

Report and Conclusions of the 1st Study Commission

IAJ Meeting in Foz do Iguasu, Brazil

9-13 November 2014

1. The topic for discussion this year was : "Media (including social media) in the Courtroom and Effect on Judicial Independence." Member associations were asked to produce short reports and we received 34 responses.
The questionnaire and a synopsis of the answers will be published on the IAJ-UIM Website.
2. At the meetings, the delegates expanded the topic somewhat and discussed the relationship between the judiciary and the media. We considered the media in three different categories : (1) written press (newspapers), (2) broadcast media (radio and television), and (3) various forms of social media (twitter, blogging, Facebook, etc.). The delegates discussed problems related to each of the forms of media, various needs in dealing with the media, and possible solutions to the problems and recommendations.
3. By way of example, we identified a number of problems common to all three categories of media. They *include* :
 - Journalists often do not have adequate knowledge and training to understand what they are reporting ;
 - At times there is not a trusting relationship between the media and the judiciary ;
 - Inaccurate and/or biased reporting ;
 - Attitude of judiciary that we are silent as an institution and speak only through our judgments and decisions ;
 - Infringement on privacy of parties, witnesses, jurors and protected evidence (such as trade secrets, financial data) ;
 - Potential influence on witness testimony and general influence and pressure on judges and jurors ;
 - Disruption and diminishment of respect for judicial proceedings.
4. We have in mind the considerations laid down, for instance, in the Madrid Principles on the Relationship between the Media and Judicial Independence.¹
On the one hand it is the responsibility of judges to recognize and give effect to

¹ <http://daccess-ods.un.org/TMP/1672171.35429382.html>; see also amongst others, Opinion No. 7 of the Consultative Council of European Judges (CCJE) ; THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT, ch. 28, 44, 74, 75 ; Recommendation CM/Rec (2010) 12 of the Committee of Minister to member states of the Council of Europe on judges: independence, efficiency and responsibilities, Annex Ch. 19 and 40; Opinion no. 3 of the Consultative Council of European Judges (CCJE), ch. 50; Mt. Scopus Approved Revised International Standards of Judicial Independence, ch. 6.2.

freedom of the media by applying a basic presumption in favour of full access by the media and permitting only such restrictions on freedom of the media as are authorized by the International Covenant on Civil and Political Rights ("International Covenant") and as are specified in precise laws of the respective countries ; on the other hand the media has an obligation to respect the rights of individuals protected by the International Covenant and to respect the independence of the judiciary.

There are many potential solutions to some of the problems we have identified. We acknowledge that a number of countries and their courts already have rules and regulations prohibiting or severely limiting some or all forms of media in the courtroom and sometimes limiting reporting on cases that are in progress. Often times these are administered on a case-by-case basis with the direct involvement of the judges who are conducting the proceedings.

With these considerations in mind, the plenary of the 1st Study Commission has focused on articulating principles and recommendations that will address additional methods of improving relationships with the media:

1. The judiciary acknowledges the important role the media plays in a democratic society conveying information of court proceedings and court-related matters to the public.
2. The judiciary could offer to be involved in informing journalists about general matters of court procedure and administration, and general issues of substantive law.
3. The judiciary should use state of the art communication strategies and methods to convey accurate information regarding the role of the judiciary in society and, when allowed by law, the nature of specific judicial proceedings (for example, this could include court press officers, who may be judges not connected with a particular case, press releases that may be issued at appropriate times during proceedings or after a case is concluded, and the use of social media by the courts)
4. The judiciary should offer help to establish and foster mechanisms outside the judiciary for addressing problems with the media such as sloppy or inaccurate reporting. This could include encouraging the establishment of a separate commission that works with the media or an ombudsman to help resolve such problems.

Finally, the First Study Commission has adopted a procedure for the management of future meetings by which we will identify a topic, obtain information from our representative delegations through the use of short, limited questionnaires, synthesize that information for the delegates and prepare a draft report to share with the delegates before we all arrive at the annual meeting.

The topic for the 2015 meeting, subject to approval by the Central Committee, is:

The relationship between effective management of the courts and the delivery of justice by independent judges.

The new officers of the First Study Commission are:

President : Peter Hall (USA)

Vice President : Roslyn Atkinson (Australia)

Vice President : Thomas Stadelmann (Switzerland)

Vice President : Mehmet Tank (Turkey)

Secretary : Virginie Duval (France)

Guidelines for the Working Methods of the 1st Study Commission

According to article 7 of the regulations of IAJ, the 1st Study Commission has to deal with the following themes: the organization of the Judiciary, the status of the Judiciary, the rights of the individual.

The objective of the 1st Study Commission is to foster the level of engagement necessary to address those fields and to enhance them in positive ways. To achieve these objectives, the Commission deals either with topics not yet covered by its own statements or by statements, regulations etc. of other organizations or institutions, or with topics for which additional statements are necessary.

Based on these principles, the Commission adopts the following working methods:

- Determination of the topic:
 - The presidency of the Commission calls on the member associations for topic proposals for the following year well in advance of the next meeting and sets a deadline for the delivery of those proposals. Anybody invited to deliver proposals should be asked to take into consideration whether the topic falls within the themes of the commission and whether it has already been covered by previous meetings or if there are additional statements necessary or desirable to make.
 - The presidency will then examine whether there are already statements, regulations etc. on the proposed topic and if so, whether additional statements are reasonable. Based on this examination, the presidency will propose one or more topics to the assembly of the commission, so that the assembly can determine which topic should be proposed to the Central Council in order to be treated at the next conference.
- Treatment of the topic:
 - The presidency will send a brief questionnaire of no more than five or six questions to the member associations to collect background information as a basis for the upcoming discussion at the assembly.
 - The presidency will compile a synopsis of the answers sent in before the deadline.
 - Based on this synopsis, the presidency will draft statements on the subject.
 - The synopsis and the statements will be sent to the member associations in advance of the upcoming meeting.
 - During the meeting of the study commission, the statements suggested by the presidency will be discussed and finalized. Discussion of the background information will take place only if essential for the discussion of the statements and the formulation of a report or opinion.
 - Based on the results of these discussions, the presidency will draft a report, opinion or similar document, which will then have to be adopted by the assembly of the commission.