

## DECLARATION OF MINIMAL PRINCIPLES ABOUT JUDICIARIES AND JUDGES' INDEPENDENCE IN LATIN AMERICA

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The statement of human rights protection requires the possibility of filing a claim before justice for its recognition. The title to a right is not complete and the right itself does not comply with what it promises if it is not possible to file a claim for that right when confronted with lack of knowledge from third parties or the State itself. Therefore, a legal action is part of the essential core of each right, and without it, rights do not exist, or they are mutilated, precisely there where their promises have to become real.

The approval of international instruments, such as Conventions, Agreements and Pacts for the protection of Human Rights has meant an important advance in the consolidation of the Rule of Law and the protection of freedoms and other fundamental rights belonging to men. Some of these instruments expressly included the judicial surety as one of the institutional sureties evidencing presuppositions to help in the claiming of the operational effectiveness of other rights. Such is the case, for example, of the American Convention on Human Rights Protection that in its 8<sup>th</sup> section sets forth a list of judicial sureties, complemented by the provisions of Section 25 by which it recognizes as such, among others, the right to an actual legal custody, in charge of an independent and impartial judge, who shall decide on the case within a reasonable period of time. These sureties, formulated in a different way can also be seen in the International Pact of Civil and Political Rights, in section 14. Such judicial sureties presuppose a determined capacity and quality of judicial response, which necessarily must become consolidated with certain minimal structural conditions that shall prevent that in actions, these sureties established by the instruments of human rights protection, remain in a declamatory level, because the judicial powers in general and the judges in particular do not have the objective support that will enable them to act as they are pointed out they should. Therefore, acting on this understanding, the independence of the judicial powers and the independence and impartiality of judges are the previous and necessary conditions for the real validity of fundamental rights.

### I – GENERAL PRINCIPLES

1. – The fundamental rights and the freedom of individuals recognize as a protection reinsurance the right to an actual legal custody, in charge of independent and impartial judges, members of equally independent judiciaries, who can count with the conditions that allow them to ensure the magistrates those objective presuppositions for the exercise of their jurisdiction within the highest standards. The signatory States have committed themselves to permanently ensure the support of the State political powers

for the consolidation of independence of the judicial powers and the judges, avoiding any action or decision that could politically, economically, socially or functionally condition the independence of judges or of the judiciary as a power of the State. Likewise, they assume the compromise of adopting the decisions and actions that would better contribute to the abovementioned objectives, ensuring favorable conditions for a better exercise of an independent and impartial magistracy, only subjected to the Constitutions and the law, with a strict respect for the regulatory hierarchical principle and free from all external pressures, conditionings or improper interferences.

2. – As independence and impartiality of a concrete judge is indispensable for the correct exercise of a jurisdictional function, these qualities shall be preserved in the internal environment of the Judiciaries so that they do not result affected directly or indirectly by the exercise of disciplinary activities, indictment activities or the activities corresponding to the ruling of the same power. Judges shall receive the guarantee that, due to their jurisdictional activity and the way in which they decide the cases trusted to them, they shall not be rewarded or punished, and that those decisions are only going to be subjected to the revision of superior courts as it is indicated by their own internal rights.
3. – In their exercise of jurisdiction, judges are not subjected to any superior judicial authorities, without prejudice of the power that the same authorities have to revise the jurisdictional decisions through legally established resources.
4. – The attacks to judicial Independence should be sanctioned by the law, which must provide the mechanisms through which the judges who feel disturbed or upset in their independence could obtain the support of the superior bodies or the Judiciary government.

## **II – MINIMAL CONDITIONS FOR THE PROTECTION OF THE JUDICIARY’S INDEPENDENCE.**

5. – The signing States must ensure the following points for a better protection of the general objectives:
  1. That the judges of the highest courts are selected using criteria that would protect their absolute Independence, especially as regards the rest of the other State powers and the political forces. The most preferable and main selection criterion should be a proven knowledge of the Law in the exercise of their judgeship, the legal profession, the legal teaching or any other similar activity, and their compromise with the assurance of fundamental rights and legal sureties.
  2. That everything related to the administrative and disciplinary management of the members of the judiciary is the responsibility of the judiciary proper, who shall organize it by means of politically independent bodies with delegated self-governing powers with the force of law, integrated by a substantial and representative group of constitutionally appointed judges, preferably with a judicial career, with an

organization and a way of acting that would ensure an autonomous ruling of the judiciary and an independent and impartial acting of judges and courts.

3. That for the compliance of their constitutional duties, the Judiciaries are the ones to fix the judicial politics, having all the necessary resources that would allow them to act with independence, swiftness and efficacy. For that purpose, it is necessary to recognize the power of the judiciary to elaborate its own budget and participate in all the decisions related to the material means for their acting.
4. That the management of the budgetary resources should be exercised by each Judiciary, in an autonomous way.
5. As regards attacks to the Independence of the judiciaries, or of the judges, the political powers shall assume, within the framework of their respective competences and in the exercise of their own authority, all those determinations and actions necessary to ensure that independence.

### **III.- MINIMAL CONDITIONS FOR THE PROTECTION OF JUDGES' INDEPENDENCE AND IMPARTIALITY.**

#### **6. JUDICIAL STUDIES.-**

All member States have to establish judicial studies.

Admission to the judiciary and judicial studies should be adjusted to the following governing regulations:

1. Selection and promotion of judges should be ruled by public and transparent proceedings, based on the weighting criteria of training, background and professional eligibility.
2. Selection must be ensured by an independent body integrated by a substantive and representative number of judges.
3. Ordinary judges (or of an equivalent category) should be selected in public tests open to Lawyers or Bachelors in Law. If possible and as a condition for their application, in every case, previous to the performance of the position, there shall be a training course or period administered by the judiciary.
4. Promotion of judges should be ruled by public and transparent proceedings, based on weighting criteria of seniority, professional eligibility and merit.

#### **7. GUARANTEES AND INCOMPATIBILITIES.-**

In order to strengthen Independence and impartiality, there are certain guarantees and incompatibilities that have to be stated, such as:

1. The impartiality of the judge, as an indispensable condition for the exercise of the jurisdictional function, has to be real, effective and evident for the citizenship.
2. The judges:

b.1. – have to be appointed in a permanent way, and cannot be appointed for a period of time.

b.2. – are immovable, making it impossible to be transferred or promoted (with the exception of a voluntary application) or removed, suspended, licensed, disposed of, separated or in any other way retired from the exercise of their functions and the place for which they were appointed, with the exception of cases unequivocally prescribed by the law and by means of a prosecution process of their behavior, in a contradictory process with broad guarantees of self defense.

b.3. – shall not be disciplinarily prosecuted or held responsible for the content, or sense of their adopted judicial decisions.

b.4.- shall not be able to perform any other public or private service, remunerated or not, with the exception of teaching, social sciences researching, or their participation in non-profit entities for public welfare, activities which could be performed with the proper arrangement of the determined hourly incompatibility.

b.5. – cannot be appointed for service commissions extraneous to the judiciary without an express consent and to the extent that those activities do not violate the general rules of incompatibility.

b.6. – cannot join political parties, nor perform political party activities, nor act in the capacity of a politician, with the exception of those expressly authorized or imposed by the Constitution or the Legislation of each country as an obligation owed to the government.

## **8. – TRAINING**

The dynamic evolution of the legal system and the new realities and challenges that have to be faced in the judicial activity stipulates the need of judge training, as a right as well as a liability, having to ensure that:

1. The right of professional training has to be recognized for everyone without any discrimination.
2. The free determination of judges for the selection of their training options has to be respected, both as regards its content and in relation to academic offers.

## **9. – REMUNERATIONS AND RETIREMENT PENSION PLAN.**

The remunerations established for judges as well as their retirement pension plans must allow them to comply with the execution of their duties, exclusively and free from all conditionings, without the implementation of damaging or beneficial measures as regards interference in their independence and impartiality. As a consequence, the following has to be established:

1. Judges must receive a remuneration that is sufficient to ensure their economical independence conforming to the proper requirements imposed by the dignity of their jobs. The compensation has to be sufficient to cover all their needs as well as the needs of their direct family group so that it is unnecessary to resort to additional incomes.
2. Remuneration cannot depend on appreciations or assessments of the judges' activities and cannot be reduced, for any reason, as long as they continue in the job.
3. Judges have the right of retirement receiving a remuneration that corresponds with their level of responsibility, maintaining a reasonable relation with the salary corresponding to their position before retirement.
4. After retirement, judges cannot be forbidden to exercise any other legal activity due to the fact of having previously occupied a legal post.
5. Any changes as regards age or other essential conditions in the retirement plan, either if they restrict or expand the access to retirement, cannot have a retroactive effect, except with the willing acceptance of the person affected.

#### **10. -DISCIPLINARY SYSTEM.-**

The disciplinary system shall be imposed according to the principles of legal standards and non-retroactivity as regards a contradictory proceeding and with respect for the right to defense. The judicial guarantees provided for ordinary criminal processes shall be applied. In this regard:

1. The law shall classify, in the most concrete possible way the facts that constitute a disciplinary infringement/violation for Judges. Sanctions cannot be adopted if the motives were not previously foreseen by the law and they should observe predetermined procedural regulations.
2. The entity with disciplinary competence shall exclusively be part of the same Judiciary.
3. The disciplinary procedure could be requested by any individual or legal entity. It shall be organized in a contradictory way and with the highest respect for the right of defense.
4. The most severe disciplinary sanctions can only be adopted by a qualified majority.

#### **11. – CIVIL AND CRIMINAL RESPONSIBILITY**

Given the special nature of their conflict resolving function, ordinarily exercised in situations of interests in conflict and recognizing that the growth in judicial litigation in the region constitutes a structural problem for the Judiciary, the following is set forth:

1. As a general rule, that judges are not legally liable in a personal way for their decisions, with the only exception of cases of willful misconduct and/or fraud.

2. In cases of repeated omission or excessive and unjustified delay that could be attributed to the judge, they shall be only disciplinarily accused of negligence.
3. In cases of civil responsibility, it can only be demanded after having exhausted all possibilities of procedural and appellation claims and only by the legally aggrieved party.
4. Both the civil action, when admitted, and the criminal action directed against judges, and the case of their arrest, shall be exercised according to conditions that cannot have as an objective an influence on their jurisdictional activity.

## **12.- IMMUNITIES.-**

There should be no judicial immunities that could signify a privilege for judges; however, they shall have a special regime especially directed to protect them so that the proceedings of legal actions against themselves cannot be used to make them functionally dependent on any other State Power or of society itself or to hinder arbitrary retaliations or the blockage of the execution of their duties. Thus, judges shall have their own code of laws and limitations to their anticipated arrest or prison, except in the cases of flagrant crimes, with immediate presentation before the corresponding Court.

## **13.- RIGHT OF ASSOCIATION.-**

The professional right of association of judges shall be fully recognized, in order to allow them to determine their statutory and ethical regulations as well as any other type of rules and to ensure the defense of their legitimate interests.

## **14.- MATERIAL RESOURCES.**

It is the duty of other State public authorities to provide the judiciary with the necessary resources for its independent, efficient and swift performance.

## **15.- JUDICIAL ETHICS.**

In the exercise of their jurisdictional function, judges have the duty of trying to enforce the law and administer justice in conditions of efficiency, quality, accessibility and transparency, with respect for the dignity of the individuals that appear demanding the service, stating at all times the Independence and impartiality of their performance.

## **16.- EXTENSION.**

The provisions of this treaty shall be applied to the Office of the Public Prosecutor, Office of the Attorney General and the Counsel for Minors and Disabled, as well as to the court assistants, in case the nature of their respective functions allow them to be applied.