“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. who allocates the cases;
   2. how they are allocated.
2. Management measures:
   1. increasing output:
   2. diminishing handling time:
   3. fostering coherence.
3. Performance appraisal:
   1. quality;
   2. quantity;
4. Working conditions
   1. in general (workload measures, office hours, regulations concerning holidays, etc.);
   2. time for writing judgments;
   3. time allocated to professional development;
   4. resources (law clerks, etc.)
   5. position / competences of the president of the court / chamber
   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 1997
   1st 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

   cf. also Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning

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/ccje. 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, \(^2\) in part. lit. g
Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and
Central Asia\(^3\), in part. ch. 27;
THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT\(^4\), in part. ch. 40, 42;
1st Study Commission Conclusions 1995;
1st Study Commission Conclusions 2000;
See also for Europe: Thomas Stadelmann/Stephan Gass/Richard McCombe, Performance

4. 1st Study Commission Conclusions 2000
   1st Study Commission Conclusions 2001 (ad 2. presidents)

c) Questions:

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

0. Preliminary Question: Are there any aspects [see a) above] missing regarding our topic for
this year, which should be treated?

   No.

1. 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?

   The allocation of cases to the respective Petty Benches of the
Supreme Court is decided by the Judicial Assembly of the Supreme
Court (Article 4 of the Rules of Court Administration for the Supreme
Court). The allocation of cases in the High Courts, District Courts and
Family Courts is decided by the Judicial Assembly of each court (Article
6 (1) of the Rules of Court Administration for the Lower Courts). In
principle, under the system adopted in the lower courts for the allocation
of cases, cases are equally allocated to each division and each judge in
filing order of the cases (except for divisions specialized in specific kind
of case). In allocating cases, no consideration is given to a judge’s
special expertise and interests. Accordingly, this method of case
allocation can be described as superior in terms of fairness and
neutrality as well as from the perspective of the judicial independence.

\(^3\) http://www.osce.org/odihr/73487.
2. 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?

In Japanese courts, in order to enhance the efficiency of handling civil cases and reduce the time required in processing such cases, specialized divisions have been created for certain types of complex and difficult litigation. Each court and the bar association are consulting on measures and methods to improve court procedures. Additionally, within the courts, research groups and similar teams are collaborating to achieve a more efficient method of conducting trials and sharing examples of contrivances for handling cases.

Besides, for complex and difficult criminal cases, courts are utilizing pre-trial arrangement proceedings for arranging the legal issues and evidence, thereby reducing the time required in handling cases as a whole. Additionally, in order to promote greater efficiency and a reduction in the time required for handling these cases, each of the courts, the public prosecutor’s offices and the bar associations are cooperating by holding various study sessions and other activities.

The above measures do not influence individual rulings of courts directly, and therefore do not have any impact on the independence of the judiciary.

3. 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?

The appraisal of judges is conducted in accordance with the Rules of the Personnel Evaluation of Judges.

The authorized appraiser and the appraisal criteria are clearly stipulated, and the processes for interviews with the authorized appraiser and disclosure procedures as well as registration of appeals have been put in place. When conducting an appraisal, the authorized appraiser gives due consideration to the independence of the judge as well as attention to obtaining multi-faceted and diverse information from within and without the court.

This kind of personnel appraisal system is characterized by a high degree of transparency and objectivity, and is useful in the proactive enhancement of a judge’s individual competences. Overall, the contents of appraisals are accepted as appropriate. Furthermore, as due consideration is given to the independence of
judges, there are no problems with the system.

4. 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.]

   The court, based on case trends and other features of each court, is taking measures to provide the necessary framework for the appropriate and expeditious handling of cases. When looking at the work environment from a consideration of the framework of the court as a whole, no particular problem is found.

   In addition, a review of the working condition of each judge reveals that there are no special problematic issues in the work environment of judges. As an illustration, in addition to annual paid leave, sick leave and special leave, judges are entitled to child care, nursing care leave and other types of leave.

   Furthermore, while enhancing their capabilities and expertise through the daily performance of their official duties by handling actual cases and self-development activities, judges are also able to take advantage of opportunities implemented by the Legal Training and Research Institute to develop their specialized expertise by participating in the research groups studying specialized areas such as medical malpractice, administrative and intellectual property cases which require expert knowledge.

**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