“At What Level Will Be the Implementation of Judicial Independence and Impartiality?”

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The asked question is: “At What Level Will Be the Implementation of Judicial Independence and Impartiality?” Everybody knows that the search for greater judicial independence for judges is a long history. Search or research?
The early history of judging demonstrates the development of a tradition of impartiality in ancient Egypt, now a core principle of western legal traditions. Ancient Egyptians fostered this tradition of impartiality over thousands of years to the extent that it became a fixture of contemporary conceptions of adjudication.

A belief in judicial independence, however, existed in the United States alongside an equally strong belief in democratic accountability. The Declaration of Independence (1776) indicted King of England because he made colonial.judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries. Judicial independence has been a core political value in the United States since the founding of the republic.

Judicial independence means different things to different people. At the least it refers to the ability of judges to decide disputes impartially despite real, potential, or proffers of favor. It is perhaps most important in enabling judges to protect individual rights even in the face of popular opposition.
Independence is seen as necessary because of the notion that an effective, legitimate judiciary must be free of outside pressures on its internal operations.

Grounds :

Thus, the question is not a recent one and for decades the quoted grounds are always the same: A series of **international instruments** sets out the recognition of judicial independence by the international community:

On an human rights point of view, we must quote the 1945 Charter of the United Nations where the peoples of the world affirmed their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

The tenth article of the 1948 Universal Declaration of Human Rights establishes that "[e]veryone is entitled in full equality to a fair and public hearing by an *independent and impartial tribunal*, in the determination of his rights and obligations".

- the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights that both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,
- the International Covenant on Civil and Political Rights recognizes the right of "all persons" to be treated equally before the courts.Article fourteen states that "[i]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."[1]

And also other international instruments, such as the 1948 American Declaration of the Rights and Duties of Man, the 1950 European Convention on Human Rights, the 1969 American Convention on Human Rights, and the 1981 African Charter on Human and Peoples" Rights refer to the right to access an independent or impartial court.

On a constitutional point of view, the independence of judges is first and foremost linked to the maintenance of the separation of powers.

[1] Bertrand Favreau, *L'indépendance des avocats et des magistrats : une condition de l'état de droit.* European Commission, Seminar on the Rule of Law, Bruxelles, 4 July 2003, in Revue Hellénique des droits de l'Homme - n° 24 -Sakkoulas, Athènes, 2004 pp.1101-1132 (in French only) and *The independance of lawyers***,** Strasbourg, Council of Europe Publishing, 2003.(French and English)

In order to avoid political disorder, it is appropriate, writes Montesquieu, that these separate government bodies are able to "act in concert" and mutually balance themselves out within each of their respective spheres of competence.

The doctrine of the "separation of powers" has traditionally proposed that the state is divided into the separate and distinct arms of Executive, Legislature and Judiciary, whereby each arm acts as a "check and balance" on the others. The principle of the separation of powers finds its connection with the principle of national sovereignty according to a layout described in 1959 by French Dean Georges Vedel: *"Each representative body exercising sovereignty that does not mainly belong to it has no competence to do so except to the extent that power is delegated to it; Parliament only represents national sovereignty through its legislative power, the Administration only represents it in through its executive power, and a judge cannot speak in the name of the nation unless he is executing a judicial task; thus, none of the representative bodies of the nation can speak on the nation's behalf, since each exercises only one of the attributes of sovereignty."*

On a specific way, the first quoted instrument, are the **the Twenty** United Nations "**Basic Principles on the Independence of the Judiciary " of 1985** « Basic Principles ») [2] (also completed with Guidelines on the Role of Prosecutors, 1990)[3] which aim, according to the preamble, **was** to "assist Member States in … securing and promoting the independence of the judiciary", illustrates this approach by establishing the general principle that judges must be free from "any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

In Europe : The European Charter on the statute for judges[4] (1998), **referring to " to** Article 6 of the Convention for the Protection of Human Rights **proclaimed its concerns** « **to see the promotion of judicial independence, necessary for the strengthening of the**

[2] Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

[3] Guidelines on the Role of Prosecutors, 1990 adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, 27 August to 7 September 1990.

[4] European Charter on the statute for judges adopted by at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998,Strasbourg, 8 - 10 July 1998.

pre-eminence of law and for the protection of individual liberties within democratic states, made more effective »,

Magna Carta of Judges (adopted in 2010) 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.

Most constitutional theories require that the judiciary is separate from and independent of the government, in order to ensure the rule of law - that is, to ensure that the law is enforced impartially and consistently no matter who is in power, and without undue influence from any other source.

Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence.

An independent and transparent justice constitutes an essential element of a State founded on the Rule of Law. As such, it is a fundamental aspect of the rule of law[5].

The recent European ***Recommendation of 2010*** states that judicial independence is a fundamental right of each individual as safeguarded by Article 6 of the Convention.

Recommendation CM/Rec(2010)12 in paragraph : "Judicial independence and the level at which it should be safeguarded" :

3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. **As such, it is a fundamental aspect of the rule of law.**

Instead, the 1985 Basic Principles set out an unqualified definition of judicial independence that raises complex questions about what could be judicial independence. As said in the Basic principles preamble : : *frequently there still exists a gap between the vision underlying those principles and the actual situation"*

[5] Recommendation CM/Rec(2010)12 in paragraph 4.

How far must states go before their judiciaries become sufficiently independent? By leaving the definition of judicial independence in unqualified terms, the Principles provide no answer to this key question.

How is the necessary separation between the judiciary and sources of undue influence achieved?

A different view emerged in the early 90s.

In January 1993, the Association of European Magistrates for Democracy and Freedom (MEDEL), referring to Basic principles and their "Rules"[6] concerning the effective implementation, produced a Draft Additional Protocol to the European Convention on Human Rights, called the Elements of European Statute on the Judiciary (known as the "Palermo Declaration")[7], stating that *"A democratic, independent and transparent justice constitutes an essential element of a State founded on the Rule of Law".(*Preamble) and that *"a Supreme Council of Magistrates [must] …guarantee the independence of magistrates*.3.1.

Nonetheless, we can find recent new sources to help us.

In 2002, in the **Bangalore Principles of Judicial Conduct** (**Value 1**) - ***Independence : Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.***

In Europe, the Recommendation No R (94) 12 of the Committee of Ministers to member states on the independence, efficiency and role of judges (« Recommendation n° R (94) ») was recently updated - and more replaced - with a new Recommendation to member states on judges' independence, efficiency and responsibilities adopted on 17.11.2010 the

[6] Procedures for the Effective Implementation of the UN Basic Principles on the Independence of the Judiciary, recommended by the Committee on Crime Prevention and Control and adopted by the UN Economic and Social Council in Resolution 1989/60, 15th plenary meeting, 24 May 1989.
[7] Elements of a european statute of the judiciary (Palermo declaration), Medel, Drawn up in Palermo on January 16 1993.

Committee of Ministers of the Council of Europe Recommendation CM/ Rec(2010)12 [8] taking into account significant changes that have occurred since then.

Magna Carta of Judges (november 2010) [9] (Fundamental Principles) summarising and codifying the main conclusions of the Opinions that it already adopted.

First question could be: **What is Judicial Independence?**

We must inderline that in the definition of independence, a link (or a confusion) is sometimes established between independence and impartiality. Both are fundamental rights safeguarded by Article 6 of the European Convention but :

- Independence protects judicial decision making from improper influence from outside the proceedings.
- Impartiality guarantees that the judge has no conflicts of interest or association with the parties or with the subject of the trial that might be perceived to compromise objectivity (Recommendation, paragraph 11).

Traditionnally, the authors have broken down the general idea of judicial independence into two distinct concepts: decisional independence and institutional, or branch, independence. Decisional independence refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law. Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government.

What an independent judiciary actually means?

A survey of judiciaries from around the world demonstrates the diversity of approaches to this task, producing different sources of undue influence in each state. These differences are likely the result of both cultural and institutional structures unique to each state community.

[8] Recommendation CM/ Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities *(Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies).*

[9] Magna Carta of Judges, adopted by the Consultative Council of European Judges of the Council of Europe on the occasion of its 10th anniversary, the Consultative Council of European Judges CCJE during its 11th plenary meeting in Strasbourg, 17 November 2010.

The relativity of identifying sources of undue influence by each state community makes the construction of a universal list of threats to adjudicative impartiality unrealistic; instead, sources of undue influence must be based on each community"s view of who presents a real risk of interference.

In truth, it exists as many causes of lack of independence for the judiciary as possibilities of interference. By exemple, interference can come from various sources:

· The executive, the legislature, local governments
· Individual government officials or legislators
· Political parties
· Political and economic elites
· The military, paramilitary, and intelligence forces
· Criminal networks
· The judicial hierarchy itself[10]

Once a source has been identified, the community must then determine the points of interaction in the relationship between judges and the source where the potential for undue influence would cause a loss of confidence in the judiciary.

The relativity in identifying sources of undue influence and the context in which undue influence has the potential to arise explains the different views of judicial independence across legal systems. In many countries the Minister of Justice's role is often suspected of representing an actual or potential threat to judicial independence. In the opposite, in varying degrees and different ways, the Minister of Justice of western continental Europe are conceived as part of the checks-andbalances mechanisms intended to insure court efficiency and accountability, and also to guard against the perils that the corporate leanings of a bureaucratically recruited judiciary.

For instance, interference in individual judicial decisionmaking was so common under socialist law, especially in the Soviet Union, that the term.telephone justice. was widely

[10] see *Guidance for Promoting Judicial Independence and Impartiality*. Agency for International Development (Washington DC: USAID Office of Democracy and Governance), revised edition January 2002, p. 17.

used to refer to the particular phenomenon of judges deciding cases based on instructions received by telephone from a government official.

For example, somes years ago was frequently quoted the case of German judges to be members of political parties, sit on city councils and even campaign for political office[11]. German judges engaging in these activities are not automatically considered subject to undue influence by the state, whereas the active political involvement by Canadian judges would be seen to undermine their adjudicative impartiality. The Canadian Judicial Council advises its judges that they must cease all political activity when they are appointed. Recommendation 2010, paragraph 21determines which as incompatible with judges' independence activities are such as an electoral mandate, the profession of lawyer, bailiff, notary, ecclesiastic or military functions, plurality of judicial functions, etc.

Bangalore Principles *(2002) Individual and institutional independence :* 23. Judicial independence **refers to both the individual and the institutional independence** required for decision-making.

The 2010 Recommendation (*Recommendation CM/Rec(2010)12)* in Chapter : "Judicial independence and the level at which it should be safeguarded' places emphasis on the *"independence of every individual judge and of the judiciary as a whole"* and makes a difference between :

"External independence" Chapter II - a guarantee of freedom towards institutions and public authorities, media and civil society

And the notion of **"internal independence"** - Chapter III – which aims at protecting individual judge in their decision making work from undue internal influences hierarchy, internal organisation, distribution of the cases ;

In the recent **Magna Carta of Judges** highlighting all the fundamental principles relating to judges and judicial systems :

3. Judicial independence shall be *statutory, functional and financial.*

Judicial Independence *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***

[11] Donald P. Kommers, "Autonomy versus Accountability: The German Judiciary" in Peter H. Russell & David M. O"Brien, eds., *Judicial Independence in the Age of Democracy*..

the highest level. The State and each judge are responsible for promoting and protecting judicial independence.

The following are the last uptaded criteria to proctec for a state : External or internal, *statutory, functional and financial.*

1- EXTERNAL OR STATUTORY INDEPENDANCE,

The Basic Principles first article requires *each state to guarantee judicial independence in its constitution or domestic law, and admonishes all government institutions to respect the independence of the judiciary.*

Even though the Principles leave key questions on the nature of independence unanswered, they require states to guarantee judicial independence in their constitutions or domestic laws.

At What Level ? In the scope of hierarchy of norms, the fundamental principle is that the statute for judges must be set out in internal norms at the highest level. For states membres of Council of Europe,there seems to be no choice as countries binded by international aggreements and principally by the European Convention.

a) A guarantee must be *enshrined at the highest possible legal level of the country.* :

- **« Basic Principles » 1985 1.).** ***The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.*** *It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*

- **Recommendation CM/Rec(2010)12 paragraph 7.** *The independence of the judge and of the judiciary should be* ***enshrined in the constitution or at the highest possible legal level in member states****, with more specific rules provided at the legislative level.*

European Charter on the statute for judges (1998): *1.2. In each European State, the fundamental principles of the statute for judges are* ***set out in internal norms at the highest level,*** *and its rules in norms at least at the legislative level.*

Universal Statute of the Judge (1999) [12] **Art.2** : *Status Judicial independence must be* ***ensured by law*** *creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.*

In brief, the principle is that the grarantee must be enacted in the Constitution, in the case of European States which have established such a basic text and enacted at the legislative level, which is also the highest level in States with flexible constitutions. This requirement protects the latter from being amended under a cursory procedure unsuited to the issues at stake. In particular, where the fundamental principles are enshrined in the Constitution, it prevents the enactment of legislation aimed at or having the effect of infringing them. It submits any potential damage to a constitutional control.

b) The safeguard the independence of the judiciary and of individual judges must be protected by an authority independent of the executive - The Councils for the judiciary

There seems to exist since the last fifteen years, a movement towards the development of bodies in charge of guaranteeing independence

In January 1993, the *"Palermo Declaration"* stated that there shall be a supreme council of magistracy, at least half of whom are judges and also including appointees of the parliament. The model statute also declared that the supreme council will produce a budget for the courts, manage the administration, and control recruitment, assignment and discipline of judges, thus guaranteeing judicial independence.

[12] The Universal Statute of the Judge (lnternational Association of Judges, (UIM) 1999).of the International Association of Judges as general minimal norms. The text of the Charter has been unanimously approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

The Council of Europe made a similar recommendation in the 1994 Recommandation.

The ***European Charter*** (1998), ***1.3.*** requires that : " ***In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention*** *of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".*

The "***Magna Carta***", as officially adopted in November 2010. (**13.) a**sks that **"** *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 status as well as the organisation, the functioning and the image of judicial institutions".*

Independent bodies, authority independent of the executive and legislative powers, body in charge of guaranteeing independence, specific body are representing of the different names given to the *Councils for the judiciary,* in the *Magna Carta* of November 2010. (**13.).**

a) Councils for the Judiciary are bodies that are designed to insulate the functions of appointment, promotion, and discipline of judges from the partisan political process while ensuring some level of accountability.They have been established, in a number of states, variously named independent authorities and non-executive bodies **Their objective is to protect and safeguard the independence of the judiciary.** They are involved to a greater or lesser extent in the selection, career, professional training of judges, disciplinary matters and court management.

In that purpose, independent authorities **OR** Councils for the judiciary **must be**

- ***independent bodies,*** **Rec(2010)12 26.**
- ***established by law or under the constitution,*** **Rec(2010)12 26.**
- ***that seek to safeguard the independence of the judiciary and of individual judges*** **(Rec(2010)12 26.)**

Councils for the judiciary :

- should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions. (Rec(2010)12 28.)

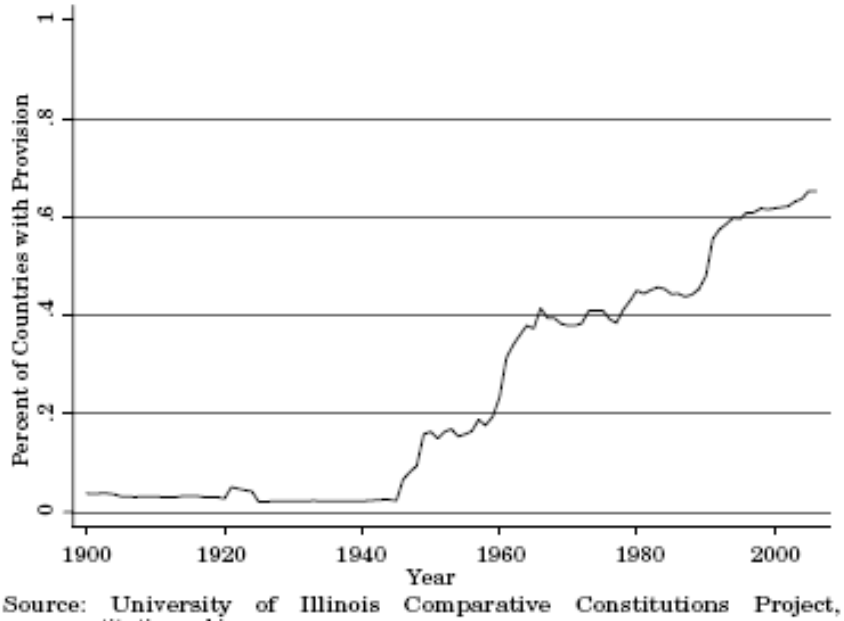
- But, … should not interfere with the independence of individual judges. (Rec(2010)12 29.)

In a number of states, variously named independent authorities have been established. Their objective is to protect and safeguard the independence of the judiciary. They are involved to a greater or lesser extent in, inter alia, the selection, career, professional training of judges, disciplinary matters and court management.

In 2000, among the councils in 121 different nation-states :

- For ninety-three countries, the Judicial Council is mentioned and described in the country's constitution[13].
- For twenty-eight other countries, the Judicial Council is not mentioned in the Constitution, or it provides no detail on the composition and powers of the Judicial Council. In these countries, the Judicial Council is left to ordinary law.

FIGURE 3A: CONSTITUTIONALIZED JUDICIAL COMMISSIONS OVER TIME



Source: University of Illinois Comparative Constitutions Project, www.constitutionmaking.org

b) Among them: the so called "French-italian model" :

[13] Por a comparative analysis of Councils for the Judiciary, see *Guidance for Promoting Judicial Independence and Impartiality*. Agency for International Development (Washington DC: USAID Office of Democracy and Governance), revised edition January 2002, 216 p..

In France, the Superior Council of Magistracy Council of the Judiciary (*Conseil Superieur de la Magistrature)* recalls that under the Constitution, it ensures the independence of the judiciary, including the President of the Republic is guarantor. It has been changed in its composition, functions and powers three times since its creation, in order to protect judicial independence.

Although the *Conseil Superieur de la Magistrature* was mentioned for the first time in France in the Law enacted August 31, 1883 on judicial organization with a provision for all the Chambers of the Cour de Cassation to sit in order to render decisions on disciplinary matters against Magistrates, it was only in 1946 under the Constitution of the 4th Republic that the Conseil Superieur de la Magistrature was actually created as an independent constitutional body. [**Was it the first ?** Some experts have said a precursor for judicial councils can be seen in the use of formal nominations committees composed of various governmental officials. *Ex :* Constitution of Albania, 1925 (judicial nominations from special committee of judges, prosecutors, and Minister of Justice).]

Under the constitutional amendment of July 23, 2008 which amended Article 65 of the French Constitution, the Supreme Council of Magistracy (CSM) is composed - since January 23rd of the present year - of two bodies or formations, one of which has jurisdiction in respect of judges and the other in respect of public prosecutors. The constitutional reform of 23 July 2008 provides that the CSM can be referred for disciplinary action by an individual, provided that in proceedings concerning the conduct of a judge is likely to be characterized as disciplinary. This prerogative is now available to the litigant is a key innovation of this reform.

In France, on last February 3, 2011, the new Council with the two bodies or formations (Judges and Prosecutors) met for the first time. The President of the French Republic is no longer the président of CSM. The formation with jurisdiction over judges is chaired by the first President of the Court of Cassation. It includes, in addition, five judges and a prosecutor, a Conseiller d'Etat appointed by the Council of State, a lawyer and six qualified persons who are neither in Parliament nor the judiciary or administrative order. The President of the Republic, the President of the National Assembly and the Senate President appoint two qualified individuals. The appointments made by the President of each House of Parliament are subject to review only the relevant standing committee of the Assembly

concerned.

The formation competent against prosecutors is chaired by the Prosecutor General at the Court of Cassation. It includes, in addition, five public prosecutors and a judge, and a Conseiller d'Etat, a lawyer and six qualified persons mentioned above.

In Italy, the constitution, enacted in 1948, provides in order to protect judicial independence, that all decisions concerning judges and prosecutors from recruitment to retirement (e.g., promotions, transfers, discipline, and disability) be within the exclusive competence of a council composed prevalently of magistrates (i.e., judges and prosecutors) elected by their colleagues.Italy's judicial council (*Consiglio Superiore della Magistratura*), created in 1958, has often clashed with Prime Minister Berlusconi,☒was the first to fully insulate the entire judiciary from political control.

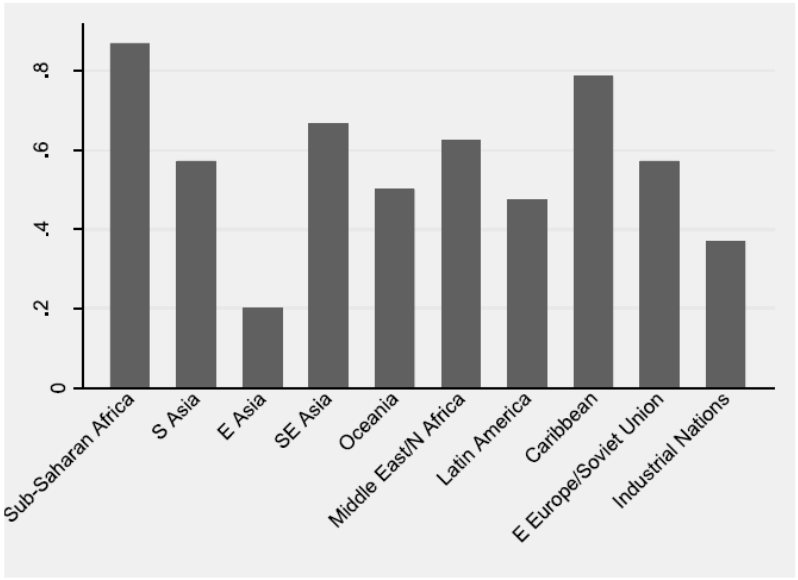
The French and Italian cases were motivated by a concern about excessive politicization and consequently granted extensive independence to the judicial power. The French-Italian model has been exported in a certain way to Latin America and other developing countries.

Spain and Portugal have slightly different models introduced after the fall of the dictatorships in the mid 1970s, in which judges constitute a significant proportion of the members. Recently, in England, the Constitutional Reform Act 2005 introduced several substantive changes in England and Wales, including a statutory duty on government members not to influence judicial decisions. The most far-reaching reforms were the abolishment of the Lord Chancellor with the transfer of his judicial functions (as the most senior judge in England and Wales) to the President of the Courts of England and Wales (formerly known as Lord Chief Justice of England and Wales), and the creation of a new Supreme Court, with twelve judges independent of and removed from the House of Lords with their own independent appointment system.And crucially, a **Judicial Appointments Commission** was created, responsible for recommending candidates for judicial appointments on a more transparent basis and based solely on merit.

In the Netherlands, in 2002, a Council for the Judiciary (*Raad voor de Rechtspraak*) was created to take primary responsibility for the organization and financing of the Dutch Judiciary.The creation of the Council for the Judiciary followed the Leemhuis

Commission's advice to the Minister of Justice by the report "Updating the Administration of Justice", in 1998 The primary impetus for reforms has not been the judicialization of politics but rather a perceived need for more accountability and better allocation of resources.

FIGURE 3b: **CONSTITUTIONALIZED JUDICIAL COMMISSIONS BY REGION IN 2000**



Source: University of Illinois Comparative Constitutions Project, www.comparativeconstitutionsproject.org

See Nuno Garoupa and Tom Ginsburg *Guarding the Guardians: Judicial Councils and Judicial Independence,* The law school the University of chicago November 2008.

c) Judicial councils will vary in terms of their competencies and their structures. Councils also vary in composition.

The councils in civil law jurisdictions vary in their relationship with the Supreme Court. In some countries, such as Costa Rica and Austria, the judicial council is a subordinate organ of the Supreme Court tasked with judicial management.

In other countries, judicial councils are independent bodies with constitutional status. Further, in some countries councils govern the entire judiciary, while in others they only govern lower courts.

It must be noticed that some councils have final decisionmaking in all cases of promotion, tenure, and removal. Judicial salaries are also technically within their authority but usually tempered by the department in charge of the budget (typically the Ministry of Finance). Judicials Councils could be classified within strong judicial council with *extensive*

competences (discipline, removal, promotion, appointments), with *intermediate competences* (appointments only) or *minimal competences (*weak judicial councils with housekeeping functions only)[14].

In the light of the various experiences observed, the changes noted since the early 1990s and the latest developments on this subject, the Recommandation considered necessary to recommend guidelines for the organisation, composition and functioning of such councils (Rec, paragraph 26).

Some legal systems traditionally adhere to the alternative which consists of securing the independence of each individual judge in the decision making process while entrusting **executive bodies** with certain administrational matters.

The 2010 Recommandation says that "both approaches to judicial independence being equally acceptable, no part of the Recommendation should be read as preferring one of these traditional models over the other". The Recommendation, similar to the 1994 Recommendation, does not seek harmonisation of member states' legislation**.**

While councils for the judiciary have proved to be helpful in preserving judicial independence their mere existence does not, in itself, guarantee it.

Therefore it is necessary to regulate their composition, appointment of members, respect for pluralism, e.g. to reach a gender balance, transparency and reasoning of their decisions and to ensure that they are free from political or corporate influences.

d) Composition :

The council is composed of three possible types of members, judges, members of other government bodies or their appointees, lawyers and even members of the civil society.

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[14] Nuno Garoupa and Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, The law school of the University of Chicago, November 2008, p.25

But, there is a conventional wisdom that assumes that judicial majorities on the judicial council promote independence.

If judges are a majority on the council, the some are suspecting that judges utilize the council to exercise self-government and maintain independence. If judges are a minority on the council, it could be said that the council is a device to constrain the judges and render them more accountable. These two types of councils reflect quite different goals.

Nevertheless, the shape of the council will depend on whether or not the judges in the council behave as a homogeneous body.

According to **the Palermo declaration of January 16, 1993 (3.2.)***At least half of the Supreme Council of Magistrates is composed of magistrates elected by their peers according to the rule of proportional representation. It comprises, besides, personalities appointed by parliament. …*

As for the euoropean "Recommendation" :.***Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism insidethe judiciary.****(*** Rec(2010 12) paragraph 27).

Recommendation CM/ Rec(2010)12 (- Chapter VI - status of the judge: selection and career, tenure and irremovability, remuneration, training and assessment) **:**. *At least half of their members should be judges chosen by their peers. (* Rec(2010 12) paragraph 46).

Magna Carta of Judges (2010) : *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. (Magna Carta* of November 2010. (**13).**

European Charter on the statute for judges (1998).

1.3. the statute envisages the intervention *of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.*

As regards the composition and the requirement to have no less than *"half of judges elected by their peers"*, it should be underlined that in member states where prosecutors have a similar status to the one of judges, they may be members of the council for the judiciary. (Recommendation, paragraphs 27 and 28).

II - WHAT MUST BE PROTECTED BY LAW ?

What must be set out in internal norms at the highest level, and its rules in norms at least at the legislative level ?

The answer is :

- **According to the *European Charter* *on the statute for judges*** 1998. ***: "…every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge… 1.3.***
- **According to the Magna Carta** as officially adopted in November 2010.**13.: "*…all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions.* "**
- **According to the Recommendation CM/ Recommendation(2010)12 Chapter VI - Status of the judge :** ***"Selection and career, Tenure and irremovability, Remuneration, Training, Assessment…"***

If independance according Council of Europe Recommendations are "soft" law, the Court of Strasburg case law are make its safeguards practical and **effective**. We can perceive clearly the problematic in the judgement Sahiner v. Turkey, in which The Court *reiterates that in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 paragraph 1,* ***regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence*** [15](see, among many other authorities,

[15] *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, p. 281, § 73, Sahiner v. Turkey, n° 29279/95, September 2001, CEDH 2001-... § 35

And as for the existence of “impartiality”, "*it appears difficult to dissociate the question of impartiality from that of independence, as the arguments advanced by the applicant to contest both the independence and impartiality of the court are based on the same factual considerations*[16]..

In order to establish whether the judiciary can be considered ‘independent’ of the other branches of government, regard is usually had, amongst other things, to the manner of appointment of its members, to their term of office, to their conditions of service; to the existence of guarantees against outside pressures; and to the question whether the court presents an appearance of independence.

Thus, there could be no independence for the judiciary without two key safeguards: **security of tenure of judges and non-interference of the executive in managing the careers of judges.**

That is to say how are they recruited? Accordind to what criteria their careers are depending ? How can it be stopped? It concernes, qualifications, selection and training Conditions of service and tenure Discipline, suspension and removal, assignment of cases.

- **Security of tenure - Selection and career of judges**

A minimum conditions for judicial independence is : Security of tenure: i.e. a tenure, whether for life, until an age of retirement, or for a fixed term, that is secure against interference by the execut(with some differences for elected judges)ive or other appointing authority in a discretionary or arbitrary manner.

It is essential that the independence of judges should be guaranteed when they are selected and throughout their professional career.

"Basic Principles" Conditions of service and tenure

[16] Sahiner v. Turkey, § 35

« Basic Principles article 10 *« -Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall* ***safeguard against judicial appointments for improper motives.*** *In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory. ».*

- **shall be adequately secured by law.**

"**Basic Principles**" Conditions of service and tenure :

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, ***shall have guaranteed tenure until a mandatory retirement age*** *or the expiry of their term of office, where such exists.*

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

"**Recommendation CM/Rec(2010)12" :**

« 44. ***Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities.*** *Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.*

45. There should be ***no discrimination against judges or candidates*** *for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.»*

As the **Magna Carta(2010)** emphacizes : 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.***

The **Recommendation Rec(2010)12 (**- Chapter VI - status of the judge: selection and career, tenure and irremovability, remuneration, training and assessment) **confers an essential role *on independent authorities established* to decide on the selection and career of judges**. (**Rec(2010)12,** paragraph 46).

In some States, this is ensured by special independent and competent bodies which give advice to the government, the Parliament or the Head of State which in practice is followed or by providing a possibility of appeal by the person concerned. Other States have opted for systems involving wide consultations with the judiciary, although the formal decision is taken by a member of government.

Tenure and irremovability are qualified as " key elements of the independence of judges in the 2010. (**Rec(2010)12,** paragraph **49.)**

Universel Statut of Juge (Security of office Art.8) – states that :

A judge must be appointed for life *or for such other period and conditions, that the judicial independence is not endangered.*
A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure.
Any change to the judicial obligatory retirement age must not have retroactive effect.

The **Recommendation Rec(2010)12 (**- Chapter VI - status of the judge: selection and career, tenure and irremovability, remuneration, training and assessment)
Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists." (**Rec(2010)12** paragraph 49.)

The terms of office of judges should be established by law. *A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions.*

Early retirement should be possible only at the request of the judge concerned or on medical grounds.**Rec(2010)12** 50.

*A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.***Rec(2010)12** 52.

- **Functionnal independence in decision making**

And independence with respect to matters of administration that relate directly to the exercise of the judicial function.

An external force must not be in a position to interfere in matters that are directly and immediately relevant to the adjudicative function, for example, assignment of judges, sittings of the court and court lists.

In conformity with principle no. 2 of the ***Basic Principles***, 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.**"*

Principle 3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

Principle 4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.

The 2010 Recommendation states that in individual cases, judges should be able to decide on their own competence as defined by law without any external influence. (**Rec(2010)12,** paragraph 10).

*The judge must be able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect**, from any authority, including authorities internal to the judiciary.***

For the **Recommandation,** that excludes for instance: superior courts instructions to judges, the allocation of cases within a court according to objective pre-established criteria, etc.

Therefore, judicial hierarchical interferences in the exercise of judicial functions cannot be permitted. Instructions from presidents of courts should never interfere in the decision making in individual cases by judges (**Rec(2010)12,** paragraph 22).

The assessment of the judge's activity is the appraisal of his/her professional performance following modalities which may vary between judicial systems (hierarchical authority, panels of judges, council for the judiciary, etc.). **Arrangements for such assessment must be consistent with the constitutional and other legal provisions of member states.** (**Rec(2010)12,** paragraph 58).

There are various systems for the distribution of cases on the basis of objective pre-established criteria. These include the drawing of lots, distribution in accordance with alphabetical order of the names of judges or by assigning cases to divisions of courts in an order specified in advance (so-called "automatic distribution") or the sharing out of cases among judges by decision of court Presidents**.**

Appropriate rules for substituting judges could be provided for within the framework of rules governing the distribution of cases. Caseload and overburdening are valid reasons for the distribution or removal of cases provided such decisions are taken on the basis of objective criteria (**Rec(2010)12,** paragraph 24).

- **disciplinary, suspension or removal proceedings**

« Basic Principles ***:*** *17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.*

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

La Charte européenne sur le statut des juges :

*« **5.1**. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges,within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctionswhich may be imposed is set out in the statute, and their imposition is subject to the principle ofproportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.».*

Le Statut Universel du Juge de l'Union Internationale des Magistrats (UIM)

Art.10 - Civil and penal responsibility

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

Art.11 - Administration and disciplinary action

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant. Where this is not ensured in other ways that are rooted in established and proven tradition, judicial administration and disciplinary action should be carried out by independent bodies, that include substantial judicial representation. Disciplinary action against a judge can only be

taken when provided for by pre-existing law and in compliance with predetermined rules of procedure.

Must be quoted the financial security: i.e. the right to salary and pension which is established by law and which is not subject to arbitrary interference by the executive in a manner that could affect judicial independence.

- **financial security and economical independance :**

mut also be established by law.

1. **<u>At individual level :</u> adequate resources (adequate, sufficient)**

According to Principle 7 of the **Basic Principles**, it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

European Charter on the Statute for Judges (1998), : *11. The term of office of judges, their independence, security, **<u>adequate remuneration</u>**, conditions of service, pensions and the age of retirement shall be adequately secured by law. (*point 11. right to adequate remuneration).

The **Universal Charter of the Judge** (1999) **:** *"The judge must receive **sufficient remuneration** to secure true economic independence. The remuneration must not depend on the results of the judges work and must not be reduced during his or her judicial service adding : "a right to retirement with an annuity or pension in accordance with his or her professional category. "* **(Art.13 - Remuneration and retirement).**

Remuneration **<u>should be laid down by law.</u>**

Recommandation 2010 <u>: The principal rules of the system of remuneration for professional judges should be laid down by law. (Rec(2010)12</u> paragraph <u>53.)</u>

"Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. *Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges." (***Rec(2010)12 paragraph *54.).***

Magna Carta (2010) *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.***

2. At an institutionnal level :

International instruments recognise the fact that the Executive and the Legislative have control over the budget of the judiciary.

However, since that poses a potential threat to the independence of the latter power, point 1.8 of the European Charter on the Statute for Judges (1998), provides for the need for judges to be associated with their representatives and their professional organizations in decisions relating to the administration of the courts and the determination of their means, as well as their allocation at a national and local level.

Universal Charter of the Judge 1999:Art.14 - Support *The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function. The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to this matter.*

Recommendation : "*Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently." (***Rec(2010)**12 Resources*33.).*

- **Appearence :**

Element for a defintion of Public perception of judicial independence could be found in the 2002 **Bengalore principles** ***; " A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom."(*****Bengalore principles** ***1.3).***

Acording to the Bengalore principles commentary (160 pages of comments) : 37 : It means that it is important that the judiciary should be perceived as independent, and that the test for independence should include that perception. It is a perception of whether a particular tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees. The question is whether a reasonable observer would (or in some jurisdictions "might") perceive the tribunal as independent. Although judicial independence is a status or relationship resting on objective conditions or guarantees, as well as a state of mind or attitude in the actual exercise of judicial functions, the test for independence is thus whether the tribunal may be reasonably perceived as independent.

It requires that the judiciary as a whole maintain some level of responsiveness to society, as well as a high level of professionalism and quality on the part of its members.[17]
And even more.

A famous english judge once described judge as being *"something like a priesthood".*[18]An American judge wrote that *"the Chief Justice goes into a monastery and confines himself to his judicial work".*[19]

[17] Peter H. Russell, "Toward a General Theory of Judicial Independence" in Peter H. Russell & David M. O"Brien, eds.., *Judicial Independence in the Age of Democracy: Critical Perspectives From Around the World* (Charlottesville, Virginia: University Press of Virginia, 2000).
[18] Lord Hailsham, Lord Chancellor of England, cited in A.R.B. Amerasinghe, *Judicial Conduct Ethics and Responsibilities*, Sri Lanka, Vishvalekha Publishers, 200, p.1.
[19] William H. Taft, Chief Justice of the United States Supreme Court, cited in David Wood, *JudicialEthics: A Discussion Paper*, Australian Institute of Judicial Administration Incorporated, Victoria,1996, p.3.

Are judges vertuous soul composing a very special caste protected without any fault, any responsability a faceless collectivity dispensing justice ? The complaint that independence may lead to its own abuses is of more recent vintage, as is the argument that the judiciary like other branches of government should be subject to a responsibility for its actions

Independence is not a privilege for judges, it is a fundamental right for citizens.

Since the early 90s, several declarations at international level or charters but also codes of judicial ethics in some member states have been adopted. These texts highlight independence and impartiality as standards of judicial ethics but also refer to institutional responsibility, diligence, active listening, integrity, and transparency.

The recent enlargement of the judicial power in many democracies has raised a tension between judicial independence and the principle of accountability.

III - INDEPENDENCE AND THE PROBLEM OF ACCOUNTABILITY

Till today while judicial independence is widely studied, accountability has been the subject of much less inquiry.While the Principles adopted by the international community identify the key characteristics of an independent judiciary that must be taken into account, and provide a useful starting point in understanding the concept of judicial independence, a more **compelling theoretical elaboration is required to answer complex questions that arise.**

Five factors are usually quoted to explain this emphasis on accountability

· The explosion of the myth that the judiciary.s role can be limited to the neutral application of the law and the recognition, even in systems where this is theoretically not supposed to happen, that the judiciary has an important place in deciding what the law is and how and where it will be applied

· The expanding importance of ordinary judicial decisions and of their impact on the lives of citizens.

· The emergence of constitutional democracies with their reliance on courts to control the actions of other branches of government and to decide conflicts among them or between them and citizens

· Changes in public attitudes toward authority.the judiciary may be the last to feel this, but in democratized societies, publics expect their officials to explain their actions, no longer taking them on faith. Arbitrary decisions whether by executive, legislature, or courts are no longer accepted.

Supporters of judicial independence argue that the separation of the judiciary from the other branches of government is required to check the political power of the other branches.On the other hand, advocates of accountability claim that institutions deciding between competing interests in matters of public policy require a democratic mandate in order to preserve their legitimacy. By contrast, advocates of democratic principles argue that an elitist judiciary striking down laws subverts the will of the people.

Accountability with respect to judges also has different meanings. Some believe that judges' decisions should reflect popular preferences.Others reject that proposition but still insist that judges administration of the courts and use of tax dollars must accommodate public needs and wishes. At its core, the idea that judges should be democratically accountable means the public, directly or representationally, has a legitimate say in how the courts should perform.

In my mind, there no antagonism between a "liberal" concept of judicial independence and a democratic principle of accountability. Nobody can underestimate the crucial importance of a fully independent judiciary for the proper functioning of a democratic community. However independence is an instrumental value and not an end in itself. In his book *"The Imperative of Responsibility,"* published in 1979, the German philosopher Hans Jonas pleads for the extreme emergency to give ourselves an ethics for technological civilization based on *"the imperative of responsibility." He that the Court of law was "established in order to administer justice. The concepts of justice and its administration underlie the existence of the entity".* [20]

Judges even in states implementing the characteristics of an independent judiciary are not immune from all sources of influence. Everibody knows that it is clearly impossible to eliminate political influence on the judiciary. Of course, there is an impossibility of assessing impartiality in a human mind.. Given that there is no judicial "*view from*

[20] Hans Jonas, The Imperative of Responsibility: In Search of Ethics for the Technological Age, University of Chicago Press, Chicago, (1979), p. 53.

nowhere, a judge enjoying freedom from any potential source of influence would still possess internal views"[21]. A judge is never – and must never be - sealed hermetically in his or her home after working hours, he remains exposed to opinion-shaping forces, and may even form opinions as a consequence of exposure to friends, colleagues, and the media.

No institutional and operational arrangements reform could succeed to assure both the reality and the appearance of independence. No statement, no recommendation will make a man or a judge independant. Independence must be every day won again, must be proclaim itself, and defends itself. It can not be decreed. It's before all a state of mind.

Bertrand FAVREAU
Président de l'Institut des Droits
de l'Homme des Avocats Européens
Istanbul May 12, 2011.

International Human Rights Instruments :

- Universal Declaration of Human Rights (UN, Paris, 1948)
- American Declaration of the Rights and Duties of Man (International Conference of American States, Columbia, 1948);
- International Covenant on Civil and Political Rights (UN, 1966);
- Declaration on Human Rights in Islam (Organisation of the Islamic Conference, Cairo, 1990);
- European Convention on Human Rights (Council of Europe, Rome, 1950);
- American Convention on Human Rights ("The San Jose Covenant", Costa Rica, 1978);
- African Charter on Human and Peoples' Rights (Organisation of African Unity, Banjul, 1981);
- Canadian Charter of Rights and Freedoms (annex to the 1982 Constitution);
- Charter of Fundamental Rights of the European Union (European Council, Nice, 2000);

International Declarations and Conventions on Independance of the Judiciary:
(chronological)

[21] Thomas Nagel, *The View From Nowhere* , Oxford University Press Inc., New York, 1986.

- Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), 1981
- Minimum Standards of Judicial Independence (The "New Delhi Standards")of the International Bar Association adopted at the 19th Biennial Conference of the IBA in New Delhi in 1982.
- Universal Declaration on the Independence of Justice adopted in June 1983 by the First World Conference on the Independence of Justice held in Montreal, Canada.
- Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985
- Judges Charter in Europe (European Association of Judges1, 1987);
- Universal Declaration on the Independence of Justice (The "Singhvi Declaration", 1989);
- Procedures for the Effective Implementation of the UN Basic Principles on the Independence of the Judiciary, recommended by the Committee on Crime Prevention and Control and adopted by the UN Economic and Social Council in Resolution 1989/60, 15th plenary meeting, 24 May 1989.
- Guidelines on the Role of Prosecutors, 1990 adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, 27 August to 7 September 1990.
- Basic Principles on the Role of Lawyers, approved by resolution 45/166 of the General Assembly of the United Nations, on December 18, 1990,
- Elements of a european statute of the judiciary ("Palermo declaration"), Medel, Drawn up in Palermo on January 16 1993
- Recommendation n°R(94) 12 of the committee of ministers to member states on the independance, efficiency and role of judges
- Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (Asia Pacific Legal Association, 1995)
- Judges' Charter in Europe approved by the European Association of Judges at a meeting of March 20th, 1993, in Wiesbaden. The text was subsequently amended in April 1996.

- Declaration of principles concerning the public prosecutor, Medel, 1996.
- Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998
- Declaration of Caracas, Ibero-American Summit of Presidents of Supreme Justice Tribunals And Courts, adopted at a meeting of Ibero-American Supreme Justice Courts and Tribunals, 4-6 March 1998.
- European Charter on the statute for judges adopted by at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998,Strasbourg, 8 - 10 July 1998.
- Caracas Declaration (Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice, 1999);
- Beirut Declaration, Recommendations of the First Arab Conference on Justice, adopted at a conference on "The Judiciary in the Arab Region and the Challenges of the 21st Century", held on 14-16 June 1999.
- Universal Charter of the Judge, approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.
- Role of public prosecution in the criminal justice system (recommandation rec (2000) 19 of European council.
- Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers' Deputies)
- Bangalore Principles of Judicial Conduct adopted by the Judicial Group on
- Strengthening Judicial Integrity in 2001 and revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002.
- Beirut Declaration (Arab Conference on Justice, 2003)
- Model Code of Judicial Conduct of the American Bar Association adopted by the ABA House of Delegates on February. 12, 2007
- Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the

Ministers' Deputies.(replaces Rec. 94 (12) on Independence, Efficiency and Role of Judges).

- Magna Carta, adopted by the Consultative Council of European Judges of the Council of Europe on the occasion of its 10th anniversary, the Consultative Council of European Judges CCJE during its 11th plenary meeting in Strasbourg, 17 November 2010