

Second Study Commission: Questionnaire for the 2007 Meeting

Second Study Commission Civil Law and Procedure

QUESTIONNAIRE

SANCTIONS FOR PARTIES' INACTIVITY IN CIVIL LITIGATION

I.

1. Does your system of law have any rules governing the processing of cases prior to trial and during the trial that fix time-limits for parties a) to correct and supplement their cases and evidence b) to take other procedural steps?

2. Do the trial proceedings consist of a large number of hearings for taking evidence or does your system of law define a limit in number of hearings, e.g. »no more than two hearings« per litigation?

3a. What are the sanctions when a party fails to take a procedural step within the time-limits fixed by the law or the court?

3b. Do the same or similar sanctions apply when a party misuses procedure for the manifest purpose of delaying the proceedings?

4a. What sanctions is the court able to apply in cases of unjustified non-attendance of a witness?

4b. Are there any appropriate sanctions when an expert appointed by the court fails to communicate his report or is late in communicating it without good reason?

5a. Where a lawyer representing a party misuses procedure for the manifest purpose of delaying the proceedings, what disciplinary sanctions, if any, can be imposed by professional associations? Is it common for professional associations to use disciplinary sanctions?

5b. Do rules regarding the remuneration of lawyers guard against needless procedural steps. If so, what are the principle ways, in which such rules encourage lawyers to crystallize the parties' claims at the earliest possible stage of litigation?

6. Does your system of law allow judges to have power on »formal conduct« and to control the timetable and duration of proceedings (e.g. by setting firm dates, refusing adjournments)?

7. Do judges have power on substantive progress of civil proceedings, particularly as respects:

- power to order the parties to provide such clarifications as are necessary
- power to order the parties to appear in person
- to raise questions of law
- to introduce factual evidence that parties have not adduced in cases where there are interests other than those of the parties at stake
- to control the taking of evidence
- to exclude witnesses whose possible testimony would be irrelevant

8. Do the judges in your legal system have power to decide whether a) the procedure should be oral or written b) to resort a summary judgment or are these matters fixed by law?

9. Are there any limitations on a party's right to adduce a) fresh evidence b) fresh points of law at an appellate level? If so, are there any exceptions to this rule?

II.

1. Are there any proposals for reform of the civil procedural law to enhance effectiveness of the procedure by sanctioning parties' abuse of court procedure?

2. What points would you wish to discuss in greater detail?

3. What subject do you suggest for the next meeting?

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