

INTERNATIONAL ASSOCIATION OF JUDGES

Minutes of the meetings of the Central Council Crans-Montana (Switzerland), September 16, 18 and 19, 1991

Session of September 16

Present: Mr. Kaufmann, Mr. Tillinger, Mr. De Miranda Rosa; Mr. Walsh and Mr. Woratsch, Honorary Presidents; the President, Mr. Christiansen; the First Vice-President Mr. Abravanel; the Vice-Presidents Mr. Voss, Mr. Aarola and Mr. Rodriguez Arribas; the Assistant of the President, Mr. Dolva; the Secretary General, Mr. Longo, and the Deputy Secretaries General, Mr. Meriggiola and Mr. Bonomo.

The following delegates represented their respective national associations:

ARGENTINA	Mr. Caviglione-Fraga and Ms. Gatzke de Gauna
AUSTRIA	Mr. Markel and Mr. Woratsch
AUSTRALIA	Mr. Legoe and Mr. Macrossan
BELGIUM	Mr. Joachim and Mr. Van Gerven
BRAZIL	Mr. Miranda Rosa and Mr. Silva
CANADA	Mr. Noble and Mr. Tremblay
DENMARK	Mr. Larsen and Mr. Rasmussen
FEDERAL REPUBLIC OF GERMANY	Mr. Henning and Mr. Voss
FINLAND	Mr. Aarola and Mr. Kiuru
FRANCE	Mr. Joubrel and Mr. Riolacci
GREECE	Mr. Sergakis and Mr. Tentes
ICELAND	Mr. Kristjansson and Mr. Sigurdsson
IRELAND	Mr. McCarthy and Mr. Walsh
ISRAEL	Mr. Lindenstrauss
ITALY	Mr. Caliendo and Mr. Tindari Baglione
IVORY COAST	Mr. Kablan Aka
JAPAN	Mr. Kenzaburo and Mr. Yonosuke
LIECHTENSTEIN	Mr. Bizozzero and Mr. Rederer
LUXEMBURG	Mr. Bour and Mr. Santer
MALTA	Mr. Agius
MOROCCO	Mr. Daoudi
NETHERLANDS	Mr. Broekhoven and Mr. Holthuis
NORWAY	Mr. Laake
PORTUGAL	Mr. Gouveia and Mr. Payan Martins
SENEGAL	Mr. Ba and Mr. Thiam
SPAIN	Mr. Galan Menéndez and Mr. Rodriguez Arribas
SWEDEN	Mr. Franke and Mr. Palm
SWITZERLAND	Mr. Abravanel and Mr. Balscheit
TANZANIA	Mr. Lugakingira and Mr. Kwey
TUNISIA	Mr. Bennour and Mr. Essersi
UNITED KINGDOM	Sir Basil Kelly and Mr. Babington

Mr. Horeczky, President of the Hungarian Association of Judges, was also present as an observer.

The session was opened at 8.45 a.m.. The President welcomed all the participants and expressed the deepest gratitude of the IAJ to the Swiss Association of Judges for the organizational

work and their generous hospitality. A special welcome was addressed to the Hungarian observer.

President Christiansen then introduced his personal assistant, Mr. Trond Dolva, Justice of the Supreme Court of Norway and gave the Central Council some good news informing those presents that after the Helsinki meeting Mr. Galan Menéndez was appointed justice of the Supreme Court of Spain and Mr. Marc Riolacci was appointed president of a division of the Court of Appeal of Bastia. He also informed the Council that Mr. Douglas Arthur Douglas-Hughes, from Great Britain, had died last June and that Vice-President Davis had not been able to come because he had recently lost his wife. At the request of the President all those presents stood in silence for a minute in memory of Mr. Douglas-Hughes.

The President then passed to the items listed on the agenda.

Approval of the minutes of the meeting held in Helsinki in 1990.

The President invited the participants to submit their remarks, if any, on the minutes sent by the Secretariat General to all member associations.

Having ascertained that nobody had any observations to make, the President declared the minutes approved.

Appointment of two auditors responsible for examining the financial report.

The members of the Council unanimously resolved to empower Mr. Agius and Mr. Riolacci to audit the financial report drawn up by the Secretary General and to submit their conclusions and proposals during the session of September 19.

Report of the President.

Mr. Christiansen said that the main task for the President in the previous year had been cooperation in the assistance programme carried out by the Council of Europe in favour of the new democracies in Central and Eastern Europe. In particular the IAJ would provide some experts to take part in meetings and seminars. One meeting had already taken place in Strasbourg, one seminar would be held in Budapest the following week and another one would be held in Prague before the end of the year. At the Budapest seminar four experts from the IAJ (including President Christiansen himself) and the General Secretary would deliver lectures on different topics of interest for our colleagues in Hungary. The same would happen for the seminar in Czechoslovakia.

In the near future, the assistance programme will be extended to the Baltic countries, and the IAJ was ready to offer its cooperation to the Council of Europe for those countries also.

President Christiansen then informed the Council that he and Vice-President Voss had participated in a conference near Oslo

organized by the Norwegian Bar Association in collaboration with the Norwegian Association of Judges for lawyers and judges of countries which were formerly behind the "Iron Curtain". There were some judges from the Baltic states and Soviet Russia: including the president of the first instance court of the town formerly called Leningrad.

Report of the Secretary General

Mr. Longo briefly illustrated the financial report, which had previously been circulated to all the members of the Council. The net balance shown in the report was 29,935,823 lire as against 28,401,424 lire for the previous year. The report covers the period from May 29, 1990 to August 30, 1991. The income was more or less the same as that of the previous year, in which the IAJ had received a substantial contribution from the United Nations Interregional Institute for Crime Research and Justice - UNICRI. Also during the last year the expenditures were kept within the limits of the income in spite of the length of the last financial year.

As far as the yearly contributions to the IAJ were concerned, almost all the members had sent them. The bank informed that payment for the year 1991 had not been received from Portugal, Malta, Morocco and Tanzania. However, Malta and Tanzania have shown that they had already sent their contributions. The delegate of Portugal announced that he has the sum with him and that he would pay in cash.

The Associations of Paraguay and Uruguay have not paid their contributions since 1989.

We had not any news from the Lebanese Association for many years and we are still waiting for information (which had been asked for through diplomatic channels) about the existence of that association.

The Moroccan delegation informed the Council that the contribution would be sent as soon as possible.

Mr. Laake remarked that the balance was too low for such an association and that the financial situation could be improved asking for money from the Council of Europe, the EEC, the United Nations or national governments.

Mr. Christiansen assured that the financial situation was always on the agenda of the presidency, but that the problem was more complicated. Mr. Abravanel pointed out that it was a golden rule for any type of associations that the financing should be the concern of the members themselves. This especially was important to save our independence. Only special activities could be subsidized.

Cooperation with international organizations

President Christiansen pointed out again that cooperation with the Council of Europe had been the main task of the Presidency in the previous year. The following experts would participate in the seminar in Budapest: Lord Ackner (U.K), First Vice-President Abravanel, Mr. Krings (Belgium) the President himself and the Secretary General. He would also participate in the seminar in Prague with another three experts from the IAJ.

Mr. Longo said that until now the Council of Europe had not given a final answer to the proposals of our association concerning the names of the experts, who included Mr. Abravanel. A certain amount of disorder existed in the Secretariat of the Council of Europe, which was responsible of a huge assistance programme to be carried out in a very short time.

Mr. Abravanel added that two Dutch colleagues would also take part in the Budapest seminar and that a meeting would be held in Strasbourg at the end of October, in which Mr. Krings and Mr. Abravanel himself would take part.

President Christiansen specified that he had not mentioned the participation of the Dutch colleagues because they were not appointed by the IAJ, but that he of course was very happy at their presence. He then asked Vice-President Voss, who was in charge of the European Association of Judges - Working Group of the IAJ, to make his report.

Mr. Voss first of all thanked the Dutch and Norwegian Associations for the generous contribution to the German fund for the help of the Colombian judges and their families. Information about this initiative had been given in Helsinki the previous year.

He did not feel the need to speak about the seminar in Norway in which he had participated with the President, as Mr. Christiansen had already spoken about it. In November 1990 he had been invited by the Icelandic colleagues to take part in a meeting in which he spoke about the application of Community Law and the necessity of training in this field. He should also have participated in a Council of Europe meeting in Strasbourg, but owing to some misunderstanding he was unable to be present. However, Mr. Riolacci participated in that meeting.

The day before, the European Group of the IAJ had met. They discussed the possibilities for judges to be educated in Community Law. They agreed on a resolution proposing that the European Parliament should not only create an academy for Community Law but also support in-service training programmes organized by the member States in the same field. The Group also established a commission of experts from six national associations; they will meet in the next few months in order to prepare a paper pointing out the possibilities of influencing the developments of the European academy and indicating which education programmes we want to be carried out there. The paper would be discussed at the next meeting of the European Group. During the meeting of the previous day, cooperation with the Council of Europe in the assistance programme to the new democracies had also been discussed.

Mr. Riolacci informed those presents that some days before

he had participated as an expert from the IAJ in a meeting organized by the Council of Europe in Strasbourg. There discussion had taken place on the problem of the reduction of the court overload, a subject on which a recommendation from the Council of Europe had been adopted in 1986. A delegation of Polish judges took part in the meeting and spoke at length about the utilisation of non-professional judges in their country. There is no association of judges in Poland, but they were very much interested in the activities of the IAJ and said they would create a national association of judges. In the Strasbourg meeting, Mr. Riolacci presented a report on behalf of the IAJ. The meeting was also attended by delegations from Austria, the Netherlands, the United Kingdom, the European Union of the Clerks of Justice and the European Union of Bailiffs.

Mr. Sergakis asked Mr. Riolacci for more details and informed those presents of the setting up in Strasbourg of a centre of documentation which would have the task of collecting all the information concerning community law in general and the relationship between community law and national law.

Mr. Riolacci gave some additional information pointing out that the court overload was increasing in the various countries represented at the meeting and that in order to deal with this situation there was a tendency to resort to the contribution of some non-professional judges (France had a draft statute in this regard). The question could be discussed by one of the Study Commissions, also in order to harmonize our work with the activities of the Council of Europe.

President Christiansen reminded the national associations that the Council of Europe had recommended that they should assist the new democracies in Central and Eastern Europe. He added that the activity of the European Working Group of the had been extremely fruitful for the judges in our region, also thanks to the important work done by Vice-President Voss and by the Secretariat, and that delegates from other regions (Africa, South America, the Far East etc.) should be aware that it is possible to establish within this association other regional groups that could help the judges in those regions.

Mr. Ba said that the discussions concerning Europe were very interesting, but he had the impression that many (non-European) delegations felt themselves excluded from participation.

Mr. Longo also pointed out also that initiatives of collaboration between two or more national associations of a same region are welcomed. In the previous year a very successful seminar had been organized by the IAJ in Santo Domingo for five Latin American countries with the financial help of the United Nations and the Italian Government. It is necessary for a national association of judges of a certain region to take some kind of initiatives in order to meet the needs of the judiciary in that region.

New applications for membership.

Mr. Horeczky, President of the Hungarian Association of Judges, gave some information on the characteristics of that association, which had been founded in the previous year after the political changes in Hungary, in order to defend the independence of the judges, who cannot be members of any political party or be involved in any political activity. More than half of the 1,800 Hungarian judges are already members of the association.

After the Hungarian observer had left the room, Mr. Woratsch, who had been appointed rapporteur on this matter, said that he had continued the investigation on the independence and on the representativeness of the Hungarian Association that he had already begun on the occasion of several bilateral contacts between this Association and the Austrian Association of Judges. At the end of his report he recommended acceptance of the application.

A discussion followed, in which delegates from France, Sweden, Belgium, Tanzania, Malta, Germany and Iceland took part.

Mr. Woratsch answered some of the questions asked by the delegates and the discussion was adjourned to the next session.

Session of September 18

The session started at 4.00 p.m. The member associations were represented by the same delegates who were presents at the previous session, apart from the following changes: Argentina was represented by Ms. Beiró and Mr. Caviglione-Fraga, Iceland, by Ms. Jónsson and Mr. Sigurdsson Valtýr; Luxemburg, by Mr. Bosseler and Mr. Bour; Portugal, by Mr. Payan Martins and Mr. Reis Figueira; Switzerland, by Mr. Abravanel; Tanzania, by Mr. Lugakingira and Mr. Rusema; Tunisia, by Mr. Bennur and Mr. Marrakchi; Israel and Japan were not represented.

The discussion about the application of the Hungarian Association of Judges continued.

Mr. Walsh pointed out that Hungary had already been accepted into international society as a democratic country, since it had become a member of the Council of Europe and had a judge sitting in the European Court for Human Rights; moreover, the judiciary of Hungary is under surveillance of the provisions of European Convention for Human Rights concerning fair trial, fair procedures, independent and impartial judgments, etc.

Mr. Woratsch gave some additional information on the Hungarian Association of Judges and on the position of the judges in that country, in particular with reference to the number of members of the association (about 60% of Hungarian judges), its financial resources, the appointment and the dismissal of judges their salaries and the dismissal of the judges who had

participated in political trials. Finally he proposed the admission of the Hungarian Association.

The Central Council held a vote and unanimously resolved to grant the Hungarian Association of Judges IAJ membership. The Hungarian delegate was asked to rejoin the members of the Council.

The President informed him of the resolution adopted by the Council, congratulated him and on behalf of the whole assembly expressed his wish for a fruitful and long lasting co-operation.

Duration of the function of the Vice-Presidents and possibility for the President at the expiry of office to stay two more years on the Presidency Committee. Discussion on suggested amendments on the Statute.

The proposal, which had already been discussed at the Helsinki meeting of the Central Council, was unanimously approved with exclusion of the words "ex officio" (moreover, in the French version, the expression "sont rééligibles" was changed into "peuvent être réélus" and the words "de charge" after "sortant" were deleted).

The new article 5, paragraph 4, of the Statutes reads as follows: "4. The above officers shall be elected every second year by the Central Council. The Vice-Presidents can be reelected three times. The past President stays two more years on the Presidency Committee."

Report of the auditors responsible for examining the financial statement.

Mr. Agius and Mr. Riolacci declared their satisfaction vis-à-vis the correct utilization of the financial resources of the IAJ. The documentation was complete, and the expenses had been kept within reasonable limits considering the length of the financial year (15 months) and the activities of the Association.

The assembly unanimously approved the balance-sheet for 1990-1991 and applauded the Secretary General.

Meetings of the IAJ in following years.

The Spanish delegation announced that the Spanish Association of Judges would be happy to host the Central Council and the Study Commissions in Sevilla at the end of September 1992. The heir to the Spanish Crown, Prince Felipe, would be the honorary President of the meeting.

Mr. De Miranda Rosa said that the Brazilian Association of Judges would host the meetings of the Central Council and of the Study-Commissions in 1993 in Sao Paulo, probably in August or

September.

Mr. Tentes said that the Greek Association would like to host the meetings of the International Association of Judges in 1994.

Mr. Essersi invited the Central Council and the Study Commissions to hold their meetings in Tunisia in 1995.

The President, on behalf of the whole assembly, warmly thanked the above mentioned associations for their invitations.

Miscellanea.

President Christiansen informed the delegates that the Presidency Committee had discussed the proposal prepared by the Australian colleague, Mr. Samuels, concerning the working methods of the Study Commissions. Many positive elements were found in this proposal, but there were also many problems involved. The proposal was then discussed by the Presidency Committee with the Presidents of the three Study Commissions, and several questions were raised concerning the preparation of the meetings of the Study Commissions and the activities carried out during the meetings. The Secretariat General would prepare a document summarizing those questions, which would be examined at the following meeting of the Presidency Committee in Norway, in June 1992. After a further exchange of views with the Presidents of the Study Commissions, a paper containing the possible solutions to the problems would be distributed to all the delegates for discussion at the next meeting of the Central Council.

Mr. Kiuru announced that the Finnish Association of Judges was going to publish all the reports presented at the Helsinki meeting.

Mr. Palm asked for comments on the following two proposals: a) every year the Secretariat General should send every member of the IAJ the list of the national associations with their addresses in order to facilitate contacts among them; b) at the meetings of the Central Council in which the officers of the Association have to be elected, candidates should be nominated on the first day and not on the last one.

President Christiansen answered that the first proposal was connected with the practical aspects of Mr. Samuels' proposal, because for the transmission of the preparatory reports of the Study Commissions it had also been maintained that it would be better to send them to the national associations rather than to the individual delegates (as happens now), who very often change from one year to another.

As far as the second proposal mentioned by Mr. Palm was concerned, it would be discussed at the next meeting of the Presidency Committee in June 1992.

Session of September 20

The session started at 9.30 a.m. The member associations were represented by the same delegates as in the session of September 16, apart from the following changes: Australia was represented by Mr. Tadgell; Hungary, by Mr. Horeczky; The Netherlands, by Mr. Broekhoven; Portugal, by Mr. Payan Martins and Mr. Reis Figueira; Switzerland, by Mr. Abravanel; The United Kingdom, by Mr. Douglas; Brazil, Greece, Japan Liechtenstein Senegal were not represented.

Reports of the Presidents of the Study Commissions and selection of the themes for 1992.

The President gave the floor successively to Mr. Krings, to Mrs. Lindeblad Ericsson and to Mr. Screvens, president of the 1st, 2nd and 3rd Study Commissions respectively, and they read out the final conclusions of the Commissions.

After the approval of those conclusions, against which no objections were raised, the Central Council also approved the proposals of the Presidents of the Study Commissions concerning the following new themes for 1992:

- 1) "The reasoning of judgment" (1st Commission);
- 2) "The legal position of children after divorce, separation or annulment of the marriage" (2nd Commission);
- 3) "The position of the victim in the criminal process" (3rd Commission).

President Christiansen thanked the Presidents and the members of the Study Commissions for the work done. He then expressed his gratitude to all the delegates and to the Secretariat General for their active participation in the meetings of the Central Council. The session was closed at 11.00 a.m..

The President

The Secretary General