



Second Study Commission  
Civil law and procedure

Meeting in Amsterdam (The Netherlands), 22 - 26 September 1996

Conclusions

THE APPLICATION OF FUNDAMENTAL RIGHTS IN THE RULES OF CIVIL PROCEDURES

29 written reports had been submitted by members of the commission for the preparation of the General Report; 22 of these reports were taken into consideration. The delegates from 33 nations were present. The General Report by the President was adopted.

The discussion in the commission covered the following matters in particular:

- The status of rules of procedure,
- The control of constitutionality of laws,
- Effective access to a judge,
- The possibility of intervention of the judge in the procedure,
- The right of appeal and the obligation to give reasoned decisions.

While bearing in mind the principles of impartiality of the judge and the necessity to respect the rights of both parties, the commission considered that these matters were so self-evident that they were no further discussed.

The commission unanimously adopted the following resolution:

- 1) All countries represented on the commission accept the definition of what constitutes the fundamental right of citizens in civil procedure contained in Art. 6 of the European Convention for the protection of human rights and fundamental freedom. viz. "In the determination of these civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".
- 2) The fundamental principles governing civil procedure and jurisdiction should rest on legislation and not on executive decree.
- 3) There must be effective access to a judge in any civil procedure and in particular cost must not be a bar to such access.
- 4) The right of a judge to manage the procedure within the appropriate legislative rules should be affirmed in order that civil procedure should not become a refuge for dilatory.
- 5) The right of appeal against, or review of the legality of any judicial or administrative decision should be guaranteed.
- 6) A judge or administrative tribunal should give written reasons for any decision if required to do so by any party to the case.