

**2015 PPJ Course and Conference, IUC Dubrovnik**

**PRIVATE JUSTICE  
IN SERVICE OF PUBLIC GOALS?  
OUTSOURCING OF JUDICIAL TASKS AND FUNCTIONS -  
BLESSING OR BETRAYAL**

**8 – 12 June 2015**

**Conference outline**

For its tenth anniversary, the PPJ Course and Conference focuses on the very core of the relationship between private and public justice. Today in many countries public justice is straining under excessive workload and huge backlogs. Even though access to justice presupposes access to courts, alternatives to conventional court proceedings are being explored and introduced in a number of jurisdictions. The civil courts in contemporary societies discharge diverse functions, from conflict-resolution to policy implementation. Adjudication may be the core job of courts, but the courts are sometimes also used for various, mainly administrative purposes. In some countries more, and in some countries fewer, civil courts assume important roles in a long list of activities: they hold public registers, appoint guardians, stamp payment orders and certify uncontested debt, deal with estates and cartel matters, conduct bankruptcy proceedings, deal with forcible execution of judgments and other titles, and oversee general elections – to mention only some typical examples. It seems that perceptions of what is an essentially judicial task and function differ, but one trend can be observed globally: the tasks and functions that were until recently discharged by courts are gradually being transferred to out-of-court services, often in the private sector. A similar transfer sometimes can be observed internally, where some tasks formerly entrusted to judges become the matter of occupation of the non-judicial staff in the courts (with or without a legal background) and automated data-processing systems, only loosely connected to the court structures.

The intention and purpose of the Tenth PPJ Conference is to evaluate the risks and benefits of this trend, comparable to a concept that in business is commonly called ‘outsourcing’.

On the one hand, it should be evaluated whether and to what extent the outsourcing trend contributes to improvement of the quality of justice. Are out-of-court services, especially those provided by private actors, better and more efficient than the services of the traditional and conservative state judiciary? Are courts gaining more capacity by outsourcing less important judicial activities? Can the skills and experience of judges be used more effectively if judges transfer a part of their daily routines to other, less prominent court personnel (like clerks, secretaries or court counsellors) who can prepare everything and leave only the decision-making in the hands of the judges?

On the other hand, the speakers at the conference have to assess the limits and inherent risks of outsourcing of judicial tasks and functions to other actors in the public and private sector. Should the right to a trial by an independent and impartial tribunal prevent the outsourcing of some judicial functions? Should the activities that require specially trained personnel who are immune to political and economic pressures remain in the courts? Are the interests underlying the services that are provided commercially by private companies and the liberal professions compatible with the public interest that forms the underlying rationale of most judicial activities? Do such arrangement favour economically stronger and politically more powerful parties? And, finally, is the outsourcing of public justice to the private sector acceptable in terms of the social costs, or does it put at stake access to justice?

The speakers at the Tenth PPJ Conference will reflect on how the trend of outsourcing affects the situation in their countries and present their views regarding further developments, both nationally and in comparison with

the developments in other countries and regions. The impact of regional and global integration processes will also be discussed, in particular when exploring whether attitudes in relationship to the role and limits of private justice converge or not.

The thematic circles that will be discussed at the Tenth Public and Private Justice Conference are the following:

1. Replacing public justice with out-of-court dispute resolution mechanisms (pre-litigation ADR, arbitration and mandatory settlement attempts)
  - Many policy documents and legislative acts, including those of the EU, encourage pre-trial attempts to settle disputes. Recommendations for the use of alternative dispute resolution methods are issued both with respect to individual and with respect to collective claims. Arbitration is also stimulated, and sometimes officially suggested to public bodies and state agencies.
2. Privatization of debt collection proceedings and enforcement
  - Certification of uncontested debt by payment orders and similar judicial acts is increasingly being outsourced, either to private professionals (notaries, bailiffs) or to special central systems (see under 3). While enforcement of judicial decisions has traditionally belonged to the portfolio of the judiciary, reforms in some countries have transferred the enforcement of various types of claims to private bailiffs and/or financial and other agencies under the control of the executive branch of government.
3. Replacing procedural routines in court proceedings by automatic data processing
  - Automated data-processing services (like the Austrian *Mahnverfahren* proceedings) are able to replace the traditional judicial processing of routine and repetitive cases. They also enable the users to effectively assert their claims outside and within the court proceedings. Generally, internet-based information systems and on-line dispute resolution systems make referral to the courts less necessary.
4. Displacement of non-contentious matters from court jurisdiction
  - Non-contentious court proceedings (so-called voluntary jurisdiction) encompass various, mainly administrative tasks and functions that are also able to be outsourced. The trend of outsourcing is strong for example in regard to probate proceedings, estates and production of public documents, but also occurs in regard to the holding of land and company registers.
5. 'Internal outsourcing' – the transfer of judicial functions from judges to other actors
  - In many courts, judges are expected to be experts in multi-tasking. Among other things required of them in some jurisdictions are: planning of the proceedings and administering litigation; drafting of decrees and judgments; imposing and enforcing fines; dictating protocols, dispatching letters and controlling service of documents; questioning of parties, experts and witnesses; calculating interests and feeding information into statistical databases. However, in order to make more effective use of expensive judicial work, various strategies of 'internal outsourcing' are available, either horizontally (by transferring simpler cases and small claims to other court professionals) or vertically (by relocating some of the tasks in all cases to clerks, assistants and court administration offices).

The draft programme of the 2015 PPJ Course and Conference will be published soon at <http://alanuzelac.from.hr/text/iuc-course>. We warmly welcome you to join us for a discussion of the above matters.

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