Second Study Commission

Civil Law and Procedure

2018 Questionnaire

61st Annual Meeting of IAJ – Marrakech (Morocco)

STRATEGIES IN EFFECTIVE CASE MANAGEMENT

In Santiago (Chile), we decided that in 2018, our Second Study Commission will focus on strategies in effective case management. We have limited the questionnaire to five questions and we expect to receive short but concise answers.

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.

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

There are many laws or legal codes in legal system of Montenegro that prescribes provisions which are referring to alternative procedures for the purpose of easier, cheaper and faster solving of civil matter cases (for instance, Civil Procedure Code, Family Law Code, Law on mediation, etc), so, we do have legal basis, that provides efficient use of case management.

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

Yes, there are provisions of the Civil Procedure Code, but also of many other laws in our system (some of them are mentioned before), and therefore, there are rules and guidelines for the use of case management in civil litigation in Montenegrin
jurisdiction, which are prescribed by different and various laws, each depending on concrete case, subject or legal matter.

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

Advantages of the use of case management are in faster and cheaper resolution of litigation, but due to the fact that parties generally do not have confidence (or they are still not used to) in those proceedings, their lack of readiness for participating creates problems in practice and low percentage of successfully solved cases, so, their negative attitude towards those alternative methods can be considered as the most serious disadvantage of the use of case management in practice.

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

The courts incur the costs of the use of case management in our jurisdiction.

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

We think that the use of case management in our jurisdiction can be improved by educating and promoting, because most people are very reserved for taking part in alternative proceedings or ways of solving their claims, or they are not convinced of success, so they often prefer regular judicial proceedings. Furthermore, judges, but also public defenders, attorneys and prosecutors as well, should persistently suggest on advantages of use of case management, or conciliation, mediation and other alternative methods of consensual dispute resolution.