



First Study Commission
Judicial Administration and Status of the Judiciary

Meeting in Trondheim, 23 - 27 September 2007

Conclusions

ACCESS TO JUSTICE
THE COST OF BRINGING OR DEFENDING CLAIMS;
INFORMATION ABOUT THE JUSTICE SYSTEM AND ENFORCEMENT OF JUDGMENTS.

The Declaration of Human Rights states:

"Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures"

1. The answers of 37 countries to the Questionnaire demonstrated that all countries operate some form of legal aid for both criminal and civil cases. However, the degree to which this legal aid is provided by the state varies considerably. In many states it appears that the availability of legal aid to bring or defend civil actions is regarded as less important than for criminal cases, where the liberty of a person might be in issue.
2. It was agreed that states have an obligation to provide an impartial and independent legal aid system (either directly or through enabling other agencies to do so) for both criminal and civil cases, which will enable all persons to utilise or enforce their legal rights.
3. The answers to the Questionnaire also showed that many countries are concerned with the increasing costs of both criminal and civil legal aid, particularly the latter. As a result, governments have frequently attempted to reduce the availability of legal aid, particularly in civil cases. Delegates concluded that economic considerations must not compromise a state's obligation to ensure proper access to justice for all persons.
4. In civil cases, the combination of court fees, lawyers' fees, the cost of experts and (frequently) the requirement that the losing party must ultimately pay the costs all make it increasingly difficult for persons (other than the richest individuals and well funded companies etc) to have access to justice. A party that is in a stronger financial position can use its financial strength to force a less wealthy party to submit. Steps should be taken to reduce this "inequality of arms" as much as possible.
5. Delegates expressed concern that if states do not provide an adequate system of legal aid (particularly civil legal aid), then persons may be forced to take other routes to solve civil disputes against their will, thereby denying them access to the impartial and independent court system and judges, which is their right.
6. Many states' legal systems require or encourage mediation (sometimes by judges) or provide a system of early neutral evaluation ("ENE") of cases by judges. Such systems can be a useful means of reducing costs and delays. However, they must never prevent parties from having a full adjudication of their disputes by an independent and impartial tribunal if they so wish, by a judge who has not been involved in any pre - trial mediation/ENE.

7. The answers to the Questionnaire demonstrated that education about the rights of persons to use the court system and how it functions is provided in most countries, to varying degrees. It was agreed that education of members of the public on the court system and their legal rights, particularly in the case of minorities, is an important aspect of access to justice.

8. A citizen does not have access to justice to obtain legal redress unless there is an effective system for the enforcement of the decisions of courts. The answers to the Questionnaire demonstrated that there is widespread concern about the efficacy of enforcement systems in states' legal systems. Some countries indicated that there were dangers of corruption and other misuse with regard to enforcement of court decisions.

9. It was agreed that it is an obligation of the state, as part of its task for ensuring that there is effective access to justice for all citizens, so that:

- (1) the system for the enforcement of court decisions is either controlled by the state or is under state supervision;
- (2) the enforcement system is as quick and efficient as possible;
- (3) the system of enforcement will enable a losing party's assets to be attached, or executed upon or otherwise made available to enforce a judgment;
- (4) the enforcement is sufficiently efficient so as to avoid the danger of winning parties attempting to use their own systems for enforcement, which may be illegal or dangerous or both.

Trondheim, September 27th, 2007