

## QUESTIONNAIRE

of the 1<sup>st</sup> Commission 2007

### Access to justice

#### Introduction:

Everybody should be guaranteed access to the courts, whether this is to make or defend civil claims or to defend a criminal charge. (See: UN-Basic Principles on the Independence of the Judiciary para 5 or European Convention of Human Rights Article 6 and other similar provisions).

This questionnaire aims to find out if there are obstacles to this access to justice and what means may be used to overcome it? The questionnaire concentrates on access to justice for individuals, as opposed to corporate entities.

#### I.) The costs of bringing or defending a civil claim or defending a criminal charge:

It is a fact that the costs that a party has to pay, when it wants to use the court system (for instance to bring or defend a civil claim) will influence an individual's decision on whether to go to court at all or to pursue/defend a claim in court. Different systems of legal aid try to reduce this obstacle to justice. A special problem may occur if the costs of experts cannot be met from legal aid funds.

- Question 1:** (a) Is there legal aid in your country?  
(b) Is this available for individuals in all courts, both civil and criminal?

Yes, free legal aid is provided in civil matters under the Act No. 327/2005 Coll. on the provision of legal assistance to destitute persons, and in penal matters based on Code of Criminal Procedure (the so-called ex offo representatives).

The free legal aid is provided under the Act No. 327/2005 Coll. in respect of

- **domestic disputes** in:
  - **civil matters** (for instance in litigations concerning apartment lease, settlement of tenancy by the entirety (undivided co-ownership of spouses), non-repayment of loans, consumer protection),
  - **family law matters** (e.g. napr. child support – alimony payments, child custody)
  - **industrial law matters** (in disputes relating to invalidity of notice, work conditions, discrimination at a workplace, etc.).
- **transboundary disputes** except for **civil matters, family law matters, and industrial law matters, also in business law matters.**

#### **Question 2:** Which costs are covered by legal aid?

- (a) the costs of using the court?
- (b) the costs of the lawyer?
- (c) the costs of experts (either appointed by the court or engaged by the parties directly)?

Provision of legal services to a person entitled by law in connection with his/her rights application includes, in particular, legal consulting, assistance in extra-judicial procedures, formation of petitions to be filed with the courts, representation in proceedings before courts and performance

of related acts, and full or partial payment of related charges, including Attorney's fees and expertise evidence.

**Questions 3:** What are the limitations of legal aid:

- (a) are there financial limits to legal aid in (i) civil; and (ii) criminal cases.
- (b) are there limits on (i) the type or (ii) choice of lawyers or experts that can be used if legal aid is claimed by an individual?

No financial or other limits for the provision of free legal aid have been set.

**Questions 4:** Who grants legal aid for civil and/or criminal cases? Is it granted by a body which is under the control of the judiciary or by an extra judicial organ? If the latter, describe this organ.

The Legal Aid Centre is managed and financed by the Government through the budget chapter of the Slovak Ministry of Justice.

II.) Information about the judicial system:

Only those who know about the possibility of using the courts to make or defend a claim, and the possible procedures that they are going to face there, will be able or willing to go to court. Therefore information and knowledge about how the courts and the judiciary function are essential:

**Question 5:** Are students in

- (i) schools and
  - (ii) universities and colleges,
- taught about the court-system, the jurisdictions of the various courts, the judiciary, the rights of citizens to use the court systems and how the system functions?

Yes, elements of knowledge on the functioning of the State and its public authorities (including judicial power) have been taught starting with primary schools within compulsory school attendance. In secondary schools and further education system the issues of judiciary and legal system have been taught in more details.

**Question 6:** What means are there for informing potential litigants or other users of the court system about

- (i) the court system and how it is organised;
- (ii) the judiciary;
- (iii) the procedure in courts (civil and criminal);
- (iv) how to get assistance to make or defend a case in court;
- (v) how much court procedures may cost?

(examples of means to disseminate this information may be: internet; advice bureaux; books/pamphlets published by the court service/government)

The information on the judiciary, court system, proceedings before a court, etc. can be obtained through internet, books and other publications, and equally from the Free Legal Aid Centre. The Slovak Ministry of Justice, the Judicial Council of Slovakia, the Supreme Court of Slovakia, and also some courts have their own web sites.

III.) Access for minority groups (eg. ethnic or language groups):

Special efforts may be necessary to ensure that members of minorities have the same rights of access to justice as do the majority group in a country.

**Question 7:** (a) Are there special arrangements to ensure that ethnic/language minorities are aware of their rights of access to justice.

In Slovakia, each individual has an equal access to a court. Pursuant to Article 33 of the Constitution of the Slovak Republic, adherence to any national minority or ethnic group must not be to the detriment of anybody.

(b) What special arrangements (if any) are made to ensure that those minorities are able to obtain equal access to justice?

Pursuant to Article 46 § 1 of the Constitution of the Slovak Republic, everybody may claim, in the way constituted by law, his/her right in an independent and impartial court, and in cases constituted by law, in another authority of the Slovak Republic.

c) Are there facilities to enable ethnic/language minorities to have cases conducted in their language/the proceedings translated for them to follow?

Yes, members of national minorities have a right to use their mother language to express before the court, and therefore, for this purpose the court has to invite a certified and sworn interpreter, if necessary. The right of the members of national minorities to use their language within the official communication is also set forth in Article 34 Section 2(b) of the Slovak Constitution.

#### IV.) Delays in the justice system:

“Justice delayed is justice denied”. The problem of delays in dealing with both civil and criminal cases is encountered in many countries. Delays in cases can amount to a serious denial of the right to access to justice for individuals.

Question 8: (a) In your country are there serious delays in dealing with civil or criminal cases because of “structural” reasons – e.g. a lack of judges/courts/experts/lawyers who are prepared to deal with legal aid cases.

Unfortunately, yes – Remarkable undue delays in proceedings still persist, especially in civil causes. The community of judges, including the Judicial Council of Slovakia, which is the supreme constitutional authority of Slovakia have been pointing out, for a couple of years, to the need to enhance justice with additional staff, in particular to increase the number of judges but also the auxiliary staff in order to eliminate the undue delays in proceedings.

(b) If there are please explain what they are.

The undue delays in the proceedings mostly occur in civil causes, less in criminal matters. In 2006, the European Court of Human Rights in Strasbourg, in relation to Slovakia, has stated in 30 cases a breach of the right to a fair trial within a reasonable time under Article 6 § 1 of the Convention on Human Rights.

(c) Are there plans to deal with these problems?

Finally in the year 2006 the Executive declared its decision to enhance judiciary by 150 to 200 judges, which was positively appreciated by the Committee of Ministers of the Council of Europe (The information taken from the Report on the activity of Agent for the Slovak Republic before the European Court for Human Rights, Strasbourg).

#### V.) Procedure in courts:

Formality in procedures may prevent individuals having access to justice.

Question 9: Are there any examples in your country. Please describe the problems. (e.g. mandatory representation by a lawyer, but heavy cost/ few lawyers available; necessity to appear at court but excessive distances to court buildings etc.).

By the law, the compulsory representation by an Attorney-at-Law is required in some cases of criminal proceedings only (ex offio). After some courts having been dismissed in 2005 in some districts the access to a court has become more difficult but nowadays, there is a bill in the legislative process based on which some of those dismissed courts should be re-established. Otherwise, we do not report any problems of the indicated nature in Slovakia.

VI.) Enforcement:

Effective access to justice also includes the need to ensure that judgements are enforced effectively.

**Question 10:** (a) Who ensures that a judgment is properly registered and enforced against a party?

All judgments are recorded in registered files through judicial management (computer system). The court marks out a judgment to be final after the mandatory requirements are met: i.e. after signification or substitute signification of a decision and expiration of the term to lodge an appeal provided that remedy is admissible. The decisions are enforceable within three days from the date they become effective. If obligor fails voluntarily to meet what was imposed on him by the enforceable decision then the authorized person may claim execution of such a decision.

(b) Do problems with effective enforcement exist?

Partially.

(c) If so, please describe them? What might help to improve the situation?

There are cases where the unsuccessful party to the litigation is not willing to perform based on a final decision and tries to avoid or, by using different ways, to defer the performance.

VII.) Other Obstacles:

**Question 11:** Are there other obstacles to access to justice? If so, please, describe them

Unknown.

VIII.) Recommendations:

**Question 12:** In your country are there any existing practices or reports/proposals for the future on the subject of improving access to justice that you would recommend to the judiciaries of other countries.

In last years (once a year), the Slovak Ministry of Justice submitted the Slovak Parliament a **Report on the State of Slovak Justice**, which is dealt with by the Constitutional and Legal Committee of the Slovak Parliament. At present, the Constitutional and Legal Committee has invited the Slovak Ministry of Justice to set up and present a document named “**Concept of Justice Stabilization**”.

The Agent for the Slovak Republic before the European Court for Human Rights in Strasbourg presents annually the **Report on Activity of the Agent for the Slovak Republic before the European Court for Human Rights**, which is equally discussed in the Slovak Parliament.

The conceptual issues of the functioning of justice is also dealt with by the Judicial Council of the Slovak Republic, which, for instance, at the turn of the years 2006 and 2007, evaluated **The Impact of Judiciary Reform on Judiciary Performance**, and further thereto it prepared a conceptual document designed for the completion of steps to strengthen the independence of

justice (including proposals of legislative changes, e.g. enhancement of the Slovak Judicial Council's authorities to the prejudice of the Slovak Ministry of Justice, enhancement of the independent position of judges, etc.). This practice may, at first sight, fall more or less general but the really independent judiciary is an enormous warranty of access to justice.

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on 28<sup>th</sup> June 2007