

**Eighth Opinion, 12 March 2020, of the Ibero-American Commission of Judicial Ethics regarding timely justice and an ethical perspective on the structural problems of the judicial administration. Rapporteur: Commissioner Justiano Montero Montero**

## **1. Introduction**

1. The 15th Meeting of the Ibero-American Commission of Judicial Ethics, held on 3 and 4 July 2019 in Madrid, Spain, deemed it advisable to prepare an opinion on judicial delay in the context of the principle of diligence and the ethical dimension of judges' involvement, in the interest of creating a culture of sustainability in judicial duties.
2. The questions raised can be addressed from different sensibilities and perspectives. Within the Anglo-Saxon judicial culture it is very common to rely on the maxim "justice delayed is justice denied", to the extent of considering it an axiom that delayed justice means, in reality, a denial of justice.<sup>1</sup> Along this line of thinking it corresponds to the Commission to encourage as a matter of principle the ideological expression of our region<sup>2</sup> with particular emphasis on the construction of a geographical space where we can showcase levels of social approval regarding quality, effectiveness and efficiency, as a distinct term that empowers us. In this sense, our legitimisation depends on the conduct that judges adopt as regards the principle of diligence, as an ethical rigour.
3. On this point, it is worth highlighting that it is not a regulatory question in view of how prolific our legal systems have been, but is rather a question of management, given that the judicial administration must act in accordance with efficiency and effectiveness as fundamental axes of its institutional design. Furthermore, it should be emphasised that these questions have a significant economic bearing to the extent that, for example, the European Union has noted how: "reducing the length of court proceedings by 1% (measured in disposition time) may increase growth of firms and that a higher percentage of companies perceiving the justice system as independent by 1% tends to be associated with higher turnover and productivity growth"<sup>3</sup>.

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<sup>1</sup> SOURDIN, Tania, and Naomi BURSTYNER (2016): "Justice Delayed is Justice Denied", available at SSRN: <https://ssrn.com/abstract=2721531> or in <http://dx.doi.org/10.2139/ssrn.2721531> (last accessed on: 29 February 2020).

<sup>2</sup> Ibero-America is a geopolitical concept because it involves the association of a group of American and European countries linked by a series of strategic interests at a political and economic level, grouped together as a block of nations for establishing alliances, exchanges and cooperation agreements. In this sense, the Ibero-American countries have met annually, since 1991, at the Ibero-American Summit of Heads of State and Government,

<sup>3</sup> European Commission, *The 2019 EU Justice Scoreboard*, COM (2019) 198 final, Brussels, 26.4.2019.

4. The aim of this opinion is to address institutional aspects and, in particular, the personal and ethical obligations of judges, in order to address the challenge of judicial delay, undue holdups in the administration of justice. To this end, it should firstly be asked to what extent judicial delay constitutes a central social dimension concept that legitimises or affects the judicial powers in their institutional performance and development; secondly, it is appropriate to refer to all the factors that contribute to delay in a judicial system, and how to remedy this; thirdly, it is necessary to emphasise that the principle of diligence constitutes a relevant component in the fight against judicial delay for which it proceeds to determine the extent of the influence of judicial delay from the point of view of ethics in the performance of judicial functions; and, finally, we need to ask ourselves how to tackle judicial delay in an effective and functional context as a potent institutional component in the interest of strengthening our judicial systems.
5. It therefore proceeds, on the one hand, to examine the institutional or structural aspects of the undue hold ups within the context of the administration of justice, and, on the other hand, it is necessary to carry out a bespoke analysis from the perspective of the legal and ethical responsibility of judges, demonstrating that it falls to them, with their attitude and leadership, to fight against the endemic problems of the judicial administrations, judicial delay and undue holdups.

## **2. Institutional aspects of judicial delay from the Ibero-American perspective**

6. Judicial delay is something that affects and impacts on the administration of justice due to the fact that it causes time delays in cases that should be resolved within deadlines set out by the rules of a determined legal order. The impact of delay in the judicial sphere undoubtedly constitutes a reality that marks a negative trajectory in the performance of judicial powers, as a sustainable pillar of the efficiency and effectiveness of quality justice as a public service.
7. The factors that cause delay in the judicial system relate to external and internal aspects: in the former sphere, the cost of accessing justice has a significant influence on litigation; in the internal sphere, different types of reasons are observed, on occasion issues affecting the law have an impact, while other issues concern the matter of excessive workload according to the number of judicial agents. Ultimately, this question allows us to see that there are multiple factors affecting the reasons for delay, which refer to both active and passive actors, that is, the external factors; however, there can be no doubt that should judges assume

the duty of diligence as an institutional ideology we can transform the prevailing model, above all in those systems where delay predominates.

8. It should be pointed out that there are important factors in the jurisdictional sphere that have a negative influence on judicial delay: the abusive use of legal channels, as is the case of challenges, inhibitions, unjustified postponements, jurisdictional decisions that seek to avoid hearing the substantive matter, the lack of official procedural impulsion and the lack of a coordinated schedule of the different processes based on the reality of each jurisdiction. The suspension of hearings handing down sentences, the excessive and irrational usage of time for the processing of coercive measures and preliminary issues, or when the actors in the system behave as if these were processes regarding the substantive issue, contribute to judicial delay.
9. It is of interest to present the universal, Ibero-American, European and some other countries' perspectives on judicial delay in the administration of justice.
10. Aligning the principle of diligence in the context of goal 16 of the 2030 Agenda for Sustainable Development, approved by the General Assembly of the United Nations in 2015, constitutes a pillar of fundamental importance. In essence, the aforementioned goal establishes actions aimed at promoting peaceful and inclusive societies for sustainable development, facilitating access to justice for everyone and creating efficient, responsible and inclusive institutions at all levels, such as promoting the rule of law at the national and international levels and ensuring equal access to justice for all, safeguarding the adoption of participatory and representative decisions that respond to needs at all levels, etc.<sup>4</sup>
11. This work is of particular note in the Ibero-American sphere. In effect, the Ibero-American Judicial Summit has made a commitment to guaranteeing a form of justice that is more agile, modern and accessible to all, but at the same time technologically advanced.
12. The 2002 Declaration developed clearly defined guidelines in terms of the content and essence of a competitive form of justice as regards efficiency and agility<sup>5</sup>. Specifically and in respect of judicial delay the Ibero-American Summit proposes:

- 1) Encourage programmes and methods that contribute to its eradication.

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<sup>4</sup> General Assembly of the United Nations (UN) *2030 Agenda for Sustainable Development*. Approved at the Summit for Sustainable Development, September 2015.

<sup>5</sup> 7th Ibero-American Summit of Presidents of the Supreme or High Courts of Justice November 2002 *Main declaration of Cancun, Cancún, Mexico*.

- 2) Increase human and material resources and improve the organisation of the same.
- 3) Simplify procedures strengthening the principles of morality, concentration and immediacy and rejecting exercising resources that are prone to procedural delay.
- 4) Encourage a form of justice that is transparent, comprehensible, predictable, attentive to peoples' needs and, above all, rapid and efficient.
- 5) Strengthen cooperation and communication between Ibero-American countries through the use of existing regional information networks and those in progress, such as *Iberius* and the entre for virtual judicial training.
- 6) Establish a programme of meetings and seminars for fulfilling the indicated aims.

13. In the *Ibero-American Decalogue for Quality Justice* (2012) the Ibero-American Summit proposed developing proper planning in the quality of justice, as well as conceiving and evaluating efficiency as a component for a reliable form of justice<sup>6</sup>. This means, in particular:

- 1) Developing due planning of quality justice. In order to achieve the objectives, it is necessary to plan, direct, organise and control. Quality implies taking long-term decisions, clearly defining objectives and strategies. Plans, objectives and deadlines must be established with an adequate use of resources. It further requires the systematisation, formalisation and normalisation of management practices where protocols are established for the generation, validation and diffusion of knowledge.
- 2) Encourage a form of Justice with a comprehensive systemic focus. Quality management allows the unification of effort to ensure the sustainability of the set objectives and targets. This view of quality management as a system, implies the necessary coordination and cooperation. Collaborative working enables the creation of valued judicial administration service.
- 3) Recognising the importance of human talent in Justice. The human talent must be an essential element of quality Justice as it is of vital importance for creating the necessary synergy in its management. The organisation must evaluate it based on the execution of its activities. It must be capable of identifying it and developing it through experience and knowledge. Personal abilities, skills, training, attitudes and competencies must be strengthened in the pursuit of excellence in the public service.

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<sup>6</sup> 16th Ibero-American Judicial Summit *Ibero-American Decalogue for Quality Justice* April 2012, Buenos Aires.

- 4) Encourage commitment and teamwork on the basis of Justice. Those who form part of any judicial organisation must identify themselves with individual users, with their needs and make a commitment to offering an adequate provision of the public service. They must be aware of the trust and social responsibility placed upon them and of the importance of Justice as a pillar of democracy in any democratic State grounded on the rule of law. All the members of the organisation will promote the culture of teamwork. They must be guarantors of ethical values, public service vocation, joint responsibility and transparency in public duties.
  - 5) Establish effectiveness and efficiency as requisites for a reliable and quality Justice. The conception of a Social and Democratic State grounded on the rule of Law, intrinsically entails the existence of an efficient system of Justice, in which individual users have the protection of their rights guaranteed. Quality must form part of the concepts of efficiency and effectiveness. The former makes reference to optimising the results achieved in relation to the use of resources that are available and invested in its attainment. Efficiency, on the other hand, is achieving the objectives, targets and standards orientated towards satisfying the requirements and expectations of the individual user.
14. Some Ibero-American countries demonstrate significant credentials regarding controlling delay, in that sense, it is worth highlighting the content of the most relevant aspects that appear in the *Summary of Comparable Indicators* of the 16th Ibero-American Judicial Summit. This is a formidable instrument that formulates a macro-vision regarding diverse variables that have an impact on judicial delays in Ibero-America, highlighting an accelerated and vertiginous trend towards litigiousness, which causes institutional difficulties in terms of providing effective responses to delays; case resolution rates warn of inequality by countries which requires assuming a model that combines the dimension of delay from the point of view of the ethical principle of diligence as far as ideologically possible, above all taking into account that the individual users think more in terms of quantitative than qualitative solutions. This is a situation that those of us who are actors in the system must pay careful attention to, given that as soon as we abandon the area of influence of quality to satisfy quantity we depart from the ethical plan<sup>7</sup>.
15. In Europe the efficiency and quality of the judicial systems are measured in accordance with different parameters that are very closely connected to the reasonable duration of judicial proceedings.
16. In the case of efficiency the indicators used by the European Commission in its *European Union Justice Scoreboard* (2019) are: “The length of proceedings (estimated or average time, in days, needed to resolve a case), the resolution rate

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<sup>7</sup> 16th Ibero-American Judicial Summit *Summary of Comparable Indicators* April 2010 Argentina.

(the relationship between the number of resolved cases and the number of incoming cases) and the number of unresolved cases (that should still be resolved by the end of the year)”; and, in terms of measuring quality, the scoreboard includes accessibility to justice for citizens and companies; adequate material and human resources; putting in place assessment tools; and using quality standards<sup>8</sup>.

17. The delay component constitutes a reality that affects a large part of our judicial systems, above all, the higher courts. In this respect, it is necessary to contemplate new formulas that enable sustainability in terms of time in the interest of arranging and consolidating our judicial powers from the perspective of efficiency and effectiveness, which entails economic investment, dedication and determination and the implementation of projects and best practice. It is therefore necessary to undertake a global reform project that enables the transformation of our judicial system. Furthermore, the fight against delay requires specific reforms, as has occurred in Spain where the introduction of cassational interest has created significant gains. However, there are also numerous cases that do not proceed to a substantive hearing for which it is necessary to implement reinforced procedural budgets that control the dilatory effect of the judicial operation. Other Ibero-American countries have undertaken important reform processes in criminal, corporate and administrative matters that are pending consolidation.
18. On this point, in 2017 the Procedural Innovations Working Group of the Ibero-American Judicial Summit adopted the Protocol on Justice in Hearings and Best Practice Guide, which gathers together initiatives aimed at fighting against judicial delay and attaining an efficient system in the administration of justice. Examples include: accepting orality at a certain stage of the process; conceding exceptional powers to judges as administrators of the process as regards the investigation; implementing electronic formats for setting down the actions carried out at trial; utilising electronic notifications for speeding-up processes; restricting appeal channels; digitalising judicial offices; and preparing manuals on best practice<sup>9</sup>.
19. In the last 15 years we have observed that the principal Ibero-American systems have undertaken various solid procedural reforms, in particular, hearings accepting orality, however, the evidence has been that these reforms have a very high cost, and therefore do not always represent an effective solution to efficiency and the conspiracy of judicial delay.

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<sup>8</sup> European Commission, *The 2019 EU Justice Scoreboard*, COM (2019) 198 final, Brussels, 26.4.2019.

<sup>9</sup> Procedural Innovations Working Group.. May 2017. *Protocol on Justice in Hearings and Best Practice Guide*, 18th Ibero-American Judicial Summit, held in Antigua, Guatemala.

20. Some Ibero-American countries have formulated concrete actions for managing delay with timely proposals that have produced interesting results, as has occurred in the Dominican Republic<sup>10</sup> and Honduras, which have ongoing projects battling delay. The data from the Judicial Delay Project in the Dominican Republic are particularly significant: on 28 February 2017 an inventory of the Dominican courts produced an amount of 23,575 pending proceedings; in March 2017 the inventory was completed and a further 35,734 proceedings were added, resulting in a total of 59,309 proceedings. Finally, in 2018 the inventory was updated and 24,312 more proceedings were added, which gave a total of 83,621 cases experiencing judicial delay and the involvement of 135 implicated courts. The project ended in May 2019 with judgment having been passed in 83,628 proceedings, that is, from May 2017 to May 2019, judicial delay was successfully eradicated from the Dominican Courts experiencing the most holdups. The body directing the action plan against judicial delay identifies courts with a backlog and puts the congestion-easing project into practice, whilst simultaneously formulating preventative actions for avoiding a resurgence in delays.
21. In view of the above data, judicial delay constitutes a structural problem that affects the efficiency and effectiveness of the judicial system, and represents an impediment not only for judges and other members of the courts but also has negative repercussions on the image of the judicial system. Therefore, a Judiciary that does not take charge of delay faces having its management called into question and casts doubt on the principle of diligence. It is thus imperative to implement effective mechanisms for controlling delay by means of an institutional commitment supported by an ethical conduct that produces a paradigm shift.

### **3. The diligence of judges in the fight against delays: fundamental rights and ethical commitment**

22. Delay is not simply a problem of procedural administration and is not resolved by the reorganisation thereof, but rather must be addressed from an ethical commitment, based on judges' duty of diligence in order that achievements be sustainable in the short, medium and long term. In effect, the fight against undue delays demands that judges take on a leading role to safeguard fundamental rights to a fair trial and within a reasonable time period, and requires them to be committed to fulfilling their ethical duty of diligence.

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<sup>10</sup> DICJ No. 06/2019. August 2019, by the Director of Innovation and Quality Justice [DICJ] *Culmination of the National Plan against Judicial Delay and new delay inventory*. Dominican Republic.

23. In both America and Europe the international conventions and the supranational courts, especially in San José and Strasbourg, have recognised that the right to a fair trial is linked to a specific understanding of what a reasonable period of time actually is.
24. In the sphere of the European Convention on Human Rights, article 6 on the right to a fair hearing is of particular relevance. One of its elements is that a trial takes place within a reasonable time: “Everyone is entitled to a fair and public hearing within **a reasonable time** by an independent and impartial tribunal previously established by law...” This same idea is expressed in article 47 of the Charter of Fundamental Rights of the European Union, which refers to the right to effective legal protection and an impartial judge. It specifically states that: “Everyone is entitled to a fair and public hearing within a **reasonable time** by an independent and impartial judge previously established by law.”
25. In Europe, the European Court of Human Rights has repeatedly stated that the guarantee of a “reasonable time” aims to ensure confidence in the administration of justice and, at the same time, emphasises the importance of administering justice without delays that can compromise its effectiveness and credibility<sup>11</sup>.
26. The European Court of Human Rights has a wealth of jurisprudence on the right to a trial within a reasonable time and uses four criteria for verifying whether there has or has not been a violation of the right to a trial without undue delays: the legal or factual complexity of the case, the conduct of the appellant and the authorities, in particular the judges, and the interests at stake. According to the Court in Strasbourg, a temporary holdup in judicial proceedings does not imply State responsibility if rapid and appropriate measures are adopted for overcoming the exceptional situation: in contrast, if the situation is prolonged and acquires a structural character with frequent instances of stoppages, this does not exonerate the State from taking an excessive amount of time to respond. In its jurisprudence, the Court in Strasbourg stresses the usefulness and importance of observing the formal rules of procedure to the extent that they enable the parties to submit a lawsuit for judicial decision, limit discretionary power, ensure the equality of arms, prevent arbitrariness and enable a lawsuit to be resolved and definitively judged within a reasonable time, guaranteeing legal certainty and the respect of the courts; however, the Court in Strasbourg rejects the application of an “excessive formalism” by the national courts<sup>12</sup>. The European Court

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<sup>11</sup> European Court of Human Rights, judgment of 7 July 2015, *Rutkowski and others v. Poland*, application no. 72287/10, 13927/11 and 46187/11, § 126.

<sup>12</sup> European Court of Human Rights (Grand Chamber), judgment of 5 April 2018, *Zubac v. Croatia*, application no. 40160/12, § 96.



frequently concludes that different countries in the Council of Europe violate the right to a trial within a reasonable time granted by article 6.1 of the European Convention on Human Rights and, in many cases, the Court in Strasbourg orders appropriate compensation<sup>13</sup>.

27. In America, Articles 7 and 8 of the American Convention on Human Rights, the Pact of San José in Costa Rica, reiterate the rights and guarantees concerning personal liberty and criminal proceedings. Specifically, these provisions make repeated references to a “reasonable time”. The Inter-American Court of Human Rights has adopted the same European jurisprudential focus when interpreting Article 8.1 of the American Convention on Human Rights. In order to know whether this fundamental right has been respected it applies, as is evident in the judgment in *Anzualdo Castro Vs. Perú* (2009), the following criteria regarding the duration of judicial proceedings: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities; and d) the impact of the trial’s duration on the situation of the person involved<sup>14</sup>.

28. This interpretation by the Inter-American Court constitutes, for example in Uruguay, a source of the principal rules for granting a “pardon” by the Supreme Court of Justice (an institution that allows for a crime to be extinguished) in cases in which the duration of the process becomes unjustifiable, a power that it has exercised in certain cases.

29. In Spain the Constitutional Court has protected citizens in the face of undue delays, for example and on numerous occasions, when, for example, there was a delay of more than four years in listing proceedings relating to an immigration matter for trial. Normally, however, the protection does not have legal consequences for either the litigant or the judge because in this case, as stated by the Constitutional Court: “the delay appears to be due to structural reasons and the heavy workload of the court.” However, the Spanish Constitutional Court established a code of conduct for judges: “the prohibition on unjustifiable delays in progressing judicial processes imposes on Judges and Courts the duty of acting with the level of celerity that enables the normal or usual duration of lawsuits of the same type and with due diligence in pushing forward proceedings in the course of the different phases involved”<sup>15</sup>.

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<sup>13</sup> European Court of Human Rights (Grand Chamber), judgment of 8 June 2006, *Sürmeli v. Germany*, application no. 75529/01, §§ 128-134.

<sup>14</sup> Inter-American Court of Human Rights *Case of Anzualdo Castro Vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 22 September 2009 Series C No. 202.

<sup>15</sup> Spanish Constitutional Court, judgment 103/2016, of 6 June, rapporteur: Asua Batarrita, 6th legal ground and 14th legal ground, respectively.

30. Undoubtedly, these legal rules lead to certain legal obligations for judges to the extent that they are responsible for the delay.
31. On the one hand, the judge must ensure that the parties comply with their procedural obligations and that these do not suffer delays.
32. On the other hand, failure by the judge to comply with deadlines does not usually have any effect whatsoever. Although the delay in adopting decisions is an endemic problem in all the Administrations, obviously including the Judicial Administration, paradoxically the irregular but not invalidating nature of judicial or administrative actions undertaken outside of the established deadline, has been enshrined as a general rule<sup>16</sup>. In reality, it has become commonplace for courts to fail to comply with the established rules in terms of deadlines without such illegality having any consequence.
33. However, the judge may incur disciplinary responsibility. In the most serious cases of lack of judicial diligence it is common to impose very serious, serious and minor disciplinary sanctions in certain cases of neglect, delay or failure to comply with deadlines<sup>17</sup>. However, it is difficult for this disciplinary responsibility to be demanded in borderline situations when the workload exceeds the institutional predictions. As the Spanish Supreme Court has indicated: “It is possible to make superhuman efforts for a period of time but a superhuman effort cannot be maintained indefinitely.”<sup>18</sup>.
34. It is therefore vital that an ethical commitment be placed on judges in areas where legal responsibility does not reach. In this respect, in 2004 the Consultative Council of European Judges attempted to determine “how judges

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<sup>16</sup> In Spain, article 242 of the Organic Law on the Judiciary states that: “Judicial actions undertaken outside the established times limits may only be annulled if this is imposed by the nature of the term or deadline”; in the same vein, article 48.3 of Law 39/2015, of 1 October, on the Common Administrative Procedure for Public Administrations also states that: “Undertaking administrative actions outside the time limits established for them will only imply the annulability of the act when it is thus implied by the nature of the term or deadline.”

<sup>17</sup> Articles 417 to 418 of Organic Law 6/1985, of 1 July, on the Judiciary (*Official State Gazette [BOE]* no. 157, of 02/07/1985) amended on numerous occasions.

<sup>18</sup> Spanish Supreme Court (Administrative Chamber, Section 7), judgment of 5 July 2013, appeal no. 329/2012, ES:TS:2013:3910, rapporteur: Pico Lorenzo, Legal Ground 6 (annulment of a serious disciplinary sanction imposed on a judge for an unjustifiable delay despite it far exceeding the set modules of entry).

might participate in this effort to guarantee access to rapid and effective settlement of disputes”<sup>19</sup>.

35. In the same vein, the European Network of Councils for the Judiciary has emphasised that it considers final responsibility rests with the judge and these questions ultimately depend on the attitude of judges. In effect, on the one hand, only judges can achieve a balance between an efficient processing of proceedings and the adoption of high-quality decisions; and, on the other, it is judges who best know how to try a case in order to reach a just resolution.<sup>20</sup>
36. Thus, and in relation to a timely judicial response, cultural factors also have an impact due to a lack of interest on the part of courts or the existence of a culture of sluggishness caused by the judges themselves, by litigants and by their representatives<sup>21</sup>. Ibero-American judges should therefore accept the commitments adopted on a regulatory basis but should also transversally apply the principle of diligence and its ethical dimension, which implies rethinking the administration of justice as a service. This requires, in reality, a change of mentality and culture brought about by each and every judge accepting a leading role in this matter.
37. Furthermore, it must be taken into account that it is not always sensible to attempt to do things in the shortest possible time, when a longer period of time is legally allowed. Accordingly, for example and taking as a reference the practice in Uruguay where, although the law allows it, the majority of Judges do not issue definitive judgment in the final hearing, when some pending evidence has just been dealt with and/or they heard the arguments, but rather they make use of the legal deadline of 30 days afforded to them for doing this. In effect, some tasks require reflection, establishing ideas, pondering, revision of the case file, tasks for which time plays a fundamental role. On many occasions lawyers themselves request extensions for pleadings due to these very reasons.

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<sup>19</sup> Consultative Council of European Judges (CCJE), Opinion no. 6 (2004) to the attention of the Committee of Ministers of the Council of Europe on the right to a fair trial within a reasonable time and judges’ role in trials taking into account alternative means of dispute settlement, 22-24 November 2004, Strasbourg.

<sup>20</sup> European Network of Councils for the Judiciary, *ENCJ Report on Timeliness 2010-2011*, Brussels, May 2011.

<sup>21</sup> SOURDIN, Tania, and Naomi BURSTYNER, "Justice Delayed is Justice Denied", *ob. cit.*, p. 51.

38. Article 74 of the Ibero-American Code of Judicial Ethics<sup>22</sup> enshrines the principle in accordance with which judges should attempt to ensure that the cases under their charge are resolved within a reasonable term.
39. This provision of the Code is inserted in chapter XII, which, following the methodology admitted by its authors, Manuel Atienza y Rodolfo L. Vigo, firstly assigns a very clear objective to the virtue of diligence in the judicial sphere: to fight against delays in the judicial sphere. And once the objectives have been determined, the ethical obligations for diligent resolution are spelt out and the elements that determine diligent conduct by the judge are expressed, in particular, punctuality, the compatibility of judicial activity with other activities and the professional responsibility of the judge.
40. Other codes of judicial conduct also show the virtue of diligence to be essential. The Commentary on the Bangalore Principles of Judicial Conduct indicates that: “The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. A judge can be efficient and businesslike while being patient and deliberate”<sup>23</sup>.
41. In the European regional sphere the Declaration of London makes a special mention of this value and states that: “The promptness of legal proceedings is influenced not only by legislation and the resources made available to the justice system but also by the attitude and work of the judge”<sup>24</sup>.
42. Principle 33 of the *Spanish Code of Judicial Ethics* expresses that: “Judges must ensure that the proceedings are carried out in a timely manner and are resolved within a reasonable time period, and ensure that procedural acts are carried out with maximum punctuality.”<sup>25</sup>.
43. Article 75 of the Ibero- American Code obliges judges to avoid and sanction, where appropriate, activities that cause delay and are contrary to the parties procedural good faith.

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<sup>22</sup> Article 74, *Ibero-American Code of Judicial Ethics*. Amended on 2 April 2014 at the Plenary Meeting of the 17th Edition of the Ibero-American Judicial Summit. Santiago, Chile.

<sup>23</sup> United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct*, Vienna and New York, 2013, § 207.

<sup>24</sup> *London Declaration on Judicial Ethics*, Report 2009-2010, European Network of Councils for the Judiciary, 2010, Brussels.

<sup>25</sup> The term timely [*tempestivamente*] refers, according to the Dictionary of the Spanish Language [*Diccionario de la Lengua Española*] “the fact or quality of being done or occurring at a favourable or useful time” The term “timeliness” is also used with increased frequency and may be translated into Spanish as *tempestividad*.

44. The London Declaration further states that: “In each procedure the judge must ensure that reasonable deadlines are set for the parties and for him/herself.” The criteria of reasonableness, again appealing to the Court in Strasbourg and to the Court in San José, must be applied according to the cases and in function of the complexity of the matter, the conduct of the parties, the actions of the courts and, finally, the rights and interests at stake.
45. Ultimately, judges must exercise a leadership role promoting a change in the culture of negligence and judicial apathy towards a form of justice that effectively protects the fundamental right to have cases judged fairly and within a reasonable time.

#### **4. Final considerations and recommendations**

46. Imparting justice within a reasonable time has economic, judicial and institutional consequences. Judicial delay puts the credibility and efficiency of the judicial system at risk.
47. Diligence can be demanded from judges and involves other public employees who provide essential support to the judicial system, for which the importance of good judicial service as an ethical valuation must be encouraged and emphasised. The treatment of the right to a trial within a reasonable time in America and Europe by international conventions and the supranational courts is imposed as a right of those on trial and a duty of judges and other judicial operators that cannot be resolved solely with institutional reforms, and not even applying judges’ disciplinary responsibility mechanisms. In effect, this endemic problem of judicial systems requires an ethical commitment by judges, by other judicial operators and must be informed by the principle of diligence.
48. The performance of the judicial function must be the standard that upholds not only the construction, design and consolidation of values but also supports efficiency leading towards a good service. The different legislations in our countries establish the deadlines for issuing judicial rulings and dealing with the different matters; however, we cannot cast aside the fact that society is watchful of our positive or negative actuation and also demands quality justice that encourages efficient impartation in order that it be exercised ever more transparently.
49. The institutional imperative requires transforming bad practices into positive actions as regards the jurisdictional function.

50. Judges have the inescapable duty of guaranteeing that the role of administering the process established by the rules is wholly fulfilled, without damaging delays to what is considered good administration of justice. This is a challenge that cannot be postponed and it is our responsibility to accept it as a corollary that is constructed as an unwavering paradigm.
51. Judicial delay seriously affects the image of the Judiciary and causes it to lose credibility in the eyes of citizens. However, judges are not the ones who are solely or even most directly responsible for judicial delay, it is due to management or is caused by the litigants themselves. Indicators must therefore be developed as an alternative to the traditional remedies against this affliction that besets justice. The experiences of the Dominican Republic and Costa Rica may serve as an example because they have demonstrated the importance of developing strategic plans wherein taking action against delay must be essential. Furthermore, certain matters, such as payment collection, should be dejudicialised.
52. Judicial delay undoubtedly contributes to the Judiciary's loss of prestige, despite the fact that on numerous occasions it is caused by the legislation. Every Judiciary should therefore be closely involved in drafting laws that take into account or abolish certain terms or deadlines. To this end they should adopt guidance on the involvement of judges in addressing structural overload without turning to solely disciplinary solutions. It will be necessary to strengthen alternative methods of conflict resolution in order to mitigate judicial backlogs that are largely generated by the litigious culture of our countries. It is therefore necessary to plan the judicial diary in accordance with the workload of each jurisdiction, achieving a balance according to the number of judges per region or department in the interest of a rational distribution of work.

In short, the Judiciary must be more involved in discussions regarding legal reforms in order that the determination of proceedings and procedural time limits conforms to reality, as we have become accustomed to using the excuse of excessive workload to justify the constant failure to meet time limits.

53. Judges must safeguard not only the legality but also the efficiency of the justice system counting on the appropriate means of support in order to do so. In any event we must do away with a culture of constant failure to comply with time limits. In effect, it corresponds to the state to procure resources for the administration of justice and for this it should, where appropriate, turn to the new technologies.

54. Judges have the duty to give the judicial administration adequate notice when they have exceptionally complex or voluminous cases so that special measures may be taken aimed at averting backlogs and delay in defining matters assigned to the office, which greatly discredits the judicial system. The *mandamus* resource in Puerto Rico, by virtue of which the lawyers may request “that a higher court order a judge to resolve a pending matter”, contributes to an effective judicial vigilance of the problems of judicial delay facing judges<sup>26</sup>. Specific jurisdictions, both appeal and cassation must make a greater commitment to procedural management by providing a solution when rulings are annulled or revoked in order to reduce submissions for hearing the matters once again before the trial. This aspect has caused substantial damage above all to the criminal process in relation to justice within a reasonable time.
55. When a court incurs delay particular attention will be paid to the extrajudicial activities of the judge, even though they may be compatible (teaching, leave etc.). However it is also advisable for warnings to be given in exceptional cases regarding failure to comply with deadlines. Furthermore, the exchange of successful instances of good practice should be promoted and, in appropriate cases, statistics should be drawn upon for planning Judicial Administration without having to resort exclusively to disciplinary measures against judges.
56. In short, the spiral of delay must be diligently attacked by those who operate the system and, in particular, by judges, so as to obtain an ever more legitimised and valued justice. In any event, judges must cultivate the virtue of patience in the manner advised by the great Uruguayan jurist, Eduardo J. Couture: “In Law, time takes revenge on those things that are done without its collaboration”



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<sup>26</sup> STEIDEL FIGUEROA, Sigfrido, *Ética para juristas: Ética judicial y responsabilidad disciplinaria* [Ethics for jurists: Judicial ethics and disciplinary responsibility], Ediciones Situm, San Juan, Puerto Rico, 2019, p. 132.

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