First Study Commission of IAJ-UIM
Questionnaire 2015
“The relationship between effective management of the courts and the delivery of justice by independent judges”

In preparation of the questionnaire 2015 the presidency of the First Study Commission decided to
(a) identify possible aspects of the topic;
(b) examine already existing opinions, statements etc. on these aspects; and
(c) formulate questions regarding the different aspects (taking into account already existing opinions, statements, etc).

a) Possible Aspects:

1. Case allocation:
   1.1 who allocates the cases;
   1.2 how they are allocated.

2. Management measures:
   2.1 increasing output:
   2.2 diminishing handling time:
   2.3 fostering coherence.

3. Performance appraisal:
   3.1 quality;
   3.2 quantity;

4. Working conditions
   4.1 in general (workload measures, office hours, regulations concerning holidays, etc.);
   4.2 time for writing judgments;
   4.3 time allocated to professional development;
   4.4 resources (law clerks, etc.)
   4.5 position / competences of the president of the court / chamber
   4.6 problems regarding the judicial deliberation

b) Existing Documents
1. 1st Study Commission Conclusions 1981
   The Bangalore Principles of Judicial Conduct, ch. 216, 217
   Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, in part. ch.18, 24, 43
   International Bar Association (IBA) Minimum Standards of Judicial Independence, in part. ch 11

2. 1st Study Commission Conclusions
   19971st Study Commission Conclusions
1998
1st Study Commission Conclusions 2000 (ad 3. coherence) cf. also Recommendation No. R (94) 12 of the Committee of Ministers to member states on independence, efficiency and role of judges, in part. ch. 17


1 The focus of the exploration was laid upon earlier Conclusions of the First Study Commission. Those documents can be found on the website www.iaj-uim.org. The opinions of the Committee of Ministers can be found on the website https://www.coe.int/t/cm/home_en.asp. The opinions of the Consultative Council of European Judges can be found on the website www.coe.int/ccj. All documents (except Op. no 17 of the CCJE) can be found in Stephan Gass, Regina Kiener/Thomas Stadelmann, Standards on Judicial Independence, Berne 2013 (weblaw.ch) as well.
The independence of the judiciary and the non-removability of judges; African Commission on Human and Peoples’ Rights Principles and Guidelines on The Rights to a fair Trial and Legal Assistance in Africa, Independent Tribunal, in part. lit.

Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, in part. ch. 27;


4. 1st Study Commission Conclusions 20001st Study Commission Conclusions 2001 (ad 2. presidents)

3 http://www.osce.org/odihr/73487.
c) Questions:

Please answer the questions for your judicial system drawing, to the extent possible, on your own actual experiences.

The responses to this questionnaire are given on behalf of two of the three jurisdictions making up the United Kingdom (England and Wales and Scotland).

A brief description of the judicial hierarchy and organisation is needed in order to explain the context for the answers given below:

England and Wales

The head of the judiciary is the Lord Chief Justice

He is assisted by the Senior Presiding Judge for responsibility for judges at all levels of the judiciary (District Judge, Circuit Judge and High Court Judge) below that of the Court of Appeal

There are High Court judges who are the presiding judges for each area of England and Wales (North, North West, Wales, Western, Midlands, South Eastern) for exercise delegated responsibility for supervision of judicial management in the regional area.

The High Court is divided into three divisions: Chancery, Queens Bench and Family each with a President

Each court centre has a resident judge responsible for management issue in that court.

The Senior President of Tribunals is head of the Tribunals judiciary in England and Wales and those tribunals that operate throughout the United Kingdom

Each Tribunal has a Chamber President responsible for management of the particular Tribunal at first tier or Upper Tribunal level.
1. Preliminary Question: Are there any aspects [see a) above] missing regarding our topic for this year, which should be treated?

**Answer**

_The identified issues cover most of the issues that present challenges to judicial independence._

_Possibly topic 3 performance should be broadened to include complaints procedures, judicial disciplinary procedures and codes of conduct so far as they come within the question of judicial performance._

_There are no other international documents relating to judicial independence that we would add to the list._

_Alongside the text books cited one might add “Tom Bingham and the Transformation of the Law” (OUP (2009) Part II The Independence and Organisation of the Courts_  

2. Please specify –in note form– your case allocation system (in particular who is responsible for case allocation and how it is done, whether account is taken of any special abilities or interests of the judge and how the appearance of impartiality or neutrality is maintained). What are the advantages of your system? What are shortcomings of the system, especially regarding judicial independence?

_In England and Wales cases are allocated to the judge by listing with the advice of the Resident Judge and the Presiding Judge._

_A decision has first to be taken as to which level of judge should try the case: High Court judge for the most serious and demanding cases, Circuit Judges and Deputy judges of appropriate seniority._

_Then the case is allocated to the individual judge in a variety of ways: High Court judges may bid to travel out to regions to try certain cases (the order of bidding is rotated on every occasion to give a fair chance for each judge to bid high in the list). Cases that are allocated to a judge on the basis of their presence at the particular court centre for the trial window period (including the High Court) are allocated as to availability, experience, specialist knowledge of the area, avoidance of any personal conflicts and the like. A judge dissatisfied with any allocation may raise it with the resident judge or presiding judge._

_The system is considered satisfactory: the judiciary control the process and the executive has no say in it; there is a mechanism for review of disputed issues up to the Senior Presiding Judge, it is considered that proven skill and experience is a reasonable criteria for assignment of cases, whilst all judges will obtain the opportunity to acquire the relevant experience by ordinary cases coming through the system. All judges are expected to treat colleagues equally and fairly and there is a grievance mechanism to resolve complaints of discrimination in case allocation. Judicially guided allocation is seen to promote efficiency and there is no perceived need for a random system of allocation. The more senior and experienced judges may end up with the most significant cases, but that is seen as a rational allocation if others can acquire the experience to take on these cases in the future._
3. What measures to increase output and/or diminish handling time are in use or planned in your Courts? How do these measures affect judicial independence?

The responsible judiciary will be aware of how many cases a judge can be expected to process in a day or other relevant period, and that is a demanding case has been assigned there will need to be pre reading time and judgment writing time involved.

The resident/president judge/chamber president will need to ensure that work flows are assigned at a reasonable level and do not adversely effect the health of the judges through inappropriate heavy loads.

In cases of unexpected increases in work loads, England and Wales has a system of deputy judges (who may be permanent judges temporarily transferred into a different court for the purpose of a fee paid legal practitioner who has appropriate judicial training) to even out work loads.

Otherwise oversupply of work where there are too few judges inevitably mean delays in listing if efficiencies cannot be introduced by other means.

4. Do you have performance appraisal, regarding quality or quantity of judicial work performed? What are the advantages of these measures? What are disadvantages/shortcomings, especially regarding judicial independence?

There are systems of appraisals in the lower court and tribunals. There are model schemes of appraisal and variations are introduced to suit the needs of the particular court or chamber.

There are discussions under way about appraisal of the senior judiciary (high court and above) but these have not progressed to a specific scheme.

Appraisals are intended to help the judge achieve best practice, efficient working, expand learning, and address deficiencies in performance. They are conducted by judicial colleagues and are based on transparency of observation and opportunity to comment. If sensitively conducted they can be helpful in improving judicial performance, maintaining a high degree of public respect and enhancing judicial independence.

Appraisals are most useful in respect of courts where judges sit alone without colleagues, and do not have the chance to learn from how others develop. The appraiser sits in with the judge (either ion a panel of two or as an observer).

Appraisals are not a form of disciplinary investigation and should not be; they are not a form of challenge to the judicial; decision in the case but are directed to how the judge goes about the business of judging. They are particularly helpful in the early years of judicial practice.

Appraisal can be combined with a mentoring system whereby a mentor is appointed to assist a new judge or a judge with identified difficulties to achieve best practice.
They are time consuming, not always appreciated by the judge being appraised, and may give rise to risk of subjective assessment, but these are issues that can be addressed by training appraisers.

5. Please identify shortcomings of the actual working conditions? What are positive effects of measures taken, regarding working conditions?[Please take into consideration the different aspects mentioned above at a) 4.]

Probably the most challenging aspect of working conditions is the absence of up to date and efficient technology: not all judges have access to wireless internet, the judicial computer network is slow to upload, outdated and prone to technical malfunctions. Not every court hearing room has digital audio recording so an authentic record of proceedings can be kept.

Recent cuts to the budgets of courts have meant that experienced staff have left the system and able court clerks who can check orders, and progress of documentation are missing thus increasing the responsibility and work load of the judge.

The responsible judiciary do their best to allocate resources fairly and efficiently but it is likely that we will see court closures and reduction of staff, with more use being made of modern technology to avoid unnecessary hearings and travel to court.

There are concerns as reductions to the Ministry of Justice will cause fundamental changes to the job of the High Court judge in work done out of London.

**Question regarding the selection of the topic for 2016**
According to the guidelines of the First Study Commission, the presidency of the commission calls on the member associations for proposals for topics for the following year well in advance of the next meeting. We therefore invite you to deliver proposals within the deadline mentioned below. If proposing a topic, please add some keywords to describe your topic.

**Deadline:** 5th of July 2015

**Address:** Please send your answers to first_sc@iaj-uim.org

The presidency of the First Study Commission of IAJ-UIM