Report of the IAJ 1st Study Commission on measures to promote integrity and combat corruption within the judiciary

Introduction

Recent events in Turkey involving the arbitrary detention and dismissal of judicial officers represent the antithesis of the conditions necessary for a stable, independent system for the administration of justice. Those events highlight the importance of the issues raised by the First Study Commission and the promotion of practices to protect the values of equal, fair and non-corrupt judicial decision-making.

This report aims to illuminate common themes evident in the responses received from across the range of member jurisdictions, as well as to draw out potential areas of disagreement and highlight specific suggestions.

The First Study Commission concentrated its discussions on best practice to promote transparency of court proceedings, judicial selection, and judicial administration; methods for supporting judicial integrity and non-corrupt practices; and major threats to these ideals. It is the role of the judiciary worldwide to attend to methods for supporting judicial integrity and non-corrupt practices rather than being instructed what to do by outside agencies.

The Study Commission thanks all of the jurisdictions that provided written responses and the delegates who contributed to discussions at the meeting of the Study Commission. We are grateful to the skilled simultaneous translators who assisted in the work of the Commission and enabled full participation of all the delegates.

Transparency of Court Proceedings

Key Themes

The Study Commission is of the view that court proceedings should be publicly accessible, as far as possible. Nearly all countries explicitly endorsed the proposition that members of the public and the media should be able to attend court proceedings, with limited exceptions. Specific exceptions identified included cases where there is a need to protect the privacy of complainants,[1] family matters, where minors are to give evidence,[2] and where public access might prejudice ongoing pre-trial police investigations.[3] Other responses referred to exceptions more generally, for instance 'the most sensitive and exceptional cases',[4] where 'necessary in the interests of justice'[5] and 'where a court unanimously holds that publicity would be dangerous to public order or morals.'[6]

[1] Greece; France; Israel; Portugal; Slovenia. Sweden refers to there being some limitations on disclosure of names to protect the privacy of complainants in sensitive cases such as those involving the offence of rape.
[2] Bermuda; Brazil; Canada; Croatia; France; Greece; Israel; Portugal; Slovenia.
[3] Sweden. France refers to an exception to public hearings in the interests of security.
[4] United Kingdom
[5] Bermuda.
[6] Japan.

The next most commonly reported element of best practice was the publication of reasoned judicial decisions.[7] Some respondents elaborated by stating that the reasons ought to be available for easily accessible online download;[8] others referred to a desire for the parties subject to the decision being anonymised (at least, as necessary);[9] and others supported the production of case summaries, especially for cases of great complexity or public importance.[10]

The idea of electronically broadcasting proceedings received more cautious endorsement. A number of jurisdictions referenced, with apparent approval, the existence currently of televised broadcast of cases in their countries;[11] others indicated that electronic broadcast might be desirable in limited types of proceedings but drew attention to potential drawbacks (such as cost and negative effects on witnesses or other court participants).[12]

The Study Commission endorsed active steps by courts to engage openly with the media, whether by the appointment of a media spokesperson for the court;[13] pre-trial meetings between the judge and the media in high-profile cases;[14] or training of judges on how to communicate openly with journalists.[15]

One respondent endorsed the open reporting of the performance of the judicial system as regards matters such as timeliness of case disposal, case duration, and appeal waiting times.[16] Another respondent endorsed a system for tracking trial progress online and receiving email notifications of where the case is at.[17]

Other Suggestions

A few individual, specific, suggestions should be mentioned. One respondent referred to the retention of audio recordings of hearings, that should be available on request, and which should not be erasable until judgment is delivered and any appeal period expired.[18] Another respondent indicated that the written transcript or protocol of a hearing should reflect the entirety of submissions and remarks made in court.[19] One respondent also referred to the

[7] For example, Spain referred, with approval, to the constitutional requirement to publish reasons for decisions in that jurisdiction. Throughout the responses to each item of the questionnaire, many jurisdictions referenced requirements, in law, to put certain best practice measures in place. As noted by Ireland, different ways of guaranteeing such measures are possible: constitutional guarantees (strongest), laws changeable by majority of Parliament, and customary practice (weakest). For each measure referred to in this summary, consideration of how best to ensure it is implemented will be relevant, balancing considerations of strength of protection, flexibility and practicality.

[8] Australia; Bermuda; Croatia; Germany; Israel; Slovenia.

[9] Germany; Switzerland. Norway referred to some limitations applying to the reporting of names in court decisions, particularly in family law cases.

[10] Australia; United Kingdom.

[11] Brazil; Georgia.

[12] Australia; United Kingdom. The Liechtenstein response referred to the desirability of "media coverage in important cases."

[13] Croatia; Slovenia.

[14] Portugal, this response also specifically endorsing the use of "communication cabinets".

[15] Slovenia.

[16] Ireland.

[17] Taiwan.

[18] Taiwan. Bermuda also referred to the availability of audio recordings of proceedings, whether in court or in chambers, to the parties and their counsel.

[19] Israel.

ability for members of the public to access, for a small fee and subject to certain restrictions, court documents, and that a decision by the Registrar to refuse access was subject to appeal.[20]

As a means of reducing, as far as possible, the use of *ex parte* hearings, one respondent referred to the use of special advocates in closed court proceedings, for example in national security cases, to ensure the court is able to hear alternative submissions even in very sensitive cases.[21]

One further respondent noted that oral hearings, rather than those based largely or exclusively on written material, afforded greater transparency.[22] In some countries the public has access to written materials referred to in hearings for transparency reasons and therefore to fight any suggestion of corruption. Others reject this kind of transparency having in mind the protection of privacy and the data protection of the information of the parties.

All of the suggestions made in response to the issue of transparency of court proceedings support undertaking measures that, *as far as possible*, permit the accountability of court participants, including judges, by ensuring proceedings are heard and determined in public and are a matter of public record.

Transparency of Judicial Selection

Key Themes

The Study Commission endorsed two propositions. First, that the process for judicial selection must incorporate merit-based criteria and be publically accessible; that is, that the method by which selection takes place must be known and not secret. Second, that it is desirable for candidates to be short-listed and recommended for appointment by a panel or committee entirely independent of the executive, or at least consisting of a clear majority of judicial members.[23] These approaches are desirable in order to promote a diversified judiciary of the highest order, with selection to be free from discrimination, political influence or other bias.[24]

Other propositions that received significant support included, first, that vacancies for judicial positions be publically advertised or that standing expressions of interest for future posts be invited[25] and, second, that the judicial selection process ought to involve some form of objective examination or testing.[26] Some of the forms of testing cited as current or suggested practice included written examinations, oral examinations, and problem solving or role playing exercises. One response referred to that jurisdiction's practice of ranking candidates

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[20] Bermuda.

[21] United Kingdom. Taiwan also emphasised that *ex parte* communications should be permitted only in exceptional circumstances.

[22] Denmark.

[23] The preferred or actual composition of such a body varied among responses. Some had a greater role for the Executive than others; some did not specify a preferred composition beyond stating that it should be "independent". However, as a general proposition, many responses expressed a preference for strong representation by the judiciary in the selection process.

[24] Australia; France; Ireland; Japan; United Kingdom. France made the point that "competition" as part of a selection process facilitates equal access to an appointment opportunity.

[25] Australia; Austria; Bermuda; Brazil; Norway; Portugal; Slovenia; Switzerland; United Kingdom.

[26] Brazil; Georgia; Germany; Greece; Italy; Portugal; Sweden; Taiwan; United Kingdom.

in an order of merit and then allowing the top candidates to choose which appointment they wanted from available positions.[27] Another referred to the creation of a merit list based on examination results and open public competition with appointments to conform to that list unless accompanied by sound written reasons.[28]

Further specific suggestions for components of the selection process that were favoured by a number of respondents included that there be an interview of candidates[29] and consultation or referee checks as regards candidate suitability.[30] One respondent favoured a consultation process that invited written comments directed at relevant, evidence-based competencies.[31]

As concerns more direct methods of enhancing the transparency of the selection process, more varied responses were received. Some jurisdictions referred, with either explicit endorsement or without disapproval, to the practice of "open public competition"[32] or permitting interviews / sessions of the selection body to be "open to the public".[33] Other jurisdictions, however, viewed the practice of public interviewing of candidates as "undesirable", expressing concern that this could unduly politicise the selection process.[34]

Once a decision has been made on who to appoint as a new judge, several jurisdictions favoured the production of a "reasoned decision" for the selection.[35] Several respondents went on to endorse a process for allowing the selection decision to be challenged or reviewed.[36] One respondent indicated that the last stage in the selection process was to publically publish the names of the proposed candidates and allow any citizen to voice an objection.[37] One respondent indicated that its calls for the implementation of best practice guidelines for judicial selection are being only partially implemented.[38]

The Commission expressed concern over the use of "short term judges" and the "limited transparency" regarding their appointment.[39] The Commission expressed grave concern about the appointment of inexperienced lawyers and judges to the superior courts of the country.

Finally, the politicisation of the appointment of judges is opposed by the Commission.

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[27] Brazil.
[28] Portugal.
[29] Bermuda; Canada; Croatia; Greece; Israel; Norway; Slovenia; Sweden; United Kingdom.
[30] Australia; Canada; Ireland; Israel; Italy; Norway; United Kingdom.
[31] Ireland.
[32] Portugal; Slovenia.
[33] Croatia; Greece.
[34] Australia.
[35] Austria; Croatia; Ireland; Portugal; Serbia; Slovenia; Sweden. Switzerland referred to the production of a report regarding the selection arrived at, but stated that the names and other personal information of unsuccessful candidates ought not to be published in order to protect their privacy.
[36] Croatia; Ireland; Portugal; Slovenia.
[37] Israel.
[38] The response from Serbia lists a series of demands which it says have been only partially fulfilled, including having pre-determined criteria for selection and advancement of judges; selection decisions being made by judicial councils comprising a majority of judicial members; non-interference by the executive and legislature regarding selection decisions; and the publication of reasons for selection decisions.
[39] Norway.

The appointment of judges at all levels should be open, transparent, merit-based and free from political influence.

Transparency of Administration of the Judiciary

Key Themes

Two of the most significant patterns of responses to this issue include, first, the desirability of making publically accessible the ways in which courts are run and, second, the need for sound procedures for the investigation and disposition of complaints made against judges in a way that balances transparency with protection from frivolous, malicious, or otherwise unfounded complaints.

In relation to the first theme, a number of responses advocated promoting the public's understanding of the court's work by communicating the roles of different judges within a court;[40] periodically reporting decisions reached regarding operational or governance related issues;[41] and engaging in dialogue with the media about matters of judicial administration, such as through the appointment of a spokesperson.[42] There were also a number of responses that supported specific public education activities, whether delivered through the use of a Court press office or website;[43] through activities organised by the National Judicial Council;[44] or through the use of public debates and roundtables involving members of the judiciary.[45]

In relation to the second theme, the Commission expressed the view that a procedure should be in place for handling complaints that is both clear and transparent.[46] One response referred to setting up a 'hotline' for complaints and a body to administer this.[47] The body that is at least partially external to the judiciary, but also independent of the executive, handles complaints by first distinguishing those which are frivolous or better framed as an appeal from those which require further investigation.[48] Other responses supported a judicial-led disciplinary process in response to complaints of negligence or malpractice.[49] Two responses emphasised that there could not or should not be personal liability for judges found to have engaged in misconduct, apart from recommending dismissal by the executive in cases of

[40] Australia; Brazil; Ireland; Portugal.

[41] Australia; Brazil; Croatia; Georgia; Ireland; Portugal; Serbia; Slovenia; Switzerland. Japan refers to its access to information rules, permitting access to documents relating to judicial administration on request. Israel referred to the practice of annually compiling a public file with statistics capturing the nature of proceedings heard throughout the year. It also proposed that regulations and standards regarding administrative procedure be published and open to the public.

[42] Croatia; Slovenia. Canada referred to the practice of its National Judicial Council engaging in "public education activities". Switzerland suggested that figures and statistics resulting from "court controlling measures" should be accessible, though with safeguards to protect judicial independence.

[43] Brazil.

[44] Canada.

[45] Slovenia.

[46] See, in particular, United Kingdom.

[47] Armenia. Similarly, Israel referred to the appointment of a retired judge as a judicial ombudsman.

[48] Australia. See also Bermuda's reference to its Judicial Complaints Protocol and Canada's reference to the approach taken by its Judicial Council.

[49] France; Liechtenstein; Italy; Taiwan. Italy indicated a preference that any sanctions arising from disciplinary proceedings be subject to review by judicial authorities.

serious wrongdoing.[50] However, it was suggested that a decision to uphold a complaint should be communicated to the complainant and, if appropriate, some offer of reparation extended.[51] This is not meant to replace the usual appeals procedure.

Other suggestions

A number of responses made reference to the process by which judges are allocated to hear particular cases. Some responses favoured the allocation process being randomised – one stating that it should be akin to a lottery.[52] Another response saw no difficulty with a practice whereby senior judges assigned junior judges on the basis of perceived skills or experience.[53] Whichever process of case allocation is used, the Commission's view is that the allocation must be based on pre-established objective criteria.[54]

There were also some best practice suggestions made in relation to transparent measures for improving the efficiency of court administration. One response suggested that a National Judicial Council develop policies designed to achieve efficiencies across the country and to standardise management practices.[55] Similarly, one response suggested that a body independent of the executive and legislature, with a long-term budget, should be responsible for managing court staffing, ICT equipment and the training of court personnel.[56] The Study Commission believes that courts should have a right to propose and manage their own budgets.[57] Judges should be responsible for, and in control of, court administration rather than civilian administrators.[58] One practice, cited with approval, was the award of a prize to judges, courts, and public attorneys who have distinguished themselves by introducing innovative ways of delivering justice.[59]

Supporting Integrity and Preventing Corruption

Key Themes

Three main themes emerged in relation to this issue. First, the Study Commission believes that there must be secure and adequate working conditions for judges. Second, there should be ongoing judicial education that reinforces standards of appropriate conduct. Third, many jurisdictions contributed to desirable approaches for responding to complaints of judicial misconduct.

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[50] Australia; Liechtenstein.

[51] Liechtenstein reports of a system whereby the State is able to provide compensation to victims of judicial negligence or malpractice.

[52] Brazil. Italy and Spain also thought that there should be a randomisation element to the allocation of judges and, moreover, that the allocation process should strictly adhere to a pre-established allocation protocol.

[53] United Kingdom. This is also the current practice in many Australian courts.

[54] Austria; France; Italy; Ireland; Switzerland. Ireland also suggested that the procedure for allocation of judges should be open to public scrutiny. Norway indicated that there should be "transparent systems for case allocation/reallocation".

[55] Brazil.

[56] Norway.

[57] Ireland.

[58] France.

[59] Brazil, referring to the annually awarded 'Innovare Prize'.

As regards judicial conditions, judicial salaries, pensions and entitlements should be reasonably generous, in order to reduce the likely effectiveness of bribery.[60] These conditions should be safeguarded from reduction by the executive during the tenure of the judge, in order to avoid threats to judicial independence.[61] Similarly, judges should have security of tenure.[62] One respondent reflected on the importance of the judicial office holding high social status or esteem, the loss of which might act as a deterrent to poor conduct.[63] A problem arises with regard to whether there should be exceptions to the protection of judicial salaries in a time of significant national economic difficulty.[64] If so, an exception to the principle of non-reduction of salaries may only be made at a time of severe economic difficulty if there is a general reduction of public service salaries and the judiciary is treated no differently.[65] Finally, there was a clear indication from one respondent that the current state of judicial working conditions (in particular, salary level) is inadequate in that jurisdiction.[66]

In relation to judicial education and support, the Study Commission endorses that this occur upon appointment to the judiciary and for it to be ongoing and include education for leadership. Specific recommendations include the use of courses (potentially delivered through a National Judicial Council, if established);[67] workshops/seminars covering topics such as conflict of interest, receipt of gifts, etc.;[68] and, in particular, the discussion of case scenarios on such topics.[69] The Commission endorses the judicial-led development of a code or principles of ethical conduct, incorporating practical advice on appropriate responses to ethical issues, which could be referenced in ongoing judicial education activities, updated to deal with contemporary circumstances such as the use of social media.[70] Indeed, the process of judges working together to develop a code of ethics is valuable in itself.[71] Other suggestions accepted by the Commission refer to the value of advisory or guideline opinions being produced on issues relating to ethics or integrity by a special judicial body (e.g., a Judicial Commission made up only of judges) and the use of structured debates on those issues.[72] In addition to formal or structured support of ethical conduct, the Study Commission emphasises the importance of peer group support within the judiciary, where

[60] Armenia; Australia; Austria; Croatia; Denmark; France; Georgia; Germany; Ireland; Liechtenstein; Sweden; United Kingdom. France also noted that judicial remuneration should not be fixed and not associated with performance metrics ("quantitative results"). Norway indicated that a judge's salary and pension should reflect the judge's responsibilities and position.

[61] Australia; France; Georgia; Ireland; Liechtenstein; Japan; United Kingdom. Greece advocated for the establishment of an institutional framework that made provision for all aspects of judicial functioning, including working conditions, salaries and pensions. Israel proposed that financial benefits should be paid directly to the judge, but not as an "employee", to ensure judges are not perceived as beholden to the executive.

[62] Australia; Greece; Ireland; Italy; Japan; Liechtenstein; United Kingdom.

[63] United Kingdom.

[64] Ireland.

[65] Ireland, citing the ENCJ 2015/2016 *Report on Funding of the Judiciary*.

[66] Armenia. Georgia suggested that there may have been a connection between increases in judicial salaries, along with tighter controls on corruption, and the reduction in corrupt practices in that country since these measures were introduced in 2004.

[67] Australia; Bermuda; Brazil; Canada; Denmark; Georgia; Ireland; Israel; Italy; Sweden; Switzerland.

[68] Armenia; Bermuda; Croatia; Denmark; Israel; Italy; Slovenia.

[69] Portugal. Serbia refers to the organisation of debates on matters concerning judicial integrity.

[70] Bermuda; Brazil; Croatia; Denmark; France; Georgia; Germany; Ireland; Israel; Italy; Liechtenstein; Norway; Portugal; Serbia; Slovenia; United Kingdom.

[71] Switzerland.

[72] Portugal; Serbia; Slovenia.

colleagues can feel comfortable sharing experiences and can receive confidential counsel in relation to any concerns they may have.[73]

The Study Commission supports an emphasis on the importance of fostering a culture of integrity within the judiciary and the courts more generally.[74] Informal discussion between judges is often a very good way to encourage that culture. The Commission endorses the practice of declaring conflicts of interest and the avoidance or declaration by judges of any affiliation with public causes which might engender a perceived or actual conflict.[75] If there is any doubt, the judge should formally consult with the judge's colleagues about the issue. Some countries have a private register of a judge's assets and income and others a public register of the judge's assets and the assets of the other members of the judge's household. The majority of the members of the Commission do not support the necessity for any register to be made public unless there is justified suspicion of misconduct of the individual judge or of the judiciary as a whole in that country. The Commission accepts that it would be a good measure to prevent corruption but stresses that such measures are only acceptable where required by the concrete circumstances and that the measures must be proportionate to the situation that exists. Therefore, if there is no suspicion of corruption of a single judge or of the judiciary in general, a register of assets and income of judges would be disproportionate to the reduction of the judge's privacy and personal security. The Commission opposes any requirement for a judge to reveal that a judge is a member of a judicial association as this information could be misused in some countries to unfairly discriminate against the judge or the association.

There should be appropriate decorum in the interaction between judges and other members of the legal profession, such that breach of formal protocols in the form of inappropriate familiarity (which could be or suggest corrupt practice) would be noticeable.[76] Judges must conform to the highest standards and avoid any inappropriate behaviour in their public and private lives. Being a judge is an obligation to society and not only a job, but a way of life.[77] Finally, the Study Commission endorses that the obligation of judges to take an oath to adhere to the fundamental principles of independence and impartiality has more than just ceremonial significance; it is an important practical step in ensuring a culture of independence and integrity be maintained.[78]

With regards to establishing a system to handle complaints of misconduct made against judges, the Study Commission expresses the view that the body which deals with complaints should be independent of the executive and legislative branches of government.[79] The

[73] Australia; Canada; Croatia; Denmark; Germany; Israel; Liechtenstein; Slovenia; Sweden. France referred favourably to judges having an avenue for seeking advice from an independent, experienced body about any ethical issues they might have.

[74] Australia; Germany. Denmark referred to a longstanding tradition of fostering integrity in its public officials, where merit-based appointments stand in the face of attempts to secure positions by rank or bribery.

[75] Australia; Bermuda; Georgia; Israel; Liechtenstein; Spain; Sweden; Taiwan. Israel expressed the view that private work should only be undertaken by judges if special permission is sought and granted.

[76] Australia.

[77] Israel. See also Georgia, which noted that judges should act in a manner that promotes public confidence in their integrity.

[78] Bermuda; Israel; Italy.

[79] Australia; Brazil; Croatia; Georgia; Germany; Ireland; Portugal; Slovenia. Bermuda noted that although the Head of the Civil Service has overall disciplinary responsibility, as an incidence of judicial independence the Registrar of the Courts is operationally responsible for discipline in that jurisdiction. Bermuda also noted an important step in promoting ethical conduct in that country was the voluntary adoption by the judiciary of a

Commission expresses the view that to increase transparency and therefore public confidence, one approach, which is generally supported, would be to make the body partly external to the courts.[80] There should be strict treatment of ill-founded complaints against judges;[81] judges should have an obligation to report witnessed corruption or attempts to corrupt;[82] and "sanctions" should be imposed on judges who are subject to well-founded complaints.[83] As to what any sanctions imposed might be, some respondents referred to suspension or removal from office by the executive or the legislative body when very serious complaints (e.g., of corruption) are made out.[84] The penal or criminal codes should apply to judges for corrupt behaviour or behaviour outside their judicial work, in the same way they would be applied to any other citizen.[85]

Other Suggestions

The Commission noted that it might be useful to have matters decided by panels of judges, rather than individual judges, as it is easier to corrupt one judge than a number of judges and it can protect individual judges against unfair criticism.[86] It was noted that the availability of requesting an *en banc* hearing of the case was a useful protocol.[87]

Threats to Integrity & Non-Corruptibility

Key Themes

Many of the major threats identified are implicit from the suggested best practice procedures identified for resolving them.[88] However, two threats, in particular, were explicitly identified.

The first key threat relates to court resourcing. This could manifest as inadequate working conditions for judges, potentially increasing their susceptibility to bribes.[89] It could also manifest as inadequate resourcing of the court system more generally and an excessive workload for judges.[90] Finally, it might manifest in a lack of financial independence for the

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Judicial Complaints Protocol to facilitate judicial conduct complaints being made to the judicial and Legal Services Committee for conduct falling short of the constitutional threshold for removal from office.

[80] Australia. Germany supported an independent prosecution service prosecuting cases of judicial corruption.

[81] Croatia; Slovenia.

[82] Austria.

[83] Brazil; Croatia; Ireland; Spain; United Kingdom.

[84] Australia; Brazil; Ireland; Israel; Portugal; Spain.

[85] Denmark; Germany; Israel; Japan; Spain. Bermuda refers to a specific provision in its Criminal Code making judicial corruption an offence punishable by a fine or imprisonment.

[86] Austria; Switzerland.

[87] Switzerland. A case is heard 'en banc' if it is heard by all available judges of the court and not just a subset.

[88] Serbia's response to this item illustrates the point well by denoting the following as threats, in counterpoint to its best practice suggestions: interference by the executive and legislative branches of government in the operations of the judiciary; lack of argumentation leading up to decisions affecting the judiciary such as selection and advancement of judges; absence of a judicial code of conduct; lack of training for judges on integrity and corruption; inadequate working conditions for judges; and, more broadly, lack of systemic measures for prevention of corruption.

[89] Armenia; Austria; Denmark; France; Ireland; Israel; Portugal; Sweden; Switzerland; United Kingdom. The threat Taiwan refers to, of illegal lobbying through offers of money or sexual favours, would be more pronounced if judges were poorly remunerated.

[90] Austria; Denmark; France; Georgia; Ireland.

courts and the opportunity for the Executive to abuse its power by using decisions around funding as a threat to secure or influence a particular court outcome.[91]

The second key threat identified by the Study Commission relates to attempts by external parties to exert influence over the exercise of judicial functions. There is a particular threat attendant upon excessive proximity between judges and those who exercise political or economic power.[92] The politicisation of judicial appointments is a particular area of concern.[93] The Study Commission also expressed concern about corrosive commentary by politicians or the media, seeking to influence the determination of cases.[94] The Commission identified pressure to conform to a particular ideological view, backed with vigorous press reporting, as an insidious threat which is as much a threat to the integrity of the judiciary as bribery or secret representations.[95] Related to this is the concern about inaccurate publicity of court sessions[96] and the impact of social media.[97]

Other Threats

The Commission identified other sources of threat to judicial integrity.

One source of threat was expressed to be the conditions of the society in which the court system operates. For instance, increased consumerism and the rise of a 'society of celebrities' (in which fame is seen as valuable in and of itself) will likely mean that members of that society, from which judges are not a world apart, will be more susceptible to personal temptations.[98] Another example raised was that wide-scale corruption in daily life, especially in politics, can have a flow-on effect to the operation of the courts,[99] perhaps because such behaviour can become normalised.

Another potential source of concern relates to the recruitment of judges and allocation of cases. The process must be consistent, merit based, open and transparent. If the status of the judicial office is decreased, the result may be a reduction in the number of high-quality lawyers who choose to accept appointment as judges.[100]

Conclusion

It is heartening that so many written responses to the Study Commission indicated that judicial corruption is not presently a problem for their jurisdiction. It is equally heartening that there is no indication that this positive status was being taken for granted. Steps to improve the transparency of the court system along with the implementation of measures to

[91] Georgia; Greece; Ireland; Switzerland; United Kingdom.

[92] Austria; Brazil; France; Greece; Portugal. France referred specifically to concerns expressed by the European Court of Human Rights regarding the lack of independence of French prosecutors, who are appointed, transferred and promoted by the Executive.

[93] Australia; Ireland.

[94] France; Portugal; Slovenia; United Kingdom. Canada referred to the issue of micro-management by government and the media, particularly where the judiciary is not in a position to make public comment on the issues raised. Japan referred to the threat of 'unjustifiable internal or external interference.'

[95] United Kingdom.

[96] Georgia.

[97] Canada.

[98] Brazil; France.

[99] Germany.

[100] Sweden.

support and enhance the integrity of judges should continue to be examined and, where appropriate, put into practice, in order to reduce the risk of corrupt behaviour by judicial officers into the future.

Topic for 2017

The topic for next year is "The Threats to the Independence of the Judiciary and the Quality of Justice: workload, resources and budgets."

New Officers elected

***President*:**	Roslyn Atkinson AO (Australia)
***Special Vice-President*:**	Mehmet Tank (Turkey)
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***Board members*:**	Nicholas Blake (England and Wales) Marilyn Huff (USA)

The First Study Commission expressed its thanks to Peter Hall for his leadership as President of the Study Commission.

Second Study Commission
Deuxième commission d'étude

Civil Law and Procedure
Droit civil et procédure civile

59th Annual Meeting of IAJ – Mexico City (Mexico)
59e Réunion annuelle de l'UIM – Mexico City (Mexique)

CLASS ACTIONS / *LES RECOURS COLLECTIFS*

SUMMARIES OF ANSWERS TO 2016 QUESTIONNAIRE
SOMMAIRES DES RÉPONSES AU QUESTIONNAIRE 2016

QUESTION 1:

Do you have class proceedings in your jurisdiction? If so, what is the nature of those class proceedings?

Quels sont les avantages ou les inconvénients de la procédure de recours collectif dans votre juridiction?

1. ARMENIA

There are no class proceedings in Armenia.

2. AUSTRALIA

Class actions can be distinguished from traditional representative proceedings and other court procedures for the grouping or consolidation of related claims. A new procedure for "grouped proceedings" which would advance the objectives of access to the courts and judicial economy were introduced. Class action proceedings may be commenced irrespective of whether the relief sought includes

equitable relief or claims for damages. Further, proceedings may be commenced even though the relief sought is not the same for each person and even though relief may require individual assessment in cases of damages being sought. The claims also need not arise out of the same transaction or contract, or act or omission.

3. AZERBAIJAN

Azerbaijani legislation does not have any separate special rules for class proceedings.

4. BRAZIL

Yes. In Brazil we have specific procedure to be followed on collective rights claims and group claims. These claims include public civil suits, public interest class actions and collective civil actions. We have different statutes that provide rules for filing and conducting class actions.

5. CANADA

Nine Canadian provinces have statutes to regulate class proceedings, and the Federal Court also has class proceedings pursuant to the *Federal Court Rules*. A class action is a procedural mechanism only; in its simplest terms, it is an alternative to multiple individual proceedings involving one or more common issues. Class action legislation neither creates a new cause of action nor alters the basis of existing causes of action. A class proceeding is not an individual action until certification is granted; and five conditions are necessary to a class action

6. *CÔTE D'IVOIRE*

Oui, le droit ivoirien admet les recours collectifs. Ils sont exercés en toutes matières: en matière sociale, en matière civile, dommages causés par une pollution de l'environnement, en matière administrative.

7. CROATIA

The complaint for the protection of collective interests and rights (class action) is regulated by the Civil Procedure Act. It was introduced in 2011 and this type of lawsuit is possible in civil proceedings. Established law deals with the protection of collective interest and rights of citizens. Such interests may include interests pertaining to human natural and living environment and other interests guaranteed by law, and must be violated or seriously endangered by the activity, or the conduct of the person against whom the complaint is submitted.

The submitter of a complaint may request the following: a determination that certain actions led to the violation or threat to collective interests and rights of

persons protected by law; to prohibit the undertaking of actions violating or threatening the interests or rights of persons, including the use of certain contractual provisions or business practices; to order the defendant to undertake actions in order to eliminate resulting or possible general harmful consequences; and finally to publish the ruling in the media accepting any of the claims.

8. DENMARK

A number of changes were made in the Danish Civil Procedure Code in January 2008, including changes to class action proceedings enabling a group of plaintiffs to file a suit together. When several plaintiffs have uniform or substantially identical claims, they are able to share the expenses and the trouble of having to file the lawsuit individually. The basic requirements for class actions are: uniform requirements; that the court estimates class action to be the best way to deal with the requirements; the group members must be identified and informed in an appropriate manner; there may be appointed a group representative; there is jurisdiction for all claims in Denmark; and, the court has jurisdiction over one of the claims. The court must approve the action as class actions.

9. *FRANCE*

Le droit français connait l'action de groupe en matière de consommation et à l'action de groupe en matière de santé publique.

10. GEORGIA

There are no class proceedings in Georgia.

11. GERMANY

Class proceedings are not foreseen in the German legal system.

12. GREECE

Yes, the legal system in Greece provides for class actions. More specifically, these are the class actions aiming to the collective protection of an undermined number of persons. These legislative interventions enabled the consumer associations, under the requirement that they meet certain conditions, to file class actions on behalf of all consumers. They should be clearly distinguished from the "class actions" which are common in the US legal system and aim at the individual judicial protection of a number of individuals.

13. ICELAND

In the Civil Procedure Act there is a provision, since 2010, on the formation of "litigation associations". However, there are no provisions in Icelandic Law on lawsuits on behalf of a "class".

14. IRELAND

The concept of a class action lawsuit is not recognized in Irish law.

15. ISRAEL

Yes. There are class proceedings in Israel. The principal source of law relating to class actions is the Class Actions Law 2006, which provides a set of rules for filing and conducting class actions. It contains a closed list of subject matter in which class actions may be filed. The Law also authorizes the Minister of Justice to add additional causes.

16. ITALY

Class actions became available in Italy beginning January 1, 2010. As far as the proceedings are concerned, consumers may act individually or through associations to which they give a mandate. So far, only 58 class actions have been filed and only three have been decided.

17. JAPAN

There are court proceedings for redress for damages prescribed in the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers as proceedings similar to class action proceedings. This Act will be enforced on October 1, 2016. This system establishes two-stage proceedings to achieve collective redress for damage incurred by consumers in consideration of the characteristics of consumer damage that the damage of the same type diffusely and frequently arises.

18. *LUXEMBOURG*

Le droit procédural luxembourgeois se fonde sur une conception individualiste de l'action en vertu de laquelle les particuliers ne peuvent saisir la justice que pour sanctionner la violation de leurs droits individuels. Le législateur n'admet pas la « class action » telle que connue dans les pays de « common law ».

Quant aux regroupements et association, il est admis qu les groupements dotés de la personnalité juridique peuvent agir en justice pour invoquer un préjudice personnel. En ce qui concerne la défense de ces groupements contre une atteinte à des intérêts collectifs qu'ils défendent, le recours n'est admis par la jurisprudence que lorsque l'action collective est dictée par un intérêt corporatif caractérisé et qu'elle a pour objectif de profiter à l'ensemble des associés. Le législateur est intervenu dans certains domaines (protection de l'environnement, des animaux, du consommateur et lutte contre la concurrence déloyale) pour reconnaître à certains groupements la faculté de se constituer partie civile devant les juridictions répressives pour des faits incriminés par la loi pénale et qui

portent un préjudice direct ou indirect aux intérêts corrects. En matière civile également, le législateur a admis notamment en matière de protection des consommateurs, différentes actions en cessation concernant notamment des clauses contractuelles abusives ou des agissements contraires aux dispositions relatives à la garantie de conformité.

19. NETHERLANDS/DUTCH

Yes. We do have two types of proceedings. The first type of proceedings dates from 1994 when a number of changes were made in the Dutch Civil Code. The changes among other things included "class action" proceedings. When several plaintiffs do have uniform or substantially identical claims, they are able to save the effort and costs of litigating individually. The law is often used by consumer or environmental organizations in legal actions against government and enterprises. There is one major deviation of the normal proceedings. It is not possible to claim for damage compensation (in money). Most used in this kind of procedures is the declaratory judgment. The second type of proceedings is rather new. In 2004, the Dutch Collective Settlements Act came in force. In cases where a lot of victims suffer a loss by an event for which another person is liable, this law gives the possibility for a collective damage compensation. It fills the gap in the first legal proceedings, because there was no possibility for a court to sentence damage compensations in class actions. That is still not possible but the main goal of this law is to provide an additional option to handle disputes of this nature more efficiently.

20. NORWAY

The current Norwegian Civil Procedure Code introduced (adopted in 2005, entered into force in 2008) for the first time a framework for class actions. A class action may be instituted either by an individual within the actual class, or by associations, trusts or public bodies if the action falls within the scope of their purpose and field of activity. The court must approve the class action. Upon approval, the court defines the scope of claims to be comprised by the action, decides whether class membership will be on an "opt in" or opt out" basis, and appoints a class representative. The court is also responsible for ensuring that those who may qualify for class membership are informed of the action. Rulings in class actions are binding only on those who are class members at the time of the ruling.

21. PORTUGAL

Portuguese system had its first ruling in the Constitution approved in 1976. It was then established a general right of participation in any legal proceedings concerning general interests, including what can be called "class actions" or "class proceedings", but also other participation rights. Art. 52 of the Constitution rules a "petition right" and "popular action right". This gives every citizen,

individually or collectively, the right to act against any authority, any fellow citizen or company, in defense of certain public interests (from public property to public health, including environment, consumer defense and other general interests.)

Although there were plenty of actions decided in the Portuguese courts founded only on the constitutional ruling mentioned above, the ordinary law that regulates this matter was only approved in 1995. The legal regime reinforces that the right is much broader than a simple "right to sue in a court of law in defense of public interests". It is also a general right of participation in any proceedings, judicial or administrative, conducted by or against the State, or any authority, in defense of certain public interests.

22. SLOVENIA

Slovenian Civil Procedure Act as a general act does not recognize class action, as it is based on the tradition of Germanic civil process, which is considered to protect property and other civil rights of individuals. More plaintiffs or defendants can act as intervening party in the same procedure; however they cannot file a class action.

23. SPAIN

En el orden jurisdiccional civil se admiten las demandas colectivas, de acuerdo con el artículo 11 de la Ley de Enjuiciamiento Civil para la defensa de derechos e intereses de consumidores y usuarios y desde la Ley Orgánica 3/2007 de 22 de marzo para la defensa del derecho de igualdad de trato entre mujeres y hombres, según artículo 11 bis.

Su naturaleza es declarativa, relativa a la defensa de intereses difusos sin contener pronunciamientos de condena.

Esta misma naturaleza tienen las demandas colectivas en el orden social cuya legitimación la tienen entes colectivos, como pueden ser los sindicatos, pero luego la ejecución la tienen que solicitar los individuos.

Por lo que respecta a los pleitos en los que es parte demandada la Administración Pública no existe la posibilidad de presentar demandas colectivas sino que tienen que presentarse individualizadas.

24. SWEDEN

Yes, since 2003. A class action is described as an action brought by a plaintiff on behalf of several persons with legal consequences for them, even though they are not parties to the action. A class action could arise in any matter within the general civil and commercial jurisdiction of the common courts and may be

initiated by a), private subjects; b) private organisations whose purpose it is to protect consumers, and d) public bodies designated by the government (i.e. the Consumer's Ombudsman). A class action may also arise under the environmental code before the land and environmental courts. A sort of class action may also arise before the Consumer's Complaints Board.

25. SWITZERLAND

There is no class action in Switzerland.

26. TAIWAN

Class action is available in Taiwan. Numerous parties (above two) having common interests may appoint one or more persons from themselves to sue or to be sued on behalf of the appointing parties and the appointed parties. The appointed parties may conduct all acts of litigation for the appointing parties; however, the appoint parties may restrict the appointed parties authority to abandon claims, admit claims, voluntarily dismiss the action, or settle the case. A final judgment is also binding the appointing parties.

27. TURKEY

There are no such procedures for the Turkish judiciary.

28. UNITED KINGDOM

Litigants can be grouped together in England and Wales to advance litigation by more than one claimant or defendant in a single action or actions with a common issue. The Civil Procedure Rules apply to procedures in the County Court, the High Court and the Civil Division of the Court of Appeal. The Supreme Court and the Tribunals have their own rules and some will have similar mechanisms in place. The mechanisms and case management powers may be exercised in different manners which may include, for example, a test case; consolidation of proceedings and the single trial of multiple actions; a group litigation order; representative actions; as well as representative actions for breach of competition law.

In Scotland, there is no formal class action procedure, although it has been under consideration for some time. Most recently, the introduction of a formal procedure was one of a number of recommendations arising from the 2009 Scottish Civil Courts Review. The recommendation has not yet been implemented.

29. UNITED STATES OF AMERICA

Yes. Class actions are authorized by Federal Rule of Civil Procedure 23. Rule 23 requires that any class action meet four mandatory requirements (Numerosity, Commonality, Typicality, Adequacy) and also fall into one of four categories of permissible class suits (A class where there is a risk of inconsistent or varying adjudications, "Limited fund" Class, "Civil Rights" or "Injunctive" Class, and "Damages" Class).

QUESTION 2:

What are the advantages or disadvantages to class action proceedings in your jurisdiction?

Quels sont les avantages ou les inconvénients de la procédure de recours collectif dans votre juridiction?

1. ARMENIA

There are no class proceedings in Armenia.

2. AUSTRALIA

The advantages were addressed specifically in the 1988 report of the Australian Law Reform Commission and this report specifically outlined the potential advantages of the introduction of a class action regime: could help to reduce costs for each member of the group as well as promote efficiency in the administration of justice; to enable the most efficient use to be made of resources and to ensure consistency in decision making; may reduce the costs of litigation to the individual and thus enhance access to a legal remedy.

Comments made by Justice Jessup of the Federal Court of Australia identify a potential disadvantage with the regime, including that a named party represents others who are not on the record and steps taken by the applicant in the conduct of the case are binding on the group members. Likewise, findings and rulings are binding on the group members. Other noted potential disadvantages are: the relative novelty of class actions, in comparison to conventional forms of litigation; the fear of legal entrepreneurialism and a flood of "US-Style" litigation; the capacity of the system to affect the power balance between applicants and respondents; and, the increased role of the media in litigation.

3. AZERBAIJAN

Azerbaijani legislation does not have any separate special rules for class proceedings.

4. BRAZIL

The main advantages of class actions in my jurisdiction are related to the reduction of costs of court proceedings to the individuals. They facilitate access to Justice and ensure consistency of the decisions and efficiency in the determination of common issues, reducing the risk of conflicting judgments.

5. CANADA

Many will say that the advantages to class actions greatly outweigh the disadvantages to such claims.

Some advantages to the plaintiffs would include: the tolling of the limitation period for the class; a notice program to advise interested persons about the status of the litigation; the ability of class members to participate in the litigation; case management by a single judge; court powers to protect the interests of absent members, etc. Further, class actions would allow defendants to be made aware of any who have opted out and the existence and nature of their respective claims (see *Walls v. Bayer Inc.*, [2007] M.J. No. 2013). The binding effect and the precedent of a judgment in a class action may be advantageous to defendants and they can also use a class action certification and a settlement approval to resolve genuine claims.

On the other hand, some disadvantages may include: lack of decision making control; the resolution of these types of claims usually take longer; in the event the class action is unsuccessful, the individual members of the class may not ring a private claim at a later time, etc.

6. *CÔTE D'IVOIRE*

Avantages: Une seule procédure est engagée. Donc une seule saisine de la juridiction, regroupement des pièces à fournir, réduction des coûts de procédure à supporter par chacun. On évite ainsi une multiplicité de procédures similaires. Aussi, un seul interlocuteur, absence d'un nombre important ou pléthorique de personnes à l'Audience, réduction du risque de péremption d'instance pour cause d'inaction ou de négligence d'un demandeur. Et aussi l'uniformité de la décision applicable à toutes les personnes auteurs du recours collectif.

Inconvénients : dossier trop volumineux à étudier et quelquefois de nombreux calculs sont à effectuer pour déterminer le montant de la réparation revenant à chacun.

7. CROATIA

The main advantage is that natural persons and legal entities in special litigations for the compensation of damages may invoke the legal determination form the judgment accepting the requests from the complaint of collective action. In this case, the court will be bound by these facts determined by the judgment in the litigation in which these facts are invoked.

8. DENMARK

The advantages are to overcome difficulties concerning lack of access to justice and to provide tools for a group of individuals to share the expenses of lawsuits. Also, one avoids conflicting rules or decisions by courts concerning the same cases.

Disadvantages may be to determine whether there are uniform or substantially identical requirements which can provide the court with some difficulties.

9. *FRANCE*

Avantages : Un seul demandeur; indemnisation des consommateurs ou des usagers du système de santé hors la présence du juge; un jugement constatant l'extinction de l'instance.

Inconvénients : En cas d'échec de la procédure d'indemnisation amiable (2e phase) la liquidation des préjudices individuels peut s'avérer très lourde en raison du nombre d'adhérents au groupe.

10. GEORGIA

There are no class proceedings in Georgia.

11. GERMANY

Class proceedings are not foreseen in the German legal system.

12. GREECE

Such actions eliminate or prohibit any violation on behalf of the company and provides for the appropriate measure in order to eliminate the continuing effects of the aforesaid violation, whilst safeguarding the proper function of the common market, and the protection of the collective interests of consumers. Decisions on class actions apply to all similar enterprises; the legal consequences apply *erga omnes*, even to those that are not parties; and the judicial precedent that allows a class action applies to all injured consumers even if they were not parties to the relevant litigation. Therefore, there are only advantages. A class action is economically more efficient. The coordination involves better use of the Courts' resources. And the risk of conflicting judgments is eliminated.

13. ICELAND

The provision on "litigation associations" is mainly intended to reduce the costs of the proceedings by allowing several plaintiffs to join forces. However, given its nature, this provision hardly achieves other aims of class-action provisions. The "pseudo class action" described under question 5 can often prove haphazard,

imprecise and insufficient to resolve the legal issues in question. Thus, several parties may be attacking the same goal at the same time with different claims. In some cases, it may be difficult to get a legal question addressed by the courts.

14. IRELAND

There are no class proceedings in Ireland.

15. ISRAEL

Advantages: The class can enhance the enforcement of rights in the event that an individual claim would be an impractical and inefficient procedure; can increase the efficiency of the legal process; lower the costs of litigation; enables consolidation of the interests of all injured parties and create an incentive for filing the suit; overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action; may be the only way to impose the costs of wrongdoing; serves not only the private interest of the injured parties, but also the social public interest; a court can equitably divide the assets amongst all the plaintiffs if they win the case; avoids different court rulings that could create "incompatible standards" of conduct for the defendant to follow.

Disadvantages: Class actions can be abused for the filing of false claims; a defendant might suffer huge economic harm; misuse of the proceedings might damage the members of the group since plaintiff does not receive any authorization to file the claim from all the other injured parties; class members often receive little or no benefit from class actions where attorneys are sometimes granted large legal fees, while leaving class members with coupons or other awards of little or no value. Confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

16. ITALY

The economic factor was crucial in denying many lawsuits and affected the trend of Italian class actions where most cases are filed by associations receiving an "ad hoc" mandate. However, the proceedings expenses and the high standard of representativeness required by the courts might discourage the consumer association when the class members are not many. A consumer may only seek damage compensation and restitution and no "punitive damages" are allowed. Thus, given that the cost to publish in a national newspaper is quite high, the association receiving the mandate might find economically worthless to file an action. It is not certain that after the action has been declared admissible it will end with a positive judgment, consequently, consumers or associations are likely to bear high publication expenses for no reason. Today, it has become clear that the Italian class action has been an almost complete failure.

17. JAPAN

The advantages are (i) the effort and cost for redress for consumer damage decrease, and (ii) a dispute may be resolved more quickly and collectively than individual litigations by each consumer. The disadvantages are not seen at present. It may be pointed out that the subject cases are limited.

18. *LUXEMBOURG*

Pas de jurisprudence connue.

19. NETHERLANDS/DUTCH

As our most superior legal adviser Council of State said: speed, legal certainty and financial security for those who are responsible and for the victims. The public advantage is a more useful effort of the resources of the courts.

However, it is said that the Netherlands are now a Cockaigne for claims, although (statistical) research does not prove that the proceedings are getting out of hand. In the Netherlands, we still do not have a so-called "American claim culture". Perhaps also because Dutch attorneys are not allowed to ask for a no cure no pay fee, or for a contingency fee.

20. NORWAY

The possibility of bringing claims by class action has not existed in Norwegian jurisdiction for more than eight years. Accordingly, the empirical foundation for evaluating the rules is quite scarce, and it is probably too early to arrive at same conclusions.

This having been said, the preparatory works for Chapter 35 of the CPC contain a quite extensive review of the potential advantages of class actions compared to individual actions and other existing manners of bringing collective actions. The essence of this review is summarized in our full answer. Example of advantages contained therein includes: cost effectiveness; coordination and better utilization of the courts resources; avoidance of situations where courts deliver several conflicting rulings concerning the same question; and most importantly, improvement of access to justice by lowering the threshold for action for the individual.

A few elements of the procedure that can be regarded as disadvantageous would include: the court's decision on approval of a class action involves several discretionary discretions; the membership of the class is based on registration ("opt-in") and the "opt out" alternative is subject to specific conditions; there are no mechanisms enabling the court to resolve the case in the general interest of the plaintiffs; there is a general risk that the possibility of pursuing claims for

damages by way of class actions will lead to a "dilution" of fundamental rules within the law of torts; and finally there is a risk that the class action institute is abused in order to inflict pressure on the defendant, possibly in combination with negative media attention, for example.

21. PORTUGAL

The advantage (at least expected) is to give concrete tools to defend public interests, in special matters, without identifying the concrete persons or victims, overcoming problems that can occur in a traditional legitimacy regime that can lead to a practical difficulty, if not impossibility, to protect public interests and/or to protect and compensate people harmed by misconducts.

22. SLOVENIA

There is no class action proceedings in Slovenia.

23. SPAIN

Los pronunciamientos relativos a cosa juzgada en los procedimientos individuales que se pronuncien sobre el mismo objeto.

Puede plantear problemas en la ejecución.

La principal ventaja es que se establece un estandar superior de protección frente al que no presenta una demanda individual.

24. SWEDEN

The advantages for members of the public are obvious. The individual will have a better bargaining power due to the better quality of the legal work and media attention as well as the better financial conditions.

Although it creates opportunities for the public, that it would not otherwise have, class actions cannot be said to be a particularly effective way to protect the rights of individuals. This is mainly due to the time needed for assessment of the specific conditions for the proceedings under procedural law, the design of the lawsuit and the notification procedure and financing problems. The only court case brought by the Consumer's Ombudsman was resolved in the first instance by way of a settlement ten years after the action was brought (!).

25. SWITZERLAND

There are no class proceedings in Switzerland.

26. TAIWAN

Advantages: Increase judicial efficiency; lower cost of litigation; consistence.

Disadvantages: The appointed parties may conduct all acts of litigation for the appointing parties, even if it's harmful to the appointing parties. Therefore, the appointing parties may concern the appointed parties would harm their interests. That's also why it is not easy to see class actions in Taiwan.

27. TURKEY

There are no class proceedings in Turkey.

28. UNITED KINGDOM

The mechanisms for England and Wales are mostly opt-in models, which have been criticized for their limited impact, effectiveness and expense. Also, the representative action has been criticized for the narrowness of the definition of the interest in the claim that each person represented must show. Claimants could expose themselves to adverse cost liabilities in group litigation as the general rule that all claimants and all defendants are joint and severally liable for all costs awarded against them applies of no group litigation order (GLO) is made.

On the other hand, experience has shown that each method by which "class proceedings" can be implemented can assist in resolving the issues affecting many actual or potential claimants in a cost effective and efficient way. It is expected that the new class action rules for competition claims will make it easier for claimants to bring collective actions for breaches of competition law, share and minimize their legal fees and benefit from a successful result or settlement.

As far as Scotland is concerned, conjunction actions allow the courts to be flexible and to take a pragmatic approach. However, conjunction of actions can also be cumbersome if there are a large number of pursuers, especially if the remedies sought are particular to each. The court has no power to compel parties to conjoin actions if they choose not to do so. This can increase the burden on the public purse and the pressure of business on the courts. Also, without conjunction, it may not be cost effective for individual litigants to pursue actions of the value of the claim is small.

29. UNITED STATES OF AMERICA

Advantages: Judicial efficiency which allows multiple similar claims to be heard together, which prevents clogging the court system; and Deterrence which deters harmful behavior that might not be deterred by individual litigation alone.

Disadvantages: Due process concerns since with absent class members, there are individuals who are bound by the judgment, and Risk of Massive Judgments with the fear of massive settlements, very few class actions go to trial. Many believe that the potential for a massive judgment is too powerful of an incentive for companies to settle, yielding windfalls for attorneys while the injured individuals receive little compensation.

QUESTION 3:

Is there an access to justice component to class action proceedings in your jurisdiction?

Existe-t-il une composante d'accès à la justice relative à la procédure de recours collectifs dans votre juridiction?

1. ARMENIA

There are no class proceedings in Armenia.

2. AUSTRALIA

Issues in relation to access to justice were at the heart of the development of the present regime, with the ALRC Report in 1988 noting these as key advantages of the implementation of such a system of grouped proceedings. Third party funding of class action litigation is advocated on the basis that it enhances access to justice with the provision of funds to potential claimants for whom the cost of prosecuting a claim would be otherwise prohibitive. "Closed class" representative proceedings can be more attractive to funders in terms of greater certainty in funding recovery. However other mechanisms such as "common fund orders" and "funding equalisation formulas" have been recently propounded by funders as solutions to "free riding" group members.

3. AZERBAIJAN

Azerbaijani legislation does not have any separate special rules for class proceedings.

4. BRAZIL

Yes. Class actions represent an important tool to assure access to justice for individuals who would not have means to ring a claim in an individual proceeding. It is important to mention that Brazilian laws do not require payment of fees on class actions, except in the case of frivolous litigation or evidenced bad faith. On the other hand, since class actions protect collective rights, they can only be filed by a public prosecutor, a public defender, a representative from federal government, the states, municipalities and the federal district, a representative from public entities and other public administration authorities, civil associations, and unions. Individuals are only legitimately allowed to file class actions in the defense of public property.

5. CANADA

One of the objectives of class proceedings legislation is to provide access to justice for individuals whose claims would be prohibitively uneconomic or inefficient if advanced in an individual proceeding. The Class action procedure embodies a social policy that encourages access to justice by enabling fair and comparable compensation for all members while avoiding a multiplicity of similar actions in a manner that ensures an equal distribution of power between the parties.

6. *CÔTE D'IVOIRE*

Quel que soit la juridiction concernée, le mode de saisine (requête ou assignation par exploit d'huissier) demeure le même, qu'il s'agisse d'un recours individuel ou d'un recours collectif. Mais en cas de recours collectif, l'acte doit comporter l'identité complète et les références de toutes les personnes concernées.

7. CROATIA

This kind of complaints has ensured the access to justice, particularly because there is a number of associations, bodies, institutions and organizations in the Republic of Croatia that are registered or that are required by regulation to deal with the protection of collective interests and rights of citizens.

8. DENMARK

The main goal is to provide an additional option to handle disputes involving a larger number of uniform or substantially identical requirements. The aim is to facilitate access to justice and support the legitimate demands, including requirements that would easily be abandoned by resource reasons. One of the objectives of the rules of class action has been to ensure that small identical claims that would otherwise not justify legal action can be resolved by the courts.

9. *FRANCE*

Tous les Tribunaux de grande instance ont vocation à traiter les actions de groupe en matière de consommation. Le TGI de Paris est compétent lorsque le défendeur n'a pas de domicile connu ou demeure à l'étranger. La juridiction est saisie par voie d'assignation, c'est-à-dire par un acte délivré par un huissier de justice. Les décrets d'application de la loi du 26 janvier 2016 instituant l'action de groupe en matière de santé ne sont pas publiés.

10. GEORGIA

There are no class proceedings in Georgia.

11. GERMANY

Class proceedings are not foreseen in the German legal system.

12. GREECE

Yes. Class actions (injunctions for the protection of consumers' interests), is one of the main "weapons" of consumers in enforcing their rights.

13. ICELAND

No.

14. IRELAND

There are no class proceedings in Ireland.

15. ISRAEL

One important question is whether the filing of an application for the certification of a class action pursuant to the new Law should be charged with a court fee. One of the most important innovations in the Law is the establishment of a foundation for financing class actions, under the auspices of the Ministry of Justice. The foundation aims to assist the representatives in the financing of class actions which are of public and social importance.

16. ITALY

The Italian Law on class actions does not provide for any specific provisions on the funding of the action. As it is well known, consumers typically do not have an interest in funding a class action, because the costs of such actions are much higher than their expected benefits. More generally, self-interested consumers would always prefer individual actions to class actions, because they can reach the same result by investing less money and taking a lower risk.

17. JAPAN

Court proceedings for redress for damage are proceedings for bringing an action to the courts and access to justice has been established.

18. *LUXEMBOURG*

Pas de jurisprudence connue.

19. NETHERLANDS/DUTCH

Yes. One of the objectives of the rules of class action in the Netherlands has been to ensure that – also small – identical claims, that would otherwise not justify legal action, can be resolved by the courts.

20. NORWAY

Yes, at least indirectly. The primary objective of introducing class action in Norwegian jurisdiction was to facilitate judicial resolution of disputes concerning claims that would otherwise not justify legal action.

21. PORTUGAL

In this type of actions, there are no taxes or initial fees required and, exceptionally, the plaintiff only pays judicial taxes in case of complete loss of the case.

22. SLOVENIA

There is no class action proceedings in Slovenia.

23. SPAIN

El individuo afectado puede en cualquier caso, con independencia de lo que hagan las asociaciones. Siempre cabe presentar la demanda individual, artículo 11.1 de la Ley de Enjuiciamiento Civil, "Sin perjuicio de la legitimación individual de los perjudicados…".

En el orden social los individuos también pueden presentar demandas en defensa de sus intereses individuales, pero en estos casos el procedimiento se paraliza hasta que se resuelve el colectivo el cual produce los efectos de cosa juzgada positiva, segun el artículo 160.5., si se refieren a idéntico objeto o relación de directa conexidad, tanto en el orden social como en el contencioso-administrativo, las cuales quedan en suspenso durante la tramitación del conflicto colectivo.

24. SWEDEN

Yes.

25. SWITZERLAND

There are no class proceedings in Switzerland.

26. TAIWAN

The major purpose of class proceedings legislation is to prevent numerous parties from brining their own lawsuits in different courts. The court may appoint an attorney as an advocate for the class actions. In addition, advocacy groups shall not claim rewards from consumers for litigation, and if a consumer advocacy group brings litigation in its own name, the court fees for the portion of the claim exceeding NT$600,000 shall be exempted. All these provisions make an easy access to class actions.

27. TURKEY

There are no class proceedings in Turkey.

28. UNITED KINGDOM

New rules introduced in 2000 for England and Wales sought to promote a number of objectives including providing access to justice in cases where a large number of claimants have suffered loss from a single or related set of events but their individual losses make it uneconomic for them to claim in an individual action. In general, the objective is to provide such access where, without such proceedings, the costs to an individual of bringing a claim would be prohibitive.

The recommendation of the Scottish Civil Courts Review was underpinned by considerations of increasing access to justice in cases where a large number of claimants have suffered loss from a single or related set of events, but their individual losses make it uneconomic for them to claim in an individual action.

29. UNITED STATES OF AMERICA

Yes, the purpose of class actions in the United States is to cure externalities inherent in the default individual litigation model. One of those externalities is that there are some cases, known as negative value suits.

QUESTION 4:

How is case management achieved in class proceedings in your jurisdiction?

Comment les recours collectifs sont-ils gérés dans votre juridiction?

1. ARMENIA

There are no class proceedings in Armenia.

2. AUSTRALIA

The Federal Court of Australia, and both the Supreme Courts of Victoria and New South Wales have extensive powers to manage class action proceedings, under the relevant legislation, including the powers to act on their own motions in respect of a number of matters in relation to the roles and functions of group members. In general, the courts' powers of management of representative proceedings include: the power to discontinue representative proceedings; the power to substitute a representative party; the power to establish subgroups and to appoint a subgroup representative; the power to order that notice of any matter be given to group members; the power to decline to approve settlement; and, the power to make any other orders necessary. It has been observed in a number of decisions that a useful approach for the management of large group proceedings is to identify common questions for initial determination, following which directions for hearings in relation to non-common questions can be made if necessary. The need for courts to prevent complex representative proceedings from being slowed by numerous interlocutory applications has also been observed.

3. AZERBAIJAN

Azerbaijani legislation does not have any separate special rules for class proceedings.

4. BRAZIL

Even though Brazilian laws provide for the management of claims by means of class actions, the effects of decisions in such cases are different from those obtained in cases pending in U.S. courts, for example. In Brazil, the decision n a class action suit will either create a binding precedent for all other claims or it will settle the issue of law discussed in that lawsuit. As for the procedure, the trial is always held by a judge and generally there is no specialized judge or court for the management of class actions. After a class action is filed, a publication of a notice in the Brazilian official gazette is required in order to allow interested individuals to become parties in the proceeding. These laws also permit wide dissemination

of the lawsuit in the media. The opt-in/opt-out feature does not exist in Brazilian class actions proceedings. In general the effects of decisions in class action suits will apply to all members of a class or group as long as they are beneficial to them. Brazilian laws related to class action suits do not stipulate a certification procedure nor do they determine a time frame for interested individuals to become parties in the proceedings. The group or class of individuals involved in a class action is determined by the nature of rights involved.

5. CANADA

Most class proceedings legislation stipulates that the same judge shall hear all motions before the trial of the common issues in class proceedings, and usually, but not always, the judge who hears motions shall not preside at the trial of the common issues. A case management judge will be assigned to the case when it is still a proposed class proceeding, and the role of the case management judge is informed by the goals of access to justice, judicial economy and behavior modification. The class action judge is required to be more proactive in order to achieve the goals of class proceedings, and a judge will play a major role if the class proceeding is settled becoming involved in scrutinizing the settlement and possible overseeing its implementation if the settlement is approved.

6. *CÔTE D'IVOIRE*

Il n'existe pas de chambre spécialisée pour connaître des recours collectifs. Les actes à notifier ou les pièces à communiquer sont adressés aux représentants du groupe de personnes, qui peuvent être des mandataires ou des avocats, sans qu'il soit nécessaire de communiquer personnellement avec chaque membre du groupe.

7. CROATIA

There are no differences in relation to other civil cases.

8. DENMARK

The courts hear class action cases according to essentially the same procedural rules as ordinary cases once the class action has been approved by the court.

9. *FRANCE*

Ces recours sont dévolus à une chambre spécialisée. La direction des services judiciaires a élaboré des notices explicatives à l'attention des consommateurs. Cette chambre qui traite également d'autres contentieux que de groupe ne bénéficie pas de personnel de greffe ou d'assistant de justice supplémentaire. Le TGI de Paris n'a été saisi jusqu'à présent que de 3 actions de groupe en matière de consommation.

10. GEORGIA

There are no class proceedings in Georgia.

11. GERMANY

Class proceedings are not foreseen in the German legal system.

12. GREECE

Case management is achieved by a class action for avoidance of unlawful conduct; by a claim for compensation based on emotional distress; by granting interim measures to secure the consumers' claims; and with the recognition of the consumers' right to redress the damage that they suffer as a result of the unlawful conduct.

13. ICELAND

In the case of litigation associations, the associations will be the formal plaintiff but the application must nevertheless list the members of the society preemptively. The association will be governed by its own statute which nevertheless has to conform with certain regulations. The procedure that follows is standard.

14. IRELAND

There are no class proceedings in Ireland.

15. ISRAEL

A registry of class actions is required by law and is open to the public on the internet site of the Directorate of the Israeli Courts. Some courts designate specific judges who hear class action cases, and others allocate the cases amongst the various judges randomly. All Class Action cases are managed via the Israeli Courts' computer "Net Hamishpat System" which takes a great part in allocating and monitoring all cases including class action cases. Upon filing a class action application, one must attach a special notice to the Courts Directorate informing the submission of said application, thus enabling supervision and registration in said registrar.

16. ITALY

As the number of cases referring to the Italian class actions is very limited, no special problems of case management arose so far. However, in some of the case management programs, which the heads of Italian courts have to draft every year and to submit to the High Council for the Judiciary, notice is given about the need to reserve a sort of "fast track" to such kind of proceedings. We may read that a

"special, privileged treatment – compared to the rest of the litigations --- will be reserved to the class actions lodged with the court, taking into account their economic and social relevance.

17. JAPAN

The court proceedings for redress for damage shall be conducted by the Specified Qualified Consumer Organization certified by the Prime Minister as a party, instead of individual consumers. Therefore, cases are managed by considering such organization as a party.

18. *LUXEMBOURG*

Pas de jurisprudence connue.

19. NETHERLANDS/DUTCH

The courts hear class action cases according to essentially the same procedural rules as in ordinary cases. Collective Settlements in mass damages cases are only ruled by the Court of Appeal in Amsterdam. Class Actions can be ruled by all the courts.

20. NORWAY

Once a class action has been approved, it is essentially managed in the same way as ordinary actions. However, in class actions, the court is charged with a greater and more independent responsibility for defining and maintaining the scope of the case. Furthermore, as opposed to what is the case in other collective actions, the procedural rights of the class are exercised only by one person, the class representative. These main procedural features of class actions, in addition to facilitating case management, are aimed at protecting those possessing claims that may be affected by the action.

21. PORTUGAL

Differently from traditional representation, the representation in this kind of action needs no warrant, power of attorney, or special authorization. The plaintiff represents every other person with interest in the demand, and the decisions' effects shall apply to the persons with personal intervention as well as everyone else non participant in the judicial discussion. That does not exclude the need to try to find and identify every single person with direct interest in the demand. Any persons with direct interest can take part in the action, accepting it as it is, or use a "right of exclusion". In this case, the effects of that action, and decisions taken, will not apply to him. The fact that public interests are always in discussion in this type of action manifests itself in two specific rules: (a) the General Attorney takes part in this action and can replace the plaintiff if he does not want to continue the

legal suit, and (b) the judge is not limited to the evidence presented by the parties, having full initiative to bring in and take evidence into account. The decisions are binding to everyone with a related interest to the cause, participant or non participant, making it impossible to file another petition for the same facts.

22. SLOVENIA

There is no class action proceedings in Slovenia.

23. SPAIN

Tan solo existe una regulación específica en los citados artículos 11 y 11 bis de la Ley de Enjuiciamiento Civil.

En el orden jurisdiccional social, en materia laboral, se regula en el artículo 150 de la Ley de Jurisdicción Social, en concreto en los apartadis 5 y 6.
The management of the case is the responsibility of the court.

24. SWEDEN

The management of the case is the responsibility of the court.

25. SWITZERLAND

There are no class proceedings in Switzerland.

26. TAIWAN

When numerous parties bring class action, the court must determine if all class members have common interests. Then the court may verify the appointed parties are authorized by al the class members. To settle all the dispute and increase use of class proceedings, the court may publish a notice to the effect that other persons with the same common interests may join the class action.

27. TURKEY

There are no class proceedings in Turkey.

28. UNITED KINGDOM

The mechanisms described by England and Wales in response to Question 1 (test case; consolidation of proceedings and the single trial of multiple actions; group litigation order; representative actions; and representative actions for breach of competition law) are effectively all case management tools and provide for the case management of the claims. Set rules and procedures exist for the

management of group litigation orders (GLOs). GLOs are rendered by a court and directions are given by the management court. A judge will be appointed for the purpose of the GLO as soon as possible and will assume overall responsibility for the management of the claims and GLO issues. A Master or a District Judge may be appointed to deal with procedural matters. And finally, a costs judge may be appointed and may be invited to attend case management hearings.

In Scotland, there is no formal active case management in the current system. Progress of conjoined actions is at the discretion of the judge. The Scottish Civil Courts Review recommended active case management in most civil court actions, as well as in the proposed formal class action procedure.

29. UNITED STATES OF AMERICA

Federal Rule of Civil Procedure 23 contains the requirements for class certification and the procedural protections that are required for a class suit. The court makes the decision of whether to certify or not certify the class. If the class is certified, the procedural protections of Rule 23 attach.

QUESTION 5:

If you do not have class action proceedings, how are the cases involving a large quantity of victims or involving a group of individuals with a collective interest dealt with?

Si votre droit national ne permet pas les recours collectifs, comment sont traités les litiges concernant un grand nombre de victimes ou impliquant un groupe de personnes ayant un intérêt collectif?

1. ARMENIA

There are no class proceedings in Armenia. Everyone brings their suit by themselves. But the legislation does not prohibit that two or more plaintiffs can act together in a same procedure.

2. AUSTRALIA

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

3. AZERBAIJAN

A claim may be brought jointly by several claimants or against several respondents. Each and every claimant or respondent shall participate in court individually and independently. Joint participants shall have the right to assign conduct of case to one of such participants. Persons who have joint legal interests in view of the subject of a dispute, or whose rights and responsibilities have the same actual and legal background or if the subject matter of a dispute contains the requirements and responsibilities having respective factual and legal grounds of the same type, several persons may serve as joint claimants or joint respondents acting as procedural co-participants.

A common decision on administrative dispute has to be made in respect of all co-participants or the procedural co-participation is necessary for other arguments, other co-participants to attend the court session, or keeping to the procedural time-frame shall represent those co-participants who made default or missed fixed timeframe. Each procedural co-participant has a right to take part independently in administrative proceeding. All procedural co-participants shall be summoned to court sessions without exception

4. BRAZIL

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

5. CANADA

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

6. *CÔTE D'IVOIRE*

En raison des réponses ci-dessus aux questions 1 à 4 inclusivement, une réponse à cette question n'est pas nécessaire.

7. CROATIA

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

8. DENMARK

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

9. *FRANCE*

Dans les matières où il n'existe pas de recours collectifs, les recours sont exercés individuellement par les demandeurs, mais le tribunal peut ordonner la jonction des procédures afin qu'elles soient instruites et jugées ensemble. Il peut également, sans opérer de jonction, instruire ensemble et appeler les recours dirigés contre un même défendeur et ayant la même cause et le même objet à une même audience. Dans ce cas, il rend autant de jugement que de demandeurs.

10. GEORGIA

Georgian Legislature does not have the term "class actions", but legislation does not forbid several plaintiffs to fill one claim together. The judge accepting claims may direct that the claims filed by several plaintiffs or claims against several defendants be heard in one or several separate proceedings if he/she finds that a separate hearing of claims is more expedient. If several claims are pending with a court, whether involving the same or different parties, are similar and have legal ties amongst each other, the court may, on its own initiative or upon the petition of a party, consolidate these proceedings to be heard at the same time if such consolidation will result in a more rapid and correct review of the dispute. The judge who has petitioned to consolidate the proceedings shall consolidate proceedings pending with him/her or with another judge, and deliver a reasoned judgment to that effect.

11. GERMANY

Each case has to be decided individually. Deciding on a large number of claims within one court case requires a joinder of individual claims. There are predominantly three ways in which such a joinder can be achieved, none of them, though, altering the fact that each claim has to be assessed and decided individually.

12. GREECE

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

13. ICELAND

A "pseudo class action" may take the form of one case (or a handful of cases) being selected by a formal or an informal group of potential plaintiffs who will share the costs and responsibility for the proceedings. It is also common that trade unions, consumer associations, and other associations and interest groups assume this role.

14. IRELAND

The test case is primarily used in multi-party litigation and may be chosen from a pool of litigants as the most appropriate to go forward as an example case. The plaintiff will formally act solely in his or her own interest and is not burdened by responsibilities or duties toward the rest of the pool of litigants. The test case will have an award of damages judged on the merits of their individual case and without regard to peripheral actions. However, there may not be enough resources to pay awards in subsequent actions, particularly where the defendant is a private entity. Where a test case is successful, other similarly placed litigants will pursue their cases in the expectation that the prior ruling will result in a judgment in their favor. No particular procedure has developed and the system is fragmented.

15. ISRAEL

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

16. ITALY

As explained, this is no longer the case for Italy.

17. JAPAN

An action may be brought for cases in which a large number of victims or a group of individuals associated with collective interests are involved instead of using the

court proceedings for redress for damage. In such cases, if a large number of victims collectively bring an action, and the action will be pending before a court and litigation proceedings will be carried out. On the other hand, even if it is a case in which a large number of victims are involved, and if only some of such victims bring an action as a plaintiff, other victims are not treated as parties to such action.

18. ***LUXEMBOURG***

Dans les litiges concernant un grand nombre de victimes, celles-ci doivent se pourvoir individuellement en justice pour faire valoir leur droit.

En pratique, lorsque les intérêts, le problème en droit, et cetera, sont similaires, les avocats des différentes parties vont se concerter pour choisir des « cas pilotes » parmi tous les dossiers qui seront alors débattus devant les juridictions. Les jugements/arrêts ainsi obtenus serviront de base pour les autres victimes dans le cadre d'arrangements extra-judiciaires. Il est cependant loisible à toute personne de renoncer à cette procédure amiable et d'insister à pouvoir débattre de son cas devant le juge.

19. **NETHERLANDS/DUTCH**

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

20. **NORWAY**

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

21. **PORTUGAL**

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

22. **SLOVENIA**

In 2008, the so-called test case procedure was introduced. The courts shall have priority to discuss tests cases. Slovenian legislation is already aware of one of the models of class action in consumer disputes. Law on consumer protection regulates the organization action on injunctions for the protection of consumers' interests. These organizational actions only apply to future arrangements effective *ex nunc*, and cover injunctions, actions for annulment of certain contracts and remedies for existing legal relationships between companies and consumers effective *erga omnes* for all consumers affected by the wrongful conduct of the companies. However, each single consumer should have to file an action for

contractual performance based upon findings of class action by himself. Another form of collective action is regulated in disputes relating to collective contracts according to Law on Labour and Social Courts that was the first law in Slovenian legislation that enforced the so-called test cases.

23. SPAIN

No existe una regulación genérica sino tan solo las específicas de los artículos 11 y 11 bis de la Ley de Enjuiciamiento Civil.

Cuando la Administración es demandada hay dos posibilidades. La primera es pedir la extensión de efectos de la sentencia recaída cada uno de los posibles demandantes y la segunda, para los casos en los que se presenten varias demandas cuyo objeto sea idéntico, se tramita un solo pleito, suspendiendo los demás y recaída sentencia se solicita la suspensión de efectos.

24. SWEDEN

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

25. SWITZERLAND

Organizations or associations can, under certain conditions, defend the interests of their members. To do so, they must have a national or regional importance and aim to protect the interests of its members. The civil suit can only be filed for violation of the personality of its members and the action is limited to asking for an injunction to avoid an imminent injury, to cease an existing injury or to have a statement that an injury was illegal. In judicial practice, such claims are rare.

As well, the Unfair competition law foresees the possibility for organizations to file a claim if their clients or members are exposed or suffer from unfair commercial behavior. Consumer defense organizations can also file claims under the Trade mark protection law. There are also specific provisions under the Equal treatment of men and women law allowing associations whose goal is to ensure equal treatment in employment or to defend their members against unequal treatment in employment on behalf of their members in an employment discrimination litigation if the outcome is likely to affect a large number of employees.

Furthermore, several administrative or public laws allow associations or organizations to launch action if they are nationally active and pursue an idealistic aim and use their funds to realize that aim.

In 2011, the civil procedural law has been unified on federal level (which was not less than a revolution in our federalistic State). The federal legislator has expressly made the choice not to introduce a class action.

Usually, these persons will entrust their interests to the same lawyer and agree with the opponent that a "leading case" shall be filed and the outcome of that case be a guideline for the (amicable) resolution of the other cases. If they do not have the same lawyer, the judge might propose to the parties to join all similar cases in one proceeding or to suspend all except one case, considered to be a "leading case".

26. TAIWAN

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

27. TURKEY

Every case is dealt with individually. First, in practice, courts take a few cases into consideration as a pilot case and deliberate on factual aspect and decide if further investigation or expert evidence is needed. After factual basis is established, law is applied to this case and detailed reasoning is written. After this, all other cases are concluded accordingly. We have no particular procedural law covering this topic but in practice, courts deal with same cases in a way that, although there is no class action procedure, all of them are treated in the same way practically. After first judgment is upheld by supreme courts, the rest is just about to complete a formality.

28. UNITED KINGDOM

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary on the part of England and Wales.

However, although there is no formal class action procedure in Scotland, multiple actions involving the same subject matter or arising from the same incident may be "conjoined". Sometimes, it is possible for the parties to identify a "test case" which will proceed to a final determination and meantime the other associated actions are stayed. Progress of such cases is at the discretion of the court.

29. UNITED STATES OF AMERICA

Due to the aforementioned responses to questions 1 through 4 inclusively, a response to this question is not necessary.

Report of the Third Study Commission

2016

This year, the Third Study Commission, which is focused on Criminal Law, undertook the study of "The Sentencing of Criminal Offenders." We decided to critically examine one of the most important and difficult tasks that a judge performs, namely the imposition of a sanction upon a person who has violated a criminal law.

In order to facilitate our studies and discussions, a questionnaire was prepared and distributed to the IAJ/UIM member organizations. The questionnaire asked for information on procedures and practices in the member countries on what information, considerations and legal constraints are taken into account when the judge applies a sanction to a criminal offender.

30 responses were received, and all were quite comprehensive. Those countries responding were: Armenia, Austria, Belgium, Brazil, Bulgaria, Canada, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Liechtenstein, Norway, Poland, Portugal, Serbia, Slovakia, Spain, Sweden, Switzerland, Taiwan (ROC), United Kingdom, Uruguay and United States of America.

During our meetings, we debated and discussed the similarities and differences between the countries represented. Specifically, we studied the factors which the judges take into consideration in crafting a sanction, such as the circumstances of the crime, the harm done to the victim, the prior criminal record of the offender, his age, health, family circumstances and whether he has apologized for his misconduct. We also discussed the actual process which judges use in deciding a sanction, such as considering the aforementioned factors, and possibly consulting with colleagues and determining what sanction was applied in similar cases. We then discussed sentencing in specific types of cases, namely drug trafficking and child pornography. Our discussions were fullsome and comprehensive. Every delegate participated. Each described how such sentencing would take place in their home country.

Certain conclusions emerged from our work.

Every country has criminal laws, and every country has persons who violate those laws. It is the task of judges to apply sanctions to the violators. This is a difficult task. It should be difficult. If sanctioning another human being becomes easy, the judge is not doing his or her job well.

In most countries, the judges have significant discretion in choosing a sanction. In choosing a sanction, the judge must consider all aspects of the crime and its effect on the victim and on the community. The judge must also consider the personal characteristics of the criminal.

The sanction which the judge chooses should reflect the seriousness of the crime, the need to promote respect for the law, the need to protect the victim and the community from additional criminal conduct, the goal of deterring others from engaging in similar criminal conduct, and the possibility of rehabilitation of the criminal.

All these considerations, when taken together, constitute the ultimate goal of achieving justice in the court of law. This is a noble goal, and worthy of the hard task the judge undertakes.

All of this requires the judge to acquire as much information as is possible about the crime, the victim and the criminal. Sometimes it is difficult to get the necessary information. But the judge must at least try.

In applying a sanction to a criminal, the judge must also draw upon his or her experience and accumulated wisdom. This is where the profession of judging becomes an art form, because there is no school, no training and no formula that can necessarily tell the judge what the sanction must be. The judge must turn inward, draw upon his or her inner self, and temper justice with mercy. No sanction should be greater than necessary to meet the aforementioned needs and goals.

We found that while the possible sanctions for particular crimes varied from country to country, the factors the judges considered when crafting a sentence were very similar.

All the delegates to the Third Study Commission concluded that, in discussing these matters and comparing systems and practices, they learned some things that will make them better judges.

At the conclusion of the substantive part of our work, it was announced that elections were necessary. All of the current officers of the Third Study Commission indicated their willingness to serve an additional 2 year term. There being no opposition nor other nominations, the following were unanimously re-elected to 2 year terms: Charles R. Simpson III, (USA) President; Dieter Freiburghaus, (Switzerland) Vice President; and Lene Sigvardt, (Denmark) Vice President.

It was the unanimous agreement of those assembled that the Third Study Commission should, in 2017, continue our study of "The Sentencing of Criminal Offenders-Part II".

Our work this year was quite productive, but additional study is needed on the subject. In 2017, we will focus on sentencing in cases of embezzlement and illegal possession of weapons. We will also comprehensively study the treatment of victims of crimes, such as whether the victim

can participate in the prosecution and whether restitution can or should be awarded. We will also study mandatory minimum sentences and how those constrain judicial discretion. Another factor which affects sentencing is the settlement of criminal cases, and that will also be studied in 2017.

Respectfully Submitted,

For the Third Study Commission

Charles R. Simpson III, President

At Mexico City DF, this 20th day of October, 2016

CONCLUSIONS OF THE 4TH COMMISSION

The Commission concludes

1) In the work relationship, which is characterized by legal subordination of the employee vis-a-vis the employer, the rights to protection of privacy and freedom of expression are not absolute.

2) During and outside working hours, the employee is required to comply with his duty of loyalty, discretion and confidentiality with regard to his employer.

Therefore, in case of posting on social networks of inappropirate information touching on the reputation of an employer or information constituting bullying or psychological harassment of another worker, the employee who has publicised the information cannot invoke the protection of his private life or his freedom of expression to avoid disciplinary sanctions.

3) Moreover, it is on the employer who wishes to avoid improper use of its Internet network by its workers to first establish clear and unequivocal guidelines on the use of its network. The employer should inform its workers, at the time of hiring, of the existence of these guidelines.

4) The employee should be aware of the risks of disseminating private information via social networks, to ensure the protection of his privacy when using social networks (1) by adjusting the conditions of confidentiality to access his accounts and (2) by understanding the risks involved when a large number of people have access to his sites.

Topic for next year : Flexible and emerging relationship