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STRATEGIES IN EFFECTIVE CASE MANAGEMENT /

STRATÉGIES DE GESTION DE CAS EFFICACE

SUMMARIES OF ANSWERS TO 2018 QUESTIONNAIRE
SOMMAIRES DES RÉPONSES AU QUESTIONNAIRE 2018

The questionnaire addresses case management in the context of the court's duties to ensure swift and efficient proceedings, which may include the court's duty to elucidate claims and deal with preliminary matters that can take place prior to trial and/or during the trial proceeding. This would include tools in relation to preparatory sessions in order to establish timelines and/or render interim orders. As well, it may include rules, procedures, and strategies utilized by courts to achieve a settlement in cases amenable to out-of-court settlements.

Le questionnaire porte sur la gestion des litiges dans le cadre des fonctions du tribunal dans le but d'assurer que les procédures seront menées à terme de façon efficace et expéditive, y compris le devoir du tribunal statuer sur les réclamations et les moyens soulevés ou à soulever par le tribunal avant les débats ou pendant les débats. Ceci inclurait des outils en relation aux sessions ou audiences préparatoires dans le but d'établir des échéances et/ou rendre des ordonnances interlocutoires. De plus, il peut comprendre des règles, des procédures et des stratégies pour parvenir à un règlement dans les cas susceptibles d'être réglés à l'amiable.

QUESTION 1:

Can case management be used effectively in civil litigation matters in your jurisdiction?

La gestion de cas peut-elle être utilisée de façon efficace dans les litiges civils dans votre juridiction?

1. ARMENIA

The RA Civil Procedure Code, which was adopted on February 9, 2018 and entered into force on April 9, 2018 unambiguously has given importance to the effective case management. For this purpose there are foreseen procedures to improve the efficiency of the case management in the RA Civil Procedure Code.

2. AUSTRALIA

Yes, the Federal Court of Australia has a framework for the use of case management in civil litigation matters. The key objectives of case management in the Federal Court are to reduce costs and delay by seeking to ensure that there are fewer issues in contest; no greater factual investigation than justice requires; and as few interlocutory applications as necessary for the just and efficient disposition of matters. The docket judge presides over the effective management of a proceeding. Judges may make orders in relation to pre-trial issues such as discovery, timeframes for filing materials, evidence, and procedural matters. Further the Court has a range of options to facilitate Alternative Dispute Resolution (“ADR”) as part of its case management role. The Court’s role in case management includes the identification of opportunities to use technology and the encouragement of parties to do so.

3. AZERBAIJAN

Yes, case management can be used effectively in civil litigation matters in our jurisdiction.

4. BRAZIL

All case management methods used by judges are defined by law. To increase their efficiency, the Civil Procedure Code of 2015 singles out conciliation and mediation, determining and guiding their application from article 165 to 174.

5. CANADA

In 1999, the Canadian Centre for Justice Statistics examined the use of two case management tools in the Canadian civil courts: time limits and formal notification requirements. Case management has been defined as a system that manages the timing and events of a lawsuit as it passes through the justice system, from the

initial of a case until it is resolved through withdrawal, settlement, trial, or other disposition. The current situation varies between Canadian provinces and territories as it relates to case management systems where a number of jurisdictions are presently engaged in building or modifying automated case management systems, or re-examining case management in an attempt to increase the speed processing and lessen backlog in the courts.

6. **DENMARK**

Yes, very much so. Case management is important in order to have efficient proceedings in civil cases in Denmark and over the past 10 years, several changes have been made to ensure more efficient case management.

7. **FRANCE**

Les affaires sont appelées à une conférence devant le président de la chambre concernée. Il peut également décider que les avocats se présenteront à nouveau devant lui à une date qu'il fixe pour conférer une dernière fois de l'affaire s'il estime qu'un ultime échange de conclusions ou une ultime communication de pièces suffit à la mettre en état. Dans ce cas, il impartit à chacun des avocats les délais nécessaires à la signification des conclusions ou à la communication des pièces. Toutes les affaires que le président ne renvoie pas à l'audience sont transmises en état par un juge spécialement désigné au sein de la chambre, appelé juge de mise en état. Les pouvoirs de ce juge sont très importants tant dans l'instruction des affaires que dans le jugement des exceptions de procédure.

[Unofficial translation: Cases are called to a conference before the president of the relevant chamber. He may also decide that the lawyers will appear again before him on a date he fixes to confer a final time of the case if he considers that a final exchange of conclusions or an ultimate disclosure of documents is enough to put it in state. In this case, it assigns to each of the lawyers the time necessary to serve the conclusions or the documents. All the cases which the President does not refer to the hearing are transmitted to him by a specially appointed judge in the chamber, called a pre-trial judge. The powers of this judge are very important in both the hearing of cases and the adjudication of procedural exceptions.]

8. **GEORGIA**

In 2017, the High Council of Justice of Georgia approved the detailed procedure for Automatic Electronic Distribution of Cases in common courts system. Pursuant to the decision of the council, cases are assigned to judges according to the principle of random allocation, on the basis of the algorithm for generating numbers. The program distributes cases based on the specialization of judges. The electronic system tracks the average number of distributed cases; number of cases distributed to each judge, the number generated as a result of random selection and then logs all these parameters.

The random allocation of cases ensures protection of the process from any kind of interference as well as fair division of labor among judges which ultimately improves the effective execution of justice.

9. GERMANY

Yes, albeit there is room for improvement. The German Code of Civil Procedure (ZPO) provides the rules which are binding for all court proceedings in civil law. The ZPO does not foresee “case management” as a system. Yet it contains provisions prescribing a certain order of procedural steps courts are required to follow in any civil proceeding. The ZPO contains several tools that enable courts to conduct proceedings in a timely manner. Besides this legal framework, courts are neither bound nor supported by specific case management tools. Judges are free to develop their own strategies in order to handle a specific case efficiently. Electronic case management systems replacing paper forms exist to a certain extent, but electronic files are not yet commonly introduced in German civil courts.

10. GREECE

Management of civil cases is the established institutional framework within which the Judicial authorities deal with, process and resolve civil disputes. It is evident that the rules of operation (procedural rules) of the Court and of the parties concerned within the above framework, affect both the speed, as well as the correctness of the legal approach in the process.

11. IRELAND

Case management can be seen as an effective mechanism for ensuring that complex litigation is dealt with in the most expeditious and efficient manner possible. Indeed, effective case management procedures are essential, given that the Irish Courts have seen, and are likely to continue to see, together with an increase in the factual and legal complexity of cases before it. Further, in an era in which the volume of litigation in this jurisdiction is at an all-time high, an effective case management system must be in place so as to make the most effective use of judicial resources.

12. ISRAEL

Yes. Israeli courts have two main mechanisms to manage a case effectively: a) Procedural - pretrial stage; and, b) Technological – all the courts in Israel are connected to an electronic case system (NET HA’MISHPAT).

13. ITALY

The expression « Case Management » in Italy is usually intended in quite a different way, if compared with the meaning these works have in a Common Law legal environment. Case management in Italy is not a way to address some particularly complex proceedings, as all litigations have to be treated exactly in the same way. Contacts between judges and lawyers in a given case on how to manage it in an efficient way are not envisageable as the judge has to strictly apply the procedural rules of our all too complex and baroque legal system. However, a “case management” strategy or “case management oriented” approach on how to address the whole ensemble of cases with which a judge has to do, can be envisaged, of course under some conditions, referring here to case management strategies of the sort which is described in the Introduction of the Italian report, basically addressing first of all the other cases; trying to reach a friendly settlement despite the attempts of some lawyers to have their cases last as long as possible; appointing only experts who have shown in previous cases to be able to produce readable, reliable and skilled reports and to be able to convince the parties to reach friendly settlements; appointing technical experts; to deny adjournments. For a judge, showing this attitude means, most of the times, seriously jeopardising some (many) lawyer’s personal interests. This can be done, very often, not without risks, especially if the head of the court is on the side of such lawyers and not on the side of his judges. For an Italian judge, showing a “case management oriented” attitude and mentality can be very, very risky!

14. JAPAN

Courts and parties effectively utilize the “Arrangement Proceedings of Points at Issue and Evidence” in many disputed civil actions. In short, courts and parties identify the points at issue and the structure of the evidence and select the witness who is both necessary and sufficient for making decisions on the points at issue in these proceedings, so that they make it possible to intensively examine the witness in a short period. In addition, courts try to recommend parties to settle disputes in these proceedings, where if they accept, they have a consultation for settlement. This makes it possible to solve disputes through settlement in their early stages.

15. LATVIA

Yes, the case management can be applied effectively in Latvia’s court system. The definition “case management” includes the time management for adjudicating matters in a court, the implementation and effective use of Court information system (TIS) and strategies that primarily emphasizes the Civil Procedure Settlement.

16. **LIBERIA**

Yes, case management which refers to “the movement of cases from their filing to their final disposition” is being utilized in the litigation of civil matters in Liberia. The essence of civil litigation within any court system including that of Liberia is to ensure a just, speedy and inexpensive resolution of cases. Under the Liberian Civil Procedure Law, the series of events that trigger the commencement of a case starts from the filing of a civil case, the service of summons on the other party, the filing of an answer, the amendment of pleadings, the filing of a reply, the scheduling of pre-trial conferences, the hearing of all pre-trial motions, the conduct of a trial, the final judgment and the handling of all post-trial motions precedent to the taking advantage of the appeal process.

17. **LUXEMBOURG**

De façon générale, toutes les juridictions disposent au Luxembourg d'un certain nombre de mesures qu'elles peuvent, ou le cas échéant, doivent mettre en œuvre pour faire évoluer l'instance d'un point de vue pratique. Plus particulièrement, les litiges en matière civile et commerciale qui à introduire devant le Tribunal d'arrondissement, respectivement les appels contre les décisions civiles, commerciales et en matière de droit du travail, sont soumises à la procédure de la mise en état qui confère aux juridictions des moyens d'actions supplémentaires.

[Unofficial translation: In general, all the courts in Luxembourg have a number of measures that they can, or as appropriate, have to implement to ensure the evolution of the proceedings from a practical point of view. More specifically, disputes in civil and commercial matters to be brought before the District Court, or appeals against civil, commercial and labor law decisions are subject to the pre-trial procedure which confers on jurisdictions means for additional actions.]

18. **NORWAY**

Yes indeed. Case management is of great importance for efficient proceedings.

19. **PARAGUAY**

Si se puede usar la administración de casos la Corte Suprema de Justicia del Paraguay ha implementado el sistema de implementación de causas civiles y el uso efectivo del expediente electrónico a partir del año 2.015, de manera efectiva y dando transparencia a los tramites de los justiciables en el área civil como una herramienta de combate a la morosidad judicial.

[Unofficial translation: If case management can be used, the Supreme Court of Justice of Paraguay has implemented the system for the implementation of civil cases and the effective use of the electronic file as of the year 2015, in an

effective manner and giving transparency to the proceedings of the justiciable in the civil area as a tool to combat judicial delinquency.]

20. POLAND

There is no possibility to manage civil or other cases in Poland since each new case registered in Court is randomly allocated to a single judge by a computer program. This general frame is considered to be one of the safeguards of the transparency of Polish judicial system. After a case has been allocated to a single judge he/she handles it according to the rules envisaged in Code of Civil Procedure.

21. PORTUGAL

Yes. Management is undoubtedly an integral part of a modern justice plan. In addition to criminal, labour and family areas of law, management can also be applied in civil and corporate cases. It can be performed both by public and private entities, and also by “julgados de paz”, which constitute alternative means of dispute resolution aimed at petty civil cases that adopt simplified and informal procedures.

22. ROMANIA

Case management is used in the activity of the courts of law at all hierarchy levels, a series of programs and steps are used to insure the effective character of this management. The objectives of the case management are reasonable term of the judicial procedures; monitoring the term in which a case is solved; reduction of the duration of case solving by concrete steps; monitoring the workload of the courts and of the panel of judges they consist of; random assignment of the cases; computerized registry of cases in a national computer program; the possibility of parties to access their own files electronically; and, the possibility to identify a case by the parties or attorneys by accessing the court's portal.

23. SERBIA

In the system of the Republic of Serbia, courts undertake certain measures aimed at securing faster and more efficient proceedings in civil matters. Prior to trial, acting judge is obliged to warn the litigants about a possibility of peaceful settlement of disputes through mediation. However, few litigants decide to attempt this kind of settlement. Also, high percentages of the so-called old cases indicates that the case management is not being used effectively in civil litigations in Serbian legal system.

24. SPAIN

Effectively. In fact, Spanish legislation imposes a mandatory procedure, within the process itself, which seeks mediation if possible; the correction of procedural defects; and, the specification and precision of allegations and evidence thus reducing and expediting the procedures. There are two general processes: the ordinary and the verbal trial; the latter used for minor claims. In the ordinary trial, the so-called “preliminary hearing” is established where the last aspects are specifically framed. In the verbal, that function is performed at the beginning of the trial itself.

25. SUISSE

C'est le Code de la procédure civile qui donne les règles pour la conduite des procès. Il n'y a pas de « pre-trial » comme il existe en autre pays mais dans la plupart des procès, une procédure de conciliation est obligatoire. Le CPC laisse aussi beaucoup de liberté en ce qui concerne les possibilités de trouver des solutions à l'amiable. Il y a aussi un contrôle annuel des procédures pendantes qui se fait par l'autorité de surveillance. Sur le plan technique, l'enregistrement des procès, des formulaires spécifique, un système de rassemblement des données et une compilation plus ou moins systématique permet aussi une gestion assez efficace.

[Unofficial translation: It is the Code of Civil Procedure that provides the rules for conducting trials. There is no "pre-trial" as it exists in other countries, but in most cases a conciliation procedure is mandatory. The CCP also leaves a lot of freedom as to the possibilities of finding solutions amicably. There is also an annual review of pending proceedings by the supervisory authority. From the technical point of view, the registration of the trials, the specific forms, a system of data collection and a more or less systematic compilation also allows a fairly effective management.]

26. TAIWAN

Yes, case management can be used effectively in civil litigation matters in our jurisdiction. Case management is a court reform to resolve the increasingly worsened cases effectively, and to help judges manage their cases. Moreover, it can also achieve the goal of the concentrated trial that was the most significant revolution in the amendatory civil procedure from 1999 to 2003.

27. TIMOR-LESTE

Case management can always be used as an alternative way of solving disputes in civil litigation matters. Although there are no specific procedural rules, judges should always encourage parties in order to solve their conflict in a friendly way.

28. UNITED KINGDOM

England & Wales

In civil litigation in England and Wales, there is now judicial involvement from the issue of a case, with strict timescales for compliance. The lower value cases in personal injury are now subject to a protocol which is largely a system of forms. At the higher value end of claims, there is robust case management from a judge. There are now specialist courts, where there is judicial case management throughout. At the lower end of the scale, the case management is less rigorous due to the cost implications for the courts. And finally, in the family courts, there is now a codified case management system which requires the parties to attend before a judge.

Scotland

In Scotland, case management can be used effectively and has become well-established in a variety of types of proceedings, most notably in commercial actions, but also in personal injuries actions, family actions, intellectual property actions, and lengthy or complex criminal trials.

29. UNITED STATES OF AMERICA

Yes. U.S. Courts have several mechanisms to assure that cases are managed effectively and efficiently. From the filing of a complaint or docketing of an appeal, courts require parties to identify the issues that they intend to raise and to submit other information to the court to help it organize its docket. In most cases, the federal rules of civil procedure require parties to submit to a pre-trial conference at which the parties must consider the basis for their legal claims, discuss the possibilities for settling or otherwise resolving the case, and attempt to develop a proposed discovery plan. The court also issues a scheduling order to establish deadlines for the major milestones in the case. Local rules may also require parties to undergo mediation to attempt to resolve issues before trial. The Federal Judiciary also uses electronic case management, called the Case Management/Electronic Case Files system (CM/ECF), in all civil litigation. Anyone may register online through the Public Access to Court Electronic Records (PACER) portal to view and download civil filings.

QUESTION 2:

Are there rules or guidelines for the use of case management in civil litigation in your jurisdiction?

Existe-t-il des règles ou lignes directrices pour l'utilisation de la gestion de cas dans les affaires civiles dans votre juridiction?

1. ARMENIA

The Civil Procedure Code of the RA provides for a number of procedures of an effective case management, such as the preliminary court session, the decision on distributing the burden of proof, submitting documents electronically, sending a judicial notice through electronic communication, combining and separating a few cases or claims, submitting the draft of the judicial act by persons participating in the case, accelerated trial, remote trial, and the examination of cases under simplified proceedings.

2. AUSTRALIA

Yes. The obligations on legal practitioners and parties in the Federal Court are contained in the *Federal Court of Australia Act 1976* (Cth). These provisions provide³ that the overarching purpose of civil practice and procedure and case management within the individual docket system is to facilitate the just resolution of disputes according to law as quickly, inexpensively, and efficiently as possible. The practical guidelines for case management are set out in detail in the *Federal Court's Central Practice Note: National Court Framework and Case Management (CPN-1)*, a copy of which is attached to the Australian report.

3. AZERBAIJAN

Yes, there are. Procedure for civil litigation is regulated by the Civil Procedure Code, the procedure for division of cases among judges is regulated by the Law on Courts and Judges and the Guidelines for the Procedure for Carrying out Cases in Courts approved by the Ministry of Justice in Azerbaijan.

4. BRAZIL

Yes, there are rules established by law which should be followed by the judge and the parties in the use of case management, such as the possibility for the Federal Supreme Court to hold a public hearing where it is necessary to clarify any matter or circumstance or if the information on the case records is clearly insufficient; mediation and conciliation can be performed as volunteer work; the creation of judicial centers for dispute resolution; judges, lawyers and public defenders and prosecutors should encourage the use of conciliation, mediation and other

methods of consensual dispute resolution; and Law 13,140/2015 (Mediation Law) dictates that dispute resolution must be pursued even before the claim is filed.

5. **CANADA**

The provincial legislatures have the legislative authority over the administration of justice, which includes the rules of court utilized in each province. Consequently, case management in each particular province may vary considerably. The Government of Canada sets the rules of court for the federal courts. There are many ways case management can be implemented. These may generally be described as: moral suasion, local practice, practice directives and notices, statutory enactments, Rules of Court, and/or Case Management Rules. Case management should be carried out with the following guidance from the Supreme Court in mind (see *Hryniak v. Maudlin*, 2014 SCC7, at para. 27): “There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance requires simplified and proportionate procedures for adjudication and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and the alternative models of adjudication are no less legitimate than the conventional trial”.

6. **DENMARK**

Yes, there are rules and guidelines regarding the use of case management in civil litigation in the Danish civil procedure. In 2007, substantial changes were made in the Danish Code of Judicial Procedure to ensure more effective management and to speed up the handling of civil cases. In the recent years, there have also been changes in terms of a set of national guidelines to more effective case management in civil cases in Denmark.

7. **FRANCE**

Le juge de la mise en état veille au déroulement loyal de la procédure, spécialement à la ponctualité de l'échange des conclusions et de la communication des pièces. Il dispose pour ce faire d'un pouvoir d'injonction à l'égard des parties et des avocats. Il exerce également des attributions juridictionnelles afin que le jugement de l'affaire ne soit pas retardé par la nécessité d'ordonner des mesures d'instruction ou par des exceptions de procédure tardivement soulevées.

[Unofficial translation: The pre-trial judge shall ensure the fair conduct of the proceedings, especially the punctuality of the exchange of submissions and the disclosure of documents. To this end, it has power of injunction with regard to parties and lawyers. He also exercises jurisdictional powers so that the judgment

of the case is not delayed by the need to order measures of inquiry or by procedural objections belatedly raised.]

8. GEORGIA

In 2017, the High Council of Justice of Georgia approved the detailed procedure for Automatic Electronic Distribution of Cases in common courts system. Pursuant to the decision of the council, cases are assigned to judges according to the principle of random allocation, on the basis of the algorithm for generating numbers. The program distributes cases based on the specialization of judges. The electronic system tracks the average number of distributed cases; number of cases distributed to each judge, the number generated as a result of random selection and then logs all these parameters.

The random allocation of cases ensures protection of the process from any kind of interference as well as fair division of labor among judges which ultimately improves the effective execution of justice.

9. GERMANY

The only rules which are actually binding for courts are set out in the German Code of Civil Procedure (ZPO) (see above question 1). In a practical manner, informal recommendations and trainings on how to handle cases efficiently as possible are provided in most German states.

10. GREECE

The fundamental rules or guidelines governing the management of civil cases are: (a) the initiation and progress of proceedings in general at the sole initiative of the interested parties – parties to the proceedings; and (b) the recognition of a certain and binding probative value in all evidence used by the parties.

11. IRELAND

The main source of guidance for the utilization of case management procedures can be found in the Rules of Court of the Superior Courts.

12. ISRAEL

Yes, the Israel Civil Procedure Regulations apply in all civil courts in Israel. The regulations set courts authority for case management and set time frames for pretrial proceedings. Under this regulation, the judge can raise case management issues on his own, and is not bound by motions filed by the parties. In addition, the judge has a wide range of discretion on how to manage the case, including setting time frames, appointing court experts, etc. The regulations also allow even more efficient procedures in specific matters. In addition to the regulations set by

the executive branch, the Chief Justice of the Israel Supreme Court can also set guidelines applied by all the courts.

13. **ITALY**

As referred to in the Introduction of the Italian report, rules or guidelines of this kind were (and are) those of the so-called “Decalogue” of the “Strasbourg Programme” for the Court of Turin. They may be therefore given by heads of courts who want to convince their judges of the need to have and keep a “case management oriented” approach, knowing that this may be very hardly contested by lawyers.

14. **JAPAN**

The Rules of Civil Procedure are the rules governing the Arrangement Proceedings of Points at Issue and Evidence in civil actions.

15. **LATVIA**

The Law on Judicial Power, Civil Procedure Law and Regulations of the Cabinet of Ministers regulates the case management. There are also three books: “Comments on the Civil Procedure Law” that are examples of practical implementation of the procedural law.

16. **LIBERIA**

Yes, there are rules and guidelines applicable for the use of case management in Liberia starting with the filing of a civil case up to its final resolution. Civil cases are commenced with the filing of a pleading. The Civil Procedure Law of Liberia provides for a new case to be placed on the “calendar” of the next term of court once pleading have rested. No further action is taken unless a party makes a request for an assignment for the case to be tried. In a nutshell, the statute provides a ten-day interval for each stage beginning with the filing of an answer, the filing of a reply or the amending of the original pleadings and the scheduling of a pre-trial conference. In Liberia the circuit courts sit for trial sessions four times a year.

17. **LUXEMBOURG**

Les règles directives relatives à l'administration judiciaire des litiges sont prévues par la loi du 7 mars 1980 sur l'organisation judiciaire, le règlement grand-ducal du 29 juin 1990 portant règlement d'ordre intérieur pour la cour d'appel, les tribunaux d'arrondissement et les justices de paix et par le Nouveau code de procédure civile. Les pouvoirs de juridictions sont beaucoup plus étendus dans la procédure de la mise en état. Cette procédure est écrite, obligeant ainsi les avocats à présenter leurs moyens par des conclusions écrites échangées entre

eux et déposés au greffe. Dès le dépôt de l'acte introductif d'instance devant le greffe du Tribunal d'arrondissement, le président du tribunal fixe les jours et heure auxquels l'affaire sera appelée. Le juge de mise en état a mission de veiller au bon déroulement de la procédure; il fixe les délais nécessaires, il peut inviter les avocats à répondre aux moyens sur lesquels ils n'ont pas répondu; il a le pouvoir de procéder aux jonctions et disjonctions d'instance, etc.

[Unofficial translation: The rules governing the judicial administration of disputes are provided for by the law of 7 March 1980 on the organization of the judiciary, the Grand-Ducal Regulation of 29 June 1990 laying down rules of procedure for the Court of Appeal, the courts District Court and Justices of the Peace and the New Code of Civil Procedure. Jurisdiction powers are much more extensive in the pre-trial process. This procedure is written, obliging the lawyers to present their pleas by means of written pleadings exchanged between them and filed with the registry. As soon as the document instituting the proceedings is filed with the registry of the District Court, the president of the court shall fix the days and times on which the case will be called. The pre-trial judge is responsible for ensuring the proper conduct of the proceedings; he fixes the necessary delays, he can invite the lawyers to answer to the means on which they did not answer; it has the power to proceed to the junctions and disjunctions of instance, etc.]

18. NORWAY

Yes, there are rules in the Norwegian civil procedure act, and we are working on national guideline for effective case management in civil proceedings. We also have local guidelines in our Court of Appeal.

19. PARAGUAY

Existen reglas o pautas para la utilización de la distribución de las causas civiles en los distintos juzgados, comenzando por la matriculación y el otorgamiento de un pin para el ingreso al sistema informático de la Corte Suprema de Justicia, y su posterior sorteo desde cualquier punto de la Republica, atreves del uso del internet.

[Unofficial translation: There are rules or guidelines for the use of the distribution of civil cases in the different courts, starting with the registration and granting of a pin for entry into the computer system of the Supreme Court of Justice, and its subsequent drawing from any point of the Republic, through the use of the internet.]

20. POLAND

There is no possibility to manage civil or other cases in Poland since each new case registered in Court is randomly allocated to a single judge by a computer programme. This general frame is considered to be one of the safeguards of the

transparency of Polish judicial system. After a case has been allocated to a single judge he/she handles it according to the rules envisaged in Code of Civil Procedure.

21. PORTUGAL

Yes. Case management is regulated by Law No. 29/2013 which affirms the general principles for management held in Portugal, irrespective of the entity (public or private) which performs it or the matter on appreciation. The new Code of Civil Procedure of 2013 (Law No 41/2013) has included provisions concerning management. Pursuant to this legal provision, case management may result from court determination, provided that there is no express opposition from any of the adverse parties and it implies the suspension of the proceedings. This suspension occurs automatically when the adverse parties involved voluntarily resort to case management during an ongoing judicial process.

22. ROMANIA

There are well established rules in case management, applicable at national level, without interfering with the principle of independence of judge. Regarding case management, the New Civil procedure Code, which is effective since 15 February 2013, introduced a procedure prior to the judgement stage, in order to reduce the duration of the process. The law placed at the disposal of parties an instrument to avoid excessive duration of the procedures.

23. SERBIA

There are, apart from the provisions of the Civil Procedure Code as primary, certain measures provided for in the National Judicial Reform Strategy are also being implemented. Also, certain rules are provided in other laws and by-laws.

24. SPAIN

It can be said that there are objectives in this process of “process management”, which are ordered by different articles of the Civil Procedure Law. These objectives would be: (1) Purpose of process avoidance; (2) Purifying purpose of the process; (3) Finality delimiter of the object of debate; and, (4) Purpose delimiting the proof.

25. SUISSE

Non. Le CPC permet la délégation de la conduit des cas à un membre du tribunal, ce qui peut aider à gérer les procès d'une manière plus efficace.

[Unofficial translation: No. The CCP allows the delegation of the case leads to a member of the court, which can help manage the lawsuits in a more efficient manner.]

26. TAIWAN

Yes, there are some rules for the use of case management in regards to Resolving the Increasingly Worsened Cases through: a. Alternative Dispute Resolution; b. Pre-Trial Proceeding; c. Case Diversion; d. Concentrated Trial and e. Case deadline

27. TIMOR-LESTE

In Timor-Leste, so far, there is no legal framework providing an overall regulation on case management as an alternative way to formal justice. At the level of labour conflicts, however, article 97 of the Labour Code declares mediation and case management as a mandatory stage to solve both individual and collective conflicts.

28. UNITED KINGDOM

England & Wales

In England and Wales, we have the Civil Procedure Rules, supplemented by their individual practice directions, which are easily accessed online, but also in a text which is known as the “White Book”. Within the White Book, there are also notes to the Rules and the Practice Directions, which inform the judge and the practitioner including case law which has been decided on any particular points. In family law proceedings, there are the Family Procedure Rules, again supplemented by Practice Directions and notes, which provide a similar codified system for case management and timetabling. Within the specialist jurisdictions, for example insolvency, there are some different sets of rules, however the basis for civil litigation are the Civil Procedure Rules.

Scotland

In Scotland, there are distinct chapters of the rules of court dedicated to the various forms of “case managed” procedures that are currently available. In addition, the rules of court are supplemented by the issue of “practice notes”, containing practical guidance to practitioners on the interpretation of the rules and an indication of the court’s expectations. Such practice notes are regularly updated, and supplemented by occasional informational sessions, by which the court maintains a dialogue with the profession.

29. UNITED STATES OF AMERICA

Yes. Federal and local rules establish specific case management procedures. Rule 26(f) of the Federal Rules of Civil Procedure outlines the requirements for pre-trial conferences in all federal civil cases. Each court has its own local rules, which outline case management procedures in that venue. The local rules of each U.S. Court also determine the required procedures for use of the CM/ECF system. The Judicial Conference of the United States is authorized by statute to prescribe the fees and costs associated with the use of the CM/ECF system.

QUESTION 3:

What are the advantages or disadvantages of the use of case management in your jurisdiction?

Quels sont les avantages ou les inconvénients de l'utilisation de la gestion de cas dans votre juridiction?

1. ARMENIA

The mechanisms presented in connection with the second question testify to the existence of legal institutes for effective case management. It is necessary to state that along with these advantages there are also some disadvantages, in particular, the Civil Procedure Code of the RA does not provide for appeal procedure in cassation order for the interim judicial acts of the Court of Appeal as a result of appeal of interim judicial acts made by the Court of First Instance, the same problem exists in the framework of the bankruptcy proceedings. Besides, the Civil Procedure Code of the RA provides too detailed regulations for the implementation of the proceedings which is inadmissible from the viewpoint of effective case management.

2. AUSTRALIA

The objectives and advantages of case management are that they encourage cost effective and efficient management of disputes, by narrowing and minimizing the scope of a dispute, managing issues that arise between the parties subject to the dispute, tailoring the pre-trial steps to the particular case, and identifying and making orders for mediation or other forms of Alternative Dispute Resolution (ADR).

A disadvantage identified by the legal profession is that parties incur higher up front legal costs. However, case management hearings are not required to be held inflexibly and are often adjourned or vacated where there is no necessity for the parties to appear, and parties are often permitted to appear by videoconference or telephone.

3. AZERBAIJAN

At present, a number of courts are applying electronic registration, distribution and electronic notification (pilot) systems in pilot mode. Users of this system express their satisfaction.

4. BRAZIL

When case management is not properly used, it can lead to slower trials and increased procedural costs. However, these disadvantages are not commonly

observed in practice, because even if the parties cannot overcome occasional doubts about who holds the right or the extension of the right, by trying to reach a negotiated settlement they are free from procedural limitations and from the risk of submitting themselves to a decision pronounced by an impartial third party. Hence, they end up reaching a more swift, economical and simple resolution for the litigation.

5. CANADA

Many will say that the advantages to case management greatly outweigh its disadvantages. The introduction of time limits and the requirements for formal court notification of case completion by parties can contribute to expeditious case processing. Active case management in the civil court context can promote early settlement, decrease the number of trials, shorten trial time, and increase the court's ability to set early and firm trial dates. Further, holding case management conferences by telephone or videoconference and email, for example promotes the efficient use of resources and should be encouraged. Case management may not be appropriate for every case. Regional differences may arise in the application of different practices based on the judicial resources available and existing regional practices. They can become another procedural delay in moving the case forward and depending on available resources, certain jurisdictions may be able to convene case management conferences more quickly than others. No matter how well thought-out any case management system is, there will inevitably be some unanticipated difficulties. There is no "one-size-fits-all" trial.

6. DENMARK

The advantage is a more efficient, swifter management and preparation of the case in order to reach the final oral hearing of the case without undue delay. In the initial written submissions, the parties are obliged to clarify their positions regarding the case. The court will then arrange a preparatory meeting via conference call. In the meeting, the management of the case and the case itself is discussed and the court can ask questions to the parties, as well as set the necessary dates. The whole idea is that the parties shall be fully prepared and the judge quite active in this meeting at an early stage and that all elements of the case can be discussed and sometimes settled.

The problem can be finding the necessary time to fully prepare for and hold these preliminary meetings in all cases at a very early stage. At some courts, each judge have the full preparation of the cases from the submissions to the written judgement. The judges at these courts tend to find that this is more efficient and makes it easier to settle the cases before the final hearing. At other courts, the case management up until the final hearing is centrally organized and usually not performed by appointed judges but under supervision by a judge. This is usually chosen to make the case management more efficient as a whole.

7. FRANCE

Avantages: Les pouvoirs d'injonction du juge sont suffisamment coercitifs pour parvenir à une mise en état des affaires dans des délais raisonnables. Le juge de mise en état peut prononcer la radiation des affaires; prononcer la clôture de l'affaire et le renvoi à l'audience; et, il peut soulever d'office des moyens de droit et inviter les parties à y répondre. Les mesures d'instruction nécessaires sont ordonnées au stade de la mise en état ce qui évite une perte de temps dans l'instruction de l'affaire.

Inconvénients : C'est une institution chronophage pour le juge. La mise en état des affaires reste compliquée dans les affaires avec de très nombreuses parties. Si le juge de la mise en état peut statuer sur les exceptions de procédure, ce pouvoir ne s'étend pas aux fins de non-recevoir qui demeurent de la compétence du tribunal, alors que ces moyens devraient être examinés le plus rapidement possible puisque s'ils sont accueillis l'affaire ne sera pas examinée au fond.

[Unofficial translation: Advantages: The judge's powers of injunction are sufficiently coercive to achieve a state of affairs within a reasonable time. The pre-trial judge may strike the case out; declare the case closed and the referral to the hearing; and he may raise legal arguments *ex officio* and invite the parties to reply to them. The necessary measures of instruction are ordered at the stage of the preparation which avoids a loss of time in the investigation of the case.

Disadvantages: It is a time-consuming institution for the judge. Business preparation remains complicated in business with many parties. While the Pre-Trial Judge may rule on procedural objections, this power does not extend to the pleas of non-suitability which remain within the jurisdiction of the Tribunal, whereas such remedies should be considered as expeditiously as possible because they are greeted the case will not be examined at the bottom.]

8. GEORGIA

In 2017, the High Council of Justice of Georgia approved the detailed procedure for Automatic Electronic Distribution of Cases in common courts system. Pursuant to the decision of the council, cases are assigned to judges according to the principle of random allocation, on the basis of the algorithm for generating numbers. The program distributes cases based on the specialization of judges. The electronic system tracks the average number of distributed cases; number of cases distributed to each judge, the number generated as a result of random selection and then logs all these parameters.

The random allocation of cases ensures protection of the process from any kind of interference as well as fair division of labor among judges which ultimately improves the effective execution of justice.

9. GERMANY

The German Code of Civil Procedure (ZPO) contains several tools which are helpful and valuable in structuring civil proceedings in a timely manner. Due to the instruments mentioned above, the average duration of a civil proceeding is relatively short in Germany. The advantage of not having too many fixed rules for case management is that the legal provisions leave a lot of flexibility to judges in terms of how they handle an individual case. Another advantage is that the ZPO clearly encourages parties to settle disputes amicably.

Disadvantages of the German system might include the delay of civil proceedings by the lawyers and parties by applying for extensions, postponements and by challenging a judge on the grounds of bias. A discussion of possible changes to the ZPO in order to ensure more efficient civil proceedings has been taking place for some years already, but has not yet resulted in significant changes ultimately.

10. GREECE

The following could be identified as disadvantages of civil cases management: a) the newly introduced mandatory private mediation process as a pre-trial stage of case management imposes a financial burden to the parties and creates an obstacle that limits the access of the parties to Justice; b) the delay in the process which is exclusively owed to the initiative of the parties for the progress of the proceedings, a delay which usually occurs with the repeated adjournment of the cases; c) the delay in having the judgement enforced combined with the great possibility to challenge judgments by repeated legal remedies; d) the great discretion to prevent or delay the enforcement of judgement even in the event of a final judgment; e) assigning too many cases to judges to handle and try.

11. IRELAND

The advantages of the use of case management in this jurisdiction have already been noted, namely the efficient use of court resources and the tempering of the ever increasing costs of modern litigation. However, there are certain potential disadvantages involved, for instance, it would seem important that pre-trial case management hearings are conducted efficiently. Otherwise, these measures could serve to exacerbate the problem that they are trying to eradicate. Another potential disadvantage of a case management system is who bears the costs of these procedures.

12. ISRAEL

The case management procedures have many advantages. It allows the court to minimize the issues in dispute, assess the case's chances to succeed and give the parties a solid platform to settle the case. In addition, the deadlines and milestones for the trial are set, allowing the case to move forward efficiently. As a result,

many cases are concluded before trial. The electronic system enables parties to view decisions given by the judge immediately, and to review all the case files. The system allows efficient searches in each case by dates or file type. In Israel, case management is crucial. There is a total of 645 trial judges in the Magistrate Court level and District Courts level, and about 814,000 cases per year of which about half are civil cases. These overflow of cases and relatively low number of judges, make case management essential in our jurisdiction.

13. ITALY

The use of case management in our Italian jurisdictions could only bring about advantages for the system. It would of course, for reasons I gave, bring about disadvantages for lawyers' pockets and personal interests. This is the reason why a real "case management approach" for Italian judges can be very risky, if judges' actions are not endorsed by the heads of their respective courts.

14. JAPAN

The advantages of utilization of case management are for example that the parties who reside in a distant location can participate through the use of a video conference system or a telephone conference system in the Arrangement Proceedings of Points at Issue and Evidence and that one or two judges composing a panel can preside over the proceedings in a panel case. The disadvantages are, for example, that the scope of procedural acts that can be conducted in the proceedings is limited in the Arrangement Proceedings of Points at Issue and Evidence.

15. LATVIA

Time management, the Court information system, and Civil procedure law symbiotically complementing each other ensure the easy accessibility that provides the faster exchange of information. This improves work scheduling and efficient collaboration between the involved parties in all cases. In addition, the Court information system provides access to all anonymous adjudications to public. To ensure the ideal operation of all these three case management components, it is necessary to invest a lot of time, teamwork, and accurate data processing.

16. LIBERIA

There are obvious advantages associated with the use of case management in the Liberian court system. One advantage is that it enhances a court's capacity to keep record on the total number of cases. Another advantage is that case management is a useful tool for tracking the backlog of cases that are pending for trial during each term of court. Additionally, an effective case management can lead to early settlement of a case at the pre-trial conference stage. In the

Commercial Court for example, a robust pre-trial regime enhances court processes and the resolution of cases in an expeditious manner.

However, there are some disadvantages observed with the improper use of case management in the courts. One main disadvantage is the court processes are party driven as party litigants usually request assignments from the judges for the hearing of their cases except for the Commercial Court where court processes are driven by the court itself without any requests from the parties. Also, the objective of a speedy resolution sometimes proves too difficult to achieve when cases take too long to resolve and become costly for all the parties.

17. LUXEMBOURG

Avantages : En conférant au juge de la mise en état des pouvoirs très étendus dans la phase instructive de l'instance, la procédure de la mise en état permet une instruction efficace de l'affaire, permettant ainsi à la juridiction de pouvoir prendre une décision sur le fond du litige sans nécessairement passer encore par des jugements préparatoires.

Inconvénients : La procédure reste compliquée dans les affaires impliquant un grand nombre de parties et en cas de jonction entre plusieurs affaires. En pratique, différents problèmes se sont avérés au niveau de l'usage des moyens de défense que les parties font valoir. Il arrive que ces moyens soient soulevés tardivement. Ceci a comme conséquence de retarder de manière conséquente les jugements à intervenir dans ces dossiers. Il arrive également que des échanges de conclusions portant sur la recevabilité de la procédure gonflent inutilement les dossiers concernés, ce qui a comme effet de causer d'importants frais aux parties et d'alourdir la tâche des juges. ,

[Unofficial translation: Advantages: By conferring on the pretrial judge very extensive powers in the investigative phase of the proceedings, the pre-trial procedure allows an effective investigation of the case, thus allowing the court to make a decision on the merits of the case without necessarily going through preparatory judgments.

Disadvantages: The procedure remains complicated in cases involving a large number of parties and in case of joinder of several cases. In practice, various problems have arisen in the use of the defenses that the parties argue. Sometimes these means are raised late. This has the effect of significantly delaying the judgments to be made in these cases. It also happens that exchanges of conclusions on the admissibility of the procedure unnecessarily inflate the files concerned, which has the effect of causing significant costs to the parties and increasing the judges' task.]

18. **NORWAY**

The advantage is more efficient, swifter and more to-the-point proceedings.

19. **PARAGUAY**

Cuales son las ventajas: La transparencia, la celeridad, la necesidad de conocimiento informático, la obligatoriedad de registrarse debidamente en la Corte Suprema de Justicia, el control de los expedientes vía internet, y la reducción de costos para el profesional y la administración de justicia. El servicio de consulta a través de la página web del Poder Judicial, pone a disposición de los magistrados, actores del Sistema Judicial, a las partes en un proceso y a la ciudadanía en general, un servicio ordenado de acceso gratuito a información jurídica, cuyas opciones de búsqueda comprenden fallos judiciales, reglamentaciones, producción de los juzgados, entre otros con el fin de transparentar la gestión de todos los juzgados. Las personas interesadas en realizar las consultas deberán adquirir un usuario proveído por el Departamento de Informática y Sistemas, dependiente de la Corte Suprema de Justicia; el mismo se solicita en la Mesa de Informaciones ubicada en la planta baja del Poder, tras llenar un formulario. Para brindar aun un mejor servicio se encuentran en la planta baja del Poder Judicial, dos computadoras habilitadas exclusivamente para la consulta de los profesionales.

[Unofficial translation: What are the advantages: Transparency, speed, the need for computer knowledge, the obligation to register properly in the Supreme Court of Justice, the control of files via the Internet, and the reduction of costs for the professional and the administration of Justice. The consultation service through the website of the Judicial Branch, makes available to magistrates, actors of the Judicial System, parties in a process and the general public, an ordered service of free access to legal information, whose options of search include judicial decisions, regulations, production of the courts, among others in order to make transparent the management of all courts. The people interested in carrying out the consultations must acquire a user provided by the Department of Computing and Systems, dependent on the Supreme Court of Justice; The same is requested in the Information Desk located on the ground floor of the Power of Attorney, after completing a form. To provide even better service, there are two computers on the ground floor of the Judicial Power, exclusively for the consultation of professionals.

Disadvantages: lack of computer skills, the need for the Internet to reach the entire population, the education of the most needy population that cannot access the first basic knowledge that is necessary for processing the trials.]

20. POLAND

There is no possibility to manage civil or other cases in Poland since each new case registered in Court is randomly allocated to a single judge by a computer programme. This general frame is considered to be one of the safeguards of the transparency of Polish judicial system. After a case has been allocated to a single judge he/she handles it according to the rules envisaged in Code of Civil Procedure.

21. PORTUGAL

Management, as an extrajudicial means of settling disputes, promotes social peace and its main advantage is precisely the satisfaction of the citizen. Through management, adverse parties are empowered and have the possibility of controlling the course of the procedure, unlike what happens in the context of a judicial process. Among the advantages of the case management one can stress the faster nature of the procedure, its informality, and the low costs associated with it.

22. ROMANIA

The legal dispositions referred to and the used IT programs at national level or at the level of the courts have uncontested advantages because they take into consideration objective criteria regarding case management, leading to observation of a reasonable duration of legal procedures. Transparency of the legal act should not be neglected either by means of the data placed at the disposal of the public on the portal and those at the disposal of the parties in the file. Another advantage comes from the national character of the IT application which is used by all courts.

On the other hand at the level of the courts there is a preoccupation for unitary use of the rules on case management. In order to accomplish an efficient case management in reference to their character, at the monthly professional meeting held at the level of the court sections, as well as at the quarterly meeting of the judges of the courts in the area of competence of the courts of appeal aspects of principle are debated related to case management.

23. SERBIA

The measures of management being used by the courts are primarily dealing with and evaluating subjective factors, however measures to strategically overcome objective shortcomings are not being taken. These shortcomings prevent courts from dealing with cases effectively, especially those which are burdened by unusually higher inflow of cases compared to other courts that despite devotion of judges cannot be solved. Also, as previously mentioned, mediation has not worked in Serbia as a way of solving cases outside of court.

24. SPAIN

The advantages of this system consist in the possibility of avoiding a large part of the process if a transaction or mediation is reached. If it does not occur, the correction of defects allows a final resolution to be produced. The concretion on allegations and setting of facts, as well as limiting the evidence, reduces the practice of the trial, which allows a shorter process.

The drawback is that the process occurs within the process and not before, so that the previous actions are not avoided, may have been done.

25. SUISSE

La gestion des cas comme le CPC le prévoit est flexible, ce qui est un avantage. Une gestion des cas avant l'introduction de la procédure n'est pas possible.

[Unofficial translation: Case management as the CCP requires is flexible, which is an advantage. Case management before the introduction of the procedure is not possible.]

26. TAIWAN

There are many advantages of the use of case management. ADR provides early settlement cases out of court. Furthermore, a successful mediation and final settlement in litigations have the same effect as a final judgement with binding effect. It's effective to solve disputes between parties. Pre-trial proceeding is used to help parties organize their cases and seek the possibilities for using ADR out of court. It is also necessary to use pre-trial proceeding to achieve the goal of the concentrated trial. Case managing system is good for judges to manage and arrange their cases easily.

27. TIMOR-LESTE

Case management should act as an alternative way of solving disputes, but not as a substitute way to do it. Access to formal justice should always be assured in any state under the rule of law. Case management can be an easier and faster solution for a civil dispute, but anyway granting the equality of parties, despite an eventual difference that may exist between them in their economic situation.

28. UNITED KINGDOM

The major advantage of specialized "case managed" procedures is that they allow the nominated judge to adopt a pro-active approach to the efficient disposal of the issues, according to the nature of the particular case. Moreover, the nominated judges are expressly empowered to address any failure to comply timeously with any case management rules or orders, including grant of decree or dismissal of the

action “to provide for discipline to ensure effective supervision of case management”. A further advantage is that it maintains an element of control over the progress of litigation through the courts.

A minor disadvantage may be the potential for increased tension to arise as between the general importance of compliance with case management procedures, and the need to avoid the denial of substantial justice as a consequence of failure to comply with merely administrative requirements. It could also be argued that case management can take up significant judicial and court time in a system which has a very long waiting list.

29. UNITED STATES OF AMERICA

Case management procedures provide many advantages. Pre-trial conferences can streamline proceedings by encouraging early settlements, and by establishing up front the legal claims that remain. Scheduling conferences help keep cases on track and establish clear case milestones. Similarly, clear deadlines for filing of summary judgment motions encourage parties to consider whether some or all issues may be disposed of before trial. The CM/EMF system also offers many advantages including instantaneous availability of case documents to litigants and the court, ease of reference to past dispositions and pending matters, and increased public access to court documents which increases the transparency of civil proceedings.

Though the CM/ECF system has no real disadvantages, its user-fee system has been criticized for being too costly. Also, like any online platform, maintaining the integrity and security of the system remains a constant focus.

QUESTION 4:

Who incurs the costs of the use of case management in your jurisdiction?

Qui encourt les coûts de l'utilisation de la gestion de cas dans votre juridiction?

1. ARMENIA

The costs incurred in dealing with the case management are included in the judicial expenses. The issues of compensation of judicial expenses are regulated by the RA Civil Procedure Code and the RA Law on the State Duty. The judicial expenses are distributed among the persons participating in the case proportionately to the amount of satisfied claims.

2. AUSTRALIA

Under the *Federal Court of Australia Act 1976* (Cth), the Court has unfettered discretion to award costs, subject to the requirement that the discretion be exercised judicially. Ordinarily, costs incurred in respect of pre-trial case management will follow the event, and will therefore be awarded in accordance with the ultimate decision in the proceeding. However, this can vary. For instance, where costs are incurred unnecessarily in respect of case management hearings, costs of that hearing may be borne by the party responsible, regardless of their overall success in the main proceeding. Further, in circumstances where costs are incurred by the Court in respect of use of technology to facilitate appearances, those costs are typically borne by the parties.

3. AZERBAIJAN

In general, court proceedings are funded from the state budget. At the same time, the parties pay state duty while applying to the court.

4. BRAZIL

As a rule, the parties incur the costs of the use of case management, but there are some specific procedures determined by law in which no value is charged.

5. CANADA

The provincial legislatures have the legislative authority over the administration of justice, which includes the technology found in the courtrooms. Only reasonable costs incurred by a party while complying with the rules of court and the court's directives may be claimed as costs that were proper or reasonably necessary to conduct the proceedings, usually in the judge's discretion and in accordance with the rules of court. Any other expenses, which are not in accordance with the court's directives and/or rules of court will generally not be

treated as being costs that were proper or reasonably necessary. Unreasonable expenditures otherwise incurred, or not subject to an agreement or court order, will generally not be treated as being costs that were proper or reasonably necessary, therefore unrecoverable.

6. **DENMARK**

The costs are included in the court fee.

7. **FRANCE**

Le coût de la mise en état est supporté par l'État. En France, la justice civile est gratuite, à l'exception des mesures d'instruction et de médiation qui sont supportées par les parties, ainsi que les frais d'avocat (sauf aide juridictionnelle).

[Unofficial translation: The cost of pretrial is borne by the state. In France, civil justice is free, except for instruction of instances and mediation that are supported by the parties, as well as legal fees (except legal aid).]

8. **GEORGIA**

In 2017, the High Council of Justice of Georgia approved the detailed procedure for Automatic Electronic Distribution of Cases in common courts system. Pursuant to the decision of the council, cases are assigned to judges according to the principle of random allocation, on the basis of the algorithm for generating numbers. The program distributes cases based on the specialization of judges. The electronic system tracks the average number of distributed cases; number of cases distributed to each judge, the number generated as a result of random selection and then logs all these parameters.

The random allocation of cases ensures protection of the process from any kind of interference as well as fair division of labor among judges which ultimately improves the effective execution of justice.

9. **GERMANY**

Aside from filing fees which must be paid when initiating any civil court proceedings in Germany, there are no specific costs of case management.

10. **GREECE**

The parties to the proceedings. As a rule, of course, legal costs lie primarily with the losing party.

11. IRELAND

The judge presiding over the case management conference may make various costs orders in respect of any pleadings which contain unnecessary matters or are too lengthy, or if there has been undue delay in the case. The costs of the initial directions hearing shall, unless the judge before whom that hearing takes place otherwise orders, be deemed to be costs in the cause. This seems a sensible approach to adopt in respect of determining who incurs the costs of case management procedures. However, more formalized procedures should be put in place in respect of the costs of case management procedures.

12. ISRAEL

The plaintiff pays a court fee of 2.5% of the monetary damages requested in the complaint. The fee is paid in 2 installments – 1.25% upon submitting the lawsuit, and 1.25% before trial. There are no special fees for pretrial proceedings and if the case settled before trial, most of the court fee is returned to the plaintiff. In addition, the courts provide interested parties with a free mediation with a law clerk (or a different judge). For the use of the electronic system, the lawyers need a smart card, which is issued by the Israel bar association at the cost of 650 NIS for 4 years. There are no other costs for the use of the system. The use of the designated stations in courts is free of charge, although printing files are subject to minimalized costs.

13. ITALY

As, in practice, practically no case management is currently implemented in our jurisdictions, at least as a general way of treating civil cases, the “costs” for this lack are incurred by parties, who see their cases addressed in the framework of proceedings which last unbearable amounts of time, with burdens of procedural costs, which very often outnumber the amount of money expressed by the value of that given case, whilst most of such litigations could be solved quickly and with a very low level of expenses, if only judges were really encouraged to fight against lawyers’ delaying tactics.

14. JAPAN

No special costs are incurred for utilizing the Arrangement Proceedings of Points at Issue and Evidence in civil actions, in addition to the costs for the whole proceedings. Court costs should be borne by a losing party in principle.

15. LATVIA

Regulation of court fees is provided by Civil Procedure Law. There are provided general principles of litigation costs; court fees and relevant costs; calculation of claim amount; exceptions, when court fees shall not be paid; reimbursement

procedures, etc. Further, a party in whose favour a judgement is delivered can recover from the other party all the court costs they have paid.

16. LIBERIA

The cost for instituting effective case management is incurred by the Judicial Branch of Government to ensure that the public has access to justice. Further, the responsibility for achieving this objective squarely falls on the courts and judges in the management of cases filed before the courts.

17. LUXEMBOURG

À part les frais relatifs à des mesures d'instructions ordonnées par le juge de la mise en état et les frais d'avocat qui sont à charge des parties, le coût de la mise en état est supporté par l'État.

[Unofficial translation: Apart from the costs relating to the instrumentalities ordered by the pre-trial judge and the legal costs of the parties, the cost of rehabilitation is borne by the State.]

18. NORWAY

The costs are included in the court fee.

19. PARAGUAY

Quien incurre en los costos: Los costos en los juzgados son sufragados por la administración de justicia que son solventadas por el ingreso del presupuesto anual que tiene la Corte Suprema del gobierno Nacional.

[Unofficial translation: Who incurs the costs: The costs in the courts are borne by the administration of justice that are solved by the income of the annual budget that has the Supreme Court of the National government.]

20. POLAND

There is no possibility to manage civil or other cases in Poland since each new case registered in Court is randomly allocated to a single judge by a computer programme. This general frame is considered to be one of the safeguards of the transparency of Polish judicial system. After a case has been allocated to a single judge he/she handles it according to the rules envisaged in Code of Civil Procedure.

21. PORTUGAL

In the event that management takes place within the scope of a management service existing in a “julgado de paz”, each party, by accepting management, pays

the sum of €35.00. As far as management carried out in the public system is concerned, the respective fees are set in accordance with the respective constitutive or regulatory acts which also provide for any exemptions or reductions of such fees.

22. ROMANIA

The costs incurred by notification of the parties and communication of the documents in the prior procedure shown and point 2, are fully supported by the courts, from their budget. Also the cost of addresses, notifications, citations, communications sent to the parties during the judicial proceedings is borne by the court. The cost of scanning of documents which were not sent in an electronic format is also borne by the court. Cost of the computer programs used by the courts and the cost of maintenance/updating is borne from a budget of the Ministry of Justice and/or of the courts.

23. SERBIA

The courts incur the costs of the use of case management in Serbia.

24. SPAIN

Expenses incurred during this process, as they take place within the process, are considered procedural costs and are imposed in accordance with the general criteria for sentencing costs, except that as a result of the success of the process there is a search of the defendant or a withdrawal of the plaintiff that are regulated. The acquiescence will not cost the defendant, unless the Court appreciates bad faith, and the withdrawal implies the conviction of the plaintiff, unless it is consented by the defendant, in which case there is no conviction for any of the parties.

25. SUISSE

En général, les coûts sont mis à la charge des parties. Exception : Une personne a droit à l'assistance judiciaire.

[Unofficial translation: In general, the costs are borne by the parties. Exception: A person has the right to legal assistance.]

26. TAIWAN

Apart from filing fee, there is no need for the parties to incur the costs of the use of case management. To encourage the parties to solve their disputes out of court, when a settlement or mediation in litigation is reached, the parties may, within three months after the settlement date, move for the return of two-thirds of the court costs paid of the current court action.

27. TIMOR-LESTE

Not applicable so far in Timor-Leste.

28. UNITED KINGDOM

As a general rule, the expenses of civil litigation are borne by the parties, subject to the availability of public funding, according to the general principle that “expenses follow success”. To that extent, therefore, the costs of case management will be met by the party causing the particular procedural steps to be required, and the associated costs to be incurred.

29. UNITED STATES OF AMERICA

There are no fees, aside from filing fees, associated with most case management procedures in federal courts. However, parties generally pay costs associated with pre-trial mediation, including the cost of paying the mediator where such mediation is required. User fees fund the federal judiciary’s electronic case management systems. Users who are unable to pay these fees may apply for an exemption.

QUESTION 5:

Can the use of case management in your jurisdiction be improved?

L'utilisation de la gestion de cas dans votre juridiction peut-elle être améliorée?

1. ARMENIA

The effective case management in the judicial system of the RA unambiguously is not perfect, and a number of procedural institutions are subject to the improvement. It is necessary to mention that the mechanisms is necessary to mention that the mechanisms envisaged by the Civil Procedure Code of the RA are rather complicated, and within the framework of one case the court is required to make a number of judicial acts. We think that procedural processes are subject to the simplification.

2. AUSTRALIA

The Federal Courts' use of case management is quite well developed, and improvements that could be made are more in the nature of refinements than wholesale changes. For instance, the Courts use of case management hearing appears effective in focusing the minds of parties and practitioners on the status of the proceeding, the key issues, and where disagreements lie as to pre-trial issues. In some circumstances the resultant opportunity for cost savings and increased efficiency from this can be lost where parties prepare for case management hearings that are adjourned, or where these hearings address few, if any, matters of dispute between the parties. This outcome could be improved through procedural changes to encourage the parties to be more proactive, where appropriate.

A further potential improvement involves the interaction between case management and the allocation of Judges to proceedings via the docket system. Further, the timeframe for the case management and the conduct of pre-trial matters can be dictated by a single judge's availability, potentially causing delays in hearing a proceedings. The benefits of having a single Judge case manage a proceeding should not be pursued to the detriment of efficient allocation of Federal Court Judges where flexibility could better utilize varying levels of availability. Whilst improvements have been made in the availability and use of technology, case management should continue to pursue the potential cost savings and increased efficiency that can arise from utilizing technology more extensively.

3. **AZERBAIJAN**

Yes it is necessary. At present, the electronic court system is expected to be applied to all courts in the near future, which will lead to more operational and effective consideration of cases.

4. **BRAZIL**

Yes, with the provision of even more specific tools to prevent the filing of a high number of claims and enable out-of-court settlements. There is still a lot to be done to relieve the Brazilian Judiciary, one of the most overloaded judicial systems in the world.

5. **CANADA**

The goal of case management is that each appearance be effective and timely, and that duplication and waste of effort be avoided. Expectations and standards should be clear and reasonable so that each sector can rely on the other to meet its commitments. With this as a model, it was recommended that Advisory Committees be established in order to identify expectations and standards in respect of case management and the means by which conformity to them may be measured and enforced. Finally, tools to use could include self-management through checklists, and identifying key indicators regularly, in an understandable format, in order to call attention to possible problems so further analysis can take place.

6. **DENMARK**

Surely, it can always be improved, but there have been many changes in improvements regarding the handling of civil cases in Denmark in the past years. In the spring of 2014, the Danish National Courts Administration launched a project to develop a system designed to review civil cases, which both contains an internal case administration system (Civilsystemet) and an external self-service portal (minretssag.dk/"mylawsuit.dk"). We have yet to see the full implications and effectiveness of these changes.

7. **FRANCE**

Le processus pourrait être amélioré par le suivi des délais par le greffe dans les affaires simples, et le transfert du pouvoir d'injonction au greffe dans les affaires simples, sous le contrôle du juge de la mise en état ce qui permettrait à celui-ci de se concentrer sur les affaires plus complexes et sur l'exercice de ses pouvoirs juridictionnels.

[Unofficial translation]: The process could be improved by the tracking of delays by the registry in simple cases, and the transfer of injunction power to the

Registry in simple cases, under the control of the Judge of the Pre-Trial which would allow him to focus on the more complex cases and the exercise of its jurisdictional powers.]

8. GEORGIA

In 2017, the High Council of Justice of Georgia approved the detailed procedure for Automatic Electronic Distribution of Cases in common courts system. Pursuant to the decision of the council, cases are assigned to judges according to the principle of random allocation, on the basis of the algorithm for generating numbers. The program distributes cases based on the specialization of judges. The electronic system tracks the average number of distributed cases; number of cases distributed to each judge, the number generated as a result of random selection and then logs all these parameters.

The random allocation of cases ensures protection of the process from any kind of interference as well as fair division of labor among judges which ultimately improves the effective execution of justice.

9. GERMANY

Yes. Some changes to the ZPO could result in more efficient case management. It would be desirable to restrict the possibility to apply for deadline extensions. Furthermore, the current system allows parties to reply to any new fact introduced by the other party unless the latter was delayed, which may result in a “ping pong game” if every party is keen on having “the last word”. It could be considered to restrict these possibilities. Furthermore, it is widely regarded necessary to create a more efficient procedure when challenging a judge on the grounds of bias. Eventually, the introduction of electronic filing makes efficient and intuitive electronic case management systems utterly desirable.

10. GREECE

Of course. Indicatively, we would suggest: a) addressing the disadvantages we mentioned above; b) limiting the specific and detailed reasoning of court judgments required by the Constitution; and c) on appeal, and in the event of its dismissal, the Court’s reference in the challenged judgment.

11. IRELAND

Given the increase in litigation in our legal system as a whole, a comprehensive case management system for all civil litigation would be something worth considering. Such an overarching system should include strict time limits and costs sanctions for failure to adhere to these limits. These conditions would ensure that the case management system is essentially party led, with the court merely supervising the process and thus avoiding unnecessarily adding to the demands on

court resources. Any comprehensive court management system would also have to consider ensuring that the judge presiding over the case management conference also retain *seisin* of the trial of the action. Whilst this may present some practical difficulties, it seems that any other situation would result in more, as opposed to less, delay in the initiation and concluding of proceedings.

12. ISRAEL

Yes. Although case management procedure is efficient, it has problems. Sometimes the pretrial phase gets complicated and prolonged, for example the need for a special hearing before a judge or a formal ruling, and the use of third parties such as an expert or a mediator delays the deadline. The electronic system does not enable a search by topic or subject matter. Users need to know the case number or other specific details of the case, or otherwise subscribe to a private legal search engine. Note that the Supreme Court's rulings can be searched by topics.

13. ITALY

Before being improved, case management should be introduced. Heads of courts should be authorized by law to issue recommendations to their judges of the same kind of those of the above mentioned "Decalogue" of the "Strasbourg Programme", so to encourage them to effectively fight against delaying techniques and tactics by lawyers.

14. JAPAN

There are discussions on how to manage the proceedings in civil actions, including the Arrangement Proceedings of Points at Issue and Evidence, at various places, such as seminars for judges at the Legal Training and Research Institute and conferences where judges attend from all over Japan. Through such discussions, we try to enhance utilization of the Arrangement Proceedings of Points at Issue and Evidence.

15. LATVIA

Considering the fast growing economic and social development, the Law should keep up with the current time and society's requirements.

16. LIBERIA

Case management processes can be improved with the Liberian Judicial system like in any other jurisdiction. One significant way is for the court to take charge in ensuring that its processes in civil cases are driven by the court itself instead of the parties. However, judges need to be more involved with the supervision of the court's docket instead of delegating that responsibility to the Clerks. Also, cases

resolved during the pre-trial conference stage should be removed from the docket to ease the backlog of cases pending.

17. LUXEMBOURG

Il existe actuellement un projet de loi sur le renforcement de l'efficacité de la Justice civile et commerciale. Ce projet prévoit entre autre d'obliger les avocats à soulever les moyens immédiatement dès leur révélation devant le juge de la mise en état. Il y est également prévu de modifier le Nouveau code de procédure civile en y énumérant limitativement les moyens de défense relevant de la compétence du juge de la mise en état. Ce projet de loi propose encore de créer deux procédures de mise en état différentes, à savoir une première pour les affaires peu compliquées et une seconde pour les dossiers plus complexes. Le travail des juges sera ainsi mieux centré ce qui aura également un effet positif au niveau de la qualité et du délai dans lequel seront rendues les décisions.

[Unofficial translation: There is currently a bill on enhancing the effectiveness of civil and commercial justice. Among other things, this bill requires lawyers to raise the case immediately as soon as it is disclosed to the pre-trial judge. It is also intended to amend the New Code of Civil Procedure by enumerating in limited terms the defenses falling within the jurisdiction of the Pre-Trial Judge. This bill proposes to create two different pre-trial procedures, one for uncomplicated cases and one for more complex cases. The work of the judges will thus be better focused, which will also have a positive effect on the quality and timeframe in which the decisions will be rendered.]

18. NORWAY

Yes. We can always improve. Especially in the Court of Appeal, there is room to improve.

19. PARAGUAY

Si se puede mejorar puesto que sirve como herramientas transparencia y menor costo tanto para la administración y para los justiciables.

[Unofficial translation: If it can be improved since it serves as transparency and lower cost tools both for the administration and for the people involved.]

20. POLAND

There is no possibility to manage civil or other cases in Poland since each new case registered in Court is randomly allocated to a single judge by a computer programme. This general frame is considered to be one of the safeguards of the transparency of Polish judicial system. After a case has been allocated to a single

judge he/she handles it according to the rules envisaged in Code of Civil Procedure.

21. PORTUGAL

It is possible to create a system according to which if parties recourse to management during an ongoing civil proceeding, the procedure is suspended for a longer period - of six months- than the one stipulated the new Code of Civil Procedure of 2013. One could argue that this suspension should not be prohibited if it entails the postponement of the final hearing, as it happens today. In the context of an ongoing civil proceeding it is also possible to adopt a system analogous to the one which prevails in the management carried out in “julgados de paz”, establishing the possibility of lower fees whenever an agreement is reached through management.

22. ROMANIA

As we have already mentioned, the case management has a series of advantages, but it is not a perfect system, but it can be improved. Obviously, a constant improvement is necessary to obtain efficient results. An important preoccupation is the one to ensure security of the computer programs since part of the database is placed at the disposal of the public. Also improvements of the ECRIS application must be conceived and operated in order to reflect the activity of the court from a statistic point of view, as to contribute to the increase of the level of implementation of the rules regarding case management. The essential component of the efficient use of the case management is human resources. That is why applying in an optimal manner of all the previously described mechanisms, requires insuring a sufficient number of judges and clerks. Finally, the use of the “Info dosar” (file info) computer program at the level of all the courts would bring uncontested benefits in the field of case management.

23. SERBIA

The system would be improved to a certain extent should the state decide to solve cases through mediation, since in almost 50% of the civil matters, the state is one of the litigants. In this manner, the number of cases before the courts would be reduced and it would allow for a better management of cases and for faster dealing with other cases.

24. SPAIN

In the labor jurisdiction, there is a process of medication prior and mandatory to the process. The truth is that this process has become more a formality than an effective instrument to avoid the process. However, if this mediation prior to the lawsuit could be established in the civil process and be effective, many

procedures would be saved, including those prior to the management phase established in our Civil Procedure Law.

25. **SUISSE**

Certainement. On peut améliorer et développer l'aide technique, mais aussi le transfert du savoir juridique des cas similaires entre les tribunaux.

[Unofficial translation: Certainly. Technical assistance can be improved and developed, but also the transfer of legal knowledge of similar cases between courts.]

26. **TAIWAN**

The using rate of ADR is still not as high as expected. To encourage the parties to use ADR out of court, our government should make an effort to propagate the advantages of ADR. Moreover, two ways may be taken into consideration that one is to increase the return of the court costs when a settlement or mediation in litigation is reached, not just two-thirds; the other is to increase the court costs when the parties choose to take actions. The pre-trial proceeding should be mandatory under the ordinary proceeding, however, now the pre-trial proceeding is not mandatory and it depends on the judge on whether they adopt pre-trial proceedings or not.

27. **TIMOR-LESTE**

No answer was provided for this question.

28. **UNITED KINGDOM**

England & Wales

In the English and Welsh courts, some of the forms required for the case management process take up judicial and administrative time which is not proportionate to its usefulness. While this is a useful check on the state of the litigation, at the lower value end there are some questions which may be otiose. There is presently a system of reform in the English and Welsh courts which is introducing much more use of IT in case management. If this is properly rolled out, it should improve case management both in terms of costs to the state and to the parties.

Scotland

While the rules of court now make provision for case management, active case management is a relatively recent phenomenon and non-specialist judges are still in the process of becoming confident and skilled in its application. The increased use of case management procedures is, however, subject to ongoing review by the

Scottish Civil Justice Council, which may be expected to address any perceived unmet need in this regard.

29. UNITED STATES OF AMERICA

Yes. Though case management procedures in federal courts help dispose of meritless issues in cases before trial, these procedures can also become very costly for parties. These disputes can take months to resolve in highly complex civil cases and can generate many thousands of dollars in attorney's fees. Some courts have experimented with implementing more informal procedures, such as telephone conferences, to attempt to resolve less complex or contentious issues by agreement. In addition, the functionality of available search features with CM/ECF and PACER are limited. Users can search for cases by case number or party name, but not by other case attributes such as disposition or subject matter.