



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Tunis, September 10-14, 1995

Conclusions

CRITERIA FOR THE ASSESSMENT OF THE WORK OF COURTS AND JUDGES

The delegates of the national associations from the following countries answered the questionnaire: Argentina, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Malta, Morocco, Netherlands, Portugal, Rumania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tunisia, United Kingdom. The delegates of the national associations of the Czech Republic, F.Y.R.O.M. (Former Yugoslavian Republic of Macedonia) and Republic of China (Taiwan) participated in the discussion.

It was reminded that the theme dealt with during the Tunis session is the follow-up of the work carried out last year in Athens. As a matter of fact, the theme debated in Athens dealt with the administration of justice, and focused in particular on the drafting of the budget and the utilisation of credits. It was then pointed out that in the countries where the budget rests entirely within the responsibilities of the Government and of the Legislature, the Government satisfies the requests of the judiciary, particularly those regarding the shortage of personnel, by making it a pre-condition that the courts enhance their standards of "productiveness". Since such a question was manifestly wide of the mark, considering the theme under discussion in 1994, the Central Council decided to put it on the agenda of this year's session.

This short introduction appears necessary in order to well understand the scope and significance of the debate held this year.

A questionnaire was circulated to the members of the Commission.

It may be inferred from the answers received that the Commission deems it desirable that the action of judges be submitted to an appraisal by and within the judiciary itself. All members of the Commission share the opinion that should such an appraisal belong to any other, external authority, such as the Government or the Parliament, then the fear might be justified of some indirect pressures exerted upon the judges, either as a whole, or as individual judges.

It therefore appears even more indispensable that such judicial control be effective and be based on pre-established rules and conditions apt to assure its objective character.

The debate has shown the need of a preliminary distinction between an appraisal of the individual action of judges and the pre-determination of general rules concerning the evaluation and appraisal of the action of each jurisdiction as a whole.

The appraisal of the individual action of judges constitutes a strictly internal problem of each jurisdiction. Such a problem mainly concerns those who are responsible for their organisation, i.e., in most countries represented here, the heads of the jurisdiction and, in those countries where such a system does not exist, a judicial body vested with appropriate powers to that effect, such as a Superior Council of the Judiciary.

It should however first of all be clearly underlined that the appraisal under consideration does not regard the judgment on the merits of the cases submitted to the courts. In this respect, every judge must be totally independent, even vis-à-vis those who are responsible for the judicial organisation.

The appraisal must concern the behaviour of a judge. Judges ought to perform their duties in all conscience, devote to their work all the time that it normally requires, and in the most efficient manner.

It was particularly underlined that a judge before whom a case is ready for decision, after having heard the arguments, must pronounce his judgement within a reasonable time.

In many countries, among which are Canada, the Netherlands, and Sweden, the judges fix every week their working plans, and such plans are then discussed by the members of the Court, in a manner that the result of such a process is a self-made control apt to avoid any inadmissible delays, as well as unusual overloads, which might stem from the internal organisation of the Court.

Such an appraisal of the individual work of the judge is extremely important because, without undermining his independence at all, it represents per se, vis-à-vis the judge himself and the governmental authorities as well as the public opinion, a guarantee of reliability of the exercise of a fundamental function in a State governed by the rule of law.

The second aspect of the problem regards the evaluation of the work of a Court as a whole. Such evaluation is particularly important, especially as far as the independence of the judiciary is concerned, because of the actual danger of possible interference on the part of the Executive or the Legislature.

This problem is connected to the overload of the Courts, to be ascribed to the evolution of the society as well as to an ever increasing complexity of the institutions in the legal system, to the proliferation of legislation, and, in some cases, to an "excessive use" of the judicial machinery.

Now, in order to make up for such an overload, more often than not the judiciary is forced to have recourse to the intervention of the political power.

Such an intervention frequently gives rise to some remarks concerning the efficiency, viz. the productive results of the work of the Courts. In this connection one speaks of a question of "productiveness".

After an in-depth examination of the question, the Commission came to the conclusion that it is up to the judiciary itself to identify the rules to be observed in order not only to maximise the number of cases liable to be adjudicated, but also in order to assure that the essential requirements of quality be met. Quality must not be disregarded to the benefit of quantity, in the very interest of the parties to a case.

To this end, the judicial authorities, availing themselves of their experience, ought to establish those rules on a general basis, keeping into account both the scope of the jurisdiction of the various courts, and the complexity of certain types of litigation. In particular, it was suggested to identify certain types of litigation by a coefficient, in order to avoid that, because of the use of too rigorous statistical methods, the above mentioned, particular aspect of the problem be overlooked.

In this way the judiciary fully keeps its independence, and gives to the public opinion full assurance that the public may rely upon the judges' will to perform their duties with the utmost efficiency.