



# European Association of Judges

## Association Européenne des Magistrats

## *Introductory word*

*More than half a century ago, in 1953, the International Association of Judges was founded in Salzburg (Austria) as a professional, non political, international organization, grouping not individual judges, but national associations of judges, admitted to the Association by decision of its Central Council. Today the organization encompasses 70 national associations from five continents.*

*Due to the existence of the specific interests and problems, faced by the judiciary of Europe, in 1991 the European Group of the International Association of Judges has been structured, organizing its own annual meetings since 1992. According to the Statutes, the object of the European Association of Judges (EAJ) is to further the objects of the International Association of Judges, where this is best done in a European context.*

*The European Association of Judges, that groups today 38 national European judges associations, is well known in Europe and among the European institutions for its non-governmental character and as the most important and biggest European representation of judges. All member states of the European Union are represented at the EAJ. Being the organization, representing the interests of European judges and magistrates and strengthening the judicial independence and impartiality on a European level, the EAJ strongly supports the ideas of self-governance of the judiciary, freedom from undue external influence, appointment and promotion of judges based on ability, integrity and experience as well as adequate economic guarantees, as inseparable elements of the principle of judicial independence.*

*One of the aims of the EAJ is to improve the knowledge of European law and the judicial cooperation between the concerned judiciaries across the borders as well as to support the efforts for the creation of a common European legal space by using the potential of national judiciaries. The EAJ shares the strong conviction that experience and legal knowledge of judges contribute to better European legal provisions and their proper application.*

*The European Association of Judges is represented at the Board of Trustees of the Academy of European Law (ERA), which promotes the awareness, understanding and good practice of EU law by providing legal professionals with training and a forum for debate.*

*In pursuing its aims the European Association of Judges organises sessions and working groups, assesses drafts and gives opinions on all issues of legal concern, participates in congresses and workshops and co-operates with the relevant European institutions.*

*The European Association of Judges has been invited to participate in the Justice Forum established by the European Commission in order to provide a platform for dialogue with stakeholders on European Union justice policy. It is expected that the Justice Forum will discuss the existing EU legislation as well as the possible future legislation, in order to ascertain whether the European area of justice is operating efficiently.*

*The European Association of Judges has been granted an observer's status at the Consultative Council of European Judges (CCJE), European Network of Councils for the Judiciary (ENCJ), the European Commission for the Efficiency of Justice (CEPEJ) and other institutions. The EAJ constantly takes part at the meetings of these institutions and gives its opinion and remarks on different documents adopted and activities carried. The EAJ's activities are periodically reflected in its electronic newsletter Euro-iustitia.*

*In its activities the European Association of Judges follows the standards of universally recognized international documents, related to the status of the judiciary, such as the United Nations basic principles on the independence of the judiciary (1985), Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe On the independence, efficiency and role of judges, Judges' Charter in Europe (1996), European charter on the Statute for Judges (1998), the Universal Charter of the Judge (1999) and the relevant Opinions of the Consultative Council of the European Judges.*

*Vilnius, June 2008*

**Dr. Virgilijus Valančius**

*President of the European Association of Judges*



### *Status*

The European Association of Judges - EAJ - is a European judges organisation under the roof of the International Association of Judges - IAJ. It is not an association of individual judges but of the most important European national judges associations comprising 38 European states. Within the IAJ it is the biggest regional group.

The EAJ has NGO (non-governmental) character and is recognised by the United Nations, the Council of Europe, the European Union institutions, other organizations. The EAJ aims not alone to defend and represent the interests of European judges and magistrates, but in the same way endeavours to strengthen and support the rule of law as well as judicial independence and impartiality on an European level and in all member states, as a privilege not of authorities of the judiciary but of the citizens coming to the courts in search of their rights.

### *Members*

The member associations of the EAJ are the most representative, free and voluntary formed judges organisations of each country, strictly non-political, equal distant to all political parties and similar groups, and independent from all lobbies and other groups of influence.

All members of the European Union are represented as: Austria, Belgium, Bulgaria (extraordinary member), Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom and Sweden.

The other members are: Armenia (extraordinary member), Croatia, Former Yugoslav Republic of Macedonia, Georgia, Iceland, Israel, Liechtenstein, Moldova, Norway, Switzerland and the Ukraine.

The assembly of the delegates to the EAJ usually meets twice a year, once on occasion of the meetings of the IAJ and the other time in turns in an East and West European country.

### *Governing principles*

Each member association in its European interests aims to

- safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedoms;
- safeguard the constitutional and moral standing of the judiciary;
- increase and perfect the knowledge and understanding of judges by putting them together with colleagues of other countries;
- study together judicial problems whether of regional, national or European interest, with particular regard to European laws and their operation in practice;
- improve the knowledge of European law and the judicial co-operation between the concerned judiciaries across the borders.

### *Main objectives and activities*

The main objectives of the EAJ are to:

- bring a better understanding of the judicial world to the various European institutions;
- ensure that European Law becomes a living reality for all judges;
- improve and facilitate the co-operation between European judges and public prosecutors;
- support the efforts for the creation of a common European legal space.

The EAJ therefore tries to facilitate the necessary exchange between all members of the judiciary on an European level and at least to assist the creation of a common European judicial culture.

Close co-operation with all European institutions acting in the legal field like the European Union and the Council of Europe shall guarantee a general accepted legal reality on our continent.

The EAJ shares the strong conviction that experience and legal knowledge of judges contribute to better European legal provisions and their proper application.

Thus the EAJ is prepared for full co-operation with the European institutions as done in the past for documents and legal acts of the European Council and the European Union, particularly concerning the access to justice and judicial co-operation. In pursuing these aims the EAJ organises sessions and working groups, assesses drafts and gives opinions on all issues of legal concern, participates in congresses and workshops and co-operates with the relevant European institutions.

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## Statutes of the European Association of Judges

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### *Article 1*

1. The European Association of Judges is a regional organization within the International Association of Judges.
2. Members are national associations and national representative groups of judges within Art. 2 paragraph 2. sub-paragraph (ii) of the constitution of the International Association of Judges that are members of the International Association of Judges, whose countries are wholly or partially in Europe or who have been admitted as such by the General Assembly of the European Association of Judges.
3. Associations from countries in Europe that are extraordinary members of the International Association of Judges are extraordinary members also of the European Association of Judges. Observer status may be granted to associations from countries outside Europe that are members of the International Association of Judges.
4. Associations or national representative groups belonging to other Regional Groups of the International Association of Judges enjoy full rights as members of the European Association of Judges, except in matters where a conflict of interests between Regional Groups appears. The General Assembly decides in case of doubt.

### *Article 2*

1. The object of the European Association of Judges is to further the objects of the International Association of Judges, where this is best done in a European context.
2. The European Association of Judges works to promote closer European cooperation in all areas pertaining to the judiciaries of the member states and international and supranational judiciaries, not exceeding the European level. Therefore the association specifically aims to:
  - a) strengthen and support the rule of law as well as judicial independence and impartiality within the European scope and in all member states;
  - b) safeguard the interests of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedoms;

- c) safeguard the constitutional and moral standing of the judiciary;
- d) increase and perfect the knowledge and understanding of judges;
- e) study together judicial problems whether of European, regional or national interests, with particular regard to European laws and their application in practice;
- f) improve the knowledge of European law and the judicial co-operation between the concerned judiciaries across the borders;
- g) defend and represent the interests of European judges and magistrates as well as other members of the judiciary enjoying judicial status, where they are at stake in projects and decisions of international and transnational governmental organizations, not exceeding the European level.

### *Article 3*

1. The General Assembly of the European Association of Judges is responsible for formulating policy.
2. The President shall convene a meeting of the General Assembly at least once a year. It may take place either in the country of a member association or, if it is held in connection with a meeting of the International Association of Judges, at the place of that meeting.
3. Notice of a meeting of the General Assembly must be sent to members at least two months before the day of the meeting. In the month following such notice, members may request the President to include any particular matter in the agenda. Where at least two members concur in making such a request, the President must comply with it. The agenda must be circulated to members at least fifteen days before the meeting.
4. Each member has one vote.
5. A member may give the delegate of another member written authorisation to vote on its behalf at meetings of the General Assembly. No more than one such authorisation can be given to the same delegate.
6. No decision may be taken by the General Assembly, unless a majority of the members are present or represented.
7. Decisions are taken by a majority vote. If at least three delegates so require, the vote shall be taken by secret ballot.

8. Extraordinary members and associations with observer status within Article 1.3 may take part in the meetings and discussions of the General Assembly, but have no voting right.
9. If a member has lost its voting right in the International Association of Judges because of arrears in payment of subscriptions, it has no voting right in the European Association of Judges either. If for the same reason a member ceases to belong to the International Association of Judges, it also ceases as member of the European Association of Judges.

#### *Article 4*

1. The President represents the European Association of Judges and directs the association.
2. The President shall be elected every other year by the General Assembly and shall be one of the Vice-Presidents of the International Association of Judges.
3. The President may appoint judges from member associations to form an executive committee to assist him with his work.
4. The General Assembly may establish permanent working groups to deal with recurring topics.
5. In the appointment of judges for an executive committee and in the selection of members of permanent and other working groups due weight should be given to ensure representation of the different geographical areas and legal traditions of Europe.
6. The General Assembly may appoint judges from member associations to represent it on a permanent basis with European or International organizations. The General Assembly may at any time revoke such an appointment.

#### *Article 5*

1. The principal documents of the European Association of Judges must be drawn up in English, French, German, Italian and Spanish. In case of doubt, unless otherwise provided, the English text shall prevail.
2. The working languages of the association are English and French. Where simultaneous translation is provided, other languages may be used, notably German, Italian and Spanish.

*Article 6*

1. The European Association of Judges is financed by contributions from the International Association of Judges.
2. The General Assembly may fix an annual supplementary contribution to be paid by each member association. A supplementary contribution may also be fixed for extraordinary members and associations with observer status.
3. The General Secretariat will present annual financial accounts to the General Assembly. The General Assembly before it sits shall designate two delegates to scrutinise the accounts and to recommend whether or not they should be approved.
4. All expenditure must be authorised by the President.

*Article 7*

1. These Statutes may be amended by the General Assembly upon the proposal of either the President or at least three ordinary members, submitted to the General Secretariat not less than three months before the meeting of the General Assembly. Within one month of receipt of such a proposal, the Secretariat General must circulate it to all members of the association.
2. In order to amend the Statutes there must be a vote in favour by majority of not less than two thirds of the votes cast and of not less than half the members of the association.
3. A member may authorise a delegate of another member to vote on its behalf. Article 3, section 5, applies.

*Article 8*

1. These Statutes are adopted in five original texts: English, French, German, Italian and Spanish.
2. In case of any difficulty of interpretation the English text shall prevail.

*Dubrovnik, 10<sup>th</sup> May 2003*

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## Statuts de l'Association Européenne des Magistrats

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### *Art. 1*

1. L'Association Européenne des Magistrats est une organisation régionale faisant partie de l'Association Internationale des Magistrats.
2. Les membres sont des associations nationales ainsi que des groupes de magistrats nationaux représentatifs au sens de l'article 2, paragraphe 2, sous paragraphe (ii) de la Constitution de l'Association Internationale des Magistrats, dont les pays se trouvent totalement ou partiellement en Europe ou qui ont été admis en tant que tels par l'Assemblée Générale de l'Association Européenne des Magistrats.
3. Les associations originaires de pays d'Europe qui sont membres extraordinaires de l'Association Internationale des Magistrats, sont également membres extraordinaires de l'Association Européenne des Magistrats. Le statut d'observateur peut être accordé aux associations de pays extérieurs à l'Europe qui sont membres de l'Association Internationale des Magistrats.
4. Les associations ou groupes nationaux représentatifs appartenant à d'autres Groupes Régionaux de l'Association Internationale des Magistrats jouissent pleinement des droits en tant que membres de l'Association Européenne des Magistrats, sauf dans les matières où des conflits d'intérêts entre Groupes Régionaux peuvent apparaître. L'Assemblée Générale décide en cas de doute.

### *Art. 2*

1. L'objet de l'Association Européenne des Magistrats est de promouvoir les buts de l'Association Internationale des Magistrats, là où ils peuvent se réaliser le mieux dans un contexte européen.
2. L'Association Européenne des Magistrats vise à promouvoir une coopération européenne plus étroite dans tous les domaines se rapportant aux pouvoirs judiciaires des états membres et aux pouvoirs judiciaires internationaux et supranationaux, en ne dépassant pas le niveau européen. L'Association s'efforce particulièrement à:
  - a) renforcer et soutenir l'autorité de la loi ainsi que l'indépendance et l'impartialité judiciaires en Europe et dans tous les états membres ;
  - b) sauvegarder les intérêts du pouvoir judiciaire, condition essentielle de la fonction juridictionnelle et garantie des droits de l'homme et des libertés ;

- c) sauvegarder la position constitutionnelle et morale du pouvoir judiciaire ;
- d) élargir et améliorer les connaissances et la compréhension des magistrats ;
- e) étudier ensemble les problèmes juridiques, que ceux-ci soient d'intérêt européen, régional ou national, en s'intéressant particulièrement à la législation européenne et à son application dans la pratique ;
- f) améliorer la connaissance de la législation européenne et la coopération judiciaire entre les juridictions concernées de part et d'autre des frontières ;
- g) défendre et représenter les intérêts des juges et magistrats européens ainsi que ceux des autres membres de l'appareil judiciaire qui bénéficient d'un statut judiciaire, là où ces intérêts sont mis en péril dans des projets ou des décisions d'organisations gouvernementales internationales ou transnationales, en ne dépassant pas le niveau européen.

*Art. 3*

1. L'Assemblée Générale de l'Association Européenne des Magistrats est responsable de la formulation de la politique à suivre.
2. Le Président convoquera une réunion de l'Assemblée Générale au moins une fois par an. Elle peut se tenir ou dans le pays d'une Association membre ou, si elle doit se tenir en même temps qu'une réunion de l'Association Internationale des Magistrats, à l'endroit où cette réunion aura lieu.
3. Les convocations à la réunion de l'Assemblée Générale doivent être envoyées aux membres au plus tard deux mois avant la date de la réunion. Dans le mois suivant cette convocation, les membres peuvent demander au Président d'inscrire un point particulier à l'ordre du jour. Lorsqu'au moins deux membres s'entendent pour formuler une telle demande, le Président est tenu d'y donner suite. L'ordre du jour doit être communiqué aux membres au plus tard quinze jours avant le début de la réunion.
4. Chaque membre dispose d'une seule voix.
5. Un membre peut donner une procuration écrite au délégué d'un autre membre afin de voter en son nom lors des réunions de l'Assemblée Générale. Une seule procuration peut être donnée au même mandataire.
6. Aucune décision ne peut être prise par l'Assemblée Générale si la majorité des membres n'est pas présente ou représentée.
7. Les décisions seront prises à la majorité des voix. Si au moins trois membres le demandent, le vote aura lieu par scrutin secret.

8. Les membres extraordinaires ainsi que les associations ayant le statut d'observateur conformément à l'article 1.3 peuvent participer aux réunions et aux discussions de l'Assemblée Générale, sans pour autant avoir le droit de vote.
9. Si un membre a perdu son droit de vote dans l'Association Internationale des Magistrats suite à des arriérés de paiement de cotisations, il ne sera pas non plus autorisé à donner son vote dans l'Association Européenne des Magistrats. Si, pour la même raison, un membre cesse d'appartenir à l'Association Internationale des Magistrats, il sera également exclu comme membre de l'Association Européenne des Magistrats.

*Art. 4*

1. Le Président représente l'Association Européenne des Magistrats et dirige l'association.
2. Le Président sera élu tous les deux ans par l'Assemblée Générale et sera un des Vice-Présidents de l'Association Internationale des Magistrats.
3. Le Président peut désigner des magistrats des associations membres afin de constituer un comité exécutif qui l'assistera dans son travail.
4. L'Assemblée Générale peut établir des groupes de travail permanents qui s'occuperont de sujets qui reviennent périodiquement.
5. Lors de la désignation de magistrats pour un comité exécutif et de la sélection de membres pour les groupes de travail permanents et autres, on veillera en particulier à garantir la représentation des différentes zones géographiques et des différentes traditions juridiques de l'Europe.
6. L'Assemblée Générale peut désigner des magistrats des associations membres pour la représenter en permanence auprès des organisations européennes ou internationales. L'Assemblée Générale peut à tout moment révoquer cette désignation.

*Art. 5*

1. Les documents essentiels de l'Association Européenne des Magistrats doivent être rédigés en anglais, en français, en allemand, en Italien et en Espagnol. En cas de doute, sauf stipulation contraire, le texte anglais prévaudra.
2. Les langues de travail de l'Association sont l'anglais et le français. Là où une traduction simultanée est assurée, d'autres langues peuvent être utilisées telles que l'allemand, l'italien et l'espagnol.

*Art. 6*

1. L'Association Européenne des Magistrats est financée par des contributions de l'Association Internationale des Magistrats.
2. L'Assemblée Générale peut fixer une contribution annuelle additionnelle à payer par chaque association membre. Une contribution supplémentaire peut également être fixée pour les membres extraordinaires et les associations ayant le statut d'observateur.
3. Le Secrétariat Général présentera les comptes annuels à l'Assemblée Générale. L'Assemblée Générale désignera avant le début de la réunion deux délégués qui examineront les comptes et qui en recommanderont ou bien l'approbation ou bien le rejet.
4. Toutes les dépenses doivent être autorisées par le Président.

*Art. 7*

1. Les présents Statuts peuvent être modifiés par l'Assemblée Générale sur la proposition ou bien du Président ou bien d'au moins trois membres ordinaires, proposition qui doit être soumise au Secrétariat Général au plus tard trois mois avant la réunion de l'Assemblée Générale. Le Secrétariat Général doit communiquer cette proposition de modification à tous les membres de l'Association dans le mois suivant la date de réception d'une telle proposition.
2. Une modification des statuts doit être approuvée par la majorité d'au moins deux tiers des votes donnés et d'au moins la moitié des membres de l'Association.
3. Un membre peut donner procuration à un autre membre pour voter en son nom. L'article 3, point 5, s'applique.

*Art. 8*

1. Les présents Statuts sont adoptés en cinq textes originaux, rédigés respectivement en anglais, en français, en allemand, en italien et en espagnol.
2. En cas de problèmes d'interprétation, le texte anglais prévaut.

*Dubrovnik, le 10 mai 2003*

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*In 1992 the working group presided over by Mr. Günter Woratsch was established to prepare a draft on the Judges Charter in Europe. Mrs Pâquerette Girard, Mr Claus Larsen, Mr Ramon Rodriguez Arribas and Mr Antonio Texeira Martins participated in the compilation of a draft. The assembly of the European Association of Judges approved the text of the Judges Charter in Europe on March 20th 1993 at the meeting in Wiesbaden (Germany). The text was subsequently amended on April 20th, 1996, during the meeting of Bratislava (Slovakia), when articles 12 and 13 were added and article 11 was modified.*

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## Judges' charter in Europe

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### *Introduction*

The process of European integration has brought about an expansion of legislative and executive power, both at a national and international level. Furthermore, new pressure groups have grown up.

The political changes in some parts of Europe have demonstrated once more that a genuine separation of powers is indispensable for the proper functioning of any State that respects the rule of law. The principle of the separation of powers must form a vital part of the policy of European integration - all the more so because the member States look upon themselves as democracies.

The independence of the judiciary is one of the foundations of the rule of law.

In consequence, it is necessary to buttress the independence of the judiciary so as to ensure that the rights of the individual are protected against attack by the State or by other pressure groups.

In order to achieve this end, the Judges of the different European countries must work together to demonstrate their solidarity in pursuing their common interests.

From this point of view, the "Basic Principles on the Independence of the Judiciary" spelt out by the United Nations are no more than the most basic framework.

Taking the United Nations Charter as a starting point, it is necessary to embody certain common principles in a "Judges' Charter in Europe".

Although differences exist between one State and another as a result of differing legal traditions and practices, **the European Association of Judges hereby vows to uphold the following fundamental principles:**

1. The independence of every Judge is unassailable. All national and international authorities must guarantee that independence.
2. The Judge is only accountable to the law. He pays no heed to political parties or pressure groups. He performs his professional duties free from outside influence and without undue delay.
3. Not only must the Judge be impartial, he must be seen by all to be impartial.
4. The selection of Judges must be based exclusively on objective criteria designed to ensure professional competence. Selection must be performed by an independent body which represents the Judges. No outside influence and, in particular, no political influence, must play any part in the appointment of Judges.
5. Judicial promotion, decided by the above mentioned independent body, must equally depend upon the same principles of objectivity, professional ability and independence.
6. The administration of the judiciary must be carried out by a body which is representative of the Judges and independent of any other authority.
7. The other organs of the State have an obligation to give the judiciary all necessary means to perform their function, including adequate manpower and facilities. The judiciary must participate in decisions taken in relation to these matters.
8. Judicial salaries must be adequate, to ensure that the Judge has true economic independence and must not be cut at any stage of a Judge's service.
9. Disciplinary sanctions for judicial misconduct must be entrusted to a body made up of members of the judiciary in accordance with fixed procedural rules.
10. No Judge shall be directly liable to a civil suit in respect of the performance of his professional duties.
11. The Judge, after leaving his office, shall have the opportunity to practice another legal profession.
12. The Judges' Charter must be expressly embodied in legislation.
13. The above mentioned principles shall apply to the members of the Public Prosecution, according to their specific position in the national Judiciary.

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## Meetings of the European Association of Judges

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<i>20<sup>th</sup> March 1993</i>	<b>Wiesbaden</b> (Germany)
<i>9<sup>th</sup> October 1994</i>	<b>Athens</b> (Greece)
<i>29<sup>th</sup> April 1995</i>	<b>San Sebastian</b> (Spain)
<i>10<sup>th</sup> September 1995</i>	<b>Tunis</b> (Tunisia)
<i>19<sup>th</sup>-20<sup>th</sup> April 1996</i>	<b>Bratislava</b> (Slovakia)
<i>22<sup>nd</sup> September 1996</i>	<b>Amsterdam</b> (Netherlands)
<i>7<sup>th</sup>-8<sup>th</sup> March 1997</i>	<b>Milan</b> (Italy)
<i>12<sup>th</sup> October 1997</i>	<b>San Juan</b> (Puerto Rico)
<i>20<sup>th</sup>-21<sup>st</sup> March 1998</i>	<b>Ljubljana</b> (Slovenia)
<i>6<sup>th</sup> September 1998</i>	<b>Porto</b> (Portugal)
<i>19<sup>th</sup>-20<sup>th</sup> March 1999</i>	<b>Villeneuve lès Avignon</b> (France)
<i>14<sup>th</sup> November 1999</i>	<b>Taipei</b> (Taiwan)
<i>12<sup>th</sup>-13<sup>th</sup> May 2000</i>	<b>Prague</b> (Czech Republic)
<i>17<sup>th</sup> September 2000</i>	<b>Recife</b> (Brazil)
<i>11<sup>th</sup>-12<sup>th</sup> May 2001</i>	<b>Lund</b> (Sweden)
<i>23<sup>rd</sup> September 2001</i>	<b>Madrid</b> (Spain)
<i>3<sup>rd</sup>-4<sup>th</sup> May 2002</i>	<b>Lausanne</b> (Switzerland)
<i>2<sup>nd</sup> February 2003</i>	<b>Alicante</b> (Spain)
<i>9<sup>th</sup>-10<sup>th</sup> May 2003</i>	<b>Dubrovnik</b> (Croatia)
<i>9<sup>th</sup> November 2003</i>	<b>Vienna</b> (Austria)
<i>14<sup>th</sup>-15<sup>th</sup> May 2004</i>	<b>Naples</b> (Italy)
<i>31<sup>st</sup> October and 4<sup>th</sup> November 2004</i>	<b>Valle de Bravo</b> (Mexico)
<i>22<sup>nd</sup>-23<sup>rd</sup> April 2005</i>	<b>Bruges</b> (Belgium)
<i>20<sup>th</sup> November 2005</i>	<b>Montevideo</b> (Uruguay)
<i>19<sup>th</sup>-20<sup>th</sup> May 2006</i>	<b>Vilnius</b> (Lithuania)
<i>28<sup>th</sup>-30<sup>th</sup> September, 2<sup>nd</sup> October 2006</i>	<b>Siofok</b> (Hungary)
<i>30<sup>th</sup> March 2007</i>	<b>Valencia</b> (Spain)
<i>23<sup>rd</sup>-27<sup>th</sup> September 2007</i>	<b>Trondheim</b> (Norway)
<i>23<sup>rd</sup>-24<sup>th</sup> May 2008</i>	<b>Turku</b> (Finland)



On regular Meeting of the European Association of Judges held in Naples, Italy, on 14<sup>th</sup> and 15<sup>th</sup> of May 2004, representatives of 31 member states unanimously delivered this,

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### **Resolution**

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#### *Concerning Consultative Council of European Judges of the Council of Europe*

In some respects integration in Europe has already gone much further than most people would have dared to predict only a few years ago. But whilst in this process, powers of the executive and the legislative have increased, judicial powers have lagged behind. For example where co-operation between judges from different European countries is required, procedures remain time-consuming and unnecessarily complex.

The pace of political change demonstrates that a strong and independent judiciary is vital in any country which respects the rule of law. It is vital that this principle be recognised throughout Europe. It is desirable that the position of judges in Europe should be strengthened by ensuring that their voice is heard by all authorities which deal with the training, appointment, responsibilities and working conditions of the judges. Even in matters of integration, the experience of judges is vital, not in the interests of judges themselves but in the interests of the citizens of each country, all of whom have the right to rely upon an independent and effective judiciary.

The European Association of Judges, which is a non-political association representing judges from 31 European countries, strongly supports the decision of the Committee of Ministers of the Council of Europe to establish a consultative council of European judges, and has both the experience and the expertise to assist and become a member of the new consultative council.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

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### **Resolution**

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#### *Concerning the New Scheme of Remuneration of Magistrates in France*

The EAJ is concerned about the recent decision of the French government to introduce a discretionary performance bonus into magistrates' salary. With this bonus system the government aims to get an influence on the performance of the magistrates, judges and public prosecutors.

The EAJ notes that international standards of judicial independence set in Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe "On the independence, efficiency and role of judges", UN Basic Principles on the Independence of the Judiciary, The Universal Charter of the Judge and the European Charter on the Statute for Judges clearly prohibit the interconnection of judicial remuneration with the results of the judges' work as creating a possibility of pressure aimed at influencing judicial decisions and behaviour of judges. In the light of the mentioned international standards, any variations in judicial remuneration (reduction of remuneration as well as grant of additional bonuses) connected to the "productivity" of judicial activities is intolerable.

National legislation and governments which have the competence to determine judicial remuneration should respect the very essential, universally recognized principle of judicial independence.

The EAJ observed, that no other country has introduced a similar system, which infringes the independence of the judiciary (only Spain recently chose a system which in some aspects is alarming as well)

The EAJ therefore asks the authorities in France to reconsider the recently created system of a discretionary performance bonus for judges.



The Meeting of the European Association of Judges held in Valle de Bravo, Mexico, on 31<sup>st</sup> October 2004, attended by representatives of 30 member states, adopted this

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## Resolution

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### *Concerning the Judicial Reform Proposed by the Italian Government*

The current Italian system governing judicial careers, which is based on a complete separation between grade and function, has so far granted to the judiciary a degree of independence which ranks among the highest in the world. It has implemented fully the constitutional provisions according to which “judges are subject only to the law” (Article 101 (2)) and “judges differ from each other only in the diversity of their functions” (Article 107 (3)).

The European Association of Judges (E.A.J.), Regional Group of the International Association of Judges (I.A.J.), expresses its deep concern about these envisaged reforms which threaten the independence—both “external” and “internal”—of the judiciary and hamper the effectiveness of the administration of justice.

The E.A.J. observes that the current Italian judicial system—which has been taken as a model in many other European countries, particularly in the new democracies of Central and Eastern Europe—is one which complies fully with the international standards set by documents of worldwide reference, e.g. the U.N. Basic Principles on the Independence of the Judiciary (1985), the Recommendation No R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges (1994), the European Charter on the Statute for Judges of the Council of Europe (1998), the E.A.J.’s Judges’ Charter in Europe (1993) and the I.A.J.’s Universal Charter of the Judge (1999).

National legislation and governments should respect the essential and universally recognized principle of judicial independence.

The EAJ therefore asks the authorities in Italy to reconsider the above-mentioned proposals.



The Meeting of the European Association of Judges held in Valle de Bravo, Mexico, on 31<sup>st</sup> October 2004, attended by representatives of 30 member states, adopted this,

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### **Resolution**

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#### *Concerning the Work of Presidents and Officials of Associations of Judges*

The right of judges to associate is granted by many international documents. To make this guarantee effective the associations must have the possibility to act freely and without pressure.

Therefore, Presidents and other officials of judges' associations should not be subject to any pressure which could reflect on his/her career, evaluation of work or in disciplinary matters due to their functions in the association be it from non judicial authorities or be it from judicial authorities.

In consequence all authorities should respect these necessities and provide an environment which ensures the possibility of associations and their officials to act freely.



The Meeting of the European Association of Judges held in Valle de Bravo, Mexico, on 4<sup>th</sup> November 2004, attended by representatives of 30 member states, adopted this,

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### **Resolution**

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#### *Concerning the Status of Judges in the Slovak Republic*

During 2003 several legislative changes were adopted in the Slovak Republic which affected the position of judges and of judicial power. They aroused concern among the members of the European Association of Judges (Regional Group of the International Association of Judges or IAJ with 35 member associations from all over Europe), while meeting in Valle de Bravo, Mexico on the 31st of October, 2004.

The EAJ is concerned about anything that affects the role of the judge in helping to develop the law and the vindication of individual rights. It is not on behalf of the judges themselves that The EAJ is stressing the freedom and independence of the judge in thinking and decision-making. The judge must feel free to take decisions which are not yet fully accepted: this approach should not become the victim of a judge's wish to avoid financial claims of whoever thinks he is the victim of a judge's decisions. A judge needs a broad margin of discretion.

Citizens – not only Slovakian – have to accept that the courageous decisions which they sometimes ask their judges to make, are being threatened by making those judges liable for other than wilful and intended distortions of the law.

The wish to avoid civil liability of judges as much as possible is not intended to make judges immune from criticism and correction. Also a penal correction is in no way out of order in the case of the intended acceptance of bribes and other forms of corruption, which make it clear that the judge at no time intended to fulfil his tasks properly and act neutrally.

It is against this background that the EAJ is worrying about new legislation in Slovakia.

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A new Act on Liability for Loss Caused by Public Power was adopted that makes it possible for the State of Slovakia to recover from a judge the full amount of damages paid in compensation to a citizen where the judge is deemed to be responsible for the loss under either of the following circumstances:

- a) it is due to unnecessary procedural delays or
- b) it is due to a wilful decision that obviously is not based on legal order.

This type of legislation in the view of the EAJ seems contrary to Opinion 3 of the Consultative Council of Judges to the Council of Europe (CCJE) on the principles and rules governing judges' conduct, in particular ethics, incompatible behaviour and impartiality, which is projected to result in another Recommendation of the Council of Europe. In paragraph 76 of that Opinion the CCJE considers that “

- i) the remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals (whether with or without permission of the court);
- ii) any remedy for other failings in the administration of justice (including for example excessive delay) lies only against the state;
- iii) it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.”

The Slovak legislation also includes a new way of creation of disciplinary senates in the Basic act on judges positions by stating that a person other than a judge may be elected as a member of a disciplinary senate and that representatives of executive and legislative powers may propose a significant (decisive) number of the disciplinary senate members. In this way the legal situation in Slovakia from 1 November 2003 on creates a real area for direct or indirect actual influence of the other two state powers on the performance of judges – even the more so when there is the threat of recovery from the judge. This is quite the opposite to what Principle I, point 2, letter b) of Recommendation R (94) of the Committee of Ministers of the Council of Europe d.d. 13 October 1994 aims at, stating that “the executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges”. The legislation on the civil liability of judges in Slovakia shortly after its becoming an EU member state, is also a threat to the *acquis communautaire*.

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The Slovak introduction of the judge's duty to pay the amount successfully claimed for loss is contrary to Article 16 of the UN Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, stating that „without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions“.

The new legislation further on seems not to be thoroughly considered. In senate cases where the secrecy of voting of senate members is defined by law, it means either the introduction of the principle of collective guilt of several judges together taking a decision in a senate although an unknown member may have voted against the decision, or the impossibility of sanctions against judges who took decisions in senate cases compared to possible sanctions in cases decided by a single judge.

Rules about civil liability of judges jeopardise judicial independence in more than one way:

Not only does an undue influence result from the freedom of the State to take or not to take recourse on the judge's personal finances for rewarded damages, but also at stake is the independent thinking and decision making, upon which a citizen relies. The EAJ is not urging this issue on behalf of the personal interests of judges themselves, but on behalf of the independent decisions they are expected to take.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

On regular meeting of the European Association of Judges held in Bruges, Belgium, on 21<sup>st</sup> and 22<sup>nd</sup> of April 2005 of 31 states unanimously delivered this

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### **Resolution**

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#### *Concerning the New Scheme of Remuneration of Judges in Sweden*

The EAJ is concerned about the recent proposal from the Swedish government, through the National Courts Administration to introduce remuneration for judges based on an assessment of their individual performance. With this system the government aims to influence the performance of judges.

The EAJ notes that international standards of judicial independence set in Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe "On the independence, efficiency and rule of judges", UN Basic Principles on the Independence of the Judiciary, The Universal Charter of the Judge and the European Charter on this Statute for Judges clearly prohibit the interconnection of judicial remuneration with the results of the judges' work as creating a possibility of pressure aimed at influencing judicial decisions and behaviour of judges. In the light of the mentioned international standards, any variations in judicial remuneration (reduction of remuneration as well as grant of additional bonuses) connected to the "productivity" of judicial activities are unacceptable.

National legislation and governments, which have the competence to determine judicial remuneration, should respect the very essential, universally recognised principle of judicial independence.

The EAJ therefore asks the authorities in Sweden to reconsider the recently proposed system of remuneration for judges.



The European Association of Judges at the meeting in Vilnius on 20<sup>th</sup> May 2006 unanimously adopted the following

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### Resolution

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#### *Concerning the French Conseil Supérieur de la Magistrature*

- 1) It is now widely recognised that the principles of separation of powers of the state and the independence of the judiciary are indispensable to safeguard the rights of citizens.
- 2) It is also widely recognised that these principles can be enforced by the creation of an independent High Judicial Council or an analogous body<sup>1</sup> in which a majority of its members are elected by their peers<sup>2</sup>
- 3) In France these principles have been adopted by prescribing the election of members of the Conseil Supérieur de la Magistrature (C.S.M.) by all judges and prosecutors.
- 4) The EAJ notes that in France it is suggested that the composition of the C.S.M. be modified to make possible an appreciable increase in the number of members appointed by the political authorities thus upsetting the current balance of power
- 5) The EAJ expresses its grave concern with such developments, because a High Judicial Council or analogous body must have a strong degree of independence or autonomy from political or other authorities, or else there is always a danger that it may undermine judicial independence<sup>3</sup> and public trust in the judiciary.

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1 See

(a) Conclusions of the 1<sup>st</sup> Study Commission of the IAJ on the topic “The Role and Function of the High Council of Justice or analogous bodies , Vienna 2003 [www.uim-iaj-org](http://www.uim-iaj-org);

(b) Statute of the Judges in Europe (Council of Europe);

(c) Recommendation 12/94 Comity of ministers of Council of Europe;

(d) Opinion No. 1 CCJE.

2 Conclusions No 3 of the 1. Study Commission see footnote 1.

3 Conclusions No 2 of the 1. Study Commission see footnote 1.



The European Association of Judges at the meeting in Vilnius on 20<sup>th</sup> May 2006 unanimously adopted the following

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### **Resolution**

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#### *Concerning the Salary Systems Related to Discretionary Performance Bonus*

The European Association of Judges at the meeting in Vilnius on 20<sup>th</sup> May 2006 unanimously adopted the following

The European Association of Judges notes with concern the practice in some jurisdictions of subjecting the remuneration of Judges to a discretionary element in the form of a performance bonus.

It is the view of the Association that this practice is objectionable on various grounds. In addition it conflicts with European standards and presents a real threat to the independence of judges.

In the first place, the criteria by which the eligibility of a particular judge for a performance bonus is assessed are not objective and transparent.

In the second place, the practice creates a temptation to give greater weight to quantity rather than to quality. Criteria of productivity, based on cost and speed, cannot be applied to the specific jurisdictional function of judges. The quality of judicial decisions depends on the ability of judges to do justice in individual cases and not on the number of judgements they are able to deliver in a given time. Subjecting the remuneration of judges to criteria of so-called "efficiency" (such as cost and time) creates the danger of deterioration in the quality of justice: quality will be sacrificed on the altar of quantity.

In view of these considerations the European Association of Judges strongly opposes the principle that a part of the remuneration paid to judges should consist of a performance bonus.



The European Association of Judges at the meeting in Vilnius on 20<sup>th</sup> May 2006 unanimously adopted the following

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### **Resolution**

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#### *Concerning the Disciplinary Action against Judges*

The EAJ notes, with dismay, that in some European states there has been a tendency by members of the executive and of the legislature (a) to demand that individual judges give further public accounts for their decisions in particular cases beyond those already given in accordance with their judicial duty and (b) to demand disciplinary action against individual judges in respect of their decisions in particular cases.

The EAJ urges all concerned to note that:

- a) Any attempt by the executive or legislature to enquire into the decisions of an individual judge or the reasons for decisions concerning a particular case constitutes an unwarranted interference with the judicial process and a direct threat to the independence of the judiciary;
- b) Any attempt by the executive or legislature to take disciplinary action against a judge in relation to a decision in a particular case or the reasons for it is an unwarranted interference with the judicial process; a direct threat to the independence of the judiciary and contrary to the principle of judicial control of disciplinary matters concerning judges.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

The European Association of Judges at the meeting in Siófok, on 27<sup>th</sup> September - 2<sup>nd</sup> October, 2006 unanimously adopted the following

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### **Resolution**

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#### *Concerning the Situation of the Judiciary in Romania*

The EAJ expresses its grave concern at legislative developments in Romania aimed at introducing administrative control over court decisions which have already been subject to the appeal procedures and also making judges subject to disciplinary and pecuniary liability for their decisions.

The EAJ emphasizes that:

- 1) Judicial independence is a necessary pre-requisite to the rule of law and a fundamental guarantee of a fair trial. As one of the main pillars of a democratic state, it must be respected and upheld by all state institutions, including the legislature.
- 2) Article 2 of the Basic Principles on the independence of the judiciary, endorsed by the United Nations General Assembly in November 1985, stipulates that “the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.
- 3) The European Court of Human Rights has frequently reiterated the well-established principle that it is the sole responsibility of the judiciary to give a binding decision which must not be altered by a non-judicial authority.
- 4) Universally recognized standards of judicial independence prohibit any inappropriate or unwarranted interference with the judicial process and require that decisions of judges should not be subject to any revision outside

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the appeals procedures as provided for by law<sup>4</sup>. The government or the administrative powers of the state should not be able to take any decision which invalidates judicial decisions retroactively, save for the exceptional cases of amnesty, pardon or similar<sup>5</sup>.

- 5) Being the independent guardians and interpreters of the law, judges should not be subject to disciplinary action as result of the mere exercise of their judicial functions, only save for cases where malicious conduct of a judge is proved. More importantly, judges should not be forced to operate under the threat of a financial penalty the presence of which may, however sub-consciously, affect their judgments<sup>6</sup>. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal; other judicial failings which cannot be rectified in this way should, at most, lead to a claim by the dissatisfied litigant against the State. Judges personally should enjoy absolute freedom from liability in respect of claims made, directly against them relating to the exercise of their functions in good faith<sup>7</sup>.

The EAJ considers that any legislative proposals violating the aforementioned universal standards constitute an unjustifiable interference with judicial independence and therefore are incompatible with the very essence of a democratic state based on the rule of law.

The EAJ urges the competent Romanian authorities to ensure universally recognised standards of judicial independence are upheld at all times and that no measures are taken which might compromise them.

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4 See e.g. UN Basic Principles on the Independence of the Judiciary, Article 4; Recommendation of the Committee of Ministers of the Council of Europe No. R(94) 12 On the Independence, Efficiency and Role of Judges, principle I (2) (a) (i).

5 Recommendation of the Committee of Ministers of the Council of Europe No. R(94) 12 On the Independence, Efficiency and Role of Judges, principle I (2) (a) (iv).

6 See Opinion No 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraphs 5.5, 5.3.

7 UN Basic Principles on the Independence of the Judiciary, Article 16; European Charter on the Statute for Judges, paragraph 5.2, Opinion No 3 of the CCJE, paragraph 5.5.



The European Association of Judges at the meeting in Valencia on 30<sup>th</sup> March 2007 unanimously adopted the following

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### **Resolution**

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#### *Concerning Criticism of the Hungarian Organization of the Courts in Hungary*

- (1) The European Association of Judges notes with much concern the report of the Hungarian Association of Judges dated 13 March 2007 concerning criticism of the Hungarian Organization of the Courts, Hungarian Presidents of Courts and Hungarian Judges made by some politicians and different types of media in Hungary.
- (2) The European Association of Judges resolves to
  - (a) refer this matter to its standing committee on “Problems Concerning Associations of Member States” and
  - (b) to request that standing committee to produce a report on the situation in Hungary and, if appropriate, a draft resolution. Such report and (if appropriate) resolution should take into account accepted international standards. The report (and if appropriate) a resolution should be prepared and circulated so that they can be discussed and acted upon by the EAJ at its next meeting in Trondheim, Norway, on 23 September 2007;
  - (c) to empower the standing committee to send a mission to Hungary to investigate the position if the committee thinks it proper to do so.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

The European Association of Judges at the meeting in Valencia on 30<sup>th</sup> March 2007 unanimously adopted the following

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### Resolution

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#### *Concerning the Pension System of Hungarian Judges*

Whereas:

- (1) The European Association of Judges had unanimously approved at its meeting in Vilnius in June 2006 the conclusions of its working party on salaries and pension systems for European Judges, one conclusion of which was:

*“A general cause of concern is the situation of judges after retirement. .... Often it is argued that after retirement judges should be treated in the same manner as all other citizens in a particular country. This argument overlooks the important point that a guarantee of a financially safe future in retirement will be a powerful incentive to independence during a judge’s period in office.”*

- (2) The European Charter on the Statute for Judges, (which is an essential document of the Council of Europe which was set out in the Council’s THEMIS PLAN activities for the development and consolidation of democratic stability in 1998), states in its Article 6.4.

*“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”*

The European Association of Judges notes with much concern that the Hungarian system of pension for judges on their retirement results in a large difference between the income of a judge in office and one who has retired. As a result of this unacceptably large difference, it is the conclusion of the European Association of Judges that the two fundamental principles set out in internationally approved documents quoted above are not fulfilled by the Hungarian system of pensions for judges on their retirement.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

The European Association of Judges at the meeting in Trondheim on 23<sup>rd</sup> September 2007 unanimously adopted the following

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### Resolution

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*Concerning the Legislative Developments in Poland, aimed at  
Reducing the Competences of the Judicial Self-government*

The EAJ expresses its grave concern at legislative developments in Poland aimed at reducing the competences of the judicial self-government in favour of the executive branch of the government, namely the Minister of Justice, and at weakening the guarantees of judicial independence in Poland. In particular the EAJ has concern over recent amendments to “Ustawa o ustroju sądów powszechnych” (Regulation of the organisation of the public courts) in regard to :

- a) the powers given by the Regulation to the Executive concerning the appointment of a president of the court;
- b) the power of re-allocation of a judge to another court without the consent of that judge;
- c) the transfer of the power to take disciplinary measures against a judge from the court to the public prosecutor’s office.

In expressing this concern the EAJ urges the Polish authorities to be vigilant to observe universally recognised standards of judicial independence. The independence of judges is first and foremost linked to the maintenance of the separation of powers<sup>8</sup>. This principle is one of the necessary prerequisites for society to have a confidence that justice will be administered by an independent and impartial tribunal. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges.

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<sup>8</sup> See Explanatory memorandum to Recommendation of the Committee of Ministers of the Council of Europe No. R(94) 12 On the Independence, Efficiency and Role of Judges

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Universally recognized standards of judicial independence require that the procedures of judicial appointment and promotion, including the appointment of presidents of courts, are free from any political considerations<sup>9</sup>. The authority taking the decision on the selection and career of judges should be independent of the government and administration<sup>10</sup>.

Application of disciplinary measures or any other kind of legal liability to judges must be organised in such a manner so that the actual independence of judges is not violated.

International standards require, that any charge or complaint made against a judge in his/her judicial and professional capacity is processed expeditiously and fairly under an appropriate procedure, complying with the due process requirements of the European Convention on Human Rights, and free from any political considerations<sup>11</sup>.

Expanding the powers of the Executive in the disciplinary proceedings of judges and limiting the scope of judicial independence creates the legal pre-conditions to exert influence on the activity of courts and creates an undemocratic and illegal precedent which denies the universally recognised principles of separation of powers and independence of judges and courts.

The EAJ urges the competent Polish authorities to ensure universally recognised standards of judicial independence are upheld at all times and that no measures are taken which might compromise them.

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<sup>9</sup> See Opinion No. 1 of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 17

<sup>10</sup> See Recommendation of the Committee of Ministers of the Council of Europe No. R(94) 12 on the Independence, Efficiency and Role of Judges, Principle I. 2. c

<sup>11</sup> See e.g. Article 17 of the Basic Principles on the independence of the judiciary, endorsed by the United Nations General Assembly in November 1985, “. Recommendation No. R (94) 12, Principle VI(2) and (3)



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

The European Association of Judges at the meeting in Trondheim on 23<sup>rd</sup> September 2007 unanimously adopted the following

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### **Resolution**

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#### *Concerning the Remuneration of Judges in Sweden*

- (1) The EAJ notes with concern the new system for the remuneration of Swedish judges, in particular the individualisation of judge's salaries.
- (2) The EAJ further notes that international standards of judicial independence set in Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe "On the independence, efficiency and role of judges", UN Basic Principles on the Independence of the Judiciary, The Universal Charter of the Judge and the European Charter on the Statute for Judges, clearly prohibit any link between a judge's remuneration and the results of his or her judicial work. Such an interconnection creates the possibility of pressure on judges, which might either have the aim, or the effect, of influencing the judge's decisions and behaviour.
- (3) The EAJ has concluded that the introduction of variations in judicial remuneration based on non-objective criteria, which are linked to performance of judicial activities, is contrary to well-established international standards of judicial independence.
- (4) The EAJ urges that all national legislation concerning judicial remuneration and all national government official and executives with the responsibility for determining judicial salaries accord full respect to the fundamental and universally recognized principles of judicial independence.
- (5) The EAJ observes that no other member state of the Council of Europe has introduced a system whereby the salaries of individual judges are separately determined according to the performance of judicial duties and activities.
- (6) The EAJ therefore urges the Swedish government to ensure that the system for determining the salaries of Swedish judges is entirely consistent with the well-established international standards of judicial independence referred to above.



The European Association of Judges at the meeting in Trondheim on 23<sup>rd</sup> September 2007 unanimously adopted the following

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### **Resolution**

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#### *Concerning the Disciplinary Liability of Judges in the Ukraine*

1. The EAJ expresses its grave concerns about the situation in the Ukraine regarding the issue of the disciplinary liability of judges.
2. The EAJ emphasises the principle of judicial independence is a necessary pre-requisite to the maintenance of the rule of law and is a fundamental requirement of a free trial. All rules concerning the disciplinary liability of judges must be based on the premise that judges are the independent guardians and interpreters of the law. To exercise these functions properly, judges must not be under the threat of any disciplinary actions by either the state or dissatisfied parties, unless the judge has been found guilty of criminal conduct, or a wilful failure to act in accordance with established professional judicial standards. Were it otherwise, judges would be operating under the ever-present threat of penalties which may, however subconsciously, affect their decisions<sup>12</sup>.
3. The single fact that a judgment has been set aside, overruled or varied by an appellate court must never be a ground for disciplinary proceedings against a judge<sup>13</sup>. Therefore any attempt by the executive or legislature to take disciplinary action against a judge because of a particular decision in a case or the reasons for that decision, (in the absence of criminal conduct or breach of established professional judicial standards), would be an

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<sup>12</sup> See UN Basic Principles on the Independence of the Judiciary, Article 16; European Charter on the Statute for Judges, paragraph 5.2, Opinion No 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraphs 5.5, 53

<sup>13</sup> See Recommendation of the Committee of Ministers of the Council of Europe No R(94)12, principle I (2) a (i), d

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unwarranted interference with the judicial process and a direct threat to the independence of the judiciary<sup>14</sup>.

4. The grounds for judicial liability to disciplinary action, in particular the liability to be removed from office, must be defined precisely by law<sup>15</sup>. Precise reasons must be given for the institution of disciplinary proceedings and the position of disciplinary liability<sup>16</sup>.
5. Accordingly, disciplinary proceedings against judges must only be instituted in cases where there is a prima facie case that there has been judicial misconduct that is so serious and flagrant such as to require disciplinary sanctions<sup>17</sup>.
6. Disciplinary proceedings against a judge should be determined only by an independent tribunal which operates procedures which guarantee full rights of defence. When such a tribunal is not itself a court, then its members must be appointed by an independent authority, with substantial judicial representation being chosen democratically by other judges. Further there must be a right of appeal from the initial disciplinary body (whether it is itself a court or other tribunal) to a court<sup>18</sup>.
7. The EAJ considers that any legislative proposal that violate these universal standards will constitute an unjustifiable interference with judicial independence. They would be incompatible with the fundamental requirements of a democratic society based on the rule of law.
8. The EAJ urges the competent authorities of the Ukraine to ensure universally recognised standards of judicial independence are upheld at all times and that no measures are taken which might compromise them.

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14 Resolution concerning the disciplinary actions against judges, adopted by the European Association of Judges at the meeting in Vilnius on 20<sup>th</sup> May 2006

15 See Recommendation of the Committee of Ministers of the Council of Europe No R(94) 12, principle V (2)

16 Opinion No 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraphs 64-65

17 Opinion No 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraph 60

18 See e.g. Recommendation of the Committee of Ministers of the Council of Europe No R(94) 12, principle V (3), Opinion No 1 (2001) of the CCJE on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 60, Opinion No 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraphs 71-72



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

European Association of Judges at its meeting held in Turku (Finland) on 23<sup>rd</sup> May 2008 has adopted in unanimity the following resolution

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### **Resolution**

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*Concerning the Composition of the Judges' High Council  
(Conseil Supérieur de la Magistrature) of France*

1. The European Association of Judges takes notice of the modifications planned by the French government regarding the composition of the Judges' High Council (*Conseil Supérieur de la Magistrature*) whereby there would be only a minority of judges on the authority in charge of their career and discipline, but a majority of representatives directly nominated by the executive and legislative powers.
2. The European Association of Judges recalls and emphasises that, with regard to the competent authority in the field of the judges' selection, career and discipline, the European authorities have, for many years, established fundamental rules in order to preserve the independence and the impartiality of justice.
3. In this regard, the European Association of Judges refers to :
  - Recommendation R94-12 of the Council of Europe Ministers' committee, which requires that the competent authority should be independent from the government and the administration.
  - The European Charter on the Statute for Judges enacted by the Council of Europe in 1998, which requires the creation of an authority independent from the executive and legislative powers within which at least half of its members have been elected among the judges by their peers.
  - The Consultative Council of European Judges, which, in its opinion n°10 adopted in Strasbourg in October 2007 which requires the creation of an authority within which there is a substantial majority of judges elected by their peers.
4. The European Association of Judges also emphasises that these standards have not been enacted for the benefit of judges or their corporate interest, but as the sole means of ensuring the necessary independence of Justice within a democratic society.
5. The European Association of Judges expresses its grave concern with regards these developments in France. It appeals to the French government to observe scrupulously the standards universally acknowledged of an independent judiciary, which is essential if citizens are to have full trust and confidence in the judicial system.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

European Association of Judges at its meeting held in Turku (Finland) on 23<sup>rd</sup> May 2008 has adopted the following

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### **Resolution**

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#### *Concerning the Remuneration of Judges in Poland*

The European Association of Judges has been made aware of certain concerns of the Polish Judges Association. They are:

- a. the mechanism for the creation of judges' remuneration and which is set every year is dependent on the political will of the executive power.
- b. the lack of any legal remedy for the judges to challenge the executive power to change the level of the basis of their remuneration.
- c. the mechanism for the creation of judges remuneration which is inadequate. It has lead to a decreasing of judges remuneration and a blurring of the separation of powers settled in the art. 10 of the Polish Constitution.
- d. creation by the executive power of a basis of judges' remuneration on a level which is inconsistent with art. 178 par. 2 of the Polish Constitution and which weakens every year the value of the judge's remuneration

The European Association of Judges is concerned:

1. that the Polish system of remuneration for judges results in a considerable difference between the level of real income of a judge and other national economic indexes.
2. As a result of this unacceptably large difference, it is the opinion of the European Association of Judges that the fundamental principles set out in such internationally approved documents as a The European Charter on the Statute for Judges, The Universal Charter of Judges, The Judges Charter in Europe and the European Charter are not fulfilled by the Polish government.

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In expressing the above concerns, the EAJ urges the Polish authorities to be vigilant to observe those universally recognised standards of judicial independence. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges.

The EAJ urges the competent Polish authorities to ensure universally recognised standards of judicial independence are upheld at all times and that no measures are taken which might compromise them.



Palazzo di Giustizia - Piazza Cavour 00193 Roma - Italia

European Association of Judges at its meeting held in Turku (Finland) on 23<sup>rd</sup> May 2008 has adopted the following

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### **Resolution on Slovenia**

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#### *Concerning the Remuneration of Judges in Slovenia*

The European Association of Judges at its meeting in Turku, Finland, has been informed again by the Slovenian Association of Judges about the current situation regarding remuneration of judges in Slovenia. The Slovenian Association of Judges is a member of the European Association of Judges.

The information given by the Slovenian Association of Judges refers, inter alia, to a decision of the Constitutional Court of the Republic of Slovenia from December 2006 declaring the salary reform of judges unconstitutional, which decision is being ignored by Government and Parliament.

In addition the European Association of Judges has been made aware:

1. The remuneration of judges is disproportionate to the burden of their responsibility and is insufficiently balanced with the remuneration of members of the two other Powers of the State.
2. The salary reform relating to judges in Slovenia has reduced in effect the remuneration of judges while increasing the salaries for public employees thus creating an unacceptable imbalance.

The European Association of Judges emphasizes the importance of compliance with the obligations in the following international legal instruments, guaranteeing, inter alia, the financial independence of judges. These international documents and principles among others are:

Principle III 1.b of the Recommendation No R (94) 12 of the Committee of Ministers of the Council of Europe: "...judges remuneration should be guaranteed by law" and "commensurate with the dignity of their profession and burden of responsibilities"

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Point 61 of the Opinion No 1 of the Consultative Council of European Judges (CCJE):

“The CCJE fully approved the European Charter’s statement (in principle 6.1.)”

Principle 6.1. of the European Charter on the Status of Judges : “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.”

Article 13 of the Universal Charter of the Judge adopted by the International Association of Judges in 1999: “The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on results of the judges work and must not be reduced during his or her judicial service.”

Paragraph 8 of the Judges Charter in Europe (adopted by the European Association of Judges in 1998): “Judicial salaries must be adequate to ensure that the judge has true economic independence and must not be cut at any stage of a judge’s service”.

The European Association of Judges is gravely concerned with the non-compliance, by Government and Parliament, of a judgment of the Constitutional Court concerning judges, resulting in the undermining of the role of judges and trespassing upon the principle of separation of Powers.

The European Association of Judges requests the Government and Parliament of Slovenia to comply with the decision of its Constitutional Court and its international obligations regarding the remuneration of its judges in the establishment of a system for judges’ salaries that is balanced.

The European Association of Judges recognizes that only by the provision of proper remuneration can a credible separation of powers be obtained.

The European Association of Judges is supportive of the endeavours of the Slovenian Judiciary in this regard.

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