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REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE

ACCESS TO JUSTICE IN THE AMERICAS

Preliminary considerations

This report confirms the content of the works that have been presented previously, embodying now the suggestions and recommendations provided by several members of this Committee.

As is known, the topic on access to justice, both in its traditional forms and its innovative arrangements, has been the source of concern and study by several multilateral organizations for many decades now. The work of the Inter-American Commission of Human Rights, as well as several research studies and proposals from public and private entities in the Americas, have represented a highly valuable source of information for this rapporteurship. Alter reading them I can affirm that the crisis involving justice represents one of the most common concerns worldwide. Criticisms and nihilist versions regarding possible and illusory solutions abound, as well as projects for transforming the systems, in addition to the formulation of environments and alternative mechanisms for the delivery of the service, as well as resigned plans for mere updating and many other responses to the problem. In addition, the descriptions of the problem affecting justice are also numerous, and the one on access to justice represents one of the most sensitive points. Particularly on this issue, although the lack of reliability in the system has undeniably been growing, apparently the demands on access to justice grow higher day after day. Particularly on this issue, although the lack of confidence in the system has been growing, it is undeniable that apparently the demand of access to justice is increasing every day.

The Venezuelan author and expert on human rights, Dr. Ligia Bolívar (researcher at the Andres Bello Catholic University), has expressed that an explanation to this situation may perhaps be related to the criminalization of certain conduct, "the result of which is that, at least in our criminal system, the demand of services of justice has increased". She also refers that the increase of delinquency related to the growth of poverty may perhaps have helped to harden certain repressive policies, in view of the pressure that comes from the population. A sort of disastrous spiral is woven within this picture: more demand for justice and less ability to provide a response to these demands. More delinquency, yes, but also more impunity. Although the classification of crimes in criminal law is getting broader and although some punishing instruments to penalize conducts subsumed in that classification are activated, the speed with which the system of justice operates is not fast enough to reach the rhythm required by the demand.

One of the principles consecrated in the American Convention on Human Rights is precisely that of having effective judicial resources, whose access should be ensured to all, in order to avoid damaging the rights enshrined in the aforementioned legislation. Access to appeals, equality before the law and judicial guarantees constitute essential tools for the effective enjoyment of human rights. For this reason, the perspective to address the theme cannot be deflected entirely to the organization of the services. Justice is a service, but first of all it is a right. There is an administration of justice, because there are some rights that such an administration must enforce. The enunciates that we have proposed in relation to the access to justice and innovative forms of same, are expressed from that perspective. Similarly, everything that we have expressed on the players that participate in the management of justice has its conceptual roots on the idea of justice as a right and as a human value.

Qualification of judges

"Impart justice" does not mean solely the mechanic application of a certain law. It is a challenging exercise of intelligence that often forces the judge to harmonize the sense of justice with the not always fair and foreseeable legal provisions. But this *desideratum* is not easy to achieve when the administration of justice is composed of judges who provide more protection to the enforcement of certain procedures than to justice itself. What we used to call "judicial crash" in many of our countries continues to be a pitiful reality expressed in labyrinth-like procedures or in irrelevant formalities. With judges who limit themselves to the inertial application of procedural norms, it is difficult to speak properly about access to justice in the non-functional sense of this term.

The complete qualification of judges necessarily entails a firm ethical and philosophical basis. The School of Law and the Academies for the Qualification of Magistrates, or their equivalent, should permanently review, improve and update the teaching curricula in order to ensure the most adequate qualification of judges or candidates. The qualification of a judge should be continuous, theoretically and practically speaking. The judge should not be qualified only for his/her initial admission, but rather has to continuously qualify during his/her whole career. Hence the need for general and specialized curricula so as to ensure their education for life.

Autonomy of the courts

Little will be achieved if we improve the qualification of the candidates to the courts but do not complement it with professional – and not political – criteria during the selection process. The diverse national constitutions, as well as the legislation governing the judicial career, clearly declare the independence or autonomy of the judicial power. In general, this type of autonomy is political, functional, administrative, economic and disciplinary. However, we cannot ignore the existence in some countries of many claims that seem to indicate the lack of enforcement of this statement. Without analyzing any of these cases in detail, as this is not the opportunity to do so, we must emphasize the need to preserve the regime of autonomy of the Judicial Power, a real autonomy and, beyond nominal, that switch the courts to authentic venues of justice without any tie to other public powers. This essential condition alone will allow the existence of a judiciary career, judge stability, due process and, in short, the full operation of the Rule of Law.

Guidelines Principles:

1. The access to justice is an inalienable human right.
2. Equal access to justice is a need of the Rule of Law.
3. One of the duties of the States is to ensure access to justice to all, trying to achieve its utmost in the deliverance of services, operationality.
4. The policies addressing the equal social access to justice should not be reduced to what we call "judicial charity", gratuity of defense, exemption of court costs and other liberalities, which are of course necessary, though insufficient. They should refer also to an authentic system of effective protection for the weakest. On the other hand, in order to make the service of justice more accessible, concentration of judicial organs should be avoided in order to decentralize them.
5. State juridical activity is not incompatible with social and communal alternative forms of justice. Alternative forms of justice aimed to restore civilized coexistence, such as conciliation, mediation, arbitration and other appropriate forms of justice by consensus, since they are not in conflict with the justice system provided by the State.
6. Alternative or innovative mechanisms of justice should receive support from the State and a legal base to grant them full validity.

7. The inalienable guarantee that every State organs decision is under judicial review, does not exclude the public administration duty to exercise its authority on a decision in a fair and timely way regarding all matters that affect the population.
8. States will prioritize care to existing vulnerable groups. So, they should promote appropriate conditions for effective access to justice for vulnerable people and to ensure all-citizens rights in equal conditions.
9. The States recognize the existence of pluri-culturality. The State's duty to guarantee access to justice is not finished when a qualified judicial system is provided, but presupposes the recognition and support of special jurisdictions based on the cultural identity of the indigenous communities, for which purpose will be set up coordination mechanisms. The States will respect common law and the traditional forms of settling disputes provided fundamental rights are not violated.
10. Guarantee must be given to effective independence of the administration of justice.
11. A rigorous selection of judges contribute to invigorate judicial autonomy and to improve the quality of decisions. Similarly, the sufficient and timely supply by the State of the necessary resources for the integral operation of the judicial organisms contribute to a better running of their activities.
12. Both the judicial process and its resolution must be resolved on a timely manner. For this purpose, appropriate measures should be accelerated in order to obtain verdicts on reasonable time for the benefit of people.
13. The juridical and ethical qualifications of judges should be a permanent concern for society and for the State. In states with a career judicial services, a system of integral judicial qualification should be set up right from the undergraduate courses and strengthen the existing schools or colleges for those who wish to follow the judicial career.
14. The legal education of the population should be encouraged, so that people may know their fundamental rights and duties as citizens and thus facilitate their effective enjoyment and fulfillment.
15. The renewal of the judicial system focusing full access to justice requires State decisions that should be demanded as a priority, as it involves a fundamental right that crosses transversally all the areas of human life.