



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Vienna, 9-13 November 2003

Conclusions

THE ROLE AND FUNCTION OF THE HIGH COUNCIL OF JUSTICE OR ANALOGOUS BODIES IN THE
ORGANISATION AND MANAGEMENT OF THE NATIONAL JUDICIAL SYSTEM

Whereas:

A majority of the countries who submitted reports have a High Council of Justice or an analogous body. Others do not have such body.

In many countries that have such bodies a significant proportion of the membership consists of judges elected by their peers or judges appointed by virtue of their office.

In a significant number of countries the High Council of Justice or an analogous body plays a major role in the appointment, promotion, discipline or training of judges as well as budgetary matters.

Whereas:

The independence of the judiciary is not a privilege of judges but a right of citizens in a democracy based on the Rule of Law;

The First Study Commission of the IAJ concludes

A High Council of Justice may be a means of strengthening the independence of the judiciary and the judges in carrying out their judicial functions. Therefore it is important that a High Council or analogous body enjoys a strong degree of independence or autonomy from other governmental powers.

Where a High Council of Justice or analogous body is not structured in such a way that promotes and protects the independence of the judiciary there is always a danger that it may undermine that independence.

It is essential that a High Council of Justice or analogous body has a majority of judges among its members. Such judges should be elected by their peers or be members by virtue of their specific judicial office but not be selected by the government or parliament.

In any case, such a body should be a means by which a buffer is placed between the judiciary and the other powers of government so that it can protect the judiciary from undue influence from those powers rather than be an instrument of it.

A High Council of Justice or an analogous body or the judiciary should play a major role in the appointment, promotion, discipline or training of judges.

The independence of the judiciary is also dependent on adequate budgetary allocations for the administration of justice and the proper use of those resources. This can be best achieved by an independent body which has responsibility for the allocation of those resources.

The topic of next year:

Rules for ethical conduct of judges, their application and observance

Vienna, November 12th, 2003