First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Vienna, 11 - 13 November 1981

Conclusions

ADMINISTRATION OF THE COURTS IN THE CONTEXT OF THE INDEPENDENCE OF THE JUDGE

Having concluded that the judge ought in all circumstances to be totally independent, not only of the power of the State but also of the parties, and at all times to be free from all "prejudice", whatever be its source, the Commission has examined the problem of the judicial administration from two aspects, namely from the aspect of the material means placed at the disposal of the court to permit it to exercise its jurisdiction and from the aspect of the exercise of jurisdiction.

In so far as the material means are concerned, it is obvious that the judge cannot exercise his jurisdiction unless the necessary material means are placed at his disposal and that, if withholding such means, the Executive may compromise the independence of the judiciary.

Material means, it must be understood, comprise not only the buildings, the furniture and the library, as well as the means of obtaining legal and jurisprudential information, but also the necessary personnel in terms of judges, secretaries and registrars.

In this respect several questions ought to be taken into consideration:

1. the number of judges and the staff ought to be established by law or by statutory regulation, according to the opinion of the judicial authorities based on uniform criteria, it being understood that, when a vacancy occurs, it ought to be filled within the best possible delay;
2. the preparation of the budget intended to provide for the functioning of the courts, should be preceded by consultation with the relevant judicial authorities, in such a manner as the legislator which appropriates the funds will be placed in a position to know the needs of the proper functioning of the courts;
3. the expenditure of the funds allotted for the functioning of the courts ought to be under the control of the judiciary in conformity with criteria laid down in advance.

In so far as judicial administration is concerned, two questions were examined: firstly, concerning the assignment of judges to different divisions of a court and, secondly, concerning the distribution of cases to the judges.

On these two questions the Commission concluded that the existing systems in the countries represented on the commission, are divergent. The systems can be summarised up as follows.

Firstly, in so far as the assignment of judges is concerned: in some countries the matter is decided by the President of the court, whether done at the beginning of the year or during the course of the year. In other countries the assignments arise by nomination to the particular post concerned, i.e. in the division where the predecessor being replaced used to sit.

Secondly, so far as the distribution of cases is concerned, this is carried out by the President of the court or some other judicial organ, or by drawing of lots or in accordance with predetermined criteria settled down by law or by regulation.

The Commission has thought that it is impossible to establish or to suggest a general system, as in each country the matter depends upon different judicial factors.

However, the Commission thinks that, whatever is the system adopted, it must on the one hand guarantee the independence of the judge and on the other hand prevent arbitrariness.