COURSE MATERIALS

PUBLIC AND PRIVATE JUSTICE: DISPUTE RESOLUTION IN MODERN SOCIETIES

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The Contribution of The CEPEJ to Justice Reforms in Europe

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28, May – 1, June 2007
Inter-University Centre
Dubrovnik, Croatia

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NOTES FOR SCHOLARSHIPS, TRAVEL AND ACCOMMODATION

If you've been awarded a **per-diem scholarship** by the PPJ Course, you will be able to receive all information and payment after the opening ceremony on Monday (May, 28th).

If your scholarship covers **travel expenses**, please note that these will be reimbursed on Monday (May, 28th), after the program, or on Tuesday (May, 29th). In order to get your travel cost refunded, please give your tickets to the Course organization team members so that they can be copied. Upon return home, you are obliged to send in your ticket in the envelope provided for you by the Course Team.

If your scholarship covers **accommodation expenses**, please note that everything will be taken care of directly with your hotel or the Dormitory. We are unable to cover the cost you might make in terms of additional services available at the hotel, such as the mini-bar or fitness club.

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SOCIAL ACTIVITIES

Monday, May 28	Dinner in the Old Town (20 Euros)
Tuesday, May 29	Guided Group Tour of the Old Town Walls (cost 50HRK / 7 Euros)
Wednesday, May 30	Study Trip – Dinner (110HRK / 16 Euros) ***Transportation to the Island of Kolocep is covered by the IUC***
Thursday, May 31	Lunch at Sesame Slow Food Restaurant (20 Euros) Dinner in the Old Town (20 Euros)

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Monday, May 28

Opening Remarks (10,00 – 11,30)
Ms. *Ana Lovrin*, Croatian Minister of Justice
Sir *John Ramsden* Bt., Ambassador of The United Kingdom
C.M. Trooster, Ambassador of The Kingdom of The Netherlands
Vincent Degert, Ambassador of the EU
John Stacey, Vice-President of the CEPEJ
Branko Hrvatin, President of the Supreme Court of the Republic of Croatia

Public and Private Justice: Introduction and Book Promotion (11,30 – 12,30)
Remco van Rhee and *Alan Uzelac*: Introductory Remarks by Editors and Course Directors

Lunch Break (12,45 – 14,00)

Improving Efficiency of Justice in Europe: Achievements of the CEPEJ (14,00 – 16,00)
Pim Albers (CEPEJ Secretariat): Evaluation of European Justice: Achievements and Challenges
John Stacey (London) and *Alan Uzelac* (Zagreb): From TF-DEL to SATURN: Brief overview of the work and achievements of the CEPEJ's Task Force on Timeframes of Proceedings
Jon Johnsen (Oslo): CEPEJ and Regional Development: the Nordic Study Example

Panel: What is interesting in the CEPEJ reports and how we can use them? (16,15-17,00)
Ng Garyein (Maastricht): Introduction

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Gar Yein Ng, Case management: Procedural law v. Best Practices

Abstract

Case management is a central activity of all courts of law.[1] "Effective case flow management makes justice possible both in individual cases and across judicial systems and courts, both trial and appellate. It helps ensure that every litigant receives procedural due process and equal protection."[2] Case management involves many actors and factors. Judges, though playing an important constitutional role in the judicial process, play only a small part in the overall case management process at court. Case management also involves administrators from the beginning to end, clerks and legal secretaries, judicial assistants in the research and judging phases, and court reporters and publishers at the end. Case management at court involves looking at case handling in primary processes, which are for most part regulated by procedural law, and organizational practices, which reflect the local situation of individual courts and their (human) resources. Environmental factors such as the needs for transparency and accessibility by parties and lawyers, and external influences from lawyers and experts also affect the efficiency of case management at court.

This presentation seeks to address the dilemma between the need to protect values found in procedural law of due process, fairness, equality[3] and the need to protect the organizational flexibility of courts to develop best practices in the face of challenges of backlogs, reasonable delays and due process.[4] The presentation is based on the author's PhD thesis. The thesis highlights how, in practice, the courts have a way of managing cases outside of framework of norms and laws, in order to reduce backlogs and achieve reasonable delays. Attached to this is the need to do further research on the best practices of the courts, and ensure that they conform to certain norms of equity and fairness in the treatment of citizens.

[1] See G.Y. Ng, "Quality of Judicial Organisation and Checks and Balances", p. 118, Intersentia, Antwerpen 2007; see also P.Langbroek & M. Fabri, " Case assignment to courts and within courts: a comparataive studey in seven countries", p.3. Shaker Publishing, Maastricht 2004
[2] D.C. Steelman, "Caseflow Management," Court Manager Vol. 18, No. 2, 2003 16
[3] See M.C. J. Vile, " Constitutionalism and the Separation of Powers", p.21 & p.312; see also J.B.J.M ten Berge, R.J.G.M. Widdershoven, "Bescherming tegende overhead: Nederlands Algemeen Bestuursrecht 2", p.60-63; Lord Millet, "The Right to Good Administration in European Law" p, 310, Public Law, Summer 2002
[4] See Ng, p. 130-131, p.283, p. 339.

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Tuesday, May 29

Access to Justice for Citizens: Legal Aid, Transparency of Judiciary and Other Issues (9,30 – 13,00)

Jon Johnsen (Oslo): Human Rights in the Development of legal aid in Europe. The Policy Work on Legal Aid in The CoE and The CEPEJ

Legal Aid in Croatia: Present and Future – Prospects for a New Act on Legal Aid

Goranka Lalić (Zagreb, CLC): Providing Legal Aid – Experiences of the Croatian Law Centre

Mirjana Radaković (Zagreb, CDPHR): Challenges of the participation in drafting of the Law on Legal Aid

Dragan Milić (Zagreb, SDF): Experiences of SDF in providing Legal Aid in Croatia: The Importance of Regulation

Gordana Grancarić (Zagreb, MJ): Legal Aid Draft Law – Current Status

Lunch Break (13,00 – 14,30)

Presentations and Panels (14,30 – 17,30)

Burkhart Hess (Heidelberg): EU trends in Access to Justice

Panel: What is the Role of Legal Aid Today? Which is the Best Legal Aid System

Zvonimir Jelinić (Osijek): Introduction

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Wednesday, May 30

Speed and Quality of Judicial Proceedings: Time-management, Reasonable and Optimum time (8,30 – 12,00)

Alan Uzelac (Zagreb): Just[ice] in Time: Judiciary and Time-management

John Stacey (London): Post-Woolf Landscape: New Developments in the UK

Paul Oberhammer (Zürich): Acceleration of Civil Procedure in the Austrian Development

Lunch break (12,00 – 12,30)

Study Trip to Island of Knowledge - Koločep Island (12,30 – 22,00)

Presentations and Panels: Ideal Timing in an Ideal Trial (13,30 – 17,00)

Fernhout Fokke (Maastricht): Civil Procedure and Fair Trial - Striking a balance between excessive formalism and 'anything goes'

Johanna Niemi-Kiesiläinen (Helsinki): Efficiency and justice in procedural reforms

Aida Grgić (Strasbourg): Formalism and Reasonable Time (contribution to the topic)

Jonathan Radway (London): Improving Case Progression and Efficiency in the Commercial Court of Zagreb

Introduction to the Island of Knowledge Institution

Dinner (17,00 – 22,00)

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John Stacey, Post –Woolf Landscape: New Developments in the UK

Summary

To recap on the reasons for the Woolf Reforms and explore how successful they have been. In this presentation I will be relying on the research undertaken by Prof. Peysner on behalf of my Department on the success or failure of the reforms.

I will not only discuss the changes to the procedural rules but also on the 'human element' looking at the impact on judges and lawyers and how they have had to adapt to new working practices.

But the story does not end there, it is important to look at how the reforms are being taken forward and reviewed, to this end I will give an overview of current and planned changes to the Woolf Reforms to ensure they still meet the needs of the customer and the organisation.

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Fernhout Fokke (Maastricht), Civil Procedure and Fair Trial - Striking a balance between excessive formalism and 'anything goes'

Abstract

Civil procedure couldn't exist without rules stipulating in which circumstances a case can be brought to a certain court and what rules should be followed in a certain action. In fact, that is what civil procedure is about. These rules, and especially rules on admissibility of actions, tend to be formulated in a rather precise way. This explains why judges have a kind of natural tendency to base final judgments on these rules, since this allows them to regulate their caseload by taking decisions that are based on clear cut rules and therefore seemingly can't be questioned. Moreover, in doing so they are backed by the generally accepted notion that a certain level of quality of proceedings should be maintained. Deformalizing procedural law without restrictions would lead to an anarchy of "anything goes" in procedures, to more insecurity about the outcome of a case and to an increase of work for already overburdened courts.

Nevertheless, this way of managing workload tends to degenerate into an excessive formalism that goes contrary to the right to a fair trial as embodied in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The European Court of Human Rights gave a large number of decisions that help judges to establish where to draw the line. It appears that five guidelines (rules of thumb) should be taken into account:

a) parties shouldn't be the victim of mistakes made by organs of the State;

b) rules can be strictly applied if the procedure itself is of a formal nature or the deciding court is the last in a line;

c) if mistakes can be redressed, the applicant should be given a fair chance to do so;

d) mistakes shouldn't be construed if it is not clear that they have been made; and

e) everything should be done to avoid applicants to become the victim of mistakes of their representatives in court.

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Johanna Niemi-Kiesiläinen
Professor of law, Umeå University

Efficiency and justice in procedural reforms: The Rise and Fall of the Oral Hearing

Introduction

This paper examines the (potentially) conflicting claims of fair trial and efficiency of justice. In the first part the development in the Council of Europe is followed. The second part of the paper uses Finland as a case study on procedural reform. In Finland the procedural laws were modernized in the 1990s with an ambitious aim to implement principles of modern procedural law. The project may have been too ambitious and costly and new reforms are drafted with the efficiency arguments in the foreground.

The purpose of the paper is to stimulate discussion on the fair trial and efficiency in the court reform. Can these claims be adjusted? Can we afford a fair trail? In the end of the paper I present a few more concrete questions to facilitate discussion on these issues.

The paper can be read selectively; each part can be read by itself and the case study can be read only concerning civil, criminal or appeal court procedure. The participants are invited to use their own experiences as a starting point for reflection and discussion.

Part I: Procedural reform in the work of Council of Europe

The human rights have always been the cornerstone of the activities of the Council of Europe. Founded in 1949 after the horrors of the war, the purpose of the Council has been to maintain and promote peace in Europe, based on democratic values, justice, individual freedom, political liberty and the rule of law.[5]

The European Convention and Court of Human Rights have played a crucial role in the upholding the human rights in Europe. As a model for the UN conventions on human rights and regional conventions, it has had a wide and lasting impact all over the world on the respect of individual rights. Still the European Court of Human Rights, with its jurisdiction over individual complaints and high respect for its decisions in all member states, has a leading role in the development of human rights.

The Court of Human Rights is struggling with a mounting case load at the moment. Paradoxically, the Court seems to find most often violations against the procedural rights and most specifically the right to a fair trial. At the time of writing I have in front of me a judgement from April 2007, in which the Court finds violation against

[5] Statute of the Council of Europe 5.5.1949, ETS 001, preamble.

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fair trial that has taken place in 1996 and in which the domestic procedures have been completed in the domestic courts in 2000.[6]

Besides the activities of the Court, also other organs of the Council of Europe actively promote the aims of the organization. In particular, the Council of Europe promote a greater unity between its members through common action, agreements and discussion in economic, social, cultural, scientific, legal and administrative matters.[7]

In the field of justice and legal procedures the Committee of Ministers has since the beginning of 1980s adopted several recommendations to promote human rights and to facilitate the reform of court procedures.

The cooperation has been intensified in the beginning of the 21st century with the establishment of CEPEJ, European Commission on Efficiency of Justice. CEPEJ is a new body, working under auspices of the Council of Europe and consisting of experts on the administration of justice from each member state. The Resolution establishing CEPEJ and confirming its Statute has been the foundation of new way of working with procedural issues in the Council of Europe.

The change in the work with procedural reform can be seen as the emergence of new approach to the management of the courts, which is commonly called new public management (NPM). New public management is the term used in social sciences for the new culture of leadership, management and organization of public sector services that has emerged in the late 1990s.

New public management must be set in the context of the reorganizing the declining welfare states. In the era of decreasing public funding and pressures to privatization, the possibility for the preservation of public services is seen in the efficiency of activities. Economic efficiency, emphasis on the results, instead of input and activity, and on leadership and management are key characteristics of NPM.[8]

New public management is sometimes described as the introduction of the managerial principles of the private sector to the public governance. This characterization is an oversimplification if not directly misleading in the context of procedural reform. Even if NPM has taken model from the management in the private sector, there is no doubt about that the court system can not be compared to the private enterprises; the goals are simply too different.

New public management puts emphasis on the functioning of organizational units. In some other sectors privatization is a key concept and even the work of public bodies is organized according to client/producer models.

[6] V v. Finland, judgement 24 April 2007, Appl. 40412/98.
[7] Statute of the Council of Europe 5.5.1949, art 15(b).
[8] John Clarke, Sharon Gewertz and Eugene McLaughlin (eds), New Managerialism, New Welfare? Sage Publications 2001.

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In the work of Council of Europe we can distinguish a shift from the old model of giving recommendations, based on the deliberations of the legal experts and processed through the political bodies, to the member states. Some of the recommendations are quite concrete and detailed, the Recommendation on civil procedure from 1984 as a prime example.[9] No doubt a lot of work and expertise has been put into the preparation of the recommendation. The intention seems to be to convince the member states in their law drafting through good arguments. The Appendix to the Recommendation, Principles of civil procedure designed to improve the functioning of justice, could be the first step towards a model law. The tone of the recommendations is benevolent and encouraging, always starting with the emphasis of the human rights and reference to the article 6 of the ECHR.

With the establishment of CEPEJ in 2002 the work with reform of court system and procedures has become more organized, permanent and systematic. In the resolution establishing CEPEJ the influence of new public management is apparent. The efficiency of the judicial systems becomes the key concept of the work. Human rights are still an important point of reference but the emphasis is now clearly on efficiency and functioning of the judicial systems.

Already in the Resolution of establishment the results of the judicial systems are mentioned[10] and the Statute defines as the tasks of CEPEJ the examination of the results of the judicial systems. The examination of results, which is typical to the new managerial culture, requires quantifiable measures, which are also mentioned in the Statute.[11] The economy and concern for the costs of justice are present in the two documents. Further attention is paid to the administration, management and use of information and communication technologies.

In the work of CEPEJ this new approach has taken concrete forms. It has carried out a major project collecting data on the functioning of the legal systems in member states[12] and commissioned several other studies on specific issues. The focus of this work is on the collection of quantifiable data from the justice systems of the member states and the development of the criteria for evaluation. Obviously, economic factors are collected and compared.

Another important measure for the functioning of the justice system is time, which coincides with one of the important human rights, right to trial within a reasonable time. A number of studies to analyse the practice of ECtHR on this issue has been published.[13] A whole program to analyse the processing time and

[9] Recommendation No R (84) 5 of the Committee of Ministers to member states on the principles to improve the functioning of justice.
[10] Council of Europe Committee of Ministers Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ), preamble.
[11] Statute of the European Commission for the Efficience of Justice, art 2(1)a.
[12] European Judicial Systems. CEPEJ 2006.
[13] Length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights. CEPEJ (2006). There are a number of doctoral theses in member states that approach this issue as well.

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delays in the national courts has been set up,[14] measuring criteria are developed, best practices have been identified, checklists drawn etc.

There seems to be a shift in policy from recommendations to monitoring and evaluation of the national justice systems. Behind this change seems to be the need for more active facilitation of reform in the member states; both the modernization of the procedures in the member states that have joined Council of Europe after 1990 and in the old member states that struggle with growing case loads and pressure to cut costs of the justice system.

Good policy reasons can be presented for the support of both approaches. There has obviously been and still is need for more cost and time conscious management of the courts. But there is also need for further discussions and reflection on the relationship between the requirements of fair trial and efficiency. Can we maintain good quality of procedures in the pressures of declining financing of the courts?

To facilitate such discussion I will present the Finnish court reform as a case study. Finland is a particularly interesting case because its out-dated procedural laws were completely reformed in the 1990s in the aspirations of modern procedural principles. The reforms have covered civil and criminal procedure in first instance courts and in appeal courts. The slogan of these reforms was orality, immediacy and concentration of the main hearing. The reform was also quite successful in the first instance courts. After the turn of the century the tide has changed. The principle of oral main hearing is in the decline and several reforms have reduced its application. The present reform proposals are driven by the need to increase efficiency of the court proceedings and to press down the costs of justice.

Part II: Case Study: Finland

The Civil Procedure

The reform of civil procedure in 1993 was an interesting experiment as it brought an antiquated Code of Procedure from 1734 to the modernity almost overnight.

The Finnish Code of Procedure dates from the Swedish Codex of 1734. The structures of the trial had remained almost intact since then. Some partial reforms had been made during two and a half centuries, most remarkably the rules of evidence in 1948, the introduction of legal aid from the 1950s onwards and the reform of procedures in the Supreme Court in 1978, but they had not touched the main structures of the trial.

A number of reform efforts had laid down the main principles for the reform. The first reform proposal was presented already in 1903 by Professor R.W. Wrede, who well acquainted with the procedural law in Bosnia Herzegovina and Bulgaria, and

[14] A new objective for judicial systems: the processing of each case within an optimum and foreseeable imeframe. Framework Programme CEPEJ (2004).

many of his idea saw light in the 1990s. But history took its course and delayed all legal reform in Finland until independence in 1917. Some of the later proposals were delayed because of the World Wars. In the 1970s, the position and recruitment of judges became an object of heated political controversy that effectively delayed the reform plans for more than a decade.

Therefore, the pre-reform procedure (until 1993) was out-dated and did not generally respect the modern principles of fair trial. Trials in the first instance were "semi-oral", that is, they consisted of a sequence of unstructured hearings. The intervals between the hearings were usually one or two months. Many trials, however, needed only one hearing because a number of simple cases were processed in the same way. The hearings of witnesses could be spread out on several hearings. Since the trials could take a long time, it was possible that the same judge did not preside over the whole trial. Therefore, what was said during the hearings was recorded and the transcriptions were often the basis of the judgement and the proceedings in the appeal.

The reform of 1993 was based on modern procedural principles. The aim of the reform was, not surprisingly, to improve the legal security.[15] More specifically, the aim was to improve the possibilities of courts to handle the cases in a thorough manner and to write a well reasoned judgement.[16]

To achieve these aims, the structure of the trial was changed. A clear distinction between the preparatory stage and the main hearing was made. To allocate resources optimally, simple cases should be decided during the preparatory stage. The main hearing should be organized according to the principles of orality, immediacy and concentration. These three principles – orality, immediacy and concentration – soon became the slogan of the reform.

To achieve these aims and to realize these principles, two structural reforms were made. First, the procedure should be flexible and it should be fitted to the demands of the nature of the individual case. Secondly, the process would be the structured into two phases, the preparatory phase and the main hearing. The main hearing would be uninterrupted (concentration) and oral and the judge(s) could not change during the trial (immediacy).

In the preparation of the 1993 reform, a funnel metaphor was frequently used to illustrate the flow of cases through the civil procedure. All cases would enter the procedure in the same way, simple cases would be decided on documents, a number of cases would be decided after a preparatory hearing and only the most demanding cases would proceed to the main hearing. Thus, the flow of cases became narrower with each step in the procedure and an illustration of the procedure looked like a funnel.

Several institutions of civil procedure were changed in order to facilitate these aims and principles.

[15] Government Proposal for the reform of civil procedure in district courts HE 15/1990 p. 5.
[16] Law Committee of the Parliament LaVM 16/1990.

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Flexible process forms:

- A separate process for the collection of undisputed monetary claims (*maksamismääräys*; payment order) was abolished. These kinds of collection claims are now decided in civil procedure on the basis of a summary action. The decisions are usually made on documents in the preparatory stage of the trial.
- Transfer of cases from the summary proceeding to an ordinary civil proceeding, when the claim is disputed, is smooth.
- A separate procedure for family matters and *jurisdictio voluntaria* remained[17] but the differences between application matters and ordinary proceedings diminished.

Decisions at different stages

- The courts were given powers to judge on undisputed claims, for example when the defendant admits the claim, and manifestly unfounded claims on the documents during the preparatory stage.
- A default judgement can be given during the preparation if the defendant declines to respond to the summons or, at a later stage, if a party fails to respond to a request to deliver a statement or to appear in the court.

Preclusion rules

- The object of the trial should be defined clearly already at an early stage of the trial.
- Both the application for the summons and the defendant's response are regulated in detail by law. The claims, grounds and evidence should be given in detail. In the response, the defendant must make any procedural objections, to state whether she contests or admits the claim or part of the claim, to state the grounds for contesting and to identify evidence.
- The preparatory stage proceedings are regulated in detail. The parties should only be allowed to file one written statement after a defined request and only one preparatory hearing should be held.
- The preclusion rules are rather inflexible. The amendment of claims or their grounds and the introduction of new evidence is restricted during the preparatory stage and all but denied in during the main hearing.

Favour mediation

- The court shall discuss the possibilities of conciliation between the parties and, if appropriate, promote and propose a settlement in the case. The court can confirm a settlement and such a confirmation has the same legal effect as a judgement.

[17] Application as a form of action was first regulated in 1987 by the Law on application proceedings (306/1986). The regulation of applications was transferred to Chapter 8 ('Procedure in Application Matters') of the Code of Procedure in 2002 (768/2002).

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Main hearing

- The main hearing was structured into the presentation of the claims and of the response, the opening statements, the presentation of evidence and the closing arguments.
- According to the principle of immediacy, the material presented at the main hearing is the basis of the judgement. Thus, even though the claims and grounds are clarified and documentary evidence collected during the preparation, they have to be presented at the main hearing.[18]
- According to the principle of concentration, the main hearing may not be interrupted and it can be adjourned only under strict conditions. In case of interruptions, a new main hearing has to be held.
- Another aspect of the principle of immediacy is that the same judges hear the case from the beginning to the end. If a judge has an impediment to attend the trial to the end, a new main hearing must be held with a new judge.[19]
- The presentation of the case and the closing arguments are not documented, taped or recorded in stenography. The oral evidence is taped and the tape is stored until a final judgement in the case is reached and, in any case, for at least a six- month period. The tape is not usually transcribed, only if the court decides to do so. [20]

Legal costs

- The main rule has consistently been that the loosing party shall compensate the costs of the winning party. To discourage 'unnecessary' law suits, a rule that each party shall bear its own costs, if the legal issues at trial were so uncertain and unclear that there was a reasonable ground for the trial, was repealed in the 1993 reform.[21]

The reform was successful

- The flexible structure of the trial has been utilized and simple cases are processed fast. In 2004, out of almost 160 000 civil actions in the district courts, about 96 per cent were decided on documents. The majority of those were undisputed collection claims. The figure includes also circa 50 000 application matters, such as undisputed divorces and other family matters, which were also decided on the documents.
- Hearings were held in 6000 cases in district courts in 2004. One-third of those were decided after a preparatory hearing and two-thirds after a main hearing (Ervasti 2005, p. 19). The number of oral hearings in civil cases declined after the 1993 reform from over 10 000 in 1995 to its present level during the latter half of the 1990s. Also, in a long perspective the number of civil cases seems to be low (Ervasti 2004, pp. 57–58).

[18] For exceptions see Code of Procedure OK 17:8a–e.
[19] Code of Procedure OK 6:1.
[20] Code of Procedure OK 22:6, 22:9 and 22:10.
[21] Government Proposal for the reform of compensation for legal costs HE 191/1993 p. 3.

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- The hearings have generally been structured as intended; in opening statements, the presentation of evidence and the closing arguments.
- The reform has enhanced good legal culture and the self-respect of the judges has increased.

Everything did not turn out as expected

- The structural distinction between the preparatory hearing and the main hearing did not hold and the boundary has become blurred. The court could hold a main hearing immediately after the preparatory hearing, in practice the same day or within 14 days. Such main hearings became very common, almost the rule, and in practice a continuation of the preparatory meeting.

- The quality of judgements has no doubt improved. But the judgements tend to be long and detailed. Partly this is due to fact that witness and party testimonies are not transcribed and the judges feel obliged to make detailed references to the evidence in the reasoning parts of the judgements.

- The preparatory stage has been longer than anticipated. The law mentions only one form of preparatory hearing. In practice, however, the preparatory hearing is sometimes adjourned and continued after some other preparatory measures, like obtaining documentation or settlement negotiations, have been carried out. The preparation of a case can also be differentiated so that separable parts of the case are each prepared separately according to OK 5:23. These provisions give the court a flexible tool for appropriate preparation of large lawsuits but they also allow the preparatory stage linger on.

Costs

- The costs of litigation have increased after the 1993 reform. According to recent statistics the legal costs have doubled since 1995.

- The costs may have a prohibitive effect on the middle class disputants. Even if legal aid or insurance may cover the costs of the party in some civil cases, the loosing party is liable to compensate the costs of the winning party and these costs are not covered by any compensation system. The threshold for going to court is deemed too high at the moment (Ervasti 2004, p. 60).

Subsequent developments

- Some of these concerns have been addressed by the review of the legislation in 2002. The border between the preparatory stage and the main hearing was made clearer. The specific provisions for the main hearing immediately after the preparatory meeting were abolished. Thus, the main hearing should always be conducted according to the same rules.

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- The main hearing should be more efficient and start with a summary by the court of the events in the preparation, instead of the party dispositions. Then the court asks whether the summary correctly presents the opinions of the parties.

- Before the reform in 2002, a judgement on the merits was only given after a main hearing in a disputed civil case. If the facts are not disputed or the only evidence put forward is documentary evidence, the case can be decided on the documents in the preparation.[22] Such a decision requires that both parties have consented not to have a hearing. It has to be noted that after a preliminary hearing, a judgement cannot be given according to OK 5:27a but that the case goes to the main hearing.

- The preparatory hearing became more flexible as it can be hold as a telephone conference or by other communicative link when appropriate (OK 5:15d).

- The cost rule allowing the court to decide that each party is partly or totally liable for their own costs when the loosing party had reasonable legal grounds for the litigation or it is otherwise reasonable (OK 21:8a; KKO 2002:89).

- New Act on Mediation in Civil Procedure[23] came into force in the beginning of 2006. The act provides a mediation procedure in the district court that can be initiated either before a case has been filed in the court or during the civil procedure. In this procedure, the district court judges act as mediators.

- A new proposal on summary proceedings takes as its starting point to improve efficiency. The most radical proposal is to start to serve the summons by ordinary letters, without proof of delivery. The service by bailiff or by letters with a signature by the receiver has been a fundamental guarantee of legal security until now. Reference to service without proof of delivery is mentioned in two recent EU documents.[24]

The Criminal Procedure

The criminal procedure was reformed in 1997 according to the same principles as the civil procedure four years earlier. Since the criminal procedure starts with the crime investigation, there was no need for the preparatory stage of the trial. Most trials go directly to the main hearing.

[22] Code of Procedure OK 5:27a, Government Proposal HE 32/2001, 54.
[23] CivMedAct 663/2005.
[24] OM TR 2006:15 European enforcement order for uncontested claim Regulation (EC) No **805/2004** art 14; European order for payment procedure (Regulation) 1896/2006 art 14.

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The main hearings in criminal procedure tend to be well structured and conducted under discipline. This is partly due to the active training programs for the prosecutors.

The problem, however, has been the low turn-out rate of the accused, and occasionally also of the witnesses, at the main hearings. Because the main hearing has to be cancelled when it can not be hold uninterrupted, cancellations became common.

The remedy undertaken in the 2006 reform has been somewhat drastic; a criminal judgement can now be given on the documents. The conditions are: 1) the defendant and the victim must agree to the procedure on the document, 2) the maximum legal punishment for the crime is at most two years' prison sentence, 3) the concrete punishment may not exceed six months' prison sentence and 4) the accused confesses the crime. Interestingly, the law does not require that the accused is informed of the sentence and agrees to it, nor should he or she agree to the claims of damages.

At the same time, a law on mediation in criminal cases was passed. Mediation is carried out by lay persons and organized by the municipalities.

The Appeal Procedure

The procedure in the appeal courts was reformed in 1998. The essence of the reform was the introduction of oral hearings in the appeal courts where the procedure had previously been mostly based on documents. The reform of 1998 was absolutely necessary since the procedure on the documents did not fulfil the requirements fair trial. Therefore Finland had made a reservation to the ECHR on this point and the reservation was removed after the reform.

The reform has been the object of heated controversy ever since. It also turned out to be extremely difficult to enforce and in 2003 the appeal court procedure was changed again, this time to curtail full hearings of cases that were obviously correctly decided by the district courts

The law recognizes two forms of procedure in the appeal court; one on the documents and another with a main hearing. Even after the reform the most common form of procedure is on the documents. A little over one quarter of the cases are heard in the main hearing. The only form of oral hearings in the appeal court is a main hearing. Especially two features underline the nature of the main hearing. First, it is conducted according to the same rules as a main hearing in the district courts and, secondly, only the dispositions and evidence presented in the main hearing are considered as the basis for the judgement.[25] In practice, this means that all evidence is taken up in the main hearing and one of the main criticisms has been that the main hearings in the appeal court are often repetitions of the main hearings in the district courts.

[25] OM 26:24-25. If the opposite party, however, is not present in the main hearing, his or her statements from the district court are taken up at the hearing.

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The rules for holding a main hearing have, thus, become the focus of the controversy around the regulation. The main hearing must be arranged either by the request of a party or for the re-evaluation of the oral testimony. According to the law, the request by a party seems to play a decisive role in the arrangement of the main hearings. In practice, however, the requests by the parties are not experienced as a big problem. And notwithstanding a request, the court does not arrange a main hearing if such a hearing would be clearly unnecessary.

The main hearings for the re-evaluation of the oral testimony, to the contrary, are experienced as a problem. The court may not change the judgement on the basis of the re-evaluation of the oral testimony if it does not hear the testimony itself.[26] This general principle of procedural, which has been confirmed in the practice of the ECHR, has turned out to be extremely problematic because the law does not stipulate what triggers the need to re-evaluate the testimony. The practice of the Supreme Court indicates, both before and after the 2003 amendments, that when a party has challenged the evaluation of testimony by the district court, the appeal court must, as a main rule, hear the testimony again – without prejudice to the outcome of the re-evaluation.

The amendment in 2003 introduced a screening of the appeals that comes close to leave to appeal. The court of appeal can decide on the handling of the appeal in a screening procedure on documents (OK 26:2). The appeal can be dismissed without further processing in the screening procedure if it is clear that
(a) There is no need for a main hearing in the case;
(b) The decision or the judgement of the district court is obviously not erroneous, and
(c) Considering the nature of the case, the interests of the parties do not require a full hearing of the case.

The screening does not solve the central problem which is the threshold to main hearing. Nor does it solve the problem of main hearings tending to become repetitions of the main hearings in the district court.

Court Structure

Simultaneously with the reform of the civil procedure the structure of the district courts was changed. The historical difference between city and rural courts was abolished. The chief judge of the district court who has a historical title *laamanni* has managerial responsibility for the court. The district court judges *(käräjätuomari*) are independent in their judicial discretion. In criminal matters also lay judge participate in the decisions.

In civil cases, the basic quorum according to the law is three judges. In matters concerning divorce, custody of children, maintenance, paternity, adoption, orders of custodian and lease of premises the quorum consists of one judge and three laymen. Another judge or one more layman can strengthen this quorum. These

[26] The same applies to an inspection at site.

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quorums, however, are hardly ever used in practice. The full quorum of three judges is only used in about four per cent of the cases. If the full quorum is not necessary because of the nature of the case and neither party requests it, the main hearing can be held before a court consisting of only one judge. Almost all civil cases are adjudged by a sole judge.

A judge does not necessarily handle the default judgement based on a summary judgement. Young lawyers who take their court training (clerkship) in the district court and other personnel of the court, who obtained the necessary education, can also give default judgements.[1]

The quorum of one judge and three laymen is used in major criminal cases. A sole judge presides over cases in which the scale allows a sentence of one and a half years in prison and the concrete punishment is fines.

Today, there are 58 district courts (*käräjäoikeus*). They vary from small courts with three judges all the way to the district court of Helsinki with almost one 100 judges.

Points for Discussion

We can distinguish in the development of the Finnish procedural law parallels to the development in the policies of Council of Europe. The reforms in the 1990s were based on an ambitious application of principles of fair and good trial. Actually, many of the Committee of Ministers Recommendation (84) 5 on civil procedure were implemented.

But there is a saying the 'best is the worst enemy of good'. Subsequent changes have meant certain compromising of the original principles. There seems to be also a tendency to keep up the good principles for the 'real' trials and to create summary or simplified procedures for others.

There are several issues that could be discussed on the basis of the development in the Council of Europe, the case study of Finland and the experiences of the participants in different member states. Here are some suggestions.

- Is there a tension between the human right to a fair trial and the efficiency of the administration of justice? Can these contradictory pressures be accommodated?
- Can we afford a fair trial? Is the right way to improve efficiency to create and streamline summary and written procedures or should the ordinary procedure be made more flexible and appropriate? Are written procedures necessarily more efficient than oral hearings? From whose perspective?
- What is the content of the human right to a fair trial? Is it only formal? Under what circumstances can a person refrain from the right to a fair hearing? What controls should the court/prosecutor exercise to check that a person has renounced his or her right to a fair hearing of free will?

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- Few European jurisdictions have such a rich tradition of oral hearings as the American one. What is the development tendency of legal culture regarding oral hearings today? What is the role of law schools in educating lawyers to master oral presentation and examination of witnesses?
- The possibilities and limits of mediation. Is mediation a new service to the parties or is it a method to decrease the workload of the courts and cut costs? Who should do mediation and what relationship to the court proceedings should it have?
- The legal culture in the appeal courts is changing in many countries. On the other hand the oral hearing also in appeal courts is seen as part of the fairness of the procedural system but on the other hand there are pressures to restrict access to oral hearings in the appeal courts. Which should be the main rule in the appeal courts, oral or written procedures? And how should access to hearings be restricted?

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CEPEJ Conference May 2007
Public and Private Justice: Dispute resolution in Modern Societies
Inter University Centre, Dubrovnik

Background information to presentation
Improving Case Progression and Efficiency in the Commercial Court of Zagreb

– A CASE STUDY –

Jonathan M Radway, LLB, Barrister, MCMI, MIMC

REPUBLIKA HRVATSKA
TRGOVAČKI SUD U ZAGREBU
(COMMERCIAL COURT OF ZAGREB)

Modernising Court Administration &
Court Management Project 2006

Inception / diagnostic report (June 2006)

Introduction

The UK government, through its Foreign & Commonwealth Office (Global Opportunities Fund), is providing funding to support the Croatian Ministry of Justice modernise court administration and court management. One element of this support is a pilot project, designed to help the Commercial Court in Zagreb in its own attempts to improve the operations of the court. Lessons learnt from this pilot project will be shared with other courts in Croatia, and with the relevant government bodies and international organisations. Agencia Consulting Ltd[27] is implementing this pilot project.

This court has been chosen because of:

- Its history of effective liaison with international projects;
- The large volume of cases it handles; and
- The enthusiasm of its judges, managers and staff to provide an improved service to its users and stakeholders.

The project commenced in June 2006 and will end in July 2007. During this time the key British project staff have been Steve Jacobs (Project Manager) and Jonathan Radway. Steve Jacobs has worked on court modernisation projects in the region for the past three years, and prior to that was an inspector of courts in the UK. Jonathan Radway has a decade of experience leading courts and is the former Director of Performance of Her Majesty's Courts Service in the UK. He has judicial experience as a Deputy District Judge (Magistrates' Courts).

[27] www.agenciaconsulting.com

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Trgovački Sud U Zagrebu (TSZG) – The Zagreb Commercial Court

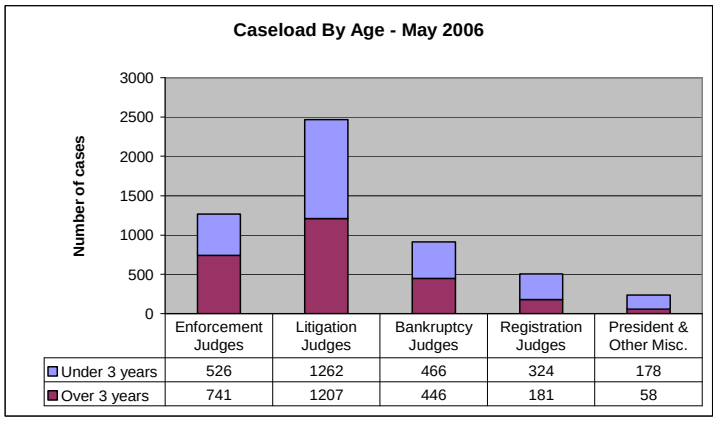
The Zagreb Commercial Court is one of 12 first instance Commercial Courts in Croatia. The country has a single, second instance court in this jurisdiction – the High Commercial Court. The TSZG handles 60% of the total Commercial Court caseload for Croatia, reflecting the fact that many companies that operate nationally have their headquarters in Zagreb.

The court has about 51 judges[28] working in four Divisions[29], supported by 180 other employees (the staff structure is shown at Annex 1). At time of writing almost all of the court's administrative processes are paper-based, although many of these papers duplicate information held on the court's 150 PCs, which have been linked through a local area network (LAN) and information can be shared on the court's intranet to which the judges have access. However, court users are not yet able to file, or receive, documents electronically.

The court's information technology position, however, is about to undergo a significant change with the implementation, originally due to commence in January 2007 but delayed, of the Integrated Court Management System (ICMS). This countrywide initiative is being implemented by IBM. The roll-out of this programme will have a significant impact on many of the court's day-to-day processes.

Workload of the Commercial Court

In May 2006 all the TSZG's judges completed caseload returns at the request of the President of the Supreme Court. We were able to draw on those returns to analyse the then current workload of the court. The President of the Supreme Court was particularly interested in the number of cases that had been within the system for longer than three years. In summary, this survey suggested that of 5,389 cases[30] open in May 2006, 2,633 (49%) had been running for more than three years and 2,756 (51%) less than 3 years. The chart shows those cases broken down by Division. The figures above provided some initial sense of scale of the length of time cases took to complete (i.e. the proportion of cases that had been in the system for longer than three years). In addition, however, other data provided to us identified the start date of all the unresolved cases before the court. We undertook further analysis to identify how long cases had been in the system, so that a more accurate picture of delays would emerge[31].



	Enforcement Judges	Litigation Judges	Bankruptcy Judges	Registration Judges	President & Other Misc.
Under 3 years	526	1262	466	324	178
Over 3 years	741	1207	446	181	58

[28] Some of the court's judges and counsellors are assigned to the High Commercial Court for periods up to 4 years and the actual number of judges active at one time in the TSZG fluctuates accordingly.
[29] The Divisions are Enforcement, Litigation, Bankruptcy and Registration (of corporations)
[30] Breakdown: 1267 enforcement; 2469 litigation; 912 bankruptcy; 505 registry and 236 miscellaneous. Subsequent investigation showed that this population was not complete.
[31] See Post Script on page 10

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We also examined the Annual Report for 2005 submitted to the Ministry of Justice by the TSZG. This report included a breakdown of unresolved cases at the end of 2005, cross-tabulated with the year of commencement. Unlike the data submitted to the President of the Supreme Court, this table included all types of case, including a significant number of outstanding enforcement actions. In total, the court had 41,139 unresolved cases at the end of 2005 and of these 8,695 (21%) had been unresolved for more than three years

Summary of issues emerging during diagnostic phase

We interviewed a number of judges, employees and staff at the TSZG. Those interviews were designed to gather information regarding day-to-day working arrangements in the court, and to explore the problems being faced by judges and staff in managing the workload of the court. We were also interested in learning about those aspects of the court's operations that they felt were working well.

During our interviews the following issues emerged that we considered being worthy of further exploration and response from the project. We grouped them under four main areas of work:

- Case management
- Performance management
- Relationships and liaison
- Information techniques and methods

On the following pages we show the issues which emerged in more detail – and some of the possible approaches we considered for addressing these issues.

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Case Management	
• Control of case progression: *judge* driven –v– *client* driven	Who is taking charge of the speed at which cases are solved – judges or parties to the case? If it's not the judge, then why is this?
• Establishing norms for case progression	The court to consider establishing a set of norms for clients to conform to and ideal trajectory for case by type – set out the court's expectations in advance, communicate them and work to them.
• Reasons for adjournments & ineffective hearings	Investigate the most common reasons that cases are not solved when they should be. Agree and develop a strategy for the court to overcome them.
• Case management techniques and early identification of issues	Investigate and establish early identification of the issues in dispute and what clients must focus on to help the judge solve the case. Advantage of timetabling whole case –v – each step at a time where appropriate.
• Case progression hearings	How the court can record and push forward the concept of active case management and place responsibility on the clients and their lawyers for active progression to the case being solved. Define the fit with mediation.
• Robust and timely performance measures for assessing TSZG's progress in case management	Develop metrics for e.g. average case length, average number of hearings per case, % of unsolved cases achieving the norm, % not achieving the norm, etc.
• Service of documents	Is the % of documents sent out which are unserved contributing to the delay? Are there actions that can be taken to improve the % of documents being served? Are the right people serving the documents?
• Internal case allocation	Do judges have a balanced workload? Does current system of allocation produce a fair distribution of work? How are exceptionally difficult cases managed? Explore methods of identifying some cases by category and managing them differently. Proportional allocation of the court resource to issue at stake for the parties.
• Transfer of cases to other courts	Where cases could be re-allocated to a more local court, is this being done quickly? What are the obstacles to this?
• Sanctions for non-compliance and their use	Are sanctions understood and used properly? Opportunities for judges to invite parties to apply for sanctions e.g. wasted costs. Approach focused on *fairness and justice to the parties* rather than compliance with a code.
• Proportionality of court resources (time, cost, speed) consumed to size of the matter litigated	Relationship and size of court taxes (fees) to the significance of the litigation, especially perverse incentives (e.g. 100 kn to start bankruptcy cheaper than enforcing a secured debt). Consider development of an approach which ensures the court's scarce resources are used to maximum effect. If 90% of enforcement activity is unproductive, explore ways of cutting it short.

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• Sufficiency of evidence and its submission to the court	Approach to solving cases. Use of best evidence available at a certain time rather than seek the perfect evidential set (a quest that may never actually get concluded). Realistic expectations and collective approach in the court.

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Performance Management	
• Allocation & performance of tasks by judges, counsellors, employees & staff	Are people doing what they *should* be doing? E.g. counting the taxes (fees) on the files? Are the tasks being performed at the right level in the organisation? Are some people compensating for under-performance by others? Are tasks being performed at the lowest possible level within the organisation? Is there duplication of tasks (e.g. dual data entry and recording) which could be dispensed with? Identify and implement new ways of working which challenge current assumptions and guarantee best use of available skills. Management of a client's queries in the most effective way – avoiding interruptions to judges – single points of contact where possible.
• Talent management – people's capability, capacity & potential	Are people allocated work which maximises the use of their talents and stretches them towards the next job up in the hierarchy? Is there spare capacity which can be captured in any individuals? Do leaders delegate tasks to their colleagues and encourage use of initiative and problem-solving? Are capable employees trusted to do their work without constant instructions?
• Personal performance measures for people working in the court	How do people know if they are doing a good job? What measurements are applied to forming this judgement? Are the correct measures being used? Are the measures linked to the court's objectives and the clients' needs? Establish a performance management framework that enables this.
• Business performance measures (transactional standards achievement)	Establish standards (norms) for relevant activities e.g. timescales, completeness, accuracy and introduce measuring of them, using existing data collection as a base wherever possible (preferably automated). Introduce management bulletins showing historical position, trends in performance and forecasts. Use this evidence to demonstrate to others the court's efficiency and improvement. Use this to demonstrate how others need to assist the court to achieve its goals.
• Best use of existing and potential spaces	Is the way judges, counsellors, employees and staff are located effective, maximising communication and workflows, maximising correct file location, minimising unused space. Is the archive disposal system up-to-date and efficient? Is a 'whole court' approach being taken to meet needs or is it departmentalised? Is client movement confined to certain parts of the building or can they access it all?
• Enforcement o HCC President's working group o Court's processes o Proportionality	Consider developing a 'whole system' approach to enforcement. Links to other courts searching for debtors etc. Agree processes that have support of all courts. Use the President of the HCC's Working Group as a model for best practice, communicate its work and model systems around the expected outcomes. Develop an approach to enforcement that balances allocation of court resource to the value at stake to the debtor - 'proportionality'. Introduce targets for clearing backlog of enforcement cases and methodology for closing files at earliest opportunity. *Commerciality* of the enforcement request / decision for the claimant.
• Staff well-being and training	Identify training needs associated with the above. Review sickness levels and causation, scoping possible

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needs	solutions to reduce avoidable absences.

Relationships and liaison	
• Identification of court users (including potential users) and their needs from the court	Create and communicate understanding of stakeholders in the Zagreb Commercial Court. Identify their information needs to enable them to access and use the court in an informed and intelligent way based on a clear understanding of what can be achieved through court process (e.g. debtor with no money can't be made to pay). Create positive relationships with professional stakeholders (e.g. lawyers, trustees, notaries public, banks) which encourage them to do their jobs in a way that furthers the objectives of the court. Find win-win situations and quick wins that help move the shared objectives forward.
• Communications strategy for the court	Create strategy for the court communications person to disseminate good news about the court and focus attention on positive aspects of the court's performance and attempts to rectify any shortcomings.
• Court "user group"	Consider use of a model which brings the stakeholders together in a new forum to develop and influence good practice, encourage the win-win position and open the window to positive criticism and opportunities for development (by the stakeholders and the court itself). Joint / mutual problem solving opportunities created to change the culture of the court into a dynamic, proactive case-solving institution.
• Developing a "liaison judge" role with the higher courts, building on President to President liaison	Make use of and build on relationships already existing at President-to-President level by extending them to next level down. Consider using Zagreb Commercial Court judges assigned to the HCC to form a 'bridge' with these higher judiciary and start a dialogue about how consistency of approach to solving cases can develop, in order to bring greater certainty to decision-making in the lower court. Consider establishing (for trial period initially) one or more 'HCC Liaison Judges' to link with the Zagreb Commercial Court judges to act as a link towards problem solving. (Lots of quick win-wins here potentially – e.g. fewer hopeless appeals made, confidence of judges improved, best practice developed and followed, greater certainty for court users about results, quicker resolution of cases, techniques for approaching the solving of the very hard cases developed etc...).

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Information Techniques and methods	
• Information to stakeholders & users	Provide information to lawyers and other professionals AND to their clients about the functioning of the court and what it can achieve in practice (not just theory). Continue to promote mediation as a solution to dispute resolution. Find a way to communicate judge's view of likelihood of success in hopeless cases (particularly enforcement) and proportionality of the enforcement pursuit to the value of the debt and likelihood of recovery. Directly communicate with the clients where appropriate and not rely on lawyers only to interface at critical points in the process (i.e. court play a part in ensuring that the client makes an *informed* decision). Help these people to use the court in an informed, intelligent way (so reducing the queries on the court and number of cases which can't be solved).
• Public displays	Provide alternatives to current method of displaying official notices (inc. undelivered process). Information leaflets about the court and its standards and its successful performance management statistics.
• Answers to frequently asked questions (FAQs)	Identify the most frequent questions asked by the clients by phone or when calling at the court and provide this information in other ways to save time of the court employees in answering repetitive questions.

A framework showing the relationship between these four areas of work, the court as an institution and the technology that supports its functions is set out in the table on the next page.

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A successful Commercial Court: definition of its characteristics and standards

Performance Management	Cases	Relationships	Techniques & methods
• Allocation & performance of tasks by judges, counsellors, employees & staff	• Control of case progression: *judge* driven –v– *client* driven	• Identification of court users (including potential users) and their needs from the court	• Information to stakeholders & users
• Talent management – people's capability, capacity & potential	• Establishing norms for case progression	• Communications strategy for the court	• Public displays
• Personal performance measures for people working in the court	• Reasons for adjournments & ineffective hearings	• Court "user group"	• Answers to frequently asked questions (FAQs)
• Business performance measures (transactional standards achievement)	• Case management techniques and early identification of issues	• Developing a "liaison judge" role with the higher courts, building on President to President liaison	
• Best use of existing and potential spaces	• Case progression hearings		
• Enforcement o HCC President's working group o Court's processes o Proportionality	• Robust and timely performance measures for assessing TSZG's progress in case management		
• Staff well-being and training needs	• Service of documents		
	• Internal case allocation		
	• Transfer of cases to other courts		
	• Sanctions for non-compliance and their use		
	• Proportionality of court resources (time, cost, speed) consumed to size of the matter litigated		
	• Sufficiency of evidence and its submission to the court		

Technology

ICMS functionality	ICMS impact (process changes)	Web site

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Next steps and methodology

In collaboration with the Court President and her Cabinet Team, we put together a more detailed draft plan for the rest of the project, designed to address the issues identified in this report. That plan included:

- Development of a website for the court.
- Development of strategies for speeding up the completion of cases.
- Development of performance management techniques for the court.
- Development of standards of service – e.g. a Court Charter.
- Addressing the impact of ICMS on relevant court processes.
- Identification of training needs, and provision of training to meet those needs.
- Mechanisms for disseminating the lessons learnt to other courts and embedding them, to ensure their sustainability.

We drew up a project plan for approval by the Court President, and started work implementing that plan in September 2006.

Within an overall Court Implementation Team a number of working groups were formed to address the four strands of work outlined on pages 3 – 7. We worked alongside these groups to establish action plans for delivering improvements in practice. The Court Implementation Team oversaw the activities of these working groups, including the timing of activities. Workshops were organised to examine good practice from other jurisdictions, talent management, and leadership skills. We worked alongside the groups to help define problems, and the approaches to solving them.

One overarching output was defining of the characteristics to be expected from a successful Commercial Court in Croatia. We assisted the court to conduct a "gap analysis" to understand the distance Zagreb Commercial Court has to travel to match the ideal and then:

- prioritise needs;
- define activities this project should undertake to close the gap in respect of defined aspects (many of which we have described above);
- assign activities to implementation team(s) to deliver and agree accountable team leaders;
- plan timetable for action, milestones and how successful implementation of the activity will be evaluated.

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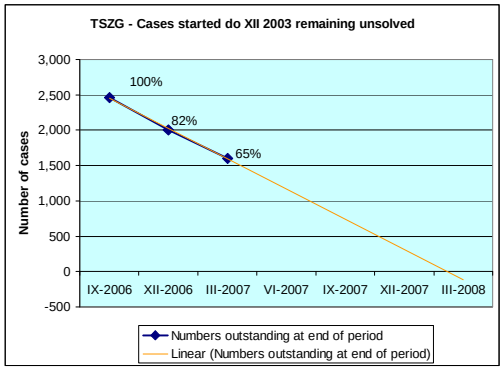
Post Script to the Diagnostic Report (April 2007)

Data quality was an issue when the project began. Several different forms giving information about workload are completed each quarter for the Ministry of Justice. Not all data on the forms could be reconciled. Also, while there were many numbers recorded, little (if any) analysis or use was made of them by the court. The contribution they could make to managing the work of the court, monitoring and improving performance was not well understood. Working with the Secretary of the Court during the first four months of the project the quality of the data was quickly improved and became a reliable source of information. A quarterly information bulletin is now produced by the Secretary for the court, and a one page summary of the headlines for more general, public use (Annex 2). Efficiency at judge, divisional and court level is now being monitored.

Using the data we were able to create a model that assisted the Court President reallocate her judges between the court's divisions for 2007 in a way that more accurately reflected the caseload in each division and the need to clear its outstanding work.

At 31st December 2006 there were 13,365 unsolved cases outstanding of which 36 went back to 1994 or earlier. The proportion outstanding for more than 3 years was in fact 15% (a much improved position) and a clear plan for clearing this backlog had been put in place. Continued monitoring shows that at March 2007 sustained progress was being made, and the court is on a trajectory to clear all unsolved cases older than January 2004 by March 2008, provided the same level of progress is maintained. This progress is shown in the chart on the left. The chart uses a baseline date of 30th September 2006, and the number of cases unsolved in the court on that date which had commenced on or before 31st December 2003.



A fast track pilot project is planned to commence in September 2007, to find new ways of managing cases in accordance with CEPEJ standards. This is intended to help the court deal with its new cases in such a way that the risk of them taking as long as three years or more to solve is reduced.

More information about the Commercial Court of Zagreb Modernising Court Administration & Court Management Project 2006 is available from:

- Jonathan Radway : jradway@jradway.com
- Steve Jacobs : stevejacobs@agenciaconsulting.com

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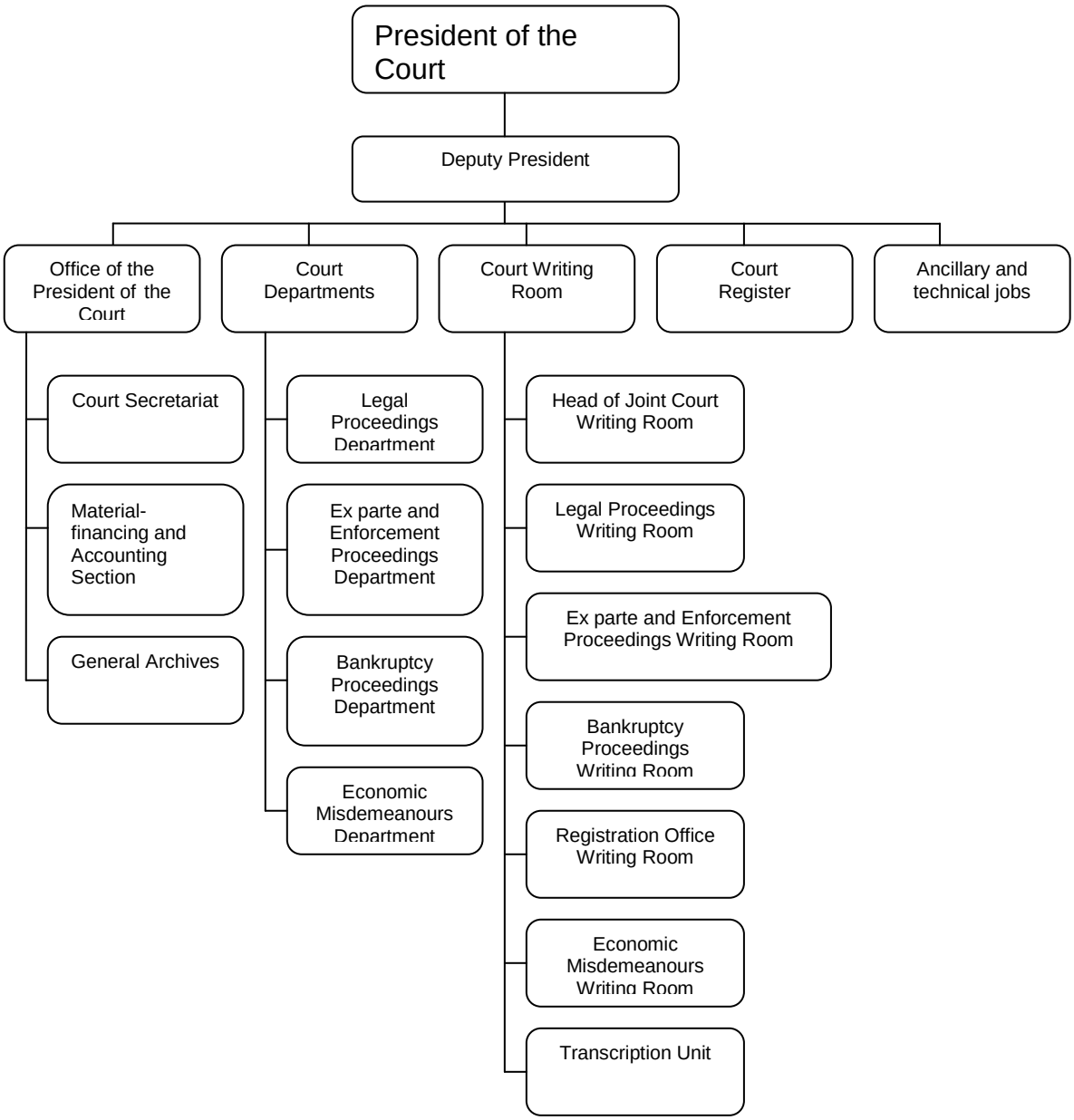
Annex One

Structure of the Zagreb Commercial Court



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Annex 2

REPUBLIKA HRVATSKA
TRGOVAČKI SUD U ZAGREBU Balanced Scorecard - Draft

Indicator	Number	Period	Yr to date 2006	Target 2007
Caseload				
Number of new companies registered	1,144	Qr 4	4,075	
Number of litigation cases received	1,526	Qr 4	5,952	
Number of litigation cases solved	1,848	Qr 4	6,347	
Number of bankruptcy cases received	83	Qr 4	306	
Number of bankruptcy cases solved	69	Qr 4	446	
Number of Ovr/Ovrv enforcement cases received	2,287	Qr 4	8,812	
Number of Ovr/Ovrv enforcement cases solved	2,352	Qr 4	10,880	
Completion rate (all cases)			105%	
Performance				
% new companies registered within 15 days				
Litigation average case length cases solved	508 d	Qr 4		
Enforcement Ovr average case length cases solved	418 d	Qr 4		
Enforcement Ovrv average case length cases solved	98 d	Qr 4		
Total number of cases waiting to be solved 0-12m	7,604	31/12/2006		
Total number of cases waiting to be solved 12-24m	2,515	31/12/2006		
Total number of cases waiting to be solved 24-36m	1,240	31/12/2006		
Total number of cases waiting to be solved >36m	2,010	31/12/2006		
% of cases waiting to be solved which are >36m	15%	31/12/2006		
Staff				
Number of Litigation Judges	16.75	Qr 4	16.75	
Number of Enforcement Judges	16.25	Qr 4	16.25	
Number of Bankruptcy Judges	10.75	Qr 4	10.75	
Number of Registrar Judges	1.25	Qr 4	1.25	
Total number: President and all Judges	46.00	Qr 4	46.00	
Number of court employees and staff		Qr 4		
Number of training days by judges		Qr 4		
Number of days sickness - judges	33	Qr 4	54	
Number of days sickness - staff	1,513	Qr 4	4,374	
Customer service				
Number of cases referred to mediation		Yr to 12-06	320	400
Number of cases accepted for mediation		Yr to 12-06	183	
Number of cases solved by mediation		Yr to 12-06	83	
Parties' satisfaction with mediation process		Yr to 12-06	76%	75%
Lawyers' satisfaction with the mediation process		Yr to 12-06	87%	75%
Parties' satisfaction with mediator		Yr to 12-06	96%	
Lawyers' satisfaction with mediator		Yr to 12-06	95%	
Parties' recommendation rate for mediation		Yr to 12-06	96%	
Lawyers' recommendataion rate for mediation		Yr to 12-06	90%	
Complaints received		Yr to 12-06		
Complaints upheld		Yr to 12-06		
Finance				
To be developed				

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Thursday, May 31

Working Together: Court Proceedings and Their Alternatives (9,30 – 12,30)

Marko Petrak (Zagreb): Dispute Resolution Ex Equo Et Bono- Historical and Comparative Perspectives

Elisabetta Silvestri (Pavia): ADR Italian Style: Panacea or Anathema?

Biljana Đuričin (Podgorica): Attorney's Role in Mediation

A.J. de Roo, R.W. Jagtenberg (Rotterdam): Mediation and Employment Disputes

Lunch Break (12,30 – 14,00)

Presentations and Panels (14,00 – 17,00)

Arbitration and Mediation: (Nina Betetto, Vesna Rijavec, Vanja Bilić, Ana Keglević)

Vanja Bilić (Zagreb): Mediation and Limitation Period

Ana Keglević (Zagreb): Mutual Obligations of The Parties and The Arbitrators

Panel Discussion: Modern Trends in Mediation and Arbitration

Nina Betetto (Ljubljana), *Vesna Rijavec* (Maribor)

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Elisabetta Silvestri
School of Law, University of Pavia, Italy

ADR Italian Style: Panacea or Anathema?

Outline

The title of my presentation draws on the popular essay by Harry Edwards, Alternative Dispute Resolution: Panacea or Anathema?, 99 *Harvard L. Rev.* 668 (1986). I want to talk about my country, Italy, in which an ineffective civil justice system has brought about a growing interest in ADR.

It is well known that since the early Eighties Italy has been kept under special surveillance by the Council of Europe and the European Court of Human Rights because of the excessive length of its civil, administrative, and criminal proceedings. Countless reforms have been adopted with the view to improving a very dysfunctional situation, which – in the words of the most recent resolution adopted by the Committee of Ministers of the Council of Europe on the subject [ResDH (2207) 2] – "represents an important danger, not least to the Rule of Law". Unfortunately, no reforms appear to have succeeded in any significant way: court congestion, excessive delays, and high costs of litigation still impair the access to justice for citizens. This has prompted the quest for alternatives to adjudication.

Arbitration and most of all out-of-court conciliation are encouraged at every level; settlements are fostered with very little regard to the subject matter of the claims and without paying much attention to the fairness of the settlement for both parties to the dispute. The message conveyed to the citizen is clear: beware of courts, they don't work and never will. Why not turn to a simple, friendly, and inexpensive private ADR-provider? The more this strategy works, the more the legislator can set aside the problem of how to devise, once and for all, a drastic reform of Italian judicial procedure in civil cases.

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Prof. Biljana Djuričin, The Attorney's Role in Mediation

The most essential benefits of mediation are its flexibility, informality, confidentiality and control by the parties to a dispute. In many legal systems across Europe, mediation as one of the methods of Alternative Dispute Resolution is in the center of interest among legislators, professionals, business community, scholars, as well as the public. The European Union especially insists on harmonization with international conventions, standards, and recommendations as well as with the European legislation. In this paper, the author explores the elements of quality assurance of mediation and mediators with emphasize on the court-annex mediation throughout the European experience. In this paper, the author presents following themes concerning the exploring on advocacy in mediation; how to identify the best means of ADR; how to provide the best support to client once the appropriate means for ADR is identified; role of the attorney-mediator; principles and procedure of mediation; professional rules assuring mediator integrity and transparency. In this paper the author also presents some activities within the European Union such as Green paper, directives on certain aspects of mediation in civil, commercial and family matters, Code of Conduct for Mediators, et cetera. Upon analyses of various mediation provisions governing quality assurance, the author concludes that it is clear that there could come good reason for choosing mediation during court proceedings. Mediation is especially good method in legal systems that increase role of law and legal state and have problems regarding dissatisfaction of parties with a long duration of the proceedings before the courts. The author also concludes that mediation poses a challenge for the modern attorney and opens up new opportunities for dispute resolution, both for the attorneys and their clients in which both sides will be satisfied.

Program outline:

- Mediation as a method to settle disputes and other methods of ADR
- Differences between litigation procedure and mediation, especially benefits of mediation
- Modern mediation: analyze American and European legal system

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In the first part of papers, the author analyses principles and procedure of mediation.

1. **Principles and procedure of mediation**

- *Law on Mediation or Mediation Rules*
- *Statement of Confidentiality*
- *Model Mediation Agreement*

In the second part of papers, the author analyses Advocacy in Mediation:

1. How to identify the best means of dispute resolution.
2. How to provide the best assistance to client once the appropriate means for dispute resolution is identified.

In the third part of papers, the author analyses role of the attorney as a mediator.

1. A practical pitfall
2. An ethical pitfall

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Vanja Bilić, Mediation and Limitation Period

Article will try to elaborate one particular subject: how commencing of mediation effects the limitation period. Discussion about all other differences in regulation of limitation periods (e.g. duration of limitations periods, what kind of law should regulate it – substantial of procedural law etc.) will be set aside.

Statutes of limitations (and it's relation to mediation) are regulated differently in various jurisdictions[32]. Building the bridges between national jurisdictions, EU issues some directions and suggestions. Also, in that sense, model laws are good tool[33]. In Croatia, UNCITRAL Model Law on International Commercial Conciliation (UML-C) was used as a starting point, and to some extent as a first draft of what has become Croatian Law on Mediation (LM)[34].

In process of drafting the LM, UML-C was useful in many ways, but on one topic Model Law had almost no suggestions: What happens with a limitation period when conciliation (mediation) proceedings commence? Draft Guide to Enactment UML-C dedicated to that subject footnote after article 4 (Commencement of conciliation proceedings)[35], but apart from that suggestion, UML-C helped nothing more. It leaved that particular subject to domestic legislation.

[32] Mediation stops limitation period in Italy, in some cases (according to article 40 of Decree 5/2003), in Austria in mediation with registered mediator and in Germany. In France as well, if mediation is started after proper mediation clause; mediation started without mediation clause doesn't stop limitation period.
In Great Britain, Ireland, Belgium, Netherlands, Luxembourg, Spain, Sweden, Finland and Denmark mediation doesn't stop limitation period. Same situation is in Greece and Portugal, with some exceptions: in Greece, for cases over 80.000 € value previous mediation is obligatory, so it stops limitation period; same in Portugal, for small value claims (under 3.741 €).

[33] There are various reasons why countries use UNCITRAL model laws for the development of domestic legislation. See: Corinne Montineri, UNCITRAL and the Development of National Arbitration Cultures and Practices (Public and Private Justice – Dispute resolution in Modern Societies, Establishing a Fair and Efficient Justice System, Dubrovnik, May 2006).

[34] Law on Mediation was enacted on October 1 2003 and published in Official Gazette 163/2003 (October 16 2003).

[35] Text of that footnote (footnote no. 3):
The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:
Article X. Suspension of limitation period
(1) When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.
(2) Where the conciliation proceedings have terminated without a settlement, the limitation period resumes running from the time the conciliation ended without settlement.

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Relation of limitation period and commencing a mediation process is in comparative legislations regulated mostly in two ways: Limitation period is stopped or it's not stopped; nevertheless, there are three possibilities:

1. Commencing mediation stops limitation period,
2. Commencing mediation does not stop limitation period,
3. Commencing mediation suspends limitation period while mediation lasts.

Each one of these possibilities could be defended with good arguments.

1. Commencing mediation stops limitation period

Creditor does not want to risk expiration of limitation periods while trying to mediate some dispute (connected to that claim): debtor could run mediation maliciously waiting the limitation period to expire.

With commencing a mediation limitation period has to be stopped, in same way that starting a court or arbitral procedure stops it. Any creditors act aimed to establish ensure or realize some claim, stops limitation period[36], so mediation should have similar effects. Starting of mediation process could be one of described acts: mediation is started for solving some dispute, i.e. for establishing, ensuring or realizing some claim. If period of limitation is stopped, creditor doesn't have to duplicate his/her activities with filing a claim on a court, just for stopping limitation period.

2. Commencing mediation does not stop limitation period

Mediating process could not be started like a court or an arbitral procedure. It's not enough to file a claim to start a procedure. Expression of will on one side, concerning starting a process, is not enough; the other side has to agree on starting mediation. Consequently, such procedure could not be subsumed to article 241 of (Croatian) Law

[36] Stopping of limitation period (with any creditors act aimed on establishing, ensuring or realizing some claim) is foreseen in article 241 of (Croatian) Law on Obligations (OG 35/2005).

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on Obligations, but rather to provisions about contractual stopping of limitation period, or about conceding a debt[37].

If commencing mediation stops limitation period, creditor could run a mediation procedure not because he/she wants to settle the dispute, but only for stopping a limitation period. Such prolongation of limitation period is probably not only against spirit of mediation, but also against reason of establishing limitation periods.

Malicious plan of debtor (who participates in mediation only to wait for expiry of limitation period), could be prevented with starting a court procedure; moreover, such action could be stimulating in a mediation procedure.

3. Commencing mediation suspends limitation period while mediation lasts

According to third solution, limitation period is suspended (during mediation) and resumes running if mediation is not successful (from the time the mediation ended without a settlement). LM determined when mediation procedure starts[38] and when ends[39], so it's not hard to determine when starts suspension of limitation period, and when limitation period resumes.

This solution also has its pros and contras though. It puts no additional burden to court system[40], since parties don't have to worry about limitation periods during the mediation, but creditor still has to be cautious about limitation periods before debtor accepts mediation and immediately after (unsuccessful) mediation. Counting limitation periods in total can be more difficult compared to situation when period is defined with date from – to.

[37] See article 240 of Law on Obligations.
[38] Article 3.2 LM: „Unless otherwise agreed, mediation starts with an acceptance of proposal for commencing mediation, which has to be written. "
[39] Article 9 LM foresees when mediation ends.
[40] This is especially important when ADR is used as a way of improving efficiency of justice.

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Croatian Law on Mediation and limitation period

First draft of LM proposed solution upon which mediation stops limitation period. In final draft (proposition of LM, enacted as a law), regulation was the opposite: Commencing mediation does not stop limitation period, unless otherwise agreed[41].

Opposite than expected, it was not a result of endless discussions. Expert team for drafting the law wasn't decisive about any solution. Chosen solution was not winner for it has prevailed with much better reasons, rather for having fewer consequences; also because life (especially business life) becomes very fast and stopping of limitation period (and starting it again after unsuccessful mediation) prolongs limitation in a way that is opposite to sense of statutes of limitation.

Since parties agreement is the main law in mediation, parties can agree on every possible (admissible) solution regarding mediation, including limitation periods: they could foresee stopping, continuing or suspending limitation periods[42], they can pose certain conditions, terms, etc.[43]

Conclusion

Since every solution (in relation of mediation and limitation period) is legitimate and defendable, it could be interesting to learn what participants of PPJ Course think about this. Author of this text is slightly biased to the third solution (mediation suspends limitation period), with above argumentation.

[41] Article 14 LM:
(1) Commencing mediation doesn't stop limitation period regarding claims that are mediating, unless parties agree otherwise in written form.
(2) If, according to law, right on filing a demand for protecting the right or an action in some dispute is limited by some preclusive period, that period will be counted starting from day when proposal for mediation is rejected or presumed rejected, i.e. when mediation is finished without settlement.

[42] Only demand (according to article 14.1 LM) is: agreement (about limitation period) has to be put in written form.

[43] In which stage (until which stage) of mediation process agreement about limitation period could be reached i.e. is there any preclusion for such agreement? No: agreement on limitation periods (and other conditions of mediation) could be reached in any stage of mediation, whenever problem (upon which agreement has to be made) occurs.

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Ana Keglević, Mutual Obligations of the Parties and the Arbitrators

The duties of arbitral tribunal may be imposed either by the parties or by the law and requirements of ethics. On the other hand, the rights and duties of the parties mostly arise from arbitration agreement with special respect to party autonomy, mandatory rules and rules of procedure. Because of the fact that many national laws lack any clear statement as to what the obligations of arbitral tribunal or the parties are it is often quite difficult to establish exact list of mutual obligations and accompanying responsibilities. It becomes clear that unlike litigation the list of specific duties differ from case to case, since it must allow for the impact of different rules of arbitration and for the differing laws applicable to each case. The author illustrates briefly main obligations of an arbitral tribunal and the parties, and sets forth the solutions provided by institutional rules of arbitration.

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Annie de Roo and Rob Jagtenberg, Mediation and Employment Disputes, European Traditions and Global Pressure

In this presentation, first an overview will be given of how employment disputes were dealt with in Europe historically.

Specialized courts with conciliatory tasks; the initial confinement of labour disputes to individual disputes; the gradual rise of collective labour disputes, following the rise of joint consultation schemes and the recognition of trade unions; proliferation of government-encouraged mediation schemes; the integration in some countries of individual dispute resolution schemes into collective dispute resolution programs.

We will then proceed to the major developments that are changing the landscape of collective labour disputes today.

De-unionization; global competition; decentralisation of bargaining; Europeanization of bargaining, and what this means for established mediation schemes, according to a recent survey amongst national mediators/conciliators.
Finally, we will move on to the changes permeating individual labour dispute resolution, and adjudication of private law disputes generally today.
The trend towards outsourcing mediation; the rise throughout Europe of court-annexed mediation programs, whereby we will draw upon an 11 country survey; the tendency to address individual labour disputes at even earlier stages; experiments with conflict management systems inside organisations.

The subject is bound to provide sufficient material for discussion, including issues such as: is there anything left to negotiate at all for employees / unions in Europe, independence of the mediator, can or should a mediator address power imbalances, accountability for process, and so on.

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Friday, June 1

Better Justice For the Sake of Its Users: An Insight Into the Future (9,30 – 13,00)

Remco Van Rhee (Maastricht): Dutch Civil Procedure in a European Context

Mario Vukelić (Zagreb): Transparency in Judiciary – Croatian Bankruptcy System

Dirk Heirbaut (Ghent): Reforming the Judicial System in France, Belgium and The Netherlands

Lunch break (13,00 – 14,00)

Presentations and Panels (14,00 – 15,30)

Albert Henke (Milan): Judicial Reforms in Kosovo, Albania and Bosnia and Herzegovina: The Activity of International Organizations

Cristi Danilet (Bucharest): Judicial Reforms in Romania

Irina Lupusor (Chisinau): Judicial Reforms in Moldova

Wrap-up and departure (15,30 – 17,00)

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Remco van Rhee, Dutch Civil Procedure in a European Context

The year 2002 witnessed the introduction of major reforms in Dutch civil procedure. According to many authors, these reforms have created a situation in which the Dutch civil procedure model is ready for the 21st century (especially after the introduction of some additional reforms in 2005). However, already in 2001 the then government appointed a commission of three prominent scholars and practitioners (Profs. W.D.H. Asser, H.A. Groen and J.B.M. Vranken, assisted by I.N. Tzankova) to formulate ideas about further amendments and/or a different approach to civil litigation. Currently, the Commission has terminated its work with the publication of its final report (2006), in which it further develops and modifies its ideas as expressed in its interim-report (2003). The reports place Dutch civil procedure in a European context and are therefore relevant for an international audience.

In the present paper I will discuss the most important changes that were introduced in Dutch civil procedural law in 2002 (I will also mention reforms that were introduced in 2005 as a sequel to the 2002 reforms), as well as the interim and final reports. It should be noted that the latter reports have, until now, not resulted in any major changes to the Dutch law of civil procedure or to the practice of civil litigation. However, in its reaction to the final report dated 5 February 2007, the Dutch government has announced that various steps will be taken in order to introduce new legislation.

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Mario Vukelić, Web Bankrupcy Project

1) The reasons for Web Bankruptcy

Specialized web pages about bankruptcy (www. sudacka-mreza.hr/stecaj or www.vtsrh.hr) and sale of assets in bankruptcy procedures provide better data accessibility to the general public and all parties involved in the process of searching and verification of published notices for bankruptcy.

Until recently, notices concerning the sale of assets in bankruptcy proceedings were published in daily newspapers. Information regarding the sale shared the same destiny as daily news – they only lasted for one day and often didn't reach a great number of potential buyers. Web based bankruptcy makes available relevant data at all times to all interested parties.

Notices for sale of assets, although very important, are just part of this web-page content. Web based bankruptcy also contains general information about commercial court proceedings, bankruptcy proceedings, texts of all relevant laws for bankruptcy, as well as numerous professional works from the field of bankruptcy. Judges and professors recognized the importance of this project and submitted their works free of charge: Which gives this project professional and scholarly significance.

We plan to extend the cooperation on and international level with experts from International Bankruptcy Institutes, World Bank and other relevant institutions.

Reconciliation of Croatian bankruptcy law with international standards and efficiency in its application is a prerequisite for foreign investments, membership to the EU, and improvement of Croatia's credit rating. In the open market environment, the growth of international bankruptcy cases is an inevitable fact.

Web Bankruptcy also contains a complete systemized review of judicial practice regarding bankruptcy procedures from 1994 up until the present, published by the High Commercial Court and other relevant sources. Providing information via the internet about certain legal issues in specific case which are already settled is crucial to the process of restoring the general public's confidence in the judiciary.

It is also crucial for the legal profession and is a basic presumption of legal practice standardization.

For the general public this is the proclaimed principals of transparency, cost efficiency of judicial proceedings and availability of the judiciary. In regards to professionals: judges, lawyers and legal professionals, information about relevant judicial practice represents the basic assumption necessary for greater consistency in rulings.

The realization of the web based bankruptcy was made possible by international donor funding obtained through the Judges Web NGO, which provide both technical and

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administrative support for the implementation of this project. This has enabled the High Commercial Court of the Republic of Croatia to focus resources on adjudication tasks and less on administrative activities. The project received endorsement and support from The Ministry of Justice as well.

Besides getting appraisals for this project and my other ICT related projects, there was a certain amount of skepticism as to why a judge is getting involved in ICT. But in the creation of software for the judiciary, judges, beside programmers must have a primary roll for obvious reasons: We are most familiar with judicial problems.

2. Procedure for liquidation of companies under bankruptcy

Bankruptcy law regulates in detail the procedure for liquidation of assets in bankruptcy proceedings. Decisions regarding debtor's liquidation of assets are generally made by creditors on Report hearing. The creditor's assembly chooses a method of liquidation, and the bankruptcy trustee must implement this decision.

Many objections, often justified, relate to the procedures for liquidation of assets. The pattern is as follows: for the seller, the price is too low, and for the buyer, price is too high. Somewhere in between are creditors who expect a higher percentage from the settlement of their claims and therefore often doubt the regularity of the procedures.

Assets value estimate, and discrepancy between estimated value and the attained price, often is a point of dispute between creditors, bankruptcy debtors and bankruptcy trustees.

Oftentimes, the price attained in the sale is considerably lower than the estimated value. Regardless of the standard procedures for estimating the value (accountant, financial, mathematic, dynamic), or by estimates conducted through court experts / bankruptcy trustees, it can be said that the achieved market price of an asset is indicative of the assets worth. Market value could be higher, which is uncommon, or lower (which unfortunately is often the case) than the estimated value.

It is the law of supply and demand which motivates the liquidation of assets, regardless of the legal system and laws in place. This can't be influenced neither by legislator, nor by bankruptcy trustee nor by bankruptcy judge.

This is all under the presumption that the liquidation procedures were conducted in accordance with best practices of the profession, applying all relevant legal regulations and provisions.

3. Bankruptcy and crisis management

Crisis management is a crucial component of bankruptcy. One often forgets that bankruptcy proceedings are conducted to satisfy the creditors by liquidating assets of

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the debtor. The Legislator determined this in the second article of the Bankruptcy Law. As an exemption, in some situations during the bankruptcy preceding, it is possible to implement a bankruptcy plan, so called "re-organization", so that debtor's business activities are permitted to continue.

One can often hear unfound legal and economic statements about "programmed bankruptcies". Statements are made regarding restructuring which will lead to rehabilitation of the company, and in this manner save the company from liquidation and assure that the workers keep their jobs. The burden is placed on bankruptcy trustees and court judges to implement the stated strategy. However, this is a misconception, if it were possible it could have been done while the company was in good standing. There would have not been a need to wait for the bankruptcy proceedings. Additionally, a large presumption is made that the creditors do not have influence in the matter as well.

Bankruptcy proceeding for big companies usually started after a long agony of insolvency, land property has been under mortgage, working equipment becomes outdated, market shares are lost and leading experts have long left the company.

It is often overlooked that the debtors through their insolvency have not fulfilled their obligations directly, damaging the creditors amongst- them also employees. One of the tasks of bankruptcy proceedings is to remove such debtors in due time from both the legal and economic market.

Creditors tend to avoid initiation of bankruptcy procedures. I am not familiar with any case where article 626 point 2 of the Companies Law enforced. This article states that it is the duty of board members to recommend initiation of bankruptcy procedures in the event that reasons for bankruptcy emerge. Not respecting this provision of the law can lead to criminal liability for board members.

Also article 39 of Bankruptcy Law, members of the board could face personal liability towards creditors, for the caused damages in situations where board members don't initiate bankruptcy procedures after the expiration of twenty one days from the day the insolvency started. This article has yet to be utilized in actual practice.

4. Appointing Bankruptcy trustees

A bankruptcy trustee for specific cases is appointed by the bankruptcy judge. It is possible to appoint any individual with the following qualifications: University degree, successfully passed examination for a bankruptcy trustee. The person can be placed on the list of available trustees which is determined by the Minister of Justice. Lawyers can also be appointed bankruptcy trustees.

Appointed bankruptcy trustees must have all the necessary skills and professional experience for conducting specific bankruptcy proceedings.

The project Web Bankruptcy has a published list of bankruptcy trustees along with their CVs, working experience, education and professional specialization. This

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information is also of relevance to bankruptcy judges and to creditors when appointing bankruptcy trustees, since it enables them to choose a most suited bankruptcy trustee with the necessary knowledge and experience for conducting a specific bankruptcy.

Creditor's assembly may chose a different bankruptcy trustee from the one appointed by the bankruptcy judge, which doesn't have to be on the list of bankruptcy trustees.

5. Results and significance of Web Bankruptcy

This web page offers a unique and comprehensive review of assets in all bankruptcy proceedings in Croatia.

One can search information regarding the sale of assets by type and value of asset, seller, geographical territory of sale and by commercial court conducting the bankruptcy proceeding. Published notices for liquidation include time, place and means of sale and payment. As a result we expect an increase in the successful sale of assets and in this way a larger settlement for the creditors.

This is the first bankruptcy 'one stop web-shop'. A potential buyer can for the first time, in one place and in real time check from reliable sources the most important information about the asset of interest. This web page is also contains links to the land-registry, cadastre and court register for companies. Our database contains a list of bankruptcy trustees and all commercial courts web sites. This means that users can check information about the property of assets, the owner and the debtor who is represented by the bankruptcy trustee. Different segments of e-judiciary such as land-registry, cadastre and court register of companies as well as databases of bankruptcy trustees and commercial courts are functionally linked together on one screen.

In addition to notices this web page also publishes attachments such as: copy of land registry and cadastre, blue prints, photographs, value estimates, court specialist's report etc. Publishing of notices and attachments is free of charge, and therefore dose not burden bankruptcy proceedings, but significantly increases the chances for creditor's settlement.

In short, with this web page we strive to increase the quality of adjudication, and in practice to materialize proclaimed principals of publicity, transparency and cost effectiveness in judicial proceedings.

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