



Second Study Commission
Civil law and procedure

Meeting in Athens (Greece) - October 9-13, 1994

Conclusions

COURTS PROCEDURES WITH REFERENCE TO REDUCTION OF DELAYS

The Commission agrees that in the vast majority of legal systems examined, delays in procedure are excessive. Litigants are entitled to expect that a case should be decided within a reasonable time.

The Commission reminds government authorities of their obligation to provide an effective infrastructure sufficient both in personnel and material to permit the realisation of this objective.

The discussion within the Commission centred in particular around the following points:

Lapse of time between the conclusion of the case and the issue of judgement: The use of a single judge; the possible introduction of extrajudicial procedures; the intervention of the judge towards controlling procedure; cooperation between judges, public authorities and the legal profession.

1. Although delay by the judge in issuing his decision is very much a secondary factor in overall delays, nevertheless it is his duty to observe certain time limits. Two approaches were expressed. According to one, the judge ought not to exceed a reasonable time depending on the circumstances of the case. According to the other, a fixed time limit should be imposed.
2. The recourse in common law countries to a single judge at first instance is becoming more and more common in a number of other systems. It would appear to be one of the most useful ways of improving the functioning of justice. Introduction of a single judge to appellate procedures must be viewed with great circumspection.
3. To some extent recourse to extrajudicial procedures where the parties agree is acceptable. However any such tendency should not lead to a marginalisation of proper legal procedures, and must not be made compulsory to the extent of depriving citizens of their right to submit their disputes to a properly qualified court.
4. The judge should have the power to intervene directly in the enforcement of procedures designed to accelerate cases and avoid abuses of procedure. A too liberal system leaving the initiative to the parties would seem to be no longer acceptable. Excessive interventionism must however be avoided.
5. It is recommended that cooperation between judges, public authorities and the legal profession should be encouraged.