



Second Study Commission
Civil law and procedure

Meeting in Macau, 23-27 October 1989

Conclusions

THE JUDGE AND THE CO-OPERATION OF OTHER JUSTICE-RELATED PROFESSIONS:
LAWYERS, LAW-PROFESSORS, PUBLIC NOTARIES, PROFESSIONAL EXPERTS,
AND OTHER STATE OFFICIALS

Barristers, solicitors and notaries are convenient branches of the profession of law and help serve the administration of justice. All professionals in the justice system, including judges, have their special, separate roles to meet the demands of all people for justice.

The commission therefore recommends that

- all persons before the courts ought to be represented by suitably qualified lawyers whose duty to justice, the court and the client are co-extensive. Notwithstanding the important part played by the attorney in litigation, the right must be reserved to the individual to appear on his own behalf;
- such persons as are unable for economic reasons to call an attorney to protect their interests during the law suit should be State subsidized with legal aid;
- criminal cases require a freely chosen attorney to defend the accused, where appropriate, free of charge; similar guarantees must be afforded to the victim.

In general it is convenient that the appointment of experts should be made irrespective of nationality.

The Commission stresses that the judge should never abandon to the expert his function as a judge.

The obligation of the judge not to abandon to the expert his function as a judge implies that he must never be bound to follow the opinion of the expert.

A law binding the judge to follow the opinion of the expert would be contrary to the general principles which are the basis of our judicial systems.

The fees of an official expert should be fixed by the court with a right to complain for the parties and the expert.

The expert may not receive any kind of compensation from the parties or from other sources.

Whereas in the civil law countries which know the Latin notary

- the notary is a public official who advises the parties impartially and points out to them the legal implications of such deeds as they might wish to make, thereby preventing conflict between the parties,
- authenticated deeds drawn up by the notary simplify evidence proceedings;
- the notary represents the parties in Court in matters of voluntary jurisdiction;
- the notary is further required by the Court to perform judicial acts such as inventories, divisions of property and affixing of seals;

it is desirable that the functions of the notary be consolidated and that resort to the notary's services in the administration of Justice be recognised and encouraged.

The Commission recommends that information should be made available for the purposes of litigation by all public authorities at the request of the Court.