

ELEMENTS OF A EUROPEAN STATUTE OF THE JUDICIARY PALERMO DECLARATION

Preamble

1. A democratic, independent and transparent justice constitutes an essential element of a State founded on the Rule of Law. The magistrates¹ who are members of the European Association of Magistrates for democracy and fundamental rights (MEDEL) are convinced that, far from being an end in itself, the institution of an integrated European economic area is merely a means for ensuring a better and more just life for human beings, whether they belong to it or live outside it.

To approach this aim of justice, political and social integration must be added without delay to economic integration. It must be accompanied by the creation of a consistent judicial space, devoted to the rule of law which protects and develops democracy and human rights. In this space the effectiveness of integrated judicial systems and the guarantees of persons who have recourse to it will attain the highest level.

2. The above-mentioned European magistrates devote themselves to the practical realization of the fundamental principles set out in the Universal Declaration of Human Rights. These principles, the exercise of which is guaranteed by the International Treaties on Economic, Social and Cultural Rights and on Civil and Political Rights as well as by the European Convention of Human Rights, are notably equality before the law, the presumption of innocence and the right of every person to have their case heard equitably, publicly and within a reasonable lapse of time, by a competent, independent and impartial tribunal created by the law.

3. The above-mentioned magistrates consider that the following minimal norms must be respected and applied by way of national legislation and practice:

° the Basic Principles on the Independence of the Judiciary, approved by resolutions 40/32 and 40/146 of the General Assembly of the United Nations, on November 29 and December 13, 1985, ° the Basic Principles on the Role of Lawyers, approved by resolution 45/166 of the General Assembly of the United Nations, on December 18, 1990, ° the Guidelines on the Role of Prosecutors, approved by the 8th congress of the United Nations for the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba (August 27-September 7 1990), ° the "Rules" concerning the effective application of the above-mentioned principles.

4. In order to implement the European judicial space in conformity with these principles and rules, the magistrates belonging to the European Association of Magistrates for democracy and fundamental rights invite the organs of the Council of

¹ Judges and public prosecutors

Europe and the member States to adopt an additional protocol to the European Convention on Human Rights based on the following guiding principles.

I. JURISDICTION AND THE JUDICIARY

1.1. Any dispute concerning either the constitutional conformity of a norm or a legally protected right or interest must find a jurisdiction pre-established by the Constitution or by the law, fit to judge it according to the imperatives of a fair trial, in the respect of the primacy of law, human rights and fundamental freedoms.

1.2. No exceptional jurisdiction shall be instituted.

1.3. In jurisdictions of every kind and degree, the law is expressed by the magistrates by means of closing speeches for the prosecution, opinions, reports and decisions.

1.4. The general principles of the statute of the judiciary are provided for in the Constitution. The law puts them into practice in conformity with the following provisions.

II. THE MAGISTRATES

2.1 Magistrates are subject only to legality and to the law. They carry out their functions in complete independence. They control the constitutionality of the laws, directly or through recourse to a constitutional court.

2.1. Magistrates are irremovable. They cannot be transferred, suspended, retired or dismissed, or be the object of any other modification of their professional situation, except in cases and through procedures disciplined by law.

2.2. The legal statute determines the procedure and the criteria for the recruitment of magistrates according to the principles of equality of access to public office, without discrimination of race, sex, religious, philosophical or political convictions.

2.3. It is the duty of the State to provide the judiciary with sufficient means to ensure the orderly performance of its functions, and especially those necessary for the initial and permanent training of magistrates.

III. THE SUPREME COUNCIL OF MAGISTRATES

3.1. The Supreme Council of Magistrates is entrusted with the administration and discipline of the judiciary. It guarantees the independence of magistrates.

It provides for recruitment, decides the assignment of magistrates and organizes professional training.

On its own initiative, or at the request of other powers, the Supreme Council of Magistrates addresses opinions and recommendations concerning judicial policy to the Parliament or to the Government.

3.2. At least half of the Supreme Council of Magistrates is composed of magistrates elected by their peers according to the rule of proportional representation. It comprises, besides, personalities appointed by parliament. Its members are appointed for a definite period of time.

3.3. The parliament votes the budget for justice according to the proposals of the Supreme Council of Magistrates and the Government.

The Supreme Council of Magistrates has a budget to carry out its tasks.

3.4. The plenary meetings of the Supreme Council of Magistrates are public, except when in camera as provided for in article 8 par. 2.

The minutes, decisions, reports, opinions and recommendations, as well as the budget and accounts, are the object of appropriate publicity. The decisions concerning the recruitment, assignment and discipline of magistrates are motivated and subject to control of their legality by a supreme court.

Each year, the Supreme Council of Magistrates provides Parliament with a report on its activities and on the state of justice.

IV. THE JUDICIARY FUNCTIONS

4.1. Each jurisdiction must be organized in such a way as to treat the disputes submitted to it competently and rapidly.

The distribution of cases among chambers and among magistrates respects the principle of the natural judge by having recourse to impersonal and predetermined systems of attribution.

Collegial courts are chaired in turn by the judges who compose it.

4.2. The general assembly of the magistrates of the jurisdiction elects, among its members, for a determined period, those who will have the responsibility of the administration of the jurisdiction. This competence can also be assigned to the Supreme Council of Magistrates.

4.3. The Supreme Council of Magistrates provides for the administration and supervision of jurisdictions.

It settles disputes which arise from the organization of the service. Any interested person or institution may submit a dispute of this kind to it.

4.4. The statute of the judiciary may make provision for the Supreme Council of the Judiciary to periodically submit each magistrate to an objective personal evaluation tending to define each person's competences and develop his/her qualities, in order to improve the service.

The process of evaluation allows for contradictory.

V. THE MAGISTRATES' STATUTE

5.1. There is no hierarchy and no grading in a magistrate's condition, whatever function he exercises and whatever the jurisdiction within which such a function is exercised.

5.2. The level of a magistrate's remuneration ensures his economic independence. The remuneration evolves according to the criterion of years of service.

5.3. The law organizes the mobility of magistrates between jurisdictions of a different nature and between different degrees of jurisdiction.

This mobility makes it possible to accede to the function of second instance from the moment of appointment just as, inversely, it allows for passage from appeal courts or courts of cassation to the lower courts.

VI. THE DUTIES OF MAGISTRATES

6.1. Magistrates settle the cases submitted to them diligently and impartially, according to the facts and in conformity with the law.

The law may authorize the expression of minority opinions in collegial decisions.

6.2. Breaches of professional duty on the part of magistrates are not open to direct civil action. The injured party has the right to be indemnified by the State. Recourse to the State against a magistrate must be authorized by the Supreme Council of Magistrates, after hearing the parties concerned.

VII. THE FREEDOMS OF MAGISTRATES

7.1. Like other citizens, magistrates enjoy freedom of expression, belief, association and assembly. They have the right to strike. The exercise of this right must not undermine the fundamental right to justice of persons.

7.2. Magistrates are free to constitute and be affiliated to associations and trade unions of magistrates or other associations, notably to defend the fundamental rights, the service of justice and their own interests, to promote their professional training and to protect the independence of the judiciary.

The Supreme Council of Magistrates fosters, without discrimination, the action of the associations of magistrates. Those responsible for the associations may on request be dispensed from service for the duration of their mandate, by decision of the Supreme Council of Magistrates.

VIII. THE DISCIPLINE OF MAGISTRATES

8.1. The Supreme Council of Magistrates handles disciplinary complaints against magistrates without delay and equitably, according to a procedure set down by the law.

8.2. The investigation and the debate allow for contradictory.

The debates are public except for motivated in camera proceedings, notably when the private life of the magistrate or of a third party needs to be protected.

The decision is always pronounced publicly. It is motivated. It receives appropriate publicity.

8.3 The decision is subject to invalidation by a Supreme Court for violation of the law.

IX. THE MAGISTRATES OF THE PUBLIC PROSECUTION SERVICES

9.1. The autonomy of the public prosecutor constitutes a fundamental instrument of the independence of the judiciary.

The magistrates of the public prosecutor ensure the equality of citizens in front of the law. They carry out their functions in an autonomous fashion in relation to the political power. They are subject only to rights and law.

9.2. The magistrates who exercise the functions of the public prosecutor benefit from the same freedoms and enjoy guarantees equivalent to those defined by the present statute.

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