

CONFERENCES REVIEW NOTE

MOSCOW / ST. PETERSBURG 2014 CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF JUDICIAL INDEPENDENCE AND WORLD PEACE

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The International Association of Judicial Independence and World Peace was founded in 1982 and is one of the best-regarded international legal organizations. The Association unites distinguished academics, practising lawyers, leading experts in law, and senior judges around the world. The work of the Association is focused on drafting international standards of judicial independence, conducting research on judicial independence, supporting a culture of peace in all states, and promoting the ideals of peace, democracy, freedom, and liberty by strengthening and maintaining judicial independence in all its aspects.

The Moscow / St. Petersburg 2014 Conference of the International Association of Judicial Independence and World Peace were organized by the University of Cambridge (UK), Kutafin Moscow State Law University (Russia), Russian Academy of Justice (Russia), Hebrew University of Jerusalem (Israel), the Russian national Law Firm *ART DE LEX* in association with the *Russian Law Journal*. It had two parts. The first was held from May 30–31, 2014 in Moscow. The second part of the Conference was convened in St. Petersburg, June 2–4, and included a visit of the Constitutional Court of the Russian Federation.

The Conference theme was titled 'Judicial Independence as an Essential Foundation of Justice and Peace.' Distinguished legal scholars and practicing lawyers discussed matters related to the current state of judicial power, and the ways of its resolution through five field-oriented sessions: 'Judicial Independence as a Central Foundation of Culture and Peace,' 'Strengthening Individual Independence of Judges and Institutional Independence of the Judiciary,' 'The Impact of Transnational Jurisprudence on Judicial Independence,' 'Judicial Independence, Rule of Law, Justice and Peace,' and 'Continuing Discussion of Mount Scopus International Standards of Judicial Independence.'

Generally, the main objective of the 2014 Conference was dedicated to the issue of strengthening judicial independence as a whole.

The Conference started on May 30 with the Opening Session. In his welcoming remarks to open the Conference, Dmitry Magonya, the Chair of the Conference Organizing Committee, explained the indivisible relationship between the rule of law and judicial independence.

At the Opening Session, the keynote lecture was delivered by the Adviser to the President of the Russian Federation, Retired Chairman of the Russian Supreme Commercial Court, Professor Veniamin Yakovlev. In his speech, he stressed the need for cultivation of the concept of 'Culture of Justice' in the Russian justice system, in connection with the aims of the Association's work. He enlightened the issues regarding the term of office for judges in respect to judicial independence, and also noted the importance of internal ethical principles of each judge to accomplish the goals of sound judicial independence, when implementing the justice.

The next speaker was the President of the International Association of Judicial Independence and World Peace, Professor Shimon Shetreet. Expressing gratitude for the hospitality and the perfect organization of the Russian organizing parties. He also pointed to the high-importance of the Association's work. As an example of this importance, the President of the Association referred to a recent Judgment of the European Court of Human Rights (*Baka v. Hungary*), where the Eur. Ct. H.R. judges cited the Mount Scopus Standards of Judicial Independence, which were drafted by the Association. Further review of the Mount Scopus Standards was one of the purposes of the Moscow Conference.

The brief report of the Chair of the Federal Commercial Court of the Ural District, Professor Irina Reshetnikova given in the Opening Session was devoted to the practical aspects of ensuring judicial independence in Russia today. One of these aspects is the system of allocation of cases between Russian judges. The allocation by the President of cases to a specific court still exists in many regions both in the commercial courts and the general jurisdiction courts. Obviously the automatic allocation of cases guarantees judicial independence more than 'discretionary assignment of cases,' summed up Professor Reshetnikova. It is important to note that

the Supreme Commercial Court of the Russian Federation supported this position in its Plenum Decree, one of the last Plenum Decrees before the planned merger of the high Russian courts.

The next report was given by Christopher Forsyth, Director of Centre for Public Law of the University of Cambridge, another organizer of the event. Professor Forsyth's report was presented as a video-recorded speech. Professor Forsyth stated in his remarks that judicial independence and impartiality are still the main guarantees of the formation and existence of a democratic society. After this presentation the Opening Session came to an end.

Session 2, titled as 'Judicial Independence as a Central Foundation of Culture of Peace,' hosted the performance of highly reputable Russian jurists. The session's moderator was Professor of Lomonosov Moscow State University Dmitry Maleshin. He noted that cultural aspect became very important in recent times not only in the legal sphere, but also in international affairs. Cultural difference is one of the reasons of the 2014 international turbulence, which will be followed with no doubts by legal turbulence. First, international law can't give the exact answer to the Crimea challenge: there are opposing arguments to each legal position. Second, recent international arbitration concerning Russian companies. Any judge is a result of the concrete legal culture. Due to the difference between western and eastern cultural traditions the decision can't be treated as independent if it is based only on one legal tradition (as well as if a decision was prepared by a judge followed only by one legal tradition). Therefore we need to consider cultural difference when we observe jurisprudence in general and judicial independence in particular.

Professor and Rector of the Russian Academy of Justice Valentin Ershov made a speech on 'Legal Certainty as One of Most Important Guarantees for Judicial Independence,' wherein he underlined the problems regarding sources of law, and also clarified several issues on what a judge may and should follow when rendering a decision on a case. Professor Ershov paid special attention to the need of excluding any ambiguities in matters of applicable sources of law for the concrete dispute.

The next report in Session 2 was presented by Professor of Kutafin Moscow State Law University Ekaterina Shugrina. The theme was 'Judicial Independence as a Guarantee of Local Government in the Russian Federation.' Professor Shugrina especially noted that resolving disputes with the participation of municipalities can be fair only under the conditions of full judicial independence, because the independent interests of municipalities (local authorities) can be respected only if judicial authority is real.

Dmitry Magonya, Managing Partner for *ART DE LEX* Law Firm, presented a paper on the theme 'Access to Justice for Socially Disadvantaged Groups of Individuals: Value of Judicial Independence.' In his paper he gave special priority to interaction between social status of litigating participants and capability to influence the

judiciary. Mr. Magonya pointed out that the independence of the judiciary is currently under attack, not only in undeveloped countries in which legal structures are still emerging, but also in developed countries with long traditions of respect for the law, where judicial authorities are exposed to powerful political and economic forces. Judicial independence, he concluded, is an issue in which every lawyer has a stake.

Professor and Vice-Rector of the Russian Academy of Justice Sergey Nikitin observed aspects of conflict of interests during the nomination of Judges. Professor Nikitin reviewed several atypical cases from the practice of the Russian Qualification Board of Judges, where the Board found conflict of interests. Professor Nikitin suggested delivering common approaches concerning the questions of conflict of interests.

The theme 'Strengthening Individual Independence of Judges and Institutional Independence of the Judiciary' was analyzed during Session 3.

Sir Louis Blom-Cooper QC, Bencher of the Middle Temple, Deputy High Court Judge – London, explored the topic 'Judges in Public Inquiries Redivivus [translated, 'renewed'] or Horses for Courses.' He highlighted the legal nature of public inquiries, the procedures undertaken by the specially appointed persons (including, among others, the representatives of judiciary) with the purpose of establishing the truth in matters of high social importance and interest. The main problem lies in the determination of whether the public inquiry is 'quasi-judicial' with its pertinent consequences, or if it constitutes a special form of rendering public administration that has nothing to do with the judiciary. The issue is not otiose, since the judged inquiries were presented within themselves a host of political controversy. The conclusion states that the judge as a member of the Commission of Inquiry should perform her or his duties as a public servant without his or her judicial prejudices.

The speech of Dr. Dato Cyrus Das, Past President of the Bar Association of Malaysia, concerned problems between activities of retiring judges and judicial independence. According to Dr. Dato Cyrus Das, in reality, there are many connections between serving and retired judges. Different jurisdictions have different rules regulating the activity of non-serving judges: some of them restrict all activity of retired judges; others establish a 'cooling off period' for practice. Some states allow retired judges to only be solicitors, not attorneys; other states prohibit post-retirement arbitration activity. Nevertheless the international legal community should think about common list of activities which retired judges can be engaged.

The next part of Session 3 was held by videoconference with Professor Vladimir Yarkov from Urals State Law Academy. Professor Vladimir Yarkov's theme was 'Optimization of Civil Procedure and Independence of Judges.' During his eloquent speech, Professor Yarkov noted the key problems with strengthening judicial

independence in Russia. Among them are: essentiality of increasing the Judge's active role in the process (today Russian judges have no opportunity to render partial judgments); necessity of optimization of the form of judicial action (according to Professor Yarkov, some kinds of cases can be resolved by another authority, rather than by the court).

The delightful speech of Professor H.P. Lee from Australian Monash University had the theme 'Judicial Independence and Judicial Creativity: The Implied Rights Doctrine in Australia.' Professor Lee stated that the Constitution of Australia was broadly borrowed from the British Bill of Rights, so it contains only a modest basis of rights. In light of this, the Australian courts were obliged to create in fact new legal provisions. But according to the Constitution of Australia, the only legislative body of Australia is Parliament. This situation was deemed the 'Implied Rights Doctrine.' Professor Lee showed the necessity of finding balance between judicial independence and judicial creativity.

Italian Professor Giuseppe Franco Ferrari (University of Bocconi, Milan) explained the Italian perspectives of judicial independence. Devoting much of the story to historical experience of maintaining judicial independence in Italy, he also highlighted the modern factors of judicial independence in Italian legislation.

The theme of Sergey Mikhailov from Kutafin Moscow State Law University was 'The Special Knowledge as a Guarantee of Judicial Independence of the Judges of Intellectual Property Court.' His report underlines that special knowledge is the additional guarantee of the judicial independence. A spectacular example of this thesis was establishing of the Intellectual Property Court in Russia one year ago. Special knowledge by its judges allows the demonstration of an outstanding level of judgments.

The discussion continued in Session 4, titled 'The Impact of Transnational Jurisprudence on Judicial Independence.'

Professor Wayne McCormack of the University of Utah indicated several important issues in modern international criminal law during his speech. Firstly, although international norms condemn international crimes, and in some instances create international criminal prohibitions, there is no international enforcement mechanism for any of them. Secondly, there are definitional problems with some international crimes such as terrorism. Thirdly, Professor McCormack noted the issue of applicability of universal jurisdiction and the extent of using military force against pirates on the open seas. As a result, Professor McCormack concluded that the present state of international criminal law needs links between: (1) substantive norms of criminal behavior, (2) supra-state enforcement, and (3) a vibrant and independent international judiciary.

The second speaker of Session 4, Professor of University of Tel Aviv Yitzhak Hadari, reported about resolving international tax conflicts. According to Professor Hadari,

the notion that international tax conflicts must be resolved and the double taxation is avoided has been agreed upon by countries for years, but it is only in recent years that it has been translated into a real international consensus. The modus that has been agreed upon is the mutual agreement procedures in bi-national tax treaties, providing that if no agreement is reached within two years, the conflict must be resolved via compulsory arbitration.

Swiss advocate Gian Andrea Danuser told Conference participants about the historical practice of buying judicial offices in Switzerland. Mr. Danuser observed the Swiss Federal Charter, established in 1291, which is one of the earliest acts concerning standards of judicial independence. The retrospective view of issues of judicial independence seven hundred years ago showed antiquity of principles of rule of law, peace keeping, and mediation.

The topic of Dr. Sophie Turenne from the University of Cambridge was 'Judicial Independence and Accountability: Two Sides of the Same Coin?' Without denying the essentiality of judicial independence, Dr. Turenne distinguished between three types of judicial accountability, which are managerial, political, and social accountabilities. Efficient justice can only be provided in the context of balance between accountability and the independence of judges.

Session 5 of the Conference, 'Judicial Independence, Rule of Law, Justice and Peace' was opened on May 31.

Professor Graham Zellick, President of the Valuation Tribunal for England, touched the theme 'The Challenges of the Independence of the Administrative Justice.' He has had a vast experience of work in the English state institutions, performing as an administrative justice. During his speech Professor Zellick enlightened several principal aspects of ensuring independence in this branch of English justice.

One of the most significant reports was given by Professor Hao Liu from Beihang University (China). Professor Liu analyzed the recent development of judicial independence in Mainland China. Only a short time ago did the Chinese judiciary need to improve its independence in three areas. The Chinese interpretation of judicial independence supposes the independence from political parties, independence from government, and independence from organizational bureaucracy. Before the recent reform, the judges had to be members of the Communist Party of China (a problem of political independence), the courts were financed by local governments (a problem of government independence), and there were many types of ranks and positions among the judges (organizational bureaucracy). For example, judges were divided between 'judges for hearings' and 'decision-making judges.' According to Professor Liu, all of these problems have been almost completely resolved by recent judicial reform.

Professor Sean McConville from Queen Mary College of London attended to the problem of acts of indemnity. The paper explored some of the issues of

access to justice – civil and criminal – for victims and survivors, and discussed the balance between political and judicial imperatives and outcomes. One of the main cornerstones of his speech was discussing the problem of maintenance of judicial independence in a state in the presence of civil war (using the example of Ireland). The opportunity of an independent judiciary in these conditions seems to be elusive.

The next speaker, Artur Zurabyan, Candidate of Science of Law, Head of Dispute Resolution and International Arbitration Practices for *ART DE LEX* Law Firm, focused on the topic 'Correlation between the Right to Appeal Decisions of the Lower Courts and the Principle of Judicial Independence.' In his report, he analyzed the correlation between the rights of higher courts to give mandatory instructions on application and (or) interpretation of legal norms to lower courts with the principle of independence of judges in proceedings and judgment awarding, which says that the courts should pass judgments based on their internal beliefs (rather than on the instructions of higher courts), independent evaluation of evidence, and interpretation of the substantive and procedural laws to be applied. Based on his research, the author concluded that independence of courts in consideration and decision-making is not diminished by the existence of the right of the parties to require review of the judicial act. Moreover, existence of such review procedures gives confidence to the judge that the case must be considered on the basis of his own internal beliefs, evaluation of evidence, and interpretation of the applicable substantive and procedural laws. Even if the court made a good faith error, including a misinterpretation of the law, then this error will be corrected in accordance with the established procedure and it will not be considered as something negative in terms of judicial ethics.

The discussion of Session 6 started with the speech of Professor Jennifer Temkin from City University of London. The theme was 'The Role of the Bar and the Legal Profession in Maintaining the Independence and Accountability of the Judiciary.' Professor Temkin illustrated how the legal profession can influence judicial independence and marked the significant role of individual lawyers, who should bear ethical responsibility.

Professor Andrew Le Sueur (University of Essex, UK) dedicated his speech to the role of lawyers in securing judicial independence. He emphasized that lawyers contribute much to the preservation and consolidation of principals of judicial independence. The individual lawyers make formal undertakings when admitted to the legal profession, as well as when they assume obligations to act accordingly with the codes of conduct and the rules of professional ethics. On the level of national lawyer associations, the representatives of legal profession exercise power as non-state actors, specifically, the speaker defines three types of such power – decisional power, discursive power and regulatory power.

Professor Artem Chetverikov spoke on topic 'Guarantees of Independence of Judicial Authorities of International Unit of Modern States: Comparative Aspects.' In his analysis, Professor Chetverikov shared the experience of operating courts of Integrated Organizations (such as the European Union, Mercosur, EurAsEc, and others). These institutions have common guarantees of judicial independence, such as prohibition of proceedings in case where one of the parties (states) is a state of judge's citizenship and special procedures for recusal of judges.

The President of the Association, Professor at the Hebrew University of Jerusalem Shimon Shetreet offered possible additions to the Mount Scopus Standards of Judicial Independence. Professor Shetreet indicated three main topics for debate that should be focused on at the next conference regarding amendments to the Mount Scopus Judicial Independence Standards: Legal Profession and Judicial Independence, Global Judicial Ethics Code, and Online Justice. In regards to the first topic, the necessity for detailed amendments is caused by an important role played by lawyers and bar associations. Regarding the second topic, it is indispensable to draft a Global Judicial Ethics Code regulating judicial conduct on and off the bench. In regards the last topic, the author thinks that proper guidelines applying to online justice should be drafted since recourse to this procedure is increasing, in particular in cases dealing with uncontested divorce or consumer complaints. In relation to the latter, his propositions include the following: creation of independent officers responsible for handling consumer complaints.

All in all, the Russian judicial system stands now at a historical crossroad. On the one hand, there is a well-defined 'road map' developed in connection with ongoing judicial reform, which contains the legal basis for the action of the 'new' Supreme Court. According to the authors of the reform, the changeover is obliged to strengthen the judicial system, to increase its effectiveness, and better the availability and quality of Justice.

On the other hand, the Russian judicial system is facing uncertainty – it is not clear what real problems face the modified judicial system, and also it is unknown if the merging of two systems, the state arbitrazh courts and the courts of general jurisdiction within the supervision of the 'new' Supreme Court, could ensure the proper level of judicial protection, both for citizens, as well as for investors and businesspeople.

This is why it seems to be crucial in the current situation to explore the opinions of the world-leading legal theorist concerning the experience of different jurisdictions in the matter of securing judicial independence.

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