2012 PPJ Course and Conference, IUC Dubrovnik

APPEALS
and other Means of Recourse against Judgments in the Context of Effective Protection of Civil Rights and Obligations
28 May - 1 June 2012

Call for papers

The 2012 Public and Private Justice Course and Conference at the IUC in Dubrovnik will focus on the systems of appellate control of court judgments. Our intention is to explore the relationship between the different approaches to appeals in national civil justice systems and their impact on the overall efficiency and effectiveness of legal protection. The right to obtain appropriate but timely protection of civil rights and obligations is at the core of the right to a fair trial within a reasonable time protected by Article 6 of the European Convention on Human Rights.

Every legal system wishes to minimise errors in the adjudication process. Voltaire's observation that 'the history of human opinion is scarcely anything more than the history of human errors' may well be extended to courts and judges. In this respect, the attempt to correct the errors is a noble task, which also justifies the various levels at which particular legal systems open the path of recourse against judgments. Yet, as confirmed by the case law of the European Court of Human Rights in Strasbourg, another core value of civil justice should be its capacity to end disputes efficiently and, as the ultimate goal, enforce civil rights and obligations in a way that is concrete and effective, and not theoretical and illusory.

Recognising that any approach to appeal has to strike a balance between the ideals of correctness, legitimacy and impeccable legal reasoning, on one side, and the ideals of legal certainty, effectiveness and efficiency, on the other, the purpose of the 2012 PPJ Course and Conference is to compare and contrast how contemporary justice systems deal with this problem. Obviously, the point of balance can be placed differently; however, in discussing the concrete issues, we wish to find out whether in different national procedures this point is placed entirely differently or whether, on the contrary, the procedural philosophies and approaches to appeal converge. Even if considerable differences do exist, it would be worth discussing whether any harmonisation is necessary and in sight.

In particular, there are several issues and phenomena that would be of interest for the Conference. One of them is the legal and constitutional status of the right to appeal in the context of civil procedure – how important is the availability of appeal from the perspective of constitutional and human-rights doctrine and , and whether the constitutional status of appeals poses any threat to the efficient functioning of civil justice. The same question may be raised for some other means of recourse against judgments, e.g. with respect to access to the highest courts (courts of cassation and similar courts). On the other hand, it would be interesting to see to what extent the principle of proportionality has been recognised in the context of the system of legal remedies, i.e. whether and to what extent the appellate control is excluded in particular types of cases (e.g. in low-value litigation). As some international instruments aimed at harmonisation of small-claims procedures in Europe and elsewhere have imposed certain elements of proportionality and limitation of the right to appeal, one may inquire what the effect of these instruments on national procedures is – e.g. whether the consequence is harmonisation or the emergence of double standards.

Apart from the general availability of appeal (and other means of recourse), another relevant issue is how legal systems tend to limit too broad, manifestly unfounded, repetitive and/or abusive appeals. Various legal limitations may be considered, including the option of filtering mechanisms at all levels, or procedural or personal sanctions for abusive recourses. The scope of the grounds for recourse is also important, in particular in conjunction with the general views regarding the purpose of recourse proceedings (removing errors objected to by the parties, or guaranteeing the 'right' and 'true' outcome). The underlying philosophy may also affect the

right and the duty of the higher courts to take on board certain issues *ex officio,* which may enhance the scope of quality control, but may also have disastrous consequences on the efficiency of proceedings.

There may also be other methods which aim at limiting the abusive and delaying potential of various means of recourse against judicial decisions. Some are related to the legal effects of launching various recourse proceedings. In some countries, appeal and certain other means of recourse regularly delay and prevent any possibility of enforcement of the challenged decision, while in others the opposite (no-filtering, open-door) approach prevails. It is also possible to assess the prospects of success and risks of early enforcement, and to make enforceability dependent on the discretion of the decision maker. All those methods may be evaluated from the perspective of their contribution to the quality and effectiveness of civil procedure. The issue of enforceability of appealed decisions may also be combined with the issue of availability of interim (provisional) measures, which may or may not have the same effect.

The effectiveness of the recourse procedures is another element of the overall effectiveness of the process. How long do the appeals procedures last, on average and in extreme cases? Are there special urgent procedures? What are the policies and strategies to ensure proper quality control of judicial decisions, but also the appropriate length of the appeals procedure? The composition of appellate bodies may be a factor that plays a role in these issues. Another factor may be the form of the process, in particular the way in which the recourse bodies process the application. An interesting point may be the role of the principles of orality and immediacy in the recourse proceedings. While some legal systems conceive the recourse proceedings as a purely paper-based process, it may be interesting to analyse the impact of such a processing method on efficiency and to contrast it with the other proceedings in which orality and direct contact with the parties are preserved also at the higher levels of the judicial hierarchy.

The outcome of recourse proceedings may also be important. What prospects do the litigants have when turning to a higher instance? Some indicators show that the chances for success in recourse proceedings may range from small to almost 50/50. How does that affect the frequency of recourse proceedings (and the assessment of the foreseeable length of proceedings)? Is the perception of the chances for success the principal motivation for the users to use the available means of recourse? What are the reasons for the different appeals success rates with respect to similar cases in different national court jurisdictions?

In this context, another issue arises. The European Court of Human Rights has pointed to the 'vicious circle of remittals' as one of the systemic deficiencies of civil procedures in a number of European countries. Should appeals result in a final and binding decision which will be pronounced by the appellate body? Or, should the result of the quality control be that the body which made the challenged decision has to restart the proceedings, and 'try harder' to reach a correct decision – if necessary, over and over again? The assessment of the percentage of decisions that are reversed on appeal, and those that are remanded to the previous instance of decision-making, may help us realise the impact of such options on the length and efficiency of the process. New strategies of limiting successive remittals may also be explored.

Finally, the costs of appeal and the financial consequences of failure to challenge judicial decisions successfully may also play a role in the discussion of all the above issues. The authors are invited to assess their importance (just as the importance of the other factors) for the frequency and the overall use of the appeals procedures.

With regard to all of the above topics and issues, a description of the current state, historical roots and the trends of developments in the future (including the prospects for harmonisation) is welcome. However, apart from the above topics, those who are interested in presenting a paper may propose any topic in the field of comparative civil procedure which they regard as being within the scope of the general topic of the 2012 Course and Conference.

Proposals may be submitted to the Organising Course Directors until **28 February 2012**. The number of speakers at the Conference is limited, and therefore the organisers will have to make choices as to the topics and speakers. In any case, all applicants will be informed in early March 2012 whether their topic has been accepted. In order to help the Course Directors in making the selection, please include in your proposal **the exact title of your contribution and a 300–600-word summary,** as well as **a short biography (half-page)**.

The deadline for the submission of finalised papers presented at the Conference in May is 31 October 2012. A selection of the presented papers will be published in the book which is due to appear before the next Conference in 2013.

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