

Conferenza Internazionale degli Organi giudiziari di controllo: partecipazione del C.S.M.
(Fasc. 72/IR/2006 relatore Dott. ROIA)

La Commissione propone al Plenum di approvare la seguente delibera:

«Il Consiglio Superiore della Magistratura,

- premesso che in data 11 e 12 giugno 2007 si è svolta a Budapest la prima Conferenza Internazionale degli Organi Giudiziari di Controllo dell'area balcanica alla quale hanno partecipato rappresentanti dei Consigli di Giustizia di Albania, Bosnia e Herzegovina, Bulgaria, Croazia, Kosovo, Romania, Serbia, Slovenia e Ungheria oltre alla rappresentanza del Consiglio Superiore Italiano composta dal dott. Fabio Roia, Presidente della Sesta Commissione e dai consiglieri avv.ti Ugo Bergamo e Vincenzo Siniscalchi;
- che scopo della conferenza, la quale ha assunto, per decisione di tutti i componenti, una struttura stabile al fine di consentire uno studio reciproco dei sistemi giudiziari dei Paesi aderenti per favorire uno scambio molteplice di conoscenze anche nell'ottica di offrire dei riferimenti ordinamentali agli Stati che stanno realizzando e definendo il processo di costruzione di un assetto costituzionale e giuridico ispirato ai principi di separazione dei poteri e di indipendenza dei magistrati da altri centri decisionali;
- che nell'ambito dei lavori è stato in particolare studiato il sistema giudiziario ungherese il quale evidenzia le seguenti caratteristiche:
 - a) il Consiglio di Giustizia, composto da 24 componenti tutti eletti dal Parlamento fra i quali 15 rappresentanti della c.d. società civile e 9 giudici scelti in una rosa di 40 aspiranti a loro volta eletti dagli stessi giudici, non rappresenta il vertice di un vero e proprio sistema di autogoverno, che manca nelle forme decentrate, e riguarda l'amministrazione dei soli giudici; risulta avere competenza in materia di:
 - a1) proposte di controllo per la spesa destinata ai procedimenti giudiziari
 - a2) controllo delle corti
 - a3) proposta di leggi che riguardino la giustizia,
 - a4) nomina e formazione dei giudici
 - b) è stato di recente costituzionalizzato (tra il 1997 ed il 2002 durante un processo riformatore del sistema giudiziario) il principio della indipendenza della decisione del giudice;
 - c) la struttura del Pubblico Ministero - autonoma rispetto al corpo dei giudici ed al potere politico per dettato costituzionale- risulta indipendente secondo una importante tradizione giuridica che è

oggetto di profondo dibattito (instauratosi dal 1990) tendente a ridimensionare l'assenza di controlli sul corpo dei magistrati dell'accusa, atteso che il solo Procuratore Generale è nominato a maggioranza dal Parlamento mentre i singoli Pubblici Ministeri vengono nominati a loro volta dal Procuratore Generale. La totale autonomia risulta particolarmente accentuata nel processo penale laddove l'ufficio del Pubblico Ministero ha la possibilità di rifiutare la denuncia di reato se la ritiene infondata oppure di ordinare l'investigazione che può essere, discrezionalmente sulla base delle singole valutazioni e senza alcuna interlocuzione con il giudice, sospesa, eliminata o mutata a seconda delle risultanze acquisite dalla polizia giudiziaria. Invero una potenziale notizia di reato può arrivare o meno all'attenzione processuale del giudice soltanto a seguito dell'iniziativa libera del Pubblico Ministero che risponde soltanto sul piano del comportamento deontologico. La struttura gerarchica dell'ufficio dell'accusa -che risulta dalla nomina diretta dei magistrati da parte del Procuratore Generale- sembra attenuata nella quotidiana esperienza giudiziaria pur sussistendo un obbligo di riferire sulla singola investigazione da parte del magistrato inquirente al diretto superiore.

- osservato che all'esito della Conferenza i Paesi presenti hanno sottoscritto l'allegata dichiarazione congiunta (All. A) con l'impegno di trasmetterla alle organizzazioni internazionali ed ai rappresentanti dei Governi locali con l'obiettivo di creare un comune sentire giudiziario anche nell'area dell'Europa balcanica;
- rilevato inoltre che la Romania è stata designata come Paese ospitante la seconda conferenza internazionale che si terrà a Bucarest nella primavera del 2008 su un tema che dovrà essere definito dal componente ospitante -al quale compete l'organizzazione dell'evento sia sotto il profilo tematico che preparatorio- avendo la delegazione italiana indicato come tema di interesse i rapporti fra pubblico ministero e giudice nell'ambito dell'area dell'autonomia di entrambi gli attori del processo;
- osservato che allo stato non devono essere compiute ulteriori attività oltre a quelle di doverosa informazione dei lavori svolti e dell'accordo siglato ai Ministri di Giustizia e degli Affari Esteri del Governo italiano;

approva l'operato della delegazione italiana nell'ambito dei lavori della prima Conferenza Internazionale degli Organi Giudiziari di Controllo dell'area balcanica;

tanto premesso, il Consiglio

delibera

l'archiviazione della pratica, con trasmissione della presente delibera al Ministro della Giustizia ed al Ministro degli Affari Esteri».

Whereas the processes of judicial reform in conference participant countries;

Determined to abide by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, which provides that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”;

Recalling the basic principles of independence of the judiciary adopted by the United Nations General Assembly in 1985;

Further recalling the recommendations of the Council of Europe Committee of Ministers on the independence, efficiency and role of judges R (94) 12 of October 1994;

Reaffirming the basic principles of the European Charter on the status of judges adopted at a multilateral meeting on the status of judges in Europe organized by the Council of Europe in 1998;

Emphasizing the provisions of the Universal Charter of the Judge adopted by the Central Council of the International Association of Judges in Taiwan in 1999;

Desiring to express a joint commitment to the development of an independent, efficient, professional and responsible judiciary as the foundation for the establishment of a democratic society;

Respecting specific features and different legal framework of the judiciaries in conference participant countries and the transition process which is underway in many of these countries.

Authorized representatives of the judicial regulatory bodies of

Albania, Bosnia – Herzegovina, Bulgaria, Croatia, Hungary, Italy,
Kosovo, Romania, Serbia and Slovenia

at the International Conference of Judicial Regulatory Bodies held

on June 11 and 12, 2007 in Budapest, Hungary

proclaimed as follows:

JOINT STATEMENT

1. An independent judiciary is the fundamental pillar of democracy in any society. In order to establish an independent judicial system it is necessary to have independent judges who can be appointed and relieved from duty only by an independent judicial regulatory body; or upon the exclusive recommendation of the judicial regulatory body by the supreme organ of popular representation or its personification. It is desirable to have the principles of judicial independence regulated in constitutional provisions. Legislative and executive organs must not have competencies which are in conflict with the principles of judicial independence.

2. Judicial organs are best placed to know the manner in which judicial systems operate problems which arise with the functioning of the judiciary, the reasons for such problems and the best manner in which to address such problems. Interference by the legislative and executive organs may limit judicial development and could possibly undermine the independence of the judicial system. Thus, the governments of conference participant countries are recommended to establish a legal framework which allows judicial regulatory bodies to be the main proponents of judicial strategy, its implementation and impact control.

3. It is recognized that governments have an interest in the proper functioning of the judiciary and that the judiciary must expect constructive criticism and respond to it. The conference participant countries remind governments and political leaders that criticism that is motivated by partisan political concerns or is expressed in inflammatory language is itself an attack on the independence of the judiciary. Governments and political leaders who support the independence of the judiciary will refrain from such attacks.

4. Self regulation in judicial affairs should become one of the principles on which an independent judiciary is built. Court administration and regulatory activities, enactment of general and separate documents necessary for judicial functioning need to be in the purview of independent judicial regulatory bodies. Adherence to this principle would allow for true independence and responsibility in respect of the judicial sector.

5. Stable and equitable financing of the judiciary is one of the most important elements towards the establishment and maintenance of an independent and stable judicial system. Judicial budgeting needs to be within the competence of an independent judicial regulatory body which proposes a budget only after a “needs analysis”. Such a budget must ensure equal allocation amongst all the courts – the budget beneficiaries. Financing of the whole judiciary from one budget, created by an independent judicial regulatory body must be the principle for judicial financing in any country. Judicial financing must not serve as a source of political pressure which can be used to influence the work of the courts and politicians are called upon to shun such activities. Not only financial independence of the judicial system, but also the salaries and allowances of judges are part of judicial independence. Hence a judge is entitled to have at least middle class living standard. This shall be guaranteed by the Judicial Career, which automatically involves a fair wage that is protected against inflation and a reasonable retiring allowance, the ensuring of which shall be the task of the government in power.
6. Provisions of the Declaration shall refer to prosecutors as well where the constitutional system and laws of the particular country allow it.
7. Participants of the first international conference of judicial regulatory bodies wholeheartedly welcome events such as this and commit themselves to organizing similar conferences every year in one of the participant countries.

On behalf of the High Council of Justice of Albania

On behalf of the High Judicial and Prosecutorial Council of
Bosnia and Herzegovina

On behalf of the Supreme Judicial Council of Bulgaria

On behalf of the Judicial Council of Croatia

On behalf of the National Council of Justice of Hungary

On behalf of the Judicial Council of Italy

On behalf of the Kosovo Judicial Council

On behalf of the Superior Council of Magistracy of Romania

On behalf of the Judicial Council of Serbia

On behalf of the Judicial Council of Slovenia

**Protocol of the Joint Statement adopted at the International
Conference of Judicial Regulatory Bodies held on June 11 and 12 2007
in Budapest**

The participants of the Conference agreed that all of the signatory countries shall interpret the Joint Statement in accordance with their own judicial and constitutional system and laws.

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In terms of the independent judiciary the Conference emphasized the importance of the request that the judges and the prosecutors shall exclusively be guided by the legal statutes and other laws.

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The Italian delegate informed the Conference that the Judicial Council of Italy was founded in 1958, it will celebrate the fiftieth anniversary of its existence in 2008. The delegate offered the experience gathered by the Council in the past to the participants of the Conference. He also gave brief information about the Italian judicial reform process which will result the separation of the prosecutorial system from the judicial system.

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The delegate of Kosovo emphasized that the participating countries must deal with the same problems even under different circumstances. He informed the Conference that in Kosovo the prosecutorial system operates independently from the judicial system and gave information about the structure of the Kosovo Judicial Council having been established 6 years ago and about the UN support. Furthermore, he proposed that the Joint Statement should contain the term that the judiciary should operate, sui generis manner, on the basis of the authorization of the law.

The President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina congratulated the Italian delegation on the occasion of the fiftieth

anniversary and emphasized the importance of the experiences of the Italian colleagues for those countries who must deal with the problems of transition. He pointed out that at the time when the idea came up to organize such a Conference, the Italian Council was invited to send its representatives to the Conference just because of having a great deal of experience. Afterwards he introduced in detail the structure of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. He emphasized that the judiciaries should operate as self-governing systems.

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The delegate of the Judicial Council of Serbia informed the Conference about the structure, operation and obligations of the Council which has been operating for 6 years. He pointed out that as the new Constitution came into force the organization became a constitutional institution. The right to elect the judges is the responsibility of the Parliament. He raised the question whether supervisory bodies of the judicial regulatory authorities do exist in the participating countries.

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The delegate of the Judicial Council of Italy informed the Conference that in Italy in order to avoid the confrontation with the Ministry of Justice as part of the judicial independence the salary-raising of the judges is regulated by the law.

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The delegation of Romania informed the Conference that in Romania the judges and the prosecutors have the same legal status, their organizational structure is united therefore he stated that where the Joint Statement refers to 'judge' or 'judges' the word 'magistracy' should be used and instead of the word 'court' the word 'judiciary' should be used in the Statement.

The participants of the Conference emphasized that the prosecutors do not belong to the judicial regulatory organizations in every country, in some countries the prosecutors' offices operate completely independently from the judicial organization and the meaning of the word 'magistracy' is not interpreted in the same way in all of the participating countries.

The delegate of Kosovo proposed that every country should interpret the Joint Statement in accordance with its own judicial and constitutional system.

The delegate of Italy also pointed out that because of the different judicial structure of the participating countries the Joint Statement should be drawn up in such a general terms that make the adoption of the Statement by every participant possible.

The delegate of Croatia referred to explanatory regulation of Article 15 of the Universal Charter of the Judge mentioned in the Preamble of the Joint Statement emphasized that the regulation relates to prosecutors as well.

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According to the above the participants of the Conference agreed to apply the interpretation principle ruled in the first paragraph of the Protocol that makes the adoption of the Joint Statement possible under the differences deriving from the specific features of the legal system of the different countries.

The participants determined that the Protocol constitutes an integral part of the Joint Statement in order to help the correct interpretation and application of the Joint Statement.

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On the subject of the point 4 of the Joint Statement the participants of the Conference agreed that this point should be completed as follows:

‘Internal court administration and regulatory activities, enactment of general and separate documents necessary for judicial functioning need to be the sole responsibility of the independent judicial regulatory bodies’.

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On the subject of the point 5 of the Joint Statement the Conference wanted to emphasize that if the judicial financing is not satisfactory it endangers not just the independence of the judiciary but the whole function of the judiciary as well.

The Joint Statement was unanimously adopted by the Conference and ceremonially signed by the delegates of the participating countries.

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The participants agreed that the Joint Statement should be put to use by the member states themselves in their own country and they may submit the Joint Statement to their organizations and institutions at their discretion.

The Conference mandated the organiser, the Hungarian National Council of Justice to submit the document to international organisations such as the International Association of Judges, the competent organ of the European Union, etc.

Each participant may make proposals via e-mail about further international organisations to which the Joint Statement shall be sent as well (E-mail address: sarkozyp@oith.birosag.hu and/or ujkerycs@somogy.birosag.hu).

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The participants of the Conference agreed that in the future the International Conference of Regulatory Judicial Authorities will take place once in a year, always in May.

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The participants of the Conference agreed that the next conferences will be organized by a different country each time. The next International Conference of Regulatory Judicial Authorities will take place in May 2008 in Bucharest, Romania.

The contact person of the Romanian party is judge Ms Ana Cristina Labus representing the Superior Council of Magistracy of Romania (E-mail address: analabus@csm1909.ro).

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The participants of the Conference agreed that besides Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Italy, Kosovo, Romania, Serbia, and Slovenia the following countries shall be invited to the next conferences: Macedonia, Montenegro and Turkey.

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21 June 2007

The protocol was made by

Dr Cecília Gulyás

The protocol was attested by

Dr Csaba Ujkéry,
Delegate of the Hungarian National Council of Justice,
Chair of the Conference