



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Porto, 7 - 10 September 1998

Conclusions

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

The first study commission continued the work begun at the last Congress of Puerto Rico. The commission continued sharing useful information about management and solutions adopted in different countries confronted with the ever increasing workload of the courts. Particular attention was given to the difficulties in dealing with civil (not criminal) cases in reasonable time.

Delegates from 30 countries and all the continents took part in the debate.

With the exception of one or two fortunate countries the time taken between the issue of proceedings in court and adjudication is considered excessive.

Tardy justice saps the confidence of the public in the system of justice.

The commission considers it vital in every jurisdiction to progress the management of the case load and to deploy the available resource to improve the service for the public.

Two extremely important facets of the problem of snail like movement seem to be excessive time taken by the parties in preparing the case and by the courts in processing the case.

I.- During preparation by lawyers

The tradition of many countries is to leave control of progressing the proceedings in the hands of the parties until they are ready to present the case for decision by a judge.

More and more changes are being introduced towards removing control of the pace of proceedings from the parties and substituting interventionist judicial management, whether at instance of the parties or imposed by a more rigorous procedural framework.

It was discussed whether directive interventions of the judge are legitimate.

It is however generally accepted and even considered to be obvious that litigants desire expeditious justice. This principle is established in some international conventions. "Justice delayed is justice denied".

Further it is considered normal that a litigant accepts the rules of the court to achieve the best possible practice in the interests of all litigants.

Good management demands nevertheless sensibility to the individual requirements of each case and allowing the parties to slow down the normal procedures where there are sound reasons for this.

A more active and directive role for the judge in case management creates more judicial work which can be justified only if this is efficient and necessary to reach expeditious justice. Every judicial intervention must contribute a benefit to the case, which cannot be achieved by simpler means. The legislator as well as the courts, the parties and their legal advisers must focus on this aspect of the problem, otherwise the risk increases that processes become unduly complicated and more expensive and that the momentum of cases is impeded and not accelerated.

II. Processing by the court

Time lost after a case is ready for decision by a judge, awaiting availability of a judge, is unjustified delay which is imposed on the parties.

Excessive time between a case being ready for decision until it is heard by a judge reveals imbalance between the caseload of the court and the available judicial resource. This constitutes dysfunctional justice whatever the cause.

Where imbalance exists between caseload and judicial resource, while the judiciary should deploy the available resource efficiently, responsibility for providing adequate resource lies elsewhere in the division of functions of the state.

Among the possible solutions, which may be adopted by legislation or convenient practice, are:

- reducing the proportion of cases needing judicial decision

alternative dispute resolution by conciliation/mediation seems most effective.

An intermediate solution is "case appraisal", which consists of an impartial assessment and indication of the likely result by a lawyer, a result which the parties may accept and which, if accepted, becomes enforceable; if this appraisal is not accepted and the judicial decision given afterwards is the same, the party who did not accept the appraisal can be ordered to bear the costs of the procedure

- better case management of individual cases and of standard case flow management

- by limiting oral and written submissions

- by imposing a reasonable timetable, when proceedings are issued, for the steps taken up to the case being ready for decision

- by limiting as far as reasonable the requirement for a full and comprehensive reasoned judgement by the trial court of first instance. Several countries adopt different ways of managing this, in the interest of expeditious justice for the parties, in ways considered not to undermine the rights of litigants.

- entry of decision by summary process, subject to the parties retaining the right afterwards to require a reasoned detailed decision.

- summary decision subject to the right of the parties to a reasoned detailed decision upon an appeal from the summary decision

- ex tempore oral decision which may be accepted by the parties and become enforceable; where such a decision is not accepted (and it is accepted in countries where it is available in 75% or 80% of cases) it must be provided in detail in writing

The commission finally reviewed the practice of dealing with cases on a "first come first served"(or "first in first out") basis. The order of the queue comes under pressure from heavy caseloads. Concern was expressed about legislatures imposing priorities without appreciating the knock-on consequences for other classes of cases and for cost effectiveness. The disadvantages arising from scarce judicial resource and waiting times should fall on litigants fairly.