Second Study Commission
Civil law and procedure

Meeting in Vienna, 9-13 November 2003

Conclusions

CIVIL LIABILITY OF JUDGES

Report

The subject of the work of the 2nd Study Commission was "Civil liability of judges". 32 written reports had been submitted by the members of the commission for the preparation of the general report, 25 of these were taken into consideration. The delegates from 31 nations were present. The general report by the President was adopted unanimously.

The discussion in the Commission covered in particular the differences between common law systems, where civil liability both of the judges and of the state is excludes, and other systems where such liability is accepted in exceptional cases.

Also the possible consequences of civil liability of judges on their independence and the differences with disciplinary measures were discussed.

The experiment of adding some cases to the questionnaire, for discussion, was found satisfactory and will be continued.

After the discussions the conclusions were reached unanimously and the subject for next year was selected.

All delegates agreed that it would be desirable to have interpreters for simultaneous translation present during the meetings of the Study Commission in the future.

Conclusions

Civil liability of judges should be distinguished from disciplinary proceedings against them since the aim and effects of each are quite different in nature.

Having regard to the Basic Principles of the Independence of the Judiciary (UNO, 1985), the European Charter on the Statute of the Judges (Council of Europe, 1998) and the Universal Statute of the Judge (IAJ, 1999), the rules about civil liability of judges should ensure that a judge performing judicial duties may be liable only in exceptional cases, which may not include any instance in which the judge is acting in good faith. In any event those rules must not jeopardise judicial independence.

Subject for meeting in 2004:
The powers of the judge in family matters

Vienna, November 12th, 2003