First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Madeira, 8 - 12 November 1982

Conclusions

CONTINUING EDUCATION OF JUDGES

1. - Whereas in some countries each judge is provided with the law books (i.e. the texts of legislation, law reports, text-books and commentaries) that he needs for his daily work, in others that is not so, and judges have to acquire such books at their own expense. Generally speaking, such books are fairly costly, and they have continuously to be kept up to date. Yet they are for the judge essential tools. Each judge should accordingly be provided with them, at no cost to himself, either at his place of work or so that he can use them at home. It is also necessary that each judge should have access to a library where he can obtain such other books as he may need.

2. - As was said by the President of the I.A.J., Mr. Hedi Saied, a judge cannot shut himself up in an ivory tower. He must forever keep in touch with changes in institutions by which the law is fundamentally affected. For that purpose it is essential that he should himself constantly take steps to keep informed. Such information may or should, according to the judicial system prevailing in his country, be added to by means of conferences, seminars, lectures, etc., organised either by official bodies or by institutions of a private character.
Exchanges of information and contacts between judges of different countries are always desirable, in particular between countries that have permanent institutions for judicial studies.
In no case should a judge's participation in such conferences, etc., prejudice his independence.

3. - It came to light in the course of the work of the Commission that in many countries the content of foreign law must be proved by any party relying on it, like any other fact of the case. The judge must thus decide within the limits set by the parties' allegations. In the result, where the content of relevant foreign law is not proved, either that law is presumed to be the same as the law of the forum or the law of the forum is applied as a last resort. In a number of countries it is accepted that, although foreign law should be proved like any other fact, the judge may nonetheless take his own steps to inform himself of the content of that law, in accordance with the maxim "jura novit curia". In others, the judge is under an obligation to take such step. Lastly, in some countries foreign law is not considered to be a fact and has to be applied as such.
In the last three cases resort to the agencies provided for by the Convention of London of 7 June 1968 should be encouraged, and all available means should be adopted to make that Convention more widely known and to persuade the countries that have not acceded to it to do so. Moreover, as is provided for by Article 18 of the Convention, countries that are not members of the Council of Europe, but who would wish to take part in the exchange of information under the Convention, could be invited to accede to it.