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**REPORT ON THE WORKING SESSION
AT THE REGIONAL COURT OF BRATISLAVA (SLOVAKIA)
IN THE FRAMEWORK OF THE
COURT COACHING PROGRAMME –
“SATURN” TOOLS FOR JUDICIAL TIME MANAGEMENT
OF THE
EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)
(BRATISLAVA, 8 APRIL 2013)**

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1. Participants, Location and Main Features of the Meeting.

The meeting started on April 8, 2013, at 10h00 a.m. in the premises of the Bratislava Regional Court. During the day, I made presentations on the topics related to the subject of the coaching activity, also answering several questions raised by the participants in the meetings. On the Slovakian side following people took part in the event:

- Ms Lenka PRAENKOVÁ, Vice-President of the Bratislava Regional Court, Judge of the commercial division and President of the commercial panel, also on behalf of Mr Ľuboš SADOVSKÝ, President of the Bratislava Regional Court,
- Ms Mária RAMKOVÁ, Chairperson of the civil division, Judge of the civil division and President of the civil panel,
- Mr Marián TRENCAN, Chairman of the Council of Judges at the Bratislava Regional Court, Judge of the administrative division and President of the administrative panel,
- Ms Michala BAŠTICOVÁ, Higher Judicial Clerk (in the meaning of judicial candidate or judge trainee),
- Mr Luká KAPIĚÁK, Director of the Court Administration,
- Ms Martina KUBINOVÁ, Director of the Personnel Department.

Working documents were sent to the participants prior to the opening of the meeting. During the event I made use of a beamer to show documents; through my p.c. I connected to the Internet in order to show relevant parts of the web site of the Council of Europe, were useful documents and

tools on the subject of the efficiency of justice can be found. An intense debate took place both after and during my presentations, as well as during presentations by the representatives of the Bratislava Regional Court. Information was exchanged on both sides, in order to find out whether SATURN tools, or at least a part of them, could be implemented in said Court.

2. Main Features of my General Presentation.

According to the draft programme sent by the Secretariat of the CEPEJ of the Council of Europe, the meeting started with a presentation by myself in which I briefly described the actions of the Council of Europe in the field of the efficiency of justice. I described the main web pages of the CEPEJ, making participants aware of the existence and importance of the general report on the “Evaluation of European Judicial Systems.” I then made a quick reference to the Working Group on “Quality of Justice” and finally introduced the activities of the SATURN Working Group on the issue of judicial time management. Through the access to the concerned web pages I showed the main documents elaborated by SATURN along these years, making also a reference to the role of the Pilot Courts Network. In this framework the Vice President of the Regional Court showed her interest in the possible participation of the said Judicial Office in the Network and I provided her in a subsequent message with necessary contact details.

I then specifically focused my first report of the meeting on the SATURN Guidelines for Judicial Time Management, giving a general presentation along the lines of the methodological document issued by Jon Johnsen. Therefore I first illustrated the tasks of SATURN and the aims of the documents elaborated by it. I showed how the proceeding of issuing questionnaires on judicial time frames was going on. In this framework I showed two among the last questionnaires, briefly talking about the answers which, e.g., had been given by the Turin First Instance Court.

I then talked about the main ideas behind the implementation test programme, along the suggestions provided by Jon Johnsen’s methodology paper, explaining why the SATURN Group had decided to make a selection of fifteen guidelines, among the comprehensive SATURN Guidelines for Judicial Time Management, to be used during implementation testing. I then gave a general overview of the aforesaid fifteen guidelines.

3. Presentation of the Bratislava Regional Court.

Following diagrams show in a nutshell the current situation of the Bratislava Regional Court. It has to be pointed out, first of all, that the Regional Court is an appellate court, whereas District Courts are first instance offices. The Regional Court has as well the function of first instance court in some specific matters. It is also important to point out that figures of the following diagrams referring to “total number of cases,” as it was explained to me in Bratislava, refer to total number of new cases lodged with the Court in a given year. “Finished” cases are cases disposed of, either by final judgement or by friendly settlement of the parties.

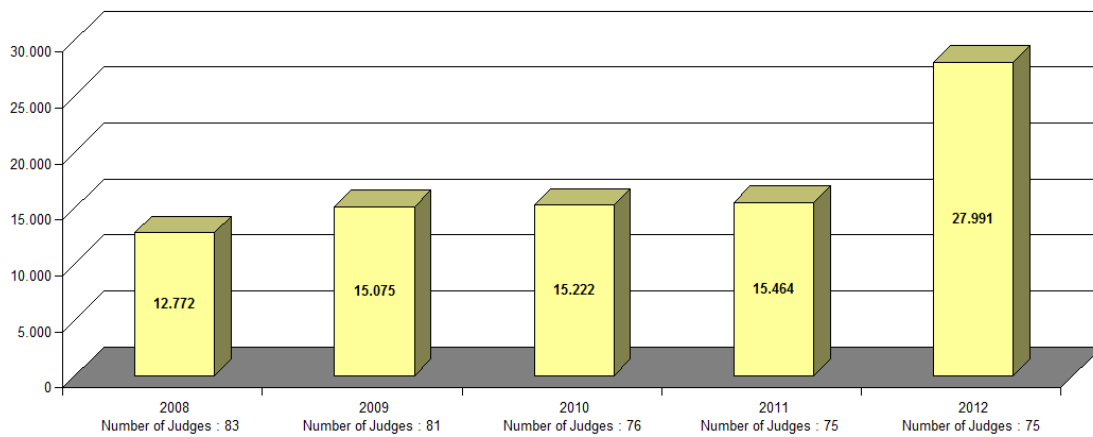
Overview of the total number of cases, of the closed and unfinished cases during 2008-2012 at Bratislava Regional Court

Total number of cases = nápad					
Bratislava Regional Court	2008	2009	2010	2011	2012
	nápad	nápad	nápad	nápad	nápad
Criminal judicial department	2.609	3.099	3.119	3.555	3.145
Administrative judicial department	1.892	1.951	2.171	1.757	11.200
Civil judicial department	6.381	7.755	7.531	7.167	11.173
Commercial judicial department+bankruptcy	1.559	1.711	1.986	2.234	1.939
Enforcement of judicial claims - Judicial treasury	331	559	415	751	534
Together - total cases	12.772	15.075	15.222	15.464	27.991
Number of Judges	83	81	76	75	75
Average annual number of total cases per 1 judge of the regional court	153,9	186,1	200,3	206,2	373,2

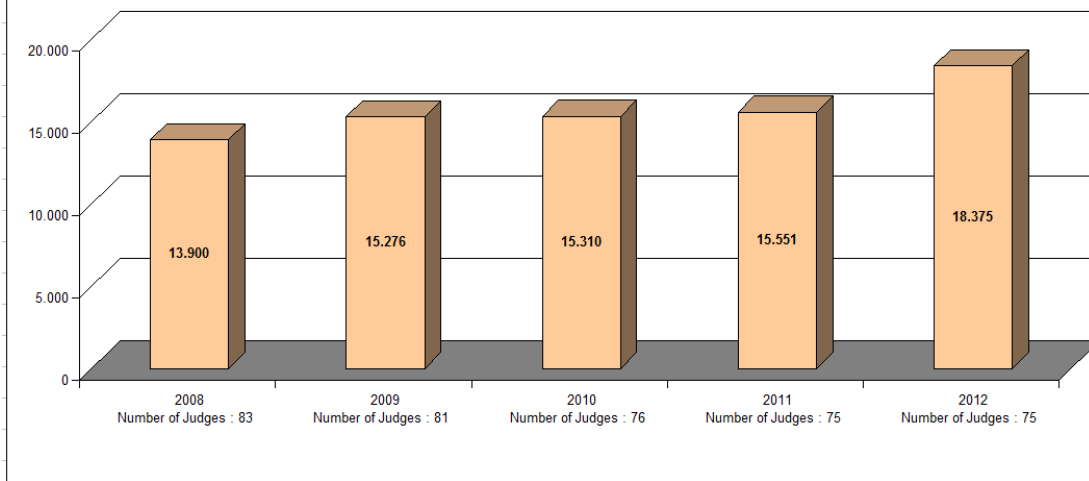
Closed cases = vybavené					
Bratislava Regional Court	2008	2009	2010	2011	2012
	vybavené	vybavené	vybavené	vybavené	vybavené
Criminal judicial department	2.596	3.018	3.205	3.535	3.113
Administrative judicial department	1.862	2.160	1.719	1.991	1.969
Civil judicial department	6.901	7.586	7.572	7.000	10.872
Commercial judicial department+bankruptcy	2.210	1.953	2.399	2.274	1.887
Enforcement of judicial claims - Judicial treasury	331	559	415	751	534
Together - closed cases	13.900	15.276	15.310	15.551	18.375
Number of Judges	83	81	76	75	75
Average annual number of closed cases per 1 judge of the regional court	167,5	188,6	201,4	207,3	245,0

Unfinished cases = nevybavené					
Krajský súd v Bratislave	2008	2009	2010	2011	2012
	nevybavené	nevybavené	nevybavené	nevybavené	nevybavené
Criminal judicial department	182	263	177	197	229
Administrative judicial department	2.993	2.784	3.236	3.002	12.233
Civil judicial department	3.436	3.605	3.564	3.736	4.037
Commercial judicial department+bankruptcy	2.474	2.161	1.819	1.772	1.832
Enforcement of judicial claims - Judicial treasury	0	0	0	0	0
Together - unfinished cases	9.085	8.813	8.796	8.707	18.331
Number of Judges	83	81	76	75	75
Average annual number of unfinished cases per 1 judge of the regional court	109,5	108,8	115,7	116,1	244,4

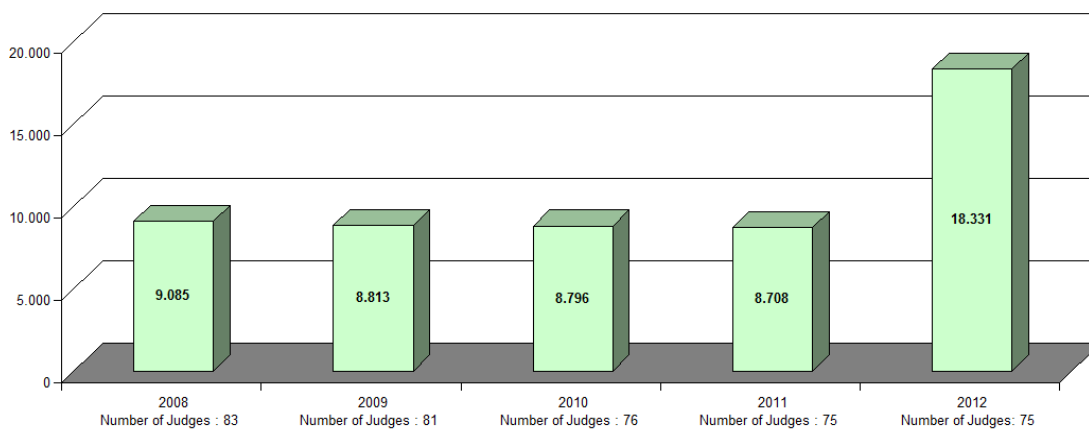
**Number of cases during the years 2008 - 2012
at Bratislava Regional Court**



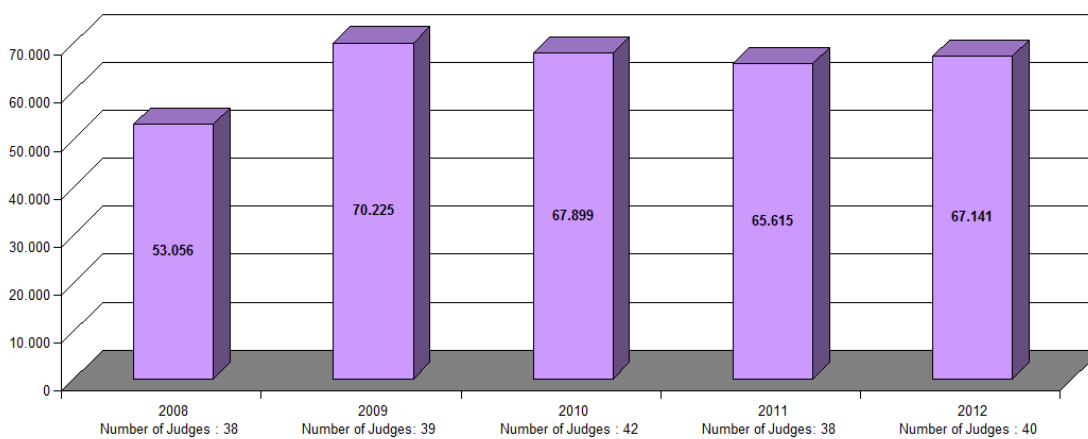
**Closed cases during the years 2008 - 2012
at Bratislava Regional Court**



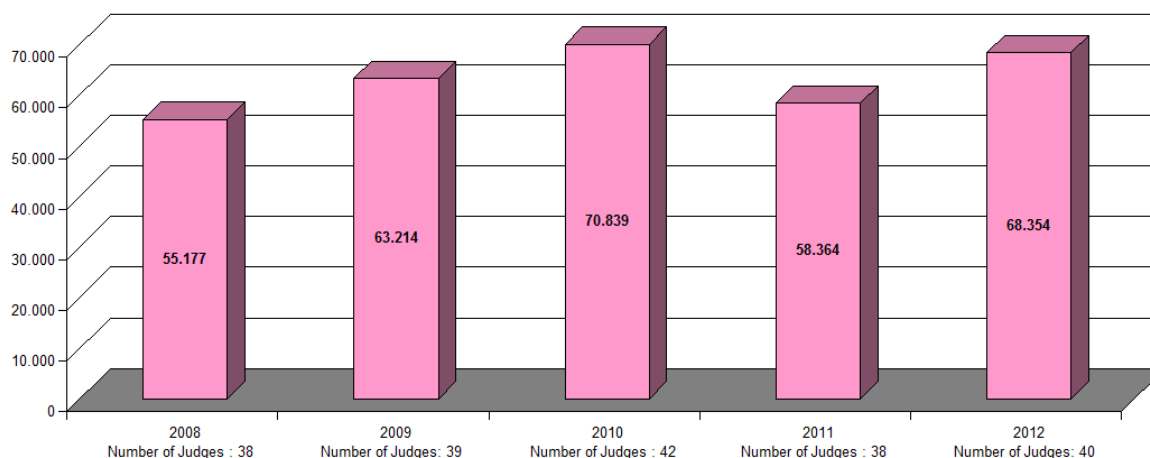
**Unfinished cases to 31.12. 2008 - 31.12.2012
at Bratislava Regional Court**



**Number of cases during the years 2008 - 2012
at the District Court Bratislava I**



**Closed cases during the years 2008 - 2012
at the District Court Bratislava I**



4. Main Issues Raised by the Analysis of Statistical Data in Bratislava Regional Court, as well as by the Discussion.

Analysis of the figures shows that, whilst the number of judges at the District Court has decreased of about 10% in the last five years, the number of new cases has more than doubled in the same period. A particularly accentuated increase has taken place in 2012, when the total number of new cases passed from 15,464 in 2011 to 27,991 in 2012. Statistical data give evidence that this increase is mainly due to an increase of administrative cases. Judges of the Court explained that this was due to collective actions concerning data access in the field of loans given to consumers. Another source of delays is given by compensation cases lodged before the Court for not compliance with the reasonable deadline requirement. Such cases concentrate in Bratislava because this city is the capital of Slovakia, even though they refer to delays in other judicial districts.

The aforementioned statistics show as well that the response by the judges to such emergency situation was a sharp increase of productivity, which unfortunately did not manage to reverse the tendency of the backlog to grow, especially taken into account the sharp increase of the figures referring to new cases. Another reason for this sharp increase of petitions is linked to the uncertainty of the legislative framework, which is subject to sudden and frequent changes.

I asked if the participants in the meeting had the feeling that the number of judges in Slovakia was not sufficient, but the answer was that the total number of judges could be deemed as satisfactory, if only they were better spread on the Slovakian territory. What Slovakian judges need is better assistance at the staff level: more and better qualified clerks and registrars of the court are needed. Furthermore, the number of lawyers has dramatically increased since the independence of the Country (from about 400 up to roughly 5,000) and the changes in the economy have persuaded a certain number of judges to leave the judiciary in order to start a liberal legal profession.

5. Presentation and Discussion about the Implementation of Some of the SATURN Guidelines on Judicial Time Management.

Following the aforementioned discussions I dwelled on some of the SATURN Guidelines on Judicial Time Management, along the lines of a report I had prepared on the basis of the experience of the “Strasbourg Programme” of the Turin First Instance Court. I therefore illustrated the article: *Study on Measures Adopted in Turin’s Court (“Strasbourg Programme”) along the Lines of*

“*Saturn Guidelines for Judicial Time Management*” (available at the following web page: http://giacomoooberto.com/study_on_Strasbourg_Programme.htm), which I wrote about two years ago in order to make a comparison between the two texts.

In this framework particular attention was devoted to the following principles:

- Active case management;
- Timing agreement with the parties and lawyers;
- Co-operation and monitoring of other actors (experts, witnesses etc.);
- Suppression of procedural abuses;
- Concise reasoning of judgments.

On each of these topics I explained the relevant SATURN Guidelines, also in the light of the experience of my Court.

As far as other SATURN Guidelines are concerned, all participants showed great interest vis-à-vis the special section devoted to “Guidelines for Court Managers.” In this framework following aspect were deepened:

- Collection of information (G 6);
- Continuing analysis and reporting on analysis (G 8 and G 9);
- Establishing targets (G 10);
- Evaluating court performances (G 12);
- Crisis management (G 13).

I also illustrated the part of the general CEPEJ report on the evaluation of judicial systems, where the concepts of “disposition time” and “clearance rate” are treated and explained. I tried to see whether such indicators could be developed in the Bratislava Regional Court, in order to monitor in a closer way the evolution of the situation as far as judicial time management is concerned. The response by the participants in the meeting was quite positive, as all the SATURN Guidelines were considered as useful and worth of implementation by the Court.

6. Ideas and Recommendations.

Following my presentations and the subsequent discussions in Bratislava I think that some basic ideas and recommendations could be formulated in order to try to help the Bratislava Regional Court to find a solution for managing and solving the problem of judicial delays.

6.1. Methodological Steps.

On the methodological level I am persuaded that a solution to problems such as those described in the previous paragraphs should be sought through the involvement not only of judges, but also of the other two main actors (at local level) of the case management process: the registrars of the Courts, on one side, and the lawyers, on the other side. This step could make those categories aware of the fact that the efforts of judges to improve the situation can and should be helped by a fruitful co-operation with these other two important actors in the judicial scenario.

It is evident that, on a more general level, as the efficiency of the judicial system is the result of many and many factors, also other actors should be involved, starting from the legislator and the “provider” of material means for the functioning of justice, which is to say the Minister of justice. This is, of course, a cumbersome and difficult path. Better is, at least for the moment, to see what on a local level can be attained. But, again, in order to have some results, also lawyers and Court registrars should be involved.

6.2. Suggestions Pertaining to the Legislative Level.

Judicial Authorities in Slovakia could launch initiatives (e.g.: congresses, conferences, meetings with representatives of political parties, with the Minister of justice, articles in law reviews as well as in newspapers, etc.) aiming at fostering following legislative reforms.

6.2.1. Reform of Judicial Map.

On the basis of the discussions in Bratislava it was clear that the total number of judges, although sufficient if compared with the needs of the Country as whole, could be better allocated in the different judicial offices of the Country. More attention should be given to the needs of the judicial offices of the Capital. In this perspective, comparative statistical analysis of number of cases lodged with different courts should be done, as a basis for possible proposals for amendment. Special attention should be given to the criteria that the “Quality Working Group” of CEPEJ is doing on criteria to be followed in order to draw guidelines on the organisation of judicial maps.

6.2.2. Reform of Territorial Jurisdiction Criteria for Allocating Damages in Cases of Violation of Reasonable Time Requirement.

During the discussions in Bratislava Slovakian participants in the meeting explained that one of the reasons for which local Court is overburdened with cases is that applications for damages following judicial delays are concentrated in Bratislava, as this is the place where the respondent party (the State) is territorially located. As an alternative, I could suggest a system similar to the one followed by the Italian law allocating damages to parties in case of violation of the reasonable time requirement (so called “Legge Pinto”).

According to this system, territorial jurisdiction is determined by the law on a sort of “matching” system, according to which to any district of court of appeal is linked another court of appeal. So, for instance, for alleged violations by a court situated in the district of the Court of appeal of Genua, the case for damages should be lodged with the Court of appeal of Turin; for alleged violations by a court situated in the district of the Court of appeal of Turin, the Court of appeal the case for damages should be lodged with the Court of appeal of Milan, etc.

6.2.3. Attendance of Parties in the Hearings. Easing Procedural Rules.

Legal rules concerning the attendance of parties in the hearings should be made easier, as they have been indicated by the participants in the meeting as a possible cause of judicial delays. The physical presence of a party should be necessary only when expressly required by the judge. On a more general plan, procedural rules should be simplified. The judge should be given the power to fix delays only when he/she deems it necessary in order to speed the course of the proceedings. The use of simplified procedures should be encouraged by the law.

6.3. Implementation of SATURN Guidelines 6-13.

Participants in the meeting showed great interest in SATURN Guidelines and assured they would try to implement them in Bratislava Regional Court. I would particularly suggest paying attention to Guidelines 6-13, as I try to show in the following points.

6.3.1. Collecting Information.

The first step is represented by collecting a maximum of statistical data and information, not only on incoming and defined cases, but also on the composition of the backlog. In other terms, it would be important to know exactly (in the Court, but also section by section, judge by judge), what is the precise number of cases pending for more than one year, two years, three years, and so on. It would also be important to have such figures “broken down” by matters. So, matter by matter, the President of the Court should know which are the sectors in which delays are more evident. This knowledge is important because it allows singling out possible remedies which might be linked to the peculiarities of material and/or procedural rights in the concerned matters.

For this purpose, the Court could study to set up a system for the classification of cases according to the matter they are dealing with. Following a possible agreement with the Bar, lawyers could co-operate by indicating, case by case, what is the matter in which the case is brought (e.g.: litigious divorce, divorce by mutual consent, co-ownership dispute, damages for breaching of contract, etc.). I.T. should help in this process. Informatisation of the whole procedure could help getting a more precise idea on how the backlog is composed.

Current statistical data only allow checking the “productivity” of a judge according to the number of cases judged and days of work, but they do not allow calculating the average duration of procedures, nor the disposition time, nor the clearance rate. They should be therefore reformed in the above explained way. Special training should be provided to some registrars and clerks of Court, in order to instruct them on how “tag” cases and provide the aforesaid kind of statistical

information. Regular meetings should be held among judges on how clearance rate and disposition time are evolving and what remedies could be enacted.

6.3.2. The Role of the Court President.

The principle according to which “The judge should have sufficient powers to actively manage the proceedings” is self-evident. However, directives and instructions issued by the Head of the Court could help the judges to “find the strength,” taking into account the current state of aggressiveness of lawyers, to play a pro-active role.

Prescriptions and suggestions issued by the Head of the Court should, as it happened in the Turin case, set priorities among different cases, like e.g.: reducing maximum length to no more than three years; giving priority to cases exceeding that deadline or dangerously approaching to it, etc. Rules set by the President of the Court about time limits in a framework such as that of the “Strasbourg Programme” (of the Turin First Instance Court) can also help the Judge to try to convince parties to avoid unnecessary requests and to try to “adjust their pace,” in order to meet the requirements of a quicker procedure. Of course a better effect could be reached if the President will previously contact the Bar in order to make lawyers acquainted with this initiative.

6.4. Setting up Specialised Sections.

One of the problems singled out during the meeting in Bratislava was related to the random allocation of cases to judges. According to this system it may happen that young and inexperienced judges get very tough cases. A (at least partial) remedy could lay in the setting up of highly specialised sections (e.g.: intellectual property rights, unfair competition, company law, real estate, etc.). The President could then assign older and more experienced judges to those sections and allocate new “difficult” cases to such highly specialised sections. Then the random allocation of cases could occur within the section (similarly to what happens, for instance, in Italy).

6.5. Sanctions for Frivolous Litigants.

Judges should be encouraged by the President to make use of remedies provided for by the law against frivolous litigants. In case some *ex officio* powers are granted to the judge by the Code or procedure (as it is, for instance, the case now in Italy), the Court should try to exert a maximum of persuasion on lawyers to abstain not only from frivolous litigations, but also from any practical actions which could resolve in uselessly lengthening judicial timeframes.

6.6. Conciliation Attempt.

Judges should be encouraged to try to find an amicable settlement of the case. The availability of the judge to such initiatives should be somehow kept in due consideration when assessing the judge for a possible transfer of promotion. Disposal of cases as an effect of a friendly settlement should be considered at the same level as disposal by judgement, also in the framework of the assessment process of judges. Actually, in many cases the friendly settlement of a case is the result of a patient activity of “mediation” by the judge. Furthermore this kind of solution not only gets rid of cases from the backlog of the concerned judge, but it contributes also not to charge the backlog of the court of appeal (and/or of the Supreme Court).

6.7. Simplified and Concise Reasoning of Judgements.

It appeared from the talks and discussions in Bratislava that also the Slovakian, as well as the Italian legal tradition, adopt a system for the reasoning of judgements more suitable to long and detailed “treaties,” than to a judicial decision. The advantage of this system is that lawyers may find in the reasoning answers to the issues and legal questions they raised during the case, as well as reasons and bases for filing an appeal. The disadvantage is that judges, “frightened” by the need to thoroughly and at length explain reasons for a case, may be tempted to differ the moment of the judgement, thus hoping to persuade parties to abandon their disputes and to find a friendly settlement of the case, what unfortunately does not happen, if not in rare cases.

So, one of the “bottlenecks” of civil justice is the timeframe between the moment in which a case has been prepared by acquiring evidence and the moment in which it comes to a decision. This

shows that one of the problems possibly causing judicial delays is brought about by the activity of reasoning in written the case.

Let me remind here that in Italy a recent reform, affecting some provisions of the Code of Civil Procedure, obliges nowadays judges to be more concise. But the weight of a tradition dating back centuries is still very strong. Therefore the Turin First Instance Court President issued a recommendation to all judges of the said Court aiming at, among other things, reasoning decisions “in a concise form, as provided for by Article 132, Second Paragraph, No. 4, of the Italian Code of Civil Procedure and by Article 118, Second Paragraph, of the Provisions for Implementation of the Italian Code of Civil Procedure.” This presidential document goes on recommending that “Only questions relevant for the decision of the case should be taken into account. Judges should keep into account that the essence of reasoning is explaining the decision and not displaying erudition. Judges should always comply with deadlines provided for by the law for deposit their decisions.”

Maybe also a special training (by the Judicial School) on the drafting of judicial decisions could be of some effect. An increased use of reference to judicial precedents, available in electronic format could as well be of use, in reproducing passages of former judgements, which the judge could deem applicable to the case he/she is dealing with. Lawyers could be invited to provide an electronic version of their acts, so that relevant passages of their remarks could be used for the reasoning of the judge, when he/she thinks this could be useful. The same is true for protocol of hearings with evidence (witnesses’ depositions, experts’ remarks, etc.).

In this framework a mention should be made also to the effort of reaching a sort of “standardisation” of the most common kinds of interim and provisional decisions. Let me just add that an uniformisation and a standardisation of (at least) less relevant decisions fits with the European example. Actually a whole array of legal decisions in matters such as taking of evidence in foreign countries, European order for payment procedure, recognition and enforcement of judgments, etc., are taken (and have to be taken!) making use of forms available on the Internet, which are joined as an annex to different EU regulations.

Closing my report, I have to thank again the Vice-President of the Court, as well as all the judges and people who participated in the meeting, for their kindness, for the warm reception and for their readiness and openness in discussing issues of common interest.

The expert

A handwritten signature in black ink, appearing to read 'Giacomo Oberto', with a long horizontal stroke extending to the right.

Giacomo OBERTO