

Proposed conclusions and recommendations of the First Study Commission 2018

Preamble

Criticism of the judiciary is a serious issue which may have ramifications for the rule of law within a State. While freedom of speech is an important value, criticism which is unfair, misleading or anti-democratic should not be made by governments or the media, due to the risks it poses for the continued survival of an independent, apolitical judiciary.

Criticism of the judiciary

1. It is inappropriate for the executive branch of the government to criticise the judiciary particularly when made before the court's final determination has been made.
2. It is a responsibility of the media to ensure that media stories about the judiciary are respectful of the role of the judiciary as an independent branch of the government, protective of the privacy and safety of individual Judges and are fair and balanced.
3. States should more closely monitor criticism on social media, particularly where it contains threats against individual Judges and/or threats of violence.

Steps taken to respond to criticism

4. Judges' associations, bar associations and other representative bodies of the legal profession should continue to respond strongly to any criticism which risks the independence of the judiciary, the separation of powers or is otherwise inappropriate.
5. Members of the media and elected politicians should also take steps to defend the judiciary against inappropriate attacks.

Boundary between legitimate and unfair criticism

6. Legitimate criticism of the judiciary will be based on the actual facts of the cases; avoid the use of inappropriate or inflammatory language; and avoid personal attacks or innuendos against individual politicians

Measures to improve fairness of reporting

7. The principle of open justice should be promoted. All courtrooms should be open to the public and all judgments should be publicly accessible unless otherwise required for safety, security or protection of litigants.
8. Judgments should be, wherever possible, written in plain language and, particularly for high profile or significant cases, accompanied by a short summary of the key facts and findings of the case.
9. Courts should have a designated press liaison to allow for the communication of information, the dissemination of material and the management of media requests in a way which promotes fair and balanced reporting but protects the independence of the court.

10. There should be greater public education programs surrounding the role and importance of the judiciary, particularly aimed at the importance of judicial independence and the apolitical nature of judicial decision-making.
11. It may be appropriate in some jurisdictions to expand the scope of liability and remedies for contempt of court, in circumstances where commentary is manifestly inappropriate.