



Third Study Commission
Criminal law and procedure

Meeting in Taipei, 14-18 November 1999

Final Report

THE INFLUENCE OF THE PRESS AND OTHER MEDIA UPON THE INTEGRITY AND FREEDOM OF
OPINION OF THE MEMBERS OF THE JUDICIARY IN CRIMINAL JUSTICE MATTERS

The Third Study Commission examined the influence of the press and other media upon the integrity and freedom of opinion of members of the judiciary in criminal justice matters. Representatives of Argentina, Australia, Austria, Bolivia, Brazil, Canada, the Czech Republic, Denmark, England, Estonia, France, Former Yugoslav Republic of Macedonia, Germany, Greece, Iceland, Israel, Italy, Japan, Liechtenstein, Lithuania, Luxembourg, Morocco, Norway, Portugal, ROC Taiwan, Romania, Senegal, Scotland, Slovenia, Spain, Sweden, Switzerland, Togo, and the USA, 21 of whom had sent a preliminary written report, proposed the following conclusions.

It was confirmed that in all countries present, the independence of the individual judge is safeguarded. In some countries, this safeguard is confirmed by the constitution; in others by a statute or a criminal code or by case-law made by a country's higher courts. In most countries, the omnipresence of the media, who project themselves as the most outspoken representatives of their community, weighs heavily upon the members of the judiciary, most especially upon those who are active in criminal courts which have always been the most visible and newsworthy branch of judicial systems. Even in those countries where no specific cases of direct pressure were explicitly mentioned, most experience this media pressure as an impediment to the ability of a judge (and by the word judge we mean to include both judges and public prosecutors in countries where such officers are regarded as members of the judiciary), freely to carry out his function.

1. As to the professional career of the judge, we received no clear evidence of cases where direct influence has been proved. However, in certain countries where the hierarchy is profoundly politicized, as for instance in Romania, or where the designation of judges is decided by parliament, as in the Former Yugoslav Republic of Macedonia and Slovenia for instance, or in the United States where state judges are often elected, the press can potentially prejudice a judge's career. In general, however, the comments of the press, however ascerbic they may be, do not seem to influence the appointment or promotion of judges.

2. As to the private life of the judge and his family, a great many participants spoke of the unfair pressure upon them from the media as a consequence of their judicial duties. Whilst a judge must expect public comment about his work, and must have broad shoulders to bear criticism when it is due, it is becoming increasingly common for such criticism to cross the boundary which divides fair comment from personalized and sensationalized attack. It is very difficult for any judge to defend himself against such attacks. There are prohibitive costs in such legal proceedings and there is the risk that if such proceedings are successful, the press may insinuate that the case, inevitably decided by another judge, was not dealt with impartially. We were all emphatic however, that in any such proceedings, a judge would apply the rules to the letter.

3. It is difficult for any judge to pursue litigation, even in purely private matters (Togo) and as a consequence, he may feel less protected by law than the ordinary citizen. If, for example, a judge is involved in divorce proceedings, it may in some systems be possible to move the case to a different

venue or bring in a judge from a different area, but in a small country this may not be possible. Many felt that aspects of private life which are tolerated for ordinary citizens attract criticism for a judge or a member of his family. So as to avoid such criticism, some judges feel constrained to lead lives which make them appear distant and colorless and this can create an unfair image of judges in general.

4. All participants agreed that the freedom of the press is an essential safeguard in any democratic society and the focus of our discussion was an attempt to define the correct balance between the value which we all place upon press freedom and the right of the judge for respect for his professional and personal integrity. We see this right not as a personal privilege but rather as something which attaches to judicial office and is essential to ensure and maintain the independence of the judge and the highest quality of justice.

CONCLUSIONS

1. There was a consensus that the best way of reacting to media pressure is to have a strong professional association which has enough independence to ensure that appointments or promotions are made strictly according to personal and professional qualities.

2. In the same vein, most participants agreed that a professional association was better placed than the ministry of justice to defend a judge against unfair treatment by the media even if, (as in France) the judge's legal costs are met by the ministry. A supreme council of judges (in whatever form it is constituted or known) is considered unsuitable because it is too political, too academic or too heavily involved with judicial discipline. Legal action by a professional association would require the consent of the judge concerned and must be used sparingly in the most obvious cases. A group insurance policy may be the most appropriate means of covering the costs, with domestic law amended where necessary to allow such action to be brought by a professional association.

3. Notwithstanding the freedom of the press, we have seen that there are very different approaches within judicial systems. For instance in Sweden the press have access to the case file as soon as a case is committed for trial. In many countries, television cameras are forbidden in courts; in others, permission for them may be given by the judge or judges hearing the case. The majority expressed the wish that an agreement should be reached with the media by which at least the preliminary phase of criminal procedures could be protected from undue personalization of those members of the judiciary who are involved. We are glad to record that there remain countries where the relationship between the courts and the press is still characterized by mutual respect.

The members of the Third Study Commission expressed satisfaction that this year's meeting of the Central Council of the International Association of Judges unanimously adopted the Universal Charter of the Judge and hope that their conclusions may contribute towards its further implementation.