



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Athens, October 9 -13, 1994

Conclusions

PARTICIPATION OF THE JUDICIAL POWER IN THE ADMINISTRATION OF JUSTICE

The 37th session of the Commission concerned the problem of the administration of justice, in relation to the independence of the judges.

Thirty one national reports were addressed to the President of the commission, that is: Germany, Argentina, Austria, Belgium, Brazil, Canada, Denmark, Spain, Finland, France, Luxembourg, Greece, Israel, Iceland, Ireland, Italy, Japan, Liechtenstein, Malta, Morocco, Norway, Netherlands, Portugal, Senegal, Slovenia, Sweden, Switzerland, Tanzania, Tunisia, United Kingdom. Delegates from Australia and Slovakia presented an oral report.

At first the purpose of this study was defined in this sense: that administration of justice signifies all the resources which are necessary for the judges to exercise their function and the effect of those resources on their independence, when those resources are too limited, but also the effect when judges are appointed. Discussions were limited to two questions 1) elaboration of the budgets which are necessary for the judiciary and the application of the funds allocated; 2) the questions relating to the number of judges and of their staff, and the influence of politicians in relation to the appointment of judges.

First question:

The answers to this question are very different from one country to another.

In some countries, the judiciary is directly involved in the preparation of the budget of the courts and in the application of the funds. Such is an ideal solution, for it has been stated that the judiciary knows better than the Government what it needs, and that there should be no influence at all of the executive power. Anyway it must be stated that Parliament ultimately decides, after the members of the judiciary have given their advice.

In most of our countries, the judiciary is not at all involved in the preparation of the budget nor in the allocation of the funds granted.

Such a solution is open to criticism, because those who prepare the budget do not know what the judiciary needs, and also because some influence on the independence of the judiciary may be possible.

Two examples were given:

Parliament and Government may decide that funds will be granted for very special purposes, for instance the prosecution of particular crimes. It follows that courts will have to devote part of their time as to how funds should be used, and such will be to the detriment of other matters which are also before the courts.

From the same point of view it has been explained that in many countries the budget/authorities will ask for a control on the activity of the judges. This has been described as a control on efficiency or productivity. It seems that such a control may affect independence. In that case it is not the quality of the judgments that is in question but the quantity. This question could not be thoroughly examined in this session, but we all agree that it is very important and should be the subject of separate study.

The preparation of the budget is an important problem, but the allocation is also very important. In some of the countries, the allocation is decided, although for a part by the judiciary, but in many other countries the Minister of Justice decides on his own. It happens that the minister reduces the funds and

decides to use them for other items than those that were initially decided. In this way it is possible to hinder the normal work of the courts.

As a general conclusion it may be said that the problem of the preparation of the budgets and the allocation of funds may very seriously influence the independence of the judges.

The second question:

The other problem which was discussed in our second session was that of the number of judges, in relation to their independence.

Differences between the participants were very significant.

In many countries, the number of judges is prescribed by law. This is at the same time an advantage and a drawback. The executive can not change these numbers and that is a good thing, but on the other hand it may last a long time before a change is effected by law.

The number of staff is in general determined by the Government and that may be a way to exercise an influence on the judiciary.

Moreover, the problem of the appointments and the influence, not only from the government, but also from the political parties, has been closely examined.

We all agreed that the judiciary should represent all major tendencies of public opinion, but the political parties should not interfere in the appointment neither directly nor by their representatives in Government or Parliament.

Generally speaking, we agreed that the judges when they are exercising their functions are completely independent and that their personal opinions will not affect their decisions.

From this point of view, it has been stated that in some countries it is forbidden to participate in politics or even to be a member of a political party. In other countries it is normal that judges take part in political matters and even that they would become members of a Government.

In this last case however, the judge cannot exercise his judicial function, whilst he is a member of the Government.

It has been said that in some countries judges resign their judicial office in order to become a member of Parliament. On the other hand some members of Parliament or Government became judges, mostly at the Supreme Court.

As a conclusion on this second aspect of the administration of justice, it should be stressed that the independence of the judge should be a reality, thanks to the measures which are being taken in order to permit a full exercise of his function, but also in order to safeguard the appearance of independence in the eyes of the public. This appearance, which must also be a reality, is essential to the confidence of the public in the judiciary.