First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in San Juan, 11-16 October 1997

Conclusions

VARIOUS SPECIAL MEASURES IMPLEMENTED IN DIFFERENT COUNTRIES TO MANAGE THE INCREASING NUMBER OF CASES COMING BEFORE THE COURTS.

It has become apparent to the members of this commission that in most countries the classic or traditional judicial system is not, or is no longer, able to cope with the increasing number of cases, with the means placed at its disposal (thus the existence of judicial backlog). The improvements of the administration system in the courts is imperative to deal with this problem.
As a consequence of this, a conflict rises between, on the one hand, the other branches of government urging for a more and more productive justice system and, on the other hand, the judiciary as the guardian of the main principles and values essential for the good quality of justice.
The first study commission is of the opinion that the different parties to this debate should be listening more to one another.
The implication for judicial power is that it must show an open mind to the reforms necessary for its modernisation while safeguarding at the same time the principles of the good administration of justice.
It would be indeed counterproductive to oppose any reform in the name of those principles when one is compelled to recognise that these same principles are being eroded by the incapacity of the classic judicial system to deal with the cases coming before the courts in a reasonable time, due to the fact that the system as it exists today cannot cope with the ever increasing number and complexity of the disputes which must be resolved.
For that reason, the first commission recognises that it is necessary to develop new measures to find a new balance between the requirements of a modern justice system and the necessity of preserving the above mentioned principles.
The main goal of discussing these matters was to obtain information from as many sources as possible to examine the steps which have been taken in other jurisdiction and to select what we consider to be most appropriate for general application with respect for the rule of law.
The commission has examined 31 reports from countries all over the world and looked at the experiences which they have had.
The questionnaire concerned three separate issues, chosen from a management point of view:
1) steps to limit the number of cases coming before the courts (limiting the input)
2) increase the number of cases dealt with (increase the output)
3) speed up the process of dealing with the cases (diminish handling time)
It was self-evident to add to this the issue of the evaluation of the results of the measure taken.
In the reports are contained the results of the steps that various countries have taken to reduce the backlog and for the management of their cases.
The last subject of the study is an examination of the effect of all these measures consistent with the principles of justice.
When we examined and discussed the national reports, it became clear that the complexity of the problems and their number made it impossible to deal with them all, having regard to the time available for the discussion.
Therefore the commission decided to continue next year on the same subject and on the issues that time did not allow to discuss in depth.

The hopes and fears regarding the steps to be taken to limit the access to and the case-load of the courts.
In general, it was agreed that the concept of limiting the input as a technique of management was in direct opposition to the principle of free access to justice.
Thus, if one wants to maintain free access to justice, the logical consequence of this option should be that resources provided for should more or less automatically increase in proportion to the increase of case-load.
The commission noted that in only two countries there is at present a system of automatic variation depending on the case-load.
The measures to be taken to limit the number of cases entering the courts can be divided into two categories.
Those which apply to the first instance, and those which limit access to the appeal courts.
In general we have noted that in many countries there exist for a long time rules and practises which are intended, or else have the effect of limiting, the number of cases to be dealt with:
e.g. in criminal law : the right of the public prosecutor whether to prosecute or not; alternatively by proposing to the dependent a penalty ("Strafbefehl"); plea bargaining; limitation of appeal.
e.g. in civil law : preliminary proceedings, stamp fees, security for costs, the requirement to have a lawyer, restriction of appeal and appeal by leave to appeal.
It is agreed that to a certain extent some of these rules and practises limit access to justice.
On the first instance level, more recent measures try to offer to (or impose on) litigant parties alternative ways of dispute resolution (A.D.R. in its different forms), without refusing access to the courts when these alternatives fail or when the outcome of them is not accepted.
These alternative systems however should not be introduced for the purpose of case or list management, but because they may provide a more satisfactory way of resolving the dispute than an imposed decision, which should be regarded as the last possible way of solving the problem.
The reduction of the number of cases to be dealt with by the courts is certainly a serious, but a secondary consideration. This side-effect depends to a great extent on the acceptance by the public of the A.D.R. and on the percentage of cases thus resolved.
The commission highlights in this regard that it is of extreme importance that the A.D.R. is equally accepted by lawyers.
One cannot expect lawyers to adopt an alternative system if it means a reduction in their income.
Summary of the suggestions which would lead to an increase of the output by efficient management of resources.
· Mobile judges
· Judges sitting alone dealing with matters in which they have experience (or else limited jurisdiction).
· More attention given to the length of time and the cost in relation to the importance of the case,
· Deviation from the principle that parties have total control of the process,
· The judge must identify the issues which require proof,
· A filter-system on the appellate level, based on objective criteria in order to exclude cases which are brought only for delay or are abusive or vexatious,
· greater staffing levels to assist the judges,
· more computerised assistance.
It is the commission's view that before any steps in order to improve case-load management can be taken, they must be evaluated having regard to their real effects on case-load and their compatibility with the principles of justice.
It is also necessary to have a system of assessment of the operations of the court system, statistically or otherwise, but always preserving the independence of the judge and the judiciary .
The commission agrees indeed that the judiciary must acknowledge their responsibility to society, but one must be extremely careful about the nature and the use of statistic evaluation, especially regarding the individual judge.
It is indeed very important to eliminate any possibility of undue outside pressure that would affect the independence of the judiciary.

In conclusion : whereas it is incontestable that all members of the judiciary must do the best they can to carry out their work to the limits of their ability, it is also necessary and essential that the other branches of government provide the judiciary with the resources necessary to carry out their work properly.