Il Comitato consultivo dei giudici europei ha sentito la necessità di intervenire sul tema scottante dell'indipendenza dei giudici rispetto agli altri poteri dello Stato e perciò ha elaborato la Magna Carta dei giudici. In essa si son voluti fissare i principi fondamentali per assicurare indipendenza e imparzialità dei giudici, per garantire un corretto funzionamento della giustizia e dare risposte certe ai cittadini. La Carta rivendica:
1) l'importanza del principio fondamentale di uguaglianza tra accusa e difesa;
2) l'importanza dell'indipendenza dei procuratori in linea con la rule of law;
3) l'opportunità che gli Stati istituiscano, se non già previsti, organi di autogoverno dei giudici per garantire la loro indipendenza, composti o esclusivamente da giudici o da una maggioranza sostanziale di giudici eletti da altri giudici;
4) l'opportunità che i giudici adottino regole deontologiche distinte dalle regole disciplinari;
5) che sia esclusa la responsabilità penale dei giudici per errori non intenzionali nell'esercizio delle loro funzioni.

LEGGI DI SEGUITO LA MAGNA CARTA DEI GIUDICI EUROPEI ...

Strasbourg, 17 November 2010 CCJE (2010)3 Final
cONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
MAGNA CARTA OF JUDGES
(Fundamental Principles)

Introduction:

On the occasion of its 10th anniversary, the CCJE adopted, during its 11th plenary meeting (Strasbourg, 17-19 November 2010), a Magna Carta of Judges (Fundamental Principles) summarising and codifying the main conclusions of the Opinions that it already adopted. Each of those 12 Opinions, brought to the attention of the Committee of Ministers of the Council of Europe, contains additional considerations on the topics addressed in this document (see www .coe.int/ccje
).

- Final version subject to possible formal modifications -
MAGNA CARTA OF JUDGES (Fundamental Principles)

Rule of law and justice

1.The judiciary is one of the three powers of any democratic state. Its mission is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.

Judicial Independence

2.Judicial independence and impartiality are essential prerequisites for the operation of justice.

3.Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to the other powers of the State, to those seeking justice, other judges and society in general, by means of national rules at the highest level. The State and each judge are responsible for promoting and protecting judicial independence.

4.Judicial independence shall be guaranteed in respect of judicial activity and in particular in respect of recruitment, nomination until the age of retirement, promotions, irremovability, training, judicial immunity, discipline, remuneration and financing of the judiciary.

Guarantees of independence

5.Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence.

6.Disciplinary proceedings shall take place before an independent body with the possibility of recourse before a court.

7.Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.

8.Initial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system.

9.The judiciary shall be involved in all decisions which affect the practice of judicial functions (organisation of courts, procedures, other legislation).

10.In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law.

11.Judges shall ensure equality of arms between prosecution and defence. An independent status for prosecutors is a fundamental requirement of the Rule of Law.

12.Judges have the right to be members of national or international associations of judges, entrusted with the defence of the mission of the judiciary in the society.

Body in charge of guaranteeing independence

13.To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their statute as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions.

Access to justice and transparency

14.Justice shall be transparent and information shall be published on the operation of the judicial system.

15.Judges shall take steps to ensure access to swift, efficient and affordable dispute resolution; they shall contribute to the promotion of alternative dispute resolution methods.

16.Court documents and judicial decisions shall be drafted in an accessible, simple and clear language. Judges shall issue reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing. Judges shall use appropriate case management methods.

17.The enforcement of court orders is an essential component of the right to a fair trial and also a guarantee of the efficiency of justice.

Ethics and responsibility

18.Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training.

19.In each State, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions as well as the disciplinary procedure.

20.Judges shall be criminally liable in ordinary law for offences committed outside their judicial office. Criminal liability shall not be imposed on judges for unintentional failings in the exercise of their functions.

21.The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

22.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.

International courts

23.These principles shall apply mutatis mutandis to judges of all European and international courts.