

UNION INTERNATIONALE DES AVOCATS

INTERNATIONAL ASSOCIATION OF LAWYERS
INTERNATIONALE ANWALTS-UNION



UNION INTERNACIONAL DE ABOGADOS
UNIONE INTERNAZIONALE DEGLI AVVOCATI

الاتحاد الدولي للمحامين

INTERNATIONAL CHARTER OF LEGAL DEFENCE RIGHTS

STATEMENT OF AIMS

The Union Internationale des Avocats has consulted with local bar associations the world-over in order to produce the present Charter.

A Charter concerning the rights of legal representation should be included in international agreements, the United Nations Covenant and regional conventions so as to set out the basic rules and fundamental guarantees of liberty and the norms of fair trial.

The independence of judges cannot be separated from that of lawyers. The two are interdependent. Furthermore the rights of legal representation in criminal cases cannot be separated from those in civil litigation. The immunity of the lawyer is based on and determined by the rights granted to the litigant.

The important work carried out by the Anti-Discrimination Sub-Committee on Human Rights of the United Nations, and by the International Conference on the Independence of the Judiciary and the Status of Judges and Lawyers, held in Montreal in 1983, in which the major international lawyers' organisations participated is of such high standard that it would be impossible to put forward a unifying text which did not take into account the final report presented by the Special General Reporter in Montreal, Mr L. M. Singhvi.

This work has the further merit of defining the fundamental elements of the judiciary and the Bar in all countries, taking into consideration the different degrees of organisation of the judiciary in both industrialised and developing countries. It is evident that neither the activity nor the monopoly of the lawyer can be identical everywhere since legislatures, the judiciary and methods differ so greatly. The same holds true for certain requirements for defending clients, depending on the political regime.

But it is the "hard kernel" of fundamental guarantees which is of greatest significance.

A preliminary examination of international texts and multilateral conventions allows us to formulate a comparative picture of institutions and mechanisms of protection: the United Nations Covenant and regional conventions in Europe, America and Africa.

These countries, which have ratified a regional convention setting up a court of human rights enabling an individual to sue the state and guaranteeing the right to a fair trial, must ensure that their internal law conforms with that convention, particularly insofar as the rights of legal representation are concerned, and they must take adequate measures to ensure effective involvement by the lawyer, particularly in the organisation of the judiciary.

Those states which have a constitutional court committed to respecting the fundamental rights recognised by their constitution, or incorporated into their constitution from a regional convention on human rights, must ensure that decisions of the constitutional court and lower courts are widely published, notably in prisons, hospitals, town halls and legal aid centres; information about the functioning of justice is one of the most effective ways of ensuring that the standards of a fair judiciary are maintained.

In a number of states, trials, particularly of political offenders, give rise to judicial and legal occurrences which contravene fundamental rights. Signatories to the UN Conventions should be prepared to accept initiative of signatory nations, should be amended to require the adoption of rules in procedural codes providing for the attendance by legal observers as standard practice.

The present Charter and its recommendations should serve as a reference in international organs and machinery or in national legislation and procedures, for the interpretation of basic rules and rights of representation, in order better to ensure the practice of law within the international community.

As a further recommendation it would be desirable that states which are parties to regional conventions or members of regional communities (such as the EEC) provide that lawyers authorised to practice in any member state have the right to plead and render legal services in each country therein.

Such an exchange of cross-frontier work would strengthen the effectiveness of the right to representation.

I - FUNDAMENTAL PRINCIPLES

ARTICLE 1

The right to justice and a fair trial is a fundamental right recognised by the totality of international treaty documents and instruments.

The right to legal representation is a basic element in the administration of good justice.

This is inseparable from the independence of the legal system; without the existence of independent and impartial tribunals there can be no effective protection for the litigant.

ARTICLE 2

Effective representation of the parties is essential to the safeguard of fundamental rights.

ARTICLE 3

Every person must be able to exercise his right to justice, and this implies the right to a court hearing and the right of access to such a court (as such terms are recognised in Public International Law).

Every person has an equal right to have his case heard fairly and publicly by an independent and impartial court which shall determine his rights and obligations, or the validity of any action in criminal or civil proceedings brought against him or adversely affecting his property; such rights shall include an equality of arms between the legal weapons available to the defence and to the prosecution.

ARTICLE 4

Every person shall be able to call upon a representative of his choice to defend him.

In all states where the legal system provides for advice and legal representation to be given by a lawyer, everyone shall be entitled to call upon a member of the legal profession, whether such profession is organised in "orders", Bars or in any other way.

Every person shall have free and effective choice in selecting his lawyer.

ARTICLE 5

The participation of the defending lawyer must be effective. This means that he has the duty to apply adequate competence to this work.

ARTICLE 6

Application of the principle of the primacy of the law implies the recognition of the rules whereby a person accused of any crime is presumed innocent until his crime has been legally established by public trial in which he has been provided with all necessary guarantees for his defence.

This general principle is not compatible with any disposition which may reverse the burden of proof, which must remain with the prosecution.

Personal guilt must be proven in every case; no notion of collective responsibility is permissible.

No person shall be condemned for acts of commission or omission which at the time were not a crime according to national or international law. In the same way no penalty shall be exacted that is more severe than that applicable at the time the crime was committed. (The provisions of conventions regarding crimes against humanity shall be excluded from this clause).

Rules of procedure cannot adversely affect the fundamental rights of legal defence, in accordance with the principle "no punishment outside the law".

ARTICLE 7

States must commit themselves to:

guarantee that any person whose rights and liberties are at issue shall have an effective remedy, even when the attempt to violate these rights has been perpetrated by someone acting in the exercise of his official position;

guarantee that the competent administrative or legislative authority shall be independent and impartial, in accordance with the state's legislation, and shall pronounce without undue delay on the rights of the individual and provide opportunities for legal remedy;

guarantee that the competent authorities comply with every justified claim.

ARTICLE 8

The chief object of the controls exercised by the courts on the executive shall be:

- a) that the executive should act within the limits of its powers as defined by the Constitution and constitutional laws;
- b) that any person whose rights are infringed or threatened by an administrative authority shall have an absolute right of appeal before the courts and shall be protected against the consequences of any action recognised by the courts as illegal, arbitrary or unreasonable;
- c) that the exercise by the executive of its discretionary powers shall not be beyond examination by the courts who will investigate whether such exercise is legally valid, justified by good reasons and whether it conforms to the general principles of law;
- d) that the powers validly conferred on the executive shall not be misused.

Where it is necessary to determine how the administrative authority has used its powers, the courts will assess whether or not the administration has the power to refuse to produce certain documents on the grounds of their confidential nature.

If a claim involves a violation of one or more fundamental rights, the courts will be entitled to invoke the Universal Declaration of Human Rights and the regional and international conventions adopted in the General Assembly of the United Nations, at least in their evaluation of the claim or of how to proceed.

II - JUDICIAL PROCEDURE

ARTICLE 9

Judicial proceedings must be public.

The court may be closed to the public by the judges during part or all of the trial either in the interest of public order, as may be permissible in a democratic society, or where the interests of the privacy of the parties involved requires this and they seek it. Every sentence passed in a criminal or civil matter must be made in public, except where the interests of minors are concerned or where the trial is concerned with matrimonial differences or the care of children.

ARTICLE 10

Any person accused of breaking the law is entitled to at least the following guarantees:

- a) to be informed as soon as possible, in a language he can understand, of the nature and the grounds of charges against him;
- b) to have the necessary time and means to prepare his defence and to communicate with the counsel of his choice;
- c) for his case to be heard without undue delay;
- d) detention pending trial must be the exception rather than the rule;
- e) to be present at the trial, to defend himself and to be defended by someone of his choice; if he is not represented, to be informed of this right to be represented and, whenever justice requires that he should be represented, to have such representation without financial cost, if he lacks the means to pay;
- f) to have access sufficiently in advance and prior to the trial, to the record;
- g) to interrogate or have interrogated the witnesses for the prosecution and to obtain and interrogate, pursuant to the same conditions, the witnesses for the defence;
- h) to have the free services of an interpreter if he does not understand or speak the language used in the hearing
- i) not to be forced to give evidence against himself nor to admit guilt;
- j) to the protection of the principle of "non bis in idem".

ARTICLE 11

The task of the prosecution is not to obtain a conviction at all costs. The facts in the case must be presented objectively.

No person charged is obliged to enter a guilty plea.

No person charged, nor any witness, may be subjected to physical or psychological compulsion, including any procedure that might undermine his will or human dignity.

No postal nor telephonic communications shall be intercepted, except in exceptional circumstances covered by the law, in line with the criteria of a democratic society and with the authority or on an order from the competent legal authority.

No search of the defendant's home may be made without his consent or an order of a competent authority.

Evidence obtained in violation of the above-mentioned principles may not be used against the defendant.

III - THE DEFENCE

ARTICLE 12

Fundamental principles for criminal defence

A free defence assumes the liberty of the defendant; a lawyer representing a client in a criminal case must be allowed to prepare, in complete freedom, a defence which corresponds to the requirements of the legal system. He shall be allowed to communicate freely with the client and to plead on his behalf without restrictions by any organisation or official party and without any arbitrary restriction being placed on the exercise of his professional skill.

ARTICLE 13

Duties of lawyers arising out of the rights and guarantees of legal representation

The duties of the lawyer in regard to his client consist of:

- a) advising the client as to his rights and legal obligations;
- b) taking such existing legal measures as are necessary to protect him and his interests;
- c) representing and assisting him before the courts or administrative authorities, as well as during police investigation.

In carrying out his tasks, the lawyer shall at all times act with complete freedom, diligently and courageously, according to the law, respecting his client's wishes and the ethics of his profession, without concerning himself with the restrictions or pressures to which he might be subjected by authorities or the public.

Every person and every group of persons has the right to call upon the services of a lawyer to represent his or their interests or case within the limit of the Law, and the lawyer has the duty to act, to the best of his ability, towards this end. In consequence, neither the authorities nor the public should associate the lawyer with his client or with his client's case, however popular or unpopular it may be.

No lawyer shall be victimised nor threatened with civil or penal sanctions, whether administrative, economic or otherwise, for having advised or represented a client or defended his case.

No court or administrative authority shall refuse a lawyer the right to appear before the court on his client's behalf.

If a lawyer faces proceedings for an offence against the court, he shall not come before any judge who took part in the trial which gave rise to such proceedings. Such matter shall be brought before the competent jurisdiction or professional organisation.

Except in such cases as here referred to, a lawyer shall enjoy civil and criminal immunity for statements which he makes in good faith in his pleadings, whether written or oral, or in the exercise of his profession before a court or any other legal or administrative authority.

The lawyer shall have the right to accept or refuse any case. With regard to legal aid or dock briefs, the lawyer shall have these same rights, provided he gives good reason.

ARTICLE 14

Lawyers must ensure that all rights necessary to the effective execution of their professional responsibilities, are maintained, notably:

- a) complete confidentiality in the relationship between the lawyer and his client, pursuant to which a lawyer may under no circumstances reveal or be expected to reveal any instructions received professionally from his client, nor any communications with the client, unless the client has so authorised ; such protection is extended to the lawyer's documentation and files ;
- b) the right of free movement, both within his own country and abroad, in the discharge of his professional duties ; any restrictions on movement, imposed on the public at large should be modified to allow a lawyer to pursue his professional obligations, under the control of an independent and impartial court which respects the norms of democratic society ;
- c) the right to research and receive information and ideas, according to the rules of the profession, without any restriction either oral or written.

Lawyers play an essential part in representing and exposing rights and complaints in society and they must be granted freedom of association, of religion, of opinion and of expression. In particular they must have the right to take public discussion on the law and the administration of justice, as well as the right to belong to or freely to set up, without interference, local, national or international organisations ; they must not be subjected to any professional restriction because of their beliefs or their membership in any recognised organisation.

Lawyers have the obligation to study current legislation, and current legislation must be available for legal examination, for the proper working of the legal system and the understanding of proposals for reform. Lawyers should also be able to put forward and recommend legal reforms, after carefully evaluating them in terms of the public interest, and they should undertake programmes to inform the public in these fields. Through their professional associations they should be consulted about legislation in the course of preparation.

IV – STRUCTURE OF THE PROFESSION

ARTICLE 15

The Bar¹

In each judicial area there are one or more independent autonomous lawyers' associations recognised by the law, whose council or other executive arms is freely elected by its members without interference of any kind by any person. The existence of such an organisation must not in any way prejudice the right of lawyers to form any additional associations of lawyers nor to belong to such associations.

ARTICLE 16

Functions of the Bar

The functions of the Bar, in ensuring the independence of the legal profession, are among other things:

- a) to promote and defend the cause of law, without any fear and with total impartiality ;
- b) to maintain the honour, dignity, integrity, competence, morality, ethical standards and discipline of the profession ;
- c) to uphold the role of lawyers in society and to preserve the independence of the profession and the defence;

¹ Bar is used to denote a professional and independent association or organisation.

- d) to protect and defend the dignity and independence of the judiciary ;
- e) to promote free access by the public to the law and, in particular, to legal aid ;
- f) to promote the right of everyone to have his case heard fairly and in public by a competent, independent and impartial court, according to valid legal procedure, in all matters ;
- g) to promote and uphold reform of the law, to comment upon and encourage public discussion of the substance, interpretation and application of existing or projected legislation ;
- h) to promote the requirement of case legal training of the highest level as pre-condition for professional access ;
- i) to ensure that there is free access to the profession, without any discrimination whatsoever, to anyone who has the necessary professional competence and honourable reputation ; to assist those newly admitted to the profession ;
- j) to foster mutual help between members of the profession and to give assistance to members of their families when circumstances demand ;
- k) to become affiliated with international lawyers' organisation and to take part in their activities.

ARTICLE 17

When anyone involved in a dispute seeks the help of a lawyer from another country, the courts and the bar must co-operate in helping the foreign lawyer obtain the right to practice before the host country courts.

So that the Bar may be allowed to exercise its function of protecting the independence of lawyers, the Bar must be advised immediately of the reasons for the arrest or detention of a lawyer and for the same reasons the Bar should receive prompt notice of :

- a) any search of the person or belongings of a lawyer ;
- b) any seizure of documents in his possession ;
- c) any decision relating to applicable procedures that might affect or call into question his integrity.

In such circumstances the Bar is entitled, through its president or his representative, to follow accepted procedure and to ensure in particular that professional secrecy is observed.

ARTICLE 18

Legal structure and access to the legal profession

Access to the profession is open to any person holding the required qualifications and skills and is not closed to anyone on account of race, sex, religion, belief, nor on account of national or social origin, wealth, birth or civil status.

ARTICLE 19

Education of the public in relation to legal matters

The Bar and lawyers have a responsibility to inform the public as to principle of the primacy of the law and the indispensable independence of the judiciary and the legal profession. The public likewise be informed of its rights and duties as well as of the appropriate remedies available.