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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

TIME MANAGEMENT CHECKLIST

(Checklist of indicators for the analysis of lengths of proceedings in the justice system)

adopted by the CEPEJ at its 6th plenary meeting
(7–9 December 2005)

This checklist is not a questionnaire but a tool for internal use of its stakeholders whose purpose is to help justice systems to collect appropriate information and analyze relevant aspects of the duration of judicial proceedings with a view to reduce undue delays, ensure effectiveness of the proceedings and provide necessary transparency and foreseeability to the users of the justice systems.

This checklist is aimed at legislators, policy-makers, all those responsible for the administration of justice including ministries of justice, judges, court officers in charge for court administration and case-management, and the research institutions that analyze functioning of the justice system. It may also be used by all organisations and persons interested in the ability of the justice systems to manage length of proceedings and establish smooth, delay-free and transparent administration of justice.

Background and purpose of the checklist

In order to prevent delays or reduce timeframes in the justice systems, states should collect information that would enable them to understand where and why delays occur.

The European Human Rights Convention and the case-law of the European Court of Human Rights require justice systems to ensure effective implementation of the right to a fair trial within reasonable time. The Court is assessing the length of the proceedings in the light of the circumstances of the case, having regard in particular to the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation. Thus, the Court is viewing the length of the proceedings in particular from the perspective of the users of the justice system. The protection of civil rights and obligations has to be effective, and not illusory. The length of judicial proceedings has to be assessed integrally, from institution of the proceedings before the court to the moment when a final and binding judicial decision has been enforced.

Relying on the case-law of the Court and the experience of national justice systems, the Framework Programme of the European Commission for the Efficiency of Justice (CEPEJ) "New objective for the justice systems: processing of each case within an appropriate and foreseeable time" emphasizes the importance of the foreseeability of the timeframes of judicial proceedings. It also points to the important influence of the periods of inactivity (waiting time) on the length of proceedings.

The studies undertaken in the framework of CEPEJ¹ activities have shown that many justice systems still do not collect or dispose of the information that is essential for assessing the length and delays in the relevant types of proceedings. In particular, the results of the Pilot Scheme for evaluating judicial systems ("European Judicial Systems 2002: facts and figures"²), have demonstrated that very few countries were able to fully and accurately respond to the questions with regard to the length of proceedings.

The CEPEJ also took into account Opinion N° 6 of the Consultative Council of European Judges (CCJE) "on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement"³ and opinions of other organisations of judicial professionals represented as observers to the CEPEJ.

This checklist is intended to give help to member states to enable justice systems to collect appropriate information and analyze relevant aspects of the duration of judicial proceedings. Its purpose is to reduce undue delays, ensure effectiveness of the proceedings and provide necessary transparency and foreseeability to the users of the justice systems. The checklist should enable analysis of the proceedings on two levels: as total duration of the proceedings from initial stages to the final decision (and, if enforcement is required, until the enforcement of the decision when this one is of the duty of the State); and as duration of individual stages of the proceedings (with particular attention devoted to the analysis of the periods of inactivity). Consequently, this checklist may assist in evaluation of the functioning of the

1 Relevant information on the CEPEJ as well as all CEPEJ documents are available on the Web site: www.coe.int/CEPEJ.

2 Adopted by CEPEJ at its 4th plenary meeting (December 2004).

³ See in particular paragraph 43: "*The CCJE recommends that, as it is impossible at the moment to rely upon widely accepted criteria, quality indicators should at least be chosen by wide consensus among legal professionals, it being advisable that the independent body for the self-governing of the judiciary play a central role in the choice and the collection of "quality" data, in the design of the data collection procedure, in the evaluation of results, in its dissemination as feed-back to the individual actors on a confidential basis, as well as to the general public; such involvement may reconcile the need for a quality evaluation to be carried out with the need for indicators and evaluators to be respectful of judicial independence.*"

national justice systems with respect to timeframes of the relevant types of proceedings (both in the framework of next evaluation rounds by the CEPEJ and other evaluation exercises), and facilitate time-management and delay-reduction policies in national justice systems. Therefore it should be widely distributed to all stakeholders, and in particular ministries of justice, court presidents, judges and other legal professionals.

CHECKLIST OF TIME MANAGEMENT INDICATORS

INDICATOR ONE: ABILITY TO ASSESS THE OVERALL LENGTH OF PROCEEDINGS

Proper time management requires not only the ability to assess the duration of individual stages of proceedings, but also the total duration of proceedings from their start to the final determination and, if applicable, the enforcement of the judicial decision.

• Identifying the court proceedings from the users' perspective

1. Is there a unique identifier (e.g. a case number) or connector for each proceeding, from the instigation⁴ to the final and binding decision?
 - a. Does the name/number/connexion of the case follow the claim or charge every time when other court or authority seizes the matter (e.g. on appeal)?
 - b. When, on the account of a legal remedy, a higher court decides to strike the decision and return the case for retrial, is the case still treated as the same case?
 - c. When cases are merged together (or separated), is the original date of instigation still used for calculating the length of proceedings?

c. Establishing integral length of proceedings

2. Can you determine the overall length of proceedings for all cases pending?
 - a. Is data available about the length of proceedings from the instigation of the proceedings before the court until the delivery of a final and binding decision? In cases where formal proceedings prior to instigation of judicial proceedings exist, is there data available on the length of these proceedings?
 - b. Is data available to determine the length of proceedings from instigation of proceedings to the enforcement/execution of the decisions (when appropriate)?
 - c. Is data available about the length of proceedings for obtaining provisional relief in court cases, from the application to the date of compliance with the orders issued?

INDICATOR TWO: ESTABLISHED STANDARDS FOR DURATION OF PROCEEDINGS

For the purpose of assessment, planning and transparency of the length of proceedings, standards and targets for optimum (minimum, maximum) duration of proceedings should be established and be available to users of the justice system. It is advisable that these standards be elaborated in consultation with stakeholders (representatives of legal professionals, public, etc.).

• Defining optimum timeframes of proceedings

3. Have you developed standards for optimum timeframes in relevant types of proceedings?

⁴ In criminal matters, data ought to include the time used from the moment a suspect is charged with an offence, independent of whether the charge is issued by the police, the prosecution or the court.

- a. Are there any kinds of national standards for appropriate (adequate, optimum) duration of court proceedings? Do they cover most types (e.g. family cases, employment cases, murder cases, urgent matters)?
- b. Do courts use specific “targets” (orientation timeframes) for the duration of particular types of the proceedings?
- c. Do judges and other court officials and other agencies and offices (e.g. Ministry of Justice, Judicial Council, Court Services) regularly plan and review appropriate duration for various types of cases?

- **Foreseeability of the timeframes**

4. Is the length of proceedings predictable for the users (parties, lawyers, others)?
 - a. Is data about the duration of the proceedings (see above, point 2) available to the public at the national level?
 - b. Do individual courts or branches of jurisdiction provide to users information with regard to foreseeable duration of particular proceedings?
 - c. Do judges and courts attempt to plan the duration of individual proceedings and estimate, together with the users, the duration of certain procedural actions (steps)?

INDICATOR THREE: SUFFICIENTLY ELABORATED TYPOLOGY OF CASES

Realistic and appropriate planning of standards and total duration of proceedings requires a sufficiently elaborated grouping of cases with respect to their complexity and average length (typology of cases), which is neither too unrefined nor overly detailed.

- **Typology of cases with regard to time-consumption**

5. Is there a categorization of cases with regard to their complexity and duration?
 - a. Does this categorization comprise most types of cases?
 - b. Is there an estimate of time necessary for processing of the case by the court (time employed by judges; judicial officials; other staff) for each category?
 - c. Is there an estimate of the expected or minimum time that is needed to accomplish particular procedural steps (e.g. service of documents by which proceedings are instituted; preparation of case prior to oral hearing)?

INDICATOR FOUR: ABILITY TO MONITOR COURSE OF PROCEEDINGS

Proper time management needs to take into account the length of every individual stage of the judicial process. For this purpose, at least the timing of most important and typical stages (“stages in proceedings”) should be recorded and analysed (these stages are enumerated in the following text only as examples).

- **Collecting data about timing of most important events in the process**

6. Do you monitor and collect data about the timing of the most important stages in most types of cases, with a view to establishing where and why delays occur?

- a. Do you collect data when the following most important moments in the judicial process take place and the duration between them:
 - i. Instigation of proceedings⁵
 - ii. Service of process upon the other party
 - iii. Receipt of the response by the other party
 - iv. Making of procedural orders by the court
 - v. The use and timing of preparatory conferences or preliminary hearings
 - vi. Beginning of the trial stage (first oral hearing on the merits)
 - vii. Existence and duration of technical expertises
 - viii. Duration and number of hearings on the merits of each case
 - ix. Conclusion of the trial stage
 - x. Decision-making in the first-instance (preliminary decisions, partial judgments, final judgments)
 - xi. Announcement and delivery of the first instance decision (judgment) to the parties
 - xii. Launching of legal remedies (appeal etc.) and their impact on the duration of the proceedings
 - xiii. Appellate hearings and decisions
 - xiv. Preliminary decisions and orders in higher courts (e.g. announcement of the judgement or delivering reasons)
 - xv. Course and results of the appellate and other proceedings (e.g. reversal of a decision or sending the case for re-trial)
 - xvi. Other (extraordinary) stages and remedies (e.g. re-opening of a case or constitutional review)
 - xvii. Effectiveness of the decision, enforcement
- b. Is data from point a.) above available to participants in the proceedings and public at large?
- c. Is information from point a.) above used for planning purposes, in order to identify and prevent undue delays, accelerate proceedings and improve their effectiveness?

INDICATOR FIVE: MEANS TO PROMPTLY DIAGNOSE DELAYS AND MITIGATE THEIR CONSEQUENCES

While monitoring the duration of proceedings, the judicial system needs to have established mechanisms for prompt identification of excessive duration (delays) and should instantly alarm responsible persons and offices with a view to remedy the situation and prevent further dysfunctions.

- **Clear responsibility for prevention and suppression of delays**

7. Can responsibility for the identification and avoidance of undue delays be clearly determined?
 - a. Is there a person or office that is in charge of monitoring the regular course of particular proceedings and locating delays with a view to reducing them, irrespective of the stage of proceedings (first instance, appeal)?

⁵ In criminal matters, the most important moments where data should be collected include the moment a suspect is charged with an offence, independent of whether the charge is issued by the police, the prosecution or the court.

- b. Does a responsible person or office have a duty to report to the court, authority or office undue delays? Can the responsible person take steps to resolve current delays or prevent future ones and speed up the proceedings? Are appropriate measures available against the responsible person if steps are not undertaken or results achieved?
- c. Is there an office being responsible for appropriate length of judicial proceedings at the national level? Has it authority to take action where delays have been observed ?

- **Emergency policies (crisis management)**

8. Are there procedures to promptly identify delay and reduce the impact of delays on the parties?

- a. Are provisional or interim measures regularly available in order to temporarily regulate relations between the parties until the end of the judicial process (e.g. pending resolution of the dispute or decision on the charge)?
- b. Can judicial decisions be declared enforceable and become operative before the end of appellate proceedings?
- c. Is it possible to impose sanctions against participants in the proceedings that intentionally or unintentionally delay the proceedings (admonition, replacement, fines, cost decisions)? Are such measures regularly used?

- **Procedural means to accelerate proceedings**

9. Are procedures in place to accelerate the proceedings and prevent delays?

- a. Are adjournments *sine die* permissible? if yes, are they frequent and periodically reviewed? Does the court periodically review all cases and decide on the need to revive (or terminate) “frozen” or stalled proceedings?
- b. Are there any procedural means available to the parties or other participants in the proceedings (judges, intervenients, etc.) in order to set appropriate time limit for particular actions in the proceedings? Are such means effective?
- c. If appeal is used as a delaying tactic, are procedures in place to prevent such behaviour of the parties?

INDICATOR SIX: THE USE OF MODERN TECHNOLOGY AS A TOOL FOR TIME MANAGEMENT IN THE JUSTICE SYSTEM

The modern justice systems may best achieve proper time management in the justice sector by the use of up-to-date technology, both for the purpose of monitoring timeframes and for the statistical processing and strategic planning.

- **Monitoring length and delays by the information technology**

10. Is information technology effectively used to monitor length of proceedings?

- a. Is essential data about all/majority of cases entered into an information system (in particular, data from 6.a)?

- b. Is information available both locally (at the level of particular judges and courts) and centrally (in the offices responsible for judicial administration and statistics)?
- c. Can parties (and, where appropriate, public at large) access information about the stage and timing of particular proceedings (e.g. dates of hearings, location of the file) through Internet or similar information system?

- **Information technology as the tool for statistical processing and planning in the area of timeframes**

11. Does information technology enable prompt production of statistical reports and planning at the policy level?

- a. Can up-to-date statistical information be promptly available for all courts, at any moment?
- b. Are statistical reports being published periodically and with sufficient frequency?
- c. Is statistical information about length of proceedings and delays collected through an information system regularly used for strategic planning?