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Quality of justice – the trial process and the time factor

Mr Presidents, Members of the Courts, Dear Colleagues, Ladies and Gentlemen,

1 Ensuring that individuals get their judicial actions tried within a reasonable time is of central importance to the quality of justice. This requirement is also of particular relevance for the Court of First Instance in view of the purposes for which this Court was established, namely to improve the judicial protection of individual interests.

2 However, the Court of First Instance struggles today with a not unconsiderable back-log of cases, which has inevitable repercussions on the length of proceedings. That this situation raises concern is not only suggested by the fact that this afternoon’s session has been sacrificed to the time factor in the trial process, but also by more tangible circumstances, which I will consider in the first part of my contribution today. I will here benefit from the fact that the time factor lends itself particularly well to appraisal, in contrast to other quality of justice factors. In the second part, I will touch upon what measures may be considered in order to promote time management in the proceedings before the Court.

3 According to statistics on the judicial activities of the Court of First Instance, the average length of proceedings in 2008 amounted to 26 months for direct actions other than in the field of intellectual property where the average period for handing down a judgment was shorter – 20.4 months. The question is whether this is satisfactory.

4 As we all know the right to legal process within a reasonable period constitutes a general principle of Community law1 – inspired by Article 6 of the Convention on Human Rights and Fundamental Freedoms. This principle must therefore be observed in judicial proceedings before the Community judicature and

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5 While it is true that the reasonableness of duration of proceedings, being relative in nature, must be appraised in the light of the circumstances specific to each case at hand, this appraisal is preceded by a prima facie assessment of whether the length of proceedings appears too long. An examination of relevant cases from the Court of Justice\(^2\) indicates in more absolute terms that proceedings at any rate exceeding four years are not prima facie acceptable. So far the Court of Justice has found only in two cases\(^3\) that the Court of First Instance did not meet the requirement of trial within a reasonable period. In these cases the periods of inactivity of the Court were considerable and the proceedings lasted more than five years. From this angle the length of proceedings in most cases before the Court of First Instance would not give rise to concern. Still, it appears difficult to find the current situation satisfactory and that for the following reasons.

6 Firstly, it must be borne in mind that the duration of proceedings before the Court of First Instance often represents only part of the total period during which a litigant’s legal situation remains unsettled. This broader perspective should not be ignored when discussing the quality of justice. In this light the length of proceedings before the Court of First Instance appears uncomfortably long with regard to the case law of the European Court of Human Rights, which relates to the total length of proceedings before all instances involved.

7 According to a report from 2006\(^4\) the Court of Human Rights in Strasbourg finds acceptable the total amount of time – two years – for an uncomplicated case to be handled by the courts. In cases regarding complex matters, that Court accepts periods exceeding two years but puts particular weight on periods of inactivity on the part of the authorities. Periods longer than five years are rarely found acceptable and more than eight years, hardly ever.

8 Secondly, the statistics of the Court of First Instance show that for the last four years the average periods for direct actions to be decided, have exceeded the corresponding average periods of the Court of Justice in the late 1980s, whose

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\(^2\) See judgments in case C-185/95 P, joined cases C-238/99 P Limburgse Vinyl Maatschappij NV (LVM) (C-238/99 P), DSM NV and DSM Kunststoffen BV (C-244/99 P), Montedison SpA (C-245/99 P), Elf Atochem SA (C-247/99 P), Degussa AG (C-250/99 P), Enichem SpA (C-251/99 P), Wacker-Chemie GmbH and Hoechst AG (C-252/99 P) and Imperial Chemical Industries plc (ICI) (C-254/99 P) v. Commission of the European Communities, ECR 2002 I-8375, joined cases C-120/06 P and C-121/06 P Fabbricana italiana accumulatori motocarri Montecchio SpA (FIAMM) and Fabbrica italiana accumulatori motocarri Montecchio Technologies LLC (C-120/06 P), Giorgio Fedon & Figli SpA and Fedon America, Inc. (C-121/06 P) v. Council of the European Union and Commission of the European Communities, ECR 2008 I-6513, joined cases C-403/04 P and C-405/04 P Sumitomo Metal Industries Ltd (C 403/04 P) and Nippon Steel Corp. (C-405/04 P) v. Commission of the European Communities, ECR 2007 I-729, and case C-385/07 P.

\(^3\) Cases C-185/95 P and C-385/07 P.

length among other things the establishment of the Court of First Instance was intended to reduce.  

Thirdly and lastly, as again shown by statistics of the Court of First Instance, there is a continual increase in incoming cases, creating a back-log, which has unavoidable repercussions on the length of proceedings. Hence there are good reasons not only to discuss time management in proceedings before the Court of First Instance, but also to take further action.

How to address in more detail the situation of the Court of First Instance lies of course primarily within the realm of the Community courts. This being said, one should not forget the interests of the Member States in ensuring the quality of justice within the Community. Not only is ensuring quality of justice fundamental to the legitimacy of the Community as a political project, Member States are also ultimately legally responsible for ensuring that the right to judicial process within a reasonable time is observed.

Looking at the workings of the Court of First Instance the absence of recourse to an advocate general and the fact that over 80 per cent of the cases are decided by three judges seem to create promising conditions for swift action by the Court. There are also examples showing that such a configuration of the Court may move extremely quickly. I am here referring to the judgment in case T-284/08 PMOI last December in which the oral hearing was held on the third of that month and the judgment issued the day after. And this was not a case of a simple nature. Quite the contrary.

Here I would like to point at two circumstances which I believe to have been important to the ability of the Court to deliberate rapidly. First, the Judge-rapporteur possessed particular expertise on the subject matter at hand. A closer look at cases regarding the freezing of assets in connection with terrorist activities shows that the same Judge-rapporteur has participated in almost all such cases that have so far been decided by the Court of First Instance. And second, such rapid deliberation assumes that most of the work of the Court had been done at the time of the hearing, possibly relying to a great extent on the work of the Judge-rapporteur.

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5 In 1988 the average period amounted to 23.7 months for direct action to be decided while the corresponding figure, as mentioned, is 26 months today.
6 The numbers of new cases amounted to 432 in 2006, to 522 in 2007 and to 629 in 2008.
7 The numbers of pending cases were 1029 in 2008, 1154 in 2007 and 1178 in 2008.
8 Member States, as Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, are responsible for ensuring respect for Article 6 of the Convention, not only as regards their own national courts but also potentially for the length of proceedings in the Community courts in accordance with the judgment in the Case of Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v. Ireland (Application no. 45036/98) from the European Court of Human Rights. Furthermore the judgments of the Court of Justice imply that responsibility is imputable to the Community as such and hence extends to Member States in their capacity as Community legislators in the Council.
This conveniently leads to two suggestions. First that increased specialisation may increase expedient proceedings. This is certainly not a new thought, and for good reasons I would think. It is evident that many cases before the Court of First Instance concern the same areas of law – such as competition, state aid, anti-dumping issues as well as intellectual property – which frequently involve highly technical matters. This seems to provide a natural basis for some specialisation of work within the Court.

I might here be treading on mined ground, since I have understood that the question of specialisation has already been discussed by the members of the Court of First Instance. Nevertheless, I would like to urge the members of the Court not to abandon this idea. Given that the average period for deciding a case amounts to more than two years, it is hardly defensible not to investigate all reasonable possibilities to increase the efficiency of the Court’s work.

And now to the second suggestion; for time management purposes it also appears interesting to consider if and how the role of the Judge-rapporteur could be further developed. In this context it should be stressed that even a small improvement is an improvement. Even if the effect of a certain measure may appear futile on its own, it must be seen as part of a whole. In this spirit, the drafting of judgments could also be examined. As has already been pointed out today, many judgments from the Court of First Instance are of considerable length. Writing, deliberating and translating a lengthy judgment normally takes longer time and the length itself may have repercussions on a judgment’s intelligibility to parties and others concerned. Lastly, for the sake of time management it also seems fruitful to consider if not the possibility to dispense with the requirement of an oral hearing, as in the case of actions on intellectual property rights, could be extended to other areas as well.

To conclude. The suggestions I have ventured to put forward could be implemented without, in principle, any amendments of existing rules. Proposals of a more radical and elaborate character, I leave with confidence to the expertise of the Court itself. I certainly look forward to discussions in the Council Working Party on the Court of Justice on any proposal from the Community courts aiming at increasing the efficiency of work within the Court of First Instance and making it even more fit to meet the challenges of the future.

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