

QUESTIONNAIRE of the 1st 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, there is legal aid for all individuals in civil and criminal 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)?

(a) the costs of using the court

(b) the costs of the lawyer

(c) the costs of experts appointed by the court (not those engaged by the parties)

Depending on the financial means of the applicant, it is possible to attend legal aid fully or only partly

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?

There are no financial limitations, but in civil cases besides the proof of the financial means there is a proof of the arguments. If there is no chance at all to win, legal aid will not be granted;

In criminal cases legal aid is only granted if the law recommends the representation by a lawyer (which is the case in certain more serious criminal offences or in other criminal cases, if the case is complicate.

The lawyer is selected by the Bar Association. Normally it is possible that a lawyer who has been chosen by the party and who agrees to act according to the conditions of legal aid is appointed by the Bar Association.

Only the costs of the experts appointed by the court are covered by legal aid.

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.

Legal aid is granted by the competent judge who will be in charge of the following procedure. It is possible to appeal against his/her decision.

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?

The information about the judiciary, the courts, procedure one gets at school are very poor. Many courts invite school classes to visit courts and attend hearings at courts, where also there is the possibility to discuss with the judge and put questions.

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)

There is an internet-site of the ministry of justice, of the upper courts of appeal, the commercial court, and of the Association of Judges, which provides with the above mentioned information.

One day every week there is the possibility to get information at the courts.

There are some pamphlets or folders of the ministry, which are distributed at the courts informing about certain topics like divorce; violence in the family; possibilities of victims of criminal offences.

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.

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

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

At the areas where (according to the fact that the minority exceeds a certain percentage) by law the possible is guaranteed to conduct cases in the language of the minority. Besides of this everyone has the right to get interpretation. In civil cases the interpreters are paid by the parties in criminal cases by the state.

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.

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

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

There are only single cases where there are delays,. Normally the reasons are some specific problems of the case or the actors in the procedure, but no structural reasons. Judiciary in Austria works quite speedy also single cases are taken by media and politicians to question the whole system. Therfor the topic of delays is always in discussion.

There is a special remedy, by which a party can ask the higher court to set a time-limit to the lower court to set a specific next step in the procedure.

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.).

Not aware of such obstacles

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?

(b) Do problems with effective enforcement exist?

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

Criminal cases: the enforcement order is given by the competent judge; there is the prison administration under the order of the ministry of justice. Main decisions like postponement of the enforcement or the end of the imprisonment on probation are in the competence of the court.

Civil cases: on the motion of the party the district court orders the enforcement. There are several means among them the enforcement by a bailiff, who belong to the staff of the court. There are no serious problems of enforcement, in spite of the problem that one only can enforce if there are any financial means at all, which often is not the fact.

VII.) Other Obstacles:

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

Not every body understands the legal terms and legal language

VII.) 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.

None

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