European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ WORKING GROUP

Quality and Access to Justice Report 2009-2010

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REPORT

Working Group on Quality and Access to Justice

European Network of Councils for the Judiciary

Table of Contents

REPORT

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European Network of Councils for the Judiciary

1. Introduction

1.1. Background

The working group Quality and Access to Justice was established by the European Network of Councils for the Judiciary (ENCJ) in June 2009 upon the decision taken by the General Assembly in June 2009. The members of the working group include representatives of 11 member countries: Belgium, Bulgaria, Denmark, England and Wales, Hungary, Italy, Lithuania, Netherlands, Portugal, Romania, and Spain, as well as representatives of 6 observer countries: Austria, Croatia, Finland, Macedonia, Norway, and Sweden. The Working Group was chaired by Mr. Niels Grubbe, Denmark.

The Working Group was established as a new ENCJ Working Group but in continuation of the work done by former ENCJ Working Groups, the Working Group on Quality Management and the Working Group on Quality Management and Transparency and in accordance with a draft proposal done by the latter group.

The Working Group on Quality Management in 2008 finalised a report "Quality Management – May 2008" with an appendix (register), and the Working Group on Quality Management and Transparency in 2009 completed a report "Quality Management and its Relation to Transparency and Access to Justice – 2008-2009" also with an appendix (register).

In the 2009 Report access to justice was understood in the narrow sense: access to information in the judicial organisation and on proceedings, and the Report was focused on transparency. The Working Group on Quality Management and Transparency suggested that the work on access to

justice was continued but in a broad sense, thus including other aspects such as procedural, geographical, financial and physical access.

For the purpose of drawing up this report and its appendix (register) the Working Group has met three times: In Copenhagen on 2 October 2009, in Lisbon on 18-19 January 2010 and in Rome on 25-26 February 2010.

The report will be presented at the General Assembly on 2 June 2010.

1.2. The Report

The aim of the Report is to describe the specific hindrances to access to justice and their impact on justice. The Report is focused on informing of the actual situation, the concrete initiatives that have been undertaken, the objectives and impact of such initiatives and the problems which have been faced or which lay ahead.

The Report thus describes how the specific hindrances have been or sought to be remedied by the court administrations/councils for justice, taking into consideration also the organisational and financial implication. It also describes actions taken by the court systems, the governments, parliaments and opinion bodies, whether or not upon initiative by the court administrations/councils for justice.

Some members of the Working Group prefer to use the term "obstacles" rather than "hindrances", but both address impediments which may be overcome, avoided or mitigated in their effect. The choice of words is therefore not of great significance and both terms appear in this report. The structure of the report is as follows:

Chapter 2 describes in general terms the scope of "access to justice within the Court System" as opposed to the scope of "access to justice" in a broader context. It focuses on the role of the Councils for the Judiciary and the Court Administration, and describes the methodology and analysis that must be the basis of any initiative taken to handle the hindrances that challenge "access

to justice"_ including the organisational and financial consequences. Chapter 2 is thus a conceptual chapter explaining access to justice within the court system.

Chapters 3-8 each address a specific topic of particular interest for the members including a comparative description of the particular hindrance and the remedies sought carried out throughout Europe. For this thorough description the group has selected the following topics:

- Financial Hindrances (Chapter 3)
- Geographical Hindrances (Chapter 4)
- Psychological and Social Hindrances (Chapter 5)
- Hindrances to Personal Appearance (Chapter 6)
- Time Hindrances (Chapter 7)
- Victims of Crime (Chapter 8)

Chapter 9 describes in general terms the broad context of the subject "access to justice" including the scope of "access to justice", the impact of "access to justice" or lack thereof on the judicial system, the hindrances that challenge "access to justice" and how to handle these challenges. Chapter 9 is thus a conceptual chapter explaining access to justice in a broad sense including challenges outside the court system.

1.3. The Register

The Register contains examples of hindrances to access to justice arranged according to type. One may take up several issues within the scope of "access to justice". For the Register the Working Group has selected the following 9 topics each subdivided into a number of issues:

- Financial Hindrances
- Geographical Hindrances
- Physical hindrances
- Technological Hindrances
- Psychological Hindrances

- Hindrances to Personal Appearance
- Social Hindrances
- Time Hindrances
- Hindrances to Enforcement
- Treatment of Victims to Crime

The members of the Working Group have briefly addressed each issue in the register using a fixed format. In these summaries the members give a description of the status and any initiatives relevant to the hindrance in question omitting detail which it is not necessary to know in order to achieve a rough idea of the situation. Initiative has in this context been viewed in the broader sense and thus encompasses ongoing initiatives as well as initiatives recently undertaken and initiatives which will be undertaken in the near future.

The aim of the Register is to give information about initiatives undertaken throughout Europe to meet hindrances to access to justice inspiring interested persons and giving them a guide on how to find further information. Therefore for further information please note the contact details of experts on the described activities and initiatives listed at the end of the register.

At this point the register only contains contributions from members of the Working Group. Keeping in mind that the aim of ENCJ is to share experience the Working Group believes however that the Register should be completed with information from all the members of the ENCJ and continue as a living document to be updated on a regular basis.

1.4. General remarks

Before deciding on the topics listed above in 1.3, the Working Group carefully considered the scope of the Report and the Register and which topics to choose for the research. The chosen topics were all found to encompass clear and present issues related to access to justice.

As stated in 1.3, the aim of the Register is to mainly be a guide – an easy reference – for seeking further information. The aim is therefore not to be a thorough comparison of the position in each

country on each topic. If the reader needs more details please find names and contact details on experts on the described activities and initiatives listed at the end of the Register.

The scope is to bring forth information on initiatives taken to meet hindrances to access to justice in mainly civil cases related to any of the issues encompassed by the nine topics. Some contributions in the Register do however include information on issues that does not fall within this scope – e.g. information on the rights of the defendant in criminal proceedings.

Some contributions contain detailed information on status in the country in question, whereas other contributions have left out information on the topic. As a consequence the contributions to each issue in the Register are various in style, length and number.

For the purpose of maintaining coherence between the Register and the Report the Working Group also decided that any listing of countries in the Report should only encompass the countries with a specific contribution related to the given issue in the Register. When reading the Report and the Register the reader should keep this in mind. The fact that some members left out information on an issue in the Register does not imply that the country in question does not have a regulation, similar to that described in contributions from other countries.

2. Aspects of access to justice in the Court System

2.1. Access to justice within the court system

The Working Group acknowledges the complex and comprehensive character of the total system of securing access to justice in a society described in Chapter 9 (Opening the Window). However, acting within the framework of ENCJ the Working Group will focus on the part of the system that involves the court system.

The report and the register therefore focus on problems connected with access to dispute resolution, but not on other aspects such as legal advice and legal assistance as well as education concerning fundamental principles of justice.
The work aims at dispute resolution by a judicial act and does not include alternative means of dispute resolution as e.g. negotiation, conciliation, and arbitration. However, mediation being a method of dispute resolution undertaken by the courts in several countries should also be taken into account.

Furthermore the scope is restricted to the court system being a public organisation designed for judicial activities. Thus, the Working Group has excluded dispute resolution activities undertaken by public or private administrative boards, councils and tribunals.

2.2. The role of the Councils for the Judiciary and Court Administrations

Measures to improve and ensure access to justice within the court system may be undertaken not only by the court system, but also by parliament and government as well as several other institutions such as universities, lawyers' organisations and other public and private bodies.
The Working Group has focussed on initiatives taken by the court system and especially by the Councils for the Judiciary and Court Administrations.

The scope, however, is not limited to initiatives involving direct action by the Councils for the Judiciary and Court Administrations themselves, but also includes initiatives aiming at initiating actions by other bodies. These may be courts, parliament, government, and private institutions.

2.3. The methodology

In taking initiatives a vide range of methods may be used.

The methods comprise organization of court institutions, facilities and human resources as well as allocation of tasks between them.

Working methods in a broad sense including behaviour must also be taken into account.

Information, guidance and education rendered to both court staff and users are also very important means of ensuring access to justice.

Finally, triage both within and outside the court system should be mentioned.

2.4. The analysis

In analysing the initiatives undertaken the following should be considered:

First in order to be aware of the actual status the feature creating the obstacles should be clearly identified and the obstacles described.

Secondly the initiative must be considered. Does it involve only actions taken by the Council for the Judiciary and the Court Administration or does it include initiating actions to be taken by others, e.g. the courts, the lawyers, the government the Parliament, and others? What are the realistic that the initiative may be carried through? This involves as regards actions taken by the Council or the Board the human resources and the financing involved. As regards initiating actions to be taken by others in addition to similar considerations it must evaluated whether or not the body to take the action is actually likely/willing to do so.

The scope and the objective of the initiative must be planned in detail. In which way and to which extent does it overcome the obstacle? Does it remove the obstacle or merely make it possible to pass it? The expected impact must be defined and some means to measure whether the impact becomes reality must be organised.

The financial and organisational implications must also be described and cost efficiency considered. Could the same objective in part be reached at considerably lower costs?

2.5. Initiative of the Council of Justice and the Court Administration

Some of the initiatives mentioned may involve legislation, e.g. changes in the judicial map, allocation of seats, and changes in procedural legislation on the possibility of video and telephone conferences. The initiatives of the Council for Justice and the Court Administration in these situations are only to initiate debate and to propose to government and parliament the changes in legislation as well as initiating discussions in the public debate. Also the initiative may be taken by such other parties. However, when the possibility has been established it may very well be the option of the Council for Justice and the Court Administration to decide on implementation and the frequency and scope of use.

Other initiatives mentioned rests on the action of the Council for Justice and the Court Administration, e.g. the use of telecommunication.

2.6. Organisational and financial consequences

The organisational and financial consequences must be carefully considered. In order to have a successful implementation it is of major importance that human and financial resources are secured, especially for the transition period. When Denmark implemented the redrafting of the judicial map some years ago, the Parliament gave no extra financing for human resources during the transition period. The result was the creation of a substantial back-log of cases, involving longer processing time, stress to employees etc. After two years the government inevitably had to allocate extra funding for human resources in order that the surplus caseload may be removed within reasonable time.

3. Financial Hindrances

3.1 Features and obstacles

Court fees

Court fees can have a significant influence on the citizen's access to justice.

On the one hand, substantial court fees can have the effect of deterring citizens from submitting cases to the courts, thus limiting citizens' direct access to justice. A concrete example of a country that has sought to avoid this situation by limiting the (amount of) court fees due is Sweden: court fees are only due in civil cases and that at the very modest sum of 45 €. Denmark has also recently sought to ensure a wider access to the courts by reducing the amount of fees payable in practically all types of cases.

On the other hand, very low court fees or the absence of court fees may encourage citizens to submit more (unfounded and insubstantial) cases. In the long run, this may result in an increasingly heavy workload for judges, longer processing times and backlogs, not to mention higher costs for the judiciary. A concrete example of the possible negative effects that the absence of court fees can have is Spain, where court fees were recently reintroduced in order to avoid the abuse of litigation by companies who used to take advantage of the exemption of court fees and would file ill-founded claims or lodge inadmissible appeals. In Austria too, recent amendments to the Act on Court Fees have come into force or are about to come into force in which existing court fees are being raised and new court fees for new court proceedings are being introduced with a view to achieve a better balance between the rising costs of court proceedings and the amount of fees paid by the parties, as well as to guarantee correct court judgment within a reasonable time.

With the economic crisis, judiciaries are under increased pressure to reduce their costs. In some countries, there may even be discussion on the introduction of full or partial recovery of costs through court fees. An example of a country where the government's policy is to have "full cost recovery" - i.e. where the cost of civil justice is being met from fees paid by litigants - is England and Wales. From the perspective of access to justice, one should be careful with placing the burden

of the cost of justice on litigants: the working group is of the opinion that access to the courts should not be restricted by the ability to afford court fees.

In practice, court fees are often being employed as a means of stimulating the use of alternative dispute resolution before commencing trial proceedings. In Hungary, for example, the legislator has tried to encourage alternative dispute resolution by reducing the amount of court fees for citizens using means of alternative dispute resolution in both criminal and civil cases, the ultimate goal being to relieve judges from an overwhelming workload and to avoid the clogging up of the judiciary system with too many cases. In Portugal, a party can be made responsible for paying the court fees whenever he/she has hindered the alternative resolution mechanisms. As for Denmark, a recent change of the ratio of the two payable fees (i.e. the fee for filing the law suit and the fee for commencing trial proceedings) has also been introduced to encourage parties to make a settlement before commencing trial proceedings.

The height of court fees can also function as an instrument to encourage other types of behaviour, such as the use of electronic means of procedure. An example of this is Portugal, where litigants who choose to use electronic means of procedure are rewarded with reduced court fees from 25 to 50%.

As for the methodology used to determine the amount of court fees due, many countries (such as Belgium, Croatia, England and Wales, Italy, Lithuania, Spain and Romania) have a system in which the amount of court fees in civil cases depends on the value of the case. Another way of determining the amount of court fees is in function of the number of days the main court hearing lasts. This method is used in Norway in civil and appeal cases. There is also - up to a certain extent - a trend towards the introduction of fixed fees in small claims cases: Denmark has recently introduced a fixed fee in small claims procedures and the Netherlands are planning to do so in the near future.

Legal assistance (legal aid for free/reduced cost, initial advice and representation)
In many countries, such as Finland and the Netherlands, it is not so much the court fees that form an obstacle to access to justice, but the lawyer’s fees. In countries where lawyers are expensive, legal

aid for free or at a reduced cost form an important instrument in ensuring access to justice to all citizens.

A first relevant question when discussing legal assistance for free or at a reduced cost is the question who is eligible to receive such aid. In Belgium, Croatia, England and Wales, Finland, Hungary, Italy, Lithuania, the Netherlands, Portugal and Spain, anyone can apply for legal aid if his annual income is below a government-set amount and the circumstances of the case make legal aid reasonable. Whether this system offers adequate access to justice will of course greatly depend on the level of this government-set amount. In Austria, legal aid has recently been restricted to individual persons with a view to reduce costs of legal aid and to reduce the workload of judges. Another country where there have been recent developments in this regard is Norway, where the government has recently proposed to extend the parties' access to legal aid, but in exchange make them pay more of the costs themselves.

Another relevant factor when discussing legal aid for free/at a reduced cost in relation to access to justice are the expenses covered. In Austria, Belgium, the Netherlands and Spain, legal aid will normally cover court fees, representation, other expenses such as experts, and may also cover counsel in order to examine the chances of success of entering into litigation. A litigant who loses a case in Austria has to reimburse the winning party's procedural costs, even when he is entitled to legal aid. In Sweden, legal aid for a legal representative is bound to a maximum amount of hundred hours.

A third relevant aspect when considering legal aid for free/at a reduced cost is what types of procedure it covers. In England and Wales, for example, legal aid for tribunal cases is only available in special cases, where for example an issue of general importance needs to be settled by onward appeal. A recent development in Romania in this regard has been the extension of legal aid to commercial, administrative, labour and social security cases.

Furthermore, there is the question of who provides this legal aid. In many countries, such as England and Wales (in tribunal cases) and the Netherlands, legal aid is often provided by voluntaries and by advice groups. Sometimes, trade unions also provide legal advice. In Austria parties may – in cases where the engagement of an attorney is not obligatory (i.e. in principle at the

district courts) – adress a judge directly for filing an application or making a statement orally.

Impairing by financing systems – (insurance and public aid)
One of the ways of limiting the costs of proceedings is by insurance against legal costs.

In most countries, legal insurance covers legal expenses in most civil cases. Persons with legal insurance are usually insured to a maximum amount and for one or more specific jurisdictions. The expenses covered are stated in the insurance policy.

Due to its voluntary nature, however, the impact and scope of legal insurance is fairly limited: only persons who deliberately choose to insure themselves against such costs and have sufficient means to do so can actually benefit from such insurance.

An interesting approach to insurance in this regard is that of Sweden, where legal protection insurance (covering all or part of the costs for legal assistance) and home insurance are linked to each other. This interconnectedness implies that each citizen with home insurance will automatically also be covered for all or part of the costs for legal assistance. As most Swedish citizens possess home insurance, the number of citizens with legal protection insurance is greatly increased.

3.2 Means of removing or overcoming the obstacles

Court fees
A means of increasing access to justice in its narrow sense - i.e. increasing the citizen's understanding of the judiciary system - is the simplification of the court fee tariff system. The introduction of fixed fees in small claims cases in Denmark and in the near future the Netherlands are examples of such an initiative. An additional advantage of this method is that it reduces the administrative burden of the courts.

Another way of overcoming obstacles to access to justice in relation to court fees is to reduce the amount due, such as Denmark has recently done in, inter alia, small claims and administrative law

cases. A more radical method is to eliminate court fees altogether or to limit their use to only civil cases, such as Sweden has done.

It must however also be remarked that very low court fees or the absence of court fees may encourage citizens to file more (unfounded and insubstantial) cases. In the long run, this may result in longer processing times and backlogs, not to mention higher costs for the judiciary. Therefore, an increase of the amount of court fees such as in Austria and the flexible use of the amount of court fees as a means of encouraging citizens to refer to alternative dispute resolution (Hungary, Portugal and Denmark) can paradoxically also increase citizens' access to justice in the long term.

Legal assistance (legal aid for free/reduced cost, initial advice and representation)
A way to increase access to justice in relation to free legal aid is to extend the availability of legal aid to more types of cases. An example of a country that has recently deployed such an initiative is Romania, where access to legal aid was recently extended to commercial, administrative, labour and social security cases.

Other possible methods to increase access to justice in this area are the extension of legal aid to a larger group of citizens and the widening of the scope of expenses covered by legal aid.

Although the expansion of the availability of legal aid to more citizens, more types of expenses and more types of cases appears to increase individual citizen's direct access to the courts in the short run, the potential increase of (unfounded and insubstantial) cases may lead to adverse effects in the long run, such as longer processing times, backlogs and higher costs for the judiciary. The introduction of a (modest) personal financial contribution from the litigant who is eligible for legal aid may help impair these adverse effects.

Mitigating by financing systems – (insurance and public aid)
An interesting approach to insurance of legal costs is to link this insurance to a more widely used insurance such as the home insurance in Sweden. The advantage of such an approach is that more citizens are automatically insured against legal expenses.

Another means of reducing obstacles to access to justice could be a system of compulsory national insurance. However, the inventory in the Register does not show that this solution has been considered so far in any of the participating countries.

As a closing remark, it must be noted that although free legal aid/legal aid at a reduced cost may increase a litigant's willingness to submit a case before a court and thus increase that citizen's direct access to justice, legal aid that is too easily available can paradoxically also lead to adverse effects in the long run. Indeed, the absence of financial obstacles to submit cases to court may lead to an increase of (unfounded and insubstantial) cases, resulting in a heavier workload for judges, longer processing times, backlogs and higher costs for society. It is up to each judiciary to find the right balance.

4. Geographical and Technological Hindrances

4.1. Features and obstacles

The geographical features creating obstacles are mainly connected to landscape, climate, and population.

The possibility of personal appearance in court has generally been seen as an important feature to secure access to justice. This goes not only for personal appearance for parties and witnesses during hearings, but also for personal address and guidance during the preparatory period of the proceedings. This view is a basis for the principle maintained in England and Wales, that access to the services of the court should be possible within one hour travelling on frequent and affordable public transport, cf. register 2.1 England and Wales.

Geographical features such as landscape and climate may make personal appearance difficult because of difficult transportation, especially in rough landscapes, e.g. mountainous areas or areas covering little islands in the sea, or in areas with a rough climate.

In order to secure high quality and cost efficient delivery of judicial decisions it is important that each court has a wide population basis securing a sufficient number of cases. This factor is therefore of great importance for access to justice. If the court has few cases, only one or a few judges may be employed. This will make it difficult for the judges to specialize and to gather experience on special types of cases. In addition it will be impossible to form collegiate chambers for major or difficult cases and the possibility of discussion with colleagues of legal questions may be considerably hampered. Also a larger size of court is important to cost efficiency, as the administration of larger entities is comparatively cheaper. Finally, it may prove a problem to attract skilled judges to small courts, and very often a small court district will not have a sufficient number of attorneys established in the district.

Geographical features, such as population density is essential for securing a sufficient number of cases to the court.

Therefore geographical conditions may create severe obstacles to access to justice. Areas with rough landscapes, e.g. mountainous areas or areas covering small islands in the sea, or areas with a rough climate will often have low population density. In such areas determining the size of court districts calls for balancing the wish to establish small districts, in order to maintain the possibility of personal appearance, with the need for larger districts in order to maintain a sufficient basis of caseload and to secure highly qualified and cost efficient delivery of judicial decisions.

In the Finnmark court district in northern Norway, covering an area 25.519 sq. km, there is a population of 0, 53 persons per 1 sq. kilometre, cf. register 2.1 Norway, and for a citizen living in the town of Utsjoki in the Lapland court district in northern Finland the nearest office is the district court, situated in Rovaniemi 453 km away, cf. register 2.1 Finland.

In several countries modern means of communication, video and telephone conferences, and the possibility to give written witness statements are counterbalancing the consideration for easy transportation as the only means to personal appearance.

4.2. Means of removing or overcoming the obstacles

Size of court districts

For a country with high population density and an easy landscape and climate and a well functioning transportation infrastructure reorganizing the court districts into bigger ones is an option. The redrafting in 2009 of the judicial map of the Netherlands will create new district courts employing between 500 and 1040 full time equivalents (FTE) and covering areas comprising between 0.9 and 3.8 million inhabitants. The objective was quality enhancement, not cost reduction, cf. register 2.1 The Netherlands.

The same situation goes for Denmark where a court reform in 2008 reduced the number of district courts from 82 to 24, each covering an average of 0.2 million inhabitants. The objective was to enhance quality, create possibility for collegiate court hearings, and to introduce effective case handling procedures. Greater distances within the court districts were not seen as a major problem. Due to geographical conditions, however, the court district of Bornholm, an island in the Baltic Sea with 50.000 inhabitants was not merged into a bigger district, cf. register 2.1 Denmark.

Italy is also considering a reassessment of the judicial geography, cf. register 2.1 Italy.

In Hungary the discussion about greater court districts and longer transportation has lead to the conclusion that due to public transportation conditions travelling longer distances would place important burdens on citizens, and small courts with only 2 or 3 judges working were left as they are. , cf. register 2.2 Hungary.

Norway also has maintained small courts with only one ordinary judge, cf. register 2.2 Norway.

In Greenland, having a total population of 56,000 inhabitants and a population density of 0.025 per sq. km over an area of 2.2 million sq. km, there are at present 18 court districts having thus each a population in the average of 3.000 inhabitants and covering each an area of 122,000 sq. km. Because of human resources some district courts are manned by lay judges having had a short training in major principles of law. It is now discussed to reduce the number of court districts from 18 to 4 creating very large districts and long distances to the courts. The main problem to

transportation is however not the distances, but the icy and mountainous landscape. The hindrances are sought met by establishing local offices, by having the courts travelling, and by using video conferences.

Local secondary or temporary seats – travelling courts

In order to counterbalance the problems connected with long and difficult transportation for citizens some countries employ a solution where a court establishes secondary court offices in smaller towns sometimes only part time manned. Another remedy employed is to let the court travel. A third solution is to let special cases travel, that is to maintain a system with small court districts and small courts for ordinary cases and having the option to direct special cases to bigger courts with more judges having the possibility to specialize, form collegiate benches etc.

Finland maintains a system of secondary court offices in smaller towns. They may be permanently or part-time manned. In some districts sections of the court travels, the idea being that geography is a challenge, but not a reason to ignore justice, cf. register 2.1 Finland. Also in Sweden the court travels, cf. register 2.2 Sweden.

Hungary has maintained a system of small court districts combined with the possibility to let special cases travel, cf. register 2.1 and 2.2 Hungary.

Austria and Spain also maintain systems where some courts may have temporary or permanent seats in major cities within the district, cf. register 2.2 Austria and 2.2 Spain.

Transportation and communication

Some countries facilitate transportation by reimbursement of travel costs, cf. register 2.3.

Several countries in Europe facilitate communication by the use of in- and outgoing e-mail, faxes, and the like. This may be seen also as a an easy substitute for personal appearance thus diminishing the obstacles to access created by transportation difficulties due to geographical conditions and large court districts, cf. register 4.1.

Video and telephone conferences

Another substitute to personal appearance is the implementation of video and telephone conferences. Such options therefore serve as means to cope with obstacles due to geography.

Video conferences have been implemented in Croatia, Norway, and Spain, are being introduced in Denmark and the Netherlands, and are contemplated in Italy, cf. register 2.4.

Telephone conferences have been used for several years in Denmark for short court sessions in the preparatory phase, cf. register 2.5 Denmark. They are also used in Norway, Sweden, and Netherlands.

In Finland, Norway and Sweden, it is permissible in criminal cases as well as in civil cases to have witnesses at the trial giving their testimony by telephone. It is not unusual that the hearings are held by telephone with persons who are not present at the meeting. This facility is mostly used when the witness is to be heard a about a certain detail or technical facts. More “important” witnesses usually have to appear in person before the court.

The objective of these methods is to avoid unnecessary travels especially for persons coming from afar or for short meetings.

Written testimonies

In several countries, including Denmark, England and Wales, Italy, Netherlands, Norway, Portugal, and Sweden, a testimony may upon decision of the judge be given in a written statement, cf. register 2.6.

5. Psychological and Social Hindrances

5.1. Features and obstacles

Attire and arranging of court rooms

In order to maintain the courts' appearance of being independent and impartial it is in most countries (England and Wales, Netherlands, Norway, Portugal and Spain) required that the judges and advocates during hearings wear specific attire such as gowns, cf. 5.1. in the Register. In England and Wales judges also wear wigs during criminal proceedings. The special attire creates a degree of anonymity and helps to keep focus on the case concerned – thus the parties' arguments and the reasoning of the decision. To underline the judges' anonymous appearance during trials Denmark has e.g. by new legislation enacted a requirement to wear gowns during trials in also the district courts, cf. 5.1. Denmark. Before gowns were only used in the higher courts and the Supreme Court. By this new legislation the judges are also specifically prohibited to appear in a way that might be understood as an expression of religious or political affiliation.

Together with the arranging of court rooms (with the judges typically sitting a little distant from the parties and elevated in the room) gowns create a respectful atmosphere leaving the participant with the feeling of an existing integrity and discretion.

Although the abovementioned are all valuable and important aims the formal dress and arrangement of court rooms may at the same time constitute an obstacle to access to justice in that the ordinary simple plaintiff, who is not familiar with legal proceedings, will find himself in unknown territory leaving him intimidated and very uneasy. The judges – from whom he is seeking help – will seem distant and reserved ("out of his reach"), and the whole process – including the decision which will most probably be written in a language he is not used to – may lead him to question whether all his arguments where actually heard and taken into account. These circumstances create a psychological obstacle which might make a possible plaintiff consider avoiding legal proceedings in its entirety as means of dispute resolution. Especially if he is not able or willing to pay for legal representation.

In especially some types of cases (e.g. family cases with the hearing of children) the formal atmosphere can be viewed as a great disadvantage.

Information, assistance and explanation of outcome

Lack of information will leave the party wondering whether he is doing what is expected of him, and if any initial need he might have for general assistance is not met, he is less likely to seek the courts as means for dispute resolution. Further if the decision is not in his favour and he is not provided with an understandable explanation, he will probably end up feeling that he was not granted justice in a sufficient manner. This may in the end influence his general trust and confidence in the court system being a competent and impartial institution.

There is within the general public in most countries an increasing demand for services from all public institutions and there is a trend towards treating the customers with a less distant and formal attitude. Being part of the general public service this trend also captures the courts, which are also expected to be less distant, reserved and formal in their treatment of users. This trend makes it necessary for the judges to view their role in a different and more service like perspective. They are now expected to be more attentive and to have greater focus on and empathy for the needs of the parties and other users.

Alongside with the increasing demand for a more empathic service and less distant and formal treatment the judges are expected to give understandable "customized" reasons and to give good service during the entire process.

As a general rule the parties are however still expected to be represented by a lawyer who will make sure to assist the party and answer any question related to the legal proceedings.

Education and survey of judges

In a rapidly changing society, with increasing demands and expectations regarding better tolerance and understanding for the individual, the judges need to be given the necessary tools to handle their customers during court sessions as well as in general. This raises the needs for seminars and training in e.g. communication skills making the judges able to handle the customers they meet – regardless of the customer's personal situation.

Lack of training might lead to a situation where the plaintiff doubts whether his arguments were heard and in addition he might feel that the problem of the court's being distant and not able to meet their customers needs is being ignored.

Treatment of witnesses

Witnesses find themselves to be in a very stressful and difficult situation and the distant and formal atmosphere surrounding the courts will most probably not help them to feel more comfortable. Any feeling of intimidation on their part may on the one hand stress them to speak the truth. On the other hand it may also make it difficult to obtain a clear, coherent and reliable statement – especially if the witness is a victim of a criminal offence or a child. Witness statements are important evidence and in order for their statements to be clear and as close to the truth as possible witnesses must in criminal as well as in civil cases be sworn in to tell the truth but should also be handled and examined carefully having empathy for their difficult situation.

Linguistic hindrances and minority groups

Foreigners and minorities do not only meet obstacles related to cultural differences but will also meet obstacles based on linguistic problems – thus the fact that they do not master the official language of the country in question or only do so partly. Any other customer who is neither a foreigner nor a member to a minority might however also face linguistic obstacles due to the use of technical languages and legal terms.

5.2. Means of removing or overcoming the obstacles

Attire and arranging of court rooms

For the sake of maintaining an air of integrity, discretion and respectfulness of the proceedings it may seem difficult to overcome the obstacle that lies with the participants feeling uneasy with the formality surrounding the legal proceedings. To overcome the obstacle of formality one may focus on creating a less formal atmosphere in at least certain types of proceedings or cases. Family cases are e.g. better handled in a less formal manner and in England and Wales the judges are as a consequence thereof no longer required to wear wigs and gowns in the magistrate's courts and family courts.

By acknowledging the level of necessary attire to maintain the appropriate dignity one may also tone the uniform down. As a contrast to the Danish example of introducing gowns in the district courts the wearing of wigs in England and Wales seized e.g. to be required in all civil cases 2 years ago, cf. 5.1. England and Wales.

Also a special attention showed to vulnerable participants to the proceedings as done by England and Wales, Lithuania, Romania, the Netherlands and Spain will help diminish the psychological barriers.

Information and assistance and explanation of outcome (court decision and others)

To overcome the obstacles that lie in lack of information, lack of assistance and lack of explanation of outcome one may – apart from drawing up written general guidelines in pamphlets and the like – focus on the language of the courts making it custom-friendly. The Netherlands has for this purpose launched a project aimed at providing better explanation of the courts' decisions to give the addressees a better idea of the arguments, cf. 5.2. and 7.1. The Netherlands. An additional advantage might be that the party – if he feels that he has received proper assistance and a decision followed by an explanation understandable to him – will accept the outcome and not take the case any further.

Local service centres within the courts will bring the courts closer to the simple plaintiff and in Austria there are service centres set up at the regional courts making it easier for people to seek

judicial assistance within the courts, cf. 5.2. Austria. In Spain all judges must – in order to guarantee transparency – grant meetings with any court user who applies for it, cf. 5.3. Spain.

One may also – as e.g. done in Denmark and Norway – introduce simple procedures in cases regarding small claims where the case cannot "bear" the costs of legal representation. In Denmark the judges must in a fast track procedure for civil cases concerning amounts of maximum 50.000 DKR (approximately 6.700 €) assist the parties in preparing the case, cf. 5.2. and 8.2. Denmark. See also 6.2. and 8.2. Norway. During these proceedings the judge is obligated to extend the courts assistance and help the parties prepare the case which makes it unnecessary for the parties to be represented by a lawyer. Being typically fast track procedures they will also lead to better average processing times.

Education and survey of judges

In order to fulfil the assignment of giving good service and overcoming the obstacles that lies within lack of assistance and lack of good communication skills many countries do focus on the education of judges offering them training in amongst others communication skills. To diminish the psychological barriers of different cultural backgrounds judges in some countries also receive training in how to deal with cultural differences.

In Norway the National Court Administration thus arranges 2-day seminars called "Service & Interaction" with the purpose of making the courts conscious of – and providing the judges with skills in handling – the different situations where they meet their users, cf. 5.2. Norway. The National Court Administration will also work out a "Guide to Good Service". In Austria and the Netherlands courses are conducted to strengthen the judges' communication skills and there are also courses focused on how to deal with aggression, cf. 5.3. In Spain the judges receive initial training in how to be polite with the public, to be user friendly and in how to provide information, cf. 5.3. Spain. In many countries – such as Denmark, England and Wales, the Netherlands and Norway – the judges receive training in understanding and dealing with cultural differences, cf. 5.3. Denmark, 7.2. England and Wales, 7.2. The Netherlands and 7.2. Norway.

Knowing that there is focus on the problem and that the judges receive training may in itself leave the parties with a confidence in the courts working on what is expected of them which in the end might lead to more tolerance towards any necessary formalities.

Regular general surveys as done by Belgium (cf. 5.3.) will in addition give the customers influence and a feeling of being a player in bettering the courts, whereas surveys of the singular judges will leave the customers trusting the system to deal with any possible unfortunate behaviour shown by a judge. Some countries conduct surveys of the courts as well as peer review. In the Netherlands a visitation committee visits the courts once every four years in order to assess the quality of the courts individually and as a whole, cf. 5.3. Netherlands. Peer reviews of the judges focusing on behavioural aspects are also conducted on a voluntary basis in the Netherlands. In Lithuania judges' qualifications are assessed once pr. 5 years in a special committee, cf. 5.3.

Treatment of witnesses

Almost all countries offer witnesses reimbursement for their travelling expenses thereby diminishing the practical and financial hindrance that lies within having to make travel arrangements etc.

To meet the psychological obstacles and thus the need for witnesses to feel comfortable and safe many countries – Denmark, Hungary, Norway, the Netherlands and Sweden, cf. 5.4. – ensure information and assistance to witnesses. In Spain failure to comply with the obligation to treat witnesses respectfully and disciplinary offences consisting "in excess or abuse of authority" or "serious lack of consideration" may result in disciplinary liability, cf. 5.4. Spain. In order to make the witnesses feel comfortable wigs and gowns are in England and Wales also removed during criminal proceedings when dealing with children and vulnerable persons, cf. 5.1. England and Wales.

In most countries witnesses in criminal proceedings are offered special protection and can apply to be anonymous or to be separated from the accused when giving their statement, cf. 5.4.

As regards children special rooms and child friendly areas have been designed in the courts of Lithuania, Romania and the Netherlands for the hearing of children, cf. 5.1. Lithuania, 5.1. Romania

and 5.4. The Netherlands, and in Romania the magistrate has drawn up a guide which approaches the hearing of minors from a psychological and legal point of view. In Italy the Chairman of the proceedings may seek assistance from a member of the child's family or from an expert in child psychology when examining a child, cf. 5.4. Italy.

Linguistic hindrances and minority groups

As a general rule court systems provide foreigners with the right to an interpreter free of charge in criminal proceedings, whereas the parties in civil cases must provide for the necessary interpretation themselves, cf. 7.1. In order to ensure the courts access to proper interpreters the Netherlands as well as Norway have taken the initiative of drawing up a central register of interpreters and translators, cf. 7.1. Norway and the Netherlands. As a contrast to the general rule in civil cases Norway and Portugal have taken another stand recognizing the right of everyone to understand and be understood, and making the court responsible for the translation services when needed, cf. 7.1. Norway and 7.2. Portugal.

Some countries provide for general information in foreign languages free of charge. In England and Wales information on notice boards in courts and tribunals is e.g. printed in a number of European and Asian languages, cf. 7.1., and in the Netherlands several brochures on proceedings are available in Arabic, Turkish and various other languages, cf. 7.1. The Netherlands.

The countries with recognized minorities further ensure their minorities the right to have legal proceedings conducted in their mother language, cf. 7.2. Thus the Slovenian speaking and the Croatian speaking citizens in the south and east of Austria have the right to use their language in certain courts of the regions of Austria. In Croatia every minority has a right to hear proceedings in their language and to have it translated at court expenses. Also Sweden recognizes the right to, under certain circumstances, use the Sami language, Finnish and Meänkieli (Tornedalen Finnish). In Wales all court and tribunal forms are available in the Welsh language and documents may also be submitted to the court in Welsh and in Spain it is possible to use co-official languages in the following five autonomous regions: Catalonia, Valencia and Balearic Islands (Catalan), Galicia (Galician) and the Basque Country (Basque). In Italy the French minority of Val d'Aosta, the German and the Ladinos of Trentino Alto Adige and the Slovenian of the Province of Trieste are considered as recognized language minorities and the code of criminal procedure provides that

these minorities are questioned, at their request, in their mother language. In the Netherlands in the province of Friesland, procedural documents can be submitted in the Friesian language. Litigants may also express themselves in Friesian during hearings.

In Denmark the court language is Danish which is also the case in Greenland, cf. 7.2. Denmark. Plaintiffs and defendants of Greenlandic inheritance are thus presumed to master Danish, although essential documents in criminal proceedings must be translated in to Greenlandic regardless of whether the defendant masters Danish. The courts find that all documents should be translated if the defendant does not speak Danish, but there are not enough translators to do this job. The documents are therefore merely translated orally during the hearing and the judgement is translated subsequently. To meet the need for translation of documents initiatives have been taken to increase the number of translators. One of these initiatives is hiring a chief translator who shall also work on creating a Greenlandic court language. Many legal terms does not even exist in Greenlandic.

In relation to the linguistic obstacle that lies within the use of technical language and legal terms the Netherlands has taken the initiative to focus on the language of the courts making it customer-friendly. Thus a project has been launched aimed at providing better explanation of the courts' decisions to give the addressees a better idea of the arguments, cf. 5.2. and 7.1. The Netherlands – also see above. Such initiatives could also be done in general in order to not merely focus on the courts decisions but to also look into the language used in other written correspondence and in any general guidelines – thus internet-texts, pamphlets and the like. By doing this a non-professional party will feel listened to all through the process and heard at his level of communication.

6. Hindrances to Personal Appearance

6.1. Features and obstacles

The possibility of personal appearance is an important feature of free access to justice.

Professional representation is often very costly, and the necessity of professional experience may deter the citizen from addressing the courts, not only because of the relation between the value of the claim and the costs involved in pursuing it, but also because of absolute inability to risk the costs.

In addition the right to present the case yourself is of importance to the feeling of being heard.

On the other hand it must be acknowledged that the technicalities of a court case and the complexity of the question of law involved will normally present too big a challenge to a citizen conducting the case in person, and his chances of obtaining justice may therefore be much bigger, if he is represented by a professional attorney. The equal representation of both parties also is important for the judge's absolute neutral and impartial role during proceedings that is also of major importance for the delivery of justice. Therefore reducing or taking away the financial hindrances to professional representation by means of financial support through insurance or public aid is inevitable alongside the possibility of personal appearance.

6.2. Public requirement for professional representation

In many countries a party in general must be represented by a professional attorney to appear in court.

However in several countries personal appearance in general is possible, cf. register 6.1 Belgium, Denmark, Croatia, Finland, Lithuania, Norway, and Sweden. In some of these countries the possibility however is not available during appeal and/or cassation proceedings, cf. 6.1. Belgium and Lithuania.

Several countries that in general maintain a requirement for professional representation as an exemption allow personal appearance in cases of minor value, cf. register 6.1 Austria, Italy, Netherlands, and Spain, or in special types of cases as e.g. cases concerning family matters, home rental, and employment, cf. register 6.1 Austria and Spain.

6.3. Means of facilitating personal appearance

Even if personal appearance is allowed, it may prove impossible because of the technicalities of court procedure and the legal complexity of the case. Therefore many countries in order to secure in practise access to justice in personal appearance cases apply an array of methods to facilitate the citizen's handling of the case.

Many countries have instituted or have taken initiatives to institute simpler court procedure for specified so-called small cases, normally defined by the value of the case. This is the situation in Austria, Denmark, England and Wales, Lithuania, Netherlands, Norway, Spain, and Sweden, cf. register 6.2.

Some countries facilitate filing the case by allowing an opening document to be a filled in blank available at the website of the court, cf. register 6.5. Denmark, Spain, and Sweden.

Some countries impose on the judge a special duty to render assistance and guidance to a party that appears in person without professional assistance, cf. register 6.3 Denmark.

For many citizens a written procedure is easier to handle than an oral, and some countries open the possibility of a simple written procedure, cf. register 6.4.

7. Time Hindrances

7.1. Significance and Implication of Time Delays

Justice delayed is justice denied. This phrase clearly and justly expresses the severe consequence of time delays. Time delays are in many European countries the most dominant obstacle to access to justice.

The main reason for delays is insufficient resources. It is therefore essential for Court Administrations and Councils for the Judiciary to focus on the task of securing sufficient resources. It implies monitoring and collecting statistical evidence of the workload, and especially changes in the workload incurred by new legislation, by extended demands to courts e.g. in regard to service and publishing of information, or by increase in caseload because of the economic situation. It also implies the establishing of efficient budget procedures. Last but not least it implies regular negotiations with government and parliament concerning the proper financing of courts.

The second reason for delays is insufficient adaptation of the tasks undertaken by the courts to the resources at hand. In any society resources are limited and because of political priorities may be allocated to other activities leaving insufficient resources to the court system. This fact must be acknowledged, and an adaptation of tasks must be considered. The courts will normally not be in a position to determine the incoming caseload, the system of supreme courts screening cases being a sole exemption. But the courts may to some extent be in a position to decide on efforts used at the cases applying simpler procedures for cases of minor value and significance. The courts may also be in a position to encourage alternative dispute solution, thus decreasing the workload of cases for judicial decision.

The third reason for delays may be inefficient court organisation and procedures for case processing. This field to a great extent rests within the competence of the court system to address and an array of means to deal with these questions is at hand.

It is important to remember that speeding up proceedings with a view to increasing court efficiency within the resources given may often be in conflict with the consideration for judicial quality, and a fair balance of the two contrary aims must be reached.

Delayed justice is in general a serious threat to the Rule of Law, but it may also in some cases carry severe consequences to the parties. Acknowledging the fact that some delay is inevitable, it must therefore also be considered how these consequences may be avoided e.g. by pre-trial actions or by compensation.

7.2. Means of Reducing and Compensating Delays

Increasing and redistributing resources

In some countries it rests within the competence of the court system to relocate resources between the courts in order to reduce delays in specific courts with a severe backlog of cases. In Spain an initiative has been taken to introduce a system of appointing part time judges, normally recruited from other courts, cf. register 8.1 Spain. In Portugal an initiative has been taken to increase the number of peace courts, cf. register 8.1 Portugal.

Reducing caseload

A means to reduce the caseload may be to encourage alternative dispute resolution. In Portugal an initiative is taken to establish institutional arbitration centres to deal with enforcement matters. Also it is under consideration to take certain procedures out of the court system (inventory procedures) and let them be processed by notaries or registration offices, cf. register 8.1 Portugal.

Some countries with a view to decrease the workload of the courts have restricted the possibilities of appeal. The restriction may imply that minor cases with low value and without further significance may only be appealed if a special permit is given, cf. 6.4 Finland. It may also imply a restriction as to the scope of appeal.

Imposing court fees in order to make citizens refrain from going to courts may be seen as a means also to reduce time delays by reducing the caseload, cf. report 3.1.

Improving organisation and processing procedures.

This group comprises several important initiatives.

Several countries have set up targets or time limits to case processing, cf. among others register 8.1 Italy, Netherlands, Norway, and Sweden. Together with statistics collected such targets may serve as a basis for benchmarking. In some countries time limits are set up for the judges' delivery of decision.

Fast track procedures for certain types of cases, normally of relative small value, has been set up in several countries, the idea being to introduce simpler and therefore quicker procedures, that are regarded apt to attain sufficient quality, the importance of the cases taken into consideration, cf. register 8.2.

A general review of court organisation has been introduced in Sweden, cf. register 8.1.

Introducing it-facilities for case processing has also been used with a view to reduce time delays, cf. 8.1 Portugal.

Pre-trial activities

Considering the fact that some time delay is inevitable, several countries have possibilities for pre-trial activities.

One field is pre-trial collecting of evidence, including witness statements, experts' opinions etc. Such procedures are available in Hungary, cf. register 8.1, and in Austria, Denmark, Italy, Netherlands, Norway, and Spain.

Interim provision e.g. arrest of property is possible in several countries, cf. register 8.4, and also interim injunctions may be ordered in many countries, cf. register 8.5.

Compensation

Finland has introduced a system of granting compensation from State funds if a delay caused by the state has infringed the party's right to a hearing within reasonable time. The compensation is granted by the court, cf. 8.1 Finland.

8. Victims of Crime

8.1. Introductory remarks

The treatment of victims of crime is a significant aspect of access to justice.

Each country has reported on the status of this issue in the register headed as 10.1. - "Advice Support and Assistance"; 10.2. - "Involvement in the Proceedings"; 10.3. – "Ability to Influence the Sentence of the Offender" and 10.4. – " Compensation".

The topic is not amenable to separation in terms of status and initiatives as the later, although in some cases recent, are embodied in current practice.

Overview
The consideration of treatment of victims of crime begins with the level of advice and support given on detection, followed by investigation and prosecution stages.

Most countries require the police/public prosecutor to keep the victim of crime fully informed of the procedures and events in the proceedings and most provide safeguards for the presence of the victim in and out of court and in respect of giving evidence.

Only some countries allow victims of crime to join in the prosecution of the alleged offender in court (with or without a separate claim for compensation).

Some countries provide legal aid/court appointed advocates to assist in the process. Some countries allow the prosecution (including the representative of the victim to recommend or influence the sentence of a convicted offender). Others will hear evidence presented by the victims of crime, their counsel or public prosecutor relating to the impact of the crime upon the victim.

There is a wide range of difference in the way that compensation may be provided for a victim. In some countries the claims are assessed alongside the prosecution. Some prosecutions can be settled

on the basis of the payment of compensation. Some countries refer the question of compensation to a civil court. Most have a provision providing some compensation for specific losses and some have a separate compensation system allowing claims to be made from the state.

8.2. Advice, support and assistance

Citizens are at their most vulnerable and often bewildered at the point at which they actually become the victims of serious crime, particularly those involving violence or of a sexual nature. Although the wheels of justice may not have begun to turn it is important that their physical and psychological needs are met and they have some vision of justice lying ahead.

The first point of contact will be with the police. In Belgium and England and Wales, the police provide advice and assistance in referring the victim to organisations providing victim support services. In Belgium the police are also obliged to send the application for a court appointed lawyer to act for the victim. Other countries also have victim support organisations and although not specifically mentioned in the Register, probably also involve initial assistance being provided by the police.

Organisations providing victim support, which may come from one or a number of groups, some limited to cases serious crime, are stated to exist in Austria, Belgium, Croatia, Denmark, England and Wales, The Netherlands, Norway, Portugal and Spain. Sweden provides an aggrieved party counsel in serious cases. There are no specific arrangements in Romania, but the former gathers statistics to draw attention to vulnerable social categories and the latter assists victims through its existing social support structures.

Ignoring arrangements for a victim's to participation in the proceedings as a joint prosecutor or claimant for compensation most countries have practical measures for their welfare and safety during the proceedings. The victims support in Austria provides for counselling throughout the proceedings and in Croatia there are special units providing help and protection and familiarisation with procedures, particularly for victims of war crimes. Many countries report on there being provisions for information from the public prosecutor and consultation with a victim throughout the investigations and trial. There are also provisions, see, for example, in England and Wales, for

protection by allowing evidence to be given out of sight of the alleged perpetrator, special seating arrangements in the court rooms, witness anonymity orders, remand in custody, restraining orders and bail conditions. In Italy there is provision for the victim of a sexual offence to give evidence at a single hearing without the stress of repeating it at the later trial. Such categories are also, exceptionally, entitled to free legal aid.

8.3. Involvement in proceedings

The victim is a witness in court in all countries and, in Lithuania, is required to attend throughout the proceedings. Some countries involve the victim as a party to the prosecution but others allow joining the proceedings for the purpose of claiming compensation or participation in sentencing. These are dealt with as separate topics in 10.3 and 10.4.

In Austria the law allows the victim to be represented, have access to documents and files, fully participate in all aspects of the criminal proceedings, be in certain cases interrogated *in absentia* of other parties (e.g. the accused) and request continuation where suspended by the public prosecutor's office. In Spain the victim is entitled to appear as a private prosecutor in the criminal proceedings, but except for misdemeanours, it is mandatory that he be represented by a lawyer. The private prosecutor can avail himself of the same procedures as the public prosecutor and continue proceedings where the public prosecutor has discontinued. A victim may also join the proceedings to recover damages. Since 2008 Norway has increased the status and interests of victims and included the right of representation and for counsel to address the court on procedural issues and question witnesses, including the defendant. In Sweden, where the custodian of a child has a close relationship with a person accused of an offence against the child the court may appoint a special representative who will protect the child's rights both during investigation and trial. In Belgium, Italy, Lithuania, The Netherlands, Norway, Portugal, Romania, Sweden the victim may join a civil claim to the criminal proceedings and make a claim for compensation. Such claims are determined by the judge having charge of the criminal proceedings.

Some countries, e.g. Italy and Austria provide for pre-trial statements to be given by children and victims of sexual crimes to avoid the distress of appearing at the hearing. They and many other

countries, as already discussed, also allow for evidence to be given by a video link or, as in England and Wales, from behind screens.

8.4. Ability to influence the sentence of the offender

Most countries do not allow the victim to influence the sentence of the court. Some allow evidence from a victim as to the impact of the offence, but this may be no more than a cosmetic exercise, other than that it could help define the seriousness of the offence when normal sentencing principles are applied. The latter statement reflects the position in Austria, Denmark, The Netherlands , Norway and certainly in England and Wales where personal impact statements may be received, either directly, from the prosecutor or through counsel (in certain cases) but any views as to sentence have to be ignored by the judge.

In Belgium it is possible for victim influence the court as to whether the sentence should be imprisonment or probation and to allow discontinuance where compensation has been agreed. In Lithuania the victim may be heard on the penalty and voluntary recompense to the victim may also reduce sentence. In Sweden the aggrieved party counsel may address the court as to sentence but the court is unfettered as to the chosen outcome. This contrasts with the position in Spain, where, if joining in the prosecution as a joint prosecutor the indictment will contain a petition on sentence. The court may be influenced as to the gravity of the matter from the victim's evidence but it cannot impose a sentence greater than that requested in the indictment.

8.5. Compensation

Compensation may be awarded as part of the criminal proceedings, by civil action or under compensation schemes supported by public funds. The latter will be reported separately.
In Austria the victim becomes a private participant in the court proceedings either within the trial or as to compensation. Details of loss must be filed before the conclusion of proceedings and may be determined by the court on conviction or referred to civil proceedings in case of acquittal. The criminal court may in any case refer the question to civil proceedings, unless disposal would not cause significant delay, but such a decision may be appealed by the victim. In Belgium the victim must become party to the proceedings by bringing an action or intervention. The court will make

findings as to the extent of damage and casual link to the offence. The prosecutor may decide not to continue a prosecution and may do so subject to conditions one of which is the offender submitting to paying compensation or reparation of damage. Agreement is reached by mediation and the obligation to pay compensation is drawn up in a report which is enforceable by civil action. In Croatia, Denmark, Italy and Spain compensation may be claimed either as part of the criminal proceedings or by a separate civil action. In the event of joining the criminal proceedings the question of compensation will be investigated and decided upon by the judge hearing the indictment. In Italy, if the victim does not join an application for compensation with the prosecution he may use a subsequent conviction as absolute evidence of the crime and it perpetrator. In Spain and in England and Wales the prosecutor may ask the court to award compensation. In Spain this is mandatory unless the victim has waived his rights or is pursuing a civil claim. In England and Wales a compensation order may be made for personal injury, loss or damage. In the case of death funeral costs and compensation for bereavement may be ordered. The amounts of the award may fall short of what is appropriate because the court must have regard to the defendant's ability to pay and may be reduced to reflect contributory conduct on the part of the victim.

All victims have the right to claim damages in civil courts and may have to do so in cases of acquittal from guilt, but where the accused is responsible for the loss to the victim.
Austria, Belgium, Denmark, England and Wales, The Netherlands, Norway, Portugal, Spain and Sweden all possess schemes for state compensation for the victims of crime. The amounts payable and the type of crime for which payment may be claimed vary from country to country as detailed in the register.

9. Opening the window

9.1. General remarks

In the previous sections the working group considered the description of solutions with regard to obstacles concerning access to justice in working group member and observer states. In this section the working group wants to illustrate by two concrete examples how the point of view from which

access to justice will be dealt with is essential to improve the quality of justice for the public. Access to justice should provide:

- Maintenance of the rule of law which is fundamental to a country's economy and prosperity.
- It is essential for democracy. Justice institutions enable people to protect their rights against infringement by other people or bodies in society, and allow parties to bring actions against government to limit executive power and ensure government is accountable.
- It helps reduce poverty and exclusion. Maintaining a strong rule of law is a precondition to protecting disadvantaged communities and helping people leave poverty behind.

Improving access to justice is therefore a key means of promoting social inclusion. Many of the issues commonly faced by people such as credit and housing issues, discrimination and exclusion from services have a legal dimension that if not resolved can contribute to social exclusion.

The first approach concerns a court's view on access to justice for the civil justice system in England and Wales. It consists of inquiring about the existing problems/obstacles, of defining a number of objectives in relation with access to justice and of formulating and implementing recommendations.

The second approach was elaborated in Australia. It makes use of a strategic framework of access to justice. The starting point of this approach is broadening the view of access to justice. Not the court system's view but a holistic view on access to justice is put first to make proposals/recommendations and successfully improve justice in society.

9.2. The court's view (England and Wales)

In 1996 Lord Woolf stated in his report on *Access to justice* on the civil justice system in England and Wales[1] that he wanted to ensure that England and Wales have a civil justice system which will meet the needs of the public in the twenty first century.

The Principles

He identified a number of principles (objectives) which the civil justice system should meet in order to ensure access to justice. The system should:

(a) be *just* in the results it delivers;

(b) be *fair* in the way it treats litigants;

(c) offer appropriate procedures at a reasonable *cost*;

(d) deal with cases with reasonable *speed*;

(e) be *understandable* to those who use it;

(f) be *responsive* to the needs of those who use it;

(g) provide as much *certainty* as the nature of particular cases allows; and

(h) be *effective*: adequately resourced and organized.

The problems

He identified the following problems: The system is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the

[1] Access to justice. Final report to the Lord Chancellor on the civil justice system in England and Wales. By the Right honourable the Lord Woolf. July 1996. See the complete report on www.dca.gov.uk

unknown; and it is incomprehensible to many litigants. Above all it is too fragmented in the way it is organized, since there is no one with clear overall responsibility for the administration of civil justice; and too adversarial as cases are run by the parties, not by the courts and the rules of court, all too often, are ignored by the parties and not enforced by the court.

He also concentrated his inquiry on particular areas of litigation where the civil justice system is failing most conspicuously to meet needs of litigants. Examples of these areas are medical negligence, housing and multi party litigation.

He was also concerned about the level of public expenditure on litigation, particularly in medical negligence and housing. In both of these areas substantial amounts of public money are absorbed in legal costs which could be better spent, in the one case on improving medical care and in the other on improving standards of social housing. An efficient and cost effective justice system is also of vital importance to the commercial, financial and industrial life of the country.

The basic reforms

He recommended a system where the courts with the assistance of litigants would be responsible for the management of cases. The courts should have the final responsibility for determining what procedures were suitable for each case; setting realistic timetables; and ensuring that the procedures and timetables were complied with. Defended cases would be allocated to one of three tracks: (a) an expanded small claims jurisdiction with a financial limit of £3,000; (b) a new fast track for straightforward cases up to £10,000, with strictly limited procedures, fixed timetables (20 30 weeks to trial) and fixed costs; and (c) a new multi track for cases above £10,000, providing individual hands on management by judicial teams for the heaviest cases, and standard or tailor made directions where these are appropriate.

An important part of the task was to produce a single, simpler procedural code to apply to civil litigation in the High Court and county courts.

Recommendations

The implementation of the report’s recommendations will make civil litigation fundamentally different from what it is now. It will be underpinned the rule of the new procedural code, which imposes an obligation on the courts and the parties to further the overriding objective of the rules so as to deal with cases justly. The rule provides a definition of 'dealing with a case justly', embodying

the principles of equality, economy, proportionality and expedition which are fundamental to an effective contemporary system of justice. These requirements of procedural justice, operating in the traditional adversarial context, will give effect to a system which is substantively just in the results it delivers as well as in the way in which it does so.

The following recommendations will mark the new landscape of civil litigation:

Litigation will be avoided wherever possible.

For example people will be encouraged to start court proceedings to resolve disputes only as a last resort, and after using other more appropriate means when these are available; Information on sources of alternative dispute resolution (ADR) will be provided at all civil courts; Legal aid funding will be available for pre litigation resolution and ADR; Before commencing litigation both parties will be able to make offers to settle the whole or part of a dispute supported by a special regime as to costs and higher rates of interest if not accepted.

Litigation will be less adversarial and more co operative.

For example there will be an expectation of openness and co operation between parties from the outset, supported by pre litigation protocols on disclosure and experts. The courts will be able to give effect to their disapproval of a lack of co operation prior to litigation; the court will encourage the use of ADR at case management conferences and pre trial reviews, and will take into account whether the parties have unreasonably refused to try ADR or behaved unreasonably in the course of ADR.

Litigation will be less complex.

For example there will be a single set of rules applying to the High Court and the county courts. The rules will be simpler, and special rules for specific types of litigation will be reduced to a minimum; all proceedings will be commenced in the same way by a claim; the claim and defence will not be technical documents. Both 'statements of case' will have to include certificates by the parties verifying their contents so tactical allegations will no longer be possible. Claimants will be able to start proceedings in any court. It will be the court's responsibility to direct parties or to transfer the case, if necessary, to the appropriate part of the system; there will be special procedures, involving active judicial case management, to deal with multi party actions expeditiously and fairly.

The timescale of litigation will be shorter and more certain.
For example all cases will progress to trial in accordance with a timetable set and monitored by the court; for fast track cases there will be fixed timetables of no more than 30 weeks; the court will determine the length of the trial and what is to happen at the trial.

The cost of litigation will be more affordable, more predictable, and more proportionate to the value and complexity of individual cases.
For example there will be fixed costs for cases on the fast track; Estimates of costs for multi track cases will be published by the court or agreed by the parties and approved by the court; For classes of litigation where the procedure is uncomplicated and predictable the court will issue guideline costs with the assistance of users.

Parties of limited financial means will be able to conduct litigation on a more equal footing.
For example litigants who are not legally represented will be able to get more help from advice services and from the courts; Procedural judges will take account of the parties' financial circumstances in allocating cases to the fast track or to the small claims jurisdiction; When deciding upon the procedure which is to be adopted the court will, if the parties' means are unequal, be entitled to make an order for a more elaborate procedure, conditional upon the other side agreeing to meet, in any event, the difference in the cost of the two possible procedures.

There will be clear lines of judicial and administrative responsibility for the civil justice system.
For example the Head of Civil Justice will have overall responsibility for the civil justice system in England and Wales; the new administrative structure will establish a partnership between the judiciary and the Court Service.

The structure of the courts and the deployment of judges will be designed to meet the needs of litigants.
For example heavier and more complex civil cases will be concentrated at trial centres which have the resources needed, including specialist judges, to ensure that the work is dealt with effectively; smaller local courts will continue to play a vital role in providing easy access to the civil justice system. Housing claims, small claims, debt cases and cases allocated to the fast track will be dealt with there, as well as case management of the less complex multi track cases; Appeals with no real

prospect of success will be eliminated at an early stage; The courts will have access to the technology needed to monitor the progress of litigation; Litigants will be able to communicate with the courts electronically and through video and telephone conferencing facilities.

Judges will be deployed effectively so that they can manage litigation in accordance with the new rules and protocols.
For example judges will be given the training they need to manage cases; Cases will be dealt with by the part of the system which is most appropriate. The distinctions between the county courts and High Court and between the divisions of the High Court will be of reduced significance; Judges will have the administrative and technological support which is required for the effective management of cases.

The civil justice system will be responsive to the needs of litigants.
For example courts will provide advice and assistance to litigants through court based or duty advice and assistance schemes, especially in courts with substantial levels of debt and housing work; Courts will provide more information to litigants through leaflets, videos, telephone help lines and information technology; Court staff will provide information and help to litigants on how to progress their case; There will be ongoing monitoring and research on litigants' needs.

Findings on the effects of the Civil Justice Reforms and new reform proposals
Civil justice reforms were introduced in April 1999 in new Civil Procedure Rules, implementing many of the recommendations in Lord Woolf's final report on "Access to Justice".

Early findings based upon evidence obtained over the first two years were presented in the paper "Emerging Findings - An early evaluation of the Civil Justice Reform" published in March 2001. The paper "Further Findings - A continuing evaluation of the Civil Justice Reforms", published in August 2002, builds on that evidence and includes some additional information. In general, the findings that were included in the previous paper have been confirmed[2]:

- Overall there has been a drop in the number of claims issued, in particular in the types of claim most affected by the new Civil Procedure Rules introduced in April 1999.

[2] The two papers are available on www.dca.gov.uk

- Evidence suggests that pre-action protocols are working well to promote settlement and a culture of openness and co-operation.
- "Part 36"[3] has been welcomed by all interested groups as a means of resolving claims more quickly: claims which settle without court proceedings and those where proceedings are issued.
- There is evidence to show that settlements at the door of the court are now fewer and that settlements before the hearing day have increased.
- After a substantial rise in the first year following the introduction of the Civil Procedure Rules, there has been a leveling-off in the number of cases in which Alternative Dispute Resolution is used.
- The use of single joint experts appears to have worked well. It is likely that their use has contributed to a less adversarial culture and helped achieve earlier settlements.
- Case Management Conferences are a key factor in making litigation less complex, and appear to have been a success.
- The time between issue and hearing for those cases that go to trial has fallen. The time between issue and hearing for small claims has risen since the introduction of the Civil Procedure Rules but may now be falling.
- The number of appeals in the course of proceedings appears to have fallen sharply.
- It is still too early to provide a definitive view on costs. The picture remains relatively unclear with statistics difficult to obtain and conflicting anecdotal evidence. Where there is evidence of increased costs, the causes are difficult to isolate.
- The views of litigants in person are difficult to obtain as they tend to use the system only once. Whilst research is currently being undertaken to assess their views, anecdotally it appears that courts are providing the assistance required. Court Service User surveys have returned good results.

In 2005 Peysner and Seneviratne completed their evaluation[4] of the Woolf reforms and noted the following benefits:

- successful case management

[3] Part 36 of the Civil Procedure Rules, whereby either party could make a settlement offer to the other party or parties. Part 36 has been revised from time to time since April 1999.
[4] J. Peysner and M. Seneviratne, The management of Civil Cases: The Courts and the Post Woolf Landscape (London: Department of Constitutional Affairs, 2005). Available on www.dca.gov.uk

- better use of experts
- increased settlements
- less adversarial legal culture

Their research showed a major concern in relation with the Woolf reforms: increased costs of litigation.

In November 2008 Lord Justice Jackson was appointed by the Master of the Rolls to lead a fundamental review of the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate costs. In conducting the review Lord Justice Jackson was asked to

- Establish how present costs rules operate and how they impact on the behaviour of both parties and lawyers.
- Establish the effect case management procedures have on costs and consider whether changes in process and/or procedure could bring about more proportionate costs.
- Have regard to previous and current research into costs and funding issues.
- Seek the views judges, practitioners, government, court users and other interested parties through both informal consultation and a series of public seminars.
- Compare the costs regime for England and Wales with those operating in other jurisdictions.

Lord Justice Jackson's "Review of Civil Litigation Costs: Final Report" (December 2009)[5] was published in January 2010 after more than a year of extensive research and consultation. It outlines the final proposals on the costs of civil litigation, informed by the period of public consultation (May to July) that followed the 'Review of Civil Litigation Costs: Preliminary Report' (May 2009)[6].

It was ten years since Lord Woolf's reforms to civil procedure were implemented. But the review also concerns consequences of developments regarding the costs of civil litigation that were not based on recommendations in Lord Woolf's report[7].

[5] Available on www.judiciary.gov.be
[6] Available on www.judiciary.gov.be
[7] e.g. the introduction of conditional fee agreements. For Lord Jackson's evaluation of the 1999 Woolf reforms and other government initiatives see the Preliminary and Final Report on www.judiciary.gov.uk

The report represents the most significant review of the civil litigation system since the Woolf Report in 1996 and proposes a package of reforms[8] intended to promote access to justice at proportional cost. Some of the key recommendations include:

1. Removing the ability to recover the success fees under a Conditional Fee Agreement and After the Event Insurance Premiums from unsuccessful opponents in civil litigation, which the report identified as major contributors to disproportionate costs.
2. Capping the level of costs which can be recovered in smaller "fast-track" trials to £12,000. Currently the fast track deals with claims worth £25,000 or less but the costs involved in bringing or defending those claims can frequently exceed the value of those claims.
3. Introducing new disclosure rules for substantial cases (those exceeding £1 million) to ensure the level and costs of disclosure remain proportionate in those cases.
4. Introducing "qualified one way costs shifting" for judicial review, personal injury and clinical negligence claims where a claimant would only be liable for a small proportion of the defendant's costs if the claim was unsuccessful, rather than the current rule that it should pay the defendant's costs. That would be subject to the financial resources and the conduct of the parties in the proceedings.
5. Abolishing the old common law "indemnity principle" and replacing that with clear rules on what costs can and cannot be recovered.

Other sections of the report deal with controlling the costs - including pre-action protocols, greater use of alternative dispute resolution (ADR), and case and costs management by the judiciary.
The measures the report proposes should ensure that legal costs are reduced, and that civil justice will be more efficient and fairer.

Outcome

Lord Wolf's proposals were accepted in England and Wales with the drafting of the Civil Procedure Rules which came into force in 1998 and are amended every year.

[8] The Final Report comprises 109 recommendations on 42 themes.

9.3. The justice system wide view (Australia)

On 23 September 2009, the Attorney-General, the Hon Robert McClelland MP, released the report of the Access to Justice Taskforce, 'A Strategic Framework for Access to Justice in the Federal Civil Justice System'[9]

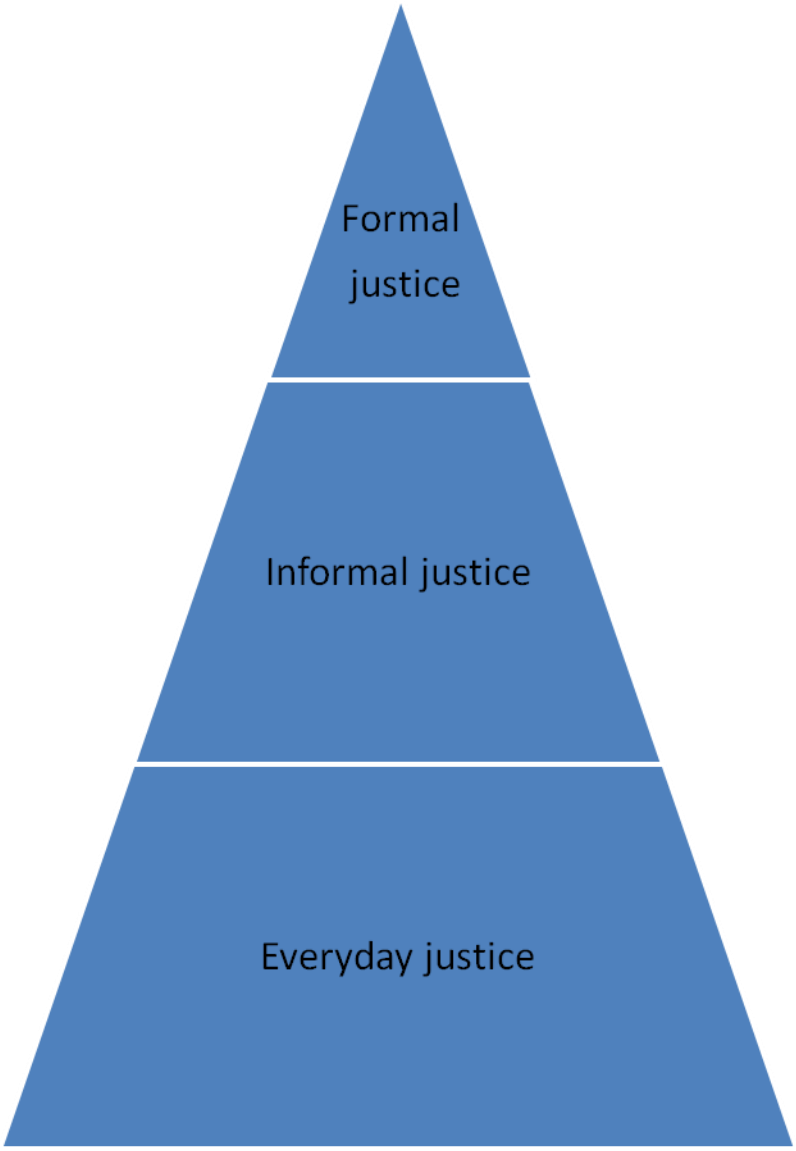
The task force elaborated an approach which is characterized by what follows.

Access to justice has traditionally been seen as access to the courts or the availability of legal assistance, but this is a narrow view. Accessibility is about more than ease of access to buildings or getting legal advice. Most disputes are resolved without recourse to formal legal institutions or dispute resolution mechanisms.

Where is the justice that we want to admit people to?

The justice system is a complex system comprising activities at the formal, informal and everyday justice level.

[9] A Strategic Framework for Access to Justice in the Federal Civil Justice System. Report by the Access to Justice Taskforce. Australian Government. Attorney-General's Department. September 2009. See the complete report on www.ag.gov.au



Formal justice:

- Courts (and execution)
- Legal assistance
- (External) Merits review
- Legal services

Informal justice:

- Alternative dispute resolution

- External dispute resolution
- Legal assistance (early intervention)

Everyday justice:
- Access to information
- Resilience
- Handling matters
- Personally

An effective justice system must be accessible in all its parts.
Without this, the system risks losing its relevance to and the respect of the community it serves.
Improving access to justice requires a broad examination of how the different parts of the whole justice system (with its various institutions) are influenced by each other and work together to support or limit people's capacity to address legal problems and resolve disputes.

Reforming one or more of the individual institutions or programs might assist current clients or users, but will not provide sustainable access to justice benefits or increase the number or profile of beneficiaries. A whole of system examination is needed.

Ultimately, access to justice is not just a matter of bringing cases to formal justice mechanisms, but of enhancing the justice quality of the relations and transactions in which people are engaged.

Demand and supply from a system wide perspective
Demand and supply in the justice system should be examined.
Demand describes what sorts of disputes there are; their nature and number.
Supply describes the options for resolving those disputes and the costs and effectiveness of those options.

The Taskforce made the following observations on the demand side:

- Information failure is a significant issue: people do not understand legal events, what to do or where to seek assistance. People do not seek traditional legal advice, but rely on non-professional sources of advice and generally available information.

- People do not generally seek to use courts or formal justice mechanisms as a means of obtaining assistance in relation to legal issues.
- Legal events are experienced across all parts of society, although they are not experienced randomly. Some legal issues are particularly likely to arise for certain demographic groups, certain legal issues often appear in clusters, and people who have experienced one legal event are significantly more likely to experience further events.

The mechanisms for dispute resolution on the supply side include, from informal to very formal, and from low-or-no cost to very expensive:

• information, advice and support

• internal complaint mechanisms

• external dispute resolution and ombudsmen

• administrative law remedies

• family dispute resolution services

• Alternative dispute resolution, including mediation, negotiation and arbitration

• courts.

The need for an access to justice framework

Initiatives with regard to access to justice must maximise the delivery and quality of access to justice.

Justice initiatives should be considered from a system wide perspective rather than on an institutional basis. Policy makers (services, councils, government, and parliament) should take a system wide approach to access to justice issues.

The traditional adversarial system is no longer relevant or sustainable for most disputes.

The use of an access to justice framework can be helpful.

The access to justice framework comprises:

- Principles for access to justice policy making
- Methodology for achieving the principles in practice.

The principles and methodology are designed to be enabling rather than descriptive.

The methodology is designed to provide a basis for policy makers to develop proposals that translate the principles into action. Proposals should indicate the action undertaken and the objectives aimed at (principles), and clearly explain the reason for doing so.

In order to help policy makers develop proposals the Taskforce formulated a number of recommendations.

Principles

Accessibility:
Justice initiatives should reduce the net complexity of the justice system.

Appropriateness:
The justice system should be structured to create incentives to encourage people to resolve disputes at the most appropriate level.

Equity:
The justice system should be fair and accessible for all, including those facing financial and other disadvantage.

Efficiency:

The justice system should deliver outcomes in the most efficient way possible. In many cases this will involve early assistance and support to prevent disputes from escalating.
The costs of formal dispute resolution and legal assistance mechanisms – to government and to the user should be proportionate to the issues in dispute.

Effectiveness:
The interaction of the various elements of the justice system should be designed to deliver the best outcomes for users.
All initiatives should be directed towards the prevention and resolution of disputes, delivering fair and appropriate outcomes, and maintaining and supporting the rule of law.

Methodology
The elements of the methodology are:

Information:
Enabling people to understand their position, the options they have and deciding what to do.

Action:
Early intervention to prevent legal problems from occurring and escalating.

Triage:
Enabling matters to be directed to the most appropriate destination for resolution, irrespective of how people make contact with the system.

Outcomes:
Providing a pathway to fair and equitable outcomes:
Resolving conflicts without going to courts
When going to court is necessary, ensuring processes are accessible, fair, affordable and simple.

Proportionate costs:
Ensuring that the cost of and method of resolving disputes is proportionate to the issues. Adequate information about costs is essential in assessing proportionality.

Is litigation the most appropriate pathway?

Resilience:
Building resilience in individuals, the community and the justice system.

Inclusion:
Directing attention to the real issues that people who experience legal events have.

The elements of the methodology are interrelated:
For example better information can lead to better action and better outcomes. Similarly better inclusion and resilience are supported by better information and more appropriate outcomes.

An individual's pathway through the justice system will vary depending on entry point, the level of assistance available, and the resources the individual has at its disposal.

Examples of Taskforce recommendations

Recommendation 6.8 (information about the law)
Greater emphasis should be placed on the opportunities that using new technologies can afford to improve the efficiency and scope of service delivery on a cost-effective basis. Measures to achieve this include:

The Attorney-General's Department should initiate discussions with courts, tribunals, Government agencies, service providers and the legal assistance sector to undertake a "stocktaking" of the use of technology to identify opportunities to increase collaboration and expand availability of services, particularly for regional, rural and remote Australia.

The Attorney-General's Department should work with legal assistance service providers, desirably through the proposed national coordination group (see Recommendation 11.1), to explore options for improving service delivery through new technology.

Recommendation 7.6 (Alternative Dispute Resolution)

Before preparing to litigate, disputants and their legal advisers should attempt to resolve the matter through an ADR process or direct negotiation where appropriate. The Attorney-General should work with federal courts and professional bodies to ensure that procedural and professional requirements reflect the expectation that parties have considered resolving the matter outside the court process prior to commencing litigation.

The expectation that parties will have attempted to resolve matters through ADR and negotiation should apply to self represented litigants.

Recommendation 8.3 (The Courts)
The Attorney-General's Department should develop options by which courts may order that the estimated cost of discovery requests would be paid for in advance by the requesting party.

Recommendation 8.6 (The Courts)
In considering possible candidates for judicial appointments, the Attorney-General should have regard to the importance of case management and the use of ADR in achieving just, fair and equitable outcomes.

Recommendation 9.2 (costs)
Given the significant public costs of court hearings, and the opportunities parties have to resolve matters without hearing, or minimise the length of hearings by identifying the real issues in dispute, full cost pricing for long hearings is generally appropriate. The Government should adopt a model of full cost pricing for long hearings which would:

- commence after a certain number of hearing days, or adopt a sliding scale, rather than be imposed as an exercise of judicial discretion, and
- be subject to a comprehensive system of exemptions and waivers (excluding, for example, human rights and native title matters) to protect access to justice.

Recommendation 10.3 (administrative law)
Commonwealth agencies should review their methods of notifying clients of adverse decisions. At a minimum, notification of adverse decisions should include information and be sufficient to enable the affected person to discuss the decision and the reasons with an experienced officer.

Recommendation 11.3 (legal assistance)

The Commonwealth should seek to negotiate a National Partnership Agreement for legal aid that gives greater priority to intervening early to help prevent legal problems from escalating, building knowledge and respect for the law and resilience in dealing with legal issues.

Recommendation 12.1 (building resilience)

Lawyers being admitted to practise should be equipped with the skills to guide a client through a dispute resolution process and understand the major ADR processes.

The Attorney-General should write to the Council of Chief Justices and legal professional associations with responsibility for the criteria for admission to ensure that the importance of a practical knowledge of ADR is recognised.

After the release of the report

The report was released for public discussion and input from 23 September until 13 November 2009. 60 submissions were received[10].

Issues identified in the consultation and the Taskforce's recommendations will be considered by Government departments and agencies, and will assist the Government to develop initiatives which appropriately address and improve access to justice for all Australians.

[10] Available on www.ag.gov.au

10. List of participants

10.1. Member States

Country and Organization	Name of members
Denmark Danish Court Administration	Mr. Niels Grubbe *(Coordinator)* Ms. Kira Kolby Christensen *(Secretary)*
Belgium High Council of Justice – Belgium	Mr. Jean-Marie Siscot Mr. Axel Kittel
Bulgaria Supreme Judicial Council of Bulgaria	Mr. Ivan Dimov
England and Wales Judges Council of England and Wales	Mr. Keith Cutler Mr. Derek Searby
Hungary National Council of Justice of Hungary	Dr. Árpád Orosz
Italy CSM-Italy	Mr. Fabio Roia Mr. Andrea Montagni
Lithuania Judicial Council of Lithuania	Mr. Vigintas Višinskis Ms. Zita Smirnoviene

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Romania Romanian Superior Council of Magistracy	Ms. Alexandrina Radulescu
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10.2. Observers

Country and Organization	**Name of members**
Austria Federal Ministry of Justice	Mr. Reinhard Hinger Ms. Gabriele Bajons
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