

# REPORT OF THE 4TH STUDY COMMISSION TO THE CENTRAL COUNCIL

64th ANNUAL MEETING OF THE IAJ

TEL-AVIV, ISRAEL

September 19 to 23, 2022

The subject of the 4th study Commission this year was the impact on judicial independence of the judicial workplace, including nominations and appointments, governance, independence in decision making, assignments fund and other resources.

This is, of course, a very wide area to discuss, so the discussion focused on appointments and nominations firstly. It was clear that there are a variety of approaches in different jurisdictions to the appointment of judges, from judges actively engaged in an election process as candidates to candidates being appointed by a committee.

All the different ways of appointment were said to be transparent and fair in their methods, however there exists the possibility of interference with these principles by the composition of the selecting bodies, whether judicial or political or a mixture, because they may not be robust enough to ensure fairness. For example, conflicts of interest can be reduced by the procedure of selection by sufficient information being obtained about candidates.

It was noted that persons may be selected by being approached to apply for positions, which has the danger of the judiciary being self selected. If there are no interviews and the selection process is based on the application file alone, this may or may not contribute to transparency. In one jurisdiction, an equality treatment officer was involved in the process of selection to ensure fairness and lack of discrimination, based on protected characteristics.

It was noted that, in a significant number of jurisdictions, the current process of selection or nomination is being reviewed in order to ensure more fairness and transparency. Changes in regulations statutory and others are or were been implemented sometimes at the instigation of associations of judges, who are playing an important part in pushing forward change. This is an evolving area which shows the commitment of judges to improve the process of selection and appointment.

On the issue of independence in decision making, possible risks have been identified in the process of promotion of judges, which may be influenced by the opinions of colleagues who are involved in the promotion of judges. There is also a risk of implementation of disciplinary procedures following the dissatisfaction resulting from certain judicial decisions. There is, finally, a possible risk related to a salary structure that does not place judges in the same grade or position at the same salary.

However it was not identified that these risks have been realised in the different jurisdictions to any or any great extent.

The discussions during the study Commission meetings were considered useful in helping the judges to appreciate such risks and to have confidence in putting forward suggested improvements to eliminate such risks by the modification of the currently existing processes or structures.

Finally it was recognized that disciplinary procedures are capable of being manipulated against judges. It is, therefore, necessary to always scrutinise the reasons behind decisions to bring such disciplinary charges. One of the ways which judges may be subjected to detriment is by being reassigned to a different region or court because of their decision or decisions. This risk should be recognized since it would be against the fundamental principle of the unmovability of judges.

It was noted that about 70% of the delegates at the meeting had Guides to Judicial Conduct in their jurisdictions, which provide a framework for assess whether or not there has been misconduct sufficient to bring disciplinary proceedings against judges.

Regarding the issue of governance, there are many structures in place in the jurisdictions, from judicial commissions, judicial assembly management boards in different courts, judicial councils and court services which involve judges. In this area, it is clear that there is the widest variety of structures to support judges. In some jurisdictions, there was a formal mechanism of contact between senior judiciary and administration Ministry of Justice officials, regarding issues affecting the judiciary, such as resources, but in other jurisdictions it was a less formal method of contact between the senior judiciary and the Administration. In some countries, the methods to determine these matters and to make representations was described by some delegates as being a complicated process.

Regarding the distribution of cases between judges, it is decided by a combination of administrators and senior judges in a number of

jurisdictions, but in other jurisdictions the allocation is done by a computerized system which may or may not be under the overview of a senior judge for a final decision. In the jurisdictions that use a computerized system, this was considered a more equitable method of allocation of cases to judges, in terms of quantity and quality. It was interesting to note that the majority of delegates, whether they use computerized system or not to distribute cases, were in favor of their jurisdictions moving towards a computerized system.

The funding of judges salaries and generally the judicial system depends on the interaction between the judiciary and the executive and government bodies. Judicial independence does not mean judicial isolation in these areas.

There is a major concern in some countries about the decline in funding for the judiciary but also particularly the lack of increase in funds for salaries.

In one delegation, judges have not been paid for more than a year.

Criticisms have been made of short-term funding on an annual basis which affects the proper planning of judicial resources.