



Second Study Commission
Civil law and procedure

Meeting in Madrid, 23 - 27 September 2001

Conclusions

PROVISIONAL MEASURES IN CIVIL (*) PROCEEDINGS

1. National law should provide for a range of provisional measures, which may be granted without entitling the opposing party to be heard if the urgency of the case makes that unavoidable or if that is required by the very nature of the measure sought.
2. If a provisional measure is granted *ex parte*, the opposing party should have the opportunity to argue at short notice that the measure be set aside.
3. Breach of provisional measures should be met with effective sanctions.
4. There is no general need for a time limit in provisional measures other than the limit that the effect ceases as soon as there is a decision on the merits.

Subject for the meeting in 2002:
"Civil liability of judges."

Report of the 2nd Study Commission

The subject of the work of the 2nd study commission was "Provisional measures in civil proceedings". 37 written reports had been submitted by the members of the commission for the preparation of the general report, 33 of these were taken into consideration. The delegates from 37 nations were present. The general report by the president was adopted unanimously. The discussions in the commission covered the following matters in particular:

1. Should national law provide for the possibility to grant provisional measures only within the framework of a pending case or also apart from that?
2. Should the effect of provisional measures be limited in time, as a general rule?
3. What do you think of the practice of using provisional proceedings as a (speedy) alternative for regular civil proceedings? Should urgency be demonstrated where a claim is not (seriously) disputed otherwise (e.g. undisputed money claims)?
4. Should national law provide for the possibility to order, in urgent cases, provisional measures without hearing the other party (*ex parte*)?
5. Should applicants for provisional measures, as a rule, provide security for the eventuality of their being liable in damages?
6. Should cross-border injunctions be allowed, esp. in intellectual property cases?

After the discussions the conclusions above mentioned were reached unanimously and the subject for next year was selected.

All delegates agreed that the quality of the discussions was enhanced greatly by the valuable contribution of the interpreters. The commission proposes that the practice of having simultaneous translation present during the meetings of the study commissions be continued in the years to follow.

(*) Understood here as excluding family matters.