First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Oslo, 17 - 19 June 1985

Conclusions

THE JUDGES AND THE PROTECTION OF HUMAN RIGHTS

Following the study of the questions which had been submitted to the Commission at its 1984 meeting in Malbun (Liechtenstein), concerning the protection of human rights, the Commission first considered the problem of the legal assistance for an accused in the conduct of his defence, by the participation of one or more counsel and if necessary an interpreter and translators.

As to interpreters, the delegates were unanimous in thinking that when a party, in particular the accused, does not know the language of the court, he must be given the assistance of an interpreter. Most delegates expressed the view that the costs of such assistance should be borne by the State.

As to the assistance of a counsel, whilst there was wide consensus that everything should be done in order for the accused to be enabled effectively to conduct his defence, there were divergences as to the methods, whereby that obligation might be met.

It was in particular suggested that the problem is an aspect of the "principle of equality of arms"; the accused must be enabled to present his defence in the same manner as the other party, which means in particular that the defence should be conducted by sufficiently experienced counsel.

Some delegates, however, were of the opinion that assistance of counsel need to be provided only in cases of some gravity and complexity. In other cases, where only a small fine may be imposed, counsel is not essential.

The choice of counsel should normally be made by the accused; it might be possibly confined to a list of available counsel. Some control on such choice, either by the Court or by the Bar authorities, ought to be possible.

The costs of that assistance should be borne by the State, except where it is established that the person concerned can afford to pay them. The amount of the costs should be based on a reasonable scale of fees.

The Commission also considered, although not at length, the important question of telephone tapping. In general, it was agreed that such tapping can be tolerated only in cases expressly provided for by the law. In any event, the supervision by the judge, intended to prevent any abuse, is essential. In this connection, reference was made to the opinion of the European Court of Human Rights in the Malone case.

Passing then on to the three questions which had been formulated for the Oslo meeting, the Commission considered the need for the setting up of a supra-national court to adjudicate upon claims regarding violations of human rights.

It was unanimously thought that an international court with jurisdiction over the whole world would be difficult to be effectively established at present. This question mainly concerned the U.N. Covenant on Civil and Political Rights.

On the other hand it was considered that between countries with very close cultural and social affinities it is possible to set up a supra-national court for the protection of human rights. In this respect the European Court of Human Rights serves as a good example. It was particularly recognized that the existence of that court has resulted in the development of a number of fundamental principles referring particularly to the right to a fair hearing, of which account has been taken not only by the judges but also by governments and legislatures in each member-State. As a further result, a harmonization flows therefrom of those principles within such States, and it constitutes a considerable progress.

It has been noticed, however, that a supra-national court should render judgments which may be acceptable to the countries to which they are addressed. These judgments should not be such as to appear highly controversial in those countries. In this connection, that Court should exercise self-restraint so as limit its scope of action to the protection of strictly fundamental rights.

As far as the ways and methods of laying a case before a supra-national court are concerned, it was generally considered that the right of States to initiate the proceedings is insufficient to assure protection to human rights, even in the case of actions brought by one State against another.

The delegates also agreed that individual complaints should not go directly to the supra-national court. The interposition of an organ such as the European Commission of Human Rights to decide on the admissibility of the complaint is indispensable.

In conclusion, it was recognized that the establishment of a supra-national court limited to a number of countries having close socio-cultural affinities could be encouraged. The Commission had particularly in mind those African countries between which there was concluded at Nairobi in 1981 the African Charter of the Rights of Man and of Peoples. That Convention, which is not yet in force, enables those countries to set up such supra-national court.

The Commission was honored by the presence of Rolv Ryssdal, the President of the European Court of Human Rights.