



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Taipei, 15-18 November 1999

Final Resolution

TO REVALORIZE THE RELATIONS BETWEEN THE JUDICIARY AND THE OTHER POWERS OF STATE
FOR A BETTER WORKING OF JUSTICE

Some 30 national reports from all over the world served as the basis for the commission's discussion on the subject: "how to re-evaluate the relations between the Judiciary and the other Powers of State"

Analysing these relations, the commission came to the conclusion that, even if the individual judge can perform or thinks he can perform his judicial duties independently, in most Countries the balance between the Judiciary and the other Powers of State is not respected with appropriate vigour.

There are too many ways the legislature and the executive can and actually does interfere, and could, or give the impression to be able to jeopardise the Judiciary's independence, even if at first sight some of these interferences seem but normal or inevitable while deeply rooted in the traditional ways of state organisation.

Independence should not only exist theoretically on the grounds of a constitutional statement or principle, but has to rely in practice on the good faith of the men and women who participate in the legislative and executive Powers.

This indeed will inevitably result in the submission of the Judiciary, which will have to please the hand out of which it is eating.

In this respect it is very relevant that no one ever questions the independence of the legislator or the power of government.

This dilemma is becoming more obvious in recent times according to the modern doctrine of judicial protection of the citizen against the State, and of judicial control on the conformity of domestic law with ratified international standards.

Therefore it is the commission's opinion that, true independence can best be achieved by a self governing Judiciary.

Rather than trying to define in detail the framework for a self-governing Judiciary, that may and probably will vary from one country to another, the commission regards it as important to adopt the general concept of a self governing organisation as opposed to the other end of the scale where the Judiciary is nothing more than a machinery that produces (hopefully) independent judicial decisions, but is, for all other aspects of its functioning, dependent from exterior care and maintenance.

From this point of view it is quite unacceptable if this separate public authority has little or no decisive influence on the selection, appointment, career and discipline of judges and staff as well as on the determination of its material needs. Furthermore, the specific mission of the judiciary, and the importance of maintaining the independence of the judge's individual decision making, demands for even greater guarantees of independence in issues such as the removal or the replacement of judges (the principle of irremovability) and disciplinary action against judges that should only be taken within the strict limits of predetermined legal proceedings. From both viewpoints, the more general organisational one and the more specific constitutional one of judicial independence, it is not acceptable that the executive power could decide upon the scale of the Judiciary's budget and its spending.

On the other hand, the greater the independence the Judiciary can and must claim to be able to function as a reliable public service, the better the fine tuning with the nations will and the stronger the

public supervision must be, not only to prevent corporatism, but to meet the very basic rules of a democratic society.

Independence and public control are two sides of the same coin in the theory of checks and balances within public authority. Each public power or authority has its counterweight in an equally important public accountability. The other part of the equation is that there is no room for accountability of the Judiciary when, except for the judicial decision making, everything else is taken care of by others than the judiciary itself.

This is both a constitutional and an organisational dilemma.

Several national reports on recent reforms or planned reforms of the judicial systems indicate that there is a progression from little or no accountability for a judiciary with little or no self governing power, towards the opposite situation.

Particular in this evolution is that it is often triggered by an urgent public demand not for a more independent Judiciary, but for a more accountable one.

Urging the Judiciary to take more responsibilities for its own functioning and organisation, creates the need for an organisational setting that allows the Judiciary to meet this demand.

If the Judiciary is willing to undertake this responsibility, the outcome would likely be a self governing, but accountable Judiciary, that is independent from the other Powers, except for the democratic approval and control of its efficient use of public resources in accordance with its legal purposes.

To implement this, the Judiciary must hold the right and the obligation to address to the nation and its representatives its overall budget proposal for discussion, supervision and approval and the obligation to accept the retrospective control of the efficient use of the granted resources.

It would be vain to think that this commission or, for that matter, anyone else, could be able to establish for the final outcome of this evolution a one and only concrete framework, with all the built-in guarantees for its acceptance in a particular State organisation.

For that matter however, the commission wants to make two important remarks :

1) As to the ultimate managing body of this self governing judiciary, be it in the shape of a high council of the judiciary or in any other shape, it is clear to the great majority of the commission that, to ensure the independence, this body must be composed in majority by members coming from within the judicial organisation itself.

2) The evolution, which concerns the Judiciary as an institutional entity, must leave untouched the right of the individual judges (and for that reason, other "workers" within), to organise themselves in associations that care for their interests as individuals and as a group. To forbid or to impede judges' associations is unacceptable and a violation of the judicial independence.

Undoubtedly in most Countries, this evolution towards a self governing Judiciary is far from finished and didn't even start in some others, but on the long term it seems to be an inevitable one in modern society.

Therefore the best way to improve the relations between the Judiciary and the other Powers of State, is the mutual acceptance of this evolution that will give each and every step in judicial reform a common goal towards an independent and accountable Judiciary in the best interest of the nation and the public service.

Taiwan, November 17th, 1999.

The commission decided that the topic for next year, in close relation with this year's topic, will be: "The independence of the individual judge within his own organisation."