“How to Promote in Practical Way the Independence of Judges as Protectors of International Human Rights Law”

April 2013 - Questionnaire 1st Study Commission

ANSWERS OF CROATIA

At last year’s meeting In Washington, D.C., we voted to undertake an examination of the topic identified above. It is the view of the officers of the First Study Commission that in order to examine the independence of judges as “Protectors of International Human Rights” is necessary to examine a variety of factors that may affect the overall independence of judges. After all, if judges are not independent in the exercise of their regular day to day duties, how will they be able to be independent in acting as protectors of international human rights law.

Therefore, we are posing a number of questions that address factors we believe affect judicial independence in general, and we are also asking a number of questions that address more specifically when and how matters that specifically involving international human rights law are brought before us as judges.

We look forward to receiving your answers, which we will compile and share with each other at our meeting in Ukraine. Please respond by 15 July 2013, if at all possible. Thank you.

POLITICAL INDEPENDENCE

1- In your country and legal system, with respect to reducing the influence of politics on the decisions that are made by judges, what guarantees or provisions of law exist to ensure the independence of judges in their decision-making ? NOTE: We list several examples and invite you to add any others that may also apply in your own judicial system:

a- Is there security of a judge’s tenure in office? If so, please describe how this is provided – for example, by constitution, by statute, by judicial rules, etc.

Yes they are  enshrined in the constitution, till 70 years of age , which is fixed by law or after a procedure by a court either following a serious disciplinary (or criminal) offence or when loose of capability to perform the office of a judge.

b- Is there legislation that prohibits others in the government from interfering in the judicial decision-making process? If so, please describe.

This follows from the constitution which declares the independence of the judge when exercising his judicial tasks. Also in Law of Courts it is stated that any kind of influence is prohibited.
c- Is there legislation that prohibits others outside the government from attempting to influence improperly a judge’s decision? If so, please describe.

Bribery and exercising pressure on state-officials (public servants, judges, politicians etc. are a criminal offence - undue influence

d- Is there a system to provide for the physical security of a judge and the judge’s family that may be invoked by the judge? If so, how is this security provided and who provides it?

Such measures are provided by the police on the request of the court president. Which measures are applied decides the police, which is under the hierarchy of the minister of interior. so called court police is in charge of security of court buildings and prisons but not for physical protection of judges and members of their families.

e- Are there any special provisions to ensure a judge’s independence from improper political influence when the judge is deciding a matter involving alleged human rights violations? If so, please describe.

Same kind of protection as in any other case. All cases are connected with some human right

f- Please describe any other guarantees or provisions of law that are intended to reduce the influence of politics on a judge’s decision-making?

none

APPOINTMENT SYSTEM FOR THE JUDGES/JUSTICES

2- Are the procedures and criteria for judicial selection clearly defined by law in order to ensure transparency in the selection process? Please describe the procedures and criteria that exist.

Judges of first instance courts are appointed only from candidates who pass successfully School for judges. Candidates are chosen after public announcement of vacant places upon criteria set up in the law. Decision is on State Judiciary council. Those candidates who successfully pass the final exam according to their success shown in points are appointed as a judge by State Judiciary Council.

Promotion of judges to higher courts is based on criteria set up in the Law on Courts. In general the criteria are set out in the law. 1) knowledge of the law, 2) the abilities and perception of the judge 3) the diligence, endurance, conscientiousness, reliability, decisiveness and determination 4) the “social competence” and the communication skills especially regarding the communication with the parties 5.) the way how the express themselves and make things understood, their language skills 6.) their behaviour in court especially opposite parties, lawyers, staff and colleagues and the behaviour outside the court as far as it infringes the professional tasks and 7) for judges who are involved
in the administration of courts (e.g. presidents of courts) their ability for this kind of tasks.

All those criteria and especially the performance of judges work are marked in point system. At last after the interview before State Judiciary Council this body decides who of candidates is going to be promoted to a certain higher court.

3- Is there a separate expert commission or other authority either outside or inside the judiciary which has jurisdiction and competence to participate in judicial selection, including conducting examinations of prospective judges if such examination are used in the process of judicial selection? If so, please describe.

No Only SJC is in charge.

ADMINISTRATION OF THE JUDICIARY

4- a- How are the salaries of judges set?

By Law on salaries of judges and other holders of judicial functions (prosecutors, presidents of courts – judges as well)

b- Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?

No comparing to salaries and other rights and benefits of other legal professions and regarding costs of living.

c- Do the judges’ compensation adequately reflect the dignity and importance of the judges’ position?

The answer is no taking in account not only salaries but burden and responsibility which comes with being a judge. Some civil servants in some ministries have an higher income, parliamentarians have higher income, and many lawyers earn more.

5- Is the administrative authority of the chief judges/justices used in a way to influence the adjudication of cases and to affect the content of judicial decision-making? If so, how?

There is an increasing influence of the presidents of courts to influence the speediness of procedures, by using divers’ statistics and asking for reasons of deviation from averages. They do not try to directly influence the content. It is also possible to complain to the president of the court on length of proceedings and if length of proceedings approves the complaint president of court can deliver an order obliging a judge to finish the case in certain time.
6- To address disciplinary matters involving judges who are accused of violating judicial conduct rules, is there a judicial council or some other body that has the power to:

a- Receive complaints and conduct disciplinary investigations? If so, please describe.

Complaints are normally addressed to the presidents or directly to the minister of justice. They can initiate a disciplinary procedure. If misconduct of a judge is proscribed in the law as disciplinary offence president of court, president of higher court, president of Supreme Court and minister of justice can initiate disciplinary proceedings before SJC composed of seven judges (elected by judges) two members of the Parliament and two professors of law.

b- Hear evidence, make decision based on the evidence, and, if it finds a violation of judicial conduct rules, impose disciplinary measures? If so, please describe.

It is within jurisdiction and authority of SJC.

c- Hear appeals from the decisions that have found disciplinary violations and imposed disciplinary measures? If so, please describe.

Appeals are heard by Constitutional Court.

d- Does the person who has made a complaint about a judge’s conduct have an opportunity to participate in whatever process is available for reviewing that conduct? If so, what is the extent of that participation?

No, participation is not foreseen.

INTERNATIONAL HUMAN RIGHTS ISSUES

7- What is the source of the law, if any, that a judge takes into consideration when deciding whether and how to enforce international human rights law? For example: the constitution, treaties, laws of the country?

The European Convention for Human Rights was declared as part of the Croatian law. It is as international treaty just under the strength of the Constitution. The Charter of Fundamental Rights of the European Union is part of the EU-Law which is directly applicable by the judge. Other international treaties or conventions which were ratified by Croatia and transformed into national law (e.g. Convention against Torture).
8- Do there exist procedures by which your courts may hear cases involving alleged violations of international human rights law when those alleged violations are separate from and independent of the laws of your country law? If yes, please describe these procedures.

No such special procedures do not exist.

9- If the answer to Question 8 is “No,” are there any types of cases in which a judge may consider and apply principles of international human rights law when making a decision, or is the judge limited to applying fundamental principles of international human rights law in making a decision only if such principles are embodied in the laws of the country?

See answer to question 7; other human rights provisions are only applicable if they are transferred in national law or if they are fundamental principles of international law.

10- Are there any persons or groups of people who work for the government in your country who have judicial immunity for their illegal actions?

In Croatia the President of the State and Members of Parliament, and members of the government enjoy immunity. In some extent they enjoy immunity in wider sense than judges who cannot be held liable for activities belonging to the performing of their duties.

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