

## **First Study Commission: Questionnaire for the 2007 Meeting**

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### **First Study Commission Status of the Judiciary and Judicial Administration**

#### **QUESTIONNAIRE**

#### **ACCESS TO JUSTICE**

##### *Introduction:*

Everybody should be guaranteed access to the courts, whether this is to make or defend civil claims or to defend a criminal charge. (See: UN-Basic Principles on the Independence of the Judiciary para 5 or European Convention of Human Rights Article 6 and other similar provisions).

This questionnaire aims to find out if there are obstacles to this access to justice and what means may be used to overcome it? The questionnaire concentrates on access to justice for individuals, as opposed to corporate entities.

##### **I.) *The costs of bringing or defending a civil claim or defending a criminal charge:***

It is a fact that the costs that a party has to pay, when it wants to use the court system (for instance to bring or defend a civil claim) will influence an individual's decision on whether to go to court at all or to pursue/defend a claim in court. Different systems of legal aid try to reduce this obstacle to justice. A special problem may occur if the costs of experts cannot be met from legal aid funds.

**Question 1:** (a) Is there legal aid in your country? *Yes*

(b) Is this available for individuals in all courts, both civil and criminal? *Yes, for anyone in criminal cases and for anyone who proves to be poor in other matters.*

**Question 2:** Which costs are covered by legal aid?

(a) the costs of using the court? *Yes* (b) the costs of the lawyer? *Yes. Public Attorneys are provided by the Judicial Power and paid on a monthly basis by the State.*

(c) the costs of experts (either appointed by the court or engaged by the parties directly)? *Yes, but only for the ones who have the benefit of "special help because of poverty", and only towards experts appointed by the court (not engaged by the parties).*

**Questions 3:** What are the limitations of legal aid:

(a) are there financial limits to legal aid in (i) civil: *No, but the aid is given to people that prove to be poor (who earn less than a certain amount of money per month and who do not have real estate goods)* and (ii) criminal cases: *No limits. The aid is given to anyone who wants it.*  
(b) are there limits on (i) the type or (ii) choice of lawyers or experts that can be used if legal aid is claimed by an individual? *Yes there are. LAWYERS: People using legal aid can't choose their lawyers. There is a whole public system of shifts that organizes what Attorney will take each case. These Attorneys are Public Servants; people can't choose them and they can't deny to work in a specific case. EXPERTS: as we said before (2, c) the experts paid by legal aid are appointed by the judge and cannot be chosen by the parties out of the court.*

**Questions 4:** Who grants legal aid for civil and/or criminal cases? Is it granted by a body which is under the control of the judiciary or by an extra judicial organ? If the latter, describe this organ. *It is granted by a body ("DEFENSORIA DE OFICIO") that belongs to the Judicial Power but has real technical independence, without any control of the magistrates. These Attorneys are mostly full time workers who are not able to have any other job, but some of them are part time workers who are allowed to work as Lawyers in other areas of Law (for instance, if they are Public Attorneys in Criminal cases, they can work as private lawyers in civil matters).*

**II.) Information about the judicial system:**

Only those who know about the possibility of using the courts to make or defend a claim, and the possible procedures that they are going to face there, will be able or willing to go to court. Therefore information and knowledge about how the courts and the judiciary function are essential:

**Question 5:** Are students in

(i) schools and  
(ii) universities and colleges,  
taught about the court-system, the jurisdictions of the various courts, the judiciary, the rights of citizens to use the court systems and how the system functions? *Not much. Out of the Law Schools, this information is given in schools and universities, but the quality and amount of information received/learnt by the students is quite poor.*

**Question 6:** What means are there for informing potential litigants or other users of the court system about

- (i) the court system and how it is organised;
- (ii) the judiciary;
- (iii) the procedure in courts (civil and criminal);
- (iv) how to get assistance to make or defend a case in court;
- (v) how much court procedures may cost?

(examples of means to disseminate this information may be: internet; advice bureaux; books/pamphlets published by the court service/government)

*There is a website of the Supreme Court, and the Uruguayan Association of Magistrates is preparing a website as well. In order to know the Laws people can read them at the Parliament's website. There is a free phone-line to ask questions to the "DEFENSORIA DE OFICIO" (Legal Aid) and another one to ask for help in Domestic Violence cases. There are also leaflets of Defensoría de Oficio available in the offices belonging to the Judicial Power. A wide variety of books is also available in bookstores and public libraries.*

### **III.) Access for minority groups (eg. ethnic or language groups):**

Special efforts may be necessary to ensure that members of minorities have the same rights of access to justice as do the majority group in a country.

**Question 7:** (a) Are there special arrangements to ensure that ethnic/language minorities are aware of their rights of access to justice.

(b) What special arrangements (if any) are made to ensure that those minorities are able to obtain equal access to justice?

(c) Are there facilities to enable ethnic/language minorities to have cases conducted in their language/the proceedings translated for them to follow?

*In our little country, we don't really have minorities who do not speak Spanish. Foreigners who need a translator to face a court are generally provided of a translator by their Embassy or by an Association. The Uruguayan Judicial Power provides freely a "translator" to people that are mute and deaf.*

### **IV.) Delays in the justice system:**

"Justice delayed is justice denied". The problem of delays in dealing with both civil and criminal cases is encountered in many countries. Delays in cases can amount to a serious denial of the right to access to justice for individuals.

**Question 8:** (a) In your country are there serious delays in dealing with civil or criminal cases because of "structural" reasons - e.g. a lack of judges/courts/experts/lawyers who are prepared to deal with legal aid cases.

(b) If there are please explain what they are.

(c) Are there plans to deal with these problems?

*There are not so serious delays in civil cases, despite some lack of judges. In criminal cases, there are some delays that are concerning a lot of people, so there are*

*nowadays some projects of structural changes and a Commission is working hard on this issues.*

**V.) Procedure in courts:**

Formality in procedures may prevent individuals having access to justice.

**Question 9:** Are there any examples in your country. Please describe the problems. (e.g. mandatory representation by a lawyer, but heavy cost/ few lawyers available; necessity to appear at court but excessive distances to court buildings etc.).

*We seldom have this problems. Civil Procedure Law says that the Judges can go to the places and do the hearings in the interior of the provinces, but in general this doesn't happen and people go by their own means to Court. The number of Attorneys is not a problem. In cases of less than a certain amount of money (approximately U\$S 250) the representation by a lawyer is not mandatory.*

**VI.) Enforcement:**

Effective access to justice also includes the need to ensure that judgements are enforced effectively.

**Question 10:** (a) Who ensures that a judgment is properly registered and enforced against a party?  
(b) Do problems with effective enforcement exist?  
(c) If so, please describe them? What might help to improve the situation?

*The notification and enforcement of a judgment is directed by the same judge who judged in first instance, and we do not see structural problems in this issue.*

*The most important obstacle in enforcement is insolvency: in many cases a judgment says that A has to pay \$ to B but as A doesn't have any incomes nor goods, B is not paid.*

**VII.) Other Obstacles:**

**Question 11:** Are there other obstacles to access to justice? If so, please, describe them

**VIII.) Recommendations:**

**Question 12:** In your country are there any existing practices or reports/proposals for the future on the subject of improving access to justice that you would recommend to the judiciaries of other countries.

*As the Commission of Reforming the Criminal Procedure is working on it, we still cannot recommend a method in this area.*

*But as a recommendation we can say that in the interior of our country we have "Peace Courts" (with Justices of*

*the Peace) and in many of them it is possible to litigate without an Attorney (in villages where there are less than 3 Lawyers). The Justices of the Peace are, in general, aware of the needs and reality of the people in the area and they provide a quick and good access to justice.*

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