First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Rome, 1-3 October 1986

Conclusions

JUDGES AND INFORMATICS.
THE INFORMATICS AS A MEANS FOR JUDGES TO ACQUIRE INFORMATION
ON STATUTORY OR CASE-LAW, OR ON LEGAL WRITINGS

From an examination of the eighteen written reports and from listening to the oral ones, submitted by Argentina, Greece, Morocco and Senegal, it appears that the situation with regard to informatics in the field of law differs greatly from one country to another.

Whereas in some countries, e.g. Brazil, Finland, France and, of course, Italy the storing of legal information by means of computers is well advanced, in most of the other countries, either nothing yet exists, be it in the field of law or specifically in the field of judicial opinions, or the existing systems are only at an initial phase. It follows that the data entered in the computer are only fragmentary. Consequently the information that can be drawn from it is very limited, especially in the beginning.

What subjects are stored in data banks? In all countries setting up computer systems, the judgments of the courts, especially those of the supreme courts, come first. Doctrine, viz. books or articles on legal problems, is only rarely put into the computer. So far as legislation is concerned, viz. laws and general regulations in force, computerizing of these texts is only at an early stage.

All this shows that it is difficult, at the moment, to form a clear picture of what the computer may be able to do in the future for law practitioners and especially for judges.

Accordingly, the views with regard to the results one might expect or that can be obtained differ greatly.

Firstly all computer based information on the law appears to be more useful for judges in the countries where the civil law legal system prevails, than in the common law countries. In the latter countries it is up to the parties, viz. in most cases the lawyers, to establish the legal basis of the claim with legal arguments as well as with the facts, and to put before the judge all the relevant legal authorities and provisions on which the case will be decided. Consequently it is the lawyer who must do the necessary research in the first place. In the countries with a civil law system, having heard the parties state their case, it is up to the judge to conduct the legal research necessary to reach a decision. In this case the computer can be a valuable source of information.

In this respect, in most countries concerned, one notes that it is mostly the younger judges who are more receptive to the use of computers, because they become more easily familiar with the use of the machine. However, in general, apart from a few exceptions, there are complaints that the computer systems are too complicated.

Moreover, and this is not only on an international level but also within one and the same country, a major difficulty arises from the diversity of key words used in programming the data-banks. It would be desirable, therefore to adopt a uniform terminology on a national as well as on an international level. In this respect one might envisage an international convention.

With regard not only to the usefulness and the efficiency of informatics in the field of law, but even more with regard to the necessity to use it, there are many divergent opinions.

In some countries where legal and judicial computerized systems are more advanced, e.g. Italy, the computer is considered to be an essential tool, not only to simplify the judge's task but also to improve the quality of his work. In other countries it is feared that judges might be tempted towards a certain automatism in their decisions. Looking up the precedents would become easy and judges might not

trouble too much with circumstances peculiar to each case. In other words, it is feared that the use of computers would rather encourage intellectual laziness.

To this objection, (which is shared to a certain extent even by judges already familiar with using computers, e.g. the Brazilian judges), the Italian judges, for whom informatics is an everyday tool, reply that once one has passed the simple stage of looking up the precedents, a computer that is fed not only with judicial decisions, but also with every single fact of each case, allows a more precise approach and evaluation of all the aspects of the case that has to be tried.

Attention has specially been drawn on the necessity to provide judges with a real control over what data will be fed into the computer. This is to avoid the storing of deliberately truncated information.

In the same line of thought, the Conference agreed on the necessity, for the future, of training judges in the use of computers. Obligatory training appears to be desirable, especially in those countries with a civil law legal system.

In conclusion, after comparing the experiences with computers in the several countries consulted, it is premature, at the very least, to give a detailed judgment on the merits of this new instrument of research. But in any event one must always remain conscious of the importance of the judge's own appreciation and evaluation of the facts. This work can only be done by a human, and in no way by a machine. The quality of the results achieved by the use of the computer depends, above all, on the quality of the judge using it.