

Session 7.1

Teaching the Art of Listening, Reading and Judging within a Judges Panel
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- 1 Ladies and gentlemen, I would like to start with a story. The topic is the art of listening. I would like to start with an old story which was taken from the Old Testament. This is a story about King Solomon. His father, King David, was about to die and out of the four children it was Solomon that was chosen to succeed him and become the next king of Israel. In those old times, kings used also to function as judges. They still had not heard about Montesquieu or his idea of separation of powers. I think that you will learn it from the story that almighty God thought that to function as a judge is much more difficult and much more responsible than functioning as a king, and God felt that he would like to compensate Solomon for the hard work that he was about to perform. One night in the dreams of Solomon God was talking to him, and told him as follows: 'look, Solomon, as a judge you will have much work to do, so I would like to compensate you. Just ask whatever you like and I am going to give it to you. For instance, would you like to have a lot of gold? Would you like to be very rich? Ask for it. Would you like to be strong? Would you like to have a strong army, a large empire? Ask for it. Would you like to have many women? Just ask for it'. Solomon's reply was, and I daresay still is, one of the most beautiful pieces of culture and morality in human history, even though it was concentrated into two words only. Solomon told God, 'please God, give me a listening heart to judge your people'. A listening heart. And the listening heart is what I am going to talk about.
- 2 First of all, when we talk about listening we have to distinguish between hearing and listening. Hearing is a relatively simple process of reception, of auditory signals, of sounds, and we use mainly our ears for this purpose. Listening is a much more complicated process. It is a real active mental process and we have to use not only our ears but also our mind, maybe our soul, maybe even our eyes while looking at the body language of the speaker. It is not easy to learn how to listen. Listening is difficult. Why is it difficult? It is difficult because there are so many obstacles. There are external obstacles. I am not going to talk about them. There are many inner obstacles, some of them physical, some of them mental.
- 3 When we talk about physical obstacles, first of all we have to think about the disability of deafness, deaf judges. We know that in several countries we may find deaf judges sitting on the bench, or members of juries, for instance, in the United States of America, in New Zealand, in Germany, in some other countries. The dilemma still exists because on one hand, at least for the last two or three decades, we have tried to advance, to promote, to encourage the international movement for human rights and patients' rights and disabled rights, but on the other hand parties in a case may justly claim, and say, 'why, we also have rights. Our right is that able people will deal with our case'. They may say, 'why don't you raise this human rights argument when you start to employ pilots, when you licence truck drivers, or if you ask for the support of a neurological surgeon?'

- 4 When I talk about deafness, it reminds me of the sarcastic reply of a judge in South Africa. Justice Young was his name. He was asked one day whether a person who suffers from both deafness and muteness should be allowed to sit on the bench was, 'why not? His deafness is an advantage for himself, because he doesn't have to listen to the boring arguments of stupid lawyers. And his muteness will be an advantage for everyone else because it is an ideal to have a silent judge sitting on the bench'. When we talk about disability there is the phenomenon, medically speaking, of the sleeping judge. Now, we have to make the distinction because if it is a real medical illness, and there are people, not only judges, who suffer from this illness, then I do not regard it as a real problem because in such a case if it is a matter of illness then either the judge should retire or should be fired. But this is a very rare situation.
- 5 The other case, which is much more common, derives from the phenomenon of tiredness, fatigue. I think that I am one of the oldest judges in this hall so I can tell you that from time to time, magistrates, young judges come and ask for my advice or tell me about their problems. Of course, the most common problem is that they get so many cases every morning; dozens of files are delivered to their chambers and they have to deal with it. It is so heavy, so difficult. They would like to be diligent, some of them would even like very much to show everyone that they are very diligent. But anyhow, they are sitting on the bench from eight o'clock in the morning till eight o'clock, or ten o'clock in the evening, expecting to be praised and commended. When I talk with them I try to convince them to stop it. To refrain from working such long hours because sometimes I really believe this is not something for praise but it is an abuse of our mission, abuse of the judiciary because nobody, no human being, is able to sit down for such long hours, non-stop, and be attentive, and be able to listen, and to deal properly with these cases.
- 6 When I talk about sleeping judges, drowsy judges, maybe I would dare also to talk about another obstacle which I myself call the 'hostile ego', the judicial hostile ego. Too many judges regard themselves as supermen. They know everything, or at least in the courtroom they know everything, or at least in the cases that they deal with they know much more than the lawyers and the parties and the experts and the witnesses, and so on and so forth. This brings me to the question, what really is the aim of listening? What is the purpose of listening?
- 7 The common answer is, the collection of information, and this is right. It is necessary that one listen to the testimonies of the witnesses because at some juncture you have to make up your mind about the factual findings. The factual findings are needed for final factual decision-making, so this is correct but this is not the only aim. First of all, if I as a judge am aware from the very beginning of the case till its very end, about everything which occurs during the case, of course it will be much easier for me, it will be much more efficient to navigate, to lead the case from the beginning to the end in the proper manner. But there is something which is, for me, much more important.
- 8 You know, we used to say that every judicial system in a democracy depends, is founded, on the trust and confidence of the people. It is needed for its existence, for validation, for its power, for its authority but the question is, how is it possible to get the trust and the confidence of the people? I think that there are, among other things, two factors. The first factor is, of course, that our decisions are reasonable. The second factor is, when the parties leave our courtroom they leave it with a feeling that the reasonable decision has been made in a proper way. What is meant by 'proper'?

It means that the whole case has been conducted justly, fairly, honestly, and with respect.

- 9 This reminds me of another story, again taken from the Old Testament. This is a story, a very important anecdote about the prophet Moses. Moses led the Israeli people from Egypt to the land of Israel and in the middle of the journey God ordered him to establish, for the first time in history, a judicial system for the people and to activate it. Moses was confronted with a very difficult dilemma: what are the criteria? What should be the qualifications for appointing a judge? The Old Testament provides us with not less than seven different criteria. For instance, a judge should, first of all, be knowledgeable, meaning that he should know the law. This is not enough. A judge should be intelligent. What does it mean, 'intelligent'? It means that he will be able to use a certain rule of law according to the specific circumstances, of time, space and so on. A judge should be honest. A judge should be courageous, independent.
- 10 But, ladies and gentlemen, for me personally the most important trait, the most important qualification, is the following one: every judge should be, what we call in our language or in our slang, a *mensch*. What does this word mean? I do not know. Maybe a human being, or if this is not enough, a loving human being. Which means that in the heart of every judge we should find, among other things, some empathy, mercy, love, feelings, sensitivity. Every judge should be sensitive to the sensitivity of other people, which means their feelings, their difficulties, their pain and suffering, their interests. To summarise it in two words, as old Solomon did three thousand years ago, every judge should have a *listening heart*.