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

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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]

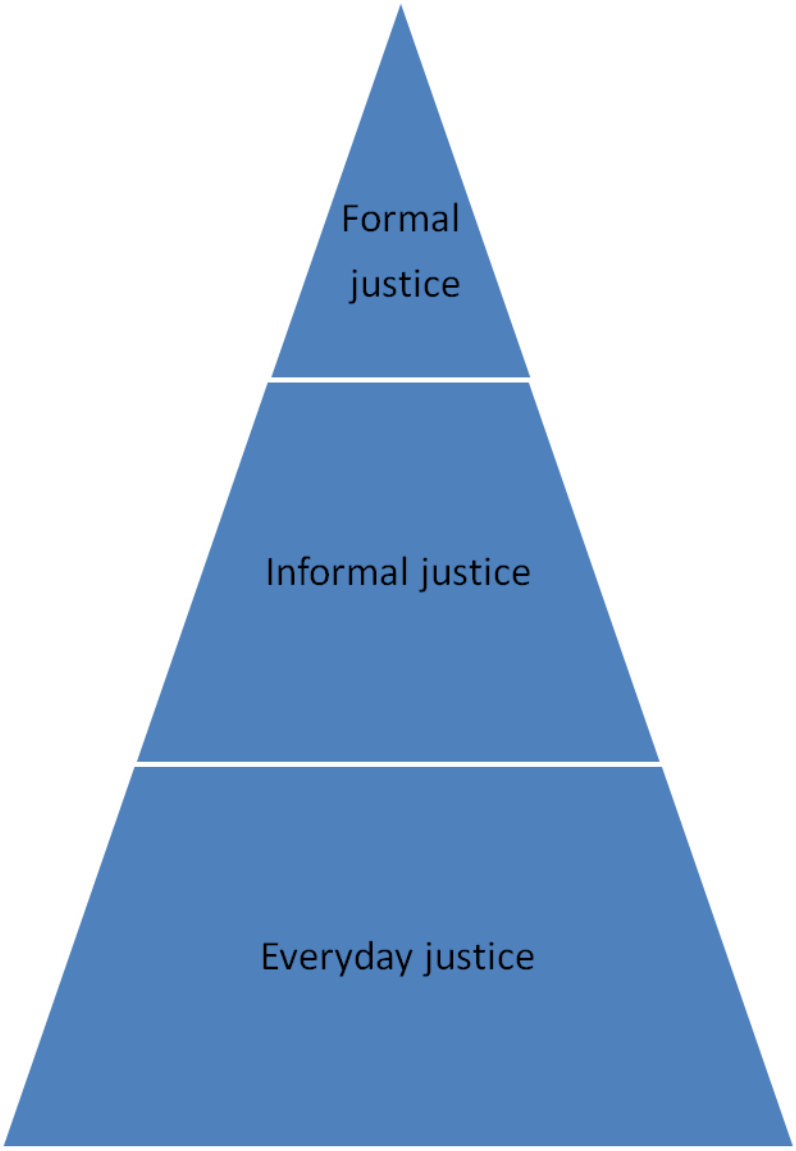
The task force elaborated an approach which is characterized by what follows.

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

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European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ WORKING GROUP

Quality and Access to Justice Register 2009-2010

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REGISTER

Working Group on Quality and Access to Justice

European Network of Councils for the Judiciary

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REGISTER

Working Group on Quality and Access to Justice

European Network of Councils for the Judiciary

Introductory remarks

When commencing this work the Working Group considered carefully which topics to choose for the research. The Group decided on the topics stated in the headlines below, as they were found to all encompass clear and present issues related to access to justice. The members were asked to give a short description of the hindrance relevant to the situation in their countries and of any initiatives taken by the court system to facilitate access by meeting the hindrance.

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 aim of the Register is to mainly be a guide for easy access to further information. The aim is therefore not to have a thorough comparative description of the regulation in each country on each topic. If the reader needs more details please find the contact details of experts on the described activities and initiatives listed at the end of the Register.

In their descriptions the members mainly focus on civil cases keeping also the scope of the work – informing of initiatives to meet hindrances to access to justice – in mind. Some contributions do however include information on issues that do 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. The fact that some members have 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.

1. Financial Hindrances

1.1. Court Fees - (variable costs and reimbursement of wins costs

1.1. Belgium, Croatia, Italy and Lithuania

Status

In many countries court fees generally depend on the value of the case. The higher the value the higher the fee. In Lithuania the fee is e.g. 1-3 %. Court fees also depend on the type of the case (divorce, trespassing, family cases, labour cases etc.), some categories of citizens (f.i. welfare recipients in Lithuania) have no duty to pay court fees and parties can apply to be lifted from the obligation to pay court fees.

The parties must also cover the costs of witnesses, experts, expertise institutions, interpreters, the costs related to the review of the place, paying the attorney, etc. The party who loses the case in many countries must cover the costs of the winning party. In Belgium it is a flat rate sum fixed by Royal Decree which depends on the nature and the importance of the case.
In Italy no court fees are due in criminal law cases

1.1. Austria

Status

The costs of a civil proceeding are court fees and, if required, fees for experts, interpreters, witnesses and guardians appointed by the court (as representatives for absent parties or parties in need of guardianship), the parties' travelling expenses, and costs of announcements and representation by a lawyer. Each party must pay its own costs; the party which is unsuccessful in a civil litigation case must reimburse the costs of the successful party.

Initiative

In 2009 and 2010 various amendments to the Act on Court Fees came into force or are about to come into force in which existing court fees were raised, new court fees for new proceedings were created and new fees in areas up to now free of court fees were introduced (e.g. concerning family law cases and costs for copies).

Objective and impact

The objective of these initiatives was to achieve a better balance between the rising costs of court proceedings and the amount or fees paid by the parties. Furthermore the implementation of new fees helps to meet the costs for providing justice in new areas and to guarantee correct court judgments in a reasonable time also in areas formerly free of court fees (such as various family law cases and proceedings auditing financial guardianship) as the State budget cannot cover the cost increase in these proceedings. The impact of these initiatives will be seen in the next year(s), where corresponding analyses will be undertaken.

Organizational and financial implications

The implications of the initiatives were mainly financial:

- to cover (at least some part of) the cost increase of the proceedings, and
- to avoid proceedings by parties able to cover the costs of these proceedings, but not willing to pay these (e.g. initiating proceedings free of fees only to incommode their former partners).

1.1. Denmark

Status

The amount due depends on the value and type of the case. The fee comprises of two separate fees: one which is due to be paid at the time of filing the law suit and one which is due to be paid when commencing trial proceedings. The amount of the two fees is set in a proportion of 50/50.

Initiative

The method of calculating court fees was generally altered by new legislation in 2005. The court fees in civil cases regarding minor claims (maximum 50.000 DKK which is approx. 6.500 €) where

largely reduced and set to a fixed amount of 500 DKK (approx. 65 €). Further the maximum total amount payable in all cases was largely reduced to 150.000 DKK (approx. 20.000 €). In cases raised against public institutions the maximum total amount was reduced to 4.000 DKK (approx. 550 €). It was also this new legislation that fixed the two payable fees in a proportion of 50/50. Before the amount of the fees where set in a proportion of 5/6.

Objective and impact

The legislation was to contribute to the impairment of financial hindrances to access to justice and also to encourage the parties to settle the case before commencing trial proceedings.

1.1. England and Wales

Status

The Ministry of Justice's policy, opposed by the judiciary, is to have" full cost recovery" i.e. the cost of civil justice met from fees paid by litigants. This is opposed by the judiciary on the principle that access to the courts should not be restricted by the inability to afford court fees. There is a system of means-tested fee waivers which the government considers is appropriate to ensure that tax-payers' money is targeted to where it is most needed. The practical application of this policy gives rise to the perception that access to civil justice only being available to the poor and very rich. In damages claims the court fees are scaled to the value, or estimated value of the claim and payable on the issue of proceedings, where directions are sought and upon setting down for trial. The government is committed to fees contributing to the financing of Her Majesty's Court Service and this position is unlikely to change. Lawyers acting under conditional fee arrangements may underwrite such costs as part of the remuneration arrangement. Fees are not payable for applications or appeals to tribunals but are (or will be) in connection with immigration applications.

Initiative

The fees for public law children's' cases were recently increased to a sum equivalent to about 2.200 €. These are proceedings brought by local (government) authorities in discharge of their child protection duties. To cushion the effect on local authority budgets the government made a one off allowance to each authority. Sadly this initiative coincided with a case of child murder and in a case which had wide publicity a local authority was found to be failing in its duty to the child in

question. This resulted in a rapid and significant increase in applications to the courts and the net value of this initiative was very small.

1.1. Finland

Status

As opposed to lawyers fees court fees are not high in Finland but set in a fixed amount. In the District court the fee for a civil case is 79 € if the decision is made during the preparation of the case. The fee is 111 € if the decision is made in the oral preliminary hearing, 145 € if the decision is made after the main hearing heard by one judge and 179 € if the decision is made after the main hearing heard by three judges. The court fee for a criminal case is 79 €, but it is not collected from the general prosecutor. There also are some fixed cost for cases that are not heard in a hearing, like divorce (79 €) and court annexed mediation (110 €).

In the Court of Appeal the court fee for a civil case is 179 € and for a criminal case 89 €. In the Supreme Court the court fee for a civil case is 223 € and for a criminal case 111 €. The appealing party is obliged to perform the cost, but there are many exceptions for that obligation, too. As a conclusion, court fees are not high in Finland but the lawyers' fees are. The loosing party is in most cases obliged to cover the cost of the winning party and they are already in the court of first instance on average of 5.277 €.

1.1. Hungary

Status

The fee of the judicial proceeding is 6 % of the claim.

Initiative

In order to relieve the Hungarian courts of their overwhelming workload, the legislator of the Republic of Hungary has striven in recent years to create ways of alternative dispute resolution (mediation), especially in criminal and civil cases. As an encouragement, citizens are entitled to a reduction of court fees in a subsequent court proceeding if they make use of these means of alternative resolution.

1.1. The Netherlands

Status

No court fees are due in criminal law cases. In civil cases with a financial interest under 5.000 €, only the plaintiff pays court fees, the amount of which depends on the value of the claim. In civil cases with a financial interest over 5.000 € both the plaintiff and the defendant pay the same amount of court fees. Here too, the court fees depend on the type of case and the financial interest involved. The same principles apply for court fees due in an appeal.

Initiative

A legislative proposal foresees the following main changes regarding court fees:

1. The introduction of fixed court fees.
2. The introduction of a low fixed fee for persons with no income or a low income, under simultaneous elimination of the (partial) exemption from court fees for persons with no income or a low income.
3. A higher tariff for appeal and cassation.
4. Collection of court fees at the beginning of the procedure.
5. The special tariff for the defendant in interlocutory proceedings is to be abolished.

Objective and impact

The aim of the legislative proposal is to design a system that will improve comprehension of the court fee tariff system for citizens and their legal representatives and will reduce the administrative burden of the courts.

1.1. Norway

Status

Court fees amounts to about 500 € in civil cases where the main court hearing lasts one day. The fee will increase for more days in court. The court fee is reduced if the case is rejected some time before the main hearing. The court fee in appeal cases amounts to about 2.400 € and increases for more than one day. The court fee for appeals on procedural rulings is 600 €. No court fee is due in e.g. cases of family matters, in tenant and landlord cases, and in cases where an employee is suing the employer for terminating the employment. One can apply to be exempted from the obligation to pay court fees.

1.1. Portugal

Status

Costs include Court fees, charges (emoluments) and costs fees of legal representatives**.**

Court fees are set according to the type, amount and complexity of the case.

Anyone who can be considered intervening in a case (author, defendant, petitioner, executed, appellant and defendant, plaintiff, assistant) may have to pay fees. Are clearly excluded mere witnesses and experts.

The winner parties must pay court fees, because this payment is to provide a service.

Costs are:

a) The court fees paid by the successful party;

b) The costs incurred by the party;

c) The remuneration paid to and by the executor; and

d) Any expenses which he incurred on behalf of the agent

e) The court fees of legal representative

Initiative

The regime on court fees was amended in 2008 in order to:

- Make the party responsible for the payment of the court's fees whenever he/she has hindered the alternative dispute resolution mechanisms.
- Give some benefits for the users of electronic means of procedure (reduced fees from 25 to 50%).
- Penalize those who abuse from dilatory measures.

1.1. Romania

Initiative

The Superior Council of Magistracy proposed to the Ministry of Justice to introduce some fixed amounts of judicial taxes for all kinds of legal actions. Moreover, in case of property litigations, where the value of a house may well amount to several hundred thousands €, the plaintiffs are to pay large sums as judicial taxes, according to the general principle where fees depend on the value of the case.

1.1. Spain

Status

Court fees were actually abolished in the 1980s in order to grant a wider access to justice by the public and to avoid corruption linked to direct payments in judicial offices. Court fees – as a flat rate – were reintroduced by a legal reform in 2003 regarding claims filed by legal persons before the civil and administrative branches of the jurisdiction. It was reintroduced to avoid the abuse of litigation by companies which would take advantage of the exemption of court fees and file ill founded claims or lodge inadmissible appeals. The reintroduction of the court fee has apparently reduced abuse of litigation by companies, albeit there are no reliable statistics confirming the actual impact of the measure. The current amount of the court fees ranges from 90 € to 210 € (proceedings in first instance) and from 300 € to 600 € (ordinary appeals and cassation appeals).

1.1. Sweden

Status

A fundamental idea in the Swedish judicial system is to grant the public a wide access to justice. To pursue that idea Court Fees are rarely used. An application fee at 450 SEK (approx. 45 €) is

however used in civil cases when filing a law suit or an application. No fees are used in the Criminal or the Administrative branches of the judicial system.

1.2. Legal assistance (legal aid for free/reduced cost, initial advice and representation)

1.2. Belgium, Croatia, Finland, Italy, Lithuania and the Netherlands

Status

In most countries anyone can upon application receive legal aid if their annual income is below a certain amount and circumstances surrounding the case make it reasonable. The legal aid will normally fully cover court fees, representation, other expenditures (experts etc.) and may also cover council in order to examine the chances of success of entering into litigation (Austria, Belgium, the Netherlands and Spain). Some lawyers also offer a free introductory meeting or a first preliminary discussion at a low rate (Belgium, the Netherlands and Spain).

1.2. Austria

Status

In cases, where the engagement of an attorney is not obligatory (i.e. in principle at the district courts), anyone can file an application or make a statement orally; to this end one half day per week is reserved on which interested parties may address a judge directly. A party with insufficient financial means may apply for legal aid when entering into litigation or at any time later as long as the civil proceeding is still pending. As far as required the court can give legal aid by (wholly or partially) freeing the indigent party from court fees and the other fees mentioned under 1.1. and by providing legal representation free of charge. Where legal representation is provided, legal aid also covers the pre-trial advice given by the lawyer.

Legal aid is granted in all civil and commercial court proceedings regardless of the applicant's nationality or place of residence. If legal aid is granted in the main proceeding, the same also applies to the enforcement proceedings. A party which was granted legal aid for a particular legal dispute in another EU Member State is also entitled to legal aid in Austria for a proceeding concerning the recognition and enforcement of the decision given in that dispute. At its discretion

the courts may grant full legal aid or – depending on the applicant's circumstances and taking into account expected costs – partial legal aid, covering only certain fees. Such aid may cover:

- a provisional exemption from court fees, fees for witnesses, experts and guardians, costs of the necessary announcements and the cash expenditure of guardians or lawyers; exemption from the guarantee covering the costs of the opposing party; and
- representation by a court official or - if necessary - a lawyer.

If the applicant loses the case, he has to reimburse the winning party's procedural costs.

Initiative

In 2009 it was initiated that no legal aid is granted to legal bodies, only to individual persons.

Objective and impact of the initiative

Reduce costs of legal aid, reduce work of the judges.

1.2. England and Wales

Status

In civil cases, except public law children's cases, all applicants for assistance must satisfy a test of both merit and financial need. Legal aid for tribunal cases is usually only available in special cases, where for example an issue of general importance needs to be settled by onward appeal. One mitigating feature is that there are many voluntary and advice groups, funded by the Legal Service Commission, local government, trades unions and charities, which will provide support and representation.

1.2. Hungary

Initiative

The Ministry of Justice and Law Enforcement has operated a legal aid system since 2008. Its task in brief:

- Legal advice
- Appoint of the solicitor to make petition
- Appoint of the solicitor to represent

There are various ways in which the social disadvantaged can obtain legal aid. Legal aid covers – not in its entirety – the costs even in case of failure of lawsuit.

1.2. Norway

Status

In criminal cases the defendant is entitled to a public defence except in some minor cases and when the defendant has confessed the crime. In family cases, some cases regarding housing and employment and cases regarding compensation for personal injury free legal aid is given to people with a gross income less than 29-30.000 € pr year, about 43.000 € for couples. People with gross income more than 12.500 € have to pay 25% of the costs themselves. In some cases – for example child care cases, divorce after a person have been forced into marriage, compensation for unlawful prosecution and compensation for serious violence – everyone is entitled to free legal aid in full. The Norwegian Bar Association is offering limited free legal advice in small legal problems. Some immigration cases (asylum) may be conducted free of charge in the courts by members of the Bar Association.

Initiative

The government has recently proposed to extend the parties' access to legal aid, but in exchange make them pay more of the costs themselves.

1.2. Portugal

Status

Anyone can upon application receive legal aid if their annual income is below a certain amount and circumstances surrounding the case make it reasonable. Some lawyers also offer a free introductory meeting or a first preliminary discussion at a low rate.

The fees of legal representatives are set by the Court, which must, for this purpose, have due regard to the time spent, the difficulty of the matter, the importance of the service provided, the financial means of the interested parties, the results obtained by means of the lawsuit and the amounts applied, in similar situations, within the respective judicial district. There is a computer program that makes automatically the calculation, always with the help of specific tables, which are the basis

of that calculation. Some proceedings are, by virtue of legal provisions, exempt from the payment of costs, as are some parties to proceedings.

1.2. Romania

Initiative

In order to ensure equal access to justice for all, a special law was passed in 2008 on judicial assistance. In contrast to the previous provisions on judicial assistance, the benefits of the new provisions are:

- judicial assistance was extended from civil cases also to commercial, administrative, labor and social securities cases, the only exception being criminal cases;
- a person is entitled to judicial assistance if she/he cannot afford to pay the costs of a trial without incurring prejudice to his own or his family's needs;
- judicial assistance consists not only in exemptions or postponements of paying judicial taxes but also free counseling and assistance by a lawyer, support in paying the fees of enforcement agents, support in paying the fees for experts or interpreters.

According to the Report on justice of 2008, with the exception of 2 courts of appeal, all the other courts of appeal reported a significant increase of the cases where judicial assistance was awarded during 2008.

1.2. Spain

Status

Citizens who have insufficient means to litigate is guaranteed a basic right to legal aid which applies to cases brought before the courts of the four branches of the jurisdiction and also to constitutional complaints before the Constitutional Court. Legal aid may also under certain circumstances be granted to legal persons (foundations and non-profit making associations). The decision on whether to grant an applicant full or partial legal aid or not is made by an independent panel. Full legal aid comprises of fees and initial legal advice before the commencement of the proceedings; free counsel through an advocate and free representation through a representative before the court in all the phases of the judicial proceedings. The applicant (including the arrested suspect or the victim of terrorism of domestic violence) may seek initial legal advice and

representation, which is granted by the competent Bar Council and Court Representatives Associations.

Initiative

Given the amount of budgetary resources devoted to legal aid every year, some autonomous regions with competences in the field of justice have made proposals in order to monitor the performance of advocates appointed under legal aid schemes. The objective of these initiatives would be to avoid the lodging of appeals by advocates or court representatives when the person enjoying legal aid has not instructed the legal professionals to do so (which happens frequently in cases before the courts of the administrative branch of the jurisdiction when the immigrant has been effectively expelled from the Spanish territory). However these proposals are currently under discussion and have not been adopted so far.

1.2. Sweden

Status

The Swedish legal aid system requires that a citizen primarily seek to make use of the legal protection cover under his or her insurance. Most of the citizens have a home insurance. If the citizen should have had insurance but does not, he or she normally cannot get assistance from the State for costs. The legal protection covers all or parts of the costs for legal assistance. Everybody (private persons, associations, organisations and companies) can get advice under the Legal Aid Act. This means that advice will be given from an attorney or an associate for fixed charge, which is lower than what the advice would normally cost, that is about 120 €. You can get advice in this way for a maximum of two hours. If a citizen need assistance with more complex issues, which take a longer time, in some cases he or she can get legal aid which is financial support provided by the State. The legal aid covers part of the costs for the legal representative, but also costs relating to evidence and other expenditure.

Legal aid is the difference between the costs that arise for a legal representative and the legal aid fee which you must pay yourself. The basic idea is that the citizen should contribute to the cost to the extent afforded according to income. Legal aid can be received for a legal representative up to 100 hours. In very special cases the court can extend legal aid.

Initiative

Recently an evaluation of the Legal Aid Act was made. One of the main questions in the evaluation was which effects the Legal Aid Act from 1997 had on the citizens. The result of the evaluation was that the legislation mainly had had the expected effects. In some areas suggestions for changes was made in order to achieve the main purpose of the legislation which is to give financial support to those who otherwise cannot afford to pursue a legitimate dispute. The suggestions are now under consideration at the Ministry of Justice.

1.3. Impairing by financing systems (insurance, public aid)

1.3. Belgium, Denmark, England and Wales, Norway, Portugal and Spain

Status

In most countries ordinary household insurances usually include legal expenses insurance in most civil cases. Usually persons with legal insurance are insured to a maximum amount and for one or more specific jurisdictions. The cover provided by legal protection is stated in the insurance policy or insurance conditions.

1.3. The Netherlands

Status

Private insurance companies offer legal expenses insurance, covering legal assistance and legal advice in legal disputes and sometimes mediation. Usually persons with legal insurance are insured to a maximum amount and for one or more specific jurisdictions. The conditions - the legal issues (not) covered, the maximum amounts, etc - differ between the companies.

1.3. Sweden

Initiative

Recently an evaluation of the Legal Aid Act was made. One of the questions in the evaluation was if the citizens' possession of insurances with legal protection had decreased. The result was that, on the opposite, more citizens possess the actual insurance.

2. Geographical Hindrances

2.1. Size of court districts

2.1. Austria

Status

The size of the 141 Austrian district courts concerning the number of working judges varies from 0,50 to 44 judges (5 district courts less than 1 judge, 4 with one judge, 21 less than 2 judges, 41 less than 3 judges, 23 less than 4 judges, 7 less than 5 judges, 23 less than 10 judges, 8 less than 15 judges, 8 between 17 and 21,50 judges, one – the biggest district court with 44 judges)
The size of the 20 regional courts varies from 11 to 72 judges.

2.1. Belgium

Status

In the 27 judicial districts there is one court of first instance, one labour court and one commercial court. Within these 27 judicial districts are 227 justices of the peace located. With 10.3 million inhabitants and a total area of 35.500 km2, geographical access to the courts is not an obstacle.

2.1. Croatia

Status

In Croatia there are around 70 Municipal and Misdemeanour courts and having in mind the size of Croatia and the number of inhabitants there are no geographical hindrances regarding geographical access to justice.

2.1. Denmark

Initiative

As part of a larger reform launched in the middle of this decade and encompassing both municipalities, police districts and court district the number of court districts where by 1 January 2008 sized down from 82 to 24. Districts courts are the court of first instance in practically all cases

In Greenland there are 18 court districts but discussions on reducing this number to 4 with the establishment of local offices. Considering the size of Greenland 4 districts will of course create

very long distances for some inhabitants to the local court. The challenges in regard to access to justice do however not only lie within the distance but also within the problems of transportation in icy and mountainous areas. Some districts can only be reached by boat in the summer time and by helicopter or snow scooters during winter time. These hindrances are sought met by making the court travel to the local areas or by use of videoconferences (see below 2.4. Denmark).

Objective and impact

The objective of the reform in Denmark was to create fewer and larger courts making it possible to conduct collegial court hearings (presiding 3 judges) in cases of a principal matter or of greater financial value.

The objective was further to improve the case flow by introducing effective case handling procedures which could easier be carried out in larger organisations. After a reduction of number of court districts each court district of course cover bigger areas and greater distances involving longer transportation for citizens going to court, but due to modern communication and relatively easy transportation because of the geographical characteristics of Denmark the greater distances was not seen as a major problem.

2.1. England and Wales

Status

A factor in deciding on closures/relocation/amalgamation is travelling time. The aim is usually that access to these services should be possible within one hour travelling on public transport. There is justifiable exception to appeal courts and specialised tribunals being located in the capital. Other factors, which are less easy to resolve, include remote areas where there may be transport able to cover a route within one hour, but running infrequently and socially deprived areas where the expense of transport is unaffordable. This hindrance is less of a problem with tribunals where the cost of travel is, within reasonable limits, recoverable and domiciliary hearings are common in cases of a person with disability.

2.1. Finland

Status

Finland is a big, but sparsely inhabited country. The distance from the southern point to northern point of the county is more than 1.200 kilometres. The population is 5.2 million people. There are 348 municipals in Finland, thus the average population in a municipal is about 15.000. As of the beginning of 2010 there are 27 Courts of First Instance and 6 Courts of Appeal. The First Instance Courts are only in the biggest towns. This means that the distances to a court are long for many people living in countryside, small towns or municipals. E.g. the nearest court for a citizen living in Utsjoki is the District Court of Lapland, situated in Rovaniemi, 453 kilometres south from Utsjoki.

Initiative

We can not change the geography, thus we have to live with it. First solution to guarantee access to justice for people that lives a long way from a court are the secondary offices in smaller towns. Some of them are manned to be able to handle all kind of district court cases. Some of them are only part time manned premises for court hearings. For example the nearest secondary office to Utsjoki is situated in Sodankylä and there are premises for court hearings in Utsjoki, too. The second solution is that the court travels. For example the Court of Appeal of Rovaniemi hears more than 50 % of cases in Oulu that is the biggest town in the jurisdiction. In practise travelling means that the section of three judges and a clerk travels from the main office in Rovaniemi to a smaller town to hear a case. In some cases it takes only one day, in some cases the section spend more days on the way. The third solution is the use of electronic networks in mass procedures like undisputed debt collection cases, case filing, invitations to a hearing etc. During 2010 a totally electronic summary procedure for undisputed debt collection cases used via internet should be introduced.

Objective and impact

According to article 21 of the Constitution of Finland everybody are entitled to have their case heard without undue delay in the competent court or authority. Geography is not a reason to ignore justice. It is merely a challenge.

2.1. Hungary

Initiative

The legislature aims at enabling every citizen to have his affairs administered as near as possible to his residence. However, the jurisdictional interest of centralising the treatment of important cases may constitute an exception from this principle. In recent times it happens occasionally that 'the case goes to the judge' on the ground of a decision taken by the National Council of Justice, i.e. the treatment of a certain case is delegated from the court which should normally have territorial jurisdiction to another court (of a same level of jurisdiction) which is about 100-200 kilometres far away. Additional costs occurring in these cases are covered by the judiciary budget, because this administrative measure is of jurisdictional interest.

2.1. Italy

Status

The Italian population is 60 million. The territory of Italy covers 301.338 km². Italy's population density is 200,3 persons per square kilometer. The judicial district with the highest number of magistrates is the Court of Naples, whose personnel is made up of 1.040 judges and prosecutors. On the contrary the Court of Campobasso is the judicial district with the lowest number of magistrates, i.e. 66 magistrates (judges and prosecutors).

The Italian territory is composed of 26 Court of Appeal districts; there are 165 ordinary Courts of first instance, evenly spread throughout the national territory. A need to act on legal districts and communes is in fact apparent, that is to say on the distribution of court houses across national territory. In this regard, it may be observed that courts with limited staff are dysfunctional, not being in a position to provide a prompt, quality response to the demand for justice. Indeed, the complexity of current legislation, as drawn up over the last twenty-years, necessarily requires specialised magistrates, even if for homogeneous subject areas. Therefore, judicial structures with reduced staff, where every judge is in charge of the different areas of law (civil, criminal, family, employment law and so on and so forth), even in this area appear inadequate to provide an efficient and prompt restorative justice.

Initiative

The rationalization of the judicial geography is one of the issues recently examined by the High Council of the Judiciary; in this respect, in January 2010 the Council adopted a "delibera programmatica" sent to the Ministry of Justice, which stresses the need to revise the judicial geography. The introductory law of the High Council of the Judiciary, in fact, expressly provides that the Council may submit proposals to the Ministry of Justice to change the judicial districts, as well as on all the subjects concerning the organization and the functioning of the various legal services. In the course of the last few years the council has indeed on several occasions hoped for a reassessment of legal districts and communes, noting their inadequacy in terms of efficiency and being up to date in the exercise of jurisdiction. A proposal to reassess judicial geography has also recently been made by the Ministry of Economy and Finance.

2.1. Lithuania

Status

There are 56 local courts, where the major part of criminal and civil cases are tried, also 5 regional courts, Appeal court and Supreme Court. The complicated criminal and civil cases are heard by 5 regional courts as the courts of the first instance. The regional courts are also an appeal instance for decisions of local courts. There are local courts almost in all municipalities. There is separate system of administrative courts: 5 regional administrative courts and Supreme Administrative court. The utmost distance to local court is around 50 km, to regional court – around 120 km.

2.1. The Netherlands

Status

There are 19 so-called district courts and 41 subsidiary court locations providing a limited range of services in the Netherlands. The number of inhabitants in each district ranges from approximately 380,000 inhabitants to roughly 1.8 million and the average district size of a Dutch district court is a little over 860,000 inhabitants. As the Netherlands is a small country with a highly developed (public) transport infrastructure, distances and geographical access to the courts are not perceived as an obstacle.

Initiative

There are plans to revise the judicial map of the Netherlands. According to these plans, the Judiciary will be organised into 10 larger district courts and the number of courts of appeal shall be reduced from five to four. Each of the 10 district courts will comprise a court board and a number of court locations. Furthermore, according to the Minister of Justice's most recent proposal, the number of court locations shall be reduced to 32 and the court boards shall be free to determine where the different types of cases shall be handled while ensuring high quality and accessible justice.

Objective and impact

The objective of the revision of the judicial map is to enhance quality and continuity of the judiciary for the litigant. In order to maintain the expertise of judges a minimum number of cases within a court are required. A minimum number of judges in one sector are also considered necessary to work efficiently and to ensure sufficient continuity within the sector. In the future, it is expected that each court will have sufficient cases, personnel and means to continue delivering high quality.

Organisational implication

- Ten districts compared to the current nineteen districts.
- The smallest region will comprise 920,000 inhabitants, the biggest 3,104,000.
- The new district courts will employ between 500 and 1040 full time equivalents (FTE). Eleven of the current courts employ less than 400 FTE, the smallest 150 FTE.
- The number of courts of appeal will be reduced to four instead of five.
- The new courts of appeal will employ between 230 and 330 FTE. The smallest court of appeal now employs approximately 110 FTE.

2.1. Norway

Status

a) Number of court districts: 66

b) Size of the court districts measured in square meters: From 454 to 25.519 km2

c) Number of inhabitant pr. court district: From 13.500 to 590.000

d) Number of judges: 540 judges and 160 deputy judges

The structure of the district courts has in the last decade been reduced from 91 to 66 courts. Even if it might be possible to find the ideal size of a district court, the distances in Norway make it necessary to maintain a number of very small courts (see below 2.2. Norway).

2.1. Portugal

Status

The judicial courts of first instance are normally the District Courts. There are more than 200.

Initiative

Since 2009 a big reform has been gradually implemented by the Ministry of Justice. Some district courts were condensed in three bigger ones with specialized competences.

Objective and impact

One of the objectives of this reform is to rationalize physical and financial means.
The main obstacle to develop this reform (which will carry on next September) is the financial one.

2.1. Romania

Status

The number and territorial jurisdiction of first instance courts (district courts) is established through Government Decision and the Superior Council of Magistracy is consulted on such legislation before adoption. Some of the relevant criteria taken into consideration are: Number of the population in the region and size of the territorial district (geographically speaking). At present, 179 district courts are functioning out of the 188 district court set up by Government Decision. The territorial jurisdiction of the district courts is to cover at least one town and other inferior territorial units (commune) that are composed of one or more villages. Small district courts are identified as courts with a low workload. In the first semester of 2009 there were 17 district courts and their workload was of less than 1000 cases. Of course the low workload is most of the times – but not always – related to the number of judges allocated to the district courts. Thus, at the beginning of 2010, the number of district courts with less than 10 judges effectively working there is of approximately 103 district courts out of which not all have a low workload. Also, regarding the courts with the smallest number of judges, for instance at the beginning of January 2010, at 4 district courts only one judge was working at each of these courts, while the number of district

courts with 2 judges working there at the same period of reference was of approximately 11). Several attempts have been made to reduce the number of district courts with a low workload and for the future the number of district courts will be reconsidered.

2.1. Spain

Status

There are a large number of court districts throughout the whole country. In the whole of Spain there are 431 judicial districts, and in each judicial district there is at least one court with first instance jurisdiction in civil and criminal matters (First Instance and Investigating Court), served by one single professional judge. The smallest judicial district in the country comprises ca. 30.000 inhabitants. Besides, there is one office of the Justice of the Peace with very narrow jurisdiction in civil and criminal matters and served by a lay judge in every municipality of the country (7.680 in total).

The district for the adjudication of serious criminal cases, for commercial, administrative and labour cases, as well as for civil cases and less serious criminal cases at the appellate level, is the province. There are 50 provinces in the country, and in the capital of each province there is at least one Criminal Court, one Youth Court, one Penitentiary Surveillance Court, one Labour Court, one Administrative Court and one Provincial Court (with jurisdiction in civil and criminal cases).

Initiatives

Given the high number of judicial districts in the whole country (431) there are some proposals by the Ministry of Justice in order to reduce the number by merging some of the less populated districts within the same province. However, the proposal is subject to discussion and has not been articulated in specific measures.

2.1. Sweden

Status

Sweden is, as our neighbours Finland and Norway, a sparsely populated big country. The challenge is to find a balance between a reasonable distance for the citizen to the courts without running the risk of a vulnerable size and organization of the courts. Furthermore, the population density varies evidently from the regions in the south to the regions in the north. The south of Sweden is populated

more like the continental part of Europe. There are 71 courts of first instance, of which 23 are administrative courts. After the 15 of February 2010 there will be 60 courts of first instance due to a reform within the administrative courts. There are 10 courts of appeal, which of 4 are administrative courts of appeal. The aim is to have courts situated where the population lives, in other words, in the larger cities.

Initiative

Both courts of first instance and courts of appeal have to travel. Some courts of first instance have also an office in other cities within the court district. The offices of police, prosecutor, courts and the correctional system try to coordinate the resources to the same cities in order to make the activities more efficient.

2.2. Number of permanent or temporary court locations within the district

2.2. Austria

Status

In addition to the courts named above (2.1. Austria) there are temporary court locations in 79 locations which were open on 2329 days in 2009, namely in the provinces Lower Austria, Upper Austria and Styria (because of the merging of district courts mainly in these 3 – of 9 – provinces of the Federal State of Austria in the past 10 years).

2.2. Belgium

Status

Court locations are permanent.

2.2. Denmark

Status

The number of court districts is 24 (see above 2.1. Denmark). After the court reform only nine of the district courts covering a relatively great geographical area do have a branch office with a court room. Not all of these branch offices are permanently manned and not all types of cases are handled there. The two high courts do have court rooms in some of the local districts.

2.2. England and Wales

Status

There are both courts and the tribunals which respond to social needs located in most centres of population. Magistrates' courts exist in most towns and where closures are proposed there is a wide consultation and needs assessment. The trend has been to concentrate on the creation of combined court centres to house county courts and crown courts. Tribunals are housed in dedicated premises but also arrange temporary sittings in facilities available in more remote areas where there is a low demand.

Initiative

Her Majesty's Court Service and Tribunal Service are now working to explore the potential for sharing their estates and thus the costs. Tribunals increasingly make use of court premises where extra sessions are required.

2.2. Finland

Status

There are 27 District Courts (1st level) and about 30 secondary offices, 6 of which are manned to be able to handle almost all kind of district court cases. There also are 6 Courts of Appeal and the Supreme Court. Finally there are some special courts. The administrative court system is separate from the general courts. On secondary courts, court travels and electronic networks see above 2.1. Finland.

2.2. Hungary

Status

There are 19 county courts and municipal courts (having the same jurisdiction as the county courts), 5 appellate courts and one Supreme Court. The number of judges in the county courts ranges from 1 to 83. Some county courts are significantly smaller and some local courts only have two or three judges working. In the last years the government wanted to close these courts due to financial reasons. The National Council of Justice managed to avoid this by proving that the workload of the judges at those small courts does not differ from the national average. The Council also argued that having regard to the Hungarian public transport conditions it would place important burden on citizens if they should be obliged to travel longer distances in order to manage their court actions.

2.2. Lithuania

Status

There are local courts almost in all municipalities. Temporary courts cannot be established in Lithuania. However, if necessary, the court may take particular procedural actions not in the premises of the court.

2.2. The Netherlands

Status

There are currently 19 district courts, 41 subsidiary court locations and 5 courts of appeal.

Initiative

On 20 November 2009, the government approved plans for a new judicial map. According to these plans, the Judiciary will be organized into 11 larger regional units with one board each instead of the 19 current districts. Each region will be constituted of one head location and eventual subsidiary court locations (see above 2.1. The Netherlands).

2.2. Norway

Status

With only 12.5 persons/km2 in Norway it is a challenge to have courts not to far away from every citizen. The most extreme example is one court in Finnmark which serves an area of 25.519 km2 (85 percent of Belgium's total area) but only has 0.53 person / km2. It is a challenge to balance between a not to vulnerable professional environment and the distance for the citizens.

Initiative

In order to meet this challenge Norway has maintained some very small courts with only one ordinary judge and one judge trainee and two officers. Even then, a citizen can have more than 300 km to their district court.

2.2. Romania

Status

The number of functioning court in Romania is as follows:

- 179 first instance courts (district courts)
- 41 tribunals (county courts)
- 4 specialized tribunals: (1 Family and Minors Tribunal and 3 Commercial Tribunals)
- 15 courts of appeal.

All these courts have permanent locations.

The courts of appeal cover, from a geographical pint of view the 15 regions of the country.
Each county has a tribunal, located in the town, capital of that county. Of the 263 towns in Romania there is a first instance court in 179.

2.2. Spain

Status

Court locations are normally permanent and not temporary, but in some provinces with big cities apart from the capital, the Criminal Court (with jurisdiction to adjudicate not serious criminal offences), the Labour Court, the Administrative Court and the Provincial Court may also have a permanent seat in some of these big cities. In the provinces which comprise more than one island (Balearic and Canary Islands) the Criminal Court and the Criminal Division of the Provincial Court may have a temporary seat in some of the minor islands of the province, which means that the judges of the court eventually have to travel to the minor islands in order to hear trials.

2.2. Sweden

Status

Usually the general courts and the administrative courts reside in different court buildings. However, there are examples where they share buildings. 14 of 48 district courts visit another

location on permanent basis. The county administrative courts use temporary court locations when travelling.

2.3. Facilitating transportation

2.3. Croatia, Italy, Norway and Portugal

Status

Every party and witness is in many countries entitled to reimbursement of travel expenses (In Norway only in criminal cases, but expenses of transportation of witnesses or expert witnesses may be included in the costs of the case to be borne by one of the litigants depending on the court's decision).

2.3. Lithuania

Status

Facilitating transportation is not available. However, if necessary, the court may take particular procedural actions outside the premises of the court.

2.3. The Netherlands

Status

Transportation to court buildings is not facilitated, with the exception of suspects in criminal cases. As the Netherlands is a small country with a well-functioning transportation infrastructure, transportation is not expensive and can be arranged relatively easily by litigants themselves.

2.3. Sweden

Status

Only in exceptional cases the litigants can get reimbursement of travel expenses in the administrative courts or in civil cases. Witnesses and experts as well as acquitted persons in criminal cases are entitled to reimbursement of travel expenses. In certain circumstances it is possible to obtain the compensation in advance.

2.4. Video conferences

2.4. Austria, Croatia, England and Wales, Finland, Italy, the Netherlands, Norway, Portugal, Spain and Sweden

Status

Many countries have in recent years taken initiative to employ videoconferencing.

The use of video conferences facilitates the geographical access to court not only for the parties but also for witnesses, experts, interpreters etc. Another aspect is that in many cases the court session can be held earlier when parties etc. are offered the possibility of video conference as an alternative to finding time to turn up in court. As a result, substantial time and cost saving arise because of the substantially shorter journey and the judges get a direct impression of the person. By avoiding legal assistance from other courts the duration of proceedings is shortened as well. Reduce costs and duration of proceedings.

However in Spain, the examination of defendants in criminal trials by videoconference is however not allowed by the procedural rules.

In England and Wales video links in tribunals are also used in child support cases where there is some fear of aggression or violence if the estranged parents have to be in the same hearing room. Video links is also used in England and Wales to facilitate the giving of evidence by a child or vulnerable person.

In criminal courts video links are used in England and Wales, Finland and Norway to f.i. avoid having to physically remove the defendant from a remand prison. In Spain videoconference equipment is also available in all prisons of the country.

2.4. Belgium

Initiative

Video conferences between a court of appeal and another location in the area of that court of appeal are tested and evaluated.

2.4. Denmark

Initiative

In 2007-2008 the Danish Court Administration in four district courts carried out a pilot project with video conference in criminal cases and also on a voluntary basis in other type of cases when appropriate. The pilot project included other interested parties such as the prosecution, the police, the prison service, lawyers and defence lawyers. After positive evaluation, in November 2009 legislation came into force where after the judge in the specific case can decide on using video conference with or without consent from one or more parties.

Video conferences can also be used in Greenland although practical issues make the use limited.

Objective and impact

The use of video conferences may facilitate the geographical access to court not only for the parties but also for witnesses, experts, interpreters etc. Another aspect is the fact that in many cases the court session can be held earlier when parties etc. are offered the possibility of video conference as an alternative to finding time to turn up in court.

Organisational implication

Currently, the Danish Court Administration is working on purchasing technical equipment for the district courts in order to make video conferences a possibility in all district courts.

Financial implication

It is estimated that a total technological upgrade of the courtrooms including video conference equipment, a/v technology and equipment for phonetic recording will cost DKK 127.5 mill (approximately 17 mill. €).

2.4. Lithuania

Status

Video conferences are not available during the hearing of the case.

2.4. Romania

Status

According to the provisions in force, witnesses can be heard through video conferences, securing data on their voice and image. This possibility exists for now, only in criminal cases and only in order to protect the identity of witnesses.

2.5. Telephone conferences

2.5. Austria and Italy

Status

Telephone conferences are neither available in Austria nor Italy.

2.5. Denmark, Finland, the Netherlands, Norway, Portugal, Spain and Sweden

Status

In many countries telephone conference can be used in the courts in civil cases as an alternative to short court sessions in the preparation phase. In Portugal it is however unusual and in Spain it is only possible in criminal cases.

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 possibility 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.

Sweden has established a special authority that handless issues of international legal cooperation, known as the Central Authority. When the Swedish courts under Swedish law are allowed to hold telephone hearings they may by Swedish rules do so even when the person is abroad, if the other state permits it. It is therefore important to find out the other state's position. The Central Authority has for this purpose a website where courts can find information about which countries who allow this kind of hearings. If there is no information about a certain country the Central Authority can assist the courts to produce such information.

Concerning a foreign request for telephone hearing in Sweden, the Swedish position has long been that this is allowed and can not be regarded as a foreign practice of authority in this country.

Therefore, a foreign authority is allowed to hear a witness by telephone with someone in Sweden without any formalities and without interference by Swedish authorities, if the person agrees to be heard.

2.5. England and Wales

Status

When a court/tribunal is engaged in dispute resolution it is usual to approach the parties (individually) by telephone.

2.6. Written testimonies

2.6. Denmark, England and Wales, Italy, the Netherlands, Norway and Portugal

Status

It many countries it is possible to give a written testimony only by permission from the court. The court decides – upon hearing the other party – whether to allow written testimonies and it is up to the court to assess the probative value of such evidence.

2.6. Austria

Status

Not available and no initiatives planned.

2.6. Spain

Status

In principle, no written testimonies by witnesses or experts witnesses are allowed in civil or criminal proceedings, since evidence must be given orally before the adjudicating court or judge, so that all parties can cross-examine the witness or expert witness. However, the Codes of Civil and Criminal Procedure allow written evidence by expert witnesses when all the parties have waived their right to cross-examine the expert witness at trial. The Code of Civil Procedure currently in force also envisages oral testimony of witnesses given in their abode, if the witness cannot travel to the courthouse on the basis of his/her age, state or health or other personal circumstances and the court agrees to hear the testimony outside the courtroom.

In criminal proceedings oral testimony of witnesses at trial can be replaced by the minutes of the examination of the witness in the pre-trial phase when this evidence has been preserved by the investigating judge with the participation of all involved parties, who are entitled to cross-examine the witness in the examination conducted in the pre-trial phase. This procedure is only admissible if there is a serious and consistent risk that the witness cannot attend the trial because of his/her elderly age, state of health, residence outside the country or other similar circumstances (cfr.8.3).

2.6. Sweden

Status

A statement made in writing by a person by reason of a pending or contemplated proceeding, or a record of statement that, by reason of such a proceeding, a person has rendered to a prosecutor or a police authority or else outside court, may be admitted as a proof only:

- If it is specifically authorized by law
- If an examination of the person who made the statement cannot be held at, or outside, the main hearing or otherwise before the court, or
- If there are special reasons with regard to the costs or inconvenience that an examination at, or outside, the main hearing can be assumed to imply, and also to what can be assumed to imply, and also to what can bee assumed to be attained by such an examination, the importance of the statement, and other circumstances.

Even in cases other than those mentioned may, however, in civil cases such written report or record of a story that referred to where the invoked as evidence in the proceeding, if the parties accept it, and it is not manifestly inappropriate.

3. Physical hindrances

3.1. Location of courts (public transport, parking facilities, etc.)

3.1. Belgium, Croatia, Hungary, Lithuania, the Netherlands, Norway, Portugal, Romania and Sweden

Status

Court buildings are in most cases situated in the city centre and easy reached by public transportation It can create parking problems, but in some cases it has been resolved by reserving parking places for the court users.

3.1. Denmark

Status

Before the court reform almost all the courts were centrally located in the cities. Because of the court reform it has been necessary to find other and larger buildings for many of the courts. The major part of the courts is located in the city centres while others are located in the outskirts and in some cities in industrial areas where they can easily be reached by public transportation or highways.

3.1. Spain

Status

Traditionally courthouses tend to be located in the centre of cities and towns, which means that there are normally public means of transportation and public parking facilities available.

Initiative

In the last years a number of big judicial compounds or campuses (with several courthouses in order to host all the courts of the district) have been built in most of the major cities of the country. Normally, these big judicial compounds are located in the outskirts of the cities (and not in the city centres), but linked by public means of transportation and equipped with public parking facilities.

Objective and Impact

The objective of building big judicial compounds or judicial campuses hosting all judicial facilities of the district is to increase the accessibility to courthouses, particularly by legal professionals or public in general, who would otherwise be forced to move among the different courthouses located in the same city. Accessibility to courthouses has increased as a result of this policy and the new judicial buildings and offices are fully furnished with IT equipment and modern facilities.

3.2. Opening days and hours in the courts

3.2. Denmark, Finland, Hungary, Italy, the Netherlands and Portugal

The courts are usually open during office hours on Monday to Friday. Office hours vary from 8.30 – 16.30, in that some opens at 9.00 and some closes at 15.00. Opening hours mostly reflects the opening hours of other public institutions.

3.2. Austria

Status

In cases, where the engagement of an attorney is not obligatory, anyone can address the district courts of their residence or abidance for filing applications and making statements orally; for this purpose one half day of the week is reserved, usually each Tuesday from 8.00-12.00.

The office hours are generally assessed from 7.30-15.30 Monday to Friday. They can be limited by order of the judicial head of the district court to definite hours, at least 4 hours per day. Beyond these definite hours only the inspection of files, legalisations or applications in urgent cases can be undertaken.

Initiative

No concrete initiatives are planned. Nevertheless due to a serious incident end of last year in a district court in the course of which a civil servant was shot down and killed a reduction of the office hours is seriously discussed. By reason of lacking financial resources only in courts of a certain dimension security measures take place at the entry of the court’s building: there is a check similar to airport security checks, but this requires at least 2 security persons who have to be paid. These measures are currently available only in 20% of all buildings.

3.2. Belgium

Status

- The opening days and hours of the registries of all courts are fixed by one Royal Decree.
- The internal organisation of all courts (number of chambers, competence of these chambers, days and hours of the sessions) are for each court individually determined by royal decree.

3.2. Croatia

Status

Courts are open from Monday to Friday from 8.00 to 16.00. In family cases, domestic valance etc. particular judges are in duty 24 hours.

3.2. Lithuania

Status

The opening hours of the courts are the same as the opening hours of the state institutions: Monday to Friday the courts are open from 8.00 to 17.00. Only judges on duty work weekends or after 17.00. These judges take just urgent procedural actions such as approval of conducting a search, arrest, etc. In some administrative courts, the work hours of the department accepting judicial documents are from 7.30 to 17.00 without breaks for working people could be able to arrive to the Court before work or during their break.

3.2. Norway

Status

Until 2005 the courts in Norway had no equal practice in opening hours. Some court's opening hours were just a few hours in the middle of the day.

Initiative

In 2005 the National Courts Administration decided that all courts shall be available to their users as a minimum from 8.30 until 15.00 from Monday to Friday.

3.2. Romania

Status

Working hours are usually between 8.00 – 16.00 from Monday to Friday (8 hours a day). The Registration Office and Archive Department of each court must be opened to the public for at minimum 4 hours a day. Court hearings start at 8.30 in the morning. They can – if imperative – be scheduled also in the afternoon. Public are allowed access to the court room 30 minutes before the opening of the hearings.

3.2. Spain

Status

All courts are open five days a week (from Monday to Friday) during the morning and early afternoon (from 9.00. to 14.30). Additionally all courts are open 3 hours on Saturday (from 10.00 to 13.00), although no session is usually held on Saturdays. Criminal courts on duty are also open during the afternoon on weekdays (from 17.00 to 20.00), and during the whole morning (i.e. from 9.00 to 14.30) on Saturdays and Sundays. Furthermore, the investigating judge and prosecutor on duty in each judicial district can be reached at any time, in case some urgent investigative actions or measures have to be taken. Most courts of the civil, labour and administrative branches of the jurisdiction are not open in August, since it is the court holiday. However, criminal courts on duty remain open according to the general schedule during August.

Initiative

In order to grant security during opening hours of the courts in all major courthouses, permanent protection during opening hours has been established in the last years. Permanent protection is granted through police officers or private guards, and the cost is covered by the Ministry of Justice or the autonomous regions with competences in the field of justice. However, there is no permanent protection during opening hours in small courthouses located in towns and less populated judicial districts.

Objective and Impact

The establishment of permanent protection in major courthouses during opening hours aimed at increasing the security of judicial facilities during opening hours and has allowed the enhancement of opening hours, particularly during the afternoon in criminal courts. No major incidents

concerning security inside courthouses have been reported since permanent protection was established.

3.2. Sweden

Status

Courts are usually open Monday to Friday from 8.30 to 16.30. The opening hour may vary from 8.00-9.00. During summertime the Courts may close at 16.00.

Initiative

The Swedish court administration will during this spring start a discussion with the courts of longer opening hours and opening time during "lunch-time" in order to give citizens a better level of service.

3.3. Access for disabled persons

3.3. Austria, Belgium, Croatia. Denmark, England and Wales, Finland, Hungary, Italy, Lithuania, the Netherlands, Norway, Portugal, Spain and Sweden

Status

Due to building regulations and demands placed upon public building to grant easy access to disabled persons courts are in all countries required to be barrier free and adapted for the disabled, which in some countries create problems in regard to the older buildings. Initiatives have been taken to modernise the old buildings.

In England and Wales Tribunals often arrange hearings for people with disabilities in suitable premises which are close to them and even in their own homes

3.4. Hearing aid in court rooms

3.4. England and Wales, Italy, the Netherlands, Portugal, Spain and Sweden

Status

Most court systems deal with disability issues and make particular provision hearing loops to which the wearers of hearing aids can "tune-in" to. When necessary, the court can also appoint sign-interpreters in order to assist hearing impaired parties or witnesses during court proceedings.

3.4. Croatia

Initiative

At the beginning of this year special aid for witnesses has been established in larger courts. The system is at the moment working as a pilot program but it is anticipated that the system will be established in all Croatian courts. Large media campaign is now in progress.

3.4. Lithuania

Status

Hearing aid is not available in the premises of the court. A part of administrative courts provide a possibility to use audio recording devices of the court hearing.

Initiative

The draft law is being prepared according to which audio records in computer media will replace written protocols of court hearings in courts.

3.4. Norway

Initiative

Speakers in court rooms and hearing loop systems are the goal for all courts.

4. Technological Hindrances

4.1. Electronic in- and outgoing communication (fax, e-mail, electronic signature)

4.1. Croatia, Hungary and Portugal

Status

All means of communication is possible but communication by f.i. e-mail is not regarded as official and thus has to be followed by hard copy or fax.

4.1. Austria

Status

The electronic data filing (or electronic legal communication) is an electronic communication between courts and lawyers and is compulsory for most type of civil claims where the cause of action is an amount of money. Electronic legal communication with the courts as an instrument of communication with the parties of proceedings, on the same level as paper, was already introduced in 1990. It appears that no other country is known to have introduced electronic communication earlier. Electronic communication in legal relations allows electronic transmission of applications or submissions and the automatic transfer of procedural data to the Automation of Court Procedures. Since 1999 the "oncoming lane" on the "data highway of the administration of justice" has been opened: electronic service of court documents is also possible now by the so-called "return traffic stream".

Initiative

Implementation of a cross-border legal communication between Austria and Germany (a project granted by the European Union).

4.1. Belgium

Status

Modern means of communication (fax, e-mail, etc) are available in all courts.

Initiative

A huge project ("Phoenix") to digitize communication within and between courts and with their environment was stopped in 2007. Smaller projects were set up.

4.1. Denmark

Status

It is today possible to communicate using secure and non-secure e-mails with the courts but official legal material and documents also have to be supplied in signed paper versions.

Initiatives

The Danish Administration of Justice Act has been amended to prepare the way for the use of digital communication in general and e-mail in particular in court proceedings. The new rules have not yet entered into force.

During 2009 the land register will become centralized and fully digitalized and automated to a certain extend. All users, professionals as well as non professionals, handle registration of property digitally via an online portal or a system-to-system interface. The handling of a wide range of regular cases is fully automated enabling a substantial reduction in case processing times.

The Danish Court Administration is also working on electronic web forms. The aim of this project is to replace the current PDF files on the courts' web page with dynamic forms which can be filled out on-line and transmitted to the courts over the internet.

Objective and impact

Using digital communication will make communication with the courts easier and faster for professionals as well as non professionals. However, it is important that the digital communication takes place in a secure way and that the courts are able to handle the digital documents adequately.

Financial implication

As the digital communication will become a part of a general modernisation of the courts' case handling systems it is not possible to estimate the costs.

4.1. England and Wales

Status

Money claims can be initiated by individuals in the county courts on-line and with payments by credit card. The application may be launched from Her Majesty's Court Service's website which also provides access for monitoring the progress of the case. Only some tribunals, e.g. employment, are accessible in this way and there does not have to be an arrangement for payment of fees. The problem with others is that rules require the appeal to be lodged with the respondent and the practical involvement of the tribunal does not begin until it is passed across.

Initiative

Both groups have achieved savings of cost and improvements in efficiency by the operating case management systems and electronically generated forms, messaging and electronic access to sources of information. Very recently the technology installed in the newly opened Supreme Court has been hailed as a success. Incompatibility between different systems is an obstacle to the integration of estates and administrative services between courts and tribunals. Although affordability is a potential obstacle the Ministry of Justice has shown willingness to find extra money where the expenditure is likely to produce long-term savings and improvements in efficiency. The Ministry of Justice's current "IT Transformation Programme" is joining up three separate departments and looking forward to joining up with the rest of the criminal justice system

4.1. Finland

Status

All courts are equipped with modern fax- and e-mail connections. There are also computers at the court rooms and the case handling (protocols, judgments) is made by the computer. From the March 2010 the lawyers giving legal aid shall be obliged to send their applications for the legal aid to a legal aid authority as well as their bills to a court via the protected electronic service in the internet. It is also possible to send the application for a summons as well as the further documents to a court by e-mail. During 2010 also a totally electronic summary procedure for undisputed debt collection cases used via internet (and paid by credit card) should be introduced.

Initiative

There is a Bill in the parliament for an Act on Judicial Authorities' Nation Wide Data System, which gives a legal framework for further information services for parties, debt collection agencies and the media. So far it is not possible for a litigant or media to follow a specific case electronically and it still takes some years before the technique is on tap.

4.1. Italy

Status

General information on the judicial system, on the judiciary's self-government system, on the main regulatory sources and on the judgments passed by the European Court of human rights can be obtained from the following websites: www.giustizia.it and www.csm.it.

Initiative A

By Presidential Decree of 2001 the basis for the start of online trials (e-justice) in Italy was laid. It includes provisions on lawyers' email addresses, on use of telematic notifications and on procedures for certifying digital signatures. E-justice proceedings in fact entail the signing, transmission and receipt of electronic documents. It has further by law been established that notifications, within the scope of civil proceedings, be as a rule undertaken electronically to the email addresses indicated pursuant to the aforementioned decree. Where the telematic process has already been implemented, various forms of access to the electronic file are provided for, with the necessary security guarantee.

Objective and impact

The positive effect of telematic notification appears twofold: On the one hand, the bureaucratic red tape associated with the completion of notifications that burdens Court registries and prosecutor's office secretariats are eliminated; on the other, the overall duration of proceedings is reduced, given that in practice it is notification errors that prevent prompt determination of the proceedings, obliging the judge to order time-consuming deferrals of the disposal of the case.

Initiative B

A notable development is expected in e-trials for 2009. The Minister of Justice expects 14 Italian courts to use the software expressly developed for paperless proceedings for the first quarter of the current year, and to facilitate the conversion of paper documents into digital formats. The Ministry

plans to develop the Information management system for individual and insolvency proceedings enforcement (Siecic) making procedural documents available online and making electronic registration of documents possible as well as notification via certified email.
The Parties may request a copy of the documents and minutes in electronic format, as opposed to paper format.

4.1. Lithuania

Status

Internet, fax and telephones are available in all courts.

Initiative

At present, there have been amendments to the Code of Civil Procedure and the Law on Administrative Procedure according to which trivial claims shall be submitted to the Court and settles in courts by means of electronic technologies. Furthermore, persons, lawyers and State institutions shall be able to subject documents to the Court by electronic means in other cases, too. It shall be possible to send documents to the Parties of a process by electronic means upon the consent of such Parties to receive documents this way. This will reduce the need to arrive to the Court personally.

4.1. The Netherlands

Status

Although contracts signed electronically are considered legally effective, it is not yet possible to submit procedural documents to the court with an electronic signature. The Judiciary is currently working on the removal of obstacles to enable parties to submit procedural documents digitally in the future.

Initiatives

In 2010, the following initiatives are planned with a view to improving electronic ingoing and outgoing communication:

- Digital delivery of undisputed money claims.
- The development of the central intake of aliens' cases (the delivery of new cases by lawyers is now done digitally).

4.1. Norway

Status

Fax and e-mail are used, however not for court case documents. Electronic public services and electronic documents will be developed in the dialogue with user organisations. Digitalisation needs to include eSignatur by introduction of electronic consideration.

4.1. Romania

Initiative

The provisions of the draft Codes for Civil and Criminal Procedure introduce measures to increase the efficiency of the citation procedure and communication of all procedural acts and documents and therefore for the elimination of these kind of hindrances to the access of justice.
Thus, both in civil and in criminal matters, the citation and communication of the procedural acts can be done through modern means of communication (telefax, email, etc.) if this kind of information is available to the courts and confirmation of receipt can be produced by the receiver. Furthermore, in civil cases, if parties are assisted by lawyers, their requests and other documents can be circulated among the lawyers directly, which facilitates the speedy progress of judicial proceedings.

Organisational impact

From an organizational point of view, the new provisions introduced are more flexible, lifting some heavy burdens from the court clerks and contributing to reducing the costs for communication and citation procedures.

4.1. Spain

Status

All courts in the country (with the sole exception of some minor offices of the Justice of the Peace) are furnished with IT equipment and electronic means of communications such as e-mail, fax and telephone. All professional judges in the country have been furnished with electronic signature, although most of them are not completely familiar with this instrument and do not tend to make use of it.

Initiatives

In some of the courts of the country (for instance, the National Court with seat in Madrid) pilot programmes of electronic court files (i.e. avoiding the use of paper files) and electronic service of documents to advocates and court representatives have been launched in the last years, although they are not fully operative in the whole country for the moment. Recently, the General Council of the Judiciary, together with the Ministry of Justice and other competent administrations, has launched the so-called "Judicial Neutral Network", a programme which secures interconnection between IT systems used by the judiciary and data bases of other administrations that can be useful for judicial purposes (Social Security, Public Registries, Bar Council and Court Representatives Associations, General Prosecutor's Office, Judicial Libraries, etc.), in order to grant access to the data and information by judicial authorities.

Objective and Impact

The objective of the establishment of the "Judicial Neutral Network" is to facilitate access to data and information necessary or useful in the context of ongoing judicial proceedings avoiding complex and cumbersome procedures to obtain the information. The programme has succeeded in as far as it has substantially facilitated and speeded up access to relevant on-line information by judicial authorities.

4.1. Sweden

Status

It is possible to communicate with the courts by using e-mails or fax. A document is regarded official if it is held by a public authority and, according to special rules, is considered to have been received or drawn up there. Certain legal documents have to be supplied in original signed paper versions. An application for a summons must be signed in the applicant's own hand. If it is not - for example, if it has been sent by fax or email - the court will ask for an original signed document to confirm it. If no confirmation is received, the application will be rejected. Today it is not possible to use electronic signature in the communication with the courts.

Initiative

To strengthen the development of eGovernment and create good opportunities for interagency coordination, a delegation for eGovernment has been established. The Delegation will coordinate

the central government administration's IT standardization work on eGovernment. The Delegation´s purpose is to ensure that method and expert support on IT standardization issues is provided in central government administration, even with regard to concept standards. Coordination of IT standardization efforts is to promote the use of open standards. An important task for the Delegation is to facilitate the use of electronic signature. The eGovernment Delegation has recently submitted proposals for a strategy for the government agencies work on eGovernment. In this context it is also important to mention the "RIF-project". RIF is collaboration between the judicial authorities launched a decade ago. The cooperation aims to develop electronic information between authorities. The idea is to standardize common concepts and develop IT-based business support that can exchange information electronically. This enables the reuse of information throughout the process, reduces the manual handling of paper by replacing paper versions of documents by electronic ones, and facilitates tracing of actions related to a specific case. The goal is to create an electronic flow of information leading to a more efficient administration of criminal offences, from the notification to the enforcement of a judgment.

Objective and impact

Public services must be continually developed to meet new needs and expectations. Using digital communication will make communication with the courts easier and faster. Furthermore, an electronic flow of information allows existing resources to be used in a more efficient way.

4.2. Access to information – (internet, pamphlets)

4.2. Austria

Status

On the website of the Austrian Justice www.justiz.gv.at there is a drop down menu "Recht zum Bürger" ("Bringing the law to the citizens") which provides interactive information on legal subjects of general interest in a visual and acoustic format. Phone numbers and addresses of the courts are listed in the court database on the website of the Austrian Justice www.justiz.gv.at.

The Website of the Austrian Justice provides forms to fill in directly or to print and then to fill out, e.g. application form for legal aid, form for payment claims, application form for enforcement.

4.2. Belgium

Status

Many courts have their own websites. Basic information to the public is available on the website of the ministry of justice (www.just.fgov.be) or in booklet form: 8 to 12 pages (ex. What to do if you are a victim? How to get access to legal assistance? Etc.).

4.2. Croatia

Status

Courts in Croatia have their own web sites with all relevant information for court users.

4.2. Denmark

Status

Each court has a web page containing general information and guidance. The Danish Courts as such also has a web page (www.domstol.dk) which contains information on the judicial system in general and a wide range of information texts on specific types of cases. These texts are named "How to Do it".

4.2. England and Wales

Status

The Ministry of Justice, Her Majesty's Court Service and the Tribunal Service each have websites which provide information and guidance. The main website address is: www.hmcourts-service.gov.uk

4.2. Finland

Status

Many courts have their own websites. Basic information to the public is available on the website www.oikeus.fi. Legislation, case-law, international treaties and the government bills are available (also in English) on the website www.finlex.fi.

4.2. Hungary

Status

The National Council of Justice developed years ago the website www.birosag.hu, where the most important information can be read in English and German. Many of the courts also have their own website. The final decision of the Supreme Court or the appellate courts is available in anonymous form.

4.2. Lithuania

Status

There is access to information about courts on the website of the Judicial Council or the websites of the bigger courts (www.teismai.lt, www.lat.lt, www.lvat.lt, www.apeliacinis.lt, www.vaateismas.lt, www.kaat.lt, www.saat.lt, www.vat.lt, www.kat.lt, www.klat.lt, www.sateismai.lt, www.pat.lt, www.vilniaus1.teismas.lt, www.vilniaus2.teismas.lt, www.vilniaus3.teismas.lt, www.svencioniuteismas.is.lt). The websites of the bigger courts also give information about the courts schedules and the litigants can find out the results of the cases which have already been heard. Impersonal decisions reached by the Supreme Court of Lithuania or the courts of the appellate instance are announced in the internet.

4.2. The Netherlands

Status

A number of brochures have been developed for the general public containing general information on the judiciary system and various topics such as the complaints procedure, different case procedures, court fees and the option of mediation in different types of cases. The Judiciary's website www.rechtspraak.nl also contains information on these topics.

Initiatives

Recently, the following initiatives were successfully developed to improve digital access:

- The development of a digital commercial case calendar for law firms (via the internet, employees of law firms can now consult the updated commercial case calendar at any time they wish, free of charge).
- The development of the central insolvency register (which enables each citizen to check whether a bankruptcy or suspension of payments has been pronounced on companies or

individuals).

- The development of a website specifically aimed at litigants without professional representation (http://www.naardekantonrechter.nl), which takes the information needs of both plaintiffs and defendants as its point of departure and offers information on issues such as 'how to prepare for trial', 'how to conduct written defence' and 'where to find legal aid' and also offers writing help for drafting a letter to the judge.

In 2010, the following initiatives are planned with a view to improve digital access:

- Consolidation and extension of the digital family law case calendar.
- Consolidation and digital access to the custody register (the information on custody is now stored at each court in the so-called custody register of minors and may be requested on the basis of a written request).
- Joint opening up of insolvency registers (in 2010, the European e-Justice portal will be opened up and the cross-border opening of insolvency registers will be implemented in the event of sufficient participation of the Member States. For the Netherlands, this means that some technical adjustments should be made to the current insolvency register and a web service in the national register should be achieved).

4.2. Norway

Status

The website of the National Court Administration, www.domstol.no. (also some information in English), gives general information about the courts, legal information and schemes. On the site are also links to different national and international information about judicial decisions. Most courts have their own local website with links to domstol.no.

4.2. Portugal

Status

Main courts have their websites with access to judicial decisions, information about their schedules and parties can find out the result of their cases.

Besides that, there are several websites with all kind of information:

http://www.citius.mj.pt (courts online)

http://www.dgsi.pt (legal and documentary databases)

http://www.dre.pt (legal)

4.2. Romania

Initiative A

A project was launched by the Superior council of Magistracy in cooperation with the Vrancea Tribunal in order to publish on the website www.jurisprudenta.org the full texts of all judicial decisions rendered by the Romanian courts. The project is expected completed by the end of 2010.

Objective and impact:

- to increase the transparency of the judicial system and ensure free and full access
- to increase the responsibility of the judiciary, unification of jurisprudence and predictability of court decisions

Organizational impact

A team was made of relevant personnel within the Superior Council of Magistracy. The selection of judicial decisions, extraction of copies from the data base, elimination of personal data and publishing is done automatically. The Superior Council of Magistracy provides the budget for the project, the legislative framework, the hardware and software infrastructures, the development and exploitation of the website and the promotion and visibility of the project. The Vrancea Tribunal provides the development, exploitation and multiplication of the software application to ensure the anonymity of the personal data.

Initiative B

Starting with the year 2000, the Ministry of Justice and the courts have developed the *courts' portal* – http://portal.just.ro/ which grants access to information regarding the status of all cases at

all courts (with the exception of the High Court of Cassation and Justice). On the internet page of every court, there is a section for *Cases' Records* through which online access is granted to all cases on the docket of the court.

Searching a case by its number will reveal the names and quality of the parties, date of registration, object of the case (divorce), subject matter of the case (family and minors case) procedural stage (first instance, appeal, second appeal, etc.), progress in the case - number and dates of court sessions, minutes of each court session, verdict of the court. More general information on the calendar of court sessions, list of cases for a certain session, relevant jurisprudence of the courts of appeal on various types of cases is also available on the website of all courts, including district courts.

4.2. Spain

Status

The official web sites of the General Council for the Judiciary – www.poderjudicial.es – the General Prosecutor's Office, the Constitutional Court, the Ministry of Justice and the autonomous regions with competences in the field of justice, provide detailed information on different aspects of the Spanish judicial and legal system, including case law of the Supreme and Constitutional Courts and other appellate courts of the country, the Spanish judicial organization and the addresses or contact details of all the courts in the country. However, no information regarding particular pending cases or proceedings is available in those web sites. Paper pamphlets and leaflets on some of the most important aspects of the judicial system of the country (such as legal aid schemes, protection of victims of crime, protection of victims of domestic or gender violence, etc.) are normally available in all courthouses of the country.

4.2. Sweden

Status

The Swedish courts have a well-developed website (www.domstol.se) which contains information about the judicial system in general and specific information about many different types of cases. On the website there are links to guiding decisions from the superior courts in anonymous form. Anyone who wants can seek for cases in every subject he is interested in. Many of the courts also have their own website. Pamphlets and leaflets on the most important aspects of the judicial system

of the country are normally available in all courthouses of the country. In order to facilitate transparency there is a so called media group. The media group is composed of judges, who are specifically committed to be available to media contacts.

5. Psychological Hindrances

(The impression of being heard and having justice rendered)

5.1. Attire and arranging of court rooms

5.1. Croatia

Status

Judges must act in accordance with the Procedural laws and Code of Ethic.

5.1. Denmark

Initiative

In 2009 new rules concerning the appearance of the judges in court sessions were enacted by the Danish Parliament. According to these rules the judges are not allowed to appear in the court sessions in a way that might be understood as an expression of religious or political affiliations. Furthermore not only the judges in the high courts and Supreme Court but also the judges in the district courts must wear a gown during the trial but not during other types of court sessions as for example preliminary hearings. The demand to wear gowns has not yet entered into force.

5.1. England and Wales

Status

The formality of wearing wigs and gowns is not followed in the magistrates' courts and family courts and proceedings in the latter are often conducted with the participants remaining seated. The wearing of wigs ceased to be required in civil proceedings nearly 2 years ago and the judges wear a simple form of gown distinguishing rank by the colour of the collar facings. The practice of wearing wigs continues in criminal courts, not simply by tradition, but in recognition of the dignity it provides to the proceedings and the "uniform" tending to provide some degree of anonymity to the

judges and advocates. Such items of dress are usually removed when dealing with children and vulnerable persons. Informality lies at the core of tribunal proceedings and this reduces the psychological barriers as far as it may be possible to do so. The proceedings before tribunals are nevertheless "legal proceedings" and the judge will control the proceedings with a relatively light touch and maintain orderliness.

5.1. Lithuania

Status

There are no restrictions imposed due to the speeches of the participants of the proceedings unless they abuse their rights.

All judges have special clothes (mantles) and signs.

Court hearing halls are similar in all courts: There is the State blazon and the banner in the hall, the judge table is slightly lifted up and there are desks for case parties. Halls of criminal case hearings are equipped with barriers for persons who committed violent crimes. Defendants under arrest are delivered to the court premises through a separate door, special rooms are installed for them. A part of courts have already got separate rooms for child interrogation installed. Generally, witnesses are questioned in the presence of parties involved in a particular case. In criminal cases witnesses are sometimes classified and procedure of concealing their identities is used. Before testimony, witnesses make an oath.

5.1. The Netherlands

Status

Although the use of black gowns and white bands is mandatory for all legal professionals (i.e. judges, clerks, public prosecutors and professional lawyers) in all cases, and despite the fact that judge(s) nearly always sit(s) on an elevation, the attitude of judges during hearings is relatively informal. There is no contempt of court ruling. Of all procedures, the criminal procedure may be considered the most formal. The courtroom in criminal cases is arranged according to the inquisitorial model. From the perspective of the public, the public prosecutor stands to the left of the judge(s), slightly higher than the suspect and his eventual legal representative, but at the same level as the judge(s). The public prosecutor's desk is separated from that of the judges. In civil and

administrative cases, the judge(s) sit(s) on a small elevation and parties sit next to each other at separate desks before the judge(s).

5.1. Norway

Judges in all courts are obliged to use a black judge gown during all main hearings.

5.1. Portugal

Status

All the Judicial operators, when in the courtroom (judge, lawyer, bailiff) use specific attire.
In courtrooms, sometimes the judge stays in a higher place.

5.1. Romania

Initiative

At the Braşov Family and Minors Tribunal, special rooms have been designed for hearing children. These are designed to be very attractive for children and to create a comfortable atmosphere when being heard by the judge. In divorce cases, or in cases related to custody, for instance, children of at least 10 years of age are heard by the judges, without the presence of the parents or their lawyers. That is why it is important for the child to be comfortable in the presence of the judge. For this purpose, special consideration was given to designing the hearing chambers for children more attractive to them.

5.1. Spain

Status

Judges, prosecutors and advocates wear gowns, badges and medals indicating their ranks during hearings and trials (particularly in the civil and criminal branches of the jurisdiction). Judges and Prosecutors are expected to treat all court users in an independent, respectful and impartial manner. Under the Act on the Judiciary currently in force in public hearings, judges, public prosecutors, clerks of the court, advocates and procedural representatives shall all sit at the same height on the board or stand of the courtroom.

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

5.2. Austria

Status

See also above 3.2. Austria (on "Amtstag"). So called "service centres" were set up at the regional courts in Linz (2004) and Leoben (January 2009) and at the district court in Hall in Tirol (November 2009). They help to make contacts to the courts easier for persons in search of judicial assistance. Objectives of service centres for Justice are:

- Short ways for the citizens (the court file is walking, not the citizens) as well as competent and rapid handling of their concerns
- Discharge of court registry and other officials from inquiries of parties or other persons involved in proceedings or from time-consuming additional activities that disrupt the flow of the main work
- To optimize and concentrate the service offering for individuals through a centralised handling by qualified personnel.

  Non-goals:
- No replacement of the "Amtstag"
- No place for complaints
- No legal advice

Initiative

- Judicial Ombudsoffices ("Justiz-Ombudsstellen"):

  On 1 November 2007 the Austrian Judiciary introduced Ombudsoffices to offer citizens an improved information and complaint service.

  Anyone involved in court proceedings may turn to the Ombudsoffices if they have questions or complaints concerning the work of the courts. They are located at the courts of appeal and are headed by experienced judges. Ombudsoffices however must not interfere with pending proceedings nor do they constitute another type of appellate court.
- Introduction of a joint service centre at the regional criminal court in Vienna and the office of public prosecution in Vienna (expected opening end of this year, beginning of the next year)

5.2. Croatia

Status

Parties in court proceedings can be represented in court proceeding by lawyers. If parties are not represented by lawyer the presiding judge is obligated to explain the party their fundamental rights and to advice them to engage a lawyer if particularities of the case requires so.

5.2. Denmark

Initiative

In 2008 new proceeding rules concerning civil matters of amounts of a maximum of DKR 50.000 (small claims procedure) entered into force, introducing a simple and fast procedure for minor civil matters. In this procedure the courts assist the parties preparing the case and giving general legal advice. In these cases it is therefore not necessary to be represented by a lawyer (further see below 6.2. and 8.2. Denmark).

5.2. Lithuania

Status

The presiding judge explains the procedural rights to the participants of the proceeding, and the judge must clarify the decision for the parties if they do not understand it.

5.2. The Netherlands

Status

Extracts of judgments in cases attracting particular interest are published in anonymised form on the Judiciary's website www.rechtspraak.nl . Furthermore, each court has one or more 'press judges', who are appointed as spokespersons to the press.

Initiative

A project called PROMIS has been launched with the aim to provide a better explanation of the grounds for decisions on the evidence and sentence in criminal judgments in order to give the defendant, defence counsel, other stakeholders and society as a whole a better idea of the arguments of the court. The basic idea is to provide detailed reasons where necessary and otherwise keep the explanation brief and to the point, in short, 'customized reasoning'.

5.2. Norway

Status

The expectations for services are growing in all areas of society. How the courts carry out their tasks is of great importance for the quality of these tasks and how the users experience of their meeting with the courts.

Initiative

As an effort in making the courts think differently and in new ways the National Courts Administration arranges a 2-days seminar called ”Service & Interaction”. The purpose of this seminar is to make the courts be conscious of - and to give them skills in - the different situations where they meet their users. The entire staff in the court attends the seminar. Using the material from the work produced by the courts at these courses, the National Courts Administration will work out a “Guide to Good Service”.

5.2. Portugal

Status

Normally this kind of assistance is done by the lawyer.

5.2. Spain

Status

Parties to most civil, criminal, labour and administrative cases (with the sole exception of some minor cases) are normally assisted by legal counsel (advocate) and represented by a court representative (*procurador*), who normally inform their clients about the contents or outcome of proceedings and the particularities of each procedural action or hearing (cf. 6.1). Furthermore, in the pre-trial phase of criminal proceedings (which is conducted by an investigating judge) all victims are informed by the criminal police or the investigating judge in person of their right to appear in the proceedings as private prosecutors and/or to seek compensation for the damages arising from the criminal offence. Suspects are entitled to obtain information from the police or the investigating judge about the charges laid against them and their basic rights deriving from their capacity of suspects.

5.2. Sweden

Status

It is of great importance that the parties feel that they have had the opportunity to present their case during the trial. In this respect, the judges' attitude during the proceedings is an important factor (see below 6.7. Sweden). The judge distributes the word during the proceedings and has an obligation to make sure that nothing irrelevant is brought in to the case. In criminal cases the participants in the proceedings are normally asked questions by the prosecutor, the public defender, the aggrieved party counsel and sometimes by the court. In civil cases the participants are asked questions by the parties legal counsels and, sometimes, by the court.

5.3. Education and survey of judges

5.3. Austria, England and Wales, Hungary, Lithuania, Portugal, Romania and Sweden

Status

In most court systems judges and court staff receive training and in some cases with the contribution of a psychologist (Hungary) or with special attention to non-verbal communication (England and Wales), or which emphasis on the hearing of minors methods and techniques and on communication techniques (Romania).

In Lithuania judges qualifications are assessed once per 5 years in a special committee of judge activity assessment under law.

A few years ago Austria started an intensified enhancement of judges' and staff members' "soft skills". The "requested social abilities" were recently incorporated in the text of the Judges' statute as a condition of appointment.

5.3. Belgium

Status

With a view toward allowing the High Council to support the judicial system as strongly as possible in achieving its objectives, the High Council developed professional auditing of the courts and the public prosecutor's offices since 2004.

The audits should

- deliver to the courts and the public prosecutor's offices reliable and valid findings, and stimulating recommendations that will motivate all magistrates and support personnel to take action and to actually manage their entities (improve the internal control process)
- recommend initiatives to external stakeholders that are competent with respect to the judiciary: this includes the removal of (legal) obstacles to this end and providing for suitable support services.

The evaluation of this auditing clearly indicates that this approach has made an impact on the managers of the audited courts and public prosecutor's offices. Correct findings and recommendations cannot be brushed aside without sound arguments. The mechanism built into the audit process of systematic follow-up of the actions that the audited party has taken with respect to the formulated recommendations, encourages systematic improvement of the internal management process.

5.3. Denmark

Status

The Court Administration does not conduct organized surveys of judges. The judges are offered seminars in (amongst others) communication, conflict management and handling of court hearings. The Court Administration further contemplates to offer seminars in cultural understanding.

At intervals the Court Administration carries out national user surveys among for example plaintiffs, defendants, attorneys, prosecutors etc. testing the user satisfaction with the general services and quality standards found when contacting the courts. The surveys are used to concentrate the efforts on aspects where there is room for improvement.

5.3. The Netherlands

Status

- Once every four years, a so-called visitation committee consisting of people from inside and outside the judiciary visits the courts. The objective of the visitation is to assess the quality of all the courts individually and as a whole in a number of defined areas.
- With a view to improving the performance of individual judges, peer review (consultation between colleagues who do the same work, but who do not work together directly) is conducted

on a voluntary basis within the courts. Peer review focuses on behavioural aspects and includes both the personal interaction with those taking part in the hearing as well as the judge's performance with his colleagues. One form of peer review involves colleagues watching and discussing a recording of a hearing.

- Several courses have been developed to strengthen the communication skills of judges and court staff. There is also a course on how to deal with aggression.

5.3. Norway

Initiative

Judges receive some training about how to act towards parties and other participants in the court during the initial training. See also above 5.2. Norway.

5.3. Spain

Status

In order to guarantee transparency, all judges in the country have a specific obligation to meet and have an interview with every court user or legal professional who applies for it, and to this effect judges should be accessible in their chambers four hours every working day. However, in some cases the judge may refuse to have an interview with the court user or legal professional if issues regarding sensitive information or deontological obligations of the judge towards all the parties in the case are affected. Judges receive initial training as to how to be polite with the public, user friendly and provide all information required within the framework of judicial proceedings and hearings, including information over the causes of postponements and delays.

5.4. Treatment of other users of the courts (witnesses)

5.4. Denmark, Hungary and Norway,

Status

In most countries the court sees to it that witnesses get information about what they can expect during the questioning and that the witness is escorted to the court room. If necessary the court will make sure to oversee the witness' child (Hungary).

Witnesses are usually fully reimbursed of their travel expenses.

In Denmark general information for witnesses can be found on www.domstol.dk and in a pamphlet which is available in the courts.

5.4. Italy

Status

As regards the presentation of evidence by minors, the law provides that the witnesses are examined by the Chairman of the Committee (and not by the Public Prosecutor or defenders), so as to avoid the stress caused by cross examination; in addition, the Chairman may avail himself during the examination of the assistance of a member of the minor's family or of an expert in child psychology. When dealing with sexual offences committed against minors, the examination of the victim is performed, if necessary, through the use of a one-way mirror glass and audio system, in such a way that the minor is able to give evidence without being seen directly by the accused.

5.4. The Netherlands

Status

- The courts conduct a customer evaluation survey every four years. The 'customers' are litigants, members of the Bar, the Public Prosecution Service and other 'repeat players'.
- In order to make children feel more at ease in court buildings, a number of courts have created special child-friendly areas with toys.
- Witnesses are entitled to compensation for the loss of time and for travel expenses.
  Before the hearing, witnesses may ask the public prosecutor to request the judge to remove the suspect from the courtroom during the witnesses' interview. The witness may also request the judge to do this during the hearing. The judge may however refuse.
  There is a special procedure for threatened witnesses, which may only be applied in serious criminal cases when the identity of the witness is unknown to the defendant. Under this special procedure, the identity of the witness and his defence counsel remain secret and the witness does not have to appear at the hearing. Such a request to remain anonymous must be submitted to the examining magistrate.

5.4. Portugal

Status

Witnesses have a special protection, which includes measures such as secret identity and private security. They are exempted from court fees.

5.4. Romania

Initiative

A non governmental organization specialized in the defence and promotion of human rights – Social Alternatives Association – in partnership with Romanian magistrates, researchers and psychologists and the National Institute of Ministry elaborated a guide for the hearing of children in judicial proceedings, in 2009. The guide approaches the phases for hearing minors from a psychological and legal point of view both in civil and criminal matters in order to ensure an adequate and effective protection of children's rights during all judicial proceedings.

Organisational implication

The guide is distributed among the courts and prosecutors offices and is uses within the future professional training programmes on this subject.

Financial implication

The guide has been financed by UNICEF.

5.4. Spain

Status

Other court users, such as witnesses, expert witnesses, etc. are also entitled to be treated in a respectful, independent and impartial manner by judges and prosecutors. Failure to comply with this standard of treatment by judges may result in disciplinary liability, since the disciplinary offence consisting in "excess or abuse of authority" or "serious lack of consideration" also applies to citizens in general and not only to parties or court users in the narrow sense of the word. Witnesses are entitled to full recovery of travel expenses from the party bearing court costs or, where no decision on costs has been made by the court, by the Ministry of Justice or the autonomous regions with competences in the field of justice. However, in many cases there have been allegations of serious delays in the recovery of travel expenses by witnesses when the

expenses are to be covered by the Ministry of Justice or the autonomous regions with competences in the field of justice.

5.4. Sweden

Status

Almost 100.000 people give testimony at courts in Sweden every year. Witness support is available at most district courts and courts of appeal in Sweden. The witness support persons assist witnesses and victims of crime with humanitarian support and practical information concerning the trial. A witness support person works on a not-for-profit basis and he or she has sworn a moral promise of confidentiality.

Initiative

The Crime Victim Compensation and Support Authority and The National Courts Administration have a government mandate to work together to achieve that witness support should be available at all district courts and courts of appeal. The Crime Victim Compensation and Support Agency, who has the overall responsibility for the witness support, is currently working with national guidelines in order to make witness support activities more uniform across the country.

6. Hindrances to Personal Appearance

6.1. Mandatory professional representation

6.1. Belgium, Denmark, Croatia, Finland, Lithuania and Norway,

Status

In many court systems parties may appear in person before all the courts of the judicial order and present their own submissions and arguments (Belgium and Lithuania with the exception of proceedings in the Court of Cassation and in Lithuania also with the exception of the Court of Appeal). But the court may forbid them to do so if it acknowledges that the excitement or inexperience of a party will prevent them from presenting their case with proper decorum or the necessary clarity.

6.1. Austria

Status

In civil and commercial matters to be settled through the courts, complaints lodged with the district courts (which are normally responsible for disputes involving up to 10.000 €) must be signed by a lawyer if the amount involved is more than 5.000 €. This obligation does not, however, apply if the complaint has to be lodged with the district courts regardless of the amount involved (f.i. disputes on family matters and disputes arising from rental contracts for residential and business premises). So where legal representation before the district courts is not compulsory, anyone can lodge a written complaint or application initiating proceedings with the court. In civil and commercial matters to be settled through the courts, complaints lodged with the regional courts must normally always be signed by a lawyer. The obligation to engage a lawyer does not apply to complaints that have to be settled in the labour- or social courts, i.e. in particular claims by employees against their employer arising from their employment relationship.

6.1. England and Wales

Status

There is no bar to persons conducting litigation in person, but corporate bodies, including business organisations formed as companies, i.e. corporations, must appear through an advocate. Although without formal representation by lawyers placed on the court record there are various sources of help for those appearing before the courts depending on the matter of the case and the court in question. In any court or tribunal a party who is not represented may be assisted by another person, not acting as advocate. This person acting in this capacity is called a "Mackenzie friend" after a case of that name. Alternative dispute resolution or mediation, where available, can reduce reliance on representation, cost and delay.

Initiative

The Tribunal's Courts and Enforcement Act 2007 authorises and prescribes mediation procedures to be adopted in cases before tribunals. Pilot schemes involving mediation by salaried tribunal judges on a voluntary basis are being run in some of the other tribunals.

6.1. Italy

Status

The parties must be represented by a lawyer to be a party to proceedings. For trials before the Court of Cassation, one must be assisted by a suitably registered lawyer. Before a justice of the peace (non-professional judges), in cases of a value not exceeding 516,46 €, the parties may be personally party to proceedings. In criminal trials it is required to name a lawyer.

6.1. The Netherlands

Status

There is no need for legal representation in civil law cases at the sub-district level (cases under 5.000 € and in some specific civil cases such as labour and rent) and in administrative law cases. In these cases, simple procedures apply with practical possibilities for personal appearance. For all other civil cases in first instance, appeal and cassation, professional representation by a lawyer is required. In criminal proceedings, no professional representation is required.

Initiative

As advised by the Judiciary, the Dutch legislator submitted legislation which broadens the scope of cases in which no mandatory professional representation applies. In all civil cases involving amounts up to 25.000 € and cases of consumer purchase and consumer credit there will be no mandatory representation. If adopted the law will be in force from 1 January 2011. At present, mandatory representation applies for cases involving a sum above 5.000 €.

Objective and impact

- Increase access to the courts and to justice;
- increase freedom of choice for litigants to make use of legal aid (whether or not this is a formal lawyer or somebody else) for a larger number of cases and
- shorten the processing times for a large number of civil cases.

6.1. Portugal

Status

Parties must be represented by lawyer.

6.1. Spain

Status

In most cases heard by the courts of the four branches of the jurisdiction and by the Constitutional Court professional representation and assistance by a court representative (*procurador*) and an advocate are mandatory. However, there are some minor exceptions to this general rule in the criminal branch of jurisdiction (cases connected with misdemeanours or with not serious road traffic offences), the civil branch of the jurisdiction (cases where the amount of the claim is under 900 €, initial applications for fast track proceedings, proceedings on challenges before the competent court against the decision made by the relevant panel on whether to grant legal aid, and appearance of creditors in bankruptcy proceedings) and the labour branch of the jurisdiction (all proceedings adjudicated by labour courts), where the party or interested person can appear on his own before the court with no representation or assistance by legal professionals. Even in these cases the party or interested person may choose to appear before the court represented and assisted by legal professionals. This election is notified to the counterparty in order to guarantee equal footing to both parties, so that the counterparty may also decide to be represented and assisted by legal professionals.

Proceedings *in absentia* are envisaged in all branches of the jurisdiction, but only in not serious criminal cases (proceedings for misdemeanours or for offences punishable with a custodial sentence under 2 years) is it possible to proceed in the absence of the defendant. In all cases where representation and/or assistance by legal professionals are mandatory the interested person normally addresses the court or judge through legal counsel, so that all applications or petitions are normally made by the legal professional and not by the interested party himself.

6.1. Sweden

Status

Parties in *civil cases* can be represented by lawyers, but it is not mandatory. This applies both to cases that are amendable to out-of-courts settlement and to cases not amendable to out-of- courts settlements (for example family law cases). In *criminal cases* the court may arrange for a defence attorney (public defender) for those who are suspected of a crime. The court decides whether a public defender is needed or not. For victims of certain crimes the court may appoint an aggrieved party counsel (please see below, 10.1. Sweden).

Administrative decisions are in most cases possible to appeal to an Administrative Court. Given the Court's obligation to investigate it is in most cases not considered necessary with assistance through a legal aid counsel, that is, a lawyer who helps the individual to pursue his or her claim. Legal aid is very rare in this type of process. After a matter has been presented or a verbal hearing has been held, the court will deliberate on the matter. The judgment is sometimes pronounced verbally immediately following the deliberations. In other cases, the judgment is pronounced later, on a date to be determined by the court. The court will always send the judgment by post to those affected.

6.2. Simple procedure cases (family cases, cases involving minor amounts and others)

6.2. Austria, England and Wales, Lithuania, the Netherlands, Spain and Sweden

Many countries have small claims procedures allowing summary proceedings which are considerably accelerated and simplified by use of blanks/standard written forms. Summary proceedings are accessible when the claim is below a set minimum. It is not necessary to make use of a lawyer in these proceedings.

Many also have special proceedings in family cases (the Netherlands and Spain).

6.2. Croatia

Status

In simple cases (land register cases) parties have access to forms on court websites.

6.2. Denmark

Initiative

In 2008 new proceeding rules (small claims procedure) concerning civil matters of amounts of a maximum of DKK 50.000 (approx. 6.700 €) entered into force, introducing a simple and fast procedure for minor civil matters. The requirements for the writ and for the reply are less comprehensive and it is possible to use blanks for the purpose. The courts assist the parties preparing the case and giving general legal advice. Further see below point 8.2. Denmark.

Objective and impact

The objective was that small claims cases could more easily be handled by the party without costly legal representation, and that the case may be handled more swiftly.

Organisational implication

In order to make proceedings in small claims procedure forms, guidelines and directions have been produced, some of them to be available to the public on the web-sites of the district courts, others to help the courts handling these new procedural rules.

6.2. Norway

Status

Conciliation boards consisting of three lay persons solve a lot of civil conflicts in Norway. They are mediating cases and have a limited competence of giving judgements. Cases not solved are referred to the district courts. Procedures are simple and informal and usually without counsel.

Initiative

From 2008 the new civil procedure act established the principle that the costs involved shall be reasonably proportionate to the importance of the case. Parties and judges are supposed to consider mediation as an alternative to traditional conflict resolution. Mediation in the courts is an alternative.

The new fast track procedure in cases involving small claims – claims lower than NOK 125.000 (about 17.300 Euro) – has been established. People are supposed to bring theses cases to the court without professional help. Normally the case should be concluded within 3 months. The possibility to get compensation from the other party for the costs is limited to 20% of the main claim, and never more than NOK 25.000 (about 3.500 €).

There are special provisions for handling family cases with different possibilities to use professionals to mediate and to give professional advice of what's the best for the child.

6.2. Romania

Initiative

The length of judicial proceedings in Romania has been debated by the European Court of Human Rights. The solution proposed entailed legislative amendments introducing simplified procedure. In criminal cases a simplified procedure is introduced in cases where the defendant pleas guilty.

6.3. Practical possibilities for personal appearance

6.3. Denmark

Status

In the fast track procedure mentioned in 6.2. Denmark the courts assist the parties preparing the case and give general legal advice. It is therefore not necessary to be represented by a lawyer. Further see below point 8.2. Denmark.

6.3. Hungary

Status

These questions are regulated by the law of civil procedure. Administrative initiative has not been taken, but the National Council of Justice senses the necessity of the psychological supervision of the judges. See above 5.3. Hungary.

6.3. The Netherlands

Status

See above 6.1. The Netherlands.

Initiative

- If parliament adopts the submitted law broadening the competence of the subdistrict sector to all civil cases involving amounts up to 25.000 € and to cases of consumer purchase and consumer credit, the number of cases in which professional legal representation is not mandatory will increase considerably.
- The Judiciary is working on a new website specifically aimed at litigants without professional representation (http://www.naardekantonrechter.nl), which takes the information needs of both plaintiffs and defendants as its point of departure and offers information on issues such as 'how

to prepare for trial', 'how to conduct written defence' and 'where to find legal aid' and also offers writing help for drafting a letter to the judge.

6.3. Norway

Status

See above 4.1. and 6.1 and below 6.6. Norway.

6.3. Portugal

Status

See above 6.1. Portugal.

6.3. Spain

Status

See above 6.1. Spain.

6.3. Sweden

Status

The courts have websites which e.g. are aimed at litigants without professional representation. The websites focuses on information which is needed both by the plaintiff and the defendant (as well as witnesses) and offers information on issues such as “how to prepare for trial”, “how to conduct written defence”, “where to find legal aid”, “who is who in the court room” and “where to find the court by public transportation, car etc”.

Initiative

In 2008 a reform came into effect at the general courts and major changes took place in the Code of Judicial Procedure. The reform involves e.g. examinations in the district court being documented on video. Before the reform an examination of a person in court was always recorded on audio tape. Now, all examinations in the district court are also documented on videotape. If the case is appealed, a person who was examined in the district court will often not need to be re-examined as the video recording from the district court can be played back in the court of appeal.

Objective and impact

One of the advantages with the reform is that the victim of the crime and witnesses often do not need to come to court more than once to give their account. This means less pressure on those who are to be examined and it could also reduce the parties' court costs. The recording of an examination from the district court in many cases gives a better reflection of the witness's actual observations than a re-examination, as a re-examination in the court of appeal often takes place a long time after the event in question. This means that the court of appeal does not need to conduct re-examinations to the same extent as previously. It will also be possible for more cases in the court of appeal to be decided without oral proceedings. In addition, there will be a reduction in the number of main hearings that need to be cancelled because the person to be examined fails to appear.

6.4. Oral or written opening and procedure

6.4. Austria, Belgium, Croatia, Norway and Sweden

Status

The opening of a civil process is in most court system generally done in written form whereas the trial proceedings are oral.

6.4. Finland

Status

European Court of Human Rights has pronounced some sentences on Finland due the denial of oral hearing in the Court of Appeal. In Finland the Appeal is based on the principle of the Second First Instance that means that the Court of Appeal hears all evidence including witnesses once again if the decision depends on fact finding. According to law it is also possible to solve a case without an oral hearing, if the decision is not dependent on fact based on oral evidence. Because of lack of human resources and the tradition of written procedure in appeal, the Courts of Appeal have been reluctant to arrange oral hearings in the cases that they estimate correctly solved on the basis of the District Court's judgment and the letter of complaint.

Initiative

To direct the resources according to needs of justice, the government has given a bill for the system of appeals permission in the Court of Appeal in minor criminal and civil cases. The defendant shall be given access to appeals permission in criminal case, if the punishment is not higher than 4 months imprisonment. The decisive factor is the District Court's judgment. The prosecutor and the injured party shall be given access to appeals permission if the punishment cannot exceed 2 years imprisonment according to law. In a civil case a leave is given if the difference of the outcome in the District Court and the demand in the court of appeal is not higher than 10.000 €. The act is to come into force during 2010.

Objective and impact

The aim of this new Act is to direct the resources of justice system according to needs of justice. The system of appeals permission should make possible to avoid further procedure in the Court of Appeal in minor cases if the Court on the basis of the judgment and the letter of complaint undoubtedly can decide that the District Court has solved the case right. This should save resources of the Court of Appeal so the oral hearing is to be arranged in all cases it is provided according to law.

6.4. Lithuania

Status

When the party adduces all written evidences, the civil claim can be tried by the order of the documentary proceedings and the parties are not invited to participate in the hearing of the case. In the courts of the first instance and the courts of the appellate instance the cases are (with one or two notable exceptions) tried orally and the judges hear the parties in dispute. In the Supreme Court of Lithuania the proceedings in civil cases are usually in written form.

6.4. The Netherlands

Status

- The procedure before the subdistrict sector judge is not necessarily oral.
- In civil cases at the appeal level, the procedure is mainly written, although parties have the right to put forward a request for an oral plea.

Initiative

A new procedure has been introduced for civil cases. It is a 'post-defence hearing' and the purpose is to obtain further information for the parties, in order to assess whether a settlement is possible and arrange for the management of the case. Previously the personal appearance of the parties was an optional interlude between two stages of the written proceedings. The post-defence hearing is now the standard procedure. Once the court has obtained sufficient information from this hearing, it can give final judgment forthwith.

6.4. Spain

Status

The opening of proceedings through a claim is done in a written form in the courts of the civil, labour and administrative branches of the jurisdiction. In the criminal branch of the jurisdiction, the trial phase opens with a written provisional indictment by the public prosecutor or the private prosecuting party in all cases, with the sole exception of trials on misdemeanours, where there is no provisional written indictment and the final indictment is presented orally at the end of the trial by the public prosecutor or the private prosecuting party. In many cases the pre-trial phase of criminal proceedings is initiated by the investigating judge on the basis of the information lodged by the victim of the offence before the police, the prosecution office or the investigating judge himself. The information can be lodged by the victim orally or in a written form.

Procedures in the trial phase are conducted orally in the courts of the civil, criminal and labour branches of the jurisdiction, but tend to be predominantly written in the administrative branch of the jurisdiction (unless the case is decided by a single administrative judge). Appeals in the four branches of the jurisdiction tend to be predominantly written, since they are always based on the written and grounded application of the appellant and normally disposed of by the competent court in chambers and with no public hearing. There are some exceptions (public hearings at an appellate level) in those rare cases where admissible evidence is to be presented to the appellate court or the appellate court (*ex officio* or granting the application by any of the parties) has agreed to decide the appeal after a public hearing.

6.5. Requirements to written applications and facilitating by use of blanks and the like

6.5. Austria

See above 4.2. Austria.

6.5. Denmark

Status

In the fast track procedure mentioned in 6.2. Denmark the requirements for the writ and for the reply are less comprehensive and it is possible to use blanks for the purpose. Further see below 8.2. Denmark. It is also possible to use blanks instead of writ and reply in ordinary civil cases. Furthermore blanks are used in the simplified procedure for the enforcement of small claims mentioned below in 9.2. Denmark.

6.5. Lithuania

Status

There are special requirements to the procedural documents. The blanks for the procedural documents are seldom used.

6.5. The Netherlands

Status

There are no examples of procedural documents in which blanks are used. However, in drafting procedural documents, litigants will often receive help from the Judicial Counter, Legal Advice Centre or a professional lawyer.

6.5. Norway

Status

Pleadings in civil cases shall state the name of the court, the names of the parties and their counsels and the exhibits enclosed. Pleadings shall serve to clarify the issues in the dispute and to explain the parties' views on the hearing of the case. The pleading shall be signed and made in a manner that ensures orderliness in the communication between the court and the parties. Parties, who are not represented by counsel, may submit the writ of summons, reply, notice of appeal orally by

appearing in court in person. The court is obliged to put the procedural step into a pleading. A scheme for writ of summons in family/custody for children cases may be used.

6.5. Portugal

Status

Special forms exist for applications for a writ and also for bringing proceedings in Judges of Peace where, in the latter case, the applicant has chosen not to bring proceedings verbally.

6.5. Spain

Status

Since mandatory professional representation applies to most cases, written applications from the parties to the court must normally be signed by legal counsel and procedural representative. However, in cases adjudicated by the civil courts in connection with small claims or fast track claims where no mandatory professional representation applies, there are standard written forms of claims approved by the courts at the disposal of claimants, so that the application can be filled in by the interested person with no assistance by an advocate or lawyer. These standard forms are available with no cost in all civil courts of the country.

6.5. Sweden

Status

It is possible to use forms when applying for summons. The forms are available on the website of the Swedish courts (www.domstol.se).

6.6. Assistance and guidance by the judge

6.6. Austria, Croatia, Italy, Lithuania, the Netherlands, Norway, Romania and Sweden

Status

In most court systems judges are to some extent obliged to guide and instruct the parties which are not represented by a lawyer.

6.6. Spain

Status

In principle, no assistance or guidance by the judge is expected in proceedings where the general principle of mandatory professional representation applies, since the party or court user is assisted by legal counsel in these cases. However, judges are expected to assist and guide court users in all cases where these do not enjoy professional representation and assistance (trials on misdemeanours, small claim civil proceedings or proceedings in connection with applications to the court in order to grant interim measures or provisions in family cases). In all these cases, assistance and guidance by the judge to the parties must be provided in an impartial and unbiased manner. As already explained (see above 5.2.) in the pre-trial phase of criminal proceedings (which are conducted by an investigating judge) all victims are informed by the investigating judge of their right to appear in the proceedings as private prosecutors and/or to seek compensation for the damages arising from the criminal offence. Suspects are entitled to obtain information from the investigating judge about the charges laid against them and their basic rights deriving from their capacity of suspects.

7. Social Hindrances

7.1. Awareness of rights and use of professional language

7.1. The Netherlands

Status

In recent years, the relevance of understandable language has increasingly been recognized by the Netherlands' Judiciary.

Initiative

- On a national level, the Document Management project has been developed within the administrative law sector. This project is aimed at standardizing all outgoing correspondence within the administrative law sector. All letters within this sector have been examined and rewritten, with much attention paid to improving clarity and comprehension. The civil sector is currently also planning to standardize and redraft its correspondence.
- The District Court of Arnhem has recently reviewed all its outgoing correspondence and has redrafted many letters with special focus on clarity and intelligibility. It has also developed a

manual ‘Understandable letters’ which has been distributed among the other courts. Some courts have adopted the method to review their own letters.

- 14 courts have developed training courses in the field of language and clarity.
- In May 2009, the Council for the Judiciary organized a theme day on ‘Mastering the language'. During this event, several speakers from inside and outside the Judiciary shared their views on the use of language by jurists and several workshops took place. More than 150 persons from the courts attended this event, mostly legal and administrative staff.
- A project called PROMIS has been launched which is aimed at providing a better explanation of the grounds for decisions on the evidence and sentence in criminal judgments. Although linguistic simplification is not the main aim of PROMIS it is expected that the increase of intelligibility in PROMIS-judgments will be an important positive side-effect of the project.

7.2. Linguistic hindrances and hindrances for minority groups, immigrants, and aliens

7.2. Austria

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.

7.2. Croatia

Status

Every minority has a right to hear proceedings in their language and to have it translated at court expenses and foreigners are entitled to an interpreter free of charge in criminal proceedings.

7.2. Denmark

Status

The court language is Danish but foreigners are entitled to an interpreter free of charge in criminal proceedings. Also in Greenland is the court language Danish. Plaintiffs and defendants of Greenlandic inheritance are thus presumed to master Danish. According to the Greenlandic procedural regulation the essential documents in criminal proceedings (such as the indictment, the list of evidence and special declarations) must however be translated in to Greenlandic regardless of whether the defendant masters Danish. According to the Courts all documents should be translated

if the defendant does not speak Danish, but there are not enough translators to do the job. To meet the need for translation the documents are translated orally during the hearing as it is done in Denmark when prosecuting foreigners and the judgement is translated subsequently. On the Ferry Islands the court language is Ferry, but also Danish can be used on equal terms. There are not the same problems with finding qualified interpretation.

Initiative

The problem of lack of translation of documents in Greenland has been acknowledged and initiatives are 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.

7.2. England and Wales

Status

Foreigners are entitled to an interpreter free of charge in criminal proceedings, and information on notice boards in courts and tribunals is even printed in a number of European and Asian languages and has a prominent direction to a telephone number via which help in other languages can be obtained. The training received by judges and staff about diversity further enables them to act with sensitivity to cultural issues (see above 5.4.). The Ministry of Justice and Judicial Appointments Commission are committed to reflecting diversity in judicial appointments and there is a current consultation about achieving this aim. The Human Rights Act 1998 protects all persons who are present in the country regardless of nationality. The Act guarantees the Article 6 of the EHR convention (right to a fair trial of any charge and in deciding civil rights and obligations). Consistent with this interpreters are provided to translate in both court and tribunal proceedings.

In Wales all court and tribunal forms are available in the Welsh language and documents may be submitted in that language.

7.2. Hungary

Status

Foreigners are entitled to an interpreter free of charge in criminal proceedings.

7.2. Italy

Status

The code of criminal procedure provides that, before the judicial authorities having first instance or appeal jurisdiction over a territory in which a recognized language minority has its permanent abode, (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), Italian citizens belonging to that minority are questioned, at their request, in their mother language and the related minutes are drawn up also in such language. Foreigners are entitled to an interpreter free of charge in criminal proceedings

7.2. Lithuania

Status

Foreigners are entitled to an interpreter free of charge in criminal proceedings. There are no procedural exceptions for minority groups, immigrants and aliens provided in the laws.

7.2. The Netherlands

Status

- Interpretation during hearings is provided when necessary.
- Several courses have been developed for judges and their staff in order to improve their knowledge and understanding of minority groups and to strengthen their skills in dealing with cultural differences.
- Several brochures on proceedings are available in Arabic, Turkish and various other languages.
- In the province of Friesland, procedural documents can be submitted in the Friesian language. Litigants may also express themselves in Friesian during hearings.

Initiative

Following the entry into force of a new law on sworn interpreters and translators, a central register of interpreters and translators has been set up with the aim of improving the quality of interpretation/translation. Only sworn interpreters/translators meeting specific quality criteria may be admitted into this register.

7.2. Norway

Status

Everybody has the right to get interpretation paid by the state with some exceptions, but there are no procedural exceptions for minority groups, immigrants and aliens. There is some training for judges to enable them to meet different cultural issues.

Initiative

In order to ease the problem for the courts to find suitable interpreters, the courts case management system includes a register of interpreters that includes information on the interpreters' qualifications. There is also a direct link from the courts case management system to The National Register of Interpreters.

7.2. Portugal

Status

The court is responsible for the translation services when needed. Everyone has the right to understand and be understood.

7.2. Romania

Status

Foreigners are entitled to an interpreter free of charge in criminal proceedings and there are special procedural provisions regarding cases involving foreigners. Cases such as extradition, award of citizenship, approval of permanent or temporary residence for foreigners, undesirability and others are regulated by special law having special procedural provisions which answer to the needs of this special category of persons.

7.2. Spain

Status

Foreigners are entitled to an interpreter free of charge in criminal proceedings. Immigrants and aliens who have insufficient means to litigate are entitled to full legal aid in all proceedings before the courts of the administrative branch of the jurisdiction which deal with the granting of asylum or with proceedings which may result in the expulsion of the immigrant or alien from the Spanish territory.

Under the Act on the Judiciary, the Spanish language is the official language of the State and shall be used in all judicial activities by Judges, Senior Judges, Public Prosecutors, Clerks of the Court and other officers of the courts. There are, however, three co-official languages in some of the autonomous communities of the country (Catalan, Galician and Basque), which may also be used before the courts of these autonomous communities. The parties, their representatives and legal council, as well as witnesses and expert witnesses, may use the official language of the Autonomous Community in whose territory the court action takes place, both in oral and written statements. This means that judicial actions and documents submitted in the official language of an Autonomous Community shall be deemed fully valid and effective without any need for translation into Spanish. They shall be officially translated when they are required to have effect outside the jurisdiction of the judicial bodies in the Autonomous Community, except in the case of Autonomous Communities with their own coinciding official language. They shall also be translated when the laws so require, or at the instigation of a party alleging lack of proper defence. In oral proceedings, the Judge or Court may authorise any person knowing that co-official language as an interpreter, having previously been sworn in or taken oath.

Initiative A

In the last years some initiatives aimed at increasing the use of the co-official languages in court proceedings have been launched. So, in order to encourage the use of co-official languages, judges who practice in Autonomous Communities where Basque, Catalan or Galician is spoken are offered courses of these languages by the Administrations of the Autonomous Regions. On the other hand judges who prove sufficient knowledge of any of the co-official languages have some preference in order to be transferred to the courts of the Autonomous Community where the co-official language is spoken. To this effect the General Council for the Judiciary officially recognises the fluency and knowledge of the co-official language by the judges and applies the preference criteria in the competition for transfers.

Initiative B

In order to facilitate access to justice by minority groups and vulnerable people the General Council for the Judiciary has actively participated in the drafting of the so-called “Brasilia Regulations Regarding Access to Justice for Vulnerable People”, a document produced by a working group with

the support of the Eurosocial Justice Project which was approved by the XIV Ibero-American Judicial Summit, held in Brasilia on March 4th to 6th, 2008. The Regulations set the bases for reflection on the problems that vulnerable people face when accessing justice, and also include recommendations for public bodies and for those who provide their services within the judicial system. The Regulations not only refer to the promotion of public policies that guarantee access to justice for these people, but also to the everyday work of all professionals and operators of the judicial system and those who contribute to the functioning of the system in one way or another. The document also urges all public powers and bodies, within their respective scope of competency, to promote legislative reforms and to adopt measures that make effective the contents of these Regulations. Likewise, International Organisations and Cooperation Agencies are actively urged to take into account the Regulations in the course of their activities, incorporating them in the different programmes and projects to modernise the judicial system in which they take part. The full text of the "Brasilia Regulations Regarding Access to Justice for Vulnerable People", which will be endorsed by the General Council for the Judiciary of Spain in the near future, is available in the web site of the Ibero-American Judicial Summit (www.cumbrejudicial.org).

7.2. Sweden

Status

In Sweden the court language is Swedish. An application for a summons must therefore be written in Swedish. If a document has been filed in another language, the court may order a party to have it translated. In exceptional cases the court may itself translate the document. Negotiations for Swedish courts are held in Swedish. The court uses an interpreter if necessary when the parties, witnesses or others involved in the court proceedings do not speak the Swedish language. In some cases, there is an opportunity for Swedish courts to hire an interpreter for translation or interpretation. In the general courts, the court may, if necessary, arrange a translation of documents received by the court, or sent out from the court. To determine whether if it is necessary, the Court should find out what other opportunities the party has to have the document translated. Only if the party can not get the document translated in any other way, should it be made by the court. The court may appoint an interpreter to assist at oral hearings or at other contacts between the party and the court. In the administrative courts, the court may use an interpreter if necessary, both in written and oral examination. In all cases, it must be assessed whether there is a real need for oral or written interpretation in the case. For the translation of documents filed in a foreign language, the Court

must consider the objective nature of the case, the extent and nature of the material and the cost of translation seen in relation to the importance to the party to get documents translated.

There is a right to, under certain circumstances, use the Sami language, Finnish and Meänkieli (Tornedalen Finnish). A law from 2009 concerning national minorities and minority languages governs the right to use the Sami language, Finnish and Meänkieli before the courts. These languages can be used in courts whose jurisdiction includes certain areas of Sweden. The use of these languages also requires that the case or matter is related to the specific areas in Sweden. The right to use the Sami language, Finnish and Meänkieli includes the right to submit documents and written evidence in these languages, the right to obtain documents relating to the case translated into these languages and the right to speak the languages in a hearing or meeting before the court. The courts have an obligation to translate all documents filed unless it is clearly unnecessary.

8. Time Hindrances

8.1. Delays

8.1. Belgium

Status

Delays can be very important in certain districts and create backlogs. When the case is ready to go to trial, the parties ask for a hearing date. The timing for this will depend on the court's case-load and the time needed for the case. Given that there can be procedural in certain cases (expert witnesses, parties to be questioned, witnesses to be heard etc.), the precise duration of the proceeding cannot be predicted. Proceedings may have to be adjourned or even abandoned.

At the end of the hearing the judge reserves judgment which must generally be given within one month under the Judicial Code.

8.1. Croatia

Status

Unfortunately judiciary is still facing problems of delays.

Initiative

Procedural laws have been amended in 2009 in order to enable courts to avoid delays and to concentrate the examination of evidence before first instance courts. Introducing new evidence is not allowed in appeal procedure.

8.1. Denmark

Status

Average processing times in the district courts have increased in the years after the court reforms in 2007 and 2008 due to organisational changes, relocations and new substantive law etc. The Courts and the Court Administration are aware of the situation and in 2009 and 2010 improvement of the processing times has been brought into focus. The problem is considered to be temporarily and the courts follow the processing times closely with statistic information used for transparency and benchmarking followed up at intervals.

For the district courts the average processing times for civil cases in 2008 were 6 months and for criminal cases 3 months. For the high courts the average processing times for civil cases were 9,7 months and for criminal cases 4,5 months. For the Supreme Court the average processing times for civil cases was 23,9 months and for criminal cases 6,3 months.

As regards the high courts the reform – which made the district courts as a general rule the court of first instance in all cases – lead to steep improvements of the processing times. Improvements of the processing time in the Supreme Court are also under way due to the reform.

8.1. England and Wales

Status

All proceedings before both courts and tribunals operate within strict time limits although they can be waived or extended in most civil cases. (In civil court cases the party who is prejudiced may be compensated by a wasted cost order). Timetables are set for proceedings in criminal courts at all levels. Timescales similarly apply to appeals before tribunals. The judiciary has opposed some appeals having to be made to a respondent body and not directly to the tribunal concerned. The only concession given was that when made in this way appeals must be referred to the tribunal as soon as it is reasonably practicable. Experience suggests that there are inordinate delays in some

cases. However the tribunal's jurisdiction runs from the date of creation of the appeal and judges are willing to make stringent directions to a respondent if representations are received from or on behalf of an Appellant.

8.1. Finland

Status

From the Finnish point of view the main obstacle to access to justice are delays in criminal proceedings. European Court of Human Rights has pronounced more than 30 sentences on Finland because of delays in criminal proceedings. There also are more than 30 appeals pending in the ECHR at the moment. Although the average handling times are reasonable in Finland – accordingly 3 months in criminal cases in the Courts of First Instance and 7-8 months in the Courts of Appeal – the handling times are too long in the white-collar crimes and other types of severe economic crimes, like aggravated tax fraud, aggravated fraud, false accounting and different types of debtor's crimes. The average handling time in these crimes vary from 3 years 6 months. The average total handling time from the first investigation until the final verdict of the Supreme Court is 4 years 5 months. In many cases the procedure from the first investigation until the final verdict takes 7 or even more years.

Initiative

In the beginning of 2010 a new law "The Act of Compensation of the Delay of Court Proceedings" came into force. According to this new act everybody is entitled to a reasonable compensation from the state's funds, if the delay of court proceedings infringes one's right to a fair hearing within reasonable time. The concepts of the act refer to the European Convention on Human Rights. The compensation shall be 1.500 € for every year the delay is the state's authorities' fault. The maximum compensation is 10.000 €. If the punishment has already been deleted or degraded because of the delay, the compensation is not to be paid. The one has to demand the compensation in the court that hears the case. The demand for compensation shall be decided at the same time with the case.

Objective and impact

The objective of the act is to ensure that everybody is able to benefit the guarantees of Fair Trial provided in the European Convention on Human Rights as well as in the Constitution of Finland.

According to article 21 of the Constitution of Finland everybody is entitled to have their case heard without undue delay in the competent court or authority.

8.1. Hungary

Status

The National Council of Justice examines twice a year the long pending proceedings and they order the cases resolved and that the proceedings in the case be examined. In order to accelerate the legal procedure the National Council of Justice guarantees procedural opportunities: the parties can requisite pre-litigation expertise from courts or notaries.

8.1. Italy

Initiative

Parliament is considering a draft legislation to deal with the problem through identifying standard determination times for specific stages of the proceedings. The C.S.M. has recently approved a Circular on the organisation of courts in which the problem of the efficiency of the judicial system is stated as a priority. With particular regard to the civil proceeding, please note that the judicial system foresees measures of summary and precautionary safeguard, which are resorted in case of urgency. The proceeding finishes with a provisional executive order, which represents just title for mortgage registration.

8.1. Lithuania

Status

The cases are usually tried in the period of 6 months in the court of any instance. Complicated cases are tried for a longer period of time. Hearing of administrative appeal cases in the Supreme Administrative Court of Lithuania are however conducted after 9-12 months due to the case load.

8.1. The Netherlands

Status

In the previous customer evaluation survey, many customers indicated that they were not satisfied with the length of proceedings, especially in appeal.

To give an indication of the average processing times at the district court level:

- commercial case with defence civil sector > 61 weeks;

- divorce case > 16 weeks;
- full bench criminal case > 15 weeks.

Indication of average processing times at appeal level:

- commercial case with defence > 72 weeks;
- criminal case (including full bench) > 33 weeks.

Initiative

Norms for processing times per type of case have been agreed upon and should be met by the courts in 2010.

Objective and impact

The aim of the norms for processing times is to manage the expectations of litigants and society in general. In some cases, the norms for processing times may also result in the speeding up of proceedings.

8.1. Norway

Status

The possibility of having a court case processed within reasonable time is a major factor affecting how quality and access to justice are perceived. In Norway, the Parliament has set case processing time standards for some case categories. The average case processing times for most case categories are reduced during the last years, but still not all standards are met. Examples of average processing times in 2008*:*

District courts

- Civil disputes: 5,2 months (standard: 6 months)
- Criminal cases, single-judge cases: 0,5 months (standard: 1 month)
- Criminal cases, cases with lay judges: 2,4 months (standard: 3 months),

Courts of Appeal

- Appeals in Civil cases: 6,8 months (standard: 6 months)
- Criminal cases, sentence appeals 3,9 months (standard: 3 months)
- Criminal cases, conviction appeals 5,2 months (standard: 3 months)

The National Court Administration monitors court activities on the number of incoming cases, number of resolved cases, average processing time and the number of pending cases. Courts with a worrying development in their case processing statistics will be followed closely, and measures will be taken.

Initiative

The type of measure depends on the cause of the development in each court however one common measure is to initialise special projects involving extra resources for a limited period of time. These resources are dedicated to reducing the number of pending cases. In the future, the number of court employees may be reduced in order to balance an increasingly tight court budget. It is expected that this will lead to longer case processing times. The case processing time standards are currently under revision. This process may lead to a different formulation of the standards. It is not intended that the revision shall lead to major changes in the case processing times.

8.1. Portugal

Status

It is a problem in our system, mainly in bigger courts of first instance, due to structural, social and political causes (among many others). The law changes too much; courts are overloaded with small actions and people are getting more litigant. The cases are usually tried in the first instance courts:

- Civil disputes: 1 ½ to 2 years
- Criminal cases (with or without defendants): 6 months or 1 year
- 2nd instance and Supreme Court of Justice: 6 months

Initiative

The new PADT (Action Plan to Ease the Courts' Workload) was launched in 2007 with the aim to withdraw from the courts the cases that could be solved, or even avoided, by other alternative means, therefore easing the procedural pressure on the judicial courts.

Some of the measures that were taken were the following:

a) Setting up a temporary and special regime promoting the end of the procedure at the judicial instance: encourages the extra-judicial dispute resolution mainly through transactions and arbitral agreement between the parties.

b) Establishment of arbitration centres with jurisdiction in civil enforcement matters. These institutionalised arbitration centres shall not only be be able to ensure dispute resolution and adopt decisions but also be competent to carry out enforcement material acts;

c) Taking the inventory procedure out of the courts. The inventory judicial procedures are particularly very slow. They may last in average 32 months and as such may affect peoples' life substantially. Their processing by other entities, such as notaries and registry offices will allow a much faster resolution.

d) Increasing the number of peace courts

e) Creating CITIUS which is a computer application with the purpose of replying to the demands of the judges' workload (it is also addressed to the other judicial operators, such as public prosecutors, court personnel and legal agents). This application allows "inter alia" the judges to:

- Deliver sentences, orders and judicial decisions directly in the computer application, with no need to resort to the paper procedure;
- Sign sentences, orders and judicial decisions with an electronic signature, through a card, such as a smartcard associated to a PIN code, without having to sign those acts on paper;
- Receive and refer electronically the cases to the secretariat, without the paper procedure having to circulate itself;
- Know immediately all the cases that are allocated to them as well as the procedural phase they are in;
- Organize and manage electronically the cases, through the establishment of personal files;
- Digitally (re)view the case, its history and the most relevant procedural parts;

During the first phase (April 2007) the CITIUS-application has been available in 15 courts, in four judicial districts, and has involved 127 judges. The second phase has initiated on June 2007, in the

county courts of the metropolitan areas of Lisbon and Oporto, and has covered 80 courts and has involved 539 judges. From September onwards, it will be extended to all the remaining courts.

8.1. Romania

Status:

In civil matters the time hindrances is reduced through the administration of evidence by the lawyers, in agreement with the court. There is an improvement of the access of justice as physical presence of the parties and their lawyers for the administration of evidence is no longer necessary. All evidence – witnesses, declarations, expert reports and documents - can be administered by the lawyers in any appropriate location outside court premises.

8.1. Spain

Status

According to last statistics published by the General Council for the Judiciary (2008), the average handling time of civil cases in the first instance ranges from 6,9 to 8,1 months, depending on the type of case. At an appellate level the average handling of civil cases is 5,4 months for ordinary appeals and 19,4 months for cassation appeals. In the criminal branch of the jurisdiction the average handling time of cases in the first instance range from 7,1 to 2,7 months, depending on the type of case. At an appellate level the average handling of criminal cases is 2,2 months for ordinary appeals and 6,3 months for cassation appeals. In some busy courts in big cities there can be delays in the proceedings in the first and second instance in the courts of the four branches of the jurisdiction, since most of these courts are overloaded. There have also been allegations of delays due to overloading in the Civil and Administrative Divisions of the Supreme Court and in the Constitutional Court. However, delays are more infrequent in courts of small towns and provinces, where the backlog of cases is not so big. All criminal cases where the suspect is kept in pre-trial custody are to be dealt speedily by the investigating judge or trial court, which means that delays of proceedings which imply pre-trial custody are rare.

Initiative

In the last years and in order to reduce delays in the most overburdened courts of first instance and at an appellate level the General Council for the Judiciary, together with the Ministry of Justice and the Autonomous Communities with competences in the field of justice, have launched some

programmes appointing part time judges, who cooperate with the judges of the court in the adjudication of pending cases, thus reducing the backlog of the respective court. These part time judges are normally recruited among judges who sit in not overloaded courts and are paid by the Ministry of Justice (or the Autonomous Communities with competences in the field of justice) on the basis of the number of adjudicated cases.

Objective and impact

The programme launched by the General Council for the Judiciary together with the Ministry of Justice and the Autonomous Communities with competences in the field of justice aims at reducing backlogs in the most overburdened courts of the country without substantially increasing the number of full time judges who sit in these courts. The programme has helped reduce the backlog and the average duration of cases in overburdened courts.

8.1. Sweden

Status

Minimizing delays is currently a prioritized subject in Sweden. There is an ongoing debate whether Sweden manage to fulfil the obligations set out in the European Convention of Human Rights, in particular in some cases categories within the administrative courts. Commissioned by the Government the National Courts Administration (NCA) has together with the courts set out processing time standards. Examples from District Courts in 2008:

- Civil disputes: 8,6 months (standard: 7 months)
- Criminal cases: 5,5 months (standard: 5 months)
- County Administrative courts: 8,7 months (standard: 6 months)

Initiative

The National Courts Administration monitors different figures concerning, among other things, the number of incoming cases, number of resolved cases, average processing time and the number of pending cases. There are special projects involving extra resources for a limited period of time. These resources are dedicated to reducing the number of pending cases. Furthermore there is a unit within the NCA working with the subject of court organization. The aim is to develop, on the basis of a courts unique structure and conditions, efficient models of organization. In the 1 of January 2010 a new act of preference explanation was adopted by the parliament. If the hearing of a case or

matter has been unduly delayed, the court shall, upon written request from a private party to explain the case or matter shall be dealt with as a priority in court.

8.2. Fast track procedures

8.2. Austria, Croatia, Norway, Spain and Sweden

Many countries have employed simplified small claims procedure (fast tracks) which enables a speedy process (see above 6.2.). The limit of the small claims ranges from 14.963,94 € (Sweden) to 17.300 € (Norway) and to 75.000 € (Austria).

These proceedings facilitate access to courts in more ways. The process form makes it easier and less expensive for e.g. ordinary people and small enterprises and businesses to proceed minor claims. The fees for legal assistance may exceed the amount claimed and legal formalities and the time involved in preparing an ordinary legal action and carrying through the case may be a serious barrier to many. The rules can also be seen as an instance of impairing Financial Hindrances, Time Hindrances and Social Hindrances.

8.2. Denmark

Initiative

In 2008 new proceeding rules in civil cases regarding amounts of a maximum of DKR 50.000 (approx. 6.500 €) entered into force, introducing a simple and fast procedure for these cases. The requirements for the writ and for the reply are less comprehensive and it is possible to use blanks for the purpose. The courts assist the parties preparing the case and giving general legal advice. It is therefore not necessary to be represented by a lawyer.

The legislation is a part of the Danish court reform in 2007-2008. The role of the Danish Court Administration has mainly been to prepare the district courts for using the proceeding rules and to produce adequate information to citizens, companies, relevant organisations, lawyers etc. The preparation part has included information and courses for the judges and other employees in the court system and preparing the IT systems of the courts for handling the cases. The information part has included an introduction to the rules on the web page and news letters to the district courts with

inspiration to disseminate information in the local area. Furthermore the Court Administration has drawn up blanks to be filled out instead of writ and reply.

Objective and impact

These new proceedings facilitate access to court in more ways. The process form makes it easier and less expensive for e.g. ordinary people and small enterprises and businesses to proceed minor claims. The fees for legal assistance may exceed the amount claimed and legal formalities and the time involved in preparing an ordinary legal action and carrying through the case may be a serious barrier to many. The rules can also be seen as an instance of impairing Financial Hindrances, Time Hindrances and Social Hindrances.

Financial implication

The rules were a part of the Danish court reform and it is therefore not possible to estimate the financial implication for these initiatives.

8.2. England and Wales

Status

There are arrangements for emergency applications for relief to be made at short notice and in some cases out of working hours and by contact with a judge at his home by telephone. Where these steps have been taken the parties are also given an early hearing to enable review or discharge of a disputed order.

8.2. Lithuania

Status

Not complicated criminal and administrative cases are tried expeditiously.

8.2. The Netherlands

Status

In certain simple criminal cases (violence (against persons with a public function), vandalism and arson), so-called 'superfast law' is applicable: in these cases, suspects are tried within the period of custody (i.e. within 3 days). Given the short period between the arrest and the treatment in court, this procedure is limited to relatively simple cases from an evidence point of view.

Alongside superfast law, it is also possible to apply 'plain fast law' in criminal cases. In these cases, the suspect on remand in custody must appear before the police judge within 14 days.

8.2. Portugal

Status

Status is the same as described in the introductory section that gives a collected description of several member states

Initiative

Some amendments to the regime in force have been introduced, improving it and opening the way to the dematerialization of the order for payment procedure, using electronic means. The extension of the time limit is 20 days, the maximum number of witnesses is five and it is possible to request a recording of the hearing, if the actions have a value higher than the threshold set for the first instance courts, today set at 3.740,98 €. It has been tried, to find a compromising solution between maintaining the proceedings simplified and the need to confer, to the parties, special procedural guarantees in reason of the value of the action.

8.2. Romania

Initiative

In criminal matters, a simplified procedure will be introduced in cases where the defendant introduces a *guilty plea*, after which the administering of evidence phase before the judge is eliminated, thus the length or proceedings being significantly reduced. Furthermore, in order to decide on the cases that can stand trial, the *preliminary chamber procedure* was introduced in the draft Criminal Procedure Code. Thus, when the file is received by the criminal court, it will go first to the preliminary chamber judge who will issue a decision of the legality of the indictment, legality of the evidence administered and acts issued by the criminal investigation bodies. In such cases, if the preliminary chamber judge decides the above requirements are met, the file will be referred to trial; meanwhile the files that cannot stand trial will be redirected towards the prosecutor's offices. In this way, the courts are to start proceedings only on cases that can stand trial, instead of having to deal with all criminal cases that are sent to the courts.

8.3. Pre-trial evidence

8.3. Austria, Denmark, Italy, the Netherlands, Norway and Spain

Status

Preserving evidence is foreseen in cases where the evidence might no more be available during the procedure or the current status of the evidence should be determined. It is possible in civil cases to obtain evidence such as examination of a witness or an expert survey previous to legal proceedings. In f.i. the Netherlands a litigant can ask the district court for a provisional examinination of a witness and/or a provisional expert opinion in order to assess whether there is enough evidence/material to commence proceedings. In criminal cases in Spain pre-trial evidence is normally preserved with the participation of all involved parties who are entitled to cross-examine the witness or expert witness in the pre-trial phase, and the minutes of the examination are to be read in open court at the trial stage in order to be assessed by the adjudicating court.

8.3. Lithuania

Status

In criminal cases, many law evaluation methods such as expertise, scene inspections, personal examinations and etc. are employed during the inquest.

8.4. Interim provisions

8.4. England and Wales, Lithuania, the Netherlands. Norway, Spain and Sweden

Status

In the civil and administrative proceedings the parties can in most countries apply for interim provisions to prevent e.g. particular acts or disposal of property or to make sure that arrest of property and funds remain valid till the judgment is adopted. The interim provisions must be granted by the competent court when the procedural prerequisites envisaged by the law are met.

In f.i. Sweden it is possible in the administrative branch of the jurisdiction to decide a temporary stay of execution of a decision by an authority.

8.5. Injunction

8.5. Austria, Croatia, Italy, Lithuania, the Netherlands, Norway and Spain

Status

Many judicial systems provides for forms of injunctions, which are adopted by way of urgency. In Croatia injunctions in misdemeanour and petty crime cases are obligatory and in Lithuania not complicated civil cases are tried after the court issues the injunction.

In the Netherlands a party can refer the matter to an interim relief judge within two months, and the parties will receive a judgment within two weeks. In cases where speed is essential, judgment can be obtained even faster. It is also possible to apply for an interim injunction in administrative law cases.

8.5. Sweden

Status

The general rule is that no enforcement measure with regard to a civil law claim can take place until a court has judged the case. The provisions concerning injunction are an exception to this rule. Injunctions generally aim to ensure that the losing party performs what is required of him or her following a future court decision. The most common precautionary measure is sequestration, which means that an applicant can have any property that the other party holds taken possession of, or have the opposite party's right of disposition withdrawn in some other way.

In the Code of Judicial Procedure there is a general provision concerning the court's right to prescribe a suitable measure to safeguard the applicant's right. This provision is, for instance, applied in actions for injunctions. Decisions on precautionary measures are granted by the court where the court action is pending. If the court action is not pending, the same provisions concerning the court of competent jurisdiction apply as for civil cases in general. The court cannot raise the question of precautionary measures of its own accord. It is therefore a requirement that the party wishing such a decision submits a motion for this.

9. Hindrances to Enforcement

9.1. Enforcement by bailiffs within the judiciary or by private executors

9.1. Austria

Status

In Austria, the enforcement of judgments is done by the courts upon application of the creditor. The enforcement rules provide for various types of enforcement, a distinction being made on the one hand as to whether the executory title is directed at a pecuniary claim or at a claim for specific performance and, on the other hand, against which assets enforcement is to be levied. Judges and registrars have jurisdiction to make decisions in enforcement proceedings. Numerous functions are transferred, in enforcement matters, to registrars, who are federal officials with special training for this purpose. These functions include, in particular, enforcement upon the debtor's moveable assets. Other functions (for example enforcement on immoveable assets) are however reserved for decision by judges. Enforcement actions are conducted by special enforcement officials, the court bailiffs. They are responsible for actually carrying out the enforcement, e.g. seizing moveable physical items, evictions, drawing up a list of the debtor's assets, etc. Bailiffs are executives of the court and must comply with its orders and instructions. They are ordered to pursue enforcement measures until the order is complied with or it is apparent that it cannot be complied with.

Organizational performance:

- Establishing of „Planning- and Controlling-units" at each Court of Appeal („FEX Planungs- und Leitungseinheiten")
- Simplification of the system of enforcement fees to reduce bureaucracy as part of a clear legal framework introducing a system of flat rated fees
- To achieve a steering-effect to avoid uneconomic enforcement-practises through reasonable and foreseeable enforcement fees
- Adequate payment of the enforcement agents (bailiffs) depending on workload
- Introducing quality criteria rising the quality of enforcement
- Decouple of the enforcement as a financial service from the judiciary in the narrower sense

- Concentration of executing and managing the enforcement-personnel at the Courts of Appeal
- Special support and training of the enforcement agents´ (bailiffs´)´ qualifications and professionalism
- Controlling of key-data and personnel management

9.1. Croatia

Status

The enforcement procedure is part of the first instance courts.

Initiative

The Ministry of Justice is preparing a new Law on Enforcement which aims at transferring execution from courts to private executors and to simplify enforcement procedures.

9.1. Denmark

Status

Enforcement is only possible through the enforcement courts which are a part of the district courts.

9.1. England and Wales

Status

The most sensitive area here is in relation to possession proceedings and eviction from dwellings. All enforcement is carried out by enforcement agents and the person affected has the right to apply to the judge of the court, with leave, at any time to seek suspension of the order. The Tribunals, Courts and Enforcement Act 2007, recently in force, gives greater judicial control over enforcement procedures and enforcement agents are only authorised by a certificate issued by a judge.

9.1. Hungary

Status

The Hungarian system of judicial enforcement regulates differently the enforcement of amounts payable to a public institution and those payable to individuals. The former are enforced by bailiffs of the courts, whereas the enforcement of expenses due to individuals is ensured by a separate, individual body of bailiffs.

9.1. Italy

Status

Specific rules apply for proceedings regarding compulsory enforcement of judicial decisions and the enforcement of other orders (e.g.: bills of exchange). A victorious creditor having obtained an enforcement order at the outcome of a preliminary investigation, or a creditor having obtained a promissory note, in case of a debtor's continued failure to comply, must turn once again to the lawyer and push for the enforcement phase of the debt before the executive judge.

9.1. The Netherlands

Status

- The judiciary has no role as concerns the execution of judgments in civil cases. Once the judge has issued a judgment in a civil case, it is up to the party against whom judgement is given to carry out the decision as soon as possible. If he does not carry out the measures stated in the judgment, the winning party may call in a bailiff. The party against whom the judgement is given has to pay the execution costs.
- The Public Prosecution Service is responsible for the execution of decisions in criminal cases.

9.1. Norway

Status

Norway has bailiffs within the judiciary. The Enforcement Procedure in Norway was changed some years ago with the intention to give the parties an opportunity to achieve a simple, swift and cheap resolution of the case through conciliation or judgment

9.1. Lithuania

Status

In 2003 the system of private court executors was implemented in Lithuania (following the example of France).

9.1. Portugal

Status

Except if the law determines otherwise, there is an enforcement agent (solicitor), acting under the supervision of the judge appointed by the applicant or by the court.

9.1. Spain

Status

Under the Spanish Constitution "the exercise of jurisdictional power in any type of processes passing judgments and having judgments executed belongs exclusively to the Courts and Tribunals as determined by the laws, according to the norms on the competence and procedure which they establish". This means that the enforcement of decisions issued by the courts of the four branches of the jurisdiction is a task that belongs to the judiciary and that cannot be accomplished by private executors but by public bailiffs within the judicial system. In fact the process of enforcement of a judicial decision is regarded as a stage of the judicial proceedings, the responsibility of which lies in the hands of the Clerk of the court which issued the judgment or decision in the first instance under the supervision of the judge or judges of the court. Since the process of enforcement is regarded as one of the stages of the judicial proceedings, all the already explained rules regarding mandatory assistance and/or representation by legal professionals (see above 6.1) and legal aid (see above 1.2) also apply to his phase of the proceedings. Consequently, the basic procedural rights of both creditors (claimant) and debtor (defendant) are guaranteed as in the prior stages of the proceedings. The competent court for the enforcement of the judgment or decision (i.e. the judge or court which adjudicated the case in the first instance) controls the process of enforcement and decides all the questions that have to be settled in order to have the judgment enforced. In the administrative branch of the jurisdiction the enforcement of judgments against administrative bodies or organs is also a task which lays in the hands of the Clerk of the respective court (under the supervision of the court itself), but all the necessary measures in order to have the decision of the court enforced are adopted by the administrative body or organ following the requests or orders of the court.

9.1. Sweden

Status

There is enforcement where an executive authority compels compliance with an obligation that has been tested by a court of law or under some specific arrangement. For enforcement to take place there must be a judgment or other enforceable title that imposes a liability to perform an obligation.

The types of obligation most commonly enforced are liability for payment and the obligation to quit a dwelling. A liability for payment is enforced by means of distraint. This allows the debtor's property to be taken in satisfaction of payment. An obligation to quit a dwelling will be enforced by means of eviction. Enforcement may also be sought for decisions on the custody of children, children's living conditions, and contact with children. In these cases enforcement takes place through the district courts.

Enforcement is carried out by a State authority, the Enforcement Office. Overall legal responsibility for enforcement rests with a bailiff officer, while the enforcement itself is normally carried out by enforcement officers. There is a fee to be paid for the State's costs in enforcement cases. In the case of a civil-law claim, the basic fee is generally 1 000 Swedish crowns. If enforcement takes place, the costs are as a rule to be recovered from the person against whom enforcement is sought, if that is possible.

9.2. Direct enforcement

9.2. Austria

Status

Not available.

9.2. Belgium

Status

For enforcement an enforceable title is required. This may be a judicial decision (judgment, order for payment according etc), an authentic instrument (e.g. act of notary), a writ of execution from the

tax authorities, a foreign judgment with exequatur, etc. For further details see: http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_bel_en.htm#2.2.

9.2. Denmark

Initiative

Since 2005 it has been possible to enforce claims of amounts of a maximum of DKR 50,000 without achieving a judgement through legal action when the claim is not denied by the debtor. Creditor fills out a blank addressed to the bailiff within the district court and if no written objections are expressed by the debtor the claim will be enforced directly.

9.2. Lithuania

Status

The law does not provide direct enforcement (without the decision reached by the court or any other authorized institution). In administrative cases it has been established that the court, adopting a decision, shall notify the institution on its execution in good will within 15 days. In case the institution fails to execute the decision in good will, the forced execution shall be initiated.

9.2. The Netherlands

Status

The judicial decision in civil cases provides an enforceable order for the bailiff.
It is possible for a party in a civil procedure to request the judge to declare the judgment to have immediate effect as far as possible despite the circumstance that the main action or appeal procedure has not yet been finalised.

9.2. Norway

Status

Motions for execution proceedings include that the creditor can use an invoice as a legal basis for enforcement. These motions are filed to the bailiffs. If the debtor has objections to the claim, he can ask for the claim to be handed over to a Conciliation Board, which is a small claims tribunal. The decision from the Conciliation Board can be a judgment, but the case can also be dismissed from the board. If so, the creditor will have to submit a writ of summons to the first instance court and get an enforceable title from this court before he can file a new motion for enforcement.

9.2. Spain

Status

In the civil branch of the jurisdiction proceedings for direct enforcement or execution of pecuniary debts based on non judicial documents (such as decisions of arbitrators, notarial instruments, commercial contracts signed in the presence of a broker, etc.) are specifically envisaged in the code of civil procedure. In these proceedings the alleged debtor (defendant) can object the enforcement or execution on the basis of the grounds provided for in the rules of the code, and the decision on whether to continue the enforcement or execution is made by the competent judge or court after hearing all the interested parties.

9.2. Sweden

Status

For a claim to be enforced it must be settled either by the court in a judgment or by the Enforcement Authority ("Kronofogdemyndigheten"). According to the Execution Code it is possible to enforce claims without achieving a judgement through legal action when the claim is not denied by the debtor. Creditor fills out a blank addressed to the Enforcement Authority and if no written objections are expressed by the debtor the claim will be enforced directly through an injunction to pay (i.e. a summary process).

9.3. Execution, eviction etc. on basis of documents or other simple means of proof

9.3. Austria

Status

The existence of an executory title which is confirmed to be enforceable (this confirmation is granted by the relevant authority in the procedure which establishes the right) is a precondition for the approval of enforcement. Generally (with the exception of certain simplified procedures), the title has to be attached to the application.

9.3. Belgium

Status

See 9.2. Belgium.

9.3. Lithuania

Status

Eviction may only be executed pursuant to the decision of the court.

9.3. The Netherlands

Status

A judicial decision will usually be necessary for purposes of enforcement and eviction. However, a notarial deed may sometimes have the same effect if parties have specifically agreed to this. In the case of an arbitral decision, an exequatur from the president of the court is necessary for the purpose of enforcement.

9.3. Norway

Status

Motions for enforcement by means of foreclosure sales of real property or apartments must be filed to the first instance court. The sales are normally handed over to real estate agencies, which will be responsible for the sale procedure and only involve the court when it comes to seek approval for the price. Also motions for evictions without an agreement between the landlord and the tenant to use a simplified procedure must be filed to the courts. If the enforcement title is a decision from a foreign court or other documents that are enforceable according to international conventions or agreements; the motions for enforcement must be filed to the first instance court. The court must approve the motion before it is sent to the bailiffs for further implementation. The debtor or the creditor can appeal the decision of the First Instance Courts to the Second Instance Court and in some cases also to the Supreme Court.

9.3. Spain

Status

As already explained (see above 9.2. Spain) execution or eviction on the basis of documents or other simple means of proof are envisaged in the code of civil procedure currently in force.

9.3. Sweden

Status

In order to be granted an execution or an eviction the creditors claim must be formally established through some kind of enforceable title.

In order to execute a claim the claim must be settled either by the court in a judgment or by the Enforcement Authority ("Kronofogdemyndigheten") in a formal decision. According to the Execution Code it is possible to enforce claims without achieving a judgement through legal action when the claim is not denied by the debtor. The debtor will be informed by the claim through service of process and is given a stipulated last day to dispute the claim. If the debtor disputes the claim the case is handed over to the district court. Otherwise, the claim will be enforced through an injunction to pay issued by the Enforcement Authority.

By applying to the Enforcement Authority for an eviction creditor can be granted an eviction and the claim is formally established (i.e. a summary process). It is also possible to get a claim formally established by the general courts or the Rent and Tenancy Tribunal.

9.4. Fees, legal aid, time involved and debtors' rights

9.4. Italy, Lithuania and Norway

Status

In some countries debtors who are welfare recipients may be granted legal aid for free by the state even in execution proceedings, but legal aid is in Norway rare to be given in enforcement cases.

9.4. Austria

Status

The value of the claim which is to be enforced is taken as a basis for the calculation of the court fees incurring for the application for enforcement. The general rules concerning legal aid apply to enforcement proceedings, too. If legal aid is granted in the main proceeding, the same also applies to the enforcement proceedings. It is not necessary to be represented by a lawyer in order to make an application for enforcement. Approval for enforcement (for purposes of satisfaction) is granted for an unlimited period. The court bailiffs must halt or suspend the enforcement if the claim is

satisfied or deferred or if continuation of enforcement is waived, if this is asserted by the creditor or if the debtor is able to prove it by a public document or a publicly certified document. Additionally, the debtor or a third party with a prima facie interest in postponement can request that enforcement be postponed. The act contains a limitative list of the grounds for postponement, including in particular enforcement proceedings and appeal proceedings. If it can be assumed that the postponement of enforcement would endanger the satisfaction of the enforcing creditor's claim, postponement may be approved only if the applicant for the postponement provides appropriate security.

There is the right of appeal, which is an ascending and non-postponing legal remedy, against the approval of enforcement. The parties to the enforcement procedure are authorized to bring the appeal. Appealing against the approval of the enforcement constitutes a ground for the postponement of enforcement.

9.4. Croatia

Status

The current Enforcement Act is putting debtor in much better position than the creditor and numerous legal remedies are possible which often leads to misuse of procedural rights and possibilities.

9.4. Denmark

Status

The rules of enforcement contain a provision that protects debtor from being summoned by numerous creditors to the enforcement court if debtor before the enforcement court has declared his insolvency. In that case other creditors as a general rule must respect this declaration during the following six months and during this period the enforcement court will only handle new enforcement proceedings against debtor if there is a special reason.

9.4. Romania

Status

Enforcement of judicial decisions, especially in civil cases entails a heavy and difficult procedure. Debtors are entitled to ask for the suspension of the enforcement procedure when they have lodged

complaints in court against an enforcement act or measure (freezing of assets) or they have requested clarifications regarding the interpretation or application of the enforcement title (enforcement title is in most cases a final judicial decision). Thus, until the complaints are dealt with by the court, it can also order the suspension of the enforcement procedure against the debtors. Although, according to the law, the complaints against the enforcement procedure and measures are to be considered urgent and are to be solved with priority, these kind of complaints are judged according to the procedure for first instance case which tends to prolong the length of proceedings.

Initiative

Provisions on enforcement are introduced in the draft Civil Procedure Code and they will probably make the procedure less formal, but it remains to be seen whether the length of enforcement procedures will be reduced.

9.4. Spain

Status

Since the process of enforcement is regarded as one of the stages of the judicial proceedings and is conducted by the clerk of the court under the supervision on the court itself, all general rules regarding mandatory assistance and/or representation by legal professionals (see above 6.1. Spain), court fees (see above 1.1. Spain) and legal aid (see above 1.2. Spain) also apply to his phase of the proceedings. Consequently, the basic procedural rights of both creditors (claimant) and debtor (defendant) are guaranteed by the court as in the previous stages of the proceedings. There are no official statistics regarding time involved in the enforcement of court decisions. However, there have been allegations of delays in the enforcement of some court decisions (particularly in the civil and administrative branches of the jurisdiction), since the procedure for enforcement is relatively complex and cumbersome.

9.4. Sweden

Status

When applying to the Enforcement Authority ("Kronofogdemyndigheten") for an execution or an eviction one must pay an initial fee of 60 €. If the enforcement process continues more than one year there will often be an additional fee. The fees are supposed to be paid by the debtor. If the debtor can't pay, the creditor has to. No legal aid is given in enforcement cases.
Executions are at the moment being preformed within one year form the day for the creditor's application. Evictions – according to law – has to be preformed within four weeks.

If a debtor disputes the injunction to pay within a stipulated limit of time, the case will be handed over to the district court to be dealt with as a regular civil case in which there e.g. is a possibility to apply for and receive legal aid. In case of an eviction the Enforcement Authority is obliged to inform the social authorities about the forthcoming eviction so that the authorities can advise and support the debtor.

10. Treatment of Victims of Crime

10.1. Advice, support and assistance

10.1. Austria

Status

According to the Austrian Criminal Code of Procedure the Ministry of Justice assigns and funds victims support organisations in order to provide certain victims of crime psycho-social and judicial assistance. Victims of crime are victims of among others violent acts, dangerous threat or a sexual offence as well as the spouse, life companion, close relatives of a person, whose death could have been caused by a criminal offence, or who were witnesses of the criminal offence. Assistance is provided free of charge during the court proceedings under the condition that this is necessary for reasons of protecting the procedural rights of victims, under maximum consideration for their personal concernment. Psycho-social assistance during court proceedings comprises the preparation of the affected person for the proceedings and for the emotional burden related to it, as well as

accompanying the person to the hearings during investigative proceedings and the main trail, legal assistance during the court proceedings, legal advice and representation by an attorney.

10.1. Belgium

Status

In Belgium, the policy in favour of victims involves a number of different groups. The police services provide what is called police assistance to victims, especially by procuring the necessary information. Legal assistants, members of the staff of the Legal Advice Centres Department assist competent magistrates in guiding individuals involved in legal proceedings. Victim support services provide psychological and individual social support to victims and their relatives. These associations may also assist victims before the commission for financial assistance to victims. The addresses of these services can be obtained from various institutions/services or by reading the brochure "Your rights as a victim of offences".

10.1. Croatia

Status

In Croatia in recent years lot of attention is paid to the victims of the crimes. In latest amendments to the Criminal Procedural Law they have special position and they have special protection bay the all players in the procedure. In the largest County Courts special units are formed for the help and protection of victims. In those units trained professionals with special skills are preparing victims for the trial making them familiar with procedural rules. That is especially important in war crime trails.

10.1. Denmark

Status

The police are obliged to give information to the victim and to send an application to the court for an appointed lawyer on behalf of the victim. When the lawyer is appointed by the court the lawyer gives guidance and information to the victim, assists the victim during investigation and trial and raises a possibly claim for damages. The salary of the appointed lawyer is paid by the state.

10.1. England and Wales

Status

The police refer victims to an organisation called "Victim Support" and they approach the victims either by telephone, letter or both to offer counselling and advice. The latter being guidance as to what will happen both the case and compensation issues. As victims whether witness or not, the Crown Prosecution Service have their own principles to promote the interests of victims and this includes in consulting victims on decisions taken during a case and informing the victims or the progress of the proceedings. There is a Victim Support Unit at most courts assisting witnesses and victims.

10.1. Hungary

Status

The Hungarian Criminal Procedural Code determines the natural person or legal entity offended in a crime as injured party, and refrains from using the more widely interpreted motion of victim.

The injured party in this respect can be considered as a witness to a crime, who enjoys a wider range of rights. Such rights include the notification on the procedural measures, may get acquainted with the documentation, may be present at certain investigation measures, may submit applications and request measures.

The injured party has the right to ask remedy against certain decisions and may seek compensation for the losses and damages suffered as a result of the crime. At certain procedural measures may be represented by a lawyer, personal participation is not always required.

Those who enforce the law, in the present legal context – among them the judges – do a lot to help the injured parties. Should the situation or the nature of the case so require, judges may spend more time and efforts on the hearing of the injured party and of the relatives of the injured. Judges may help the injured party by clearly articulating the rights under criminal procedure and other rights provided by law. These additional rights are articulated in two pieces of legislation.

One of them deals with legal assistance to injured parties. The first version of this law was adopted in 2003, now there is an amended version is in force in Hungary.

The other law provides for the legal assistance to the victims and for the legal remedies for the injury. Both pieces of legislation are harmonized with the EU standards. They are in force for some years now, the approach represented in them is rather new for our colleagues.

10.1. Italy

Status

In order to provide proper protection to the victims of sexual offences and relieve them from the legal costs, a recent legislative reform provides that sexually offended persons are eligible for legal aid, also in derogation to the income limit generally provided for by law. In order to facilitate the formalization of the request, the law expressly provides that the petition be drawn up on unstamped paper. The competent judge shall have jurisdiction on the request.

10.1. Lithuania

Status

The victim has a right to obtain legal assistance.

10.1. The Netherlands

Status

- Victims of crime have the right to be kept informed on the progress of their case by the Public Prosecution Service (i.e. the suspect's arrest, the willingness to pay for the damages, the date of the session). In the event that the Public Prosecution Service decides not to press charges, it will inform the victim of this decision and will point out the possibility of filing a complaint against this decision at the competent Court of Appeal.
- Victim Support Netherlands (*Slachtofferhulp Nederland*) provides legal and practical advice as well as emotional support to victims of criminal acts and traffic accidents. It also acts as a spokesperson for victims in public debate.

Initiative

So-called Victim Counters (*Slachtofferloketten*) have recently been opened in three different cities in order to support and assist victims of crime in a more efficient and effective way. The Victim Counters are the result of collaboration between the Public Prosecution Service, the police and Victim Support Netherlands.

10.1. Norway

Status

The prosecutor is obliged to give information and advice to the victims. In serious crimes of violence and crimes of sexual offence the victim is entitled to counsel appointed by the court and paid by the state. The court may under certain conditions appoint a counsel in other serious cases. The counsel is appointed in connection with the investigation as well for the court hearings.

In 14 cities there are Regional offices of the Service for Victims of Crime (RKK), www.kriminalitetsofre.no, which represent a free, low-threshold service to individuals who have experienced crime. Everyone who experiences problems related to criminal activity, including family members or others who are close to a victim, may contact these offices for support and advice. The services are funded by the government.

10.1. Portugal

Status

Portugal does not yet present an articulated and comprehensive policy. Thus a policy which in the structures of police forces, criminal justice, health, social security, and education systems, recognises the victims status as such and promotes an efficient articulation among the different entities establishing a contact and making sure that the victim receives information and adequate support, and which include rationalization of the social and financial costs generated by the victimization process.

The organizations for the support to victims come out from civil society as a response to a collective problem. In Portugal, the Portuguese Association for Victim Support - APAV (www.apav.pt) – is a social solidarity private institution, a legal entity for public use, whose statutory aim is to promote and contribute to inform, protect and support citizens who have been victims of penal offences. It is a non-profit organization for volunteering, which supports, in an individualized, qualified and humanized way, victims of crime, through the rendering of free and confidential services.

10.1. Romania

Status

Annually, the report on justice elaborated by the Superior Council of Magistracy presents the statistics regarding victims of crime for the most relevant categories of crimes: rape, personal injuries, crimes against property, crimes against social relations, family crimes – abandonment, etc. A distinction is always made between adult victims and victims of crimes under18 years of age. The purpose is to draw attention on vulnerable social categories and to analyze issues related to factors favoring and disfavoring crime.

10.1. Spain

Status

Under the Spanish code of criminal procedure all victims of criminal offences are fully entitled to appear as private prosecutors in criminal proceedings from the very institution of the proceedings by the investigating judge. This basic right applies to all phases of the proceedings (i.e. pre-trial phase, trial phase including appeals and enforcement phase) and must be exercised through mandatory professional representation (advocate and legal representative –*procurador*-) according to the general rules which apply to criminal proceedings. The only exception to mandatory professional representation refers to cases of misdemeanours, where the victim of the offence can appear in person before the court with jurisdiction to decide the case (cf. 6.1 and 6.3).

Before the commencement of the court proceedings or the granting of the right to legal aid, victims of crime may seek initial legal advice and representation, which is granted through the provisional appointment of an advocate and a court representative by the competent Bar Council and Court Representatives Associations. However, if the applicant is finally not entitled to have (full or partial) legal aid, he/she will have to pay the fees of those legal professionals. On the other hand, at the commencement of the pre-trial investigation, the criminal police and/or the investigating judge must inform all victims of the offence of their right to appear in the criminal proceedings as private prosecutors and/or to seek compensation for the damages arising from the criminal offence. Victims of the offence are also informed that the public prosecutor will seek compensation on their behalf, unless they waive the right to obtain compensation or decide to seek compensation through a separate civil action before the courts of the civil branch of the jurisdiction.

Initiative

In the last years the General Council for the Judiciary, together with the Ministry of Justice and the Autonomous Communities with competences in the field of justice, have established Victims' Support Units in all major courthouses of the country. Victims' Support Units are served by officials within the justice system and provide detailed information, support and advice to victims of all type of crimes, including advice regarding the appointment of advocates and legal representatives (*procurador*) under legal aid schemes, programmes for the protection of witnesses, compensation of damages, specific assistance for victims of terrorism or gender violence, etc.

Objective and impact

The objective of the Victims' Support Units programme is to provide advice and support to victims of all types of crime, in order to adequately guarantee their rights in the context of criminal proceedings. The programme has contributed to strengthen the position of victims, particularly of victims of gender violence and terrorist offences, two criminal phenomena which raise serous concern in the public opinion.

10.1. Sweden

Status

In certain cases, the court can appoint an 'aggrieved party counsel', usually an attorney who will assist the victim of crime. An aggrieved party counsel can be appointed if a victim of a crime has been subjected to, for example, a sexual offence, assault, unlawful deprivation of liberty, robbery or other offence that can lead to the imprisonment of the person who committed the offence. An aggrieved party counsel protects the interests of the victim of crime and can, for example, bring an action for damages on the victim's behalf in the criminal case. In a case where a custodian has a close relationship with a person suspected of an offence against a child, the court nay appoint a 'special representative' for the child. The special representative shall, instead of the child's custodian, protect the child's rights during the preliminary investigation and during the trial. A victim of crime is also allowed to have a suitable person with him or her as a support person during the trial. Furthermore, as previously mentioned, a witness support person assists victims of crime (please see above 5.4. Sweden).

10.2. Involvement in proceedings

10.2. Austria

Status

According to the Austrian Criminal Code of Procedure victims – regardless of their position as private participants – shall have the right:-

a) to be represented,
b) to have insight into official files,
c) to be informed on the subject matter of the proceedings and on their significant rights prior to their examination,
d) to be informed about the progress of the proceedings,
e) to be granted the assistance of an interpreter,
f) to participate in adversary questioning of witnesses and the accused, at a fact-finding session,
g) to be present during the main trial, and to interrogate the accused, witnesses and expert witnesses, and to be heard in relation to their claims,
h) to request the continuation of proceedings, which were suspended by the public prosecutor's office.

Witnesses – especially young ones and/or in cases of sexual offences – can be interrogated by an expert (psychologist) *in absentia* of other parties (esp. the accused) who have the right to intervene via video or audio. This video recording can be used in the trial (main hearing).

Upon their request victims shall be granted psycho-social or legal assistance during court proceedings. Psycho-social assistance during court proceedings comprises the preparation of the affected person for the proceedings and for the emotional burden related to it, as well as accompanying the person to the hearings during investigative proceedings and the main trail, legal assistance during the court proceedings, legal advice and representation by an attorney.

According to the Criminal Code of Procedure (CCP) a victim may become a private participant to the criminal proceeding by declaration in order to request compensation for the damages sustained or the infringement of the rights.

In case of an acquittal the private party is referred to civil proceedings to claim his or her compensation. If the defendant is sentenced the court also has to decide on claims of the private participant. In case the court is not in the position to decide on the full claim the private participant may be referred to civil proceedings. The private participant has the right to appeal against the court decision if he or she is referred to civil proceedings. The courts decision on claims of private participant is enforceable.

Besides other rights a private participant particularly:

- may request the taking of evidence,
- may in case the public prosecutor withdraws the indictment pursue the indictment as subsidiary prosecutor,
- may appeal against the courts decision to dismiss the charges,
- has the right to be summoned to the trial and may give reasons for the claim,
- may appeal against the courts decision in regard of his or her claims.

10.2. Belgium

Status

Any legal means may be presented to prove the extent of the damage and the causal link between the offence and the damage. The victim of an offence who wishes to obtain compensation from the criminal court for the damage suffered must formerly declare himself to be a plaintiff. This formality is known as “filing a civil action”. A complaint to the legal or police authorities is not sufficient. Two procedures are available to an injured party: filing an action and filing an intervention: 1) Filing an action, which triggers a prosecution, can be done in two distinct ways: by filing a civil action with the examining magistrate and by direct summons. 2) Filing an intervention is the most common and least costly procedure. The victim intervenes in the proceedings already instituted by the public prosecutor.

The Royal Prosecutor may decide not to prosecute the suspect if the latter meets certain conditions. The first condition to which the offender must submit, which is of direct interest to the victim, is compensation or reparation for the damage. This particular procedure is known as criminal mediation. It may only be used for offences for which the Royal Prosecutor does not consider petitioning for more than two years’ imprisonment. The procedure takes place before the public

prosecutor's office magistrate responsible for criminal mediation. The offender and the victim must reach an agreement on compensation. The agreement is drawn up in a report. If the offender does not fully comply with the conditions set, the victim may institute civil action for damages in the civil courts or file for civil action.

10.2. Croatia

Status

See above 10.1. Croatia. Victims are entitled to claim compensation as part of the criminal procedure or in separate civil procedure.

10.2. Denmark

Status

The victim is involved in the proceedings as a witness and as the injured party claiming legal compensation. In most cases the victim makes a statement directly before the court in the presence of the defendant. However, there are rules aiming at the protection of the witnesses in the rare cases where there might be a reason to fear reprisals. The court can decide that the defendant must leave the courtroom when the witness makes a statement or decide that the identity of the witness and other information about the witness must not be known by the defendant. The law prescribes a special procedure for these cases. As the injured party the victim has the right to claim compensation during the criminal proceedings and to produce evidence. In many cases the court has appointed a lawyer that assists the victim. The court can decide that a claim is not admissible during the criminal proceedings where after the victim must bring a civil action against the defendant.

10.2. England and Wales

Status

The courts do not have any specific duty towards victims of crime. In fact the main statutory duty on a Court dealing with crime is under the Human Rights Act 1998 and the "convention right" under article 6 which guarantees a fair trial and particular rights under article 6(2) and (3).
The Criminal Procedure Rules 2005 (under continuous review but made pursuant to section 69 Courts Act 2003) has as its overriding objective that "criminal cases be dealt with justly" (rule 1.1). Dealing with a case justly expressly includes giving a defendant a fair trial (rule 1.1(2).c) but also includes at "(d) respecting the interests of witnesses, victims and jurors…"

As witnesses, there are provisions to assist in the giving of evidence such as the availability of special measures which can include screens in court, playing a pre recorded interview as evidence in chief, allowing cross examination by remote T.V. link Certain witnesses by reason of age or the offence charged are automatically entitled to special measures if requested, others have to apply to the court for special measures to be used. Under the Criminal Evidence Act 2008 the court can make a "witness anonymity order" where the court is satisfied that balancing the defendant's right to a fair and open trial with the safety of the witness and the interests of justice, such an order should be made.

10.2. Hungary

Status

The injured party is entitled to be notified on the procedural measures, to be present at the procedural action, to inspect the documents affecting him, to make motions and objections, to receive information regarding his/her rights and obligations and to file for legal remedy. The injured party may act as a substitute private accuser if the prosecutor/investigating authority rejected the report, terminated the investigation, or dropped the charges, or if only formal charges were filed.

During certain procedural measures the injured party may be represented by a lawyer. Personal participation is not always required.

In case of smaller crimes – punishable with no more than 5 years of imprisonment – the Hungarian Criminal Procedural Code provides for the possibility to get moral and material satisfaction through mediation techniques *(restoration of status).*. Experiences gained during the last 2½ years show, that mediation offered by experts is useful and effective. Mediation is an excellent instrument to dig to the roots of the conflict, and to settle the relationship between the injured party and the defendant. Defendants usually undertake to go and see other specialists (family counsellor, psychologist) or to undergo treatment (detoxication cure). It is also possible that the defendant offers financial compensation in the amount established by the injured party. Once the mediation is successful, no further punishment will be imposed.

Since one can turn to mediation even in the court stage of the administration of justice, it is important that the judge informs both parties on this possibility and its content. In order to achieve

this judges have to have a solid knowledge on these options. Training with mediation experts helps judges in this respect. Personal exposure helps judges to acknowledge the importance of this measure, and makes it possible for the judge to introduce to the victims and the defendants this legal instrument.

10.2. Italy

Status

As regards the acquisition of witness evidence by the victims of sexual offences, including those who have reached full age, the law provides for the possibility to examine the injured party prior to commencing the process, in the forms such as to guarantee also the rights of the accused (pretrial evidence hearing). Thus, it is possible to acquire the victim's report and avoid that the injured party is called to testify in the trial; this prevents the witnesses from having to narrate more than once, also at a later time, what is for them a traumatic event.

The injured party has the possibility to join a civil claim to criminal proceedings. The criminal judge, in this case, must decide not only whether or not the accused is guilty, but also on the damage claim filed by the victim. In case of judgment, the judge may also order the accused to pay damages in favor of the victim; at the civil party's request, the accused is ordered, effective immediately, to pay a sum – so-called advance – according to the limit within which the proof of damage has already been assessed. If the victim decides to file a separate civil action for the payment of damages suffered as a result of the offence, the law provides that the definitive judgment of conviction from a penal court is effective in civil court in terms of supporting a finding, its criminal unlawfulness, and in claiming that the accused has committed it. The injured or offended party may request the seizure of the accused's assets, in case the guarantees underlying the fulfillment of the civil obligations deriving from the offense are at risk (liability jurisdiction).

10.2. Lithuania

Status

The victim must attend court hearings during the whole legal proceeding.

10.2. The Netherlands

Status

- Victims of certain serious crimes may have a personal interview with the public prosecutor. During this interview, the effects of the crime may be discussed as well as the further course of the proceedings. There is also room for questions.
- Since 2004, victims in certain criminal cases are also entitled to draw up a so-called victim's statement, in which the consequences of the crime for the victim are described. This written statement is added to the file and may be read out loud during the hearing.
- Since 2005, victims in certain criminal cases are also entitled to describe the consequences of the crime in a personal statement during the hearing.
- Victims wishing to claim compensation for damages incurred by a criminal act may join the criminal case as a party to the action without additional cost. The criminal law judge will then rule on the criminal case as well as on the compensation. In the more complex cases, the criminal law judge will refer the claim for compensation to the civil law judge.

Initiative

An issue that was raised in the previous customer evaluation study was the fact that victims and the accused have to await their hearing in the same waiting room, without any separation between them. Following this finding, a number of courts have rearranged their waiting rooms so as to avoid such contact before the hearing.

10.2. Norway

Status

The victim has traditionally been treated in court as an ordinary witness, and most victims give testimony directly before the court.

Initiative

From 2008 the status and interests of victims have been strengthen at different stages of the prosecution and court proceedings. Some of the initiatives are:

- The victim shall be given a special seat in the courtroom.
- The victim has the opportunity to give evidence before the defendant, and hear his or hers statement.

- The victims counsel has the right to express opinions on procedural issues.
- The counsel has the right to ask questions to the defendant, witnesses and expert witnesses after the prosecutor and the defence counsel.

10.2. Spain

Status

The victim who appears before the court in the capacity of private prosecutor has similar procedural rights like other prosecution parties (including the public prosecution) and may therefore apply for investigative actions, precautionary and protective measures (including pre-trial custody of the suspect or defendant) and file an indictment at the trial phase. Applications for precautionary measures and the filing of an indictment can be made by the private prosecutor even if the public prosecution objects the application or indictment, and it is for the investigating judge or the trial court to decide whether the application filed by the private prosecutor should be granted. This means that in certain percentage of criminal cases the private prosecutor is the only prosecuting party, since the Public Prosecution Service may have applied for the dismissal of the criminal proceedings.

10.2. Sweden

Status

In most cases victims of crime are given notice to attend the court to be questioned about the offence committed against him or her. The victim of crime is questioned by the prosecutor, by the aggrieved party counsel, if such has been appointed, by the defendant's attorney and sometimes by the court. If the victim experiences discomfort due to the presence of for example the accused in a criminal case, the court can decide that the accused may not be present during the questioning of the victim.

10.3. Ability to influence the sentence of the offender

10.3. Denmark and Norway

Status

In Denmark and Norway the victim has no influence on the sentence of the defendant.

10.3. Austria

Status

Victims of crime have the right to be heard in relation to their claims during the trial. And as a private party besides others they have the right to appeal against the courts decision in regard of his or her claims (see also above 10.2. Austria).

10.3. Belgium

Status

E.g. probation or imprisonment can depend on the victim.

10.3. England and Wales

Status

In sentencing there has been increasing use of "victim impact statements" in the criminal courts. The present scheme started in October 2001 and is now subject to the Practice Direction (Criminal Proceedings Consolidation). This provides for "personal statements of victims". The statements should not include any views from the victim or the victim's family as to the sentence but if such a view is given the Judge must ignore it. This Practice Direction has been updated from May 2009 which widens the occasions when the family of victims can make statements.

In sentencing again – there has been a pilot of the use of "Family impact statements" in murder or manslaughter cases. This has run through much of 2007 in certain courts and the use of them has been the subject of a report by a group under Professor Rock reporting to the Office of Criminal Justice Reform. Part of the scheme involved the use of separate advocates instructed solely for the purpose of making a statement before sentence in open court to the Judge. Experience shows that this has not been used much – although the Prosecution barrister has been used on a number of occasions to make such a statement. The statement should not influence sentence and other than giving an emotional outlet for grieving families, the use of such statements has been questioned. This is not a legal area – but is highly political. Whilst the future of such statements is not known – it is envisaged that the use of such statements will continue albeit provided exclusively by or through the prosecution. When the idea of "victims, advocates" was first mooted by Lord Falconer and Harriet Harman (then Solicitor-General) it was stated that £30m had been set aside to finance this. There would appear to be no separate budget for this now.

10.3. Lithuania

Status

The Court may hear the victim regarding the amount of the penalty. Trivial criminal cases can be closed upon the reconciliation of the victim and the offender. Voluntary damage reimbursement to the victim is also significant to the amount of the penalty.

10.3. The Netherlands

Status

The effects of the crime on the victim are taken into account in the sentencing. For a more elaborate description of the means for victims to influence the sentence of the offender. See above 10.2. The Netherlands.

10.3. Spain

Status

The victim of the offence who appears as private prosecutor in criminal proceedings can effectively influence the sentence of the offender. This is so because the private prosecutor is fully entitled to file an indictment against the defendant and, under the Spanish code of criminal procedure, the indictment must contain a petition of sentence to the trial court. The indictments by the prosecution parties are binding for the trial court, in as far as the defendant cannot be committed for trial if there is no previous indictment by any of the prosecution parties (even solely the private prosecutor) and the court may not pass a higher sentence than the petition by the prosecuting parties regarding sentence, in case the defendant is convicted of the charges. On the other hand, the victim of the offence usually gives witness evidence at trial including aspects concerning impact of the offence in his/her everyday life, and this evidence may also influence the court's decision as to sentence.

10.3. Sweden

Status

The court decides what sentence an offender should have. The prosecutor and the aggrieved party counsel can in their closing arguments argue for a certain kind of sentence, for example that the sanction should be imprisonment due to the severe injuries of the victim. The court is however free to chose another sentence or another sanction.

10.4. Compensation.

10.4. Austria

Status

A victim may become a private participant to the criminal proceeding (see above 10.2. Austria).

The Victims of Crime Act provides a scheme under which victims of severe crime who have suffered physical/mental injuries are financially compensated for medical treatment or rehabilitation loss of maintenance for dependants as well as for non pecuniary damages (compensation for pain suffering) etc. According to this act victims of crime have the right to a lump sum of 1.000 € with regard to serious injury or of 5.000 € with regard to serious permanent consequences of the crime.

10.4. Belgium

Status

The victim of an offence who wishes to obtain compensation from the criminal court for the damage suffered can declare him self a plaintiff (see above 10.2. Belgium).
It is also possible to obtain compensation from the commission for financial aid for victims of deliberate acts of violence. For more details see:
http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_bel_en.htm

10.4. Croatia

Initiative

See above 10.1. Croatia. Victims are entitled to compensation in the criminal procedure or in separate civil procedure.

10.4. Denmark

Status

The victim can claim compensation as part of the criminal proceedings (see above 10.2. Denmark). The state also awards compensation and damages for personal injury inflicted by violation of the Criminal Code. Any decision on compensation is made by the Criminal Injuries Compensation Board under the Minister of Justice. The compensation may cover treatment expenses, pain and

suffering, lost earnings, permanent injury, loss of earning capacity, damages for clothing and other personal property and small amounts of cash carried by the victim when the injury was inflicted.

10.4. England and Wales

Status

A compensation order may be made to the victim to cover any personal injury, loss and damage. In the case of death the payment for funeral expenses can be made to the person incurring them and a payment for bereavement can be ordered. Compensation can be reduced for reasons of the victim provoking the assault. No exemplary or aggravated damages can be awarded. However the Court must have regard to the means of the defendant.

There have been a number of schemes to allow a person injured as a result of a crime to claim compensation from the Board. The claim must be for at least a minimum of £1,000 and concerns injuries only. This is a statutory scheme set up outside of the criminal court system aware that many defendants do not have any means to pay proper compensation. There is a right of appeal to a tribunal as to the level of compensation, or as to denial or reduction of it because of e.g. contributory behaviour.

Victims of crime have all the usual rights to bring claims in the civil courts for damages for loss and injury. There is very little state funding to assist the legal costs of bringing such a claim. It is expected that if a victim has a claim against someone who has the financial ability to pay it, then legal proceedings will be brought on a conditional fee basis or "no win, no fee".

10.4. Hungary

Status

In case of smaller crimes – punishable with no more than 5 years of imprisonment – the Hungarian Criminal Procedural Code provides for the possibility to get moral and material satisfaction through mediation techniques *(restoration of status)*, Experience gained during the last 2,5 years shows that mediation offered by experts is useful and effective. Mediation is an excellent instrument to dig to the roots of the conflict, and to settle the relationship between the injured party and the defendant. Defendants usually undertake to go and see other specialists (family counsellor, psychologist) or to undergo treatment (detoxication cure). It is also possible that the defendant offers financial

compensation in the amount established by the injured party. Once the mediation is successful, no further punishment will be imposed.

Since one can turn to mediation even in the court stage of the administration of justice, it is important that the judge informs both parties on this possibility and its content. In order to achieve this judges have to have a solid knowledge on these options. Training with mediation experts helps judges in this respect. Personal exposure helps judges to acknowledge the importance of this measure, and makes it possible for the judge to introduce to the victims and the defendants this legal instrument.

One of the most important conditions to give material satisfaction is to secure the material and financial resources of the defendants – especially assets gained from crime – in the course of the investigation. However, this sanction is rather rarely imposed, because it is very time consuming and may result in a delay in the procedure. On the other hand, the failure to secure the funds that may serve as material compensation does hurt the rights and interests of the injured party. When there is conflict, unfortunately the injured party suffers this loss.

10.4. Lithuania

Status

In case the victim can not be made amends before the case conclusion the State shall compensate damage under the established order. Afterwards, they shall be recovered from the offender.

10.4. The Netherlands

Status

- Victims wishing to claim compensation for damages incurred by a criminal act may join the criminal case as a party to the action without additional cost. The criminal law judge then rules on the criminal case as well as on the compensation to the victim. In the more complex cases, however, the criminal law judge will refer the claim for compensation to the civil law judge.
- The Criminal Injuries Compensation Fund (*Schadefonds Geweldsmisdrijven*) provides financial compensation to victims having suffered personal injury following a violent crime who are unable to lodge a claim for financial compensation with the perpetrator (i.e. because the perpetrator is unknown).

10.4. Norway

Status

A victim has the right to have his or her civil legal claims decided in connection with the criminal proceedings in court. (In Norway most judges are both criminal and civil judges). The prosecutor is obliged to present the claim when there is no special counsel appointed. The court may refuse to allow the claim pursued during the main hearing if the proceedings would cause substantially inconvenience, and my also civil procedures. The victim will in that case most often be entitled to free legal aid.

Compensation can be given from the State compensation to victims of violent crime, www.voldsoffererstatning.no. In the case of a victim who dies, the surviving relatives may be eligible for compensation. Compensation may be granted even if the perpetrator cannot be held responsible for his or her actions. The compensation from the state covers income the person lose or will lose, expenses stemming from the injury, travel expenses and damage to clothing or personal articles. In addition a person might be eligible to receive special compensation or redress for long-lasting medical injuries and certain non-economic damages.

10.4. Portugal

Status

The victim can ask for compensation from the offender for the damage he has caused. Such a claim must be formulated as a civil claim in the criminal procedure.

Initiative:

An act of September 2009 approves compensation to victims of violent crimes and of domestic violence. Concerning victims of violent crimes only pecuniary loss caused by the injury is eligible for compensation. In regard to victims of domestic violence the amount of the compensation is set taking into account the existence of serious financial distress resulting from the crime but it may not exceed the monthly equivalent of the national minimum wage for a period of three months, which may be extended by a further three months or, in situations of extreme distress, a further six months.

10.4. Romania

Status

Victims of crime can recover the prejudice suffered as a result of a crime from the offender. For this purpose they are entitled to formulate civil claims - compensation in money, restitution in integrum, etc. – during a criminal trial. In case the defendant is convicted, the defendant will have to also repair the prejudice suffered by the victim. When making a criminal complaint or when giving declarations during the criminal investigations and/or during the criminal trials, in this way, it's easier for the victims to also state on the prejudice occurred and to produce evidence thereof. Victims are given indications regarding this possibility, starting with the criminal investigations phase. The advantage is that the judge who sits for the criminal trial would know the facts better to decide correctly on the alleged prejudiced incurred by the victim. The disadvantage is that criminal trials are usually longer than civil suits.

10.4. Spain

Status

In the Spanish criminal system compensation to victims of the offence is normally fixed within criminal proceedings, which means that the victim does not need to seek compensation through a separate civil action before the courts of the civil branch of the jurisdiction, although he/she can do so if he/she wishes. The victim of the offence who appears before the criminal court has two basic options: a) If the victim appears in the capacity of private prosecutor, he/she may seek compensation for all damages arising from the offence and include the petition regarding compensation in the indictment; b) If the victim only applies for compensation without filing an indictment regarding criminal actions, he/she may appear before the criminal court in the capacity of private claimant and limit his petition to compensation of damages arising from the offence. The victim of the offence may also decide to exercise the civil action in a separate civil procedure before the courts of the civil branch of the jurisdiction, and in that case compensation is not fixed in the context of criminal proceedings but in a separate civil procedure.

Even if the victim of the offence does not appear before the criminal court in the capacity of private prosecutor or private claimant, the public prosecutor must seek compensation on behalf of the victim in his indictment, in so far as the victim has not waived his/her right to seek compensation or decided to seek compensation in a separate civil procedure. The victim of the offence must be

informed by the criminal police or the investigating judge of this feature (the public prosecutor seeking compensation on behalf of the victim), so that the victim may decide not to appear as private prosecutor or private claimant in criminal proceedings. On the other hand, victims of terrorist violence and victims of gender domestic violence are entitled to compensation by the State up to an amount of money fixed by statute. The State is entitled to recover the sums paid as compensation for terrorist or gender domestic violence from the convicted offenders responsible for the damages for which compensation was paid.

10.4. Sweden

Status

A victim of crime can request damages from the defendant (the person who is alleged to have committed the offence). Such damages can relate to, for instance, compensation for destroyed clothing, a broken tooth, costs for medical care, pain and suffering, or personal violation. The amount of the damages will be decided by the court, in accordance with established practice. If the person liable to pay damages does not have any assets and if compensation is not covered by insurance, it is in several cases possible to get compensation from the Crime Victim Compensation and Support Authority.

An aggrieved party, who has been given notice to attend a trial, is also entitled to compensation for travelling to the court. This also applies to any expenses for accommodation and lost income from work.

11. Contact Persons for further details

11.1. Member States

Country and Organization	Name of contact	Contact details
Denmark Danish Court Administration	Mr. Niels Grubbe Ms. Joy Winter	ngr@hrintern.dk jow@domstolsstyrelsen.dk
Belgium High Council of Justice – Belgium	Mr. Jean-Marie Siscot Mr. Axel Kittel	jean-marie.siscot@hrj.be axel.kittel@csj.be info@csj.be
Bulgaria Supreme Judicial Council of Bulgaria	Mr. Ivan Dimov	legal._alliance@abv.bg
England and Wales Judges Council of England and Wales	Mr. Keith Cutler Mr. Derek Searby	hhjudge.cutler@judiciary.gsi.gov.uk derek.searby@judiciary.gsi.gov.uk encj@judiciary.gsi.gov.uk
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Netherlands Netherland's Council for the Judiciary	Mr. Frans van Dijk Mr. Herco Uniken Venema Ms. Christiane Flaes	f.van.dijk@rechtspraak.nl unikenvenema@rechtspraak.nl c.c.flaes@rechtspraak.nl

Portugal Superior Council for Judiciary of Portugal	Ms. Mafalda B. Chaveiro	mafalda.v.chaveiro@csm.org.pt
Romania Romanian Superior Council of Magistracy	Ms. Alexandrina Radulescu	alexandrinaradulescu@yahoo.com
Spain CGPJ of Spain	Mr. José Miguel García Moreno	josemiguel.garcia@cgpj.es

11.2. Observers

Country and Organization	**Name of contact**	**Contact details**
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