



# **51<sup>st</sup> ANNUAL MEETING OF INTERNATIONAL ASSOCIATION OF JUDGES**

**YEREVAN 2009**





**51st ANNUAL MEETING OF INTERNATIONAL  
ASSOCIATION OF JUDGES  
YEREVAN, REPUBLIC OF ARMENIA  
SEPTEMBER 7-11, 2008**



Association of Judges of the  
Republic of Armenia

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# INTERNATIONAL ASSOCIATION OF JUDGES

## HISTORY AND INFORMATION



The International Association of Judges was founded in Salzburg (Austria) in 1953 as a professional, non-political, international organization, grouping not individual judges, but national associations of judges.

The main aim of the Association is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedom.

Today the organization encompasses 70 such national associations or representative groups, from five Continents.

The Central Council, the IAJ's deliberative body, meets annually, preferably in a different country every year. Each member association has two representatives in the Council.

The IAJ has four Regional Groups:

- i) the European Association of Judges (38 Countries);
- ii) the Iberoamerican Group (15 Countries);
- iii) the African Group (12 Countries);
- iv) the Asian, North American and Oceanian Group (9 Countries).

The IAJ has four Study-Commissions,

dealing respectively with judicial administration and status of the judiciary, civil law and procedure, criminal law and procedure, public and social law. On the basis of national reports, the members of the Commissions study problems of common interest to the justice process in every country of the world, on a comparative and transnational basis.

The Association has consultative status with the United Nations (namely the International Labour Office and the U.N. Economic and Social Council) and with the Council of Europe.



## **NATIONAL ASSOCIATIONS AND REPRESENTATIVE GROUPS MEMBER OF THE INTERNATIONAL ASSOCIATION OF JUDGES IN 2008**

ARGENTINA (Asociación de Magistrados y Funcionarios de la Justicia Nacional)

ARMENIA (Association of Judges of the Republic of Armenia) - extraordinary member

AUSTRALIA (The Australian Section of the International Association of Judges)

AUSTRIA (Vereinigung der Oesterreichischen Richter)

BELGIUM (Section Belge de l'Union Internationale des Magistrats)

BOLIVIA (Asociación Nacional de Magistrados de Bolivia)

BRAZIL (Associação dos Magistrados Brasileiros)

BULGARIA (Bulgarian Judges Association) - extraordinary member

BURKINA FASO (Syndicat Burkinabé des Magistrats)

CAMEROON (Amicale des Magistrats Camerounais)

CANADA (Canadian Superior Courts Judges Association)

CHILE (Asociación Nacional de Magistrados del Poder Judicial de Chile)

COSTA RICA (Asociación Costarricense de la Judicatura)

CROATIA (Udruga Hrvatskih Sudaca)

CYPRUS (Énosi Dikastón Kýprou)

CZECHIA (Soudcovská Unie České Republiky)

DENMARK (Den Danske Dommerforening)

EGYPT (Egyptian Judges Club)

EL SALVADOR (Asociación de Magistrados y Jueces de El Salvador)

ESTONIA (Eesti Kohtunike Ühing)

FINLAND (Suomen tuomariliitto - Finlands domareförbund ry)

FRANCE (Union Syndicale des Magistrats)

GEORGIA (Judges of Georgia)

GERMANY (Deutscher Richterbund)

GREECE (Énosi Dikastón kai Eisangeleon)

HUNGARY (Magyar Biroi Egyesület)

ICELAND (Dómarafélag Íslands)

IRELAND (The Judges Association of Ireland)

ISRAEL (National Representation of Judges of Israel)

ITALY (Associazione Nazionale Magistrati)

IVORY COAST (Union Nationale des Magistrats de Côte d'Ivoire)

JAPAN (Nihon Saibankan Kyokai)

KAZAKHSTAN (Union of Judges of the Republic of Kazakhstan) - extraordinary member

LATVIA (Latvijas Tiesnesu Biedriba)

LIECHTENSTEIN (Vereinigung der Liechtensteinischer Richter)

LITHUANIA (Lietuvos Respublikos Teiseju Asociacija)

LUXEMBOURG (Groupement des Magistrats Luxembourgeois)



MALI (Syndicat Autonome de la Magistrature)  
MALTA (Assocjazzjoni ta' l-Imhallfin u tal-Magistrati ta' Malta)  
MEXICO (Comisión Nacional de Tribunales Superiores de Justicia de los Estados Unidos Mexicanos)  
MOLDOVA (Asociatia Judecatorilor din Moldova)  
MONGOLIA (Association of Judges of Mongolia) - extraordinary member  
MOROCCO (Alwidadia Alhassania Lilkodate)  
NETHERLANDS (Nederlandse Vereniging voor Rechtspraak)  
NIGER (Syndicat Autonome des Magistrats du Niger)  
NORWAY (Den Norske Dommerforening)  
PANAMA (Asociación Panameña de Magistrados e Jueces)  
PARAGUAY (Asociación de Magistrados Judiciales)  
PERU (Asociación Nacional de Magistrados del Peru)  
POLAND (Polish Judges Association – Iustitia)  
PORTUGAL (Associação Sindical dos Magistrados Judiciales Portugueses)  
PUERTO RICO (Asociacion Puertorriqueña de la Judicatura)  
REPUBLIC OF CHINA (TAIWAN) (The Judges Association of the Republic of China)  
RUMANIA (Association of Rumenian Judges)  
SENEGAL (Union des Magistrats Senegalais)

SLOVAKIA (Združenie sudcov Slovenska)  
SLOVENIA (Slovensko Sodnisko Drustvo)  
SOUTH AFRICA (Judicial Officers' Association of South Africa)  
SPAIN (Asociación Profesional de la Magistratura)  
SWEDEN (Sveiges Domareförbund)  
SWITZERLAND (Association Suisse des Magistrats de l'Ordre Judiciaire)  
TANZANIA (The Judges and Magistrates Association of Tanzania)  
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA (Zdruzenie na sudii na Republika Makedonija)  
TOGO (Association Professionnelle des Magistrats du Togo)  
TUNISIA (Association des Magistrats Tunisiens)  
UKRAINE (Ukrainian Independent Judges Association) - extraordinary member  
UNITED KINGDOM (The British Section of the International Association of Judges)  
URUGUAY (Asociación de Magistrados Judiciales)  
U.S.A. (Federal Judges Association)  
VENEZUELA (Federación de Asociaciones de Jueces de Venezuela) - extraordinary member.



## CENTRAL COUNCIL MEETINGS

- 1) 1953 – Salzburg, Austria
- 2) 1954 – Cadenabbia, Italia
- 3) 1956 – Munich, Germany
- 4) 1958 – Paris, France
- 5) 1961 – Roma, Italy
- 6) 1963 – Amsterdam, The Netherlands
- 7) 1964 – Bruxelles, Belgium
- 8) 1965 – Vienna, Austria
- 9) 1966 – Salzburg, Austria
- 10) 1967 – Luxembourg, Luxembourg
- 11) 1968 – Verona, Italy
- 12) 1969 – Berlin, Germany
- 13) 1970 – Tunis, Tunisia
- 14) 1971 – Rio de Janeiro, Brazil
- 15) 1972 – Nice, France
- 16) 1973 – Bruges, Belgium
- 17) 1974 – Firenze, Italy
- 18) 1975 – Copenhagen, Denmark
- 19) 1976 – Lausanne, Switzerland
- 20) 1977 – Trier, Germany
- 21) 1978 – Rio de Janeiro, Brazil
- 22) 1979 – Stockolm, Sweden
- 23) 1980 – Tunis, Tunisia
- 24) 1981 – Vienna, Austria
- 25) 1982 – Madeira, Portugal
- 26) 1983 – Dakar, Senegal
- 27) 1984 – Trisenberg, Liechtenstein
- 28) 1985 – Oslo, Norway
- 29) 1986 – Roma, Italy
- 30) 1987 – Dublin, Ireland
- 31) 1988 – Berlin, Germany
- 32) 1989 – Macao
- 33) 1990 – Helsinki, Finland
- 34) 1991 – Crans Montana, Switzerland,
- 35) 1992 – Sevilla, Spain
- 36) 1993 – Sao Paulo, Brazil
- 37) 1994 – Athens, Greece
- 38) 1995 – Tunis, Tunisia
- 39) 1996 – Amsterdam, The Netherlands
- 40) 1997 – San Juan, Puerto Rico
- 41) 1998 – Porto, Portugal
- 42) 1999 – Taipei, Taiwan
- 43) 2000 – Recife, Brazil
- 44) 2001 – Madrid, Spain
- 45) 2003 – Alicante, Spain
- 46) 2003 – Vienna, Austria
- 47) 2004 – Valle de Bravo, Mexico
- 48) 2005 – Montevideo, Uruguay
- 49) 2006 – Siofok, Hungary
- 50) 2007 – Trondheim, Norway
- 51) 2008 – Yerevan, Armenia

# ASSOCIATION OF JUDGES OF THE REPUBLIC OF ARMENIA



The Association of Judges of the Republic of Armenia was founded in April, 1997. The AJRA is a voluntary, independent, self-sustainable professional organization which unifies judges of Armenia, members of the Constitutional Court of the Republic of Armenia. With the purpose of promoting the intellectual, spiritual and other nonmaterial needs of its members, the AJRA protects their lawful interests, as well as ensures the authority of courts.

As a non-governmental organization, the main goals of the Association are:

- promotion of forming and strengthening a sovereign, democratic, social, rule of law state in Armenia,
- assistance to the process of judicial reform, creation of democratic legal system, and further development of judicial system,
- participation in drafting of laws and other legal acts related to judiciary, discussions and expressing the positions of judges with regard to these drafts,
- protection of judicial independence, as-

sistance to strengthening the immunity and security of judges, as well as to increasing the authority of judiciary,

- promotion of persons with high professional and moral qualities, appointment of judges,
- participation in the development of professional knowledge and training of judges and candidates for judges,
- protection of rights and lawful interests of the Association members,
- promotion of guarantees for protection of Constitutional rights and freedoms of citizens,
- creation of necessary conditions for meetings, exchange of professional experience for the Association members and organization of rest for them,
- cooperation with foreign and international judges, associations, maintaining of independent foreign activities,
- publication of a newsletter and legal literature,



- upon necessity, provision of financial assistance to the Association members.

Alvina Gyulumyan, judge of Constitutional Court of the RA (presently judge of ECHR), was the President of the Association of Judges of the RA From 1997 to 2003. From 2003 till today the President of the Association of Judges of the RA is Hrachik Sargsyan, Chairman of Armavir General Jurisdiction Court.

Since the establishment of the Association it has been publishing the “Judicial Power” scientific newsletter (formerly called “Ori-



natert”). The “Judicial Power” was the first legal media to address judicial practices. Since 2004 the newsletter has been included in the list of periodicals established by the Higher Qualification Commission, which is acceptable for publishing the results of Candidate’s dissertations. The newsletter is published regularly in 400-500 copies.

The agenda of the 48<sup>th</sup> Annual Meeting of the International Association of Judges held on 19-24 of November, 2005 in the Eastern Republic of Uruguay included the membership issue of the Association of Judges of the RA. In March, 2004 the Association of Judges of the RA applied for membership anticipating to become a full member of the IAJ. The membership issue of the AJRA had been discussed in Rome, in the Central Council of the Association and a decision had been made to invite the AJRA delegation to the 48<sup>th</sup> Annual Meeting of the International Association of Judges.

The President of the Association Hrachik Sargsyan and the Chairman of the Criminal Court of Appeal of the RA Tigran Sahakyan departed to Montevideo as delegates. Ober-

to Giacomo, deputy Secretary General of the IAJ, presented the AJRA application to more than 200 participants during November 23<sup>rd</sup> session of the Meeting. The decision was unanimous and the Armenian Association of Judges became the 68<sup>th</sup> member of the IAJ. From CIS countries only Moldova, Georgia, Ukraine and Kazakhstan are members of the IAJ.

The 50<sup>th</sup> Annual Meeting of International Association of Judges took place in Trondheim, Norway in September, 2007. The AJRA delegation also participated in this Meeting.

According to the Constitution of the International Association of Judges, among other things, the selection of the venue of the following Annual Meeting shall be considered during the current Meeting.

Applications for holding the Meeting in 2008 had been submitted by the following countries: Republic of Armenia, Spain, Romania, Morocco and Kazakhstan. As a result of the preliminary examination of the applications, the Presidency Commit-

tee of IAJ submitted the candidacy of the Associations of Judges of the Republic of Armenia, Spain and Romania to the Central Council. After considering the proposals of those three countries, the Central Council of the IAJ by secret ballot elected the Republic of Armenia as a hosting country for the 51<sup>st</sup> Annual Meeting of the International Association of Judges in 2008.

Thus, from 7<sup>th</sup> to 11<sup>th</sup> of September, 2008 for the first time in the whole region and particularly in CIS region the 51<sup>st</sup> ANNUAL MEETING OF INTERNATIONAL ASSOCIATION OF JUDGES took place in the Republic of Armenia, where 216 judges from more than 53 countries participated .

For other information, please, visit: <http://www.judje.am>

Rome, 17 October 2007

TO MR HRACHIK SARGSYAN  
PRESIDENT OF THE ASSOCIATION  
OF JUDGES OF THE REPUBLIC OF ARMENIA (AJRA)

Dear Colleague,

I take pleasure in informing you that, during the 50<sup>th</sup> world meeting of the International Association of Judges (IAJ), held in Trondheim (Norway) on September 2007, the Central Council of the IAJ approved the proposal of the Association of Judges of the Republic of Armenia to host the next plenary meeting. Therefore, the Central Council of the International Association of Judges will convene in Armenia for its 51<sup>st</sup> meeting in September 2008.

The indications and guidelines concerning the organisation will be transmitted separately.

While expressing my congratulations to AJRA for the important recognition of its participation in the life of the IAJ, I take the occasion to reiterate to the Armenian colleagues the will of the IAJ General Secretariat to offer all possible cooperation for the best success of the event.

I look forward to receiving your first communication about the main aspects of the organisation, at your earliest convenience, and to seeing you in your hospitable country.

Yours sincerely



Antonio Mura  
Secretary-General of the IAJ



## 51st Annual Meeting of the IAJ YEREVAN (ARMENIA), 7th - 11th September 2008 PROGRAMME for the 51st Annual Meeting of the IAJ YEREVAN (ARMENIA), 7th - 11th September 2008

### Saturday, 6<sup>th</sup> September 2008

- 00:00 - 15:00 Registration of the delegates  
15:00 - 18:00 Meeting of the Presidency Committee

### Sunday, 7<sup>th</sup> September 2008

- 10.00 - 17.00 Meeting of the European Association of Judges  
10.00 - 17.00 Meeting of the Ibero-American Regional Group  
10.00 - 17.00 Meeting of the African Regional Group  
10.00 - 17.00 Meeting of the Asian, North American and Oceanian Regional Group  
11.30 - 12.00 Coffee-break  
13.15 - 14.45 Lunch  
16.00 - 16.30 Coffee-break  
17.00 - 19.00 Meeting of the Presidency Committee  
20.00 - 21:00 Visit to the Museum of Armenian Genocide  
21:30 - 23:00 Welcoming dinner offered to participants and accompanying persons by the Armenian Judges Association - Parvana restaurant, Yerevan

### Monday, 8<sup>th</sup> September 2008

- 09.00 - 09.45 Opening Ceremony.  
-President of the Republic of Armenia speech  
-Chairman of the Cassation Court of the RA speech  
-President of the Association of Judges of

- the RA speech  
10.00 - 13.00 Meeting of the Central Council (1<sup>st</sup> part)  
11:30- 12:00 Coffee-break  
13.15 - 14.45 Lunch  
15.00 - 19.00 Meeting of the Study Commissions 1 - 4 (1<sup>st</sup> part)  
16.00 - 16.30 Coffee-break  
20.00 Dinner in Arqayadzor restaurant

### Tuesday, 9<sup>th</sup> September 2008

- 10:00 - 13:00 Excursion to Holy Etchmiadzin, visit to the Treasury Museum.  
13:15- 14:30 Excursion to Zvatnots Cathedral with lunch  
14:30- 20:00 Excursion to Lake Sevan and peninsula.  
20:00-24:00 Dinner at "Harsnaqar" complex in Sevan offered by the Chief Justice of Cassation Court the Republic of Armenia

### Wednesday, 10<sup>th</sup> September 2008

- 09.30 - 13.00 Meeting of the Study Commissions 1 - 4 (2<sup>nd</sup> part)  
11:30- 12:00 Coffee-break  
13.15 - 14.45 Lunch  
15.00 - 15.30 Fotosession  
16.30 - 17.00 Coffee-break  
15.30 - 18.30 Meeting of the Central Council (2<sup>nd</sup> part)  
20.00 - 24:00 Farewell Dinner in Harsnaqar complex.

### Thursday, 11<sup>th</sup> September 2008

- 10.00 - 12.00 Meeting of the Central Council (3<sup>rd</sup> part)  
from 13.00 Departure of the delegates

# MEETING OF THE INTERNATIONAL ASSOCIATION OF JUDGES



Yerevan, 8th September 2008

Opening ceremony

Your Excellency,

Ladies and Gentlemen,

Dear Colleagues,

It is an honor and great pleasure for all of us to be here today participating at the opening ceremony of the 51<sup>st</sup> meeting of the IAJ in Yerevan, the capital and largest city of Armenia. The city which history dates back to the 8th century BC. According to Armenian tradition, the name of Yerevan is derived from an expression exclaimed by

Noah in Armenian while looking in the direction of Yerevan, after the ark had landed on Mount Ararat and after the flood waters had receded: “Yerevats!” (“It appeared!”).

For me it is a privilege to address you in the name of the International Association of Judges. It is the first time the IAJ meeting is held in this part of the world, in this landlocked mountainous country, a transcontinental country at the juncture of Eastern Europe and Western Asia, between the Black Sea and the Caspian Sea, located in the Southern Caucasus, a small country and a population, that has its own distinctive alphabet, invented in 405 AD and its own language. I thank the Armenian Association of Judges for organization of this meeting, for their warm and friendly hospitality, that I already experienced during my stay in Yerevan two months ago.

The International Association of Judges was founded on 6<sup>th</sup> of September, 1953, in Salzburg, Austria, where the first meeting of the Central Council took place and where the Constitutional act was signed.

The IAJ was founded as a professional, non-political, international organization, grouping not individual judges, but national associations of judges. Today the IAJ encompasses 70 member associations from all continents. The main aim of the International Association of Judges is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedom.

By our Constitution one of the objects of the IAJ is to increase and perfect the knowledge and the understanding of Judges by putting them together in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organization, with foreign laws and in particular, with how those laws operate in practice.

That’s why four Study commissions were set up: 1<sup>st</sup> dealing with the organization of the Judiciary, the status, the rights of the individual; 2<sup>nd</sup> dealing with Civil law and procedure, 3<sup>rd</sup> dealing with Criminal law



and procedure and 4<sup>th</sup> dealing with Public and social law.

This year the topic of the 1<sup>st</sup> Study Commission is “The relationship between the executive and the judiciary in a democratic society: the question is who should be master?” the topic of the 2<sup>nd</sup> Study commission was “Damages for personal injury”, the topic of the 3<sup>rd</sup> Study Commission was “Sex offenses: today’s problems and effective solutions” and the topic of the 4<sup>th</sup> Study Commission was “Rights of parents in the employer-employee relationship”.

Although all topics were decided by the Central Council at the last year meeting, I was surprised to see that approximately only one third of member associations answered the questionnaires of study commissions (26 for the 1<sup>st</sup>, 24 for 2<sup>nd</sup> and 3<sup>rd</sup> and 18 for 4<sup>th</sup>).

It is time for reflection. Time to ask ourselves why only one third of members contributed in the work of Study commissions by answering the questionnaire and also

how can we improve it.

The work done in the Study Commissions is important part of our meetings; the topics are usually related to the problems of judiciary and to the law. They are connected with our everyday life, practice and work. Therefore we should improve the cooperation, the work and results of our Study Commissions. Time, when the general report of the Study Commission could have been done after the discussion at the meeting, is gone. With the enlargement of the IAJ it is probably necessary that in the future the Chair of each Study Commission prepares a draft general report, that is distributed at least one month before the meeting to all members and is the base for the discussion at the meeting. Therefore, I kindly ask all Chairs and members of the Study Commissions to devote during the meeting of the Study Commissions a little time for discussion about possible changes and improvement in the work of Study commissions in future.

More than 55 years of the existence of the

IAJ has resulted in an extraordinary development of the association. At the beginning in 1953 there were six countries, but today we have 70 members from all over the world and I hope that the association will gather even more members after this meeting.

In the name of the IAJ and my personal name I thank the Armenian Association of Judges, its President and dear friend Mr. Sargsyan Hrachik and all Armenian colleagues that worked hard, for the invitation and for perfect organization of our 51<sup>st</sup> annual meeting.

**Maja Tratnik**  
**President of the IAJ**





especially it earned the recognition of the Government of the country. I want to express my gratitude to the Court of Cassation of the RA and many organizations for their support in organizing and holding the Meeting properly.

No doubt the Meeting will leave its positive impact on raising the reputation and the effectiveness of activities of the Association of Judges of the RA.

In this connection, I would like to extend my deepest thanks to the authorities of the International Association of Judges, its executive body and other organizers of the Meeting.

I would also like to express my grati-

tude to all delegates and guests who have come from more than 52 countries and say, “Welcome to Armenia, to Noah’s country, shiny and hospitable”.

**Hrachik SARGSYAN**

President of the Association

of Judges of the RA

Chairman of General Jurisdiction

Court of Armavir Marz



## OVERVIEW OF THE ANNUAL MEETING

The registration of delegates of the International Association of Judges started at the Armenia Marriott Hotel on September 6, 2008. According to the agenda, on the same day, from 3:00 to 6:00 p.m., the meeting of the Presidency Committee took place, during which many organizational, technical and other issues related to the Annual Meeting were discussed.

On September 7, the Meetings of the European Association of Judges, Ibero-American, African, Asian, North American and Oceanian Regional Groups took place, where a number of issues that the regional groups were concerned about were discussed.

After a coffee break, the Meeting of the Presidency Committee continued, following which the delegates and accompanying persons visited the Museum of Armenian Genocide.

The dinner in Parvana restaurant offered to the participants and accompanying persons by the Association of Judges of the

RA marked the marvelous end of the day.

On September 8, at 9:00 a.m. the Opening Ceremony began with opening remarks made by the Chairman of the Cassation Court, the President of the AJRA and the President of the International Association of Judges. Subsequently, the Meeting of the Central Council (1<sup>st</sup> part) continued the Meeting. From 3:00 to 7:00 p.m. the Meetings of all four Study Commissions (1<sup>st</sup> part) took place. A delightful dinner at Arqayadzor restaurant concluded the day.

On September 9, the day was marked by a morning visit to the Mother Sea of Holy Etchmiadzin and the Treasury Museum. After the visit, the delegates and the accompanying persons visited Zvartnots Cathedral. Here the guests took a great delight in this picturesque sight. After lunch the delegates visited Lake Sevan and the Peninsula. They visited the Monastery and rode a motorboat on the lake and then were asked to dinner at Harsnagar Complex. It is worthwhile to mention

that different dishes were served for the guests during the dinners, but the stress was put on Armenian national dishes, which earned great praise by the guests.

In the morning of September 10, the Meetings of all Study Commissions (2<sup>nd</sup> part) took place. A photo session of the delegates and accompanying persons followed the meeting, and the photos with souvenirs were handed over to all guests later in the evening. The Meeting of the Central Council (2<sup>nd</sup> part) took place on the same day.

In the evening the guests were invited to a farewell dinner in Harsnaqar Complex.

On September 11, the Meeting of the Central Council (3<sup>rd</sup> part) took place. Afterwards, the departure of the delegates started. All the guests expressed their gratitude and admiration for the high-level organization and administration of the 51<sup>st</sup> Annual Meeting of the International Association of Judges.



## DISCUSSION TOPICS AND ADOPTED CONCLUSIONS OF THE STUDY COMMISSIONS OF IAJ 1<sup>st</sup> STUDY COMMISSION

The relationship between the executive and the judiciary in a democratic society;

The question is - who should be master?

The independence of the judiciary and the balance of power between the three powers of a democratic state: the legislature, the executive and the judiciary, are core elements of the work of the First Study Commission.

The central role of the legislature will not be part of our considerations of this year. In the past the First Study Commission has studied several topics where the relationship between the executive and the judiciary has been an element of the analysis. This year this relationship will be the centre of our investigation.

An examination from this viewpoint may make possible general conclusions on the mutual influence of these two branches of the powers of state and we hope will throw light on the question of

the balance of powers in Member States and this specific aspect of independence of the judiciary.

For the purpose of this questionnaire we ask everyone

(I) to exclude from their consideration the position of the “constitutional court” (if one is part of the judicial system in their country) can be regarded as part of the judiciary system; and

(II) to exclude the head of state in their country (as opposed to the head of government) from consideration as a part of the executive, unless the head of the state exercises power or “influence”. If either might be exercised, then it should be noted.

(III) “Influence” may be exercised or not; we think that if it might be exercised, then it should be noted.

Question 1:

Is the principle of independence of the

judiciary enshrined in the constitution or a comparable legal source in your country?

Question 2:

Is the principle of balance of powers enshrined in the constitution or a comparable legal source in your country?

Question 3:

Is there any influence of the executive on selection and the first appointment of judges?

If yes: describe it.

Question 4:

Is there any influence of the executive on the promotion of judges?

If yes describe it.

Question 5: Is there any influence of the executive on the selection, or appointment or dismissal of presidents of court?

If yes: describe it.

Question 6:



Is there any influence of the executive on the distribution of cases /assignment of judges to certain cases?

If yes: describe it:

Question 7:

Is there any influence of the executive on the transfer of judges to other courts?

If yes: describe it.

Question 8:

Is there any influence of the executive on the termination of office of judges?

If yes: describe it.

Question 9:

Is there any influence of the executive on the disciplinary procedure against judges?

If yes: describe it.

Question 10:

Is there any influence of the executive on the initial training of judges?

If yes: describe it.

Question 11:

Is there any influence of the executive on the in-service training of judges?

If yes: describe it.

Question 12:

Is there any influence of the executive on the salaries of judges?

If yes: describe it.

Question 13:

Is there any influence of the executive in deciding on (a) the overall budget of the judiciary; and/or (b) how the funds designated for the judiciary are to be spent?

If yes (in either (a) or (b)), describe it.

Question 14:

Is there any influence of the executive on the selection and appointment of clerks of the court?

If yes: describe it:

Question 15:

Is there any influence of the executive on the composition of the Council of the judiciary or a similar body (if such a body exists)?

If yes: describe it:

Question 16:

Is there any other influence of the executive on the work of the Council of the judiciary or a similar body (if such a body exists)?

If yes: describe it:

Question 17:

What influences (if any) does the judiciary have on the executive power of central/local government? In particular, (a) does the judiciary have any power to control the exercise of executive power (by virtue of orders that the court can make on the application of parties to the court) and (b) what power (if any), does the court have to oversee the appoint-



ment of members of the executive?

Question 18:

What power does the judiciary have over other public bodies (e.g. the police, or other quasi – governmental powers) in your country?

Question 19:

Who fulfils the task of prosecution in your country?

Question 20:

Is there a common career of public prosecutors and judges?

Question 21:

Can judges be appointed as public prosecutors and vice versa?

Question 22:

Is there an influence of the executive on the appointment/promotion of public

prosecutors?

Question 23:

Is there a possible influence of the executive on the cases public prosecutors are in charge of?

Question 24:

Which problems (if any) do you see in the relationship between the executive and the judiciary in your country?

Question 25:

Are there concrete projects to change elements in the relations between the executive and the judiciary? What would this change mean?

# 1st STUDY COMMISSION CONCLUSIONS

## THE RELATIONSHIP BETWEEN THE EXECUTIVE AND THE JUDICIARY IN A DEMOCRATIC SOCIETY: THE QUESTION IS - WHO SHOULD BE MASTER?



1. Although many countries' constitutions or constitutional laws adopt the principle of the "separation of powers", in fact, in a democratic society, it is inevitable that there should be constructive interaction between the executive, legislative and judicial powers of the state.

2. However in a democratic society based on the rule of law there naturally is a tension between the executive, which is controlled by elected politicians and the judiciary, which is (generally) not elected but which, in all cases, rightly guards its independence from political interference.

3. It is dangerous for either the executive or the judicial power of the state to predominate over the other. In the first case it can directly threaten judicial independence. In the second it may lead for calls to curb judicial powers and so can indirectly threaten judicial independence and the rule of law. In either case the rights and freedom of the people would be endangered.

4. Examples of situations where the balance between the executive and the judicial

powers is in danger that were cited in discussion were: (a). direct or indirect refusals of the executive to acknowledge and act upon decisions of the judiciary, and (b) a misuse of the media by the executive against the judiciary.

5. The structural independence of the judiciary is essential. A lack of such independence may influence the independence of the individual judge and therefore infringe a fundamental right of the people to have a fair resolution of their disputes.

6. Proof of structural independence of the judiciary requires an examination in the country concerned not only of the relevant legal regulations but also the factual situation. In some countries the strictly legal position is amelioration by current practice. However, principle effectively observed rather than mere practice is a much safer foundation for an enduring balance between the executive and the judicial powers.

7. The following aspects of the structural independence of the judiciary (amongst others) have been identified: selection and

composition of the Council of the Judiciary, selection and appointment of judges, promotion of judges, selection of presidents of court, physical safety of judges, salaries pensions and other entitlements of judges, distribution of cases, transfer of judges, termination of office of judges, disciplinary procedures against judges, training of judges, drafting and spending the budget of the judiciary, internal management of courts.

These aspects also refer to public prosecutors in countries where they are part of the judicial system.

8. The answer to the question "Who should be master in a democratic society?" is neither - there should be a balance between the executive and the judicial powers, each respecting the power of the other in the respective domains according to law.



## 2nd Study Commission Civil Law and Procedure QUESTIONNAIRE DAMAGES FOR PERSONAL INJURY

### Part I – General questions

1a. Does your system of law have any rules governing damages for personal injury? If so, what do they provide?

1b. Is non-patrimonial (non-pecuniary) compensation limited to cases provided by law?

2. Which are the criteria to distinguish patrimonial and non-patrimonial damage? What are the consequences of the distinction if it exists?

3a. What are the primary aim and the general principle of the law of damages for personal injury (e.g. prevention, sanction, distributive function, adequate compensation)?

3b. Do different forms of damages for personal injuries exist (e.g. compensatory, exemplary, punitive damages)?

4. Does your system of law recognize different categories of damages for personal injury, particularly?

- physical pain
- mental suffering due to permanent loss of abilities
- mental suffering due to false imprisonment
- mental suffering due to damage to intangible rights of personality
- sentiments of fear (e.g. the worry caused by the fear of developing cancer)
- mental suffering caused by the death of a close relative

5a. What methods are used to assess the non-patrimonial damage? Are there any statutory rules on sums to be awarded (e.g. minimum, maximum sums)? Are there any judicial tariffs?

5b. According to your system of law, which circumstances should be taken into consideration in assessing non-patrimonial loss (e.g. nature, intensity and duration of the injury and/or suffering; individual circumstances of the victim; social position; financial situation)?

5c. What is the role of an expert appointed by the court in assessing non-patrimonial loss?

### Part II - Cases

6. A defective product harms V, a 25-year-old woman. Her right eye is severely injured (the sight is reduced to 50 %). What kind of non-patrimonial (non-pecuniary) damages is she entitled to?

7. A, a 20-year-old student, suffers severe brain injuries. He is reduced to a living dead. Are his parents who take care of him entitled to a com-



compensation for their mental suffering?

8. A, a publisher publishes an article, which contains many untrue and offending statements of B's life. B sues for compensation. When assessing the non-patrimonial loss does it make any difference if B is a rock star, a politician or an unknown citizen?

9. A who is slightly injured in a car accident misses a trip to Australia he had booked recently. Is he en-

titled to compensation because he was prevented from enjoying his holiday (non-pecuniary damages)?

10. A's house is burgled and he cannot sleep for months after the event. Is he entitled to monetary compensation of his distress?

#### Part III

11. Are there any proposals for reform of the legislation governing damages for personal injury?

12. What points would you wish to

discuss in greater detail?

13. What subject do you suggest for the next meeting?



## **2<sup>nd</sup> STUDY COMMISSION**

### **GENERAL REPORT DAMAGES FOR PERSONAL INJURY**

1. There is no common understanding of the notion of non-patrimonial damage. There is no need to define its scope as to do so might impede the development of the law.
2. While it is noted that in some jurisdictions punitive damages may be awarded, the aim of awarding damages in personal injury cases should be that of compensation.
3. a) Where the legislature has established a scale of compensation for personal injury, there should be left to the judge sufficient flexibility to be able to award in each case compensation which is just and equitable.  
b) In doing so, the judge should be able to have regard to the particular circumstances of the individual case.



## 3<sup>rd</sup> STUDY COMMISSION

Sex offences: today's problems and effective solutions

### QUESTIONNAIRE

Sexual exploitation in its various forms creates enormous responsibilities for Courts around the world. Sexual crimes also present great challenges. Victims are reluctant to testify. The privacy rights of complainant in the trial of a sexual offence often collide with the right of the accused to a fair trial. The trans-border internet transmission of child pornography and international human sexual trafficking present enormous challenges from the perspective of investigation and enforcement.

This year's questionnaire will survey the responses of member countries to evidentiary issues that frequently arise in sexual assault prosecutions, protec-

tions available to sexual complainants in sexual assault trials, and the sentencing of sexual offenders. We will also touch briefly on two subjects of universal concern, sex trade offences and internet child pornography, both of which merit further inquiry in the future by the Third Study Commission.

#### I. Sexual offences

1. Does your legal system criminalize conduct that is intended to lead to a sexual assault? e.g. grooming, spiking a victim's drink, trespassing on property with the intent to commit a sexual offence, etc.

If yes, provide details and refer to any problems with the prosecution of these types of offences.

2. (a) Are there legislative provisions or evidentiary rules in your legal system preventing or limiting the interrogation/cross-examination of a sexual complainant about his/her prior sexual conduct?

If yes, provide details. Are hearings on these issues held in public?

(b) Are there legislative provisions or evidentiary rules in your legal system that limit the access of an accused person to private records of the complainant (e.g. psychiatric or medical records) in a sexual assault trial?

If yes, provide details. Are hearings on these issues held in public?

3. In your legal system, can the prosecution introduce evidence of other sexual offences committed by the accused person at his/her sexual assault trial?

If yes, do any special rules apply to this type of evidence?

If yes, provide details.

4. Are there special protections available in your legal system for the complainant in a sexual assault investigation and trial? e.g. use of out-of-court video-taped testimony of complainant, use of screens



to protect the privacy of the complainant in the courtroom, presence of a support person in the courtroom while the complainant testifies, self-represented accused prevented from interrogating/cross-examining complainant, etc.

If yes, provide details.

5. In your legal system, what is the age of consent to sexual activity? e.g. 14 years of age, 16 years of age, or some other age.

6. (a) Have Guidelines been established in your legal system for sentencing sexual offenders (including aggravating/mitigating factors)?

If yes, provide details.

(b) Does your legal system have special sentencing provisions for sexual offenders? e.g. preventing them from being in the presence of children under 18, from being near schools or playgrounds, requiring them to register with the local

police?

If yes, provide details.

(c) Do special provisions exist in your legal system that deal at the sentencing hearing with the impact of the sexual abuse on the complainant? e.g. victim impact statements, submissions to sentencing judge by legal representative of sexual complainant, etc.

If yes, provide details.

## II. Sex trade offences

7. Has your legal system adopted international conventions and/or its own legislative provisions relating to human sexual trafficking such as prostitution and sexual slavery? e.g. UN Convention against transnational organized crime, UN (Palermo) Protocol to prevent, suppress, and punish human trafficking, etc.

If yes, provide details. Do these international conventions/laws, protocols play

an active role?

in decision-making by the Courts?

## III. Internet child pornography

8. Has your legal system adopted special legislative provisions against the possession and distribution of internet child pornography?

If yes, provide details.

# REPORT OF THE 3<sup>rd</sup> STUDY COMMISSION



## I. INTRODUCTION

The Third Study Commission examined several aspects of sexual assault prosecutions.

The questionnaire addressed evidentiary issues that arise in sexual assault proceedings,

special protections available to sexual assault complainants, and special sentencing

provisions for sexual assault offenders. The questionnaire also briefly touched on sex

trade offences and internet child pornography, it being recognized that each of these

subjects could provide a basis for individual study at future meetings.

## II. SURVEY & DISCUSSION

The Commission received 28 responses to the questionnaire. Delegates from

over 30 countries participated in the two Study Commission sessions and provided valuable contributions to our discussions. Small group discussions were included in the meeting format, along with a program evaluation form. Charts summarizing the questionnaire responses are annexed to this report. There appears to be a similar approach to consent and “grooming” issues, the first two topics discussed, in common-law and non-common-law member countries.

Sex Trade Offences – International Conventions on the Subject

All questionnaire responses refer to domestic legislation that pertains to human sexual trafficking, namely prostitution and sexual slavery. Some responses indicate the specific international conventions that have been ratified; however, there is little discussion as to how those international conventions are adopted domestically.

Various countries referred to specific international conventions and, for ease of reference,

we have appended a handout entitled “Signed and Ratified International Conventions” that identifies those countries that have signed and ratified certain conventions.

We also discussed the need to educate judges on the application of international

conventions to their work in the courtroom. The delegates from the Netherlands

described Eurojust, an organization whose objective is to facilitate international contacts within Europe among prosecutors and judges.



## 4<sup>th</sup> Study Commission Questionnaire

Rights of parents in the employer employee relationship

Introductory remarks:

There are different measures developed enabling men and women to reconcile their occupational and family obligations. New flexible ways of organizing work and time, which are better suited to the changing needs of society may take into account the needs of both undertakings and workers. This is also important to promote equal opportunities and equal treatment between men and women. Flexibility and diversity of child-care services is part of a strategy to meet the different preferences, needs and circumstances of children and their parents.

The three main field of this questionnaire are

a. maternity leave for women –related to maternity and birth

b. parental leave (distinct from maternity leave) for men and women related to the

upbringing of infants and  
c. time off from work on grounds of other urgent family reasons

A. Maternity leave

1. When shall pregnant employees inform their employer of their condition?

2. Are pregnant employees and employees who have recently given birth entitled to a continuous period of maternity leave? How long is this leave and when is it allocated before?

3. Do they maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before?

4. What rights are acquired by the worker on the date on which maternity leave starts until the end?

5. Is there continuity of the entitlements to social security, in particular regarding health care?

6. Do workers at the end of maternity leave have the right to return to the same

job or, if that is not possible, to an equivalent or similar job?

7. Are employees protected against dismissal?

8. Do special provisions exist to meet the operational and organizational requirements of small undertakings?

9. Are employees entitled to time off in order to attend ante-natal examinations, if such examinations have to take place during working hours?

10. What are the most common cases at courts related to this?

B – Parental leave

1. What are the conditions of access and rules for applying for parental leave?

Describe Your system (full-time or part-time basis, time-credit system....).

2. Is the entitlement to parental leave subject to a period of work qualification and/or a length of service qualification and which period?



3. Which notice periods do exist for the worker when exercising the right to parental leave, specifying the beginning and the end of the period of leave?

4. Is an employer allowed to postpone the granting of parental leave for reasons related to the operation of the undertaking (e.g. where a replacement cannot be found within the notice period)?

5. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before?

6. What rights are acquired by the employees on the date on which parental leave starts until the end of parental leave?

7. Is there a continuity of the entitlements to social security, in particular regarding health care?

8. Do employees at the end of parental level have the right to return to the same job or, if that is not possible, to an equiv-

alent or similar job?

9. Are employees protected against dismissal on the grounds of an application for, or the taking of, parental leave?

10. Do special provisions exist to meet the operational and organizational requirements of small undertakings?

11. Does your system also grant access to parental leave for adoption cases and are there specific rules for applying parental leave to the special circumstances of adoption.

12. What are the most common cases at courts related to this?

C. Time off from work on grounds of urgent family reasons

1. Are employed parents with responsibility for the care and upbringing of children entitled to time off from work on grounds of urgent family reasons in cases (sickness or other reasons related to family members making the immediate presence of the worker indispensable)?

2. What are the conditions of access for applying for this kind of time off?

3. Is this time off limited to a certain amount of time per year or per case?

4. Do employees maintain their pay or are they entitled to allowances. How high are these allowances related to the pay before?

5. Is there a continuity of the entitlements to social security, in particular regarding health care?

6. Are these employees protected against dismissal?

7. Do there exist special provisions to meet the operational and organizational requirements of small undertakings?

8. What are the most common cases at courts related to this?



## 4<sup>th</sup> Study Commission

### A Maternity leave

#### Conclusions:

- In most countries, information must be given to the employer but the moment varies considerably and is especially related to the right of acquiring remunerations or allowances in relation to maternal leave.
- A period of leave before and after the birth exists in all the countries; its duration varies considerably from one country to another.
- In most countries a remuneration or maternity allowance exists.
- According to the rules of anti-discrimination the rights of the workers remain identical during maternity leave to those rights granted to the other workers.
- Generally they maintain their affiliation to the social security and the right to return to same or equivalent

work.

- Employees are protected against dismissal which is generally regarded as abusive. In Taiwan the employers are the subject also of administrative fine in these cases.
- The examinations before and after birth - may generally be done during the work hours. The obligation to work is suspended for this period.
- Generally cases before the courts are rare. When they exist, they vary and often deal with payment for maternal leave or abusive dismissal.
- Switzerland has regulations which are more favorable than these general conclusions.
- Japan answered for a particular category of employees only.

### B – Parental leave

#### Conclusions:

- In most countries there exists an access to leave, if notice is given early enough.
- Generally a notice must be given so that the leave can start.
- It is remarkable to note that in the majority of the countries, that answered the questionnaire, the leave is open equally to the father or the mother
- Remuneration is seldom guaranteed, often there exists a reduction or payment or fixed allowances.
- Social security rights are maintained, also the right to return at the end of the leave to the same or an equivalent work.
- Due to the leave the workers are protected against dismissal and indemnities have to be paid in the event of abusive dismissal.
- Several countries recognize the same



right in the event of adoption but there are some exceptions.

- Before court these cases are extremely rare and are generally related to unfair dismissals.

- Switzerland has a different regulation.

- Japan answered for a particular category of employees only.

C. Time off from work on grounds of urgent family reasons

Conclusions:

- In all the countries, which answered the questionnaire, exists the possibility of obtaining time off from work if a child or a family member is ill or

has an accident exists.

- The conditions for this time off are very different, but generally it is of short duration.

- The rights to the social security system are maintained and the worker is protected from the abusive dismissal.

- The rare cases before courts do not make it possible to make conclusions.

- Switzerland has different regulations.

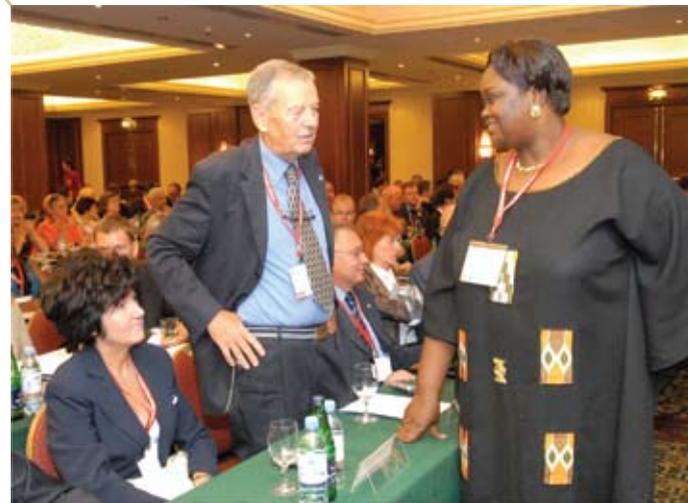
- Japan answered for a particular category of workers only.

**Members of the Presidency Committee  
during the Central Council Meeting**



**Delegates during the  
Central Council Meeting**

**Opening Ceremony, September 8, Yerevan**



**Discussions during the breaks of  
the Central Council Meeting**



**Representatives of the Association of Judges of the RA  
at the 51<sup>st</sup> Annual Meeting of the International Association of Judges**

**Visit to the Catholicosate of All Armenians and the Mother Sea of Holy Etchmiadzin**



**Meeting with His Holiness Karekin II,  
Supreme Patriarch and Catholicos  
of All Armenians**



**Visit to the Treasury of Saint  
Museum in Holy Etchmiadzin**

**Antique religious treasures are  
shown to delegates**





**His Holiness Karekin II with IAJ delegation**

**Statue of Femida carved from  
a single block of ice**



**Visit to antique Zvartnots Cathedral**

## Lunch around the ruins of Zvartnots Cathedral



## View of Sevan Peninsula





**Stroll around the Peninsula**

## **Panorama of Lake Sevan and Sevan Peninsula**



## Sailing on Lake Sevan





**Farewell evening. Armenian national musicians  
play Armenian national music**



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