

THE INTERNATIONAL ASSOCIATION OF JUDGES IN THE XXIST CENTURY*

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The Expansion: an Actual World Dimension

1. Created on the initiative of six national associations of judges in 1953, at the dawn of the new century the International Association of Judges had already reached the dimension of 56 members. Since 2005 the members have become 69.

Most of the countries in which the rule of law is enforced are represented in the IAJ, together with nations in which the ideal of the rule of law still needs watchful protection and enhancement.

Therefore the International Association of Judges is obliged to face in a modern way the challenges upon which its constitution was based since the origins.

Firstly, institutional changes in many countries led to the creation of new democracies, typically faced with some basic problems, one of which is justice.

Secondly, the traditional dialectics between the powers of the state – that animates the debate also in those countries where the principle of the separation of powers is strongly affirmed – lead each of the players to pursue the institutional structure that better emphasises its role. Therefore, the engagement in favour of the balance of powers and of the protection of the independence of the judiciary remains topical everywhere in the five continents (also in those countries where democratic principles are the foundations of political systems) and projects the activity of the IAJ all over the world.

2. New members joined recently the International Association of Judges: Croatia, Mexico, Moldova and South Africa in the year 2000; Egypt, Georgia and Mongolia in 2001; Burkina Faso and Panama in 2003; Kazakhstan and Ukraine in 2004; Armenia and Bulgaria in 2005.

The list comprises associations from Asia and Latin America, from North and South Africa, from Eastern and Central Europe: different continents, different judicial traditions, different approaches to the rule of law, but associations all joint by the common desire to be affiliated to an organisation whose main aim is to safeguard the independence of the judicial authority, together with its constitutional and moral standing, as an essential requirement of the judicial function and guarantee of human rights and freedom (IAJ's Constitution, art. 3).

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3. As to the activities carried on since the year 2000, it is worth mentioning the organisation of the annual plenary meetings of the IAJ: in Brazil (Recife, 2000), Spain (Madrid, 2001, and Alicante, 2003), Austria (Vienna, 2003), Mexico (Valle de Bravo, 2004), Uruguay (Montevideo, 2005) and Hungary (Siofok, 2006).

All these events gathered, on a world basis, a considerable number of member associations to discuss current problems of some of them and to mark out the direction and the policies of the International Association as a whole.

4. In the same period, the elections of the IAJ's officials brought to the presidency of the Association personalities coming from Africa (Mr Tarek Bennour, Tunisia, President from 2000 to 2003), Europe (Mr Ernst Markel, Austria, President from 2003 to 2004, and Mrs. Maja Tratnik, Slovenia, current President, since 2006), South America (Mr Sidnei Beneti, Brazil, President from 2004 to 2006).

Again, through its board, the IAJ represents the variety of experiences and judicial systems existing in the world and demonstrates the possibility of bringing them to a synthesis round the value of the independence of the judiciary.

Activities, Surveys and Studies

5. The IAJ has been present in many contexts where the independence of the judiciary was at stake. In this respect, it is worth mentioning the activity of the Presidents of the Regional Groups on the occasion of crisis which opposed the judiciary to other powers of the State, both in countries whose associations of judges are member of the IAJ and in other countries.

Positive results came from an operating method repeatedly used, consisting in the involvement – in cooperation with the IAJ's and the competent Regional Group's Presidents – of a Working Group, made up of eminent judges of the interested region as well as of other parts of the world, to study reasons and origin of the crisis, to draw up proposals and to meet the competent State authorities.

The increasing activity of the Association has also been expressed through the constitution of other *ad hoc* Working Groups which, both at regional and global level, have dealt with questions that more intensely call for the attention of the member associations.

6. A strong engagement has been deployed also in the field of the fight against corruption.

The IAJ started a debate on this topic firstly within the Regional Groups (mainly the European and the African), and then on a plenary level. On 27th September 2001, the Central Council approved a resolution against corruption and established a Permanent Advisory Committee of judges of the utmost professional standards and prestige, whose task is to offer advice to national authorities about how to tackle corruption in the judiciary or any false allegations concerning judicial corruption.

The debates that preceded the approval of the resolution showed how different the approach to a problem can be, depending on the national history and experience. As a consequence, we may underline today that the engagement against corruption means not only the – yet essential, of course – vigilance and intervention in those situations where corruption is an actual problem; it requests also the active participation of those countries where the experience of corruption never gave rise to structural system alterations and which, consequently, have institutional experiences and values that may serve as guidelines for the countries struggling against corruption.

7. The ever increasing role of the work done by the IAJ's four Study Commissions is testified by the requests received from academic and parliamentary institutions to have access to their reports, in order to base on them broader researches or the drafting of new regulations and laws.

But the Study Commissions' activity represents mainly an occasion to increase and perfect, within the IAJ members, the knowledge of the various legal systems currently in force all over the world, and to study jointly juridical and procedural problems.

In this respect, particular importance, for its reflections on the general activity of the IAJ, has the work done by the 1st Study Commission, which deals with the status of the judiciary and judicial administration, i. e. the ambit where challenges for the independence of the judiciary are most pressing.

Among the topics discussed within the 1st Study Commission, it is worth mentioning the investigation on how the appointment and assessment of judges can be made consistent with the principle of judicial independence (2006); the relation between economics, jurisdiction and independence (2005); the ethical rules for conduct of judges, their application and observance (2004); the independence of the individual judge within his/her own organization (2000); the revalorisation of the relations between the judiciary and the other powers of state for a better working of justice (1999); the recruitment and training of judges in a modern society (1996); the participation of the judicial power in the administration of justice (1994).

In the perspective of the debate and comparison between various legislative and institutional experiences, the research on the salaries of the European judges may also be cited. This survey is intended not as a labour dispute or a union matter, but as the demonstration of the central role played by the issue of remuneration of judges in a framework of effective protection of the independence of the judiciary.

8. The study in depth and the analysis of theoretical and practical questions of law especially characterizes the IAJ's activities in the new century. It is worth mentioning, on the one hand the international conference on the independence of the judiciary, held in Lomé (Togo) in November 2006, which echoed the practice of the international congresses organised by the IAJ (the last edition, the 7th, being in 1989). On the other hand, the carrying out of seminars on the occasion of some meetings of the Central Council, thus combining the institutional activity of the IAJ with a reflection on current judicial problems.

The debate and the analysis of juridical questions finds space also in the occasion of the meetings of the Regional Groups. This is particularly true in the case of the African Group, which expressly devotes one session of its mid-year meetings to the study of a specific issue in a comparative African perspective, and of the Asian-NorthAmerican-Oceanian Group, which is in the process of elaborating its own new working schema. The ANAO Group, on the occasion of its November 2006 meeting in New York (for the first time held outside an IAJ world meeting), successfully proved the effectiveness of an informative session with the participation of experts coming not only from the bench but also from the academic world and international institutions.

9. As to the relations with the international governmental organisations, both universal and regional, since the year 2000 the IAJ and its Regional Groups intensified their contacts and their cooperation with these institutions.

The European Association of Judges has been granted the status of observer by the Council of Europe both in the Consultative Council of European Judges (CCEJ) and in the European Commission on the Efficiency of Justice (CEPEJ), whose meetings are regularly attended by representatives of the EAJ.

Moreover, the EAJ has been invited in several occasions to participate in meetings of experts organised by the European Commission on issues related to jurisdiction.

In 2006 the EAJ's application for status of observer has been lodged with the European Network of Councils for the Judiciary (ENCJ).

For its part, the African Regional Group has submitted an application for the status of

observer at the African Union. Contacts have been started between the Ibero-American Regional Group and the Organisation of American States.

10. As to the United Nations, contacts established by the IAJ representative at the UN seat in Geneva, Mr Pierre Zappelli, with UN officials allowed the IAJ delegate and the IAJ Secretary-General to enter into relations with the present UN Special Rapporteur on the Independence of Judges and Lawyers, Mr Leandro Despouy. As a result of this contact, the IAJ representatives were able to present Mr Despouy with goals and actions of the IAJ, and get an interesting overview of the Rapporteur's various initiatives in the field of the independence of judges in the world. The IAJ representative in Geneva has been invited to participate, as a member of a panel, in a public session about the implementation of the Bangalore Principles of Judicial Conduct.

Mr Despouy was invited and took part in the 47th Annual Meeting of the International Association of Judges (held in Valle de Bravo, Mexico, from October 31st to November 4th, 2004), where he delivered a speech to the community of judges gathered there, in the presence also of the President of the United States of Mexico. The UN Special Rapporteur participated in the 48th IAJ annual meeting (Montevideo, Uruguay, 21st-23rd November 2005), too, delivering a speech in the context of the conference on "Aspects of the Independence of the Judiciary in Latin America".

In May 2005 the IAJ President, Mr Sidnei Beneti, and the IAJ's representatives at the UN seat in Geneva, Mr Pierre Zappelli and Mrs. Louise Mailhot, together with the Secretary-General, Mr Antonio Mura, met in Geneva with the UN High Commissioner for Human Rights, Mrs. Louise Arbour. The aim of the meeting was to consider how to reinforce the interaction between the International Association of Judges and the Geneva seat of the United Nations, with particular reference to possible ways for the IAJ of helping that UN Office in its activities concerning the independence of the judiciary.

Organisational Methods and Perspectives

11. The resources of the International Association of Judges come entirely from its self-financing. The financial participation of its members is structured in such a way as to take into account the different capacity of contribution characterising the variety of the IAJ members.

This form of self-financing is a solid barrier to guarantee the full independence of the Association from external influences. For this reason the IAJ members are attached with great conviction to this ideal, notwithstanding the obvious consequence of the exclusion of any other

income, which contributes to prevent the Association to obtain the large scale notoriety characterising other NGOs. Therefore, the knowledge of the activities of the IAJ remains mainly confined within the circle of experts and is not widely perceived by the public opinion, in spite of the immediate reflection that the promotion of the independence of the judiciary has on the effective protection of human rights.

On the same line, it is worth noting that the International Association of Judges is managed spontaneously and without remuneration by judges using their spare time. This is much true as regards the members of the General Secretariat, who guarantee the continuity of life of the Association and the possibility for its members to maintain contacts during the intervals between the meetings.

12. The beginning of the new century saw the confirmation of the IAJ General Secretariat's seat in Rome, in the historical venue of the Italian *Corte Suprema di Cassazione*.

With reference to the activity of the General Secretariat, the main evolution has been the transition towards a structural organisation that envisages professional personnel to support the judges who are the voluntary corps of the Office. This evolution was made possible thanks to the special financial contribution generously granted by the Italian *Associazione Nazionale Magistrati*. Since 2001 the Italian Association bound itself to fund each year the IAJ with a further sum besides the annual membership contribution. This sum is specifically devoted to the remuneration of the assistant to the Secretary-General, who has been employed since the beginning of 2001, providing the linguistic and legal skills (particularly in the field of international law) essential to the current dimension of the Association.

Nevertheless, more changes will become necessary in the future, to cope with the increasing amount of work caused by the growth of the IAJ in terms of number of members and operations. The reorganisation of the General Secretariat is essential so as to share work and duties among its members, in a manner consistent with the new asset and the many fields of action of the International Association.

So as to reduce the work load and increase efficiency, most of the ordinary activities of the bureau have been progressively computerised (keeping of the accounting books, correspondence, filing of the main documents of the Association etc.).

In the meanwhile, an important development has been the creation of a web site in five languages, which is regularly updated in its contents and ameliorated by a technical point of view. The website represents an effective mean to spread the knowledge of the IAJ all over the world and to answer the main question posed by the general public about the Association, serving at the

same time as a valuable instrument for the spread and exchange of documents within the members.

One of the principal outcomes of the site has been the possibility to publish in the internet all the national reports prepared by the member associations in view of the discussion of specific topics within the IAJ Study Commissions. The reports are therefore available not only for the delegates to the Study Commissions, but for all the colleagues interested in collecting comparative information on specific issues, as well as for scholars. The publication of the national reports in the website, freely available to the internet community, poses obviously the problem to reconcile, by one side, the publicity of debates and studies carried out in the perspective of general interest, and, by other side, the protection of intellectual property and copyright: a problem which is under examination by the Presidency Committee and the Central Council.

13. Major changes occurred also in the organisation of the annual meetings of the IAJ. Until 2005 the meetings had always been organised and entirely financed by one member association. This practice echoed that of the first years of life of the IAJ, when the members were few; it remained unchanged through the first fifty years of life of the IAJ, although debates arose from time to time concerning the sustainability of such economic burden by a single hosting association.

In 2005 a new formula was introduced, entailing the division of costs between the organising association (charged with providing simultaneous translations, local staff, meeting rooms and social events) and the convened national associations, who meet the travel and accommodation cost of their attending delegates.

Judges' "Associationism": a Thriving Phenomenon. New Challenges for the IAJ

14. The tendency to form associations within members of the judiciary is of great utility for the promotion of common values, the exchange of information and knowledge, and the enhancement of friendly relations among judges of different countries and judicial systems.

This simple statement may appear almost self-evident, perhaps, in large part of the world; but it cannot be taken for granted everywhere. Actually, it is the arrival of a process which is far from being completed on a world basis, as demonstrated by the existence of systems where the creation of associations of judges is forbidden by law (or even by Constitution, like today in Venezuela, for example).

On the other hand, the force of this tendency is demonstrated by those cases, such as

Turkey, where countries traditionally against the establishment of associations of judges are now examining sweeping reforms to adapt to new realities and exigencies.

15. The “associationism” has been historically characteristic of the European continental countries, where judges are public officials recruited by public competition and whose progression in career is disciplined by law, even if with peculiar courses. In such a cultural and legal environment, the need to share opinions among colleagues and to look with them for the solution of common problems rises natural.

In other countries, with different historical and institutional backgrounds, the need for judges to come out from the traditional isolation of the role, and their request of a confrontation with colleagues from abroad, are increasingly growing in recent years.

In this perspective, the IAJ’s Constitution has been prophetic in envisaging the admission of “representative groups” of judges: reference is made to those realities where associations in the strict meaning of the word do not exist, but either the presence of similar unions is significant, or *ad hoc* aggregations can be established to become part of the international process.

The IAJ’s Constitution, through more than fifty years of life and various amendments, has shown its lasting value and has contributed objectively to the promotion of the associationism all over the world, stimulating and encouraging the establishment of associations of judges (or, at least, to discuss the opportunity of creating them).

Thus, the IAJ experienced contacts with associations being formed, although still involved in the process of their constitution, or – at an earlier stage – with individuals who expressed interest to join the IAJ (that is the case of India, for instance).

On the other hand, pseudo-associative organisations characterised by the compulsory affiliation of their members and by the participation of governmental or institutional entities that manage, finance and, after all, condition them, remain unacceptable and incompatible with the IAJ’s values.

Nevertheless, with regards to such realities, the International Association must make its cultural and methodological resources available to encourage the transition towards forms of associationism more compatible with the principle of the independence of the judiciary.

16. The reflection about the associationism within the judiciary and its international dimension cannot leave out of consideration the more general topic of international cooperation between judges.

The growing phenomenon of judicial dialogue between judges of different countries (i. e.

through training programs, international conferences and seminars, etc.) combines with the increasing number of foreign judgements that must be recognized in other countries, thus forcing the judicial community worldwide to compare legal systems and take note of foreign laws so as to suggest to the legislative power solutions that better match the needs of practice when drafting the rules for the international judicial cooperation.

A further spur to a stricter collaboration between judges of different countries comes from the enforcement of international conventions, which poses the problem of the bi- and multi-lateral interpretation of treaties. In fact, it is not devoid of interest for a judge to be aware of how a convention has been interpreted by judges of another State Party, also in view of a uniform enforcement of international law.

While enhancing judicial cooperation, the risk of creating a cross-border judicial élite must be avoided. The involvement of as many judges as possible in the global dialogue, together with the impulse impressed by the highest judicial authorities (supreme courts, general prosecution offices, high councils of the judiciary), may serve to spread common international values and praxis among the judicial community in each country.

It is important to underline that the exchanges among judges can be of help not only to share knowledge of juridical and procedural techniques, but also to share social and institutional values that have influence on the judicial activity. This is particularly true as far as democratic values are concerned, which import the rule of law. In this perspective, it is important to reinforce and promote exchanges and meetings between judges, in order to avoid partial information or the excessive influence of some lines of thought in comparison with others.

It is worth noting the frequent convergence of viewpoints even when judges come from cultures very different one from the other. Even more so such convergence is significant when we consider the variety of methods and criteria of appointment of judges all over the world. A common sensibility – to the independence of the judiciary, the fair trial, the integrity of the systems in which judges operate as well as the public perception of such integrity – is the main element of such inherent community of values.

17. The reflection on the values incorporated in the IAJ's Constitution cannot avoid dealing with the points of friction of the IAJ's founding norms with the reality of the various forms that the associationism may take in different countries and systems.

Thus, the regulatory norm asking for the admission of only one association or national representative group of each country (Reg. art. 11.1) is appropriate when dealing with the application for membership submitted by single national associations with very high percentage

of affiliation among the judges of the country. On the other hand, it creates problems and fetter when applied to countries where the plurality of associations is a fact.

Furthermore, the same norm is inadequate to cope with the request of admission coming not from 'national' associations, but from associations composed of judges from the supra-national or international jurisdictions. It is therefore necessary to envisage new formulas, even statutory, to manage these occasions and to avoid the paradox of having an international association of judges unable to establish relationships with international jurisdictions.

In this perspective, a serious study could be started to evaluate the possibility of using the extraordinary membership not only to grant the admission to those associations of judges which are still struggling to achieve independence (IAJ Constitution, art. 2), but also for other entities which, even if for different reasons, may not apply for a full membership. Otherwise, new forms of observer *status* could be devised.

In general, the requirements for the affiliation to the IAJ are now under revision, the membership to the IAJ having suffered in recent years three main types of problems.

One is represented by the not infrequent admission of extraordinary members. From experience a more demanding control of the requisites and a deeper study and comprehension of the context is felt as necessary in this respect.

Another problem is the maintenance of the basic conditions to be a member of the IAJ, and possible checks. Conditions may be jeopardised either by a radical change in the composition of a national association, or by its failing of representativeness, or also by institutional changes in the interested country creating new legislative frameworks for the associations.

A third challenge is represented by those members that, although without officially withdrawing from the IAJ, do not maintain their contacts with the International Association. The IAJ is called to investigate the reasons of such interruptions, since they could be the signal either of internal problems of the involved national association or of the failure of the IAJ to meet the expectations of its members.

18. Besides the traditional perspectives, in their up-to-date display, contemporary experience is marked by the appearance of new realities. Hugely significant, among them, the continental dimension of progressively stricter forms of cooperation and integration – the main example being represented by the European Union –, as well as the phenomenon of globalisation, which involves organized criminality (with the connected increase of judicial cross-border action of contrast) not less than a new dimension of commercial law.

The increasing role of regional cooperation, meant as a peculiar viewpoint – common to

countries of a given cultural and/or continental region – in matters concerning the role of judges in the society, has led the IAJ to modify its statutory norms. In particular, it is worth citing the adoption of new Statutes by the European Association of Judges (2003) and by the African Group (2005), as well as the amendment of the IAJ's Constitution and By-laws in order to grant fair representativeness, within the Presidency Committee, to all the Regional Groups.

But the contemporary broad, complex landscape invites also to look national justice in a new way and, beyond it, to take into consideration various supra-national and international jurisdictions. The creation of institutions such as the International Criminal Court and the European Court of Human Rights shows that justice has now taken a new direction, based on common values shared by the members of the international community.

If, before the new borders of justice, the meaning of the IAJ's engagement referred to (and livened up by) the single national judiciaries remains undiminished, at the same time an international association of judges cannot be uninterested in the wide external phenomena mentioned above. To remain confined to a strictly national dimension would be inadequate to the substantial *raison d'être* of the IAJ.

Conceived (with true farsightedness in an epoch where international perspective were definitely narrow in the justice field) as a means of confrontation between actors of different national jurisdictions, the IAJ faces today the challenge to remain faithful to its traditional values, being able, at the same time, to confront with the new emerging realities of the contemporary world.

In this line, it is worth mentioning the requests of admission or cooperation coming from, *inter alia*, the Association of Members of the Board of Appeal of the European Patent Office, the judges appointed by the United Nations to serve in Kosovo, the *Groupement de Magistrats Européens pour la Médiation*.

Without any doubt, the independence of judges is primarily relevant also for the credibility and the effectiveness of the international judicial institutions.

Even more deeply, as far as international courts are concerned (which deal with crucial factors, e.g. with crimes of genocide or involving fundamental human rights), the topic of actual and standing independence of their judges comes up. For their genesis, composition and range of action, those judicial bodies are frequently marked out by stricter links with the political sphere, in comparison with the internal national judiciary of each single state involved.

What is set out above sketches out – for the International Association of Judges – a further, challenging field of engagement for the promotion of the value of judicial independence, that is functional to an impartial justice.