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ENCJ PROJECT TEAM

Timeliness Report 2010-2011



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TIMELINESS

REPORT

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Project Team on Timeliness

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1. INTRODUCTION

The Project Team on Timeliness was established by the European Network of Councils for the Judiciary (ENCJ) in June 2010. The members of the working group include representatives of 14 member countries: Belgium, Denmark, England and Wales, France, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, Scotland, Slovenia and Spain, as well as representatives of 4 observer countries: Austria, Finland, Germany, and Sweden. The Project Team was chaired by Mr. Niels Grubbe, Denmark.

The Project Team in the report presents an analysis on the various solutions used within the ENCJ for meeting the problem of long processing times, but the Report does not contain a detailed description of the situation in each State or a detailed comparative analysis. Based on the analysis, the Team in the report has included a list of recommended actions that may be taken to improve timeliness.

The project on Timeliness is a continuation of three former ENCJ reports¹:

- “Quality Management May 2008” with an appendix (register on quality management)
- “Quality Management Report 2009-2010. Quality Management and its Relation to Transparency and Access to Justice” with an appendix (updated and supplemented register on quality management)
- “Quality and Access to Justice 2009-2010” with an appendix (register on access to justice).

The Project Team sent out a Questionnaire on Timeliness to all ENCJ Members and Observers asking both for statistics on processing time and for information on how each country had addressed the issue of timeliness. It was left open to each respondent to decide how much detail they wished to include in their answers to the questionnaire. Additionally, the Project Team decided that it was not necessary for the respondents to include in their answer a description of systems also used by other countries. It was sufficient that the idea had been presented by one respondent. The answers to the Questionnaire have served as an important source of information for the analysis in the Report, but they are not directly included or discussed. The answers do, however, contain an extensive amount of information and they are therefore accessible at the ENCJ website.²

When collecting information for the report the Project Team decided to address the Questionnaire to Councils for the Judiciary and Court Administrations who are the actual members of the ENCJ. The bodies addressed were only to give information that they were able to gather within their own competence and thus not gather information from other national bodies administering courts in other legal branches. The Project Team also decided to focus on receiving information on best practices, which the councils knew that the courts used, and to focus on ordinary criminal and civil cases.

¹ The reports are published at the ENCJ website (http://www.encj.eu/index.php?option=com_content&view=category&layout=blog&id=13&Itemid=18)

² The questionnaire together with a guide and the answers to it are published at the ENCJ website (<http://www.encj.eu/>)

As a result of this scope of analysis the report may not contain a full picture of all best practices used within the courts and by individual judges.

In addition to the answers to the Questionnaire, the Project Team has examined the extensive and valuable reports and other documents published by CEPEJ, CCJE, and others on timeliness. A list is included as an appendix to the Report. In deciding to establish a project team on timeliness ENCJ was of course well aware that other organisations are working in the same field. However, this is only to be expected, given the importance of timeliness and the seriousness of the problems caused by undue delay. Councils for the Judiciary and Court Administrations have a central position in taking initiatives that may lead the most important stakeholders to solutions and also in bringing the stakeholders to work together on solutions that need cooperation. Therefore, notwithstanding the risk of duplication, ENCJ inevitably must engage in the battle against undue delays.

2. PROBLEM AND CONSEQUENCES

2.1. Justice Delayed is Justice Denied

“Justice delayed is justice denied”. These words clearly state the impact of the slow processing of cases and decisions by the courts and accordingly the importance of timeliness.

The questionnaire asked for statistical information on processing time. In their statistics many countries distinguish between types of proceeding³, types of court⁴ and methods of counting⁵ and, thus, achieve a more sophisticated approach. The results are mainly satisfactory – most litigation is processed within 6 months. If a money claim system is established and no objection is raised, the length of proceeding may be reduced to a few weeks.

However, 6 months can also be too long a period when no extraordinary circumstances exist. On the other hand, 6 months cannot be achieved if expert witnesses or lay judges are involved, or if the case has a cross-border dimension. Thus the impact of long processing times varies a lot with different types of cases. In some cases it is of vital importance that a decision is quickly reached, whereas in others it is far more important that time for examination and consideration has not been restricted. However it is important for all types of cases that “shelf time” is avoided both within the courts and with the parties and advocates.

Apart from looking at time periods from an objective point of view the personal perception of the individual party must also be considered. One must ask whether the individual party considers the procedure completed in an appropriate time or finds that it was unduly delayed.

Even though the situation in many European countries is not critical, timeliness is a perennial problem and, there are opportunities for improvement. In some countries

³ E.g. criminal cases, civil cases, labour-law matters, social law matters.

⁴ E.g. court of first instance, court of appeal, Supreme Court.

⁵ E.g. average length, median.

there are severe problems with timeliness in some cases. The cases on delay decided by the European Court of Human Rights demonstrate this. The needs of litigants, however, require a performance at a level that must be considerably higher than the minimum standard required by the European Convention on Human Rights. In addition society's demand for speed is growing. The struggle against undue delays accordingly should be regarded as a permanent obligation of the courts.

The principal cause for this is lack of funding, resulting in too few judges, too little staff, lack of IT facilities etc. However, in many ways the situation may be improved without extra funding. It is the intention of the Project Team to demonstrate and discuss such opportunities and to show that solutions generally need the cooperation of all stakeholders, parliaments, governments, judiciary, prosecution, attorneys, and others.

2.2 Quality and Independence

In striving for timeliness other aspects of quality must not be disregarded. In order to secure the rule of law it is of utmost importance that the quality of the decision has the highest priority. In order to have quality decisions, appropriate time must be made available for preparing and hearing the case and for rendering the judgement. Timeliness is part of the quality, but the drive for efficiency must not lead to inferior quality decisions. Timely processing and issuing of judgements needs organisation, management and judicial effort that keeps an eye on efficiency – including cost efficiency and efficiency of the individual judge's work. The balance between efficient case processing and high quality decisions is a delicate task that may only be undertaken by the judiciary itself. Legislators and government must understand that there is a limit to efficiency, when it encourages hasty and therefore bad judgements.

In striving for timeliness the independence of the judiciary must never be put in peril. Judges know best how to deal with the cases in order to achieve what it is all about – justice. On the other hand, judges must be open to experiences from other professional and commercial fields and realize that some court practices rest on tradition, not on any analyses of advantages and disadvantages. Therefore, in the sphere of court practices, and organisation the way forward may be proposals from Councils and Administrations, suggesting effective reforms, which the judiciary may consider and, where appropriate, implement and evaluate on a pilot basis. In putting forward recommendations Councils for the Judiciary and Courts of Administration – even if parts of an independent judiciary – must be aware of the need to preserve the judges' independence in balancing timeliness and the demand for high quality decisions.

It is necessary also in the field of timeliness to apply quality management methods, described in reports and registers published by earlier ENCJ Working Groups. It is important to analyse problems and actions and take action on proposals in implementing the solutions proposed. But it may be even more important, to set up methods for measurement and recording of the impact of the actions taken, to evaluate their effect, and to respond to that evaluation.

3. CAUSES

Why do courts in all countries have problems with timeliness? There are several reasons.

Shortages in various aspects are important reasons:

- a) *Lack of financial resources.* The courts do not get enough money. This entails that the courts do not have sufficient resources and can therefore not decide cases quickly enough.
- b) *Shortage of judges.* There are too few judges to deal with the caseload. This can have several causes. One reason is that the number of appointed judges is not enough. Another reason may be that too few lawyers want to work as judges because of the relatively low remuneration and/or heavy workloads.
- c) *Shortage of support staff.* If there is not enough support staff – be it young lawyers or administrative personnel – judges have to do administrative work and get less time to decide the cases. Another consequence of shortage of support staff is that the preparation of the cases takes too long.
- d) *Lack of court rooms and court time.* Cases cannot be decided because there are more cases ready for hearings than there are court rooms and court time.
- e) *Lack of technical means.* If modern technical facilities are not used or not permitted it takes more time for the court to prepare and communicate a decision in a case.

Other important reasons are organisational:

- f) *Lack of training or specialization of judges.* Improvement of skills may facilitate efficient processing.
- g) *Inefficiency and inflexibility of judicial map.* Several countries still retain a judicial structure which divides the country into small court districts with only one or very few judges. This creates inefficiency and inflexibility. Often opportunities to reallocate cases or judges in order to reduce backlogs and uneven workloads are very restricted.
- h) *Untimely or ineffective procedural rules.* If the procedural rules are not adapted to modern conditions it takes more time than is necessary for the court to make a decision in a case. A bad procedural rule, for example, if you cannot force a witness to come to the court hearing, causes delay.
- i) *Lack of case management.* Case management can contribute to eliminating shelf time on the part of judges and the advocates.
- j) *Delay in test cases.* Case processing must be organised so that judges can issue decisions as quickly as possible in cases that contain principled solutions that

are going to be applied in other similar cases which are adjourned pending the decision in the test case.

The attitude of stakeholders may result in undue delays:

- k) *Judges' attitudes*. It is important that judges are aware of the necessity, in the interests of the parties and society, that decisions are taken without undue delay, and have a full understanding of mental barriers, especially in troublesome cases, that may increase shelf time.
- l) *Delay of parties or advocates*. Procedural rules and case management must be directed against such delays that are a very prominent factor in impeding timeliness.
- m) *Non attendance of parties and need for rescheduling*. Effective organisation and cooperation with prosecutors and advocates as well as effective means of reaction may reduce non attendance

Other causes may be:

- n) *Delay of extrajudicial decisions*. These may be expert opinions or rulings sought from international courts, e.g. the European Court. In relation to expert opinions, the court can by effective management and by imposing requirements secure that answers are given without undue delay.
- o) *Change of material law*. New laws involve new practices and new problems in applying the law that may call for test cases, thereby impeding effective processing.

It should be noted that these reasons have a very varied impact on timeliness. Also some features may be of vital importance in some countries, but be less significant in others.

4. STAKEHOLDERS – COMPETENCE, INITIATIVE, AND COOPERATION

4.1. Judicial Councils and Court Administrations

The structure of court administration varies a lot throughout Europe. However, there is a trend towards creating separate bodies with specific organisational and administrative functions with a view to securing judicial independence. This trend is based on the understanding that, in order to ensure the independence of the judiciary, the personal and functional independence of the individual judge should be linked to the independence of the courts and the judiciary as a whole in matters of appointment, promotion and training of judges, the administration of courts, and the management of funds, including budgeting and accounting.

In practically all countries the basic structure of courts and the procedural rules are regulated in legislation. These matters are therefore within the competence of Parliament which is also responsible for the allocation of funds for the judiciary as a whole.

The preparation of legislation is the responsibility of the Ministry of Justice, whereas the national budget is normally prepared and proposed by the Ministry of Finance acting in this field together with the Ministry of Justice. These competences are, of course, vital to the functioning of the courts and therefore to securing timeliness.

In some countries the Ministry of Justice has also retained within its competence the management and administration of the courts, distribution of funds between the courts, including budgeting and accounting, and the employment of judges and other court staff, including appointment, promotion and training.⁶

In several countries there are established Judicial Councils which are bodies independent of the legislative and executive governmental powers with a view to ensuring the independence of the Judiciary. Their competences vary, but normally they include appointment, promotion and training of judges and they may also encompass organisation and administration of courts.⁷ In some countries the appointment and promotion of judges are the responsibilities of separate bodies holding no other competence.⁸

National Court Administrations are established in some countries.⁹ They are normally bodies separated from government and in some countries fully independent. Court Administrations are responsible for the administration of the courts, including staff, premises, technical equipment, IT management, as well as distribution of funds, budget planning and accounting.

The daily management of court proceedings is normally the responsibility of the individual courts, subject to such competence given to the president of the court or a board of judges.

4.2. Initiative and Cooperation between Stakeholders

Parliaments, the Ministries of Justice, Councils for the Judiciary, Court Administrations and the courts are all stakeholders in the pursuit of timeliness. But it is in the courts that the work is done by judges and other court staff acting together with advocates and prosecutors. Not only as individuals, but also associations of judges, staff, advocates and prosecutors therefore are stakeholders. Citizens, as parties to cases are of course the most important stakeholders. They are the customers, and also play an important role by their actions in their capacity as parties. It takes the cooperation and effort of all these stakeholders to achieve efficient and quick functioning of the courts.

Councils for the Judiciary and Court Administrations acting within their competences can by themselves take important measures. However their functions are not restricted to that. As they are at the core of the problem, they may also initiate actions by other stakeholders. They can describe and analyse the situation and the problems and consider remedies. Sometimes the remedy lies within their competence and they may act

⁶ E.g. in Austria, Germany, Czech Republic, Finland, Latvia and Slovenia.

⁷ E.g. in England and Wales, Scotland, Spain, Portugal, Italy, France, Belgium, the Netherlands, Slovenia, Romania, Hungary, Slovakia and Lithuania.

⁸ E.g. in England and Wales, Ireland and Scotland and in Denmark and Sweden in which an independent appointment committee makes recommendations of candidates for appointment.

⁹ E.g. in Ireland, Scotland, Denmark, Norway, Sweden, Latvia and Lithuania.

accordingly and carry through reforms, for instance in the field of training judges or developing electronic case management systems, or the procuring of audio and video conference equipment. But also where a remedy requires action to be taken by other stakeholders, they may take the initiative by raising awareness of the problem and possible remedies or by putting forward proposals for actions by other stakeholders, be it parliament or government or be it courts, judges, advocates and prosecutors. This may for instance, be the case concerning the allocation of sufficient court resources, development of process law and promotion of judicial mediation between litigants.

5. MEASUREMENT, ANALYSIS AND RESPONSE

5.1. Statistics concerning Courts, Judges and Case Processing

Statistics are an important tool for studying and managing judicial administration. Statistics, as a rule, reproduce the judicial map of a country providing data on the general set-up, the number and types of courts, the number of judges, other staff and eventually public prosecutors.

Statistics often include information on the workload according to case type (civil, criminal, family, divorce, ownership, commercial) and to processing (number of incoming, pending as well as determined or withdrawn cases). Such information in some countries is collected for each court, in others for each judge.

Statistics may also include information on time spent on processing, and may specify case type. Such information, where collected, is normally collected only for each court, but may be collected for each judge and other personnel.

Data may also be collected ad hoc for a limited group of courts or cases or for a limited period, normally, for the purpose of studying a specific question, for instance the impact of some action taken or considered.

5.2. Use of Statistics

The Judiciary must be accountable to the public for the functioning of the courts including the processing of cases without undue delay. Therefore, in order to ensure transparency statistics concerning the workload and processing time of the courts should be published.

In addition statistics are necessary for monitoring the courts. Such statistics should be an essential tool for Councils for the Judiciary and Court Administrations and of course also for the courts.

With a view to accountability in regard to timeliness the following remarks can be made about statistics:

- a) Statistics with a general overview of all national courts containing information on judges and other staff as well as workload and processing time are often published in order to make transparent to the public the situa-

tion and efficiency of the courts as a whole. National statistics are made available to the public in most countries at least once a year and may be seen on websites that are often widely accessed.

- b) Such national overall statistics may be used for international benchmarking with a view to timeliness. However due to differences in organisation of courts, definition of cases, staff and processing, international benchmarking is complicated and of lesser value. The examination of established facts and numbers can, however, provide a minimum standard for comparison between various countries, despite their diverse background and different systems for administering justice.
- c) Similar statistics may often be produced with data for each court and be made available to the Court Administration and individual courts and also to the public for the purpose of benchmarking between the courts with a view to timeliness. Such statistics are often produced on a three-monthly basis.
- d) Statistics may be used by the public and politicians in order to measure service quality including attaining trial completion times in compliance with specific time limits provided for by the judiciary or by law in individual countries in keeping with general principles concerning reasonable trial length. This also encompasses evaluation of productivity and performance of the justice services offered. To this end, it is vital to assess the speed with which judicial work is discharged, in the context of the number of cases initiated, the number of cases resolved and the number of cases left pending.
- e) User surveys should on a regular basis be carried out in order to get information on stakeholders' proposals and comments on the performance of courts with a view to timeliness, and when appropriate also comments on proposed actions before and after implementation. Such user surveys should be published to make them transparent.

In addition the following remarks can be made about the statistics that should be processed with a view to monitoring the courts in regard to timeliness issues:

- f) Statistics with a general overview of all national courts containing information on judges and other staff as well as workload and processing time of the individual courts may be used by the Ministry of Justice when contemplating and working out proposals concerning the organisation of courts, procedural rules, allocation of funds etc. with a view to timeliness.
- g) Similar statistics may be used by the Court Administration and particular courts for managing local court administration, reallocation of workload, materials and human resources etc. with a view to timeliness
- h) Detailed statistics on cases and processing may be used by individual courts and judges for case management with a view to timeliness.

- i) Statistics are an important tool in quality management for identifying and analysing problems in connection with delays and backlogs, for evaluation of possible actions and for measuring and recording the impact of actions taken, e.g. To improve processing times, efficiency etc. For such purposes statistics may be a necessary tool for Court Administrations and individual courts. Such statistics are often produced on a three-monthly basis.
- j) Investigative instruments, run by offices or upon the request of other parties, by means of statistical crosschecking allow for an individual judge to be pinpointed as responsible for unacceptable practices which cause delays and which may, in certain cases, result in him/her being relieved of duties.

5.3. Collecting and Processing Data for Statistics

Statistics are an important means to provide transparency and accountability and also an essential tool for monitoring timeliness issues by Councils for the Judiciary and Court Administrations and of course also for the courts.

The collection of statistics is carried out by Court Administration, where such independent organisation exists, and in other countries by the Ministry of Justice, possibly in cooperation with the Higher Court of the Judiciary. In some countries¹⁰ data is collected and processed in collaboration between the Ministry of Justice and other bodies of state administration, professional bodies or economic institutions.

Evaluations of productivity must, however, respect the independence of judges. Therefore collection of data as well as access to and processing of data collected should rest within the judiciary or an independent body such as a Court Administration or a Council for the Judiciary.

In addition when collecting data and processing and publishing statistics, great care must be taken to ensure that this process may not damage the independence of individual judges, thus also damaging the judiciary as a whole and the proper administration of justice.

Statistics and the collection of data, including time measurement and recording, must be seen as providing an opportunity to promote the efficient management of the business of the Courts but must not constitute a burden for judges. They offer a very useful organizational yardstick and work tool and must not be experienced as an agonizing goal. This aspect is of relevance since it is important that judges should be assisted by the administration, to advance both the quality and quantity of their work.

¹⁰ E.g. Italy and Germany.

6. REMEDIES

6.1. Requirements and Consequences

6.1.1. Requirements for Processing Time

In most countries the obligation to process cases *without undue delay* simply exists as an objective or a principle, cf. article 6 of the European Convention of Human Rights. Requirements for processing times during the preparation phase are therefore not stipulated in domestic law of most countries. The law merely provides that cases must be handled “as soon as possible”, “without undue delay” or “within a proportionate time”.¹¹

In some countries in each case *the judge must stipulate a deadline for the next step*, for instance for the parties’ written statements¹² or for delivery of the judgement.¹³

In some countries *specific requirements* for processing time are stipulated by law. Such stipulations may apply to cases in general.¹⁴ In other countries the law provides for strict time limits on the delivery of judgments following the end of proceedings.¹⁵ Time limits may be stipulated only to apply for specific cases such as criminal cases¹⁶ or cases of reinstatement of an employee.¹⁷ Time limits may also be stipulated as objectives by the Ministry of Justice as a result of a parliamentary agreement.¹⁸

Clear requirements set down in law with fixed deadlines for carrying out hearings and giving the judgement may make it easier to compel the courts to process cases speedily and within short deadlines. It will also assist the parties to evaluate whether a perceived delay should be considered an undue delay.

Fixed deadlines stipulated in the general law, however, cannot take into account the nature and complexity of each case and thus can fail to ensure the quality of the proceedings and decision in some cases.

In addition, fixed deadlines, especially when applied only to specific types of cases, make it impossible for the courts to prioritize particular cases taking into consideration the entire workload of the court.

For these reasons a better solution may be, that the judiciary as a whole and also the individual courts state and publish their objectives as to processing times and publish, for instance on a yearly basis, whether those objectives have been achieved. This will present an opportunity to discuss with the public and the authorities general problems including efficiency, workload and resources. It will also make it possible for the

11 E.g. in Austria, Czech Republic, Denmark, Germany, Finland, Italy, Latvia, Lithuania, Romania, Scotland, Slovakia and Sweden. Slovenia has a special law fully regarding this topic.

12 E.g. in Belgium, Denmark, Hungary, Malta and Slovenia.

13 E.g. in Belgium and Denmark at the end of a trial the judge must inform the parties of the date when judgement is delivered. In Portugal at the end of a trial in a criminal case the judge will inform of the date when the judgement will be delivered.

14 . E.g. Portugal. In Belgium cases shall be handled within 6 months, whereas in Slovenia timeframes of 6 months simply defines when a case is considered to be in backlog.

15 E.g. in Cyprus and Slovenia judgement must be delivered within 1 month/30 days of the completion of the hearing.

16 E.g. in Germany, the Netherlands and Scotland.

17 E.g. in Latvia.

18 This applies in Denmark for specified criminal cases

courts to explain the reasons for necessary processing time and the balancing between efficiency and the quality of decisions. It will improve the parties' understanding of processing time needed and promote realistic expectations. Finally it will provide a basis for benchmarking and deciding whether a delay may be unduly long and if this is so, choosing the appropriate remedies.

6.1.2. Consequences of Exceeding Requirements

A number of countries state that there are no consequences to the courts for exceeding any specified time limits or stated objectives. The responsibility of processing cases without undue delay thus would seem in most cases to be mainly a moral obligation.

In some countries, however, exceeding time limits may carry consequences

- a) Upon application of a litigant the case may be prioritised and expedited quickly. When the decision is taken by the court itself it is possible for the court to prioritise the case in question having regard to all its cases.¹⁹
- b) Upon application of a litigant a court of higher instance may set a fixed deadline for the court to perform the proceedings. To have a superior court looking into the case and fixing a deadline will diminish any argumentation within the particular court as regards the prioritization of its cases.²⁰
- c) Upon application of a litigant the president of the court may reassign the case to another judge. Provided that the new judge is required to prioritise the case, the reassignment will bring the parties closer to a decision, but the remedy seems to conflict with the principle of having the judge who heard the evidence give the judgement.²¹
- d) In many countries a party may also bring a civil action against the state and claim damages for any loss inflicted by undue delays. In some countries a litigant upon application may be compensated for undue delays.²² Financial compensation based upon the objective facts of the processing of the case will both make the courts aware of the need for speedy proceedings and give the parties actual compensation without the necessity of a civil litigation against the state.
- e) Undue delay in criminal cases may result in reduction of the punishment. This may remedy the delay for the accused but may leave the victim of the crime with a sense of having been unjustly treated twice.²³
- f) In most countries the parties may complain to either the president of the court, to a court of higher instance or to a special disciplinary board. If justified, a complaint may lead to disciplinary sanctions such as criticism, imposing a fi-

¹⁹ E.g. in Portugal (the High Council decides on priority), Slovenia and Sweden. In Sweden the decision is taken based upon the complexity of the case and on how the parties have acted.

²⁰ In Austria the party can ask the court of next instance to fix a time limit for the court.

²¹ E.g. in Malta and Norway. In Malta a case may be reassigned, if it has been pending for more than 3 years or the judgement after the final hearing has been pending for more than 18 months.

²² E.g. in Germany, Finland, Portugal and Slovenia.

²³ E.g. in the Netherlands.

ne, removal from office or transfer to a lower court. The imposition of personal responsibility for meeting the requirements emphasises the need for speedy processing. The risk of facing a disciplinary sanction may however result in fast but incorrect decisions, leaving the parties with the necessity of an appeal. Imposing disciplinary sanctions may be unjust, if an excessive backlog is due to a general lack of resources or lack of initiative by the administration to remedy the backlog of an individual judge. A disciplinary sanction does not involve any compensation for the party.

- g) Monitoring systems allow certain authorities to impose disciplinary sanctions against judges or to monitor a court where undue delays are systemic.²⁴

It should be noted that in situations where undue delay is caused by a lack of resources to deal with a heavy workload, the consequences listed under items a-c) will not solve the problem, and disciplinary sanctions as listed under item f) would be unjust and should not be applied. In such cases compensation from the state for damages caused by long processing times seems more appropriate, as the reason for the delay may justly be considered to be the fault of the state.

6.2. Reduction of Caseload

6.2.1. Restriction and Limitation of Appeal

In many countries these remedies are applied to cases in which the value does not exceed a certain amount of money²⁵. They often do not apply to certain cases (e.g. family matters).

The remedies may be for example the following:

- a) Limiting the appeal to certain grounds (e.g. serious procedural errors or error in evaluation of the law) or requiring the party to obtain permission to appeal²⁶.
- b) Not admitting new evidence in the appeal procedure²⁷.
- c) Not admitting appeal to the 3rd instance (Supreme Court)²⁸ when both the 1st and 2nd instances have decided the case in the same way.²⁹
- d) Only admitting the possibility of appeal to the 3rd instance (Supreme Court) when the case contains a dispute of a principled character (e.g. interpretation of statutes) or a decision by the 3rd instance is considered necessary in order to develop the application of the law;

²⁴ E.g. in Slovakia, Romania and Slovenia. In Portugal these actions are taken by the High Council of Judicial Power.

²⁵ E.g. in Austria, Denmark, Germany, Lithuania, the Netherlands and Portugal.

²⁶ E.g. in Austria, Germany, Italy; Portugal, Scotland and Slovenia.

²⁷ E.g. Austria and Hungary.

²⁸ E.g. in Czech Republic, Denmark, Italy and Portugal.

²⁹ E.g. in Portugal.

- e) Implementing a system of “sieve” (selecting and rejecting) in Appeal Courts, by taking a simplified procedure to extract cases with no chance of success in a rapid and affordable way³⁰.

Restricting or limiting appeals are remedies that may affect negatively the right of citizens to access to justice, by not allowing them to have a decision revised by a Superior Court. However, in several countries the possibility of a hearing in two instances is regarded as sufficient access to justice.

Where the possibility of appeal is contingent upon a decision based on the character of the dispute involved, which is vested in the higher court, that competence to give permission to appeal is regarded in some countries as compromising the impartiality of the higher court. In some countries the competence is therefore vested in a special, independent board.

6.2.2. Alternative Dispute Solution

This remedy encompasses

- a) Promotion of *alternative dispute resolution* (ADR) methods outside of the Judicial System (mediation or arbitration, either as a prerequisite/obligation, or as an option, possibly accompanied by sanctions if the party does not accept the submission of the case to ADR, or impedes the process, without plausible justification³¹. Provision for broader access to ADR methods can also be found in the Superior Courts)³². This remedy, if obligatory, may increase the costs of litigation if the dispute is not solved. In those cases, it may also represent a delay in solving the dispute.
- b) Transferring competences to solve the dispute to *other Systems* (e.g. Notaries and Register Offices) – for example, in cases related with orders for payment, successions and divorce³³.

6.2.3. Transfer of Cases to other Courts or other Judges within the same Court

Transferring cases *from Courts where the workload is very high to other Courts* where the cases can be resolved in a shorter period of time³⁴. The transferral must always be decided by the courts or another independent body. Nevertheless, this remedy may raise some doubts in systems that adopt the “Natural Judge” principle³⁵.

³⁰ E.g. in Finland – but, because of the problems within this procedure, it will be replaced by a new system of leave for the Appeal Courts from the beginning of 2011.

³¹ E.g. in Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Italy, Latvia, Malta, the Netherlands, Portugal, Romania, Slovakia and Slovenia

³² E.g. in Ireland.

³³ E.g. in Czech Republic, Hungary, Latvia and Portugal

³⁴ E.g. in Hungary, Lithuania, the Netherlands and Slovenia

³⁵ In some countries the constitution stipulates that a case may not be transferred from the court that according to the law has the local competence. This principle is referred to as the “Natural Judge” principle.

6.2.4. Increased Competence of Lower Courts

This remedy when combined with restrictions or limitation on appeals is a very effective means to secure cost efficiency. However, if applied to major cases or cases involving extensive economic interests it should be combined with the possibility of a superior court instructing that the case be transferred to its jurisdiction in order to ensure a high quality decision.³⁶

6.2.5. Judicial Dispute Prevention

Judicial dispute prevention may be achieved for instance by the following remedies:

- a) Creating *pre-judicial instruments to prevent the need to present the case before a Court* or even as a prerequisite to filing the case before the Court³⁷ – for example, notification of the debtor to pay, or notification of the employer to cease the illicit conduct taken against the worker.
- b) *Enhancing the value of “precedent”* as a means to make the application of the law more predictable and thereby discourage the filing of cases which have no prospects of success³⁸.
- c) *Increasing the judicial dispute fees* in order to discourage filing a case³⁹; and/or requiring that such fees must be paid in advance⁴⁰, eventually reimbursing the winning party in the end. If not accompanied by a proper legal aid system, this remedy may have unjust consequences, allowing only the wealthy to have access to the courts.

6.2.6. Amicable Settlement

Remedies may comprise

- a) *Promotion of amicable settlement* of the dispute, preferably in the early stages of the procedure⁴¹.
- b) *Reduction of the cost of judicial dispute fees the sooner the procedure ends*, mainly by amicable settlement of the dispute⁴².
- c) *Possibility of discontinuing a criminal procedure* – especially in cases regarding minor or medium criminality – under specific conditions (for example imposing duties to be carried out by the defendant, paying compensation for damage done) or *permission to settle the criminal case* under specific conditions⁴³. This remedy may be contingent upon considering

³⁶ E.g. in Scotland

³⁷ E.g. in Slovenia

³⁸ E.g. in Finland and Italy

³⁹ E.g. in Malta and the Netherlands.

⁴⁰ E.g. in Slovenia.

⁴¹ E.g. in Austria, Ireland, the Netherlands, Portugal and Slovenia.

⁴² E.g. in Latvia and Hungary.

⁴³ E.g. in Czech Republic, England and Wales, Germany, the Netherlands, Portugal and Slovenia

the victim's view on the matter (if any) or possibly upon the consent of the victim.

6.2.7. Multi Party Actions

Several jurisdictions have established procedures for the raising of class actions or multi-party actions to avoid duplication of effort by claimants in cases involving common calamities, such as the sinking of a ship or an air disaster, or product liability claims in which many people claim to have been injured, for example by ingestion of a pharmaceutical product.⁴⁴

In Scotland the Court of Session is experimenting with an alternative method of managing actions which involve large numbers of claimants. The court is empowered by its rules to disapply the normal rules of court. A judge is appointed to manage all the cases of the relevant type and he or she meets with the legal representatives of the claimants and defendants to agree a procedure to govern the actions. This can involve the fixing of timetables for the procedural steps in the action, the identification of generic issues for determination or the selection of representative cases to proceed to determination. Having consulted with the relevant parties, the court can by practice note set up a specific procedure to govern those actions. Thereafter a nominated judge manages the linked cases.

6.3. Increase of Capacity

6.3.1. Balancing Workload and Capacity

In many countries the judicial map is divided into a considerable number of small court districts where one or only a few judges preside. Such a system is not flexible and therefore not very responsive – among other things – to increase or decrease of numbers of incoming cases, creating respectively backlogs or non efficient use of human resources. The principle of the “natural judge” prevents the transfer of cases and thus impedes flexibility.

It is of major importance to a flexible and efficiently managed court system to create greater entities with several judges and to secure the possibility of easy and quick re-allocation of judges and/or cases in order to ensure an efficient and fair workload for all judges. Human resources are the most important factor in achieving effective and speedy processing of cases. With easy transportation and electronic communication, bigger entities covering greater areas ought not to be a major problem. However, tradition and pressure from local politicians impede the transformation of the judicial map in many countries.

Several remedies seek to solve some of these problems, the core of which, however, seems to be the judicial map.

6.3.1.1. Optimum Workload

In Romania, a pilot scheme is in effect which seeks to ascertain “optimum workload” for judges and courts with a view to assigning a corresponding volume of cases. It

44 E.g. in England and Wales, Denmark, Ireland, the Netherlands, Scotland and Slovenia.

involves system software named ECRIS that automatically calculates the optimal level of activity for each court. Each file registered within a court receives a level of complexity between 1 and 10. The programme considers a number of variables including complexity of the cases, maximum work time, the expertise and level of seniority of judges, historical case volume, statistical measurements, and the optimal duration of trials and of administrative activities of judges or clerks. The programme calculates the optimal workload for each court, and the corresponding volume of cases is assigned. The project was piloted in 2010 and the first analysis of the results of a survey revealed that over 90% of the judges experienced a reduction in their workload and an improvement in the quality of their work as a result of this project. The project does not solve the problem of what to do when the volume of cases in the system exceeds the optimum workload, but the system makes the surplus workload obvious and thus is useful in the pursuit of a balance between workload and capacity.

6.3.1.2. Ascertaining Actual Costs of Cases

In the Netherlands in order to assess the effectiveness of the courts system, each type of case is valued as to its costs to process the case and deliver a judgment (e.g. complex cases are valued at €5,000 while ordinary cases cost €2,000 each). The amount of cases that each court can handle is then estimated and a budget granted accordingly. This allows account to be taken of the notional profit or loss made by a court in any one year when estimated and actual cases disposed of are calculated and compared. Each court had a certain degree of discretion as to its budget and may assign financial reserves with which to start own projects.

6.3.1.3. Allocation of judges and staff

In Hungary the National Council of Justice has launched a project that includes the measurement of the workload of the judges and outlines and regulates a unified method of case distribution. Under this method the cases are arranged in groups based on the required work and the importance of the given case. The required work is estimated at the time of the arrival of the case and is finally determined at the time of finishing the case. The creation of a proportional workload not only within the courts but among the courts is an important goal. The system may form the basis of the distribution (or redistribution) of judges (and/or other court officials) among the courts and the latest modification of the Act on Organisation and Administration of Courts serves this purpose.

6.3.1.4. Allocation of financial resources

In all countries the total allocation of resources to the judiciary is the responsibility of the Parliament. However, the systems of distributing between the courts the total funds allocated vary a lot.

In several countries the distribution is decided by the Ministry of Justice and the main lines of distribution may even be fixed in the national budget. Fixing the distribution will normally be based on discussions between the Ministry of Justice and the Judiciary represented by the Supreme Court (The Lord Chief Justice) or by the Council for the Judiciary.⁴⁵

⁴⁵ E.g. in Poland, Portugal, Slovenia, England and Wales and Scotland

In some countries the distribution between the courts of the total funds allocated to the Judiciary is entirely the competence of the Court Administration or the Council for the Judiciary and to some extent also in regard to putting forward suggestions to Parliament in respect of the amount of the total funds allocated to the judiciaries.⁴⁶

The distribution of funds in some countries is decided by negotiations between the deciding body and the individual courts based on budgets of the courts.⁴⁷

In other countries the distribution is decided by parameters including volume of cases and number of staff.⁴⁸

In the Netherlands and Germany the distribution of funds is based on a case cost analysis establishing the total costs in processing cases of different types combined with expected volume of cases. In the Netherlands a net surplus or deficit is calculated by the year's end and transferred with some restrictions to the next year.

6.3.2. Reduction of Vacancies

Once the capacity needed in a court is fixed by establishing the number of judges and other staff to be allocated to the court, it is important to reduce vacancies. In a country where the total number of judges is not sufficient reduction of vacancies within the judiciary may be achieved, for example, by encouraging judges who have the right to retire to remain in the system, or by recruiting experienced professionals to the judiciary⁴⁹.

6.3.3. Reallocation of judges

Courts may not influence the number of incoming cases, and very often the balance of workload and capacity is disturbed by the increase and decrease of incoming cases. This may be due to increase or decrease of commercial activity in a specific court district or during a financial crisis due to increase of bankruptcy cases. In such situations flexible reallocation of judges is important to prevent backlogs.

In the Netherlands, the facility to reallocate judges to deal with cases in another district is flexible and easy to apply. Dutch judges are competent to judge cases in all districts. They are appointed as a judge in one district-court but at the same time are appointed as deputy-judge in all the other courts. Therefore judges can easily deal with cases in another court. This method of reallocation is often used. Also in other countries it is possible to reallocate more judges to courts where the workload is very high, and reduce the number of judges in courts where the workload is small⁵⁰. Such flexibility may raise some doubts in systems that adopt the "Natural Judge" principle.

46 E.g. in Hungary, Sweden, Denmark and Slovenia

47 E.g. in Hungary and Sweden.

48 E.g. in Denmark.

49 E.g. in Romania.

50 E.g. in Lithuania, Malta, Portugal, Sweden and Slovenia. In Hungary this may be done only by decision of the president of the Supreme Court and upon proposal of the president of the National Council of Justice. In Austria the deployment of district judges not exceeding 3 % of the permanent judges is possible in order to substitute judges who are absent due to illness or holidays, suspended or dismissed, unable to perform due to processing exceptionally large cases, or where a backlog of cases exists.

6.3.4. Flying Brigades

In some countries there exist “flying brigades” of judges whose role is to target backlogs and to clear them before moving on.⁵¹ They are deployed on needs first basis. A Flying Brigade may be put in place for a limited time period to write judgments for a district court which is temporarily unable to cope with their workload. The Flying Brigade may comprise a group of judges and staff lawyers. The brigade is funded by the Council for the Judiciary or the Court Administration. The work of the Flying Brigade consists of hearing cases and writing judgments.

6.3.5. Retired Judges

In some countries the courts may have assistance from retired judges, being employed for a limited period, on a part time basis.⁵² Employing retired judges may be in contravention of principles of personal independence. In most countries in order to ensure his personal independence a judge may only be relieved from his duties by decision of a court because of misconduct or severe illness impeding his functioning. However, the judge must retire at a certain age. However, if he is employed after retirement, a mechanism is needed to compel him to retire anew, if due to age his functioning becomes unsatisfactory? Arguably, his employment for a limited period may only be used once, or else his functional independence may be hampered by his wish to get a prolongation of his employment.

6.3.6. Juridical Assistants

Young lawyers are employed as judicial assistants by the courts in some countries.⁵³ They are tasked with preparing files and writing summaries of the case, outlining the main issues and adding relevant case law. During the court hearing they may take notes and after the court hearing they participate in the deliberations in chambers and finally they draft the decision. Judicial assistants are usually not assigned to a particular judge. The use of judicial assistants varies very much. In Denmark they may even act as judges in 1st instance courts or even in 2nd instance courts, sitting in a panel with two High Court judges with full capacity in deciding the case.

If juridical assistants are employed with a competence to make judicial decisions, then, in order to ensure their personal independence, they must be exempt from termination of employment basically along the same principles as judges.

6.3.7. Number of Judges Deciding Each Case

Reducing the number of Judges needed to hear the case (assigning the case to an individual Judge instead of a collegiate Court)⁵⁴.

51 E.g. in the Netherlands, Denmark and Sweden

52 E.g. in the Netherlands, Scotland, Sweden and Slovenia. In Denmark similar arrangements have been tried on a pilot basis.

53 E.g. in the Netherlands, Romania, Denmark and Slovenia. Since 2008 a similar system of “judicial fellows” has been piloted with the High Court of Ireland

54 E.g. in Germany, Portugal and the Netherlands

6.4. Facilitating and Speeding up Court Procedures

6.4.1. Time Limits to Procedural Steps

All countries have rules of procedure which govern or influence the time which it takes to process cases through the courts. These may be rules, which govern the times at which various procedural steps are to be taken in preparation for a hearing and the length and content of such hearings and appellate procedures. One way of speeding up court procedures is by simply reducing the periods which the rules allow for completion of steps in the court proceedings. But there is a limit on how far the court can squeeze timetables, which require the parties to the proceedings to take certain steps, before the fairness of the process is compromised.

6.4.2. Reducing the Procedural Steps which Lead to a Hearing

6.4.2.1. *Early Guilty Plea scheme.*

This applies in the Crown Courts⁵⁵ which are the senior crime courts where juries determine guilt in serious crime. Sentencing is the responsibility of a Judge. The scheme encourages the police to identify cases which are likely to result in a guilty plea – for example where the defendant has made a full admission of guilt of the crime to the police in interview. In such a case the new scheme allows for the case to be accelerated into the Crown Court where at one hearing the plea of guilty and sentencing take place. The police gain because they do not have to prepare a full file, undertake full disclosure or take statements of witnesses who are not central to the case. The prosecution gain because they too do not have to prepare a full prosecution file and can file papers with the court which may be incomplete or in handwriting. The defence gain because they still get paid the same although all is done in one hearing. The defendants are given the maximum credit for a plea of guilty (at present 33%). The court gains in those cases need only one hearing – although the Judge has to accept a file that is not as well prepared as before. And finally victims and witnesses gain as they know at the very earliest opportunity that they are not required to give evidence in court.

6.4.2.2. *Criminal Justice: Simple, Speedy and Summary.*

This scheme has been introduced in the lower Magistrates' Court⁵⁶ to improve throughput of cases and to ensure that as far as practicable small criminal cases are dealt with efficiently and effectively. The procedures encourage the Court to avoid or refuse adjournments and to have special courts which hear the allocated cases in a day set aside for such. Again much can be gained for all, through this scheme which sets out strict timetables for police and prosecution in order to make files available to the defence at the earliest opportunity, and for efficient listing of disputed matters. Overall a higher work rate is expected from all the agencies involved.

⁵⁵ E.g. in England and Wales.

⁵⁶ E.g. in England and Wales.

6.4.3. Limiting and Reducing Hearing

6.4.3.1 Written Procedures

In Latvia, parties may agree in writing that the court may adjudicate on administrative matters without a court sitting if the documents in the matter are sufficient to dispose of the issues.

6.4.3.2 Virtual Courts (Video and Telephone Conferences)

This scheme involves the use of IT and video links to prisons and police stations. Many countries have similar systems which allow defendants to appear by video link and thus save the need for prisoner transport and cell block housing when at court.⁵⁷

In some countries telephone conferences may be used for giving testimony in civil cases if the judge so decides. Telephone conferences will normally not be accepted for testimonies needed to establish disputed and crucial facts.⁵⁸

6.4.4. Limiting and Simplifying Written Judgements

6.4.4.1 Oral Judgements

In some countries in cases concerning small claims the judgement may be given orally. The judge will explain to the parties his reasoning, but only the result will be stated in the protocol of the court.⁵⁹

6.4.4.2 Simplification of judgements

The specification of reasons given in a judgement varies a lot throughout Europe.

For instance the determination of facts in some countries requires detailed reasoning not only specifying and describing the documents and testimonies accepted as a basis for the determination as well as those not accepted, but also the grounds for acceptance or disregarding of evidence.⁶⁰ In other countries the judge may restrict the reasoning to a short statement of the facts accepted and the basis for the acceptance with a reference only to the documents and testimonies forming the basis for the decision.⁶¹

Also in some countries the judgement must address in detail all argumentation of the parties even if the argumentation obviously is not sustainable or not relevant.⁶² In other countries such argumentation may be rejected with a short statement, that it was not sustainable, that it was not relevant for the decision.⁶³

⁵⁷ It is being piloted in areas of England and Wales but is not yet accepted for trials or longer hearings. Video conferences are used in the Nordic countries and in Slovenia.

⁵⁸ Telephone conferences are used in the Nordic countries.

⁵⁹ E.g. in Slovenia and the Netherlands for petty case procedures, see sect. 6.4.5.

⁶⁰ E.g. in Portugal and Slovenia.

⁶¹ E.g. in Denmark.

⁶² E.g. in Portugal.

⁶³ E.g. in Denmark and Slovenia.

6.4.5. Small Claims Procedures

Greater use is made of small claims procedures across a number of systems. Particularly interesting aspects include the Dutch small claims procedure for petty cases where the disputed amount is not more than €5,000⁶⁴. Such cases are heard by a single judge and legal representation is not obligatory. In the majority of such cases upon the decision of the court the judgment is delivered orally at the court session. With this regulation at least 75% of the total cases can be finished within 6 months. Of interest is also the Danish system which allows for the enforcement of undisputed debts up to €6,500 without the need to obtain a judgment in the first instance.

6.5. Improvement of Processing

6.5.1. Case Management

In Ireland case management is used by the High Court to reduce delays in proceedings. It is common in cases which have the potential to take a long time at trial and these cases can be shortened considerably. The judge can, after the defence is delivered, ascertain the contentious issues, direct the appropriate pre-trial measures, e.g. discovery, and confine and tailor these to the actual contentious issues. A timetable can be fixed for completion of pre-trial procedures and the trial itself. All of this ensures that in the trial itself, the evidence and the legal argument are confined with precision to the real issues in contention. The judge may decide to fix a timetable for the completion of preparation of the case for trial, if there has been undue delay; he may require the party to explain the delay and make any ruling or direction which might expedite proceedings or, if the judge is dissatisfied with the conduct of proceedings, he can disallow the costs associated with irrelevant or excessively lengthy processes.

Case management may be exercised in case management conferences conducted by a judge and attended by solicitors and counsel for the parties. These conferences are ordered or directed by the judge at the initial directions hearing, and if no direction is given at this stage, either party may apply by motion to the Court at any time prior to trial for a direction that a case management conference be held.

The general purpose of such conferences is to ensure that proceedings are prepared for trial in a manner which is just, expeditious and likely to minimise the costs of proceedings. The judge's focus is on the timely progression of proceedings and his readiness to disallow costs, acts as a disincentive to parties to engage in excessive interlocutory proceedings, e.g. discovery.

Every case, whether or not it has been the subject of a case management conference, is subject to a pre-trial conference at which the judge establishes the steps that remain to be taken in preparation for the trial. The judge must establish the length of and arrangements for trial. If the judge is satisfied that the case is ready to proceed, he will fix a hearing date. The judge can request the parties to consult and agree documents for trial.

⁶⁴ As of 1 July 2011 the limit will be increased to €25,000.

Another type of case management is case flow management which is carried out by officials in a centralised court in Scotland. The procedure of case flow management currently involves: (a) the service of a simplified initiating writ together with, if required, an application to inspect or recover documents, (b) the court issuing a timetable. The timetable sets out dates by which (i) other parties may be brought into the action, (ii) documents recovered, (iii) written pleadings may be adjusted, (iv) first the claimant and thereafter the other parties may lodge statements of valuation of the claim, (v) the parties may each lodge lists of witnesses and the documents or productions on which they intend to rely, and (vi) the parties must meet at a pre-trial meeting to discuss the case with the aim of either settling the case or limiting the issues in dispute. The timetable concludes with the date allocated as the start of the trial. Parties may apply to the court to vary the timetable on special cause shown but such applications are not very common and do not take up much judicial time.

In several other countries similar case management or case flow management procedures apply.⁶⁵

6.5.2. Call Overs and List Management

In Ireland, the case load of the High Court is divided into a number of lists. Some of the busiest lists, most notably, the Personal Injuries, Non Jury/Judicial Review and Commercial Lists, operate systems of list management to deal with the large volume of cases listed.

The judges managing court lists often use “positive call overs” to ensure that cases are progressed through the system as speedily as possible. These are usually done at the same time as a list to fix dates for trials. This exercise occurs at a stage in the proceedings after the pleadings have been closed and a notice for trial served by either party. Although the case will have been certified as ready for trial by one or both sides and thus placed in a list to fix dates for trials, frequently there are outstanding unresolved procedural issues, usually discovery of documents. In a “positive call over”, the legal representatives of the parties are required to attend court to confirm that their case remains “live” and inform the court if they are ready to proceed. Any case in which the parties fail to appear can be struck out and can only be re-entered by order of the court. Problems causing delay in progressing a case are frequently brought to light in these call overs and a form of informal case management can be applied. Thus the judge can make appropriate orders directed to any party, perceived to be in delay in any requisite procedure. Often where delay occurs because a problem has been encountered by a party, not involving culpable delay, the discussion which ensues between the parties and the judge can lead to a solution to the problem without the necessity of recourse to a court order.

These call overs can take place three or four times a year and are a very useful way of ensuring that the entire stock of cases in a particular list is kept under active supervision and management, so that delay can be minimised.

⁶⁵ E.g. in the Netherlands, Portugal and Denmark.

6.5.3. Electronic Tracing

Electronic tracing is being trialled by the courts in England and Wales for the filing and submission of electronic documents. It is a pilot scheme operation called T3 – transforming through technology. All court documents are in electronic form but, at least during the experimental phase and where case materials are complex, the court also receives a hard copy file (core trial bundle) to avoid disruption of the proceedings if there is a technical failure.

In Italy, a pilot on the digitalisation of the civil and criminal process is currently under way, seeking to make it obligatory to serve all communications and notices via electronic means through the use of certified e-mail.

Several other countries are applying or preparing similar systems of electronic communication and the filing of electronic documents in order to facilitate and speed up not only communication but also the handling of documents in court when preparing the case for trial or preparing the written judgement.⁶⁶

6.5.4. Specialised Courts System

Another case management initiative undertaken by a number of countries is the designation of specialised courts in order to deal with specific areas of law. Specialisation leads to greater effectiveness and thus saves time.

6.5.5. Judges' Secretaries

In Finland, judges' secretaries fulfil a similar role to that of a registrar. District Court judges and their secretaries are partners, who form a working unit. The secretary takes care of the practicalities of the process, e.g. invitations, protocols and communication with the advocates' offices.⁶⁷

6.5.6. Electronically Recorded Meetings

In some countries court meetings may be electronically recorded and transcripts are produced only if necessary, for instance if details of a testimony or proceedings are contested.⁶⁸

6.5.7. Effective Use of Court Rooms

Shortage of court room facilities may impede the progressing of a case. In order to optimize the effective use of court rooms any postponement of the hearings should be avoided. In England and Wales a system of double shift sitting has been introduced. According to the double shift sitting system the court hearings are scheduled by the court as two daily sessions each of 4.5 hours one starting early morning and one in the afternoon. By the system the use of the courtroom for 9 hours per day is achieved instead of the previous 4.5 hours. In Slovenia, some courts developed software that

⁶⁶ E.g. in Denmark, Portugal and Slovenia.

⁶⁷ Similarly e.g. in Romania as much as possible bureaucratic tasks are delegated to the Court staff.

⁶⁸ E.g. in England and Wales and Slovenia.

allows better use of court rooms, as the system immediately records that the hearing was cancelled and draws attention to the possibility of using the same court room by others.

6.6. The Projects on Logistics in Finland

In year 2006, the Finnish Ministry of Justice had an idea, that a totally new and fresh perspective and expertise were needed in the battle against the delays and in finding novel solutions to the court system operations and processes. This idea shaped up as a judicial process improvement and delay reduction innovation, which is also called the Projects of Logistics in daily use. In this innovation the court system processes are viewed and analyzed with cross-scientific perspectives by merging knowledge and ideas from industrial management and the law. In order to do this, a research group from Lappeenranta University of Technology (Supply chain and operations management) formed a process improvement teams together with the management and employees from the Helsinki Court of Appeal and Insurance Court.

The main stages of the project were:

- a) Thorough inventory of pending cases of the different working units of the court (age, type and size of pending cases),
- b) Analysis and evaluation of the process and improvement needs (e.g. operational statistics, and interviews),
- c) Planning the improvement initiatives (in group work-shops),
- d) Implementing the improvement actions (e.g. pilot-testing, training, personal guidance), (v) evaluation of the improvement actions (e.g. interviews, numerical analysis, needs for changes).

As a result of the Projects on Logistics the courts have in use new work and management procedures which have had a huge impact on process efficiency. The new procedures include for example:

- a) New production planning practices using multiple project control

New work planning practices were developed where the cases are treated as projects. The proceeding of the case is scheduled immediately after arrival and the handling process is planned according to this scheduled date.

- b) A new follow-up and control system using time-limits for each stage of the handling process

An IT-tool based follow-up system was build, which has time-limits for every phase of the handling process and which alerts if the case exceeds these limits. The system can be used as a tool both for planning the order of work and for the overall management follow-up of the situation.

- c) New procedures to highlight and control the progress and flow of more complex cases

The more complex cases often got stuck in the process. In order to avoid this, procedures to identify and highlight these cases from the mass were developed.

- d) Establishment of prioritization rules and determining definite throughput-time objectives for different case-groups.

The goal of the projects was that no case should be pending over 12 months and this was very well achieved. When the projects started in Helsinki Court of Appeal as much as 34 % of the pending cases were older than 12 months and in Insurance Court 16 %. After the projects, the situation is dramatically better; Helsinki Court of Appeal has now 7 % of pending cases older than 12 months and Insurance Court 8 %. The situation is continuing to improve as the use of the new procedures becomes more and more routine.

7. RECOMMENDATIONS

7.1. Timeliness and other Quality Aspects

“Justice delayed is justice denied” is a true statement that underlines the importance of delivering justice without undue delay. However, in striving for timeliness it must be remembered that the drive for expedition should be balanced with other quality aspects, of which the quality of the decision should have the highest priority. The demands of society require processing without undue delay, but drive for efficiency must not lead to inferior quality decisions.

7.2. Timeliness and Independence

In striving for timeliness the independence of the judiciary must never be put in peril. Judges know best how to deal with the cases in order to achieve what it is all about – justice. Therefore, in the field of court practices and organisation the way forward may be for Councils and Administrations to make proposals, suggesting effective reforms that the judiciary can consider and, if appropriate, implement and evaluate on a pilot basis.

7.3. Cooperation between Stakeholders

Parliaments, the Ministries of Justice, the Councils for the Judiciary, the Court Administrations, the courts, the judges and other court staff as well as the advocates and prosecutors are all stakeholders to the delivery of justice without undue delays. It takes cooperation and effort from all these stakeholders to achieve efficient and quick functioning of the courts. Councils for the Judiciary and Court Administrations may

take important actions within their competences, but they should also initiate actions by other stakeholders where an analysis of the problem shows that such action by others is necessary.

7.4. Quality Management

Councils for the Judiciary and Court Administrations when dealing with timeliness should apply quality management methods. They should therefore thoroughly analyse the situation and identify the problems, consider the impact of a proposed remedy to the problems, establish methods to measure the impact of remedies implemented, and react to the result of the measurements.

7.5. Statistics on Caseload and Processing Time

For public information statistics on the courts caseload, and processing time should be published normally on a yearly basis in order to make the functioning of courts transparent and ensure accountability. The published statistics must show the situation of the different types and levels of courts as a whole.

For benchmarking, statistics at least on a half yearly basis should be produced with data for each court and be made available to the Court Administration and individual courts and also to the public for the purpose of comparison.

Statistics are an important tool in quality management for identifying and analysing problems in connection with delays and backlogs, for evaluation of possible actions and for measuring and recording the impact of actions taken e.g. to improve processing times, efficiency etc. Such statistics are an essential tool for Councils for the Judiciary and Court Administrations and individual courts. Data should therefore be collected on a regular basis for processing and creating such statistics.

Evaluation of productivity must respect the independence of judges and courts; in so doing their professional competence must be safeguarded. Therefore collection of data as well as access to and processing of data collected should rest within the judiciary or an independent body such as a Court Administration or Council for the Judiciary. In addition when collecting and processing data and publishing statistics it must be ensured that this process does not damage the independence of individual judges, thus also damaging the judiciary as a whole and the proper administration of justice.

7.6. User Surveys

Councils for the Judiciary and Court Administrations should on a regular basis carry out surveys among stakeholders in order to get information on stakeholders' proposals and comments on the performance of courts, and when appropriate also comments on proposed actions before and after implementation.

7.7. Requirements for Processing Time

Councils for the Judiciary and Court Administrations in cooperation with the courts should state and publish for the judiciary as a whole and for individual courts their objectives as to processing times for different groups of cases. In addition they should publish, for instance, on a yearly basis whether objectives have been achieved.

Fixed deadlines stipulated in the general law should be avoided. Such deadlines cannot take into account the nature and complexity of each case and thus ensure the quality of the proceeding and the decision. In addition fixed deadlines, especially when applied only to specific types of cases, make it impossible for the courts to prioritize particular cases taking into consideration the entire workload of the court.

7.8. Caseload Reduction

Initiatives should be taken to reduce caseload especially by applying

- Judicial dispute reduction (dispute prevention, alternative dispute resolution, and amicable settlement)
- Repetitive case reduction (multi party actions)
- Extension of lower courts' competence
- Restriction and limitation of rights of appeal.

7.9. Capacity Management

Balancing workload and capacity is essential in order to avoid undue delays and backlogs. The improvement of this balance in order to ensure an efficient and fair workload for all judges should be accomplished by changing the judicial map with a view to creating bigger courts and by giving Councils for the Judiciary, Court Administrations and the courts the power to reallocate judges and cases in a straightforward and flexible way including the use of "flying brigades". Also methods of assessing the workload for judges in different courts should be adopted with a view to identify problems as soon as possible.

Juridical assistants should be employed, especially in systems where a shortage of trained judges prevails.

7.10. Court Procedures

Small claims procedures are an important means to improve the efficiency of the courts without hampering the quality of the court procedures. The introduction of such simplified procedural rules should therefore be considered and proposed.

During preparation of the case for hearing procedural steps should be reduced and time limits should be set for each step and strictly followed. Exceeding time limits should carry consequences for the party not adhering to the requisitions.

Planning of hearings with a view to limiting time to what is really necessary improves the efficiency of the court. Also it should be made possible for the court upon decision of the judge to use video and telephone conferences and to record proceedings electronically both during preparatory meetings and during the hearings.

Careful consideration should be given to the possibility of simplifying written decisions. Where legally fixed time limits for delivering the judgement do not apply, the court should be obliged at the end of the oral hearings to announce the date when the judgement will be pronounced.

7.11. Processing

Case management should be introduced as it has proved a very important means to speed up the preparation of the case for hearing and to ensure time effective hearings through planning. Case management with a possibility of using both judicial and staff management depending on the case and the issues involved, should be considered

Electronic recording of the civil and criminal process including electronic filing and access should be introduced combined with making it possible – and a later stage obligatory – to serve all communications and notices both to and from the court via electronic means through the use of certified e-mail.

Designation of specialised courts in order to deal with specific areas of law and also specialization of judges within the court may improve efficiency and thus speed up proceedings. Introduction of specialisation within the courts should be within the competence of Councils for the Judiciary and Court Administrations deciding on the matter in agreement with the courts involved.

Delegation of competences to the administrative staff, including judges' secretaries, should be applied in issues connected with the practicalities of the process, e.g. invitations, protocols and communication with the advocates' offices.

APPENDIX 1: FURTHER READING

In this appendix you will find a list of reports and documents on timeliness that have been published by other networks etc. A link to the document is indicated where it is available at the internet.

1. Documents published by the CEPEJ:

“Saturn Guideline for Judicial Time Management”

Published 11 September 2009 – 9 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)8Rev&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)8Rev&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

“Compendium of “best practices” on time management of judicial proceedings”

Published 8 December 2006 – 19 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2006\)13&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2006)13&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

“Time management checklist”

Published 9 December 2005 – 4 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2005\)12&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2005)12&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

“A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe - Framework Programme”

Published 13 September 2005 – 9 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2004\)19&Language=lanEnglish&Ver=rev2&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2004)19&Language=lanEnglish&Ver=rev2&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

2. Documents published by the CCJE:

“Opinion no 6 (2004) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers on fair trial within a reasonable time and judge’s role in trials taking into account alternative means of dispute settlement”

Published 24 November 2004 – 14 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2004\)OP6&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogo=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2004)OP6&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogo=c3c3c3)

“Questionnaire on case management, judges' role in trials, and alternative dispute resolution methods”

Carried out in spring 2004

Link to the answers to the questionnaire:

http://www.coe.int/t/dghl/cooperation/ccje/textes/travaux6_en.asp?

“Preliminary remarks and questionnaire on management of cases, judges’ role in the proceedings, and use of alternative dispute settlement methods”

Published 10 February 2004 – 7 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2004\)1&Sector=secDGHL&Language=lanEnglish&Ver=original](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2004)1&Sector=secDGHL&Language=lanEnglish&Ver=original)

“1st European Conference of Judges on “The Early Settlement of Disputes and the Role of Judges””

Carried out on 24-25 November 2003

Link to the conference:

http://www.coe.int/t/dghl/cooperation/ccje/meetings/conferences/litiges/default_en.asp?

Link to program – 2 pages:

http://www.coe.int/t/dghl/cooperation/ccje/meetings/conferences/litiges/Programme_en.pdf

Link to conclusions – 3 pages:

http://www.coe.int/t/dghl/cooperation/ccje/meetings/conferences/litiges/Conclusions_en.pdf

3. Recommendations to be found at the CCJE's website:

“RECOMMENDATION No. R (95) 5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE INTRODUCTION AND IMPROVEMENT OF THE FUNCTIONING OF APPEAL SYSTEMS AND PROCEDURES IN CIVIL AND COMMERCIAL CASES”

Published 7 February 1995 – 4 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(95\)5&Language=lanEnglish&Ver=original&BackColorInternet=c3c3c3&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(95)5&Language=lanEnglish&Ver=original&BackColorInternet=c3c3c3&BackColorIntranet=FDC864&BackColorLogged=FDC864)

“RECOMMENDATION No. R (86) 12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING MEASURES TO PREVENT AND REDUCE THE EXCESSIVE WORKLOAD IN THE COURTS”

Published 16 September 1986 – 2 pages

Link:

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(86\)12&Language=lanEnglish&Ver=original&BackColorInternet=c3c3c3&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(86)12&Language=lanEnglish&Ver=original&BackColorInternet=c3c3c3&BackColorIntranet=FDC864&BackColorLogged=FDC864)

4. Report by Rusen Ergec:

“General report on Preventing Backlog in Administrative Justice” done for “XXInd Congress of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union”

Conference carried out on 7 June 2010 – 56 pages

Link:

http://www.juradmin.eu/colloquia/2010/General_Report_2010_EN.pdf

Link to the “Questionnaire on Preventing Backlog in Administrative Justice” – 3 pages:

http://www.juradmin.eu/colloquia/2010/Questionnaire_en.pdf

Link to the 22nd Colloquium in Luxembourg on 7-8 June 2010:

http://www.juradmin.eu/en/colloquiums/colloq_en_22.html

5. Report by European Agency for Fundamental Rights:

“Access to justice in Europe: an overview of challenges and opportunities”

Published 23 March 2011 – 72 pages

Link to report:

http://www.fra.europa.eu/fraWebsite/attachments/report-access-to-justice_EN.pdf

Link to fact sheet – 2 pages:

http://www.fra.europa.eu/fraWebsite/attachments/Factsheet-Access-to-justice_EN.pdf

6. Study published by the European Commission for Democracy Through Law (Venice Commission):

“Draft Study on Individual Access to Constitutional Justice”

Published 10 June 2009 – 151 pages

Not available on the internet.