Questionnaire 2016 of the 1st Study Commission

Best Practice within the Judicial System for Ensuring Transparency and Integrity and Preventing Corruption

Answers: Austria

As a general remark it has to be said that Austria is seen as and is in fact a country, where corruption within the judiciary does not play a role. The last time that a judge was involved in a corruption case is more then 20 years ago. Therefore the following answers reflect general considerations and are not very much based on Austrian experiences. This does not mean at all that the existing structural system in Austria is that perfect that it prevents any possibility of corruption. There are a lot of possibilities for improvement which could foster safeguards that also in the future corruption within the judiciary is avoided as far as possible.

The advantages, which members of the judiciary may search by means of corruption, may either be financial gratifications or improvements for their professional career. The latter may determine their professional behaviour opposite hierarchies with in the justice system. The means to exercise corruption are either by direct bribery be it with money or other goodies or by undue exercise of existing structural dependencies. All limitations of independence are therefore potential sources of corruption if the dependency is misused. In this regard all decisions on appointment, promotion, transfer, remuneration, allocation of cases, decisions on refusal of cases and dependencies on resources in combination with workload and time-limits have to be immunized against such misuse.

1. What would you identify as best practice to safeguard transparency of:
   a) court proceedings
      - open court for public and press;
      - public availability of decisions;
      - reasoned decisions.

   b) selection of judges
      - transparency regarding decisions on the total number of judge’s posts and allocation of posts to the different courts
      - publication of vacancies
      - clear criteria (based on merits)
      - clearly determined and transparent procedure
      - independent body (at least clear majority of judges elected by their peers)
c) administration of the judiciary?

Council for the Judiciary (Judicial independence requires the Judiciary to govern itself), which is composed at least with a clear majority of judges elected by their peers in a transparent way, which acts in a transparent and accountable way and which in any case respects the independence of the individual judge in adjudicating his/her judicial tasks.

2. What would you identify as best practice to support and promote integrity of judges? Do you have experiences with such practices? Which?

- Ethical guidelines drafted and adopted by the judges themselves.
- Initial and in-service training. At least a short training in this regard also if judges are elected from experienced practitioners.
- Establishing the possibility to search advice in ethical questions
- If corruption is proved in a fair trial: proportional sanctions (up to dismissal of the judge).

The Austrian Association of Judges has elaborated and adopted Ethical Guidelines (“Welser Erklärung”), which are also included in the training of judges and judges candidates.

3. What would you identify as best practice to prevent corruption within the judiciary? Do you have experiences with such practices? Which?

- See above under 1 and 2
- Adequate remuneration, pension and working condition, which on the one hand ensure that best qualified persons apply for the position of a judge and on the other hand reduce the temptation of corruption.
- Provide the resources, which are necessary to cope with the workload in a reasonable time.
- Objective and transparent procedure for allocation of cases (re-allocation of cases) following pre-established rules and criteria.
- Avoid ex-parte communication
- Stop the tendency to substitute panels of judges by single judges
- Provide remedies against undue stand-still of procedures
- Asset declaration
- Incrimination of non-reporting of observations of corruption or attempts of corruption.
- Special means in a country, where there is an “overall climate of corruption” and where judiciary should be a pioneer to get rid of it like special inspection tasks within the judiciary or agent provocateur.

Of cause all these proposals especially the last ones should be debated in Mexico, before including them in a list of recommendations, which may be the outcome of the meeting in Mexico.

4. What are the major threats, in your experience, to transparency and integrity and a non-corrupt judiciary?

There are judiciaries with very poor working-conditions, remuneration, social security and security of judges.

There are more and more judiciaries, where the pressure on judges caused by the non-existing balance between workload and resources is increasing.

Political influence on the carriers of judges.

There are still societies where day to day corruption is self-evident. Here special awareness and training for members of the judiciary is essential.

Gerhard Reissner