

sion, he must share the sum earned for the operation carried out.

Without doubt equity is a noble value respected in this country, where the bailiff is above all "a social and human being".

### **In Esztergom, a rural and industrial town, two independent bailiffs are still subject to the supervision of the court.**

It was in Esztergom, a town with a population of 35,000 and still with a rural atmosphere, that we visited a firm, which was less modern than the previous one but entirely indicative of the liberalism which is taking root.

Two independent bailiffs, a man and a woman, were working in the same room, together with two secretaries.

Our hosts remind us of some basic principles concerning Hungarian judges and bailiffs.

With regard to the judges, these are appointed by the President of the Republic for a prescribed length of time. On the other hand, if the bailiff wishes to be appointed elsewhere, he must submit his application to the National Bailiffs Institute, which transmits this to the presiding judge, who selects the best in accordance with the number fixed by the Ministry of Justice.

Since 1985, the bailiff has had the power to seize everything, movables or immovables, and not just money.

As for seizures carried out in Esztergom, these are more industrial in nature than agricultural. In disputes, complaints and tax problems are generally submitted to the presiding judge. Until 1985, the debts of the state cooperatives gave rise to a seizure of money only, but since then the bailiff has had the power to seize everything.

Accordingly, in view of the mutual obligations and requirements of the bailiffs and the court, supplementary work is necessary in order to correct errors and progress together in the same area.

It should also be noted that 10 or 15 years ago the number of disputes was certainly on the increase but today the increase is exponential. Given that a bailiff receives approximately 100 files, alternating with a colleague, he finishes the year with 600 cases.

Finally, the presiding judge of the Esztergom court must notify disputes to the court of the administrative area, which imposes the penalty. There is thus a special court composed of two judges and three bailiffs competent for this.

### **On the track of the last state bailiffs**

Thanks to the exceptional permission granted by the Ministry of Justice and particularly to the assistance of the Vice-Minister of Justice, Ms Edith Papacsy, we were able to visit the place of work of the bailiffs of the Budapest Court.

Today there are three bailiffs working for the court, i.e. half as many as before 1994. There are two large adjoining rooms off a deep corridor, one furnished with long wooden desks, which is the office of the three bailiffs, the other being the room where books are collected and registered.

The procedure is divided into four basic stages :

- The bailiffs receive the document from the Court.
- They establish a list of the names of the debtors, giving a number to each in order to distribute the addresses according to the administrative area.
- Then comes the stage of registering the books.
- Then the bailiffs receive the judgment.

With regard to payment, three kinds of salary exist:

The basic salary, 20% of the basic salary pro rata to the supplementary operations carried out and finally a seniority bonus.

From January to September the number of operations dealt with on average by each bailiff varies from 1000 to 1600. Furthermore, the method of payment and reimbursement of expenses is different in the case of an independent bailiff and that of government employee.

For example: For a government employee, the act of going to the place in question costs him 700 forints, i.e. about 42 francs (6 francs = 100d forints) which are not advanced but are reimbursed. In the same way, to open a debtor's door the bailiff must advance 5000 forints, i. e. about 300 francs, reimbursable a posteriori.

In short, this flying visit in search of the last government employed court bailiffs, in the final bastion of communism still sealed off from the outer world, left us meditative but relatively optimistic as to the spontaneous eradication of the system. So we shall only talk of these government-employed bailiffs as a distant memory of times long gone by!

### **First General Assembly of the Hungarian Bailiffs in the Carpathian basin.**

The first General Assembly of the independent Hungarian bailiffs took place in the mountain range of the Carpathians. Truly a "summit" meeting between the first president of the National Institute of the Bailiffs of Hungary, Mr. Miklos Krejniker and the delegation of the Union comprising Maître Jacques Isnard, President and Maître Baudouin Gielen, Secretary-General.







## The genealogy of the corporate body of bailiffs.

Mr. Jacques Isnard, that expert orator, took us in his initiatory speech through the maze of the history of the bailiffs.

But basically what is left of this living past if not an open future in which Roman law continues to exercise its hegemony ?

Nobody questions the necessity of a homogenous legal authority less than the Hungarian bailiffs, who are more than ever ready to collaborate in building a united Europe.

Four great essential historical themes were dealt with by Mr Jacques Isnard :

- The Roman privilege : 15 centuries have passed since the power of execution was granted to the first bailiffs, called "Viatores", "Executores" or later in the 4th Century, "Libellus", mediator in the service of the judge.

- The increase in the exercise of powers of the independent bailiff due to the Decree of 14th June, 1813, making him the holder of an office and granting him the powers to carry out the activities of a public servant.

- The enumeration of the two foundations on which the status of the independent functions of the bailiff are based : on the one hand, the principle of double liability, financial in the case of his own errors and criminal in the case of violations committed by him in the exercise of his activity and, on the other, the responsibility of supervision of the activity of bailiff by the Public Prosecutor's Office. As well as instancing the various areas in which the bailiff intervenes.

Finally, the specific nature of the bailiff's diploma in France and Belgium (4 years after matriculation), not forgetting the driving force of the International Union and the

member countries all over the world.

## Questions put to the first President of the National Institute of Independent Hungarian Bailiffs : Towards harmonization of legal regulations.

**UIHJ Magazine :** Maître Miklos Krejniker, you are the first president of the National Institute of Hungarian Bailiffs. When was the National Institute founded, what is its composition and, finally, what are its aims ?

**Maître Krejniker :** A Bailiffs Institute was founded in 1991 but reorganized a year ago as soon as the bailiffs became independent again. The fact is that in the course of the last 40 years, state-employed bailiffs did not have the opportunity of coming together in an institute. Furthermore, the present National Institute, whose members are necessarily the bailiffs, was created by law. The role of the Institute is to see to it that the rights of the bailiffs are protected and to transmit their problems to the Ministry of Justice and the Courts. Furthermore, the National Institute assesses the suitability of candidates for the profession and in the event of a court case against a bailiff it must defend him.

However, our initial experiences are not always favourable. For in addition to our work for the Institute we must also carry out our activity as a bailiff. It is more a struggle than a job for the moment and in the last instance an honour.

The activity of the National Institute must be accepted by the Ministry of Justice. In fact, the officers of the Committee elect the members of the Bailiffs Institute. Every member has his own office

with only one secretary for everybody. On the Committee there is a president, two vice-presidents and seven members. Each administrative area has a representative, in all 40 representatives. Finally, the Committee and the president are elected for 3 years. Two vice-presidents and two assistant vice-presidents assist the president.

There is also an accounts committee which supervises the financial activities of the Institute. Bailiffs are required to pay subscriptions. It is a minor sum which must be increased in order, among other things, to be able to pay our subscription to the International Union. But this must wait until the forint becomes convertible.

**UIHJ Magazine :** President, what problems do you encounter within the Institute and more generally in the profession ? In short, what for you is the internal and external future of the independent Hungarian bailiffs ?

**Maître Krejniker:** Problems are often the result of poor application of the laws by the bailiffs in their practice, such as seizures carried out in an approximate way. The bailiff is therefore compulsorily insured, as an essential condition for the exercise of his activity, against the consequences of his writs in the event of embezzlement.

With regard to the external policy of our National Institute, this consists in the first instance in submitting our application for membership to the International Union. However, our limited financial resources and the language difficulties oblige us to limit our ambitions. We hope nonetheless to achieve close contact with the international organizations.

It must be remembered that in Hungary there are only 180 bailiffs, of whom 6 are women, for a population of 10 million. Our first goal is to achieve a total of 300 with this status.







Furthermore it has been difficult to assess the number of writs served since the creditor has had to advance the costs of execution. About 30% of creditors do not advance this sum or else they only pay 6 months later. However, one can say that in Hungary the number of writs increases every year. The proof is that the procedure is becoming so onerous that creditors often no longer have enough money to finance the operation.

It should be realized that the number of writs is really increasing, from some 250,000 to 300,000 cases per annum.

However, over the years, until the law on liberalizing the profession, writs accumulated in vain. We have the statistics for Austria, where a million writs are served every year. Here, in this country, as economic life develops, we are following the same path and hope to have in the next two years a figure of 300 bailiffs.

But we are confronted with the basic problem of the parallel necessity of unifying the status of bailiffs, which at the moment is very incoherent, including 3 or 4 extremely heterogeneous systems with the social security or customs taxation system.

In the cases instanced, it is the bailiff who will act and perhaps a figure of 1,000 bailiffs may be reached ! Such a venture can only be carried out successfully if the reimbursement of the social security system is carried out through the intermediary of the bailiff.

The major problem is the disparity between the number of bailiffs, which is too little, the excessively high number of debtors, who are often unemployed, and a fragmented legal and judicial system handing out unsuitable penalties which do not contribute to an efficient economy. One proof of this is that in Hungary the debtor is informed by post and not by the bailiff, who

unfortunately is deprived of his traditional task of "mediator-player".

## **Conclusion : "From the end of the old state bailiff to the new Hungarian independent bailiffs".**

Before leaving Hungary, we were received by Ms Edith Papacsy, Vice-Minister for Justice. The International Union took advantage of the occasion to make proposals for collaboration with the Hungarian Ministry of Justice.

Three key ideas were developed by Mr Jacques Isnard :

- A retraining course for Hungarian bailiffs in order to increase their expertise.

- The desire of Hungary to become associated, since the 1993 Congress in Paris, with a draft agreement to modify the stipulations of writs, with Hungary in a European perspective. The idea of contact with the experts of the French Ministry of Justice was put forward.

- Explaining that if the legal system is properly organized, an illicit "mafia"-type system of justice can be avoided.

Ms Edith Papacsy took note of this and accepted the proposals of the International Union. In Hungary, she explained to us, there was within the Ministry a department for bringing Hungarian laws into line with European standards, a task entrusted to the Minister of Justice as a result of a recent law.

## **"The independent Hungarian bailiffs or the new leaders of Central Europe."**

The Vice-Minister expresses a desire to become part of the Inter-

national Union from an early stage. But the financial contributions of the Ministry still remained very modest, in view of the economic situation which continued to be precarious ; all the more so as the present economic stabilization programme was accompanied by a certain reduction of ministerial budgets.

In short, this wind of economic reform unfortunately still made it impossible for the Ministry of Justice to grant financial assistance to the experts of the International Union.

However, Mr Jacques Isnard reiterated his plan for association with Hungary, explaining this from two points of view :

- First, the desire of the International Union to include Hungarian experts in discussions concerning legal procedure and enforcement.

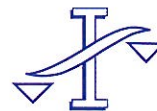
- Finally, concrete assistance in putting new structures into place in Hungary, especially by facilitating exchanges through training courses in Belgium or in France. In this respect, there was an existing "FAR" programme, already taken up by Slovakia, which facilitated aid to the former Eastern bloc countries in a European framework.

In concrete terms, the meeting between the members of the International Union and the Ministry of Justice was highly successful and led to mutual understanding. In the same way, mentioning the European Writ of Execution (EWE) as well as the IT Data Exchange programme (ITDE) in the perspective of a common project in Europe only highlighted once more the necessity of "optimal cooperation" between the members of the International Union.

All our hopes are now turned towards Hungary, which has everything that it takes to become the new pioneer country of Central Europe.







# Colloque international

## 7/10 novembre 1995. Séance d'ouverture



**De la vieille ville jusqu'au quartier de Miramar, tout au long des 7 kms de son large front de mer en arc de cercle, baigné par l'écume des Caraïbes, La Havane étale tout le prestige de son passé, un passé riche d'histoire et d'aventures et fort de sa culture.**

La Havane fut, sans doute, une grande et belle ville. Il faudra désormais entreprendre un vaste chantier de rénovations pour redonner à la capitale cubaine son lustre d'antan.

Le palais des congrès, tout près des majestueuses résidences, siège de la plupart des ambassades, est un immense bâtiment moderne inséré dans un cadre verdoyant et bucolique.

Les manifestations à caractère scientifique s'y succèdent à une cadence effrénée. Hier la médecine, aujourd'hui le droit, demain...

En la circonstance, il s'agissait de la première rencontre internationale traitant de la protection juridique des droits de l'homme, organisée par le Parquet Général de la République de Cuba. Vingt-cinq pays étaient représentés. Le colloque s'est ouvert par un dis-

cours du Docteur Escalona, Président du Comité d'organisation, Procureur de la Nation et Conseiller d'Etat. Celui-ci brossait un tableau rétrospectif de la situation politique à Cuba en dénonçant les effets néfastes de l'embargo sur l'économie et la population cubaine, et en affirmant la volonté de Cuba de s'ouvrir toujours plus largement vers les autres nations.

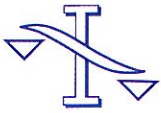
L'orateur devait exprimer le souhait que le colloque soit, non seulement le siège d'un foyer d'intenses réflexions académiques, mais aussi le carrefour privilégié de rencontres entre les délégations présentes.

Le temps fort de cette cérémonie d'ouverture fut incontestablement l'intervention du Ministre des Affaires Etrangères, M. Roberto Robaina. Intervention vigoureuse, dans le propos, marquée par quelques passages parti-



Réception de l'UIHJ par le D. Escalona, Procureur Général de la Nation (4<sup>e</sup> depuis la droite)





Cour d'Appel de La Havane - Délégués : au centre la délégation de l'UIHJ, à l'extrême droite M. Leclubier Directeur-adjoint de l'ENM

culièrement critiques visant notamment de grandes puissances du globe dénoncées pour asservir les petits pays et griefs destinés aussi aux organisations humanitaires qui, sous le couvert de leurs actions, contribuent "à favoriser l'emprise des pays riches qui mettent à genoux les pays pauvres".

Sur l'échiquier planétaire de la protection des droits de l'Homme, le ministre cubain des affaires étrangères définissait Cuba comme un pays fondamentalement attaché aux valeurs démocratiques revendiquant, à cet égard, un leadership au sein des nations qui s'attelaient à développer les droits essentiels des peuples dans les domaines des droits de l'Homme, de l'égalité des citoyens, des libertés publiques...

Tempérant la généralité des propos tenus à l'égard de certaines associations soupçonnées de nourrir de sombres desseins, M. Robaina se félicitait de l'intérêt manifesté par quelques organisa-

tions étrangères venues témoigner sur le sol national cubain de leur soutien aux efforts déployés par le gouvernement dans ces domaines particulièrement sensibles, renforçant en cela la conviction des dirigeants de La Havane à poursuivre, par une aide inconditionnelle, leurs interventions en faveur des peuples opprimés.

En conclusion, l'intervenant devait mettre l'accent sur le dogme cubain de la démocratie et sur l'esprit de sacrifice et de solidarité de la population à la défense de la culture contemporaine.

## Rencontres

Le colloque de La Havane a été l'occasion pour l'U.I.H.J. de nouer de nombreux contacts avec les représentations étrangères.

La délégation de l'Union comprenait:

- Le Président Jacques Isnard
- M<sup>e</sup> Dominique Hector

- M<sup>e</sup> Dominique Aribaut.

Mme Catherine Sargenti, Présidente du tribunal d'instance de Pointe-à-Pitre, s'était jointe à la délégation.

Une première séance de travail a été programmée avec l'"Union Nacional de Juristas de Cuba" au siège de cette dernière. Un large échange de vues s'est opéré avec M. Arnel Medina Cuenca, Président.

Les statuts de l'Union ont fait l'objet de nombreux commentaires. Par ailleurs, la délégation cubaine s'est montrée vivement intéressée par les explications fournies par l'exercice de la profession d'agent chargé de l'exécution et encore davantage réceptive au statut de l'Huissier de Justice en vigueur en France et au Bénélux.

L'exécution des décisions de justice à Cuba est le fait des magistrats eux-mêmes. Cette situa-





*Délégations de l'UIHJ et de juristes de la Chine, conduite par le Vice-Ministre de la Justice*

tion pose de graves problèmes et le Gouverneur de Cuba est préoccupé par les nécessaires réformes qu'il entend entreprendre dans ce domaine.

Un échange de documents est intervenu pour permettre à l'instance compétente de l'association de procéder à une analyse des dispositions applicables dans les pays à statut libéral. La délégation de l'Union a encore été reçue au siège de la Cour par le Premier Président de la Cour d'appel de La Havane (hors ville) pour une réunion d'information à laquelle assistait également M. Daniel Lecrubier, Directeur adjoint de l'Ecole de la Magistrature à Bordeaux en mission à Cuba. Par ailleurs, de nombreuses informations ont été données aux Premiers Présidents et Procureurs Généraux de Cuba, tous affichant

un vif intérêt pour la profession d'huissier de justice, dont l'équivalent est inexistant à Cuba. Enfin le Docteur Escalona, Procureur Général de la nation a convié, en présence de ses collaborateurs, la délégation de l'Union à un déjeuner d'échanges de vues.

La mission de l'UIHJ a encore réalisé deux conférences d'information sur la profession d'Huissier de Justice d'abord avec les représentants de la Colombie et ensuite avec les membres de l'imposante participation de la République de Chine dirigée par M. Zhao Hong, Vice-Président de la cour Populaire Suprême de Chine.

Il est indiscutable, pour tous ces pays où les fonctions d'Huissier de Justice sont inconnues, que les caractéristiques qu'offre un profes-

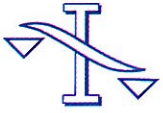
sionnel dont les fonctions regroupent parfois trois, quatre, voire cinq activités différentes suivant les systèmes judiciaires en vigueur, suscitent une particulière sensibilité dans la mesure où le système en vigueur, notamment chez les Huissiers de Justice libéraux, est de nature à renforcer l'efficacité des mesures d'exécution.

Il semble, en effet, qu'un peu partout dans le monde toutes les sociétés souffrent d'une carence plus ou moins grave dans l'exécution des décisions de justice.

A n'en pas douter, le régime inspiré des bases de l'organisation judiciaire Franco-Bénélux en matière d'exécution des titres et celui du statut de l'Huissier de Justice auxiliaire du juge suscitent un puissant mouvement attractif.







# ***E**l evento en La Habana del 7 al 10 de noviembre 1995*



***El evento en La Habana que se desarrolló del 7 al 10 de noviembre 1995 fue para la UIHJ un momento importante del año 1995.***



*Le théâtre national à La Havane*

Una delegación compuesta del Presidente J. Isnard, M<sup>e</sup> Dominique Hector, M<sup>e</sup> Dominique Aribaut Abadie y de la Señora Catherine Sargenti, Magistrada Francesa, Presidente del Tribunal de Pointe-à-Pitre, asistieron al primer evento sobre la Protección Jurídica de los derechos de los ciudadanos.

Durante estos días, los representantes franceses tuvieron muchos contactos tanto con los magistrados, los juristas como con altas personalidades del

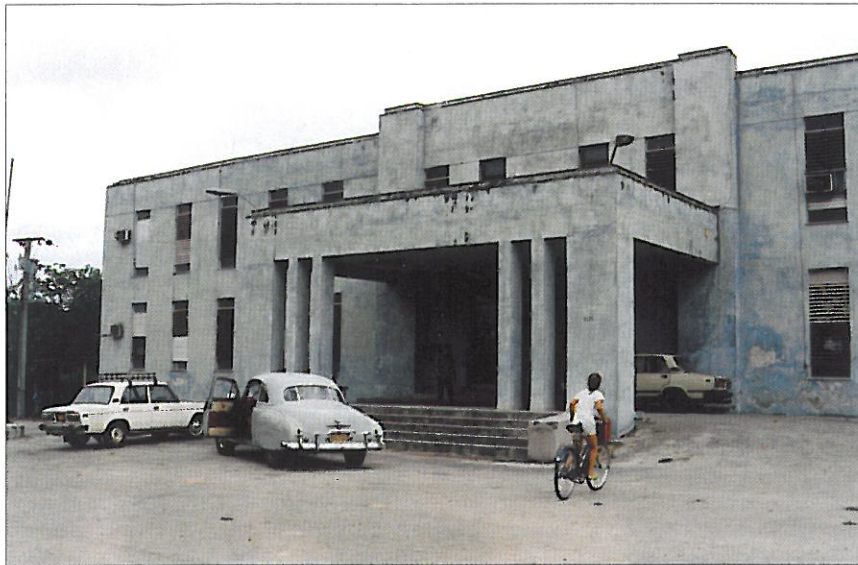
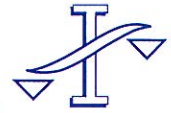
gobierno cubano, como el Doctor Escalona, Fiscal General de la Nación que nos reservó una cordial acogida.

La primera entrevista fue con el Presidente de la Union Nacional de Juristas de Cuba, el Señor Arnel Medina Cuenca.

El Presidente Medina Cuenca estuvo muy interesado por nuestro estatuto y sobre todo por nuestras funciones de agente de la ejecución y auxiliar de justicia.







*Cour d'Appel de La Havane - Palais de Justice*

Hay que precisar que en Cuba las sentencias son ejecutadas por los jueces. El Presidente Medina Cuenca es consciente de que este sistema tiene muchos fallos. Particularmente cuando la sentencia está dictada por un juez y tiene que ser ejecutada por otro.

Además, la ejecución representa un trabajo importante y es un cargo suplementario para los jueces.

Durante esta fructuosa entrevista quedamos de acuerdo en intercambiar documentos e ideas durante los meses a venir.

Después nos recibió el Presidente del Tribunal de Apelación del partido judicial de La Habana. Asistió también a esta entrevista el Director de la Escuela de Judicatura francesa, el Señor Daniel Lecrubier.

Un intercambio muy interesante sobre nuestra profesión se desarrolló durante más de dos horas. Fue expuesto el sistema francés de la ejecución con

sus modalidades. El señor Daniel Lecrubier insistió mucho sobre nuestra ayuda permanente del juez como auxiliar del juez. Los magistrados cubanos estuvieron muy sorprendidos por la agilidad y la rapidez del sistema.

Además de todos estas entrevistas con los cubanos, tuvimos una serie de contactos con otras delegaciones, como por ejemplo

la delegación colombiana y china que participaban activamente en el evento.

A estas dos delegaciones les explicamos la meta y el objeto de nuestra profesión, las delegaciones estuvieron de acuerdo para decirnos que nuestra ponencia sobre el sistema de la ejecución les interesaba mucho porque el sistema tenía muchos fallos en sus países respectivos.

Insistieron sobre todo en el papel de la justicia, que a pesar de dictar la sentencia tiene que dar al enjuiciado todos los medios para que sean ejecutadas las sentencias.

Porque si no hay ejecución, no vale la pena dictar sentencias.

Después del congreso en Canadá, este coloquio permitió a la UIHJ cruzar de nuevo el Atlántico para dar a conocer a los países de la zona del Caribe y a los de América del Sur, las ventajas del Huissier de Justice liberal europeo.



*Le Capitole*

