IMPROVING THE INSTITUTIONAL FRAMEWORK OF FAMILY AND CIVIL LITIGATION IN ROMANIA

Cooperative Agreement No. 186 A 00 03 00103 00

CLOSED FILES REVIEW OF CIVIL AND FAMILY CASES
Summary of final working sessions – September 2007

In September 2007, ABA/CEELI-Romania organized two working sessions to discuss findings and recommendations formulated in the reports[1] on the project conducted with the support of USAID over a nine months period.

THE FIRST WORK SESSION TOOK PLACE ON SEPTEMBER 19 with representatives of the Commission for the Revision of Civil Procedures, Superior Council of Magistrates (SCM) and the National Institute for Magistrates (NIM) and focused on operational impacts of code amendments. The following policy recommendations were outlined and discussed during the session, along with implementation issues:

1) Establish realistic adjournment intervals based on complexity of expertise.

2) Provide judicial authorities with the possibility to waive expert reports under specific circumstances.

3) Improve case preparation by:
   - Providing judicial authority to encourage discovery;
   - Requiring scheduling conferences;
   - Creating the possibility for courts to delay preliminary hearing until standard documentation is complete.

4) Establish judicial authority to allow courts to adjourn on own motion.

5) Re-assess effectiveness of sanctions:
   - Sufficiency of current fines;
   - More reliable application by fiscal authorities.

The discussion centered on how the responsible entities (SCM, MOJ, etc.) might plan for implementation of changes in each of these areas.

The subject of experts was given considerable attention during the discussion. Participants noted that the causes of delay with expert reports are complex, but particularly attributed them to a lack of experts in some areas, or to difficulties experienced by experts in obtaining reliable land records. CEELI emphasized that the closed file research specifically did not focus on land restitution cases as they raise a series of unique problems that are not necessarily representative of other case types. Nevertheless, insufficient numbers of available experts remain an important

[1] The reports (Phase I-family cases; Phase II – civil cases; and Summary) were published on the SCM website: http://www.csm1909.ro/csm/linkuri/05_09_2007__11683_ro.pdf.

issue to be addressed by SCM and MOJ, in consultation with institutions specialized in training future experts.

Several remedies were debated, such as introducing provisions in the code of civil procedures to permit the recruitment of highly qualified professionals – as one option to supplement the registered "corps of experts". Participants reported that MOJ recommendations to solve experts-related problems are due at the end of October (with assistance from Dutch experts). They also generally agreed that, in view of another upcoming study (on cases complexity – to be completed by mid October), it will be possible to develop related criteria on the complexity of experts' assignments. This would, in turn, permit the development of standard templates for expert reports, as well as guidelines for judges to establish expert fees.

Participants debated the utility and practicality of developing templates and procedures for ensuring preparation by parties and stricter guidelines for case preparation, considering the advantages of using the principle of "scheduling conferences" (Fr. *Mise en Etat*). It is anticipated that the new code of civil procedures will separate the oral procedure from the written one, such as providing for a 60 days delay for the parties to exchange documents.

As for the application of sanctions (fines), participants focused on experts but made no comments on the contribution to delays by attorneys or parties. They argued that sanctions should not be applied if experts present valid reasons for delay (such as shortage of available resources), and that fines did not serve as deterrent given their minimal value. They debated also the question of complaints against magistrates, such as those which might result from judges imposing fines, and argued over various means for magistrates to feel protected against abusive complaints.

CEELI emphasized the desirability of addressing concretely and systematically the above policy and operational issues – noting that they would not be solved by simply amending the procedures code, and stressing that discussions should involve the various stakeholders (attorneys, experts, agency representatives).

THE SEPTEMBER 21 WORK SESSION involved technical staff of the Ministry of Justice, SCM and NIM planners, statisticians, and IT staff to explain principles of fact based research and discuss issues related to collection of court data and implementation of technology in the court environment. The Justice System Action Plan for technology was reviewed prior to the meeting. This ambitious plan includes the acquisition of 13 million Euros of equipment, and the implementation of e-filing, court recording, digital records storage, and enhancements to the ECRIS system. The following general topics were covered:

Case Management Reports and Information - Typical case management reports that courts use for performance monitoring, planning, and case management include:

- ✓ Filing and dispositions (clearance) by court and judge
- ✓ Dispositions by type, court and judge
- ✓ Age of cases disposed
- ✓ Cases without future date
- ✓ Open pending by case type
- ✓ Case age report (by relevant categories)
- ✓ No progress report
- ✓ Time between events (intermediate time frames)
- ✓ Number of adjournments / hearings (hearing date certainty)
- ✓ (more advanced) length of trials (hearings)

A list of report outputs from the ECRIS system was not available at the time of the September 21 discussion. Participants noted that the new release would include the ability to track time lines between events in the life of a case, which could be very useful information for case flow management. They were encouraged to determine what types of reports would be useful for both case management by the court and statistical reporting at the national level. Case management system design should facilitate identification of critical data elements or information for reports and statistics.

Weighted Caseload - Determining case complexity is an issue for the Romanian courts. It is anticipated that analyzing case complexity will help the courts better predict the time required to resolve individual cases, as well as facilitate more equitable case allocation among judges and determination of judicial resources. Methodologies for determining relative case weights to be used in calculating judicial resource needs were presented in more detail. The elements of a typical weighted caseload study include defining the "judge year"[2], conducting case time study, and using a Delphi study[3] to validate time study results.

When using weighted caseload to determine judicial resources the process typically involves the consideration of secondary factors, such as staff support, facilities, and other limitations on judicial time. This was discussed with the participants. The weighted caseload process was differentiated from that used to measure case complexity for purposes of differentiated case management. Participants were particularly concerned that a study take into account not only courtroom time but time spent by judges in reviewing case information and preparing judgments. A comprehensive time study should take into account both bench and non-bench time associated with various types of cases.

Court Recording – The implementation of court recording is included in the IT master plan for implementation in late 2007. The participants were encouraged to consider establishing pilot sites to identify potential problems and issues before full implementation. Working with the pilots, the SCM would be able to develop operational policies, assess site preparation costs, determine training needs, and anticipate the impact of recording and transcript preparation on personnel. Mr. Stefanescu indicated that, unfortunately, the project plan and funding did not foresee establishing pilots and would have to be implemented in total. In any event, the courts will need to consider many of these issues:

- Video v. audio; stand alone, PC-based, & networked options
- Site assessments regarding space, PC, power & acoustic characteristics
- Internal policies and procedures
    - Transcript preparation (frequency, priority, etc.)
    - Transcript formats
    - Access to transcripts (parties, public)
    - Fees for transcripts
    - Challenges to accuracy
    - Record on appeal
- Qualifications for recorders & transcribers
- Impact on personnel and workflow requirements

[2] A "judge year" is the number of days available in a year for a judge to conduct judicial business, subtracting weekends, holidays, average sick days, scheduled training, administrative tasks etc.

[3] Similar to a focus group, a Delphi study helps solicit the views and perspectives of stakeholders on a variety of topics, including technical ones, but unlike focus groups does not require face-to-face meetings. In the court system context, judges are generally brought together via e-mail, fax or teleconferences to have a structured discussion about the length of time to disposition for the various types of cases based on their experience.

- Technical infrastructure
- Storage and access, retention requirements (archiving & indexing)
- Training for staff, judges, etc.
- Rollout plan, including retraining and review of utilization
- Sustainability (license fees, future system upgrades)

E-filing – The session concluded with a recap of a previous discussion with Mr. Stefanescu regarding the upcoming plans for establishing e-filing. The group was informed that e-filing can involve a number of functions, including case initiation, notification and summons of parties, exchange of documents, and issuance of judgments and orders. Participants were encouraged to obtain more information from court systems that have implemented aspects of e-filing, including Finland, Great Britain and the federal courts of the United States. They were encouraged to start e-filing with a limited number of cases or a specific case type, in particular one that involves large documents. This appears to be the plan, as e-filing will be at first used only for commercial cases. Some of the lessons learned from previous efforts were highlighted, including the reluctance of attorneys to embrace e-filing, the need for new procedures and rules, provision for security and system backups, and handling exceptions to the process.

Systems Integration – The information technology plan also calls for integration of the court recording and case management system, as well as integration between the courts and other agencies. It remains to be seen whether the timeline and scope of this plan are reasonable. Participants in the second session generally represented that they are anticipating many of the issues that will need to be considered in implementing what is certainly a very ambitious plan.

IN CONCLUSION, CEELI attempted through the convening of these two sessions to convey two messages:

- Amendments to the code of civil procedures designed to help reduce unnecessary delays need to be accompanied by a rigorous, inter-institutional effort to anticipate operational and other changes resulting from procedural amendments. Lessons learned in other countries – including in continental systems such as Italy – demonstrate that procedural reforms do not yield the expected results when such advance planning does not take place. In some of its publications, the European Commission for the Efficiency of Justice (CEPEJ)[4] makes exactly those points.
- Experience shows also that the introduction of sophisticated case management practices, integrated systems (including court recording, e-filing), weighted caseload designs, etc. requires a considerable investment of time, thought, and testing. Through presentations by an international expert in systems design, CEELI attempted to highlight some of the issues that must be addressed imperatively by those in charge of developing this ambitious project in Romania.

[4] See also: *Compendium of "best practices" on time management of judicial proceedings* - Strasbourg, 8 December 2006- CEPEJ(2006)13

APPENDIX A – LIST OF PARTICIPANTS

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APPENDIX B – DISCUSSION CHART (09/19/2007)

LEGISLATIVE	OPERATIONAL
1) Establish realistic adjournment intervals based on complexity of expertise.	o Classify levels or types of complexity of expert reports in collaboration with expert representatives o Determine critical elements and level of effort typically required to complete each type; create templates where practical o Estimate ideal time range for preparation of each type o Introduce guidelines to allow judicial flexibility to adjourn matters based on estimated time to prepare expert report rather than fixed adjournment intervals o Review fee schedules based on complexity & qualifications of expert; publish recommended ranges o Identify changes needed to ECRIS to support flexible scheduling o Conduct court training and notify expert community
2) Provide judicial authority to waive expert reports under specific circumstances.	o Conduct comparative research from other countries regarding use of experts o Determine and publish factors or guidelines for waivers o Train judges and advocates
3) Improve case preparation by: o Providing judicial authority to encourage discovery o Requiring scheduling conferences o Creating the possibility for courts to delay preliminary hearing until standard documentation is complete	o Develop guidelines for conducting discovery and scheduling conferences, including timing, forms, and sanctions; consider time required for litigants to obtain information or documents from public agencies o Where possible, determine minimum required elements/documents parties must have for each case type at filing o Establish case screening checklists for staff and judges o Develop informational materials for pro se litigants (plain language brochures) o Train judges, staff and advocates
4) Establish judicial authority to allow courts to adjourn on own motion	o Identify circumstances that do not require attendance of parties for adjournment o Establish policy for judges to grant routine adjournments without presence of parties o Establish process for monitoring adjournments, using ECRIS data if possible o Train judges and notify advocates
5) Re-asses effectiveness of sanctions: o Sufficiency of current fines o More reliable application by fiscal authorities (replace ID national number with address?)	SCM: o Develop complaint database to evaluate nature of complaints; publish results o Determine if SCM can develop pro active processes to address judicial perceptions regarding complaints

	SCM/MOJ: o Meet with advocate association regarding sanctions and complaints, time guidelines o (long term) On the basis of research develop benchmarks and time standards for case management with bar input o Provide training for judges and advocates o Establish systems for measurement and reporting, including ECRIS, and train responsible staff