

Questionnaire 2017 of the 1st Study Commission

“The Threats to the Independence of the Judiciary and the Quality of Justice: workload, resources and budgets.”

Introduction

The aim of the work of the 1st Study Commission of IAJ is to identify possible problems and threats to the judiciary regarding a specific topic, and to provide potential solutions by compiling examples and proposals from member associations. Based on this compilation the Study Commission then formulates its conclusions and gives its opinion on how to avoid such threats and problems. Last year – 2016 – the Commission was explicitly searching for best practice, at that time regarding ensuring transparency and integrity and preventing corruption.

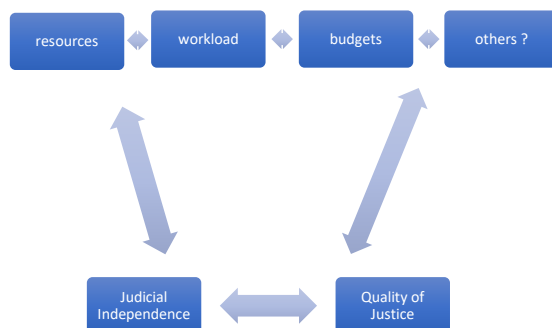
In preparing the questionnaire for 2017 the presidency of the 1st Study Commission considered it to be useful to proceed in the same manner as the year before, albeit that best practice is not mentioned in the title of the topic. Therefore the commission decided to

- a- identify possible aspects of the topic;
- b- examine already existing opinions, statements etc. on these aspects;
- c- formulate questions regarding the different aspects (taking into account already existing opinions, statements, etc); and
- d- considering the above-mentioned sources, discover which measures could help to diminish or eliminate the different threats.

1) Possible aspects

The topic chosen for this year mentions three possible threats - workload, resources and budgets – and two endangered values - Independence of the Judiciary and Quality of Justice.

By choosing those three threats, the commission was well aware that there are many other threats which could endanger the independence of the Judiciary and Quality of Justice. But the naming of those threats was to express that the focus should be on working conditions, such as workload, resources and budgets while accepting it might be possible that there are additional threats and problems in this field.



Therefore the task of the commission in 2017 will be

- a) to describe what possible negative impacts all the identified threats might have – whether on judicial independence or on the Quality of Justice or both – whereby everybody is invited

to identify also possible additional threats, concerning working conditions; and
b) to identify measures which could diminish or eliminate such threats.

As one can see, as listed below, there are already numerous statements, opinions and the like demanding sufficient resources for the judiciary, and referring to workload and budgets. So the task for the 1st Study Commission in 2017 should be a twofold one: on the one hand the commission should – based on existing documents – consider if the proposed measures are useful or if they need improvement. And on the other hand – and that will be the most important part – the goal will be to identify and propose concrete – additional – measures for fostering and ensuring both judicial independence as well as quality of justice.

2) existing opinions, statements etc.

1. **THE SYRACUSE DRAFT PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY (1981)¹**
 Art. 24. To ensure its independence the judiciary should be provided with the means and resources necessary for the proper fulfillment of its judicial functions.
 Art. 25. The budget of the judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.
2. **INTERNATIONAL BAR ASSOCIATION (IBA) MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE (1982)²**
 10 It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.
3. **THE (MONTREAL) UNIVERSAL DECLARATION ON THE INDEPENDENCE OF JUSTICE (1983)³**
 2.41 It shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets.
4. **UNITED NATIONS BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY (1985)⁴**
 7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.
5. **DRAFT UNIVERSAL DECLARATION ON THE INDEPENDENCE OF JUSTICE ["Singhvi Declaration"] (1985)⁵**
 32. The main responsibility for court administration including supervision and disciplinary control of administration personnel and support staff shall vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.
 33. It shall be a priority of the highest order for the State to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.
 34. The budget of the courts shall be prepared by the competent authority in collaboration with the judiciary having regard to the needs and requirements of judicial administration.

¹ Source: Stephan Gass/Regina Kiener/Thomas Stadelmann, Standards on Judicial Independence, Editions Weblaw, Bern 2012, p. 35 ff.

² <http://www.ibanet.org/Document/Default.aspx?DocumentUId=bb019013-52b1-427cad25-a6409b49fe29>

³ Source: Gass/Kiener/Stadelmann, p. 42 ff.

⁴ <http://www2.ohchr.org/english/law/indjudiciary.htm>

⁵ <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G87/124/32/PDF/G8712432.pdf?OpenElement>

6. Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary [Resolution 1989/60, 15th plenary meeting, 24 May 1989], The Economic and Social Council⁶
 Procedure 5
 In implementing principles 8 and 12 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to case-loads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.
7. IAJ 1st SC CONCLUSION 1994: Participation of the judicial power in the administration of justice [IAJ Meeting in Athens, October 9-13 1994]⁷
see Appendix
8. African Commission on Human and Peoples' Rights Resolution on the Respect and the Strengthening on the Independence of the Judiciary
 [The African Commission at its 19th Ordinary Session held from 26th March to 4th April 1996 at Ouagadougou, Burkina Faso]⁸
 1. CALLS UPON African countries to:
 [...]provide, with the assistance of the international community, the judiciary with sufficient resources in order to enable the legal system fulfil its function;
9. Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (1997)⁹
 41. It is essential that judges be provided with the resources necessary to enable them to perform their functions.
 42. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.
10. EUROPEAN CHARTER ON THE STATUTE FOR JUDGES (1998)¹⁰
 1.8 The Charter provides that judges should be associated through their representatives, particularly those that are members of the authority referred to in paragraph 1.3, and through their professional associations, with any decisions taken on the administration of the courts, the determination of the courts' budgetary resources and the implementation of such decisions at the local and national levels. Without advocating any specific legal form or degree of constraint, this provision lays down that judges should be associated in the determination of the overall judicial budget and the resources earmarked for individual courts, which implies establishing consultation or representation procedures at the national and local levels. This also applies more broadly to the administration of justice and of the courts. The Charter does not stipulate that judges should be responsible for such administration, but it does require them not to be left out of administrative decisions.
11. IAJ 1st SC CONCLUSION 2000: The independence of the individual judge within his own organization [IAJ Meeting in Recife, 17-21 September 2000]¹¹
 3. The proper administration of the Judicial system must create and ensure the conditions necessary for judicial independence. This includes appropriate remuneration and security of office. However, the judge and the judiciary as a whole have an obligation to ensure the effective handling of the workload and the management of resources. Among the matters which could compromise the independence of the judge

⁶ <http://legislationline.org/documents/action/popup/id/7739>

⁷ http://www.iaj-uim.org/site/modules/mastop_publish/?tac=35

⁸ http://www.achpr.org/english/resolutions/resolution26_en.html

⁹ <http://lawasia.asn.au/objectlibrary/147?filename=Beijing%20Statement.pdf>

¹⁰ [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DAJ/DOC\(98\)23](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DAJ/DOC(98)23)

¹¹ http://www.iaj-uim.org/site/modules/mastop_publish/?tac=41

are an excessive workload, insufficient resources for the fulfilment of the judge's duties, the arbitrary imposition of quotas and assignment of cases, procedures and criteria for promotion. Where a judge's work is evaluated, it must be done in a manner which does not undermine his independence. For example it may be dangerous to evaluate the work of a judge by reference to the percentage of decisions which were reversed on appeal.

12. Opinion no 2 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights¹²
see Appendix
13. IAJ 1st SC CONCLUSION 2001: The appointment and the role of presidents of courts [IAJ Meeting in Madrid, 23-27 September 2001]¹³
5 As regards budgetary matters and the allocation of resources for the functioning of the judicial system, this should be sufficient to enable the judiciary to fully exercise its functions, but in particular, should not be a means by which pressure is placed on judges which could affect their independence. Presidents of courts should at least be consulted as to the budgetary and other resources required by the courts to carry out their judicial functions.
14. Commonwealth (Latimer House) Principles on the Three Branches of Government (2003)¹⁴
IV) (c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;
2. Funding
Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary. Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary. As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.
15. IAJ 1st SC CONCLUSION 2003: The role and function of the high council of justice or analogous bodies in the organisation and management of the national judicial system [IAJ Meeting in Vienna, 9-13 November 2003]¹⁵
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.
16. The Burgh House Principles on the Independence of the International Judiciary (2004)¹⁶
6. Budget States parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.
17. IAJ 1st SC CONCLUSION 2005: Economics, Jurisdiction and Independence [IAJ Meeting in Montevideo, 21-24 November 2005]¹⁷
3) NPM can be used for the management of the courts. But even here care must be taken not to infringe the independence of the judiciary in an indirect way. A lack of resources (number of judges, staff) could put judges under pressure to act in a certain way in proceedings.

¹² [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE\(2001\)OP2](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2001)OP2)

¹³ http://www.iaj-uim.org/site/modules/mastop_publish/?tac=42

¹⁴ <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=37744>

¹⁵ http://www.iaj-uim.org/site/modules/mastop_publish/?tac=43

¹⁶ <http://www.ila-hq.org/download.cfm/docid/D18ED684-4653-49A8-9857773C7D5C9C69>

¹⁷ http://www.iaj-uim.org/site/modules/mastop_publish/files/files_486e93aae7b65.pdf

4) The judiciary (high judicial council, single courts) should be involved in the process of budget drafting and in the allocation of given resources.³

5) Nevertheless the practice of providing for budgets for individual judges and/or panels of judges should be avoided, because that practice could constitute a danger to judicial independence. That is because the judge would be forced to keep in mind the effects of his decision on his personal budget (or the budget of the panel).

6) Cost of lawsuits (witnesses, experts, interpreter) must not be subjected to a strict budget as these resources have to be available sufficiently and without restrictions.

7) Monetary Incentives of some kind, such as bonus related salaries for judges, workload norms for judges and bonus related salary systems, could seriously jeopardize judicial independence. At the least such incentives might give an appearance of jeopardizing judicial independence since the parties might have the perception that the financial interest of judges would prevail over the principle of giving an impartial decision.

18. Mt. Scopus Approved Revised International Standards of Judicial Independence [Approved March 19, 2008]¹⁸

2.17. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

15. BUDGET 15.1. States, parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

19. Declaration of Minimal Principles about Judiciaries and Judges' Independence in Latin America (Campeche Declaration) [Federación Latinoamericana de Magistrados, Campeche, April 2008]¹⁹

5. c) That for the compliance of their constitutional duties, the Judiciaries are the ones to fix the judicial politics, having all the necessary resources that would allow them to act with independence, swiftness and efficacy. For that purpose, it is necessary to recognize the power of the judiciary to elaborate its own budget and participate in all the decisions related to the material means for their acting.

d) That the management of the budgetary resources should be exercised by each Judiciary, in an autonomous way.

14. – MATERIAL RESOURCES. It is the duty of other State public authorities to provide the judiciary with the necessary resources for its independent, efficient and swift performance.

20. RECOMMENDATION CM/REC (2010) 12 OF THE COMMITTEE OF MINISTERS²⁰

32. The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality.

33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.

34. Judges should be provided with the information they require to enable them to take pertinent procedural decisions where such decisions have financial implications. The power of a judge to make a decision in a particular case should not be solely limited by a requirement to make the most efficient use of resources.

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly

¹⁸ <http://law.huji.ac.il/upload/InternationalStandardsJudicialInd2008.doc>

¹⁹ <http://www.fam.org.ar/FAM.asp?id=312>

²⁰ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1707137>

encouraged.

21. Opinion No14 .(2011) of the Consultative Council of European Judges (CCJE), "Justice and information technologies (IT)"
see Appendix

22. Opinion No18 .(2025) of the Consultative Council of European Judges (CCJE), "The position of the judiciary and its relation with the other powers of state in a modern democracy"

(6) Budgetary autonomy

50. The consequences of public financial difficulties, especially those resulting from the economic crisis since 2008, have caused serious problems in many member states. Access to courts and legal aid has been reduced, the workload of the courts has increased and the judiciary has been restructured. In their answers to the questionnaire, many member states reported discussions concerning the remuneration of judges. Salaries for judges have been frozen for many years or even lowered in recent years.

51. It is accepted that, subject to constitutional provisions, ultimately the decisions on the funding of the system of justice and the remuneration of judges must fall under the responsibility of the legislature. However, European standards should always be obeyed. The CCJE has made recommendations about the funding of the judiciary¹⁰⁶. The judiciary should explain its needs to parliament and, if applicable, to the ministry of Justice. In the case of a severe economic downturn, judges, like all other members of society, have to live within the economic position of the society they serve. However, chronic underfunding of the judicial system should be regarded by society as a whole as unacceptable. This is because such chronic underfunding undermines the foundations of a democratic society governed by the rule of law.

VIII: Summary of principal points

17. Chronic underfunding of the judiciary should be regarded by society as a whole as an unacceptable interference with the judiciary's constitutional role, because it undermines the foundations of a democratic society governed by the rule of law (paragraph 51).

23. Opinion no 19 (2016) of the Consultative Council of European Judges (CCJE), THE ROLE OF COURT PRESIDENTS²¹

17. Court presidents should also be empowered to monitor the length of court proceedings. This is closely linked to the reasonable length clause of Article 6 of the ECHR and the requirements of national legislation. Monitoring of the length of proceedings and actions to be undertaken by court presidents to speed up the disposition of cases must be balanced with the judges' impartiality, independence and with judicial confidentiality.

C. Managerial role

24. The CCJE recognises that the managerial role of court presidents in member states varies. There is, however, a general trend towards a wider managerial role for court presidents. This is a result of demands for a better service to court users and society and reflects the general view that presidents playing that role can enhance court performance. In this regard, the CCJE stresses that various models focusing on the managerial function are possible. Any managerial model must serve the better administration of justice and not be an objective in itself. The CCJE considers that any central authority responsible for managing the judiciary should only perform those tasks which cannot be performed effectively at the level of courts.

25. While judicial systems vary, the managerial functions have to be framed and adapted to the specific environment of the judicial organ of state respecting its independence and the independence and impartiality of individual judges. As it is in the case of relations between court presidents and other judges, the managerial functions of the presidents are also based on these fundamental values. The presidents should never engage in any actions or activities which may undermine judicial independence and impartiality.

26. Replies of the CCJE members show that in some cases, court presidents have an explicit strategic planning function. The CCJE takes the view that the obligation of court presidents to provide fair and impartial justice will inevitably require that goals are defined and strategies developed in order to address various challenges and issues affecting the judiciary.

²¹[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2016\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2016)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)

27. Court presidents are responsible for managing the operation of the court, including managing court staff and material resources and infrastructure. It is crucial that they have the necessary powers and resources to fulfil this task efficiently.

28. The role played by court presidents in managing the court staff varies quite significantly among the member states. The replies to the questionnaire show that in some member states, the powers of the court presidents can be very broad. They can deal with selection and recruitment, setting remuneration levels, transfer, discipline, performance assessment and dismissal. In other member states, the powers of the presidents are very limited and most of the managing tasks are fulfilled by an outside body or person.

29. Replies submitted by the CCJE members also show that court presidents have functions in relation to the maintenance and security of court infrastructure. If all these powers are exercised by organs appointed by, and accountable to the executive, for example to the Ministry of Justice or to the central authority, the CCJE's view is that court presidents should be involved and should have significant influence on how these services are provided.

30. These powers should be exercised in a way that is both professional and transparent. There is a clear advantage if this responsibility is shared with the "court manager" or "administrative director", who can have a different level of authority in the management of court personnel. In such cases, these officials should be appointed by, and be accountable to, court presidents.

31. Court presidents should also have the authority to establish organisational units or divisions in the court, as well as individual posts and positions in order to respond to various needs within the court operations. Where court presidents intend to make significant changes in the organisation of the court, the judges should be consulted.

32. In some member states, court presidents have some functions in the allocation of the court budget. For example, they analyse the resources needed to deal with the caseload within a reasonable time, and then negotiate with the central authorities in charge of budget allocation. This is a significant issue: it depends heavily on the administration framework of the judicial system, on the extent of its autonomy, and on the division of responsibilities within the system. The criteria used in the process of the allocation of financial and human resources to different courts are a key factor for defining the role of the court presidents. That role, if not decisive, should be significant. This is especially important in view of the existence, in some member states, of judicial systems where the allocation of resources is strictly centralised, and the discretion of the court presidents is very limited.

33. However, presidents should have the power to manage the budget within their courts. This power implies that court presidents are accountable. In order to perform this task, court presidents should be assisted by skilled professionals from among the non-judge court staff.

V. Conclusions and recommendations

4. Where court presidents have a role in collecting data and assessing the work of the court and of individual judges, appropriate safeguards must be in place to ensure impartiality and objectivity (paragraph 22).

5. Any managerial model in courts must facilitate the better administration of justice and not be an objective in itself. The court presidents should never engage in any actions or activities which may undermine judicial independence and impartiality (paragraphs 24 and 25).

6. The role of court presidents in the allocation of budgetary means to the court should be significant, if not decisive (paragraph 32), and they should have the power to manage the budget within their courts (paragraph 33).

24. See also:

INTERNATIONAL ASSOCIATION OF JUDGES: UPDATING THE UNIVERSAL CHARTER OF THE JUDGE (Project 2017)

New Article 2-4 – Resources for Justice

The other institutions of government of the State must provide the judiciary with sufficient resources to be able to properly perform its function.

The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to the budget of the Judiciary and material and human resources allocated to the courts.

25. New Article 8 – 1 – Remuneration

The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence.

The remuneration must not depend on the results of the judge's work, or on his/her performances, and

must not be reduced during his or her judicial service.

Rules on remuneration must be enshrined in legislative texts at the highest possible level.

3) Questions

1. Have you experienced threats to judicial independence or to the quality of justice regarding

- (a) resources
- (b) workload
- (c) budget regulation or allocation;
- (d) judicial terms and conditions including entitlement to an appropriate salary and pension: and
- (d) others (please provide details)?

Please differentiate between threats to judicial independence and threats to the quality of justice. Describe how exactly judicial independence and/or the quality of justice were or might be influenced negatively.

2.

(a) Do you know of measures which can diminish or eliminate threats to judicial independence and/or to the quality of justice due to working conditions (resources, workload, budget regulations, others)?

(b) Do you have experience with such measures?

3. Are there decisions of your national courts or tribunals or constitutional measures that give guidance on

(a) what is a sufficient budget for an effective justice system;

(b) judicial terms and conditions including entitlement to salary and a pension.

4.

(a) Is the Council of Justice, or any other independent organisation in your country if there is one, consulted about court resources, workload and budgets for the courts?

(b) If so, what form does that consultation take?

(c) What effect does that consultation, or lack of consultation, have on judicial independence or the quality of justice?

5.

(a) Is the workload of your courts or the quality of justice adversely affected by changing procedures that judges are required by the government to follow?

(b) Is the judiciary in your country consulted before any such changes are implemented?

(c) What effect does that consultation, or lack of consultation, have on judicial independence or the quality of justice?

The Presidency Committee also invites each national organization to provide details of any other threat to judicial independence which has been experienced in your country or region in the past year.

Proposal for topic 2018

The presidency is asking you to submit your proposals for possible topics to be treated in 2018 together with the answers to the questionnaire. The reason for this is that we would like to do some research before the meeting in Santiago to know whether a topic has been handled with before and if there exist already standards, opinions, recommendations in relation to a topic.

Please send your detailed answers – not later than 19 June 2017 – to the board of the First Study Commission:

first_sc@iaj-uim.org

The presidency of the 1st Study Commission