

Report of the 2nd Study Commission to the Central Council

66th Annual Meeting of the IAJ

Cape Town, South Africa

October 19th – 22nd 2023

“Written submissions – when do they turn from a help to a hindrance?”

The questionnaire of the 2nd Study Commission invited member associations to respond to questions relating to written submissions with a view to discussing the impact they have on proceedings.

There were 39 responses to the questionnaires which were circulated to the member associations.

As in previous years, we do not believe that the questionnaire and answers should be central to the work carried out by the 2nd Study Commission but rather should stimulate discussion about the question posed.

At the first discussion session, the 2nd Study Commission was addressed by Vice President – Mr. M.F.J.N. (Tijn) Van Osch. He outlined the experience in The Netherlands where the Court of Appeal introduced new rules imposing limitations on the length of written submissions. Initially, there was a very negative reaction from legal practitioners resulting in legal proceedings being instituted which challenged these measures. Ultimately, the Supreme Court of The Netherlands upheld the validity of these new limitations. Interestingly, a recent survey has revealed that legal practitioners are now in favour of these restrictions and are of the view that their introduction has improved the presentation of their cases.

At the second discussion session, Mr. M.F.J.N. Van Osch, again addressed the 2nd Study Commission presenting a brief summary of the responses received to the questionnaire. An overwhelming majority of countries did not impose a limitation on the length of submissions received (almost 3:1 of the 39 responses received).

The general consensus of our meetings was that while submissions are beneficial, the increasing trend of submissions being longer and incorporating excessive and unnecessary material was a very difficult problem for judges, particularly those operating within civil law jurisdictions. In common law jurisdictions, the problem was not as significant as written submissions were often restricted. Many judges are overloaded with submissions which are excessive in length and which include material that is not necessary, making it difficult to identify the core issues in a case and the relevant facts relating to those core issues. It was also generally agreed that imposing limitations on the length of written submissions would be beneficial to judges, although some members were against such an idea either because policing such restrictions would add another layer of complexity to the case causing more difficulty than it was worth, or because of legislative constraints within their jurisdiction.

Suggestions to tackle the difficulty which lengthy submissions present for judges include engaging in an educational campaign with legal representatives to assist them to understand what judges require to be addressed in submissions; and to hold a pre-trial procedure where core issues in a case can be identified thereby ensuring that the submissions focus only on those issues.

With respect to the situation pertaining when limitations are in place, there is a necessity to ensure that these are implemented. How this is done varies between the jurisdictions ranging from the requirement to comply with such limitation being policed by court staff at the point of receipt of submissions; cost orders being imposed on offending parties; cost orders being imposed on the legal representatives who have offended the limitation rules with orders being made in favour of the other party to the proceedings or the State; and the admonishment of the legal representatives by the court

Vice President – Mr. M.F.J.N. (Tijn) Van Osch, also briefly outlined his important and interesting role at the HCCH in The Hague.

I would like to thank Mr. M.F.J.N. (Tijn) Van Osch for both of his excellent presentations. I would also like to thank the other Vice Presidents, Ms. Justice Michele

Monast and Ms. Justice Tara Burns, for assisting in the preparations for this meeting and report.

I would also like to thank all the contributors to the 2nd Study Commission for providing responses to the questionnaire and for contributing to our engaged discussion on this topic. This is an issue which transcends both the civil and common law jurisdictions and is increasingly causing difficulties for judges. It is important that we tackle this issue so that submissions assist rather than detract from court proceedings.

The topic for discussion next year, to be approved by the Central Council, relates to how the judiciary in the member associations deal with lay litigants and any special measures which apply. The question is:

The increased presence of self-represented litigants in civil matters and its impact on the administration of justice: What have we learned in the last decade?

Judge Mette Sogaard Vammen,
Denmark,
President of the Second Study Commission,
21st October, 2024