

**QUESTIONNAIRE
of the 1st Commission 2007**

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**

Question 2: Which costs are covered by legal aid?

- (a) the costs of using the court? **Yes**
(b) the costs of the lawyer? **Yes**
(c) the costs of experts (either appointed by the court or engaged by the parties directly)? **Yes, for experts engaged by the courts**

Questions 3: What are the limitations of legal aid:

- (a) are there financial limits to legal aid in (i) civil; and (ii) criminal cases. **Yes (i and ii): legal aid is available only if income and/or estate do not exceed a certain amount. (If the question aims to the amount of legal aid, the answer would be as follows: There are not financial limits to the legal aid. The individual is granted legal aid. The lawyer he has chosen is paid directly by the court, and it is the court that determines the lawyer's salary based on the lawyer's hour list and a salary rate set in administrative regulations.)**
(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? **i: Yes, admitted lawyers only; ii: No (experts have to be engaged by the courts though)**

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. **The court itself. The courts decision may be appealed to a higher court.**

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 **Yes, but only basic elements**
(ii) universities and colleges, **Yes in colleges (partially); No in universities (except students of law of course)**

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?

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)

internet sites of courts (of varying quality); pamphlets published by the courts (of varying quality and depending of the canton)

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. **in rare cases (dependent of special topics) there are pamphlets in different languages**

(b) What special arrangements (if any) are made to ensure that those minorities are able to obtain equal access to justice? **none**

(c) Are there facilities to enable ethnic/language minorities to have cases conducted in their language/the proceedings translated for them to follow? **If necessary there are interpreters involved in the proceedings. When legal aid is granted, the party has not to pay for the interpretation.**

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. **No, not in general. It is discussed though in specific legal areas, that there is a delay because of lack of experienced judges or prosecutors, especially in the field of white-collar criminality.**

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

(c) Are there plans to deal with these problems? **No**

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.). **No**

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? **In a criminal case, it is the task of the administration - enforcement authority - if necessary with aid of the police, to enforce the judgement. In a civil case the other party has to enforce the judgement oneself, with instruments that the State gives at hand (f.e. debt enforcement agencies, courts)**

(b) Do problems with effective enforcement exist? **No**

(c) If so, please describe them? What might help to improve the situation?

VII.) Other Obstacles:

Question 11: Are there other obstacles to access to justice? **No**

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.

We have a good system of legal aid. And there are possibilities of free legal advice by legal clerks at first instance courts and the lawyers associations are providing free legal advice, too (however both form of legal advice cover just questions of basic quality and for more detailed questions the individual has to engage a lawyer, with the possibilities of legal aid of course, if his or her financial possibilities don't reach the limits).