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From 20 to 2020 – Building the CFI of tomorrow on solid foundations

Workshop 'Quality of Justice'

Your Royal Highness,
President of the Court of Justice, members of the Court of Justice,
President of the Court of First Instance, members of the Court of First Instance,
President of the Civil Service Tribunal, members of the Civil Service Tribunal,
Dear colleagues,
Ladies and gentlemen,

The organisers of this very festive and interesting day have invited me to report on the contributions made in the workshop on the quality of justice. It is a pleasure and an honour to do so. Before I start the delicate task of telling you what others have said and suggested (and I may add some of my own views), I wish to congratulate the Court of First Instance (hereinafter also referred to as the Court) on its 20th Anniversary – a court which we may hopefully soon be able to refer to as "the General Court of the European Union". This is a new name in line with its important and evolving role, and its impressive track record.

When one comes of age at 20, it is good to stop a moment to reflect both on the past, the passing of the teenage years, and the coming period of dynamism and vibrancy, by setting a number of concrete ambitions. It is therefore wise to celebrate this milestone by looking ahead and discussing the possible outcome of the future – always on the basis of an understanding and evaluation of the past.

The theme of the morning session was the concept of quality of justice and the quality criteria. Each of the contributors to our workshop brought new ideas and suggestions, and the debate was fascinating.

What I personally found very interesting is that on a number of important points, participants’ views were actually concurring more often than one might have expected. I will report first on the quality criteria that were discussed this morning and
then on the discussion concerning the time factor in proceedings. I will conclude the report with a short mention of the main suggestions that emerged from the debate.

**Quality criteria**

In discussing the concept of “quality of justice”, the contributors and discussants were able to build on the very comprehensive and masterly report of the chair of our workshop, President Sauvé. Following the flow of the different steps in proceedings, President Sauvé mapped out and discussed seven criteria or elements that can serve as indicators of the quality of justice. These are:

1. access to justice;
2. the consistency and predictability of judgments;
3. the quality of the relationship between the court and the parties;
4. the expeditiousness of the process, that is the time factor;
5. the intelligibility of the judgments handed down;
6. the possibility of securing compliance with the court’s judgments, where necessary through enforcement; and
7. the social acceptability of the justice that is being delivered.

Discussing what quality of justice actually means, President Paczolay broadened the debate with a number of interesting observations. He noted that a growing number of countries are developing integral quality systems for courts. It is a trend which started in the US with the Trial Court Performance Standards. As we know, the Council of Europe created the European Commission for the Efficiency of Justice, which created, in turn, a working group on quality of justice. Mention was also made by President Paczolay of the basic values and areas of the excellence of courts, which were developed by another organisation devoted to judicial quality management, the International Framework for Court Excellence.

President Ravarani added a well-timed note of caution to the debate by pointing out that the criteria for the quality of justice that we identified were essentially criteria set by lawyers themselves. He noted that the constituent powers, governments and parliaments, are more interested in the speed of justice than in the intrinsic quality of justice. Citizens and the media have also - most of the time - different and more narrow preoccupations than the intrinsic quality of justice. President Ravarani suggested therefore that quality of justice is in reality about the ethics or morality of the judge (“l’éthique du juge”), a task which judges and courts inevitably assume.

It was underlined in the debate that the quality of justice travels beyond the interests of the parties in a specific case. This is particularly true for a supranational court like the Court which interprets and applies important areas of Community law that are also applied by national courts, national competition authorities and other national actors and agencies. This is a very salient point that, in my view, needs to be seriously taken into account when considering possible changes to the future organisation and procedures of the Court.

With this broad landscape of quality of justice and quality criteria in place, we discussed a number of these criteria, in the practice of the Court of First Instance.
The first criterion that was discussed is the **independence of the court and the stability of its case-law.**

It became clear that the independence of the Court and the stability of its case-law are not in issue. Predictability requires, however, also sufficient publicity and awareness of the case-law, and President Sauvé suggested in that context that it is worthwhile to consider updating and further improving the abstracts of the case-law that are published in the Digest of Community Case Law.

We then discussed the quality of the relationship between the parties and the court - or, as Marc Pittie rightly named this point, “une justice qui écoute”. It is an important quality point which gave rise to a lively debate.

Views were expressed and suggestions made on the organisation of both the written and the oral procedure before the Court.

As regards the **written procedure**, views were exchanged between members of the Bar and the judiciary with regard to the imposed limitation on the length of the pleadings. The practitioners noted that the Court is confronted with ever longer and more complex decisions of the Community institutions. It was suggested that the use and application of the Practice Directions be reviewed in so far as these put a limit on the length of written pleadings. The concern is that the limitation may in some types or categories of cases lead to an obstacle to the Court being fully informed about the facts of a case and that, as a result, the quality of justice may be affected. It is no doubt justified that the Practice Directions send a strong signal that written pleadings should not be unduly long. On the other hand, flexibility is required in certain types of cases. Moreover, one needs to be aware that it is in practice often very difficult to limit an appeal to a few grounds of appeal only, in a situation where a matter may be complex, a decision very substantial and the deadline for appeal relatively short without a possibility to bring new grounds or arguments at a later stage in the procedure.

As regards the **oral procedure**, it is very interesting to note that both representatives from the Judiciary and from the Bar stressed the primordial importance of the oral debate. President Sauvé mentioned that he is personally convinced of this importance. He noted further that the Court’s practice demonstrates that it is possible to give the oral procedure its proper place in administrative proceedings. He also mentioned the recent shift and experiment in the French administrative courts to facilitate more of an oral debate. He emphasised that the oral debate provides a spontaneity and a simplicity (we may say “efficiencies”), which the written procedure cannot provide. Marc Pittie and Anthony Collins stressed the same points from the practitioner’s perspective.

I think we have not often heard such clear and concurring views on the importance of the oral debate for the quality of justice.
A number of interesting and specific suggestions were made to make the hearing even more meaningful than it already is. Suggestions included:

- giving the parties access to a sort of “rapport préalable”, as this would allow them to understand what the Court may consider to be the most interesting or pertinent points raised by the case;
- (in the alternative) to consider whether the Report for the Hearing could give more direction on what the Court considers are the key points that should be debated in the case or to have an introductory hearing;
- I may add: to get a generous advance warning or broad tentative indication of when a hearing will take place, a suggestion which the CCBE already discussed this year with the Court. This would allow the parties to prepare properly for the hearing and to assist the Court in the best possible fashion.

The discussion took us subsequently to the criterion of the intelligibility of the judgments of the Court, which Marc Pittie referred to as “une justice motivée”.

The Court’s judgments tend to be very comprehensive and are reasoned in great detail. Should this be changed? Are the judgments unduly long? Should they be shortened?

In the debate on this point, much emphasis was placed on the fact that it is crucial to have comprehensive and extensively reasoned judgments. Many have stressed that this is a cornerstone of the quality, the credibility and the acceptance of the Court’s judgments. Moreover, it is a fact that the Court’s judgments and its reasoning in areas such as competition law are an important point of reference for the Commission, national competition authorities and national courts. For all these reasons, it was strongly argued that the findings and reasoning in the Court’s judgments should not be shortened.

In addition, the coherence of the case-law is important. It was suggested this morning that the Court may consider - in particular now that it operates with eight Chambers of three judges - to introduce additional internal mechanisms to safeguard that coherence. I think this is indeed an important point to consider.

The debate then moved to the social acceptance of the justice delivered by the Court.

This quality point goes more to the role of the Court in the overall framework of the Community judiciary and the control it exercises on the decisions of the Community institutions. In a ever more challenging context, the Court has certainly fulfilled the purpose and objectives for which it was created in 1989, and this in a more than impressive fashion. This was stressed by many contributors today.

Two aspects were, however, rightfully the subject of a more extensive and critical debate. These were the length of proceedings and the nature of judicial control.
The nature of judicial control

As the nature of judicial control was one of the themes of the other workshop, it was only briefly discussed by the contributors in our workshop. Anthony Collins stressed that a comprehensive review of the legality of the decision of an institution is required when the case concerns sanctions that have been imposed by a body that is both investigator and decision maker and where the action for annulment is the only opportunity for ensuring that the powers conferred on the Commission are exercised in accordance with the law. He pointed to the fact that “light” judicial review suffers from the same deficiencies as “light” beer and “light” butter: designed to give the customers the impression of having consumed the real thing whilst not having done so. They remain thirsty and hungry for more!

Although it is a wider problem, the problem is clearly illustrated in competition cases. The influx of economic theory into competition law poses specific challenges in terms of judicial control. These challenges are not only present at the level of the Community courts but also at the level of the national courts. The issue is however particularly crucial at the Community level, because of the “steering” nature of the case-law of the Community courts in the field of competition law. To put it in very simplified and blunt terms: the established case-law to the effect that the Courts apply a limited review in cases requiring “complex economic or technical appraisals” poses a serious challenge to the system of appropriate checks and balances. The suggestion is not that the Court should decide policy or substitute itself to the executive power or specialist authority. There is, however, a changing world in which sufficient checks and balances must remain.

The length of proceedings

This bring me to the length of proceedings, which was the key theme in our afternoon session.

In a very comprehensive and interesting contribution, Anthony Collins started the debate on this theme with a core question: does speed matter as much in proceedings of a more administrative nature as it does in civil law or criminal proceedings? This is a very interesting question and Anthony Collins downplayed the importance of speed.

Many thoughts and suggestions were expressed on the time factor. As one could expect, there were some diverging views.

On the one hand, Prof. Moreiro Gonzalez, in his very interesting and outspoken contribution, qualified delay as the first and foremost concern of quality of justice. His suggested that private parties’ access to the Court may have to be reduced, that the courts must be able to adopt their own rules of procedure, that more judgments should be taken by way of orders and that more cases should be dealt with by a single judge.
On the other hand, Anna Falk and Anthony Collins pointed to the fact that parties have a right to legal proceedings within "a reasonable time", and that the reasonableness may vary with the type of case at hand.

Anthony Collins stressed that the precedent value of the Court’s case-law in the supra-national and national context demands a fully reasoned and considered response to what are often novel and complicated questions. He noted in this context that orders are an unsuitable vehicle for the development of the Court's case-law, except for some very narrow fields, since orders omit what should be the core of a trial: the oral debate.

He also suggested that a greater emphasis on the oral hearing would allow the participants to focus upon the principal issues in the proceedings, and that this could contribute to more efficient and faster decision-making.

As regards the suggestions that were made in the discussion, a distinction can be made between "management suggestions" and "structural suggestions".

With regard to the management of cases, the suggestions included:
- to reconsider the introduction of specialisation within the Court. This may not be an easy option (based on experience in the past) and one would need to consider whether a "light" form of specialisation, that would mean that judges would not only deal with one particular type of cases, would be feasible;
- to have more frequent recourse to a single judge; I can note on this point that the Conseil des Barreaux Européens (CCBE) has already in the past expressed reservations on this suggestion in terms of quality and legal certainty;
- the expansion of the role of the judge rapporteur in the management and conduct of proceedings. This seems an interesting suggestion to explore;
- to put greater emphasis on the oral hearing; and
- to lower the hurdle for interim relief (as we know, the possibility for obtaining interim relief before the Community courts compares unfavourably with the possibility of obtaining interim relief before many national courts. If this hurdle would be lowered and decisions in interim relief proceedings could be obtained and would in practice resolve a high percentage of matters, this could be of considerable assistance).

Specialisation (in some form) within the Court may in any event need to be considered.

With regard to the suggestions for structural measures, the (almost) unanimous outcome of the discussions was that an increase in judicial resources is inevitable and urgent.

This bring us to the key question: should it be the creation of a specialised tribunal for intellectual property cases, and/or an increase of the number of judges at the Court (which could go hand in hand with a "light" form of specialisation within the Court)?
This needs to be discussed further. The creation of a specialised tribunal seems a clear and easy option. Other options may however also provide the relief that is being sought to allow the Court to continue to fulfil its pivotal role in the EU judiciary system.

To conclude: we thank the Court for having organised this opportunity to contribute to the debate. We, the contributors, wish all decision makers wisdom in the further shaping of the Community Courts in a way which is in the interests of the quality of justice and European citizens.