

Avocats sans Frontières Italy

The Second Annual Conference and General Meeting The International Association of Anti-Corruption Authorities

Wednesday 21st – Saturday 24th November 2007

PROTECTING THE INTEGRITY OF THE JUDICIAL AUTHORITY FROM CORRUPTION

Honourable Authorities, distinguished Guests, Ladies and Gentlemen, let me pay at first a tribute to Indonesia Hosts who through this charming hospitality are rendering our stay more agreeable and pleasant.

I comply with suggestions given to me and I will restrict my contribution on the integrity of the judicial authority from corruption.

INTRODUCTION

Everyone agrees that in any society the justice system must have the confidence of its citizens and the international community. It is one of the pillars of good governance and civil society

But the judicial authority in any justice system is particularly vulnerable to influence – political, populist, and financial.

The integrity of the judicial authority is guaranteed by its independence from the executive. The machinery to ensure that independence is found in most if not all Constitutions of the world.

But judicial authority must also be supported and protected so that it can dispense justice fairly and without fear of favour or contradiction from outside sources.

THE ITALIAN EXPERIENCE

In Italy we can arguably be proud of a strong, independent judiciary. It has its own hierarchy independent of government. It is fearless in tackling issues which are constitutionally sensitive and sometimes unpopular with the citizens.

But there is a dark negative side to Italy of which many of you are aware. Something that I am not proud to admit. In the report of 2007 by Transparency International the less corrupted countries are Denmark, Finland, New Zealand, whereas the most corrupted countries in Europe are Italy (47 position) and Greece (56 position).

It is within that atmosphere of potential corruption that the Judicial Authority in Italy has to operate.

In Italy, as in many other civil law jurisdictions, the legal process evolves in a very closed and dark environment. It is heavily reliant on paper submissions and hearings “in camera”, procedures are obscure and difficult to follow, length of proceedings, judicial secrecy, and bureaucracy is everywhere for the defendant as well as for the complainant.

In this closed environment there is an ideal climate and atmosphere for corruption to breed. Not necessarily coarse corruption – bribes, etc but much more subtle corruption – favouritism, nepotism, bias, political pressure, listlessness, indolence etc.

Integrity and probity are the cure!

EXPERIENCE IN COMMON LAW JURISDICTIONS

The adversarial system of the common law jurisdictions on the other hand adopts a much more open approach. The maxim “**Justice must not only be done, but seen to be done**” is one of the core principles.

Some of the key features of an oral, adversarial, system:

the public nature of the hearings
the oral testing of evidence by interested parties or their lawyers
the opportunity for the accused to see and challenge his accusers
the robust relationship that there can, and may have to, be between lawyers and the judge
the role played by the rules of ethics and professional conduct in how the lawyers and judges behave
the immediacy of the process once the prosecution and defence are ready for trial.

It is not surprising therefore that in England – with its system of open justice in the public forum no judge in living memory has either been accused or convicted of bribery or corruption.

Nevertheless inside the recent reform of justice the United Kingdom set up a new office inside the Department for Constitutional Affairs the Office of Judicial Complaints. The Constitutional Reform Act 2005 gives the Lord Chancellor and the Lord Chief Justice joint responsibility for a new system for considering and determining complaints about the personal conduct of all judicial office holders in England and Wales and some judicial office holders who sit in Tribunals in Scotland and Northern Ireland. The Office of Judicial Complaints is a new office that was set up on the 3rd April 2006, to handle these complaints and provide advice and assistance to the Lord Chancellor and Lord Chief Justice in the performance of their new joint role.

THE NEED FOR TRANSPARENCY AND THE WAY FORWARD

Transparency is the main weapon against corruption. Of course it cannot prevent corruption but it becomes a much more difficult exercise when everything that is done by the judicial authority is in the openness of court proceedings under public scrutiny – with the parties present and through the eyes and ears of the media present.

Open justice should be the norm not the exception – and by that I mean every aspect of the judicial process should be open to scrutiny. Even the most fascist regimes in history insisted on holding open trials – but they were show trials – hypocritical farces meant to persuade the citizens that justice was being seen to be done when in fact the judicial process had already been corrupted and interfered with along the way.

To avoid corruption of the judicial authority some suggestions:

- Pay judges and publicly funded lawyers properly
- Provide proper infrastructure and support to courts and court services
- Enhance the reputation and standards of the judiciary by continuing professional training and development – do not allow career judges to be lax, cynical and lazy. Professional competence of the judge is one of the essential guarantees of the independence of judiciary
- Raise public awareness of the judicial system – in schools and in other civil structures.

In conclusion if we analyse Basic Principles on the Independence of the Judiciary adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985 and endorsed by General Assembly of UN we are aware that the three means to achieve independence are **transparency, integrity and accountability**.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Thank you for your attention

Paolo Iorio