

**THE FEDERATION OF JUDGES FOR DEMOCRACY OF LATIN AMERICA
AND THE CARIBBEAN
AND
MEDEL (EUROPEAN MAGISTRATES FOR DEMOCRACY AND FREEDOMS)**

AT THE CONCLUSION of the seminar held in Porto on 28th-30th May 2004 agree on the following common platform:

In many countries today jurisdiction finds itself pressed by political power which, by considering the judiciary as subalternate subsystem, aims at keeping jurisdiction homogeneous with political logics, which are founded on the majority principle.

In the consitutional State of Law, founded on the separation of powers, primacy of the Constitution implies primacy of human rights above majoritary opinions and, thus, autonomy and independence of those who have to safeguard these rights: that is to say, autonomy and independence of jurisdiction in respect to political power.

Magistrates have to take their role seriously and have to acquire consciousness of the fact that the independence bestowed upon them by the Constitution and by International Agreements grants them the possibility to be an instrument for the fulfillment of citizens' rights, as well as the possibility of controlling the legality of the exercise of all powers, excluding any immunity.

For this reason independence should be safeguarded, since it is not a privilege of magistrates, but instead a functional guarantee for the fulfillment and protection of citizens' rights.

For these rights to be effective it is essential not only that the judiciary be independent from other powers, but also that every single judge, public prosecutor, or public defendant be independent from all other powers.

It is therefore recommendable to eliminate any external influence on judges and to forego completely the hierachical system inherited from the Napoleonic model. In order to grant every judge not only external, but also internal independence, it is necessary to substitute verticalism with horizontalism implying *equal dignity of judicial functions*: that is to say, the equality of magistrates in all that concerns the exercise of judicial functions.

To this end, it is necessary that the stability of each judge be granted by eliminating any form of precariousness of office; it is also necessary to separate the *topmost organs of jurisdiction* (Supreme Courts), entitled to have the last word in judicial controversies, both civil and criminal, from *organs of self-government*, which should be entitled to the administration of the judiciary (admission of magistrates, selection and professional training, career, appointment of heads of offices, disciplinary jurisdiction etc.).

In carrying out judicial duties, judges should also be independent from their colleagues with respect to decisions entrusted to them autonomously. It is however necessary to consider that magistrates, if isolated and atomized as monads – without relation to the ideals and ethical-cultural backing of their associations, deprived moreover of the confrontation with the plurality of ideas and cultures -, are exposed

to autoreferentiality and corporative regression, are more subject to influence or to aggression by external or internal powers, and can more easily be carried to political scopes related to the political party system.

It is therefore necessary to promote and strengthen judiciary associationism in the scope of guarding the independence of magistrates: a judiciary associationism which must sustain and contribute to the growth of commitment, culture, and professional deontology founded not only in the individual conscience of duty but also in the debate and dialogue between different professional cultures and experiences.

Tasks of democratic associationism are, therefore:

- to focus its cultural activity and the professional commitment of magistrates to the fulfillment of constitutional goals and, among these, particularly to the guarantee of human rights and to the monitoring of exercise of public and private powers;
- to favor the diffusion of democratic and constitutional culture within the judiciary;
- to pass beyond the idea of “judicial castes” and beyond the idea of the separation of the judiciary from society as a whole: the relationship with society and citizens is an element of great importance for the renovation of the judiciary, especially if society reincorporates the debate on justice, since in a democratic State the most efficient control on any power is a diffused control and exposure to criticism of public opinion;
- to be a critical voice in all fields, by denouncing publicly the compressions of human rights and by backing without reserves the needs for justice of the less fortunate.

In this perspective – in order to favor the development of collaboration and cultural interchange that began many years ago among some Latin American and European associations – Medel and the Federation of Associations of Judges for Democracy of Latinoamerica and of the Caribbean committ themselves to:

- exchange information and to constant consultation on respective activities and initiatives, as well as to exchange evaluations of the problems affecting jurisdiction;
- contribute to cultural interchange among Europe, Latin America, and other continents, especially among judges and magistrates, in the field of human rights;
- the investigation and study for the organization of international conferences, regional or national, judicial interchange and programs of continued training that will contribute to the comprehension and resolution of judicial conflicts affecting society;
- develop, present and sustain the Statute of the Judiciary with parliaments and international organizations, according to the guidelines stated above.

Geronimo Sansó

Federación de Asociaciones de Jueces para la democracia de Latinoamérica y del Caribe

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