

NATIONAL JUDICIAL ACADEMY



NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES [P-1107]

6th – 12th September, 2018

**Program Coordinators- Mr. Sumit Bhattacharya and Ms. Ankita Pandey,
Faculty**

National Judicial Academy, Bhopal

List of Resource Persons

S. No.	Name	Designation
1.	Hon'ble Mr. Justice Kurian Joseph	Judge, Supreme Court of India
2.	Hon'ble Mr. Justice Navin Sinha	Judge, Bombay High Court
3.	Hon'ble Mrs. Justice Meenakshi Madan Rai	Acting Chief Justice, Sikkim High Court
4.	Hon'ble Mr. Justice Sunil Ambwani	Former Chief Justice, Rajasthan High Court
5.	Hon'ble Mr. Justice Sanjeev Sachdeva	Judge, Delhi High Court
6.	Hon'ble Mr. Justice Ram Mohan Reddy	Member, Krishna Water Disputes Tribunal, Ministry of Water Resources, RD and GR
7.	Hon'ble Mr. Justice R. C. Chavan	Former Judge, Bombay High Court
8.	Hon'ble Ms. Justice Roshan S. Dalvi	Former Judge, Bombay High Court
9.	Hon'ble Mr. Justice R. V. Easwar	Former Judge, Delhi High Court
10.	Hon'ble Mr. Justice S. Nagamuthu	Former Judge, Madras High Court
11.	Dr. Sudhir Kumar Jain	Principal Judge, Family Court, West, Tis Hazari Court, Delhi
12.	Mrs. Renu Sharma	Former District Judge, Bhopal

13.	Prof. V. K. Dixit	Visiting Professor, Kathmandu University School of Law
14.	Prof. (Dr.) Sarasu Esther Thomas	Professor of Law, National Law School of India University, Bangalore
15.	Dr. Prem Kumar Agarwal	HOD Post Graduate, Dept. of Law, Hoogly Mohsin College
16.	Mr. Atul Kaushik	Additional Secretary (Retd.)
17.	Dr. Abhishek Yadav	Department of Forensic Medicine, All India Institute of Medical Sciences (AIIMS)
18.	Dr. Harish Shetty	Psychiatrist

PROGRAMME SCHEDULE [P- 1107]

DAY 1 06th Sept 2018 Thursday	<u>SESSION 1</u> 10:00 AM – 11:30 AM Constitutional Vision of Justice	T E A	<u>SESSION 2</u> 12:00 PM – 01:30 PM Role of Courts in a Constitutional Democracy	L U N C H	<u>SESSION 3</u> 2:30 PM – 4:00 PM Adherence to Core Judicial Values	T E A
DAY 2 07th Sept 2018 Friday	<u>SESSION 4</u> 10:00 AM – 11:30 AM Courtroom Technology: Use of ICT in Courts	B R E A K	<u>SESSION 5</u> 12:00 PM – 01:30 PM Managing the Docket: Court and Case Management	B R E A K	<u>SESSION 6</u> 2:30 PM – 4:00 PM Law of Precedents: Identification and Application of <i>Ratio Decidendi</i>	B R E A K
DAY 3 08th Sept 2018 Saturday	<u>SESSION 7</u> 10:00 AM – 11:30 AM Law relating to Cyber Crimes: Advances and Bottlenecks		<u>SESSION 8</u> 12:00 PM – 01:30 PM Electronic Evidence : Collection, Preservation and Appreciation		<u>SESSION 9</u> 2:30 PM – 4:00 PM Forensic Evidence in Civil and Criminal Trials	

<p>DAY 4 09th Sept 2018 Sunday</p>	<p><u>SESSION 10</u> 10:00 AM – 11:30 AM Judging Skills: Framing of Charges</p>	<p><u>SESSION 11</u> 12:00 PM – 01:30 PM Judging Skills: Art, Craft and Science of Drafting Judgment</p>	<p><u>SESSION 12</u> 2:30 PM – 4:00 PM Art of Hearing: Promoting Rational Discourse in the Courtroom</p>
<p>DAY 5 10th Sept 2018 Monday</p>	<p><u>SESSION 13</u> 10:00 AM – 11:30 AM Role of Courts in Securing Gender Justice</p>	<p><u>SESSION 14</u> 12:00 PM – 01:30 PM ADR and Plea Bargaining</p>	<p><u>SESSION 15</u> 2:30 PM – 4:00 PM Simulation Exercise and Discussion</p>
<p>DAY 6 11th Sept 2018 Tuesday</p>	<p><u>SESSION 16</u> 10:00 AM – 11:30 AM Occupational Stress in Judges: Identification and Consequences of stress</p>	<p><u>SESSION 17</u> 12:00 PM – 01:30 PM Managing Judicial Stress: Institutional Strategies and Techniques</p>	<p>Local Visit</p>

<p>DAY 7 12th Sept 2018 Wednesday</p>	<p><u>SESSION 18</u> 10:00 AM – 11:30 AM Impact of Media on Judicial Decision Making</p>	<p><u>SESSION 19</u> 12:00 PM – 01:30 PM Sessions Trial : Fair Processes</p>	
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P-1017: National Orientation Programme for Junior Division Judges

A seven day orientation programme was organized for the junior division judges from 6th to 12th September, 2018 at the National Judicial Academy, Bhopal. The programme was designed to facilitate participant officers share experiences and views, better appreciation of the judicial role, responsibility of judicial officers in a constitutional democracy, recent developments in juridical thinking and technological advances relevant to accreting performance standards and to deliberate on several aspects of law and practice relevant to enhancing the quality of performance. The idea was to provide participants a unique platform to share experiences and assimilate best practices.

DAY 1

Session 1 - Constitutional Vision of Justice

Speakers - *Justice Ram Mohan Reddy & Prof. V.K. Dixit*

The session began by discussing with introduction of 'Justice' that could be explained in the context of constitutional vision. The framers of the constitution had socialist ideology and as the word "socialist" has been incorporated in the preamble, these liberal theories of justice had been incorporated within its body as our constitution aims at social revolution. All these features of the Constitution promote justice (social, economic and political) which the Constitution assures to its citizens. Both the criminal as well as civil law are dealing with social, economic and political justice. Further, it was remarked that there are two concepts of equality i.e. formal equality and proportional equality. The former means that law treats everyone equal and does not favor anyone either because a person belongs to the advantaged section of society or to the disadvantaged while the latter expects the state to take affirmative action in favor of the disadvantaged sections of the society within the framework of liberal democracy. It was referred that part IV of the Constitution would also in one way or the other fall within the purview of judicial review though there is no mention found in our Constitution. It is one of the pragmatic concept of bringing about social economic justice. Thus it could be stated that an idea of a just and egalitarian society remains one of the foremost objectives of the Constitution.

Session 2 - Role of Judiciary in a Constitutional Democracy

Speakers - Justice Ram Mohan Reddy & Prof. V.K. Dixit

The judicial system is a part of the political process and it has been considered as the protector or custodian of rights of the citizens. The judiciary under our Constitution is watchdog of the Constitution. It looks into both law making and the law implementation by the other two wings of the Constitutional democracy. The functions and role of these institutions are essential for successful operation of Constitutional democracy in our country. It instills in the people the feeling of trust and confidence in the citizens towards the judicial system. Further, the doctrine of separation of powers was discussed and it was stated that it becomes significant to prevent too much concentration of power in the hands of the government. There are two important pillars of constitutional democracy i.e. rule of law and respect for the minorities. It was remarked that personal prejudices must never come in the functioning of the judges as the very concept of justice is lost if judges are partial.

Session 3 - Adherence to core judicial values

Speakers - Justice Ram Mohan Reddy & Prof. V.K. Dixit

The session focused on the judicial values that must be adhered to by the judicial fraternity at all levels. Some of these values are: (a) Independence - A judge should exercise the judicial function independently on the basis of the assessment of facts and in accordance with a conscientious understanding of the law, free from any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason; (b) Impartiality - It is essential to the proper discharge of the judicial decisions. It applies not only to the decision itself but also to the process by which the decision is made; (c) Integrity - The behavior and conduct of a judge must affirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done; (d) Propriety - A judge shall in his personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality; (e) Equality - Ensuring equality of treatment to all before the courts is essential to due performance of the judicial office; (f) Competence and Diligence - The judicial duties of a judge take precedence over all other activities. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

DAY 2

Session 4 - Courtroom Technology: Use of ICT in Courts

Speakers - *Justice Sunil Ambwani, Justice R.C. Chavan & Mr. Atul Kaushik*

The session was dedicated towards the introduction of the use of Information and Communication Technology (ICT) in the courts. The session began with an insight of what ICT is and how it is useful in bringing transparency in the courts. The discussion went on to analyse the historical background of the Information Technology and its arrival to the courts in India with special focus on the achievements of Phase I and II of the e-Courts project. Further, the following benefits of ICT were highlighted in the course of discussion:-

- ICT provides facilities for presentations in courts instead of arguments and also makes video-conferencing possible.
- Introducing ICT to the courts can make the service of processes easier and allow the lawyers to address while sitting in their own offices.
- ICT can enable lawyers to be present different matters in different courts, thus achieving time management.
- Digitized petitions will be introduced wherein the petitions could then be filed from the lawyer's office.
- ICT would ensure a setback to corruption prevailing in the judicial system.

Discussing the way further it was stated that e-Committee has paved the way for phase-III in which technologies such as 5G application, artificial intelligence, augmented reality, machine translation, mobile collaboration, speech recognition will be implemented to ensure a more transparent and accountable judiciary.

Session 5 – Managing the Docket: Court and Case Management

Speakers - *Justice Sunil Ambwani & Justice R.C. Chavan*

The term “management” suggests judicious deployment of resources including human resource for optimum output. The session included discussion on how judges and court administrators must work together and coordinate their efforts in key areas of court administration and management. Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office. It was also pointed out that behaviour of the judge in the court is the

one of the most important aspect in court management. Handling disruptive persons, aggressive lawyers, reluctant witnesses, sluggish staff, would go a long way in effective disposal of cases. The judge presiding over a court must monitor unnecessary delays and ensure that there are no uncalled for adjournments. The use of ICT is another way to support and automate case management practices of courts.

Session 6 - Law of Precedents: Identification and Application of Ratio Decidendi

Speaker – Prof. V.K. Dixit

Chair - Justice R.C. Chavan

In order to appreciate the law of precedents, the hierarchy of courts must be clearly established and there must also be a proper reporting system in place. It was explained that precedent is a judicial decision which in itself is a principle. The underlying principle which forms its authoritative element is often termed as the ratio decidendi in a particular case. In other words, ratio is that part of the judgment which was absolutely necessary to resolve the said dispute. The concrete decision is binding between the parties to it. In order that an opinion may have the weight of a precedent, two things must concur i.e. 1) an opinion by a judge and, 2) an opinion the formation of which is necessary for the decision of a particular case. Thus, the law of precedents play a very important role in the decision making process of a judge and help the courts to stand as an adequate means in the disposal of the judicial administration system.

DAY 3

Session 7 – Law relating to cybercrimes: Advances and Bottlenecks

Speakers - Justice Navin Sinha & Justice Sanjeev Sachdeva

The session illustrated the history of internet and enlightened the participants on the pros and cons of social media. The current figures of users of social networking are quite astounding. Around 90% of the world population use Facebook or other social networking sites such as WhatsApp, Twitter etc. It has been seen that children below the age of 18 have accounts on various social networking. An inclusive account of the kind of cybercrimes was projected in detail such as –unauthorized use of trademark; identity theft; unauthorised use of copyright; defamation issues; disclosing of confidential data; corporate espionage; cyber bullying. It was stressed that one of the pragmatic problem is that the government does not own cyber space, and it is rather owned by private companies, henceforth, control over the technology crimes becomes all the more intricate. On how the evidence can be collected from social networking sites the case *United States v. Joshua Meregildo* was cited .Discussion on process to block , deregister a website and as to what is to be done by the judges in this regard was also deliberated upon.

Session 8 – Electronic Evidence: Collection, Preservation and Appreciation

Speakers - Justice Navin Sinha & Justice Sanjeev Sachdeva

The session highlighted the impact of digital footprints and appreciation of electronic evidence in contemporary times was established. It was emphasized that it is not conclusive in nature. Such types of evidence are generally found in storage device, digital files etc. Electronic evidence is classified into two types –volatile evidence and non-volatile evidence. It was iterated that before a digital evidence is accepted in a court of law, its relevance, veracity and authenticity must be ascertained. The concept of computer forensic is termed as a sequence of packets in a computer network and it explains the digital artefact. Significance of Meta data helps in establishing the originality of any electronic evidence was discussed with many visual examples and it was stated that on front end it is created by the user and the machine creates it at the back end. It was explained that section 65B certificate is only required while producing secondary evidence of the copy of the original and not when the original itself is being produced. Further, the requirement of section 65B certificate being procedural can be relaxed by the court whenever the interest of justice so requires. It was suggested that while

appreciating evidence three things are to be kept: - standard of proof, source of authenticity and best evidence rule.

Session 9 – Forensic Evidence in Civil and Criminal Trials

Speaker – *Dr. Abhishek Yadav*

Chair - *Justice Sanjeev Sachdeva*

This session was divided into three parts- issues relating to the potency test, the problem of negative viscera reports and with the legal aspects of DNA profiling. The issues relating to potency arises in civil cases such as adoption, validity of marriage and divorce; and in criminal cases such as rape, sodomy, molestation and other types of sex related offences. DNA becomes relevant in adjudicating matters relating to identification, disputed paternity/maternity, abduction, inheritance, adoption, rape, murder etc. DNA as an evidence is scientific and unbiased and is thus highly reliable. The use of DNA in cracking down a case was demonstrated through a number of high profile cases such as the Rajiv Gandhi assassination, Sheena Bora murder, Arushi Talwar and Hemraj murder, Bodhgaya blast, Delhi gang rape, Priyadarshini Mattoo murder, etc.

DAY 4

Session 10 – Judging Skills: Framing of Charges

Speakers – Justice Meenakshi Madan Rai & Justice S. Nagamuthu

Chair – Justice Kurian Joseph

The session focused on the skills necessary for correctly and accurately framing of charges. The purpose of framing a charge was asserted to the judicial officers. It was underscored that framing of charges is a cardinal judicial activity which cannot be delegated. It not only for informing the accused precisely about the accusations against him/her, but also enabling him/her to prepare best for defense. Simulation and hypothetical problem solving exercise was performed and analysed during the session. It was stated that charges are framed at two stages 1) investigation & 2) inquiry. The differences between ‘common intention’ and ‘common object’ was discussed and clarified. The material bases of framing of charges were discussed as police report, document, examination of the accused, medical report, statement of witnesses. It was asserted that as provided by the apex court in *Ramakrishna Redkar v. State of Maharashtra*, 1980 Cri LJ 254 (Bom), in a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters.

Session 11 – Judging Skills: Art Craft & Science of Judgment Writing

Speakers – Justice Meenakshi Madan Rai & Justice S. Nagamuthu

Chair – Justice Kurian Joseph

It was asserted that judgement is the ultimate asset of the court as an institution. It is indicative of the working of the judicial mind, the judge’s approach, his grasp on issues of facts and law involved in the case, his analytical skills and the depth and breadth of his knowledge of law. The judgement is the clearest index of the personality of the judge. It is a product of long practice and persistent perseverance. It was suggested that language of the judgement must be simple, and must not be equivocal or vague, precedents or irrelevant quotations from arguments must be avoided as citation. A judgement must ensure the narration of facts, framing of issues, analysis of the evidence and must ensure that the flow of the language is clear, logical and coherent.

Session 12 – Art of Hearing: Promoting Rational Discourse in the Court Room

Speakers – *Justice Meenakshi Madan Rai & Justice S. Nagamuthu*

Chair – *Justice Kurian Joseph*

Hearing is the most important activity that a judge has to do in the court. Thus, it must be so inculcated in his lifestyle that it becomes an inseparable part of his demeanor as a judge. The skill and the art needs continuous and conscious practice so that it inevitably enables him or her to simultaneously filter and focus on what should (not) be heard which would affect the judgement. It was deliberated to listen to the arguments advanced, sort the facts which are deemed relevant to be adjudicated, weed out the irrelevant points which might influence the decision in any way, dispassionate hearing without personal prejudices must be practiced. The session was focused on how to develop the art of hearing by a judge with the purpose of reaching to the most appropriate conclusion. It was suggested the continuous process of elimination of the unimportant, prejudicial, impertinent, and distracting fractions of deliberations must be mastered by a judge to help him/her reach out a reasoned decision or opinion.

DAY 5

Session 13 – Role of Judge in Securing Gender Justice

Speakers – Justice Roshan Dalvi & Prof. (Dr.) Sarasu E. Thomas

The session was aimed to sensitize the judges as to how to secure and promote gender justice in their capacity as a judge. It was emphasized that the single most important virtue which is basic to ensure gender justice is ‘appreciation’ of a women in her various roles and facets. It is more important than any other value viz. identity, dignity, equality etc. From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society. Despite having so many enactments dealing with women atrocities, and judgments of the apex court enabling protection of women the societal condition of women has not improved to the level wherein she is actually at par with her more dominant counterpart. It was discussed that gender justice is eminent because of the evolution of the institution of family from joint family on one end to surrogate motherhood on the other. The causative factors of dysfunctional family were discussed which included ego, generation gap, communication gap, disparity in backgrounds, expectations. In cases of battered women, it was explained as to how to word a protection order in an injunction plea. It was emphasized that in cases of child custody it is the child rights and the best interest of the child which has to be considered not that of the parents and the guardians. In cases of joint custody, the concept of custody must be more meaningful rather than limiting to mere access. Custody of the child must lead to value addition to the child via responsible parenting. It was insisted that compensation to a victim women is a must by it is not often enough, hence it is the role of the courts to help her take charge of her life in a dignified way to ensure meeting of the ends of justice. It was emphasized that justice should not to be gender blind but gender sensitive.

Session 14 & 15 – ADR and Plea Bargaining & Simulation Exercise

Panel – Justice Roshan Dalvi, Dr. Sudhir Kumar Jain & Prof. (Dr.) Sarasu E. Thomas

ADR system which is an alternative to the typical civil and criminal judicial system provides with a resolution which is essentially win-win for the contesting parties, as against the win-lose model often seen in a typical trial process. Mediation was argued to be the preferred ADR. The basic difference between Mediation and Conciliation was dealt with, wherein in the former model the external doesn’t proposes solution to the disputant parties and is neutral but the later

may propose the positive solution and actively participate to help dispute resolution between the parties. It was suggested that the judge may also attempt to shift from mediation to conciliation if the situation so demands, thereby exhibiting flexibility. The concept of Med-Arb i.e. a hybrid model of both mediation and arbitration was discussed enlisting the benefits of the process. The types of suits which may be transferred to the *Lok Nyayalayas* was discussed which included, Motor accidental claims, Land references, Banking related suits, Summary suits, Family disputes, Section 498A IPC cases, Section 138 NIA cases, or for that matter any other issue by consent of the parties. Typically speaking cases suitable for ADR include, Possession suits or recovery of possession, Specific performance, Commercial disputes, corporate litigations, Matrimonial disputes like maintenance, custody of children. It is the discretion of the courts or tribunals to considering such matters for referring them to ADR for much speedier, socially acceptable amicable solutions saving enormous adjudicatory time and money.

The process of plea bargaining was discussed as an emerging and steadily accepted concept in India. A process wherein the accused may bargain with the prosecution for a lesser punishment. In simple words, Plea Bargaining is an agreement (contract) between the accused and the prosecution regarding disposition of the criminal charge levelled by the prosecution against the accused. In layman's language, it is bargaining done by the accused of a serious and severe offence, with the authority for a lighter punishment in lieu of a full-fledged trial. The concept is slowly but surely catching up in Indian criminal law jurisprudence. The sessions included hypothetical exercises to make participants aware of aspects and procedures to be followed by them under a controlled simulated situation.

DAY 6

Session 16 & 17– Occupational Stress in Judges: Identification and Consequences of Stress & Managing Judicial Stress: Institution Strategies and Techniques

Speakers – *Dr. Harish Shetty & Dr. Prem Kumar Agarwal*

The sessions were interactive and participative in nature. The speakers focused on clinical approach to deliberate on the subject matters. Deliberation was made to understand what is “stress”? What are the stressors? What are the commonly identified stress triggers amongst the judicial officers? What is work-life balance? How can it be achieved? It was explained that stress is a reaction to a stimuli and not *per se* the issues or problems that triggers them. It was explained that 21st century leaking bucket hypothesis on “emotional wealth” and “emotional equity” are two vital objectives which needs to be nurtured to develop control over reactions propelling stress. While discussing various ways to reduce or control stress, it was suggested that slowing down one’s autonomic nervous system is a cardinal way to reduce stress. It was suggested that one needs to consciously adopt practices to reduce stress. A few ways to do the same included, Abdominal breathing; Sleeping; Meditation; Mindfulness activities; Exercise; Journaling; Laughing; Reframing negative experiences into a more positive light; Doing activities that we enjoy; Spending time with those we love and being present etc. Explaining emotions it was deliberated that “anger” is a positive emotion as compared to “aggression” which is negative emotion. It was underscored that “peace is difficult to find within, but impossible to find outside”. It was shared that whenever one is not happy, and he/she tracks back and analyzes to look out for the reasons, (s)he must be able to find out one out of the following two bases: a) either (s)he is comparing or b) (s)he is not living in now.

DAY 7

Session 18 – Impact of Media on Judicial Decision Making

Speakers – Justice R.V. Easwar & Ms. Renu Sharma

It was stated that freedom of press should neither degenerate into a license to attack litigants and close the door of justice, nor can it include any unrestricted liberty to damage the reputation of respectable persons. It was remarked that freedom of expression is not absolute, unlimited or unfettered. The judges being human they are occasionally motivated by considerations other than an objective view of law and justice. No judge is completely impervious from the influence of the hype created by the media. The media must exercise self-regulation. It is expected of persons at the helm of the affairs in the field of media to ensure that the trial by media does not hamper fair investigation, and more importantly does not prejudice the defence of accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

The Reardon Report and the Medina Report on assessment of impact of media was discussed. In order to stifle free speech and comments on the court, even an occasional exercise of the power of court to punish the condemners is enough to deter most persons from saying anything that might prejudicially affect any trial proceeding or tend to transgress the natural justice principles.

Session 19 – Fair Trial Procedure

Speakers – Prof. S.P. Srivastava & Ms. Renu Sharma

Chair – Justice R.V. Easwar

It was underscored that fair trials are the only way to prevent miscarriages of justice and are an essential part of a just society. The right to a fair trial has long been recognized by the international community as a basic human right. A fair trial is very important as it decides the fate of entire case. Attributes of fair trial was discussed. It was insisted that witness must be examined and cross examined on the same day as it would significantly reduce chances of witnesses turning hostile. A major problem for denial of fair trial is the contradiction between the said fact and writing those facts in records. Inability of the witnesses to understand a question posed by an advocate often leads to incorrect or inconsistent depositions, wherein judges need to enable the witness by helping him to properly understand the question posed. In *Mohd. Hussain v. State* [(2012) 2 SCC 584] the judgement was questioned on the basis of

incompetency of advocate that he was not sufficiently experienced to conduct such complicated case. The matter was referred to 3 bench judges and another council was appointed to prevent denial of the fair trial. In *Mohd. Ajmal Amir Kasab v. State of Maharashtra [(2012) 9 SCC 1]* where it was observed that the accused should also be provided with defense council from the date of arrest itself to appreciate fair trial. In *Asha Ranjan v. State Bihar AIR 2017 SC 1079* Sahabuddin was convicted for murder. During trial he threatened witnesses by outside means in consequence of which all witnesses turn hostile. A petition was preferred to Supreme Court of India and Sahabuddin was transferred to another jail reasoning that if he continued to remain in Shiwan fair trial could not be conducted.