



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Amsterdam, 22-26 September 1996

Conclusions

RECRUITMENT AND TRAINING OF JUDGES IN A MODERN SOCIETY

The first Study commission has considered the problem of the recruitment and training of judges in a modern society. 34 National reports from Countries of all the continents in the world were presented and were examined from a comparative law standpoint in order to enable, after a discussion which proved to be both constructive and useful, the emergence of useful information for all those, Countries, organisations or individual professionals, concerned with the need of an independent and efficient justice, serving well the parties or users of court services.

1.1. The examination of these reports show that for the recruitment or selection of judges of first level, most Countries require a law degree or equivalent superior studies.

Although in many Countries the law does not expressly impose a minimum age to enter the profession, it is apparent however that the access is rarely possible before the age of 30 (after addition of years of studies, professional experience requirements and/or training).

In the Anglo-Saxon system, access to the profession is generally at an even older age.

A more or less long experience in legal professions (most often in that as a barrister or attorney) is the most frequent requirement, mainly in Countries where there is no training program for candidates, or only a minimal program.

The Countries which have established an elaborate system, such as a national judicial school, often impose apprenticeship in other legal professions, particularly clerkship as lawyers.

Some Countries have established a system of general apprenticeship that is open to all young graduates who wish to enter in one of the legal professions. These systems allow all young graduates to learn the basic skills of several professions, including that of judge or public prosecutor.

1.2. Generally one can identify 2 main basic approaches to selection:

1. the recruitment for a purpose of a first and only career as a judge, aimed at relatively young candidates, and which, in general, offer the possibility of promotion.

2. the recruitment for a second career for candidates who have already acquired both maturity and extensive professional experience before appointment to the Bench.

The first commission is of the view that it could be useful to combine the two systems, as is seen in many countries, in order to bring to the institution experience, maturity, dynamism and open minds.

One must stress however that to be able to judge the dispute of others with the needed authority, distance and understanding, there is generally a need for a degree of maturity and life experience (of which professional experience is only an aspect) that isn't but exceptionally acquired before the age of 30 or 35 years.

Many examples show however that this problem can be remedied if the working conditions imposed to the younger judge restricted power and/or collegial work under the supervision of more senior colleagues. This can be coupled with a system of appointment that may or may not follow.

This system of probationary appointment preceding final nomination is, of course, less applicable to people who are asked to leave a well established professional career in order to take a new start in the judges profession.

1.3 As for the criteria of selection apart from the classical ones of competence and legal knowledge, which are often verified through entry exams or exams of a similar nature, the commission has put the emphasis on a series of criteria, more difficult to define but nevertheless essential to guarantee, as much as possible, that a good technician in the law be also a good judge and be able to work in a professional organisation of which the public is asking more and more, and justly so, that it be efficient and accountable for its own performance.

The time available did not permit to study in depth or even to review in a useful fashion all those criteria, such as the psychological profile of a candidate, his or her communication skills, ability to listen, his or her social qualities and work organisation capacity.

Certain countries have already introduced in their selection process or are in the process of doing so, mechanisms and techniques that tend to take into account in an objective manner some or all of these criteria.

It goes without saying that as the process of selections becomes increasingly technical and sophisticated, this then creates an additional problem: that of the specific training and competence of the persons responsible for the selection itself.

1.4 Political consideration, in the sense of the influence of political parties in the appointment (or promotion) of judges, is in the unanimous opinion, to be avoided at all costs. In respect not only to the impartiality of the individual judge, but equally of the independence of the entire judiciary.

The appointment of the judges should be made by the most objective standards so that it is only open to those best suited to exercise the practice of a judge. The constitutional principle of judges being irremovable, as recognised in many countries, can be regarded as a price society ought to pay for an independent judiciary. Good management of resources requires that through an objective and comprehensive selection process this price is kept as modest as possible. The best guarantee for obtaining this goal is to give this process to an independent body which at least includes sufficient representatives of the judiciary and which has at his disposal the necessary know-how and technical support.

If status and working conditions of judges are such that a large number of suitable candidates is attracted, it is still possible, in those Countries where appointment is the prerogative of another organ of State, for a selection committee to submit a number of suitable candidates to the final choice of that other organ of State.

2.1. In the reports submitted, prior to the meeting, the delegates considered special training for judges both before or immediately after appointment and while in office (life-long-learning).

Due to pressure of time this could not be discussed in detail. It must be emphasised however that the special training of judges including continuing education, is of prime importance because the standard of professionalism of the judge must meet the needs of contemporary society.

The judge has to have special skills which one acquires neither in university nor in another profession.

Therefore three aspects of a judges' education have been stressed out:

- the legal education
- the specialised skills
- the social issues-awareness

In that respect international co-operation and exchange are very important.

2.2. The necessary means (funds and disposability) have to be provided not only for the organisation of these programs, but also to allow individual judges to keep up high standard of professional competence and skills. It is by all means evident that the basic structure of training programs will be different for the two main recruitment options mentioned above.

2.3. A warning must be made : the education of judges cannot give way to undue influence. Therefore, the education has to be organised by the Judiciary itself or, at least, under its control or with its consent. It must also be emphasised that if on one hand it should remain possible not to appoint or not to appoint permanently a candidate or a judge appointed on a probationary basis who has not completed successfully the training program, equally those who have completed a long and comprehensive program successfully, must be guaranteed (permanent) appointment.

In this respect provisional appointment with restricted powers during a probationary period, as already mentioned, including at the same time a practical and theoretical education followed by a permanent appointment which depends upon satisfactory results seems to offer the best guarantee. Not only for the candidate but also for the standard of justice to be administrated.