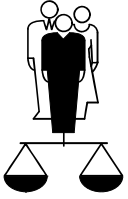


DVS



Europäische Akademie Berlin

DRAFT VERSION

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European Charter of Lay Judges and Arbitrators

→ Please send any suggestions and/or amendments to Claudia Rehms cr@eab-berlin.eu

Preamble: Basic principles

1. All state authority is derived from the people. Dispensing justice, the 'third state authority', must also derive its legitimacy directly from the democratic will of the people.
2. An independent judiciary is a necessary pre-requisite for democracy and the rule of law.
3. Administration of justice and settlement of disputes have a part to play in keeping and ensuring the peace, which also pre-suppose knowledge about law and justice, proper and realistic ascertaining of the facts and awareness of societal contexts.
4. Participation by experts in the field, by people acting in an honorary capacity with experience of a profession or of life, in administering justice and settling disputes is an accepted principle in legal systems in numerous European countries which has existed for centuries.
5. The growing significance of European law both within EU member states' legal systems and within a European-wide legal system calls for participation of lay judges in European courts. They are to ensure that European legal acts as well as rulings based on these laws are comprehensible and plausible and able to be appreciated by members of the general public, and that European principles as well as national characteristics are taken into account.
6. European countries have developed a variety of systems regarding participation by the people in dispensing justice; diversity and rivalry between systems offer an opportunity to learn from one another.

Part I Function and work of lay judges and arbitrators

1. Participation by voluntary lay persons in dispensing justice is an element of civil emancipation. Representative democracy is founded on the pre-requisite that all the authority of the state must be legitimised by the people and the citizen is to play an active role.
2. Volunteer lay judges and arbitrators augment independence in the judiciary. They ensure that there is a close relationship with the general public, transparency, efficiency and acceptance in decisions. They guarantee plausibility and comprehensibility in proceedings and judgements, and thus add to trust or

confidence in the legal system. Those involved in proceedings as well as members of the public ought to be able to understand decisions. For this reason lay judges etc. act as connecting link between the legal system and civil society.

3. Lay judges - with their sense of what is right (or wrong) and their own ability to perceive justice - represent an amplification of the legal positivism to be found among professional legal people. Jurisprudence is a method of perceiving justice, not justice per se. In order to arrive at a just decision, it is necessary to have also an ability to judge human nature, to have experience of life and of the world of work.
4. Public participation in administration of justice moulds character and develops awareness and sense of what is right in society.
5. In those instances where a lay person can contribute special knowledge, such as technical, economic (commercial), medical or pedagogic expertise, a lay judge or arbitrator has a particular importance in proceedings. In this way they increase the quality of jurisdiction by means of expertise in complex actual cases.
6. Lay people working in a voluntary capacity are in a position to create a link between legal policy and the general public.
7. Lay judges and arbitrators help to relieve the judiciary from having to deal with petty or minor cases and routine proceedings.
8. Selection, election and appointment of lay judges and arbitrators must be taken in accordance with objective criteria by a body independent of the judiciary. In the case of dismissal or withdrawal of a lay person the courts have jurisdiction in conjunction with persons acting in an honorary capacity.

Part II: Rights and obligations of lay judges

1. Lay judges and arbitrators are independent and exercise their office to the same extent and with the same voting weight as salaried judges, unless, due to the nature of the case, different procedures of handling are legally stipulated.
2. Lay judges and arbitrators are obliged to be loyal to the constitution and are bound to justice and to the law: They are subject to the same rule-of-law obligations as are salaried judges, they are sworn to confidentiality where the law demands it and exercise their office impartially and without fear or favour.
3. Lay judges and arbitrators are required to preserve the fundamental principles of the dignity and high morals (ethics) of a judge. Lay and salaried judges are obliged to cooperate with one another on good terms.
4. They receive no compensation for their voluntary work or activity. Expenditure in time arising from the office is to be recompensed. Lay judges are entitled to continued payment of earnings received in an employee position or compensation for loss of income as a self-employed person or for outlay incurred if the office holder is involved in running a household for a number of persons.
5. Lay judges and arbitrators are to be protected by legislation from all or any discrimination or disadvantage in their profession, particularly from dismissal, to the extent that such a step is not justified on exceptional grounds due to conduct. All and any hindrance to or exertion of influence on activity as lay judges is to be punished.
6. Lay judges and arbitrators are liable for their activities in the same way as salaried judges.
7. Lay judges and arbitrators are required to acquire the necessary knowledge and competence to enable them to carry out their activities.
8. Lay judges and arbitrators are to be included in legal administration matters relevant to their office. In legal and legal administration bodies or committees

(presidium, judicial councils etc.) they are to be represented in matters concerning them with a seat and a vote.

9. Court officers are required to make available the training and resources necessary for lay judges and arbitrators to exercise their office.

Part 3 Systems of participation by lay judges and arbitrators in Europe

Lay judges, public prosecutors and arbitrators undertake their duties in a variety of different ways.

1. *Persons with previous legal training or as juridical lay persons:*

Justices of the peace and deputy public prosecutors in Italy as well as certain members of professional, trade and disciplinary tribunals in Germany have legal training (studies), but are working in an honorary capacity.

By contrast, generally speaking lay judges and arbitrators in the judiciary do not have a legal background, education or training.

2. *Persons acting as expert lay judges or as general representatives of the public with no special expert knowledge:*

Lay judges and arbitrators in commercial or trade matters, in employment and social support tribunals and in family law disputes take decisions on the basis of their expert knowledge and professional or work experience jointly with salaried judges in proceedings in particular specialist fields. In courts with particular fields of jurisdiction, such as for example commercial or economic crime cases, juvenile delinquency, civil law disputes in the construction or banking industry, lay subsidiary judges (on the bench) are appointed to the court on the basis of particular actual knowledge in these fields.

In particular the Schöffen in the German system and jury members in general low-level criminal jurisdiction take part in proceedings as representatives of the general public without any pre-requisite particular forms of knowledge and, as they do so, contribute in particular their experience of life, knowledge of human nature and general perceptions of law and justice to the court proceedings.

However, whether they are called or appointed to serve may be made dependent on specific minimum requirements with respect to academic (school) or professional (work) training.

3. *In joint hearings and decisions in conjunction with salaried judges or taking decisions on one's sole authority:*

In particular in proceedings with low amounts in dispute or of minor or petty criminality cases, but also in juvenile / youth and family law matters, it is possible that lay judges and arbitrators and public prosecutors can take decisions in their own responsibility (e.g. magistrates in England and Wales, justices of the peace in Spain and Portugal). Judgements in commercial courts of first instance in France are made solely by lay judges and arbitrators. The jury in a minor criminal case is the only body which can decide on the guilt or innocence of the accused.

In criminal proceedings where there is a Schöffen system, in chambers dealing with commercial matters, employment, social, finance and administrative tribunals, lay judges and arbitrators take decisions both on questions of proceedings and on judgements jointly in conjunction with salaried judges.

4. *Determining disputes or conciliation:*

Whereas lay judges and arbitrators collaborate in courts where there are judgements to be made on the merits of the case, in other cases - except where

the matter in dispute is able to be resolved by means of a settlement - there are arbitrators, mediators and (e.g. in Switzerland and Germany) justices of the peace who are required to reach a mutually agreed solution to the dispute with all the parties.

Part 4 European organisations for lay judges and arbitrators

1. In order to implement the objectives of this Charter, the signatory organisations agree on coordinated European cooperation. By means of a joint office they will maintain contact with the bodies of the European Union and the Council of Europe.
2. Additional organisations or associations of lay judges and arbitrators may also subscribe to this Charter.

European organisations of expert lay judges, magistrates, justices of the peace and other honorary judges in

Germany

Federal Association of Commercial Judges
Federal Association of Lay Judges
Federation of German Arbitrators

England and Wales

Magistrates' Association

Finland

Suomen Lautamiehet ry

Austria

Vereinigung der fachmännischen Laienrichter Österreichs

Scotland

The Scottish Justices Association

Sweden

Nämndemännens Riksförbund

Spain

Asociación Democrática de Juzgadoz de Paz

have jointly and unanimously agreed to these principles.

(signed) in Brussels, on (date)