

QUESTIONNAIRE
sur le sujet
LA RESPONSABILITE CIVILE DES JUGES

Mes chers Collègues,

J'ai le plaisir de vous envoyer une copie du questionnaire pour la préparation du sujet qui sera traité par la 2ème Commission d'Etude à sa prochaine réunion. Comme nous avons décidé à Madrid, quelques cas d'exemple pour la discussion ont été ajoutés, jusqu'ici à mon regret seulement en anglais. J'ajoute aussi une liste des sujets discutés dans la commission depuis 1980 et une liste des adresses des délégués comme corrigée à Madrid. Voulez-vous indiquer les autres corrections désirées et, si possible, ajouter votre adresse e-mail ?

Pour l'envoi des réponses au questionnaire, veuillez bien faire référence à la lettre du Secrétaire Général. Veuillez croire, chers Collègues, à l'assurance de mes sentiments dévoués.

Ton Pos

I

1. Sous quelles conditions un juge engage-t-il sa responsabilité pour
 - a. erreurs de jugement ;
 - b. propos défamants émis au cours de l'audience ;
 - c. délais (excessifs) ;
 - d. fonctionnement défectueux des services judiciaires ;
 - e. autres comportements dans l'exercice de sa fonction ?
2. Dans ces cas s'agit-il d'une responsabilité personnelle ou d'une responsabilité de l'Etat ? Si le juge est tenu responsable personnellement, est-ce que l'Etat lui rembourse ce qu'il a dû payer (ou vice versa) ?
3. Si dans votre système il y a responsabilité personnelle, est-ce qu'une assurance contre ce risque est habituelle, obligatoire ou pourvue par le gouvernement ?
4. Est-ce que les règles sur la responsabilité civile des juges mettent en cause leur indépendance ? Est-ce que ces règles sont d'ailleurs satisfaisantes ?
5. Y-a-t-il des projets de réforme ?

II

6. Quel(s) point(s) désirez-vous discuter à fond ?

III

(pour préparer les conclusions)

7. Quelles modifications proposeriez-vous au législateur dans ce domaine ?

IV

(année prochaine)

8. Quel sujet proposez-vous pour l'année prochaine ?
9. Qu'est-ce que vous pensez de l'expérience d'ajouter un (quelques) cas à un questionnaire bref ? Préférez-vous retourner à la pratique précédente d'un long questionnaire et écarter les cas ? Est-ce que vous avez d'autres suggestions pour les années à venir ?

Janvier 2002

Ton Pos

(Voir page 2 pour des cas d'exemple en anglais)

CASE STUDIES

CASE A

A motorist, AB, is charged with a criminal offence under the Road Traffic Legislation, for which the maximum penalty is a monetary fine of a particular amount. He disputes the allegation that he has committed the offence and engages PQ as his lawyer to defend him.

PQ regularly appears to argue cases before the Court in question. His relationship with one of the judges - JJ - is not a good one. JJ regards PQ as an incompetent lawyer and in the past has publicly criticised PQ in very strong terms. On occasions his criticism has involved personal insults directed towards PQ.

At the hearing of the case against AB, a heated argument develops between the Judge JJ and the lawyer PQ during which the Judge suddenly announces that because of both the lawyer's behaviour in Court and what the Judge regards as AB's untruthfulness, the hearing cannot continue and must be adjourned. The Judge then orders that until the next adjourned hearing, AB must be detained in custody. AB is accordingly removed to prison.

The Judge believed that he had power to order the detention in custody of AB. He was wrong. Having been committed to prison AB appealed to a higher Court, which declared that the Judge had no such power and even if he had such a power, the actions of JJ would have been an improper use of that power. AB was released from prison, but only after having been imprisoned for some five days, pending the time involved in making the appeal.

CASE B

A Judge is required to decide a dispute between a consumer, backed by a consumer's association and a large commercial undertaking.

In the course of giving judgment in favour of the consumer, the Judge makes a number of very highly critical and colourfully expressed comments on some of the business practices of the commercial undertaking, including the assertion that he regards its board of directors as being dishonest and corrupt. None of these remarks are relevant to the questions which he has to decide. Those comments are widely publicised in the press, radio and television and result in substantial commercial losses to the defending undertaking. At a subsequent appeal, by the undertaking, it is held that the comments were not only unnecessary for the purposes of the judgment given by the Judge, but were also made without evidential or factual basis and reflected a personal and biased view.

CASE C

A civil action is set down for a hearing on a specified date. In the expectation that the case will be heard on that date both parties to the action instruct their lawyers to be present and cite witnesses.

When the date set down arrives it is clear that far more cases have been put out for hearing than can be dealt with by the judges available. The parties, their lawyers, and the witnesses are sent away and told to come back another day, as are many others.

Part of the reason why there were not enough judges was that one judge had suddenly been taken ill. But the principal reason was that, relying on a new computer system, a major administrative error had been made and even had the judges all been in good health, some cases could not have been heard.