, was unanimously adopted.

The value of this Charter is not a result of a formal status, which, in fact, it does not have, but of the relevance and strength that its authors intended to give to its contents. A thorough knowledge of its contents and a wide distribution of the Charter are essential for its goals to be realised . The Charter is aimed at judges, lawyers, politicians and more generally to every person who has an interest in the rule of law and democracy.

**EUROPEAN CHARTER ON THE STATUTE FOR JUDGES**

            The participants at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8‑10 July 1998,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" ;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Having referred to Recommendation No R (94) 12 of the Committee of Ministers to member states on the independence, efficiency and role of judges, and having made their own, the objectives which it expresses ;

Being concerned to see the promotion of judicial independence, necessary for the strengthening of the pre‑eminence of law and for the protection of individual liberties within democratic states, made more effective ;

Conscious of the necessity that provisions calculated to ensure the best guarantees of the competence, independence and impartiality of judges should be specified in a formal document intended for all European States ;

Desiring to see the judges' statutes of the different European States take into account these provisions in order to ensure in concrete terms the best level of guarantees;

Have adopted the present European Charter on the statute for judges.

**1.         GENERAL PRINCIPLES**

1.1.      The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.

1.2.      In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.

1.3.      In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

1.4.      The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

1.5.      Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion ‑ decisions on which depend the guarantee of individual rights and in preserving the secrecy of information which is entrusted to them in the course of proceedings.

1.6.      The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period.

1.7.      Professional organizations set up by judges, and to which all judges may freely adhere, contribute notably to the defence of those rights which are conferred on them by their statute, in particular in relation to authorities and bodies which are involved in decisions regarding them.

1.8.      Judges are associated through their representatives and their professional organizations in decisions relating to the administration of the courts and as to the determination of their means, and their allocation at a national and local level.  They are consulted in the same manner over plans to modify their statute, and over the determination of the terms of their remuneration and of their social welfare.

**2.         SELECTION, RECRUITMENT, INITIAL TRAINING**

2.1.      The rules of the statute relating to the selection and recruitment of judges by an independent body or panel, base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity.  The statute excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin, or by reason of their philosophical and political opinions or religious convictions.

2.2.      The statute makes provision for the conditions which guarantee, by requirements linked to educational qualifications or previous experience, the ability specifically to discharge judicial duties.

2.3.      The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of  judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open‑mindedness, competence and impartiality which are bound up with the exercise of judicial duties.

**3.         APPOINTMENT AND IRREMOVABILITY**

3.1.      The decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, are taken by the independent authority referred to at paragraph 1.3 hereof or on its proposal, or its recommendation or with its agreement or following its opinion.

3.2.      The statute establishes the circumstances in which a candidate's previous activities, or those engaged in by his or her close relations, may, by reason of the legitimate and objective doubts to which they give rise as to the impartiality and independence of the candidate concerned, constitute an impediment to his or her appointment to a court.

3.3.      Where the recruitment procedure provides for a trial period, necessarily short, after nomination to the position of judge but before confirmation on a permanent basis, or where recruitment is made for a limited period capable of renewal, the decision not to make a permanent appointment or not to renew, may only be taken by the independent authority referred to at paragraph 1.3 hereof, or on its proposal, or its recommendation or with its agreement or following its opinion.  The provisions at point 1.4 hereof are also applicable to an individual subject to a trial period.

3.4.      A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto.  An exception to this principle is permitted  only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof.

**4.         CAREER DEVELOPMENT**

4.1.      When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned.  Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement.  Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.

4.2.      Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens.  This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laiddown by the statute.

4.3.      Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence.

4.4.      The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof.

**5.         LIABILITY**

5.1.      The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation.  The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.

5.2.      Compensation for harm wrongfully suffered as a result of the decision or the behaviour of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties.  The submission of the claim to the competent court must form the subject of prior agreement with the authority referred to at paragraph 1.3 hereof.

5.3.      Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body.  This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.

**6.         REMUNERATION AND SOCIAL WELFARE**

6.1.      Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.

6.2.      Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3.      The statute provides a guarantee for  judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

6.4.      In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

**7.         TERMINATION OF OFFICE**

7.1.      A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal pronounced within the framework of a procedure such as envisaged at paragraph 5.1 hereof.

7.2.      The occurence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3 hereof.