

# **Statute** **of the Iberoamerican Judge.**

**THE VI IBEROAMERICAN SUMMIT OF PRESIDENTS OF SUPREME COURTS AND TRIBUNALS OF JUSTICE**, held in Santa Cruz de Tenerife, Canarias, on the 23rd, 24th and 25th of May 2001.

TAKING INTO ACCOUNT that the evolution of our societies has given an increasing prominence to the judge, which subsequently requires that the Judiciary responds to the opening-up's and sensitivity's demand in connection with the expressed necessities of various sectors and social agents and adapts its traditional working and attitude methods to these new necessities.

CONSIDERING that the Judiciary must evolve towards the securing or consolidation of its independence, not as a privilege for judges but as a right for citizens and guarantee of the correct functioning of the democratic and constitutional State of Law which assures an accessible, efficient and foreseeable justice.

CONSIDERING, moreover, that, at the same time as the efforts realised in the so-called "Judicial Reform", with the diversity observed in the iberoamerican field, it is indispensable to meet the requirements of our populations to put the justice in the hands of judges of clear skilled, professional and ethical suitability, from whom depend, as last resort, the quality of the justice.

CONVINCED that for the best performance of the jurisdictional function, and along with the constitutional and legal provisions of each one of the States which compose the iberoamerican community, it is necessary that the judges, independently of their hierarchal order, dispose of an instrument which condense, the most precisely possible, the rights, duties, conditions and requirements which need to accompany and guide them in the exercise of their delicate tasks.

DESIRING, lastly, to offer a referent who would identify the values, principles, institutions, processes and minimum resources necessary to guarantee that the jurisdictional function develops independently, determines the judge's role in the context of a democratic society and stimulates the efforts developed in this sense by the Judiciaries of the region.

**We hereby approve and promulgate the following**

## **STATUTE OF THE IBEROAMERICAN JUDGE**

### **INDEPENDENCE**

#### ***Art.1. General principle of independence***

As a guarantee for the defendants, the Judges are independent in the exercise of their jurisdictional functions and must only comply with the Constitution and the law, with strict compliance to the principle of legal hierarchy.

#### ***Art.2. Obligation of respect for judicial independence***

The other powers of the State and, generally speaking, all the national or international authorities, institutions and organisms, as well as the various groups and social, economic and political organisations, must respect and make the independence of the Judiciary efficient.

#### ***Art.3. Judicial independence and means of communication***

The use of means of social communication with the purpose of supplanting jurisdictional functions, imposing or influencing the content of judicial decisions, in conditions exceeding the legitimate right to the freedom of expression and information, is considered as harmful for judicial independence

#### **Art.4. *Internal independence***

In the exercise of the jurisdiction, the judges are not submitted to superior judicial authorities, but it does not affect the power of the said authorities to revise the jurisdictional decisions through the resources legally established, nor the powers that each national system confers to the jurisprudence emanating from the Supreme Courts and Tribunals.

#### **Art.5. *Defense of judicial independence***

The affronts to judicial independence have to be sanctioned by the law, which shall plan the mechanisms through which judges, anxious or perturbed in their independence, could obtain the support of the superior organs or the organ of government of the Judiciary.

#### **Art.6. *Material conditions of independence***

The State shall guarantee the economic independence of the Judiciary, through the allowance of the adequate budget in order to cover its necessities and through the appropriate outlay of the budgetary parties.

### **IMPARTIALITY**

#### **Art.7. *Principle of impartiality***

The impartiality of the judge is an indispensable condition for the exercise of the jurisdictional function.

#### **Art.8. *Objective impartiality***

The impartiality of the judge has to be true, real and obvious for the citizens

#### **Art.9. *Abstention and objection***

Judges have the obligation to leave off the proceedings and knowledge of cases in which they would have a previous link with the object of the process, parties or interested persons in this one, according to the terms established in the law.

The abstention without foundation and the groundless objections accepted by the judge, must be sanctioned in accordance to what is stipulated in the law.

**Art.10. *Incompatibilities***

The exercise of the jurisdictional function is incompatible with other activities, apart from those accepted in the law

**SELECTION OF THE JUDGE, JUDICIAL CAREER AND NON-REMOVAL PRINCIPLE**

**Art.11. *Organ and process of selection of judges***

The processes of selection and appointment have to be realised through organs predetermined by the law, which also apply predetermined and public processes assessing objectively the professional knowledge and merits of the applicants.

**Art.12. *Objectivity in the selection of judges***

The mechanisms of selection shall be adapted to the necessities of each country and shall be directed, in any case, to the objective determination of the applicants' suitability.

**Art.13. *Principle of non-discrimination in the selection of judges***

In the selection of judges, there shall be no discrimination on grounds of race, sex, religion, ideology, social origin, economic situation or other which could violate the right to equality protecting the applicants. The nationality requirement of the concerned country shall not be considered as discriminatory.

**Art.14. *Principle of non-removal***

As a guarantee of their independence, the judges cannot be removed from the moment in which they acquire the said category and join the Judicial Career, in the terms established by the Constitution.

Nevertheless, they can be suspended or separated from their position for physical or mental handicap, negative evaluation of their professional duty in the cases established in the law or separation of the position in the case of criminal or disciplinary responsibility, by the organs legally established, through

procedures guaranteeing the respect of the due process and, in particular, the one of the rights of hearing, defense, contradiction and legal resources, as appropriate.

**Art.15. *Temporary appointment of judges***

As some countries admit temporary appointment of judges, this situation aspires to be modified in order to reach the guarantee of non-removal according to the terms of the previous article.

**Art.16. *Internal non-removal***

The guarantee of non-removal of the judge extends to transfers and promotions which require the full consent of the interested person.

Exceptionally, it may be established in the law the possibility of a judge's transfer or promotion for necessities of the service or modification of the judicial organisation or temporary assignment of this one, for the same reasons, in order to reinforce another jurisdictional body. In such cases, in which the general interest prevails over the personal one, the respect of the due process shall be guaranteed.

**Art.17. *Objectivity in the composition of the judicial career***

Transfers and promotions of judges shall be decided on objective criteria predetermined in the law, based, principally, on the professional experience and capacity of the applicants.

**Art.18. *"Ad hoc" non-removal principle***

The non-removal of the judge also guarantees, as a general principle and apart from those cases specifically established in the law, that he/she shall not be removed from the knowledge of the affairs with which he/she has been entrusted.

**RESPONSIBILITY, INSPECTION AND EVALUATION OF THE JUDGE**

**Art.19. *Principle of legality in the judge's responsibility***

Judges can be criminal, civil and disciplinarily held responsible in accordance with what is established in the law.

The exigency of responsibility shall not include affronts to the judicial independence which intend to be concealed under its official coverage.

***Art.20. Organ and procedure for the exigency of responsibility***

The disciplinary responsibility of judges shall be the competencies of the bodies of the Judiciary legally established , through procedures guaranteeing the respect of the due process and, in particular, the one of the rights of hearing, defense, contradiction and legal resources, as appropriate.

***Art.21. System of judicial supervision***

The systems of judicial supervision have to be understood as a mean in order to verify the correct functioning of judicial bodies and provide support for the improvement of the management of judges.

***Art.22. Evaluation of the performance***

As a guarantee for the efficiency and quality of the public service of justice, a system of evaluation of professional technical performance and conduct of judges can be established.

***Art.23. Consequences of the negative evaluation of the performance***

The inadequate or poor performance in the exercise of the jurisdictional function, duly accredited through the legal and regulatory procedures established, allowing the hearing of the judge, can entail the application of obligatory training period or, where necessary, the application of other corrective or disciplinary measures.

## **TRAINING**

***Art.24. Initial training***

The initial training is aimed at selecting the most suitable applicants for the performance of the judicial function in a democratic society, through mechanisms allowing to check the requirements that must fulfil any candidate to the Judiciary and the training of this candidate for the knowledge and own

skills of his/her function, with a theoretical-practical orientation including, as far as possible, a period of internships in jurisdictional bodies.

#### **Art.25. *Training centres***

The Judicial Schools, whichever is the name they receive in each country, have to assume the responsibility of initial training of judges and, where necessary, of the ones belonging to the judicial career following the indications, if applicable, of the superior judicial government organ, as regards the intention which must be pursued with this training, designing, planning and executing the educational programmes and assessing their results.

#### **Art.26. *Cost of the initial training***

The cost of the initial training must be taken on by the Judiciary, in collaboration with, if applicable, private and public institutions trying, also, if its economic possibilities allow it, to facilitate methods of financial support for the candidates wishing to become judges.

#### **Art.27. *Nature and cost of the ongoing training***

The ongoing or in-service training constitutes a right and a duty for the judge, and a responsibility for the Judiciary, which shall facilitate it free of charge.

#### **Art.28. *Voluntariness of the ongoing training***

The ongoing training can be conceived as obligatory or voluntary for the judge, but it must be marked by an obligatory nature in case of promotion, transfer involving a change of jurisdiction, important legal reforms and other circumstances specially qualified.

#### **Art.29. *Organ which has been entrusted with ongoing training***

The ongoing or in-service training must be provided to judges and senior judges through the Judicial Schools, turning, without detriment, to the collaboration of other institutions, public or private, when necessary.

#### **Art.30. *Evaluation in the training***

The evaluation of the candidates realising processes or systems of initial training shall be realised in accordance with objective criteria, in order to determine the possibility or impossibility for their admission in the function.

The evaluation of the ongoing training, integrated in the personal file of the judge, can constitute an element of assessment for the judicial performance and a criteria of decision for the promotion of judges.

***Art.31. Judicial participation in the planning of the training***

With regard to the policy of judicial training, the competent organs must take into account the opinion of judges

**SALARY, SOCIAL SECURITY AND MATERIAL MEANS**

***Art.32. Salary***

Judges must receive a sufficient, unyielded salary and appropriate to the importance of the function they carry out and to the exigencies and responsibilities entailed to this function.

***Art.33. Social security***

The State must provide the access to a system of social security to judges, guaranteeing that they will receive, at the end of their service on ground of retirement, illness or other contingency legally stipulated or in case of personal, family or patrimonial damage arising from the exercise of the position, an honourable pension or adequate indemnity.

It is advisable, as far as economic possibilities allow it, to foresee a security system for judges including a multiple risk insurance.

***Art.34. Human resources, material means and technical supports***

Judges shall rely on human resources, material means and technical supports in order for their function to be adequately carried out.

The criteria of judges has to be taken into account in the decisions approved on the individual, reason for which their opinion must be heard.

In particular, judges must have easy access to the legislation and jurisprudence and dispose of the other necessary resources for the rapid and motivated resolution of litigations and trials.

***Art.35. Family and personal security***



Guaranteeing the independence and impartiality which have to chair the exercise of the judicial function, the State shall provide the necessary means for the family and personal security of the judges according to the circumstances of risk to which they can be presented.

## **RIGHT OF PROFESSIONAL ASSOCIATION**

### ***Art.36. Right of association of judges***

The impartiality is compatible with the recognition of freedom of judges association apart from the exceptions established by the Constitution or legislation of each country.

## **JUDICIAL ETHICS**

### ***Art.37. Service and respect of the parties***

In the context of a constitutional or democratic State of Law and in the exercise of their jurisdictional function, the judges have to go beyond the field of exercise of the said function, trying to give justice in conditions of efficiency, quality, accessibility and transparency, in respect of the dignity of the person demanding the service.

### ***Art.38. Obligation of independence***

The judge is obliged to maintain and defend his/her independence in the exercise of the jurisdictional function.

### ***Art.39. Due process***

Judges must carry out and make carry out the principle of due process, becoming guarantors of the rights of the parties and, in particular, ensuring they are given an equal treatment avoiding any imbalance motivated by the difference of material conditions between them and, in general, any defenceless situation.

### ***Art.40. Limitations in the inquiry of the truth***

Judges shall only use legitimate means that the system makes available for them in the persecution of the truth of the facts in the cases for which they are competent.

**Art. 41. Motivation**

Judges have the inexcusable obligation, in guarantee of the legitimacy of their function and of the rights of the parties, to duly motivate the decision they dictate.

**Art.42. Decision in reasonable delay**

Judges must obtain that the procedures they are in charge of get resolved in a reasonable delay. They shall avoid or, in any case, sanction time-wasting or contrary activities to the good procedural faith of the parties.

**Art.43. Principle of equity**

In the resolution of the conflicts coming to their attention, the judges, without any detriment to the strict respect of the current legislation and having the human background of the said conflicts always present, they shall try to temper with equity criteria the personal, family or social defavorable consequences.

**Art.44. Professional secret**

Judges have the obligation to keep strict confidence and professional secret in relation to ongoing trials and to the facts or known details in the exercise of their function or in relation with this one.

They shall not consult nor assess in cases of present or possible judicial conflicts.