

Report of the 2nd Study Commission to the Central Council

70th Annual Meeting of the IAJ

Taipei, Taiwan

September 17th – 21st 2023

“How are data protection rules impacting on the way judges work in civil litigation?”

The questionnaire of the 2nd Study Commission invited member associations to respond to questions relating to the impact of data protection rules on the work of judges in civil litigation.

There were 38 responses to the questionnaires which were circulated to the member associations.

As in previous years, we did not believe that the questionnaire and answers should be central to the work done by the 2nd Study Commission but rather should stimulate discussion about the question posed.

At the commencement of the session, the 2nd Study Commission was addressed by the Honourable Leo Gordon of the US Court of International Trade who spoke about “Data Security and Privacy Under U.S. Law”. After his excellent presentation, an engaged discussion ensued, chaired by Vice President Mette Vammen, regarding the question posed.

For the purposes of this report to Central Council, we have reduced our deliberations to the following principal conclusions:-

1. Regulation of the protection of personal data is now transnational although the laws relating to it differ between jurisdictions with some more comprehensive than others. In Europe, a similar data protection regime applies throughout the member states as the regime has been imposed by EU legislation, whereas within the United States, the protection regime differs from State to State with more restrictive requirements applying in some States.
2. In general, courts are subject to a data protection regime with regulation falling to the judiciary rather than a national data regulator.

3. Different jurisdictions have different rules with respect to the amount of data published about parties involved in proceedings. In general, the common law jurisdictions operate a system whereby the identity of parties is disclosed publicly through court lists and published judgments unless there is an exception established by law such as family law and cases involving children. In civil law jurisdictions, there generally is a more restrictive regime with respect to the publication of the identity of parties with such information being redacted.
4. In relation to written judgments it can be necessary to reveal personal details of the persons or entities involved in proceedings. In common law jurisdictions, the rule of precedent requires the relevant facts underlying the determination to be set out so that a court considering a precedent ruling can know the basis on which the decision was reached. Differences in facts can mean that a case can be distinguished. However, the requirement to provide personal details can arise across both the civil and common law jurisdictions when the personal details are relevant to the decision being made. The competing duty imposed on a judge to provide reasons for a decision requires that relevant facts are set out. Furthermore, it is important for the litigants and appellate courts to understand the basis for a decision. The question to be considered by a judge when disclosing personal details is whether the details are relevant and whether it is necessary to reveal them to inform the basis for their decision.
5. The dichotomy between these competing interests is difficult and must be carefully considered so as to ensure that the reasons for a decision are properly set out while at the same time disclosing as little personal information as is necessary.
6. Each jurisdiction represented at the 2nd Study Commission has adopted its own systems and procedures for addressing data protection issues which arise in relation to the publication of judgments. This is a developing area which must be navigated carefully. It is probable that many lessons are yet to be learnt with respect to best practice in this area.
7. Lastly, we should all be mindful of the personal responsibility we hold in relation to personal information material within our possession. It is important that we treat such material carefully remembering that carelessness not only can have personal consequences but also a negative effect on judicial integrity.

I would like to thank the Honourable Leo Gordon for his excellent presentation and Ms. Justice Tara Burns for assisting in the preparation of this report. Thanks also goes to the Honourable Justice Michele Monast and board member, Judge Flavia da Costa Viana, for their assistance with preparations for the study group to include translations of the questionnaires. Lastly, thanks to all the contributors to the 2nd Study Commission both in terms of providing responses to the questionnaire but also for contributing so enthusiastically in our discussion.

The topic for discussion next year, to be approved by the Central Council, relates to setting limits on written submissions to include their length, the time for filing, the number of additional submissions and penalties or cost implications for breaches of these

requirements . The question is “Written Submissions – when do they turn from a help to a hindrance?”

New Officers elected

President – Ms. Mette Sogaard Vammen (Denmark)

Vice President – Mr. M.F.J.N. Van Osch (The Netherlands)

Vice President - Ms. Michele Monast (Canada)

Vice President – Ms. Tara Burns (Ireland)

The First Study Commission wishes to express its thanks to John Edwards, Kristine Eidsnik and Flavia da Costa Viana for all their dedication and hard work in the 2nd Study Commission over the last few years.

Judge Mette Sogaard Vammen,

Denmark,

President, Second Study Commission,

20th September, 2023