First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Helsinki, 18 -20 June 1990

Conclusions

How to Protect Judges From External Political, Economical and Social Influences and From Violence; With Particular Regard to the Respect Due to the Judgements of the Courts and to the Social Status of the Judges.

29 countries took part in the work of this Commission and sent written answers to the questions put by the President. The following conclusions were reached as a result of the very fruitful exchange of views which took place in Helsinki on June 18, 19 and 20, 1990.

The first question was to determine the degree of detachment and self-restraint appropriate to the judiciary. This question was looked at, on the one hand, from the angle of its participation in social life, in particular its membership of associations of all kinds, whether those be clubs, such as the Rotary, clubs or groups dedicated to charitable or even religious works, or sporting clubs, and, on the other hand, from the angle of its involvement in political activity.

Opinions were strongly divided, especially as regards judges being involved in political activity.

In some countries this activity was explicitly authorised, whereas in others it was strictly forbidden. But even in these last-mentioned countries it happens that, notwithstanding this ban, some judges, whether on their own or as members of a grouping, even as members of an association, express political choices in a particularly outspoken way.

The members of the commission noted that, if it is true that even legal questions may have a political dimension, membership of a political party entails following a specific political line and, moreover, a political party will always seek to hold its members to this line, necessarily compromising that independence and impartiality which is the very corollary of independence.

Admittedly, independence and total impartiality are very difficult to achieve, but everything must still be done with the view to achieving this objective. It must be borne in mind that in the eyes of the public it is not sufficient that the judge be impartial; he must also be seen to be impartial.

Besides, there can be no hiding the fact that this requirement may be seen differently depending on the country and even on the period involved. It has in particular been stated that in those countries with very marked differences between political parties, which is sometimes the case with developing countries, public opinion tend to look even more unfavourably on a judge being a member of a political party.

It is thus very difficult to deduce a general rule.

As regards membership of cultural, sporting or other associations, the Commission took the view that judges should lead a normal social life, but at the same time avoid relations capable of compromising their respectability. If it is not possible for them to live in isolation, they should nevertheless show prudence in their relations. While there can be no doubt that their involvement in charitable associations is to be encouraged, there should equally be no question of them carrying out duties that involve financial responsibilities (in particular, as treasurers).

The second question, which was fully debated by all the members of the First Commission, related to the means available to a judge who is the subject of malicious attacks, whether verbal or written, whether in the press or on television.

It should at once be emphasised that what was at issue here was not criticism of court decisions, in so far as such criticism reflects nothing more than differences of opinions. Such criticism is normal and should not call for a reaction from the judge concerned.

What was at issue was rather those malicious, unjust attacks impugning the honour and reputation of judges. However, it is not always easy to draw the line between these two different types of criticism.
Several members pointed out that in their countries this problem is almost non-existent. The judiciary in these countries enjoys the necessary degree of respect and the press does not indulge in such attacks.
In several other countries the situation is unfortunately quite different. Personal insults are directed at some judges. It is to be deplored that in some instances such attacks come even from members of Parliament.
All members were agreed, that a judge who finds himself the target of such attacks is unable personally to defend himself. Moreover, the means available to him, whether the right of reply in the press, a civil action brought in the courts or a criminal action, fail to yield the desired results. Exercise of the right of reply more often than not leads to the making of a further even more disagreeable reply; a civil action is much too slow and sometimes even risky, in that the judge called upon to hand down the decision will hesitate to pass judgement for fear of being accused of partiality. The same is true of a criminal action.
However, a proper remedy for this situation needs to be found, for two reasons:

(a) The fears possibly aroused by such behaviour may lead the judges, concerned to refrain from reacting to the perpetrators of such attacks (journalists and others). Such an attitude would amount to the very negation of independence.

(b) If such attacks increase in number, they could jeopardise the confidence which the public must have in its judiciary.
For these reasons, it is vital that such slurs on the honour and reputation of judges should not be allowed to continue without anything being done.
There was no solution on which the members of the First Commission were unanimous.

Some members were of the opinion that it was for the associations representing judges to take up the defence of those who are unjustly attacked. In this case those associations must be legally authorised to take action, even to go to court.
Others were of the opinion that the defence of judges was a matter that should be taken care of by the judiciary itself, perhaps even at the highest level, such as the Supreme Court or those vested with the highest responsibilities within this court.
Some other members took the view that it was better to refrain from doing anything and not to draw attention to each passing attack; however, where a continuing campaign by the press was involved, these members felt that defamatory attacks should be made the subject of criminal prosecutions, brought either by the Attorney-General or the Director of Public Prosecutions. What they in particular had in mind was the contempt of court procedure as it existed in the Common law countries and Israel.
However several members of the First Commission stressed the need to react rapidly and effectively, as this was the only sort of reaction which made an impression on the public.
In conclusion, everyone was agreed as to the indispensability of a reaction, but that such a reaction would have to be tailored to the institutions and customs of each country.
The third topic debated by the First Commission concerned the protection of judges against attack by terrorists and gangsters.
The Tunisian representative explained that in his country this question was expressly regulated in the law relating to the judiciary.
Most other countries represented in the First Commission do not have any special rules of law in this regard. Several members explained that their associations had made representations to their Governments with a view to securing the express regulation of the question of compensation for judges who had fallen victim to such attacks.
The Canadian representative pointed out that it would be normal in his country, where a judge fell victim to a terrorist attack, for his or her spouse and (minor) children to receive the salary he or she would have received up until the age of retirement. Compensation should likewise be paid where a member of a judge's family fall victim to such an attack. All members supported this proposal. Some of

them added that it would be desirable that a similar rule should be adopted for all those working in the ancillary judicial services.
Finally, it was noted that in some instances acts of terrorism had caused serious problems for the formation of the panels responsible for handing down judgement. In France, juries had had to be done away with because jurors, afraid of reprisals, were finding all manner of excuses for exemption from jury service in such cases. The Italian delegate explained how in his country it had been possible to avoid having recourse to special proceedings and even special panels responsible for handing down judgement. The United Kingdom delegate explained that in Northern Ireland it had, in view of the extent of terrorist activity, been necessary to do away with the jury system, such cases now being tried by one judge at first instance and by three judges on appeal.
This shows how much such acts undermine the independence of the judges in question. It is a matter that can only be deplored.

These conclusions were adopted by the Central Council of the International Association of Judges on June 20, 1990.