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EUROMED JUSTICE III PROJECT

COMPONENT I:
Access to justice and legal aid

WG 1.1

HANDBOOK

«Which identifies and describes possible approaches and best practices to improve access to justice and legal aid»

Georges J. ASSAF
Expert

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Handbook
Which identifies and describes possible approaches and best practices to improve access to justice and legal aid

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I. ACCESS TO JUSTICE AND LEGAL AID 24

A. LEGAL FRAMEWORK 24
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The right of access to justice without discrimination should be considered a principle of constitutional value, whatever the form of the constitution and including non-written constitutions. 24

FRAMEWORK LAW ON ORGANISATION 24
It is always preferable to organise legal aid by adopting a single legal framework, that is, a framework law covering all aspects of legal aid for beneficiaries, the courts and stakeholders and in which the stipulations are such as to be applicable in the different national contexts. 24

PRIORITY APPLICATION OF INTERNATIONAL STANDARDS 25
The recommendation is that lawyers responsible for legal aid should give priority to the standards of applicable international conventions before the national courts, and for the legislator to harmonise domestic legislation regularly with the conventions ratified by the State, to seek a gradual removal of reservations that have been made and, on the whole, to take into consideration international standards possibly without taking account of whether conventions have been ratified or not. 25

It is advisable to analyse regularly the case law of the courts in order to detect to what extent they apply the terms of international conventions. 25

NON-DISCRIMINATION AMONG POPULATION CATEGORIES 26
Legal aid should be available to any person in the territory of the country concerned without discrimination against population groups due to gender, religion, ethnicity, language, nationality or other situations or status, and it should not distinguish between foreigners in legal or illegal residence, according to law. 26

LEGAL PERSONS UNDER PRIVATE LAW 28
Legal aid granted to legal persons under private law should be available with reference to their non-profit making purpose. 28

FOREIGN NATIONALS 29
The widest respect for the principle of non-discrimination founded on international obligations should be ensured without prejudicing the organisation of this aid according to the specific status of the foreigner and the nature of the act giving rise to this aid (residents/non-residents, legal/illegal, minors/adults, asylum seekers/economic migrants, nationals/stateless persons, civil/criminal cases, with or without the condition of reciprocity). 29

A foreigner in an illegal situation should at least have the right to legal aid for proceedings that could lead to expulsion. 29

The restriction affecting foreigners in an illegal situation should not be discriminatory, that is established without objective grounds, and this to comply with the principle of equality. 30
A minimum of legal aid in criminal cases should be ensured for asylum seekers or refugees as well as in civil cases for any violation of fundamental rights. 30

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Experts must be appointed from among those approved and paid by the State from lists drawn up according to specialisation with professional bodies of experts and whose fees are determined by prior agreement on a unified scale per category of case. 34

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It is advisable to exempt the applicant for legal aid from legal costs in civil and criminal cases and, alternatively, defer payment, because should the case be won this will have a positive financial effect on the same applicant. 35

LEGAL GUIDANCE 36
The State should ensure a minimum of legal guidance in litigation that dos not require judicial representation. 36

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The economic criteria of eligibility to legal aid does not only depend on the applicant party being poor, but on a situation of economic incapacity to pay judicial costs, based on the minimum required to meet vital elementary needs. 37

BODY COMPETENT TO EXAMINE THE APPLICATION FOR LEGAL AID 38
The choice and organisation of the body competent to examine the application for legal aid, whether of a judicial, administrative or professional nature, in civil and criminal cases, should aim, above all, to shorten the response time to the application by promptly verifying the criteria that must be met. 38

GRANTING TEMPORARY LEGAL AID IN CASE OF EMERGENCY 38
It is advisable in dealing with an urgent application for legal aid, when the right to this aid has not been granted, to provide temporary legal aid while the beneficiary produces the documents of proof requested within a reasonable timeframe, at the risk of the aid being withdrawn. 38
PROVISIONAL EFFECTS OF THE DEMAND FOR LEGAL AID 39
A demand to halt proceedings in order to apply for legal aid, either by doing away with the role of hearings or by transferring the hearing, should not affect the normal progress of proceedings in the case under trial. 39

APPLICATION FOR LEGAL AID REFUSED 39

There must always be grounds for refusing the application for legal aid that can be reviewed quickly, whether the decision to refuse is administrative or judicial. 39

AID MECHANISM OF THE BAR ASSOCIATIONS 40
The recommendation is to create within the bar associations a mechanism with its own statutes defining its mandate and way of working under the supervision of the Law Society, and supported by lawyers adequately paid and trained in the matters presenting most difficulties to litigants, particularly the more vulnerable. 40

FINANCIAL MODEL AT CENTRAL AND DECENTRALISED LEVELS 41
If there is no unique financial model for legal aid, a special budgetary line should be introduced to cover the cost of justice in providing court assistance, to be dispensed through the Law Society and to which the latter would contribute. 41

It is also recommended that municipalities or town councils do the same thing within their respective jurisdictions 41

DISTINGUISHING BETWEEN THE TASKS OF THE PRESIDENT OF THE COURT AND ADMINISTRATION; INTEGRAL COURT MANAGEMENT 42
The respective tasks of the president of the court and the administrative director should not be confused, at the same time not excluding the principle of integrated management conducted jointly by the judge and the administrative director, preferably himself a judge, trained in modern management techniques. 42

COURT MANAGEMENT AND DIALOGUE WITH LITIGANTS AND THE STAKEHOLDERS IN JUSTICE 43
One condition for improving the services provided by the courts would be to regularly hold dialogue with litigants and the stakeholders in the justice sector by means of disseminating information regularly on efficiency, workload, the court's resources, as well as listening to the opinions of those using justice as a public service. 43

II. ACCESS TO JUSTICE, DURATION OF COURT PROCEEDINGS, HINDRANCES AND DELAYS 45

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Data collection on the stages of proceedings should be institutionalised within a mechanism for regular analysis and adjustment throughout proceedings. This will help in the rapid diagnosis of delays and will lessen the consequences. 45

Appropriate management of delays in proceedings requires these to be regrouped according to their complexity and average duration and, as a result, their breakdown into adapted procedures. 45

Adopting standard formats with a limited number of pages for certain simple categories of case helps comply with deadlines and to focus on key points and the reasoning behind judicial decisions or judgments. 45

COORDINATION MECHANISMS 46
The stakeholders in justice as a public service, all disciplines included, should be involved in coordination mechanisms the aim of which is to improve access to justice for users. There should be a law determining forms of involvement in the mechanisms of the stakeholders concerned. 46

DURATION OF PROCEEDINGS 48

The optimum duration of court proceedings as laid down in legislation should be fully respected, particularly in criminal cases, and controlled by the courts: hence the technique of the schedule agreed beforehand by the parties at the encouragement of the judge. In this approach, timeframes according to the type of case, should replace timeframes that if broken are not sanctioned by legislation. 48

CULTURE OF RESPECT FOR DEADLINES 49
A culture of respect for timeframes should be promoted by all stakeholders in the justice sector as a means of improving the quality of justice and this both at university level and in magistrate training colleges and law schools. 49

Codes of ethics are also complementary instruments in promoting this culture. 49

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Specialist courts should be created and specialist judges trained on the condition that the movement of judges is controlled to avoid emptying the specialisation of its pertinence. 52

STANDARDISATION OF COMMON SERVICES 54
Standardising the administration of procedures through common services helps reduce delays and costs and improves the way justice functions. 54

IMPACT STUDIES 55
Best practice would be to plan an impact study prior to adopting or amending all legislation organising courts or procedures. 55

REDUCTION IN WORKLOAD 56
One recommendation is to set up national support courts, without any particular territorial jurisdiction, with the task of reducing the workload, which has become structural, in certain courts according to needs as they arise. 56

The temporary territorial allocation of support judges or judicial auxiliaries is also recommended in courts with a high workload, as well as increasing the number of judges with a resulting sharing of cases. 56

Reducing the workload of the courts should also ensue from a reduction in the out-of-court activities of judges and to achieve this judges must declare these activities in a special register. 56

DOWNSIZING THE WORKLOAD 58
Downsizing the workload of the courts should be made general by determining a profile of workload appropriate for the type of court, per type of case before the courts, per stage in the proceedings. 58

TOOLS TO FACILITATE PROCEDURES FOR THOSE INVOLVED IN JUSTICE 59
Having the stakeholders in justice, particularly judges and court staff, use manuals and printouts on specific procedures is a practice that should become the rule. 59

ALTERNATIVE DISPUTE RESOLUTION METHODS 60
Best practice would be to develop a judicial framework governing mediation and enforcement of decisions, which also provides for creating and organising a professional body of mediators with the status of justice auxiliaries. 60

Making a pre-trial information meeting obligatory on the possibility of settling the dispute using mediation. 60

Mediation should be considered in administrative cases, at least for individual administrative acts. 61

RANGE OF APPLICATION OF MEDIATION 62
Measures encouraging the use of alternative dispute resolution should be determined by the competent national authorities, demonstrating the advantages in protecting the rights of the parties to the dispute as well as the reduction in time and cost they provide. 62

It would be advisable to have a law covering all aspects of mediation in all fields or, in the absence of this, special provisions in procedural codes covering both civil and criminal cases, and responding to international standards. 62

A transversal law covering mediation should, however, take account of the specific aspects of each branch of the law. 62

THE PRACTICE OF MEDIATION 64
The profession of mediator should be organised by the legislator for the liberal professions, particularly for those in the legal professions, and should include training based on an officially approved curriculum. 64

Best practice would consist of introducing mediation in the curricula of initial and on-going training for legal professionals and justice auxiliaries 64

The failure of the mediator to comply with obligations could also be sanctioned. 64

Organising the profession of mediator should not lead to an excess of formalities in achieving the flexibility demanded in mediation. 64

THE USE OF MEDIATION AS A SPECIFIC PRE-LITIGATION PROCEDURE 66
Mediation should be possible at any pre-litigation or litigation stage, or in executing the judgment on the dispute, providing it suits the parties and providing the legal context so permits. 66

PRINCIPLES GOVERNING MEDIATION 67
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IV. ACCESS TO JUSTICE, LEGAL AID AND UNDERPRIVILEGED SOCIAL GROUPS 69

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Special legislation for vulnerable groups is advisable and should take into consideration the forms of access to justice and legal aid specific to each group. 69

Setting up national information networks on the law and promoting means of electronic communication for this network would facilitate access to justice for members of vulnerable groups because of the considerable risk of discrimination that affects them. 69

A mechanism should be set up within the Ministry of Justice for coordinating access to justice and legal aid with the bar association to facilitate the task of bringing effective assistance to the greatest number of members of vulnerable groups. 69

It is also advisable to reinforce the partnership between public administration and the NGOs specialised in access to justice for the members of vulnerable groups and to institutionalise this by consolidating it with the departments of the ministries concerned. 69

B. VICTIMS 71
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Integrated efforts should be made to protect the physical and psychological integrity of victims, more particularly those who will be heard in the proceedings, to avoid access to justice leading to sequels to the offence. 71

Special protection measures, including speed in gaining access to justice and accompaniment in proceedings, must be provided for victims exposed to the risk of repeated offences, as in cases of organised crime and violence and sexual abuse, particularly in the family environment. 71

TECHNOLOGICAL MEANS USED IN VICTIM PROTECTION 73
The particular vulnerability of victims demands strict protection measures when they take part in public judicial procedures, namely excluding their physical presence from wherever the trial takes place and from hearings, and to that end the use of videoconferencing systems and closed circuit television should be provided, possibly amending legislation in force in order to permit such use. 73

THE RIGHT OF VICTIMS TO INFORMATION 73
It would be appropriate to create an information system on all aspects of pre-litigation and court procedures involving professionals and qualified justice auxiliaries so as to make the victim familiar with how the court procedure evolves, depending on the circumstances of that victim's vulnerability. 74

Prior information for victims on obtaining the psychological and material support available as court procedures evolve, as well as on the conditions for obtaining possible compensation, should be made accessible to them. 74

It is advisable to keep the victim informed of the risks involved from a court decision, particularly if the suspected offender is released. 74
RESTORATIVE JUSTICE 75
Insufficient legislation in restorative justice for victims should not be an obstacle to the judge adopting ad hoc measures based on the spirit of the law and on the terms of international conventions in force, special attention being given to certain categories of victim. 75

C. WOMEN 77
LEGISLATION FOR THE PRORECTION OF WOMEN WHO ARE THE VICTIMS OF VIOLENCE 77
Legislative, regulatory and other frameworks should be fully revised in order to take account of gender issues, more particularly the vulnerability of women. 77

The eligibility of women who are the victims of violence to legal aid should be automatic without taking marital status into consideration, the lawyer appointed to dispense the aid being qualified for this type of case. 77

PUBLIC POLICIES 78
Access to justice and legal aid for women requires an integrated approach and for that the adoption of public policies to encourage such an approach. 78

Such public policies should bring about changes within public structures and provide staff training in order to break institutional resistance to change. 79

Preparing public policies on such matters assumes the active participation of the civil society organisations so that these policies are put into practice and do not end up being dispersed and hit by contradictions. 79

Co-operation among the different professional organisations concerned, lawyers and medical doctors in particular, is recommended based on an empirical study showing the gravity of the phenomenon of violence against women. 79

Exhaustive laws should be prepared including mechanisms for appeal, more particularly in the automatic access to legal counselling and legal aid upstream and downstream of the needs expressed by women who are the victims of violence. 79

The national human rights institutions, where they exist, should be given quasi-judicial functions to be able to submit cases directly to the Public Prosecutor's Office on behalf of the women who are the victims of violence and who turn to the institution. 79

The local authorities, particularly the municipalities, should be involved in facilitating access to justice and legal aid for these women by creating reception and guidance services. 79

Medical and para-medical professionals, as well as staff members, must notify the public authorities without delay of cases of violence against women they become aware of in their in their duties and to inform these women of means of protection and support available to them, a failure to inform running the risk of sanction. 79

D. THE DISABLED 80

LEGISLATION 80

States that have not yet done so are advised to ratify the United Nations Convention on the Rights of Disabled People, create the agencies provided in the Convention and to harmonise domestic legislation with the terms of the same convention, particularly those having regard to access to justice and legal aid. 80

The States are advised to create the necessary conditions to guarantee that buildings housing judicial services are accessible to disabled people, and to ensure the resources necessary for them to be able to benefit. 80

For those suffering from a mental disability and who are institutionalised, it is advisable to provide for their judicial representation by guardianship in order to protect their rights. 80

It would be appropriate to have legislative and other provisions to confer quality on specialist national agencies as well as on civil society organisations in this field, so as to conduct public service litigation in order to ensure the rights of those disabled. 80

E. MINORS 82

The agencies of the juvenile justice system should apply simplified procedures that are adapted to the level of development of minors. 82

In this regard, the minor should be heard and should understand the content and the aim of judicial proceedings, and be guaranteed respect for his/her image and privacy. 82

F.REFUGEES 84

Special attention should be paid to refugees and asylum seekers seeking justice, and this regardless of ratification of related international conventions. 84

International cooperation in support for refugees should be provided using technical and financial assistance to set up specialist structures for ensuring access to justice for members of these groups 84

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FOREWORD AND ACKNOWLEDGEMENTS

In the pages that follow the reader will find a description of best practices, a descriptive summary of the discussions that helped identify these best practices, and a brief final commentary by the author.

It is important to mention that the characteristic that seems most remarkable in this work is that the best practices described in this handbook reflect the majority consensus observed during the discussions among the participants at the preparatory meetings on each of the topics dealt with.

These are not best practices conceived in an abstract manner, attached in the margins of some other consideration; nor are these ideal practices dreamt up in an abstract or utopic scenario or suggestive of a complete and absolute exhaustive list of best practices. These are rather more practices that correspond to the level of agreement achieved during the meetings and discussions with the delegations of countries that participated in each meeting.

These best practices reflect what the delegations of the beneficiary countries taking part in the meetings consider to be practical because they are adapted to the context of the respective countries as well as to the legal ad institutional context. These best practices also corresponded to foreseeable progress in years to come and can be implemented in technical terms and with realistic margins, in the short and medium term, even if they are not constricting in nature.

These are best practices that have resulted from discussions on the regional context in which they have been adopted. Certain countries have already implemented fully or partially what these best practices recommend or reflect, but their adoption reinforces this trend and expresses their merit.

The best practices that have been approved and the information included in the summary of discussions, also provide us with a quick look at the situation and the principal traits of the topics dealt with.

The discussions, that are summarised after the description of each group of best practices, provide not only condensed information which is felt to be interesting, in fact very interesting, but also reveal where the strong and weak points of the topic dealt with lie and the situation in the region. In certain cases, they reveal areas where progress can be more complicated or slow, or areas where it can be easier and faster.

Besides this, in legal terms, they provide an idea of certain specific success and point out deficiencies and shortcomings compared to what could be considered as a standard, desirable situation between the EU and the beneficiary countries in the project.

To reach this point, a questionnaire was used that had been previously prepared. These questions, as well as the reference documentation from each meeting, were given to participants beforehand so that they could be better prepared for the discussions. This workgroup met 5 times, each meeting lasting three days.

All the beneficiary countries were invited to take part in the meetings and each of them invited to send three experts appointed beforehand by the National Coordinator in each country. Not all of the beneficiary countries took place in all of the meetings, and that for different reasons. We did ascertain that the participants from each country were

the same at each meeting, or at least that there was a degree of continuity in the composition of the delegation.

During each meeting, different topics were dealt with according to the programme for the project, and agendas were prepared by the team responsible for implementing the project in coordination with the expert author of the Handbook, and each time submitted for the prior agreement of EuropeAid. This meant that the expert was able to gather the information that helped to describe the essential elements of the discussions and to draw up the best practices based on the level of consensus observed and expressed in each case. After each meeting, the expert prepared an outline of the work done, including the opinions and ideas of participants and the proposals for best practices relative to conclusions. After that, the expert once again sent his outline report to the beneficiary countries by way of information and verification for further discussion and, if necessary, for the outline to be corrected, amended or validated at the following workgroup meeting. This cumulative way of working facilitated further progress at each meeting and helped to arrive at the final version of the Handbook at the end of the fifth working meeting.

The final version of the text was sent once again to the countries concerned so that through their national coordinator, and with the support of the participating experts, they could approve the results achieved. Final suggestions or amendments to their contributions were then included in the final version of the handbook.

This document is therefore the result of detailed work done by the expert and author of this handbook, work done by a team, the protagonists being all the participants who took part in the different activities required in preparing the handbook. Without their work and their commitment this handbook would never have seen the light of day.

We would also like to express our gratitude to M. Georges J. Assaf, Expert, for his expertise, collaboration, positive attitude, professionalism and his valuable technical work. Prior to each meeting he prepared the questions to be discussed with the assistance of the technical team of the EuroMed Justice III Project and the invaluable, fundamental collaboration of the experts and representatives of the ENPI South countries who were involved in preparing the handbook in coordination with their national coordinator. Finally, we would like to extend our warmest thanks to all the experts from the ENPI South countries who have collaborated in the different meetings and provided the requested information. It goes without saying that without their valuable support, deep commitment and constant efforts, this Handbook would not have seen the light of day.

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Georges J. Assaf

METHODOLOGY

The objectives of this handbook are to:

1. Identify best practices for improving access to justice and legal aid.
2. Examine more particularly the needs of underprivileged social groups.
3. Have best practices used as a tool by stakeholders in the legal and court systems for the effective improvement of access to justice.

Those who have **contributed** to preparing this handbook have been chosen by their respective governments, those of the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the State of Israel, the Hashemite Kingdom of Jordan, the Kingdom of Morocco, the Republic of Lebanon, Palestine, the Republic of Tunisia, excluding Libya and the Syrian Arab Republic whose participation in the project has been suspended.

Conforming to the terms of reference of the project, the methodology used to prepare this handbook rests on using the experience of the countries listed above, included in the EUROMED JUSTICE III Project, in the area of access to justice and legal aid, based on the points dealt with by the participants in the **five working meetings in 2012 and 2013 dedicated to preparing this manual, held consecutively in Paris, Marseille, Sofia, The Hague and the closing meeting in Sofia,** and that we have grouped as follows:

Examination of the legal framework (framework in force and projects for reform currently being prepared particularly with regard to having a policy for the procedural management of cases, management of workload or the volume of cases and the preliminary breakdown of this workload in order to channel some of them towards alternative methods of dispute settlement using conciliation or mediation, the use of information systems for handling case files and the administration of courts and determination of reasonable timeframes, mechanisms geared to respecting deadlines, data collection to help measure the performance of the courts, etc.) and the practice of legal aid in the beneficiary countries taking part in the Project included in the neighbourhood policy of the European Union by comparing standards developed within the context of the CEPEJ.

Examination of any initiatives adopted by the CSO in this area (beneficiaries, methods of implementation including cooperation with government authorities and professional agents, sustainability, and the way in which they improve access to justice).

Examination of the needs of those using justice as a public service, the scope and nature of needs in the pre-litigation and litigation stages including the stage of enforcing judgments, the obstacles most commonly faced particularly the slow pace of proceedings, delays, the lack of legal counsel for the underprivileged from the social and economic points of view, among others, and a lack of information on court proceedings.

Examination of the professional needs of the legal professions (judges and lawyers in particular, but also court experts, notaries and court officials, staff of the office of the clerk of court) so that they can perform their work better, improve cooperation among the parties concerned (Ministry of Justice, judicial authorities through the Magistrates' Association, the bar associations and other professional bodies involved).

Measure of the current extent to which best practices have been identified in the participatory process used to prepare this handbook on best practices, in the ENPI countries involved in the EUROMED Justice III Project, particularly with regard to the CEPEJ recommendations and possible improvement as a result of access to justice through recommendations issued in the form of best practices.

Difficulties in applying the methodology adopted include:

- the changing composition of certain delegations, although compensated by the presence of the head of delegation at all meetings
- sporadic participation - of certain countries at meetings,
- low participation of legal professions, other than judges, at meetings, and the total absence of other stakeholders in the field of justice in the area concerned and to whom this handbook is addressed
- lack of sufficient time to cover all points raised and as a result the priority choices reflected in the subjects addressed in this handbook.

The difficulty of eliminating any possible contradictions and summarizing discussions, without which the handbook would be no more than a simple compilation.

The presentation of the handbook is simplified and laid out as follow:

- identification of a subject,
- design of one or several good and relative practices,
- summary the discussions that have led to an agreement on the best practices deemed appropriate for the state of legal progress in the respective countries,
- additional comments made by the author on the subject addressed.

The content of the handbook was submitted to the participants for them to verify their respective contributions and to ascertain that the portrayal of their ideas and information is as they expressed them.

The reference documents attached to this handbook cover several aspects of access to justice that can be used exhaustively by the user of the handbook. In nature they differ from the references that serve as a guide in reading a study, due mainly to the difference in nature between a study and a handbook of best practices. Access to justice is indeed a vast area covering a wide range of aspects, which made footnotes, which are necessarily limited, impracticable.

INTRODUCTION

The following series of questions on the different aspects of access to justice and legal aid, presented under five headings, is one way of introducing the methodology used in preparing this handbook, although these questions address substance rather more than structure and content. The aim is to provide a global idea on the subject and to coordinate best practices with the different aspects of access to justice and legal aid.

Those practices that are the object of this handbook have been described by a group of legal professionals from the ENPI countries of the southern Mediterranean delegated officially by the ministries of justice in their respective countries, during five meetings lasting three days that provided the substance of the handbook.

The five headings proposed in this introduction are the following:

1. The legal and institutional framework for legal aid
2. Cooperation between the ministries of justice and the bar associations, and coordination with the NGOs
3. The accessibility of justice, that is the real possibility of being able to go to trial
4. Legal aid for those in underprivileged social groups
5. Access to justice in the public interest: public interest litigation

Apart from making access to trial easier for litigants and guaranteeing representation before the courts, access to justice is rooted in a legal framework that must be adequate, and in the fair settlement of disputes by the courts.

The range of legal and judicial systems in force in the ENPI southern Mediterranean region are not really an obstacle to making a global analysis of the framework for access to justice, which is governed by legal principles and by national and international legislation, more particularly the obligatory standards in the International Covenant on Civil and Political Rights (equality before the law, assumption of innocence, guarantees against arbitrary arrest, the right to a fair and public trial conducted by a competent, independent and impartial court, established by law), binding on those countries that have ratified the same Covenant and that are destined to use this handbook, as well as those stipulated by the underlying Principles on the independence of judges (independence guaranteed by law, any interference in the judicial process prohibited, sufficient resources for the public service of justice, principles governing the selection, training and rules for the way in which the system functions and is disciplined, fair proceedings and respect for the rights of the parties involved), the underlying Principles on the role of lawyers, barristers and solicitors (effective procedures and mechanisms adequate for equality of access to a lawyer, sufficient resources to ensure the services of legal aid to those who are destitute and other persons in uncertain situations, the freedom to form or to join professional organisations and, in the case of the latter, to cooperate with governments in regard to the services provided by these professionals), the underlying Principles on the role of prosecutors (defining the responsibilities of prosecutors regarding the protection of human rights and dignity and ensuring a fair trial, the strict separation of court functions from those of the public prosecutor's office), the code of conduct of agents responsible for enforcing the law (respect for human rights and assistance for all persons in need of urgent help), the underlying principles on treatment of prisoners (prohibition of discrimination, respect for human rights as well as for international conventions, reinsertion of ex-prisoners in society in the best possible conditions, bearing in mind the rights of victims).

Furthermore, some particularly important work has been accomplished over the past decade by the **Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ**), to produce precise principles and recommendations on the multiple aspects of access to justice.

International and regional references, more particularly European, listed under the heading “Principal References", attached to this handbook, take account of the amount of work accomplished to date.

These references help the reader better understand these sources and ramifications of best practices that have been produced by consensus within the work group mentioned above.

Accompanied by interventions from specialists on a range of issues relative to the object of their meetings, participants at the working meetings that gave rise to this handbook have been led through their discussions to deal with the growing needs arising in their respective countries, more particularly due to political upheavals in that region, and to take account of this in their work.

This analysis should be an introduction to the theme that will lead to defining, on the one hand, means of access to justice, and, on the other, the obstacles that hinder such access or simply exclude access to justice, the aim being to guarantee equality for all in gaining access to justice, whatever a person’s legal status (this is particularly important in dealing with illegal migrants, refugees and asylum seekers) or social status (whether these are underprivileged groups discriminated against on the grounds of gender, religion, income, displacement that has affected them due to conflict or war, etc.).

Among the obstacles to access to justice we find:

- on the one hand, **the high cost of justice** (the cost of proceedings, judicial expertise, lawyer's fees), **out-dated or incorrect legislation** (namely that defining the organisation of justice and judicial procedure), **a lack of statistics, a lack of mechanisation in the courts** or **insufficient staff training,**,
- and, on the other, **a lack of information** for litigants on their rights, and, for those who are sufficiently well informe**d, a lack of material means** to help gain access justice.

A consequence of these obstacles, is that the ENPI countries of the southern Mediterranean are working to reform the justice sector and are supported in this task by the European Union, this handbook being an example of the results of this cooperation.

The question of access to justice is inherent in the reform of justice. Legal aid is a means of guaranteeing equality among litigants and also of confronting the growing demand for justice.

Best practices in gaining access to justice are those arising from the objective of making justice independent, impartial, diligent, effective and efficient (for the lowest cost and with the best quality).

Basically, these same parameters are the same for legal assistance (that is legal counselling and judicial representation). Can legal aid have an influence on justice?

The questions raised briefly below are not exhaustive in that they serve as **a simple**

framework within which to develop "best practices", that is pertinent, generic responses to questions raised, these responses forming the substance of this handbook as a "reference document" on access to justice and legal aid.

Legal aid provides access to justice for the underprivileged and contributes to the quality of justice (simplified procedure, reasonable cost, swift progress, well grounded judgments, etc.), to which litigants, in certain cases, may prefer conciliatory mechanisms, that are possibly traditional.

These **alternative methods to settling disputes** have their own disadvantages in trying to meet the aim of access to justice, particularly when they apply customs rooted in the discrimination of women.

Mediation organised by law and conducted by a group of specialists could overcome shortcomings in this field.

THE LEGAL AND INSTITUTI0NAL FRAMEWORK OF LEGAL AID

Legislation and regulations that govern legal aid, and the conditions in which its benefits can be provided in certain countries in the region, only respond partially to international standards on aid.

The questions below were raised at working meetings and underlie the best practices defined as a result of them.

What amount does the State allocate to legal aid or judicial support, and does it have its own budgetary heading in the budget of the Ministry of Justice? What criteria are involved?

What is the range of application of legal aid? Is it available for alternative methods to settling disputes, more particularly mediation?

Is it available to foreigners whose situation is legal under the condition of reciprocity, to foreigners whose situation is illegal and asylum seekers? What are the conditions?

What is the role of the Bar Association in this process? Does it have its own mechanism for legal aid? What training is given to lawyers? What funding is available and what areas are covered (civil and criminal)?

What application is made of international standards for access to justice, particularly those that bind the State to the international Covenant on civil and political rights?

What application is made of the international human rights conventions ratified by the State? Are these directly applicable before a national judge? What use do lawyers responsible for legal aid make of these conventions? What training do they receive to do this?

To what extent do the courts comply with legislation that provides for judicial representation? If they do comply, is compliance purely a formality, for the needs of the case, without any real impact on the right of defence?

COOPERATION BETWEEN THE MINISTRIES OF JUSTICE AND THE BAR ASSOCIATIONS, COORDINATION WITH THE NGOs

What is the nature of this cooperation? Is it informal? Permanent? Occasional? What is its content?

What effect does it have on the functioning of the courts, the speed of trials, the good management of case files, etc.?

ACCESSIBILITY OF JUSTICE, THAT IS THE EFFECTIVE POSSIBILITY OF COMING TO TRIAL

Does the framework, and do the means, available operate sufficiently well?

Why is it that more people have the means to seek justice than those who do not have the means and who avoid seeking justice?

Apart from the official assignment of lawyers for legal aid in criminal cases, is there any legal aid for civil or administrative cases? What are the conditions of eligibility? What distinction is made between individual and public interest cases? What priority is given to these? What are the restrictions?

What access is there to judicial expertise? What access is there to sworn translators or interpreters? What information is available for litigants on access to justice as a whole, on legal aid in particular, on alternative methods for settling disputes? Are information desks available to the public in the courts of justice? How are those who are disabled or illiterate informed? Does the media make a contribution? What strategy is in place to inform the largest possible number of underprivileged litigants on their right to access to justice?

What quality control is done on the work of lawyers responsible for legal aid? What legal, linguistic and cultural skills are demanded? Many cases are complex and demand a special skill and considerable experience. Lawyers working pro bono often have limited skills and experience. The quality of the service required may suffer although there is no follow-up mechanism for the cases entrusted to these lawyers.

What is the role of the para-jurists? What is their field of intervention? To what extent do lawyers except such a role? On the whole, are they reluctant to see this intrusion in their field of work? It is even more a problem when legal aid often does not lead to court proceedings.

ACCESS TO JUSTICE FOR THE MEMBERS OF UNDERPRIVILEGED SOCIAL GROUPS

Most underprivileged categories (women, children, refugees, the disabled, ethnic, religious, racial or social minorities, migrants, prisoners, and the poor) are found in the legislation of international agreements. Other categories, although identified in much legislation, are not yet the object of special agreements (this is the case with displaced persons). The importance of having the State ratify these conventions addressing these groups is essential for the persons concerned to gain access to justice. Reservations expressed at the time of ratification would not render this right inoperable. The partial

or total removal of these reservations should always be an objective pursued by the stakeholders in justice, more particularly the bar associations and the CSOs.

The National human rights institutions also play an important role in access to justice for members of underprivileged social groups, particularly when they have quasi-judicial functions. The function of conciliation is also of importance in dealing with claims brought to them by litigants. Their role in providing information is also important for access to the law and for providing guidance to those seeking legal aid.

Historically the SCO had an early role in the ENPI countries of the southern Mediterranean, regarding specialised legal aid, particularly for vulnerable groups. Their action is based on human rights. Restrictions come mainly from their staff having insufficient training, as is the case with the lawyers involved in these cases, as well as low and sporadic funding available to them.

Their cooperation with the authorities is beginning, in the post-conflict period that has resulted in regime changes in the region taking shape. Difficulties may arise due to the displacement of the public authority, or to the police and other security institutions having to move due to intimidation and violence, as well as to a lack of confidence in the authorities. They need to carry out major reforms in relation to the period prior to the violation of human rights is obvious in the post-conflict situation.

ACCESS TO JUSTICE IN THE PUBLIC INTEREST: PUBLIC INTEREST LITIGATION

Access to justice in the public interest, “actio popularis" of Roman law, is not formally recognized or organized in the ENPI countries of southern Europe despite its pertinence in bringing justice to a greater number of litigants in situations in which they have need of it.

What obstacles stand in the way of “class-action", as it is known in Anglo-Saxon legal systems? What is its nature?

Firstly, the **obstacles** are of **a legal nature** and arise from the quality to act (“locus standi"). In a number of countries a person may not seek justice unless able to demonstrate “a direct and personal interest" to act. In other countries, notably in Africa and in Europe, **jurisprudence accepts the quality of seeking justice if the person can demonstrate that there is “sufficient interest" to act.**

Hence in certain European countries, the quality to act has been recognized for the NGOs specialising in the environment. This practice, which is widespread in Latin America where the courts accept the concept of “diffuse interest", does however have its limits.
The courts would rule no more on personal criterion but on that of public interest.

This should be facilitated by the fact that the Rio Declaration on Environment and Development (Principle 10) commits the signatory States to effectively transposing into national law the power of judicial and administrative access, including demands for compensation.

Obstacles of an economic nature involve the high costs of any judicial procedure, justice charges, lawyer's fees and legal expert's fees. Furthermore, in the practice of the courts that sentences the party losing the case to paying the legal costs and fees incurred by the adversarial party, this adds considerably to the cost of justice and condemns judicial action in deterring the NGOs or persons acting in the general interest from

taking action.

This type of question comes up in this handbook in the summary of discussions presented on each subject with regard to access to justice and legal aid.

This summary is a faithful reflection of the presentations and interventions made by participants in providing information on the situation in each of the countries concerned, completed by comments made by the author of the handbook and then finalized with the approval of the participants on the definition of best practices to be implemented by the legal professionals and other justice auxiliaries in their respective countries.

I. ACCESS TO JUSTICE AND LEGAL AID

A. LEGAL FRAMEWORK

PRINCIPLE OF CONSTITUTIONAL VALUE

The right of access to justice without discrimination should be considered a principle of constitutional value, whatever the form of the constitution and including non-written constitutions.

SUMMARY OF DISCUSSIONS

Participants in discussions agreed that the right of access to justice is recognized in their respective countries as a right of constitutional value derived from the right to human dignity, the framework of reference being that of the international conventions on human rights and international obligations arising from them.

In certain countries such as **Lebanon**, these conventions are part of the Constitution and the rights and principles enshrined therein have constitutional value. Legal aid itself is recognized and organized by law.

The "Arab Spring" took away the **Tunisian Constitution** in which the principle of equality of all before the law was enshrined. This is now suspended while the constituent assembly attempts to write a new constitution, which means that the right of access to justice will be included explicitly. However, this depends on having a control system in place for the constitution.

COMMENTS

The right of access to justice when it is covered in an international legal instrument which, in the ranking of standards, prevails over the law or even the Constitution in certain cases, is, whatever the case, applicable in domestic legislation where it prevails over other contradictory standards, and even when they are not contradictory but are insufficient.

Besides, certain constitutions include, in their preamble as a whole, a direct reference to respect for the principles contained in the Charter of Human Rights (UNDHR, PIDESC, PIDCP), then considered to have constitutional value. It should be noted that this is reflected in the final conclusions of EUROMED JUSTICE II (2008) in the paper "Universal significance of access to justice: common elements").

FRAMEWORK LAW ON ORGANISATION

It is always preferable to organise legal aid by adopting a single legal framework, that is, a framework law covering all aspects of legal aid for beneficiaries, the courts and stakeholders and in which the stipulations are such as to be applicable in the different national contexts.

SUMMARY OF DISCUSSIONS

A specific legal framework is a fundamental element in providing comprehensive coverage for the different aspects of legal aid. It is also important to cover the pre-litigation stage by a law, similar to the judicial stage.

It would be advisable that such a law details the different aspects of an integrated system, similar to the bill being prepared in **Morocco**, which provides for legal aid.

This promotes harmonisation with international legislation that can easily be integrated into such a law.

According to the point of view of some participants in the work group, if fragmentation does not encourage the correct application of the right of access to justice, it is difficult, if not impossible to imagine all the aspects of legal aid being covered by a single law because the principle of access to justice covers several exceptions. Also, when provisions concerning legal aid appear in more than one piece of legislation, as in Israel, where it is covered under civil and criminal matters, it might be preferable to bring these together in a compendium so that the fact they are scattered throughout different pieces of legislation does not become an obstacle to their correct application.

One difficulty, and not the least, that was raised during discussions, is that of the budget required for the legal aid system to function correctly, and this rests on political will, that is, the place legal aid holds in government priorities. In **Jordan**, the budget for the justice sector, 7 million JD and 4,000 staff members, would not be able to bear the charges and costs that would be dedicated to legal aid if there were to be a special law to organise legal aid as a public service similar to other public services.

COMMENTS

A single legal framework in the form of a law covering all the aspects of legal aid would be more appropriate for international standards on legal aid because it would be more appropriate for complete harmonisation and more practical for legal professionals and other parties involved in legal aid, because of its exhaustive nature. However there should be no confusion between a legal framework and a legal aid model (public, professional in its approach, founded on the services of the CSO, etc.)

PRIORITY APPLICATION OF INTERNATIONAL STANDARDS

The recommendation is that lawyers responsible for legal aid should give priority to the standards of applicable international conventions before the national courts, and for the legislator to harmonise domestic legislation regularly with the conventions ratified by the State, to seek a gradual removal of reservations that have been made and, on the whole, to take into consideration international standards possibly without taking account of whether conventions have been ratified or not.

It is advisable to analyse regularly the case law of the courts in order to detect to what extent they apply the terms of international conventions.

SUMMARY OF DISCUSSIONS

Certain international standards are not easily applicable in the Middle Eastern countries, particularly those that address family law (referred to as “personal status law") and this when the State is obliged, having ratified international conventions, to give these

standards precedence.

This difficulty in applying international standards remains even when the pyramid of standards provides for the supremacy of international standards, as in **Lebanon,** where civil procedural code provides for the supremacy of international conventions ratified over national legislation and their direct application in the national courts.

An additional obstacle appears, in certain countries such as **Jordan** and **Morocco**, where the rule of pre-eminence of international standards is not written into the law, although the case law of the courts does provide for it in certain cases but in reference to specific contexts.

Within this framework, the most reliable way of giving precedence to international standards would be for the legislator to act regularly to harmonise national legislation with pertinent international conventions ratified by the State and, in addition, to refer systematically during the process of making laws not only to international conventions ratified by the State concerned but also to international standards addressing legal aid.

COMMENTS

Applying standards on family law contained in international conventions to national legislation raises a problem in certain countries in the region that have a dual court system, civil, under common law on the one hand, and religious for cases of personal status (**Lebanon, Israel, Jordan** in particular) or, in matters of family law, where the common law courts apply, Islamic law enshrined in legislation (**Egypt, Morocco, Algeria**).

Reservations expressed regarding the application of certain articles on personal status law (law that covers as a whole marriage, divorce, maintenance allowance, child custody, succession) mainly in the convention against all forms of discrimination against women (CEDAW) and in the convention on child rights (CRC) only resolves the problem technically; difficulties in implementing best practices particularly in cases of non-discrimination, remain as ever.

The lack of harmonisation, as well as reservations expressed by the states that have ratified or joined international convention,s may constitute an obstacle to the right of access to justice. Hence the pertinence of integrating best practice in the application of international law, and constantly aiming to eliminate reservations to achieve better access to justice.

Where there are no reservations (the case of **Lebanon**, for example, that ratified the convention on child rights without any reservation), the question that arises is that of the religious courts applying the international standards contained in the conventions that have been ratified, these courts tending to invoke a “religious public order" in order to reject international standards.

NON-DISCRIMINATION AMONG POPULATION CATEGORIES

Legal aid should be available to any person in the territory of the country concerned without discrimination against population groups due to gender, religion, ethnicity, language, nationality or other situations or status, and it should not distinguish between foreigners in legal or illegal residence, according to law.

SUMMARY OF DISCUSSIONS

The right of access to justice raises a number of problems in that the status of beneficiaries varies, but in no case whatsoever should it be provided in a discriminatory way.

Provided by law in all the countries of the southern Mediterranean, this right may appear formal when the conditions presented by law are inflexible or not adapted to reality.

The right of access to justice provided in constitutions is organized through legislation. Legal aid is granted in criminal cases without any discrimination between nationals and foreigners. In civil cases, this right rests on the condition of reciprocity. Here Lebanese law is exhaustive in expressing the conditions required for any person present on its territory to gain access to justice: any natural Lebanese or foreign person regularly resident in **Lebanon** benefits from legal aid under the condition of reciprocity.

In administrative terms, access to justice is not always evident even when legislation provides for it or does not exclude it. Here, legal aid in **Israe**l is not available to foreign adults who are under expulsion orders.

The right to legal aid is covered by special provisions in a draft bill currently being debated in **Morocco**, which aims to take into account the particular social and cultural elements of the country, particularly language, in order to prevent any discrimination.

An important question put to the participants of the work group is that of applying international standards in cases to make up for failings that may exist in the national legal context.

It was suggested that imperfections in terms of access to justice should be corrected, for example, by a law approving a list of beneficiaries for legal aid according to the international obligations endorsed by the State.

This would resolve the problem of the criteria to adopt in determining vulnerable groups for the needs of access to justice. In fact, these groups are not determined based on the same criteria and it would be preferable to harmonise these by referring to those identified in international legislation.

When it comes to restrictions to legal aid based on the financial situation of countries (wealthy, developing or poor), such restrictions, although in principle rejected by all work group participants, cannot be overlooked. In fact, a number of participants were of the opinion that when legal aid is organised and the effect is to make access to justice available to more people, this becomes a heavy burden on the budget of their respective countries.

COMMENTS

It is difficult to conceive of a division in which the right of access to justice benefits certain population groups while others are deprived of it, notably foreigners, under the pretext of reciprocity.
This question does not arise in criminal cases because the process imposes the right of defence as one of the conditions for a fair trial. It should not arise in civil cases, particularly those cases that are not sufficiently numerous in terms of mobilising supplementary resources.

The European Court of Human Rights (Article 6.1) provides the right to legal aid in criminal cases but also (in the case law interpretation of the European Court of Human Rights) in all cases that, in civil matters, demand the presence of a lawyer, and this, in respect of the principal of equality of arms between the adversarial parties, that is, when the interests of justice demand this (the interests of justice in the criminal field are present whenever a person risks a prison sentence).

LEGAL PERSONS UNDER PRIVATE LAW

Legal aid granted to legal persons under private law should be available with reference to their non-profit making purpose.

SUMMARY OF DISCUSSIONS

Three major traits characterise the way legal aid is granted to legal persons under private law and to public legal persons in the countries of the southern Mediterranean: available to legal persons under private law that are non-profit making in certain countries (**Lebanon, Tunisia**), whereas this aid is only provided for natural persons in other countries (**Israel**). In both of these cases, it seems that the philosophy of legal aid rests on the association with protecting human, individual or public rights. This explains the existence of palliatives for certain groups of legal persons under private law that are non-profit making and who may receive legal aid to defend public rights (hence public interest action in environmental issues in **Israel** notably).

Another form of palliative for legal persons under private law who are not eligible for legal aid exists in certain countries (**Jordan**) that allows the court before which the legal person under private law appears to take the decision to defer payment of legal aid to the date on which the court's decision is passed, but leaves the whole problem of payment of fees to lawyers and experts.

In granting legal aid to public legal persons, the rule everywhere is that the State's litigation department represents these persons in litigation brought before the courts, but this aid is available in certain countries to public legal persons although it is little used (**Morocco, Jordan**).

However, persons under public law who show a high degree of administrative and financial autonomy are autonomous when it comes to their judicial representation.

COMMENTS

Legal aid to legal persons under private law raises the question of access to justice in the public interest ("Public Interest Lawyering", highly developed in the Anglo-Saxon legal systems or more generally on the American continent).

Private persons responsible for a public service activity that are often an instrument for applying the State's social policies may use legal aid to improve access to justice for certain social groups through legal action.
The fact that the countries of the southern Mediterranean have no place in their legal systems for public action, comes from a narrow concept of the interest to act (locus standi): a person may only seek justice if able to demonstrate a "direct and personal interest" to act.

In a number of African countries and in Europe, a best practice has been developed by

jurisprudence that accepts the quality required to seek justice if the person can demonstrate a “sufficient interest" to act.

Therefore in certain European countries, the quality to act has been recognised for those NGOs specialising in the environment. This practice, that is widely used in Latin America where the courts accept the concept of “diffuse interest", does, however, have its limitations.

Introducing a best practice in this area would require restrictions to be lifted when the action is in the public interest.
The courts would no longer rule according to personal criteria but on that of public interest.
Constitutional and/or legal reform should intervene to this end, which would facilitate the work of the courts.

In this regard, the Rio Declaration on the Environment and Development (Principle 10) commits the signatory States to effectively transposing into their national legal framework the power of judicial and administrative access, including demands for compensation.

Furthermore, obstacles of an economic nature were raised by the work group participants, in whose countries in the southern region prevailing obstacles include the high costs involved in any judicial procedure, the cost of justice, lawyers’ fees, court expert fees and the difficulty faced by the public authorities in assigning an adequate budget to legal aid, an added burden to legal persons under private law when they are non-profit making. The NGOs that risk becoming involved in legal proceedings are therefore dissuaded by the practice of the courts in sentencing the party that loses the case to paying the costs and fees of justice undertaken by the opposing party. This adds considerably to the cost of justice for the NGOs and would condemn any judicial involvement be preventing non-profit making legal persons under private law from seeking justice in the general interest.

In parallel to granting legal aid, a best practice would be to remove such sentences when NGOs or natural persons are recognised legally or by the courts as acting in the general interest.

FOREIGN NATIONALS

The widest respect for the principle of non-discrimination founded on international obligations should be ensured without prejudicing the organisation of this aid according to the specific status of the foreigner and the nature of the act giving rise to this aid (residents/non-residents, legal/illegal, minors/adults, asylum seekers/economic migrants, nationals/stateless persons, civil/criminal cases, with or without the condition of reciprocity).

A foreigner in an illegal situation should at least have the right to legal aid for proceedings that could lead to expulsion.

The restriction affecting foreigners in an illegal situation should not be discriminatory, that is established without objective grounds, and this to comply with the principle of equality.

A minimum of legal aid in criminal cases should be ensured for asylum seekers or refugees as well as in civil cases for any violation of fundamental rights.

SUMMARY OF DISCUSSIONS

The fundamental principle of legal aid without discrimination depends on criteria established by the State, which differ according to the situation of the person concerned. Even in this case, the situation of a foreigner, for example, may be governed by several pieces of legislation, as in **Tunisia,** where the different legal frameworks ruling on the status of foreigner must be taken into consideration: the law on nationality, the law regulating the presence of foreigners in the territory, international conventions, particularly the convention on the status of refugee (more than one million refugees from Libya in the south of Tunisia. Among them are Africans who have asked for asylum, and others who have committed criminal offences). In view of the overlapping of status in such a situation (refugees, asylum seekers, economic immigrants), legal aid is granted on a case-by-case basis.

Furthermore, in most of the ENPI countries of the southern Mediterranean, legal aid, that is legal counsel in the pre-litigation phase, is absent, either because it is not expressly provided for or because it is confused with judicial aid. In **Morocco**, the law does not provide for legal aid to foreigners other than in the judicial phase and should be amended to provide legal aid during the stage preceding court procedures.

Legal aid is provided for in criminal cases for all persons without discrimination and for certain vulnerable groups such as children, particularly those in trouble with the law and who benefit from it automatically. Other groups, however, only have access to justice because of specific legislation or special courts created with the purpose of finding solutions to problems affecting these groups specifically.

Hence, in 2000, a special court was set up in **Israel** for cases involving immigration (without, however, competence to recognize claims for asylum) and helped to improve the conditions of detention.

On the whole, nationals and foreigners whose usual residence is in the country, even if their situation is illegal, are submitted to the same conditions for granting legal aid, with the exception of legal aid at the pre-litigation stage and under the condition of reciprocity in civil cases (**Jordan, Lebanon, Morocco, Tunisia**). In **Jordan**, victims of human trafficking automatically benefit from legal aid due to a specific law that governs their situation. In **Morocco** legal aid is provided by applying international obligations arising from conventions that have been ratified, particularly those related to women and children.

Legal aid is also available in administrative cases.
The law regulates the situations of foreigners in **Morocco** who are there without a visa. Here, the authorities may take the decision of expulsion, which can be appealed within a period of 48 hours before the president of the administrative court ruling in emergency interim proceedings, within a period of five days during which the foreigner is detained.

COMMENTS

Legal aid for foreigners is a complex issue because often the status of foreigner doubles as the status of victim (violence and abuse against domestic servants, human trafficking, violation of the fundamental rights of the person and that person's freedom).

Legal aid in civil cases should always be available for foreigners should their fundamental rights be violated.

B. ORGANISATION OF PROCEDURES

ACCESS TO JUSTICE, LEGAL AID AND LEGAL ASSISTANCE

Legal aid at the pre-litigation stage should be an integral part of aid seen from the point of view of justice as a public service.

SUMMARY OF DISCUSSIONS

Legal aid in the pre-litigation stage is not a feature of legal aid in the ENPI countries of the southern Mediterranean. These countries leave it to the specialist NGOs to provide this assistance according to means available and needs, without State intervention. **Lebanon** is a typical case in which the civil society organisations are many and are traditionally active. The Lebanese work group participants, however, recommended that this legal aid should be made law, complementing legislation providing for legal aid as in the current draft law in **Morocco**, that has drawn on Belgian, French, Algerian and Spanish legislation, which includes provisions providing for legal aid during the pre-litigation stage.

Therefore, in general, legal aid is not organised as such but appears through certain procedures specific to each country. In **Israel**, the Bar Association, the NGOs and legal clinics provide legal counselling in the pre-litigation stage to many beneficiaries. Legal aid is available in criminal cases in a wide range of situations during the pre-litigation stage and is also available in cases of serious violations of human rights. In **Jordan**, the NGOs provide legal counselling to those requesting it, particularly in cases of domestic violence and human trafficking. Furthermore, conciliation, before beginning legal proceedings, is a form of legal counselling prior to the litigation stage. Draft laws on mediation and on the victims of domestic violence also address the pre-litigation phase. Legal aid during the pre-litigation stage in **Tunisia**, which certain specialist NGOs provide for issues involving consumer protection (group action), is dispensed by numerous agents, but this idea remains to be clearly defined because it involves procedures that do not require representation by a lawyer before the district judge ("nahia"), industrial tribunals or litigation dealing with family law (personal status). The referring judge (a member of the public prosecutor's office for each court) during this stage provides counsel to litigants on civil, criminal and commercial matters.

COMMENTS

The importance of legal assistance during the pre-litigation stage is particularly underscored by the international and European courts of human rights.

International standards provide the accused with the guarantee of access to a lawyer in

strict confidence without hindrance, delay or undue time restrictions in which to communicate freely (cf. Principle in (1) A. The United Nations Principles relative to the protection of all persons in any form of imprisonment or detention).

The United Nations Commission on Human Rights stresses the importance of the presence of a lawyer and a medical doctor, and this quickly and regularly throughout all stages of the pre-litigation stage.

It is the same for the Commission against torture that appeals regularly to States to guarantee right of access to a lawyer very early in the pre-litigation stage.

The European Court of Human Rights has also recognized the fundamental right of access to the services of a lawyer and total confidentiality in any contacts with the same during the pre-litigation stage, so that a delay in applying this principle does not lead to psychological coercion on a detainee and to deprive the same of the right to keep silence, all of which violates the rules of a fair trial.

PRINCIPLE OF NON-FRAGMENTATION

Legal aid should be not be fragmented and should provide adequate cover mainly for the fees of lawyers, experts and interpreters involved in proceedings, as well as all costs incurred with the litigation procedure, that of enforcing judgments and other enforcement decisions taken by the courts although partially or entirely deferring these costs until proceedings come to an end.

SUMMARY OF DISCUSSIONS

The provision of legal aid is graded in all of the countries concerned in which there is no obligation to provide judicial representation for small claims cases, followed by an exemption from judicial rights for those persons eligible for legal aid accompanied by a legal obligation on the part of legal professionals (expert, lawyer, judicial officers etc.) to agree to provide their services to those benefiting from legal aid, free, or partially free, of charge in certain cases, left to the appraisal of court administration or that of the judge.
On the whole, all countries accept the principle of non-fragmentation of legal aid and the legal obligation on legal professionals, excluding judicial officers, to agree to accomplish the task assigned to them unless there is a valid reason reported shortly after the date of their appointment. Certain countries involved do not have a budget for legal aid and have no specific mechanisms that deal with the distribution of aid, beginning by an assessment of eligibility and the timeframe within which legal aid is provided. Eligibility (that is a well founded application submitted) in terms of examining the financial situation of the applicant (entirely formal in **Lebanon)** may indeed be queried, as is the case in **Israe**l, at the end of the first year of proceedings.

The scope of granting legal aid, automatic in specific cases involving children, victims of domestic violence, human trafficking, persons caught in flagrante delicto (**Lebanon, Jordan**), matrimonial cases, labour accidents, persons appearing before the military courts, proceedings before the magistrates' (community) courts (juridictions de proximité)(**Morocco**), remains relative in many respects, without counting stamp duties that come due, as well as the cost of obtaining certificates of ownership and other documents required to obtain legal aid (**Morocco, Lebanon, Tunisia**). In effect, provisions are made to demand a minimum contribution in certain cases (**Israel**) towards the cost of judicial expertise, that can sometimes be high and is therefore considered on a case-by-case basis , and towards lawyers' fees, although there is always

the possibility of asking for an additional payment from the party that wins the case (**Lebanon, Israel**). Similarly, in criminal cases, there are problems regarding the payment of fines by prisoners who have served their sentence and still remain in prison (**Lebanon, Jordan** where an exemption of up to 2500 DJ is provided). However, the legal aid department in the Ministry of Justice does help the applicant in filling out forms.

COMMENTS

Although there is no basic model for organising legal aid, mainly due to situations that vary considerably from one country to another, the stakeholders and institutions must be identified and encouraged to contribute as they can produce the critical mass required to ensure legal aid meets the expectations of litigants, or at least complies with the parameters universally recognised under rule of law.

For this to happen, clearly legal aid should cover all costs to avoid excluding those who cannot contribute to the costs within the context of this aid.

The right of access to justice imposes on the State positive obligations (do what is required for every person and every group to gain access to justice effectively and to this end implement, for example, measures to eliminate discrimination to benefit those groups who have suffered from discrimination in this respect or create courts in remote regions of the country) as well as negative obligations (avoid creating obstacles to access to justice for individuals and groups, even if indirectly, by demanding payments no matter how small they are).

WORKING WITH THE BAR ASSOCIATION

The State should work with the bar associations at all levels in consolidating the legal aid system in force and, to this end, ensure a minimum of resources to guarantee that the system is effective and efficient and that quality is in line with the cost of the service provided.

SUMMARY OF DISCUSSIONS

Apart from the governmental programs for legal aid provided in certain countries (**Morocco, Israel** particularly), the bar associations do, as a whole, provide a pro bono programme to dispense legal aid as being a duty for the members of the profession, and who are officially appointed to perform this duty by the president of the Bar Association. Although certain systems or practices do not appoint a lawyer to more than one pro bono case per year (**Jordan**), all the countries of the southern Mediterranean share the problem of having enough lawyers available to ensure legal aid. Legal aid is often insured by trainee lawyers and occasionally by career lawyers drawn in by the political scope of the case and cases involving issues of public interest and that are widely reported in the media.

The provision of this form of legal aid is formally organised by certain bar associations under a legal aid committee with the task of managing the flow of applications coming from the courts and distributing tasks among volunteer lawyers, this task sometimes limited to criminal matters in certain cases, far fewer civil cases being dealt with directly by a committee appointed by the head of the Bar Association (**Lebanon**).

This pro bono system is sometimes formally financed from the annual subscriptions paid

to the Bar Association by its members, or financed by the association's general budget (**Lebanon**) or by a funding agreement with the ministries of justice and finance (**Morocco, Israel, Tunisia**), and implemented either as the mainspring of the legal aid system (**Lebanon, Jordan**) or as a support instrument for those persons who are not granted legal aid by the government (**Israel**). Fees are determined either on a flat rate basis (**Lebanon**) or according to a table set by the government in those countries in which the State funds this aid (**Tunisia**).

On the other hand, lawyers' fees are, in some countries, recoverable from the opposing party by the officially appointed lawyer having won the case for his client, and for that purpose fixed by the court.

The only quality control on the service provided by lawyers working under legal aid in return for flat-rate fees is, on the whole, that of the only quality control rule found in professional codes of ethics.

COMMENTS

Possible mechanisms for regulating the fees of lawyers vary and actually depend on the model adopted for dispensing legal aid.

What subsidies are granted by the State to professional organisations (justice auxiliaries, lawyers, court officers, experts) and to syndicates? In the case of the former, are they considered to cover services paid to their members or the services that their members must provide to impoverished litigants, and in the case of the latter, as covering the legal aid of which their members have need?

In using professionals for legal aid are lawyers paid a salary by the State for legal aid, similar to lawyers hired by the litigation service of the State?

What incentive measures (for example, exemptions from income tax on fees received through legal aid) are there for justice auxiliaries to encourage them to volunteer for legal aid?

JUDICIAL EXPERTS

Experts must be appointed from among those approved and paid by the State from lists drawn up according to specialisation with professional bodies of experts and whose fees are determined by prior agreement on a unified scale per category of case.

SUMMARY OF DISCUSSIONS

In matters of legal aid, the fees of experts (like those of lawyers) are determined by law through a fund held by the Ministry of Justice and the amount is left to the discretion of the courts that refer it to the Ministry of Justice (**Algeria, Lebanon**). The discretionary power of the courts helps curb demands for excessive fees and to fix objective criteria (**Tunisia**).

Funding is also available for judicial expertise when legal aid programmes are conducted by civil society organisations (**Lebanon, Israel**). **Israel** provides for a minimum contribution from the beneficiary applicant in civil and criminal cases. Payment of experts' fees in **Algeria**, both civil and criminal, is covered by legal aid. The decision on this is left to the judge.

Expert's costs should be covered by the party that has the means to do this, or costs shared between the parties.

The quality/effectiveness of legal aid granted depends on the mechanism for appointment/accreditation. **Jordan** provides a "flagrante delicto fund" that provides fees for experts in criminal cases. When experts are organised into companies, subsidies can be allocated to them in order to control the quality of services and eventually commit pro bono experts similar to lawyers; staff experts could be committed to contributing regularly to make up for shortages in this field.

COMMENTS

Judicial expertise as a guarantee for justice is sometimes defective because there is no legal framework sufficiently well developed to guarantee adequate results on which the court can find the grounds to pass judgment.

A lack of criteria suitable for nominating experts is in itself a failing on the part of the justice system.

Organising bodies of experts into "syndicates" according to "specialisation" is not in itself sufficient if the rules governing them are vague.

Within the framework of criminal justice, inadequate expertise may worsen the situation for the accused and undermine the rules for fair trial.

A formal regulated programme for on-going technical and procedural training is the only way of guaranteeing a fair trial in which expertise is essential as a means of proof.

Whatever the case, the question of the certainty of the judge stands firm, and many committees of experts on the same subject during a trial reduces a litigant's expectations of what to expect from justice to nothing, and if this is the case it will take even longer, be more costly, uncertain and often lead to the denial of justice.

Each time the responsibility of the judicial experts (civil, criminal and disciplinary) must be emphasised. The same goes for the lawyers involved in the provision of legal aid.

EXEMPTION AND DEFERRED PAYMENT OF COURT COSTS

It is advisable to exempt the applicant for legal aid from legal costs in civil and criminal cases and, alternatively, defer payment, because should the case be won this will have a positive financial effect on the same applicant.

SUMMARY OF DISCUSSIONS

In criminal cases, exemption grounded on poverty is the rule in practically all of the ENPI countries in the southern Mediterranean, although this is not the case in civil cases in certain countries (**Jordan**) and a flat rate is demanded in other countries to apply for legal aid (**Israel, Jordan**). These rules remain applicable for every level of court and may be reconsidered to determine the eligibility of the applicant. Once granted, legal aid in **Algeria** remains in place for all levels of court, although it may be withdrawn at any time, even after the close of proceedings. This rule does not stand in **Lebano**n if the beneficiary loses the case, which means he must submit a new application for legal aid

for the appeal he wants to make.

A palliative exists in some countries (**Jordan**) that allows the applicant to benefit from deferred payment of judicial costs to the end of proceedings and after judgement is passed.

Special provisions are provided to create specialist services in the courts to be able to offer legal aid to vulnerable groups based on special legislation, although in **Jordan** victims of violence as well as victims of human trafficking may also benefit from this.

COMMENTS

The question of legal aid for vulnerable groups and that constitutes one of the major chapters in this handbook, in many respects still remains marginal within the entire framework of legal aid. It does appear in specific legislation for women who are the victims of violence and for victims of human trafficking (Egypt, Jordan), and this as a result of international pressure and the consequent support to come up with aid mechanisms that will meet the needs of these groups.

The specific needs of these groups, which are many and varied in the ENPI countries of the southern Mediterranean, are therefore clear: they may not suffer delays nor be submitted to the payment of taxes and duties. In this sense, classical legal frameworks that have often not been reviewed since they were adopted seem discriminatory and inadequate in responding to such a variety of situations. Best practices suggested by the workgroup should also serve to reform legal aid systems that most often are restricted to court support and not to the provision of legal aid, that is, they provide legal counselling and assistance to applicants in non-court procedures, helping them become aware of their rights in good conditions and to understand the procedure in which they are involved.

LEGAL GUIDANCE

The State should ensure a minimum of legal guidance in litigation that dos not require judicial representation.

SUMMARY OF DISCUSSIONS

Litigation that does not require judicial representation is that in which the value is below a certain level that varies according to country and is generally fixed according to the minimum salary.

Pre-litigation counselling is advisable to guide litigants in such cases.

COMMENTS

In the case of what is usually referred to as “small claims", legal aid, whether counselling given to those who want to exercise their rights the value of which is small compared to the economic situation of the actual country, require specialist services that go beyond guidance and that they could get from court officials or possibly from information desks in the courts.

Legal counselling to people in such cases helps move cases quickly through the courts

with the jurisdiction to handle them.

ECONOMIC CRITERIA OF ELIGIBILITY

The economic criteria of eligibility to legal aid does not only depend on the applicant party being poor, but on a situation of economic incapacity to pay judicial costs, based on the minimum required to meet vital elementary needs.

SUMMARY OF DISCUSSIONS

Legal aid is usually granted taking the economic situation of the applicant into consideration and/or the nature of the crimes or offences with which the applicant is accused and which are taken into account in examining the application for aid.

Objective criteria are provided for assessing the economic resources of the applicant but it is understood that a state of poverty is taken as subsisting beyond the vital needs of the applicant.

The economic criterion is far more strict than the legal criterion that rests on assessing the possible outcome of the case or whether it is without grounds or inadmissible.

Legal aid may, however, be withdrawn officially by the legal aid office if the applicant is found to have sufficient revenue that he has tried to hide.

The outer signs of wealth may not be used as a criterion because this raises a problem for the assessor (**Israel**). It is the personal situation of the applicant and his family unit in civil cases, and that of the mother also if a minor is involved, that is taken into consideration in granting legal aid. However, the household situation is taken into consideration when dealing with cases related to family law (**Jordan**) or, also in the same case, assignment of a lawyer is not requested, a referring judge serving as counsellor to introduce a standardised procedure. Moreover, the law of 2002 does not make the economic criterion a strict criterion (**Tunisia**).

Besides this, legal aid is provided by law for certain categories of people. In **Jordan**, for example, application for a maintenance allowance, child custody, in the case of a labour accident, a disabled person, victims of human trafficking and people caught in flagrante delicto. In **Algeria** the economic criterion does not come into cases involving family law, labour law or illegal immigrants.

COMMENTS

A situation of economic incapacity is that defined by a minimum threshold of financial input, sufficient to cover the vital needs of a person, or of the family when that person is married, for example.

Legislation existing in several countries covered by EUROMED JUSTICE III appears out-dated and elementary where it continues to be based on elements that are static (such as certificates of poverty and non-payment of income tax, or on a certificate proving no ownership of property) in being able to assess the eligibility of the applicant to legal aid. Criteria founded on economic incapacity should be considered in a more flexible way for eligibility to free legal counselling.

BODY COMPETENT TO EXAMINE THE APPLICATION FOR LEGAL AID

The choice and organisation of the body competent to examine the application for legal aid, whether of a judicial, administrative or professional nature, in civil and criminal cases, should aim, above all, to shorten the response time to the application by promptly verifying the criteria that must be met.

SUMMARY OF DISCUSSIONS

The choice of the body competent to examine the application for legal aid may be done based on the resource offered to the applicant. This body must also be competent to verify the different aspects regulating the way in which legal aid is granted based on established criteria (**Algeria**). The question of whether assessment of the application is done by a judge (**Lebanon**) is of little importance when it is done based on the same criteria used by an administrative body within the Ministry of Justice, as is the case in **Israel,** or done using the same criteria by lawyers in the legal department of the Ministry of Justice. In countries in which it is a judge that rules on whether the application is well founded, a decision to refuse aid may have an effect on the progress of the case. Here an administrative body responsible for dealing with applications for legal aid would contribute to better centralisation and to defining a legal aid policy.

Another model is that in which, besides being provided by law, the bar associations where the different players involved in legal aid are represented, also take part (**Tunisia**).

COMMENTS

Creating legal aid offices responsible for deciding on applications for legal aid may, from their composition, (magistrate, lawyer, other justice auxiliary, specialised associations) be better placed to decide on eligibility bearing in mind the extent to which economic criteria are relative in the specific nature of each situation.

GRANTING TEMPORARY LEGAL AID IN CASE OF EMERGENCY

It is advisable in dealing with an urgent application for legal aid, when the right to this aid has not been granted, to provide temporary legal aid while the beneficiary produces the documents of proof requested within a reasonable timeframe, at the risk of the aid being withdrawn.

SUMMARY OF DISCUSSIONS

The procedure for granting legal aid is always possible in the case of emergency in certain ENPI countries in the southern Mediterranean (**Algeria, Israel**) on condition of completing the documents requested once the decision to grant legal aid is final. Should this not be done, legal aid granted on a temporary basis is withdrawn. Therefore in the case of emergency, it is the public prosecutor who decides on whether legal aid is granted in **Algeria**. There is no response to urgent cases in **Lebanon** where the decision to grant legal aid is left to the judge who must also assess the possible outcome of the case before deciding to grant aid. In **Tunisia**, the judge decides on whether to grant emergency legal aid. In **Israel**, there is no rule to determine what is classified as urgent, so it is decided on a case-by-case basis.

Apart from the arrest of a person who asks for a lawyer to be assigned to his defence, in other countries **(Jordan**) there is no special legislation for an emergency procedure to grant legal aid. Such an assessment is, on the other hand, left to the Law Society (Ordre des Avocats).

COMMENTS

Demanding that legal systems ensure the effective implementation of the right to a fair trial within a "reasonable timeframe" means that there is always the possibility of granting provisional legal. In this regard, the interests of the user of the public justice service must prevail.

PROVISIONAL EFFECTS OF THE DEMAND FOR LEGAL AID

A demand to halt proceedings in order to apply for legal aid, either by doing away with the role of hearings or by transferring the hearing, should not affect the normal progress of proceedings in the case under trial.

SUMMARY OF DISCUSSIONS

In certain countries proceedings may be suspended but not interrupted, in the interests of speeding up the decision on the case (**Algeria**). The application for legal aid in other countries (**Israel**) must wait for court proceedings, if it is not urgent.

The application for legal aid in a court of law should not be abusive, and if it is, it is an abuse of the law enshrined in the procedural code (**Lebanon**).

COMMENTS

Criteria should be used in such a way that the procedure cannot be used as an instrument by the parties to hold back the outcome of the case. More systematic use should be made of a fine imposed on a party applying for legal aid that clearly has no grounds.

Here the idea of "reasonable timeframe", despite the principle of good justice administration, is enshrined in the European Convention on Human Rights. This idea has become a quality criterion in court action and in proceedings. More than the quantitative aspect in reducing numbers and managing the flow of cases, it is a question of efficiency.

APPLICATION FOR LEGAL AID REFUSED

There must always be grounds for refusing the application for legal aid that can be reviewed quickly, whether the decision to refuse is administrative or judicial.

SUMMARY OF DISCUSSIONS

Refusing an application for legal aid is viewed from different angles in the procedure installed in the ENPI countries of the southern Mediterranean: either the decision does not admit appeal (**Tunisia, Lebanon**) or it admits an internal appeal before the same

court, to which a response must be given quickly (**Algeria**), or an appeal is possible in which an assessment mechanism to determine the economic and legal grounds of the application is used by the court or by the lawyer responsible for the legal aid office, which examines the grounds before addressing the application to the court that then decides (**Israel**).

All participants agreed, however, that an appeal to a refusal of the application should always be possible, the court being free to decide on whether the grounds for the application are well founded.

COMMENTS

Decisions to refuse or withdraw an application for legal aid should always be open to appeal. The timeframe within which the appeal must be answered should always be brief.

AID MECHANISM OF THE BAR ASSOCIATIONS

The recommendation is to create within the bar associations a mechanism with its own statutes defining its mandate and way of working under the supervision of the Law Society, and supported by lawyers adequately paid and trained in the matters presenting most difficulties to litigants, particularly the more vulnerable.

SUMMARY OF DISCUSSIONS

Two models for legal aid mechanisms appear in the ENPI countries of the southern Mediterranean: the first, which is costly, is organised around the idea of a professional approach to legal aid through a Legal Aid Office (including a core of lawyers working full-time) and that of the public prosecutor, correctly filling their role and providing a professional service (**Israel**).

The second, typical in **Tunisia** and **Morocco** (if we refer to the recent bill providing exhaustive organisation for legal aid) provides regional aid offices, generally controlled by a magistrate and including legal professionals. These offices regularly examine applications reaching them and decide on them, the lawyers appointed having the right to fees based on a fixed rate scale according to the type of case. In Algeria, there are legal aid offices within the tribunals, the courts, the administrative courts, the supreme court, the State council and the jurisdiction court.

In parallel to these two models, there is the traditional committee officially appointed by the head of the Law Society who receives an application after the court has decided to grant legal aid to the litigant who has submitted the application (**Lebanon, Jordan**).
Here the role of the bar associations is different from the public system for legal aid, in that it either plays a supporting role in the first model presented (**Israel**) using its own funds to provide aid, based on more flexible criteria, to those whose applications have been refused by the legal aid office at the Ministry of Justice, or it remains the kingpin of legal aid by providing lawyers to plaintiffs in civil and criminal cases at the request of the courts (**Jordan, Lebanon**) using its own funds to pay the flat rate sums covering the fees of the lawyers assigned (**Lebanon**).

In all of these cases, the quality of the services of lawyers should be at the heart of the system, which should remain flexible to allow not only the impoverished but also litigants having difficulty in gaining access to legal aid.

COMMENTS

Creating within the bar associations a mechanism responsible for legal aid, in the form of a committee with its own statutes determining its mandate, organisation and working methods, under the supervision of the Law Society, is important in that this aid may then be the object of follow-up and quality control on the services of lawyers assigned to it. Indeed, only the Law Society has disciplinary authority over its members should they fail in their professional duty.

Besides, the centralization of datam relative to legal aid helps produce the statistics required for a legal aid policy to be defined jointly by the bar associations and the Ministry of Justice.

FINANCIAL MODEL AT CENTRAL AND DECENTRALISED LEVELS

If there is no unique financial model for legal aid, a special budgetary line should be introduced to cover the cost of justice in providing court assistance, to be dispensed through the Law Society and to which the latter would contribute.

It is also recommended that municipalities or town councils do the same thing within their respective jurisdictions

SUMMARY OF DISCUSSIONS

Legal aid depends firstly on an adequate budget broken down according to a scale of fees according to the nature of the case and administered by the Ministry of Justice. This should be provided in the State budget as in **Algeria** and **Morocco** or in **Israel**.

But it is difficult in the current state of public finance in certain countries such as **Lebanon** or **Jordan** to include legal aid in the State budget, the role of the State remaining that of supervising legal aid services, or at least to apply a direct tax, such as stamp duty.

COMMENTS

The question of funding legal aid lies at the heart of the problems that affect the effectiveness and efficiency (cost-quality balance) of legal aid in most of the ENPI southern Mediterranean countries. This aid often leaves much to be desired when lawyers are not really paid but receive a flat rate that, at the most, covers the expenses of the case.

Hence their disaffection and the assignment of trainee lawyers without much experience and taking their first strides in the legal profession.

The fact that legal aid funding is left to the discretion of the government in countries where this is the case, indicates that aid is almost never a priority for the public authorities who see in it a task for the non-governmental organisations funded by development agencies or international organisations.

Funding for legal aid should be reconsidered rationally, founded on the concept of common justice as a factor in human development.

DISTINGUISHING BETWEEN THE TASKS OF THE PRESIDENT OF THE COURT AND ADMINISTRATION; INTEGRAL COURT MANAGEMENT

The respective tasks of the president of the court and the administrative director should not be confused, at the same time not excluding the principle of integrated management conducted jointly by the judge and the administrative director, preferably himself a judge, trained in modern management techniques.

SUMMARY OF DISCUSSIONS

The question of managing the timeframe of procedures and, as a whole, the administration and running of courts, presents several dimensions that currently require the division of tasks among judges, who have not received specific training for this type of management. Therefore court administration should be entrusted to judges to manage the flow of cases and their breakdown according to category. In trusting management to an administrative director who is a judge will have an even better effect on narrowing timeframes without affecting the quality of justice.

Certain initiatives have been adopted in the countries of the region to remedy this. **Algeria** has experience in modern management of courts. In **Israel**, a private company has been contracted by judicial administration and the ministry of finance to define a strategic plan for court administration, based on the identification of problems with a view to defining solutions for better administration. This should serve, among other considerations, for legislative reform so that the management adopted as a consequence will be operational.

In **Jordan**, a pilot scheme is underway for a court administrator who operates according to strategic planning.

In **Lebanon**, an initiative to support court administration by allocating a small amount of funding to the first president of the court of appeal, a contribution that can be made without prior procedure, did not meet with success.

Creating a strategic planning committee in which judges have a central role was raised by the participants of the workgroup, although court administration and strategy in certain countries, such as **Lebanon**, remains under the competence of the High Judicial Council in coordination with the Ministry of Justice, because of the many authorities intervening in court management whether in dealing with personnel, judges or material, equipment and infrastructure resources.

In **Tunisia**, the general court strategy depends on the organisational plan of the Ministry of Justice responsible for providing the guidelines on the way in which justice functions. Regional offices of the Ministry of Justice come under their respective governors. This experience has not been conclusive because the regional director, torn between the governor, higher authority and the Ministry of Justice, could only play a waiting game. After the clean sweep made to the institutional organisation of judicial authority that existed before the revolution, creating an authority for the organisation and functioning of justice (majlis a'ala lil 'adala) including all the stakeholders in justice with the ramifications of notaries, judges, clerks of court, may respond to the needs of strategic planning.

Planning is still envisaged for certain areas (planning in terms of justice for referrals to

harmonise decisions; standardise management of cases and proceedings for specific matters such as cases concerning rents, so that proceedings can progress faster).

COMMENTS

It is important to recall the distinction clearly made by the European Commission for the Efficiency of Justice (CEPEJ) between the tasks of the court president and its administrator in that their skills and competencies are initially different.

The president of the court should be involved mainly in managing cases brought to the court and in implementing strategies guaranteeing a high level of legal quality in decisions.The court administrator should be concerned with the tasks of managing court organisation among them planning, and organisation of administrative staff.

The results of a court being the sum of the collaboration between judges and administrative staff, it would be wise to plan a global management system with the joint participation of the president of the court and its administrator.

COURT MANAGEMENT AND DIALOGUE WITH LITIGANTS AND THE STAKEHOLDERS IN JUSTICE

One condition for improving the services provided by the courts would be to regularly hold dialogue with litigants and the stakeholders in the justice sector by means of disseminating information regularly on efficiency, workload, the court's resources, as well as listening to the opinions of those using justice as a public service.

SUMMARY OF DISCUSSIONS

Dialogue with litigants is not organised as such but is conducted using ad hoc methods each time, and referring judges must be excluded or other forms that might influence users (**Algeria, Tunisia**) that are not always the same in nature. In fact dialogue with stakeholders or among stakeholders in justice requires mechanisms that do not exist in the countries of the region.

In **Israel** there is an ombudsman for the administration of justice who receives and responds to complaints from users (very often concerning delays) and from lawyers, and he prepares an annual report, certainly contributing to the improvement of justice as a public service. He does not respond, however, to the concept of dialogue among the stakeholders in justice.

In the current state of affairs, this dialogue takes place informally at the initiative of the media or civil society organisations, among them the bar associations, that receive judges, lawyers and other stakeholders from the justice sector in order to discuss matters on how justice is functioning. A joint committee was recently set up to include judicial administration and the law society in order to understand relations between judges and lawyers.

Furthermore, there are commissions at justice administration level, as in **Tunisia,** that meet regularly to discuss work progress in the courts and sometimes organise conferences that serve as a platform for dialogue between the stakeholders in justice and the public.

This takes account of the opinion of users of justice as a public service, an important point in that this leads to constructive dialogue as a means to improving justice.
Certain means are used by justice administration, such as press releases, information offices or Internet sites, which are usually not interactive and do not permit even a superficial dialogue with users, but do include information and sometimes forms and explanations on procedure.

COMMENTS

Information from these stakeholders of justice on how the courts function is a sign of transparency.

Collecting and disseminating information, that helps explain why delays occur and where bottlenecks are located, is crucial in reducing delays and pre-empting them.

To this end, States should have operative systems for the collection of judicial data because some judicial systems are not ready for the practical collection of information, or they have no information.

The preparation and use of questionnaires is useful here for obtaining information and for analysing within the system pertinent aspects on the duration of court procedures, examined for this purpose as a whole.

The aim is:

- to reduce excessive delays
- to guarantee that procedures are effective
- to ensure transparency and to give users of justice as a public service the necessary insight.

All of this helps to assess the way national judicial systems function by looking at delays in the different procedures and helping to implement time management policies and to reduce delays.

Information resulting from this allows the stakeholders in justice to react and to structure their own relationships and those with the administration of justice.

Such dialogue between the different stakeholders, the legal professionals and essentially the bar associations, as well as the NGOs active in the sector, should be located at Ministry of Justice level. The NGOs are the community stakeholders who can detect needs and provide ideas and initiatives to respond to them. The key word in all of this is “coordination".

II. ACCESS TO JUSTICE, DURATION OF COURT PROCEEDINGS, HINDRANCES AND DELAYS

A. DURATION AND TIMEFRAME

DETERMINING A TIMEFRAME FOR PROCEEDINGS

Timeframes, established according to the different categories of proceedings and the stages of proceedings, are organisational tools that require the consensus of the parties concerned, those involved and employees of the courts, in order to achieve the desired results. They should be respected by the courts that take the initiative to implement them.

Data collection on the stages of proceedings should be institutionalised within a mechanism for regular analysis and adjustment throughout proceedings. This will help in the rapid diagnosis of delays and will lessen the consequences.

Appropriate management of delays in proceedings requires these to be regrouped according to their complexity and average duration and, as a result, their breakdown into adapted procedures.

Adopting standard formats with a limited number of pages for certain simple categories of case helps comply with deadlines and to focus on key points and the reasoning behind judicial decisions or judgments.

SUMMARY OF DISCUSSIONS

Although the concept of “reasonable timeframe", in the absence of any timeframe established by law in most of the ENPI southern Mediterranean countries, is at the heart of good case management, this remains in the hands of the judges who must manage the timeframe of proceedings in order to render the best justice possible.

In **Lebanon**, civil procedural code mentions a “reasonable timeframe" that prohibits the judge from delays without justification and therefore permits a justified delay and institutes a kind of balance between “useless sluggishness" and “explicable sluggishness". It was agreed that developing best practices in this sense would help establish a “reasonable timeframe" bearing in mind that the judge can always modulate the progress of cases without being held to strict timeframes unless they are fixed by law (for example, in **Algeria**, settling procedural incidents within 15 days without the possibility of appeal, or, in **Lebanon** and **Israel**, timeframes fixed in cases described as urgent, particularly in family matters).

To overcome the elasticity of the “reasonable timeframe" particularly when means of defence impose delays, certain judicial administrations plan regular meetings to establish reasonable timeframes. Those in **Algeria** have led to fixing averages of 6 months in civil cases and to referrals from week to week or fortnight to fortnight without going beyond a month, unless there is justification for this. In **Israel**, timeframes are established according to the nature of the case, the timeframe being reduced when

the case is urgent.

A project to establish procedural timeframes according to the type of case to serve as an indicator to the courts in conducting cases, is being prepared in **Jordan**.

Average timeframes have been established in **Tunisia**: 1 to 6 months for criminal cases, 9 to 12 months for civil and commercial cases.

In addition, magistrates are asked in ministerial circulars to send monthly reports that help verify whether there has been a delay in observing timeframes and also 'to address other problems that hold up the running of the courts and hinder procedures, such as the work of the clerk of court's staff that cannot accomplish the most elementary of tasks (contracts are regularly signed with private companies to process documents containing judgments). Other guidelines are also given to lawyers asking them to produce their papers within time.

COMMENTS

Establishing procedural timeframes involving the different stakeholders in justice is an on-going process that must involve magistrates, lawyers and other justice auxiliaries in order to implant a line of conduct applicable to each process: an action plan determining the estimated duration of the preparatory stage, preliminary hearings and proceedings. In this way a schedule is established that is sent to the parties in advance. Lawyers and prosecutors can then make their comments.

This way of finding a common ground on which to progress the procedure without pitfalls cannot be conceived without a symbiosis between courts and lawyers.

There should be a consensus on "general states of justice" to facilitate the debate on the best means of improving access to justice by simplifying procedures and preventing their abuse[1].

COORDINATION MECHANISMS

The stakeholders in justice as a public service, all disciplines included, should be involved in coordination mechanisms the aim of which is to improve access to justice for users. There should be a law determining forms of involvement in the mechanisms of the stakeholders concerned.

SUMMARY OF DISCUSSIONS

Work group participants expressed two points of view on this question: the first (**Israel, Lebanon, Palestine)** deplore the absence of regular meetings that could include experts, lawyers and stakeholders in civil society and advocate enlarging the circle of stakeholders involved in justice as a public service to formally include the staff of the offices of the clerk of court, the work of the judges often being hindered by an absence of staff after official working hours. For proceedings to run well all those involved, judges, lawyers, experts, clerks of court, social workers in juvenile justice cases and the judicial

1 Cf. Euromed Justice II: fourth meeting: «Access to justice through the efficiency of justice : managing the justice system, special reference to practical ways of combating delays in the justice system ». Final conclusions. 2009.

police when transporting prisoners to the court (**Lebanon**), must take part.

The reasons in favour of such inclusion (**Palestine**) also arise from the frequent violation of proceedings by judges when they decide to repeatedly refer, although the procedure only allows for this to happen once, or the administrative division of case files among judges, in the absence of the automatic allocation of files, is often a reflection of a poor practice rather than best practice.

Contrary to this, the second point of view (**Jordan**) considers it wiser to restrict the circle to the principal stakeholders, that is judges and lawyers, and this because of the multiple difficulties of getting all the stakeholders involved in the judicial process to meet at the same time.

According to this second opinion, the judges are best placed to manage proceedings in such a way as to comply with timeframes, while the phenomenon of associations of users of justice as a public service is unknown to communities in the region.

Another reason is the corporatism that sometimes characterises the legal professions and is an important factor in the failure of cooperation among the different stakeholders (**Tunisia**).

Neither of these points of view provides a solution to structural problems in the countries of the region as, for example (**Palestine**), summoning officials as witnesses in court proceedings is practically out of the question, or again, the status of Palestine, divided into zones A, B and C, is another reason for difficulties in respect of proceedings, particularly when it is necessary to coordinate with the Israeli authorities to have a person appear before the court, for example as a witness (this is the case in the status of zone C).

In conclusion, it was agreed that all protagonists in the judicial process, including litigants, are stakeholders involved in the procedure and must be attached as the links in a chain. Even if the approaches differ from one country or region to another, in the current state of affairs, users do not make the rules but are submitted to them. On the whole, they are not present in the laws that control procedures.

COMMENTS

Coordination between the stakeholders in justice should not be reduced to information sharing meetings but should be based on the systematic collection of statistics, the organised collection of information and on a system for monitoring and assessing developments in the sector, all factors that will give coordination full meaning.

Making a coordination mechanism formal within the Ministry of Justice involves decision-makers in judicial policy and the stakeholders in justice, including those of civil society, and will help meet the ever-growing demand for justice and legal aid, without this having a negative effect on the good performance of the courts.

Formal coordination may also be useful in the criminal justice sector in that a network of legal practitioners including judges, lawyers and clerks of court could become a space for an exchange of knowledge and experience, as well as a space for finding solutions to systemic problems that affect the good performance of justice.

The question of involving the users of this public service through associations of users may seem precocious in the current state of affairs, but signs of increased initiative in

civil society in this sense can be detected in **Lebanon** where a journal is published regularly reporting on the experiences (negative on the whole) of users, and this has also been the case in **Tunisia** following the revolution.

DURATION OF PROCEEDINGS

The optimum duration of court proceedings as laid down in legislation should be fully respected, particularly in criminal cases, and controlled by the courts: hence the technique of the schedule agreed beforehand by the parties at the encouragement of the judge. In this approach, timeframes according to the type of case, should replace timeframes that if broken are not sanctioned by legislation.

SUMMARY OF DISCUSSIONS

The courts cannot change the timeframes of proceedings even if the parties agree to this. In this respect, there cannot be a "proceedings contract" between the parties to the case, mainly because the timeframes established by law, on the whole, may not be extended and remain strict in criminal cases (**Algeria, Jordan**). However, the most appropriate way to reduce delays in proceedings is the preliminary management of the timeframe fixed by law by agreement between the parties under the supervision of the judge.

The judge is qualified in **Israel** to conduct proceedings due to the growing number and nature of evidence that sometimes requires more time. But the President of the Supreme Court has introduced a procedure that restricts judges from the possibility of prolonging proceedings.

The timeframes established by law are sometimes too short (the judge in interim proceedings may, for example, reduce the time to 24 hours and even down to only one hour), or too long: judges should have more latitude in fixing timeframes depending on urgency, complexity or type of case (**Lebanon**) if the parties are not against this (**Tunisia**). In certain countries (**Palestine**), timeframes provided in the civil procedural code are not sufficiently precise, which opens the way to opportunistic extension of the same. On the other hand, strict timeframes in criminal cases, particularly with regard to preventative detention, are not respected. These timeframes should in no case whatsoever be left to the courts.

Statistics help define the difficulties the courts face in this matter and help establish criteria according to type of case and means required.

On the whole, it is the application of the law on timeframes that stands because establishing timeframes is a matter of public order and may only be regulated in cases provided by law. In criminal cases, all legislative provisions are a matter of public order, at the risk of invalidating procedures. On the other hand, in civil and commercial cases, timeframes are an incentive without being accompanied by sanctions (**Tunisia**).

COMMENTS

Best practices in terms of the duration of judicial proceedings depend mainly on the good management of judicial time and the courts, which leads to a series of questions: the first touching on the inability to foresee the duration of proceedings, a structural problem that affects the work of the courts and regularly increases the volume of cases in most countries of the EUROMED region.

Hence the development of concepts such as that of “optimum duration" of a case, a concept that depends, of course, on a number of parameters linked mainly to the nature of the case and the type of court.

But the flexibility of the duration of judicial proceedings must in all cases take account of the special needs and risks that litigants face from the fact that proceedings are flexible.

A second question linked to the duration of judicial proceedings is written into the procedure itself and the way in which it is applied by the judges and the parties in litigation. This concerns the delay in producing items of evidence or measures ordered by the judge repeatedly, such as the successive nomination of court experts to perform a similar task or the judge waiting until the closing date of the case before verifying items of proof, particularly those which, if absent, distort proceedings and mean proceedings must be reopened.

In this context is there any “duration" for judicial proceedings, any policy to establish foreseeable and optimum timeframes, a definition of standards and objectives for managing time?

It is understood, for example, that certain standards and certain objectives are written into the procedure itself, which should prevent time delaying manoeuvres by the parties that judges cannot be ignore.

These are important considerations in gaining access to justice and that do not receive sufficient attention. In this respect, the staff of courts should also be submitted to target standards and objectives.

CULTURE OF RESPECT FOR DEADLINES

A culture of respect for timeframes should be promoted by all stakeholders in the justice sector as a means of improving the quality of justice and this both at university level and in magistrate training colleges and law schools.

Codes of ethics are also complementary instruments in promoting this culture.

SUMMARY OF DISCUSSIONS

A culture of respect for procedural timeframes is entirely relative to the latitude judges are allowed, or which they sometimes allow themselves, to manage the duration of proceedings (**Lebanon**). A failure to respect timeframes is an ever-present phenomenon (**Jorda**n). To deal with this, having regular control over the progress of proceedings, monitoring undue referrals or assessing the neutrality of the judge, which in reality is none other than a different way of saying being too soft, is a measure that is well founded. However, the follow-up conducted by inspectors from the Ministry of Justice may be counter-productive because it incites judges to settle litigation formally at the cost of an in-depth resolution of cases (**Tunisia**).

On the other hand, the question could be viewed from the angle of a prolonged delay due to the parties to the proceedings: judges may apply sanctions to parties who violate the proceedings in this way; in the same context, constant assessment and review of delays to proceedings help deal with this situation (**Israel**). In **Jordan**, control of progress in

proceedings is done systematically by an information system that deals systematically with this problem.

A culture of respect for timeframes may also suffer from the image that judges have of themselves: so it is in **Palestine** that a culture of respect for procedural timeframes has become frayed over the past three decades. Judges today act like civil servants and no more.

COMMENTS

A culture of respect for timeframes in providing justice is a phenomenon accomplished over time and becomes a tradition that has an influence on judges as much as they themselves influence the tradition.

Codes of conduct express the willingness of legal professionals and justice auxiliaries to see this culture take root.

This does not depend, however, on the discipline imposed on judges or on the sanctions applied to them within this context, but on training judges. The recognition of those among them who respect timeframes expressed in their being given more responsibility and career promotion can only contribute to rooting this culture. Judges who receive such recognition may then impose on their courts and their staff, and even on other justice auxiliaries, the need to share in this culture.

Developing a culture of respect for timeframes depends also on the means and resources available to judges and their personnel, and on favourable working conditions that are constantly improved.

SANCTIONING THE FAILURE TO COMPLY WITH DEADLINES

Technical and administrative mechanisms should be implemented to define the causes of delays in proceedings so as to prevent them, sanctions being only secondary and applied to certain lapses.

SUMMARY OF DISCUSSIONS

The failure to respect timeframes could be provided for as such by law and sanctioned (**Algeria**). Furthermore, it could be qualified as constituting a denial of justice and sanctioned as such (**Lebanon**). It could also be evoked by the codes of conduct for judges (**Lebanon, Jordan** in particular). But even if legislation does not provide sanctions in all the ENPI countries of the southern Mediterranean, and although respect for timeframes is not really the prime obligation of judges, their task being to find a solution to the dispute submitted to them, the axe of sanctions for failing to respect timeframes is brought down by the High Judicial Council and court inspection. Judges who do not respect timeframes are interrogated by the High Judicial Council and may be sanctioned (**Israel, Jordan, Lebanon, Tunisia, Palestine**). Judges must justify their lapses particularly when hindering the progress of proceedings. In this respect, both court inspection (that carries out regular inspections on progress in proceedings, referrals and delays and receives individual complaints) and the disciplinary council for judges make a contribution. Serious lapses are submitted to the disciplinary council and these are listed for the law to hold back promotion or reallocate the judge in question (**Lebanon,**

Jordan, Palestine).

If a lawyer does not submit his conclusions within the deadline provided by law, a single referral is possible but an additional referral cannot be accepted. The judge ordering it is exposed to some disciplinary sanction by the High Judicial Council, such as having promotion held back.

Justice auxiliaries also have a legal obligation to respect timeframes as does the staff of the office of the clerk of court and lawyers (**Algeria, Israel, Jordan, Palestine, Lebanon, Tunisia**). The latter are exposed to disciplinary sanctions by the Bar Association to which they belong in the case of any time-delaying tactics. Courts may also sanction lawyers by sentencing them to compensation for damages and interest to the parties they represent (**Israel**).

By way of example, the law controlling judicial expertise provides for sanctions if deadlines are not met, where this becomes prejudicial to a party to the case (**Algeria**).
Disciplinary sanctions against judges and lawyers, and possibly judicial experts, are not always the most appropriate because demands for a hearing report may always be justified by the judge who will invoke in this case impartiality and neutrality, while the lawyers may invoke the need to seek means of evidence. The judge must respect timeframes and control delays caused by lawyers and judicial experts while at the same time remaining neutral. The judge may refer to the Bar Association to call its members to order and remove the judicial expert who has abused the timeframe within which to submit his report to the court.

Regarding control over the progress of judicial proceedings, this must be administrative in nature so that it can include in its control file any unjustified lapse on the part of the judge hindering the speed of judicial proceedings (**Tunisia**).

COMMENTS

The prevention of delays should be the object of a reasoned process founded on judicial statistics on the types and stages of proceedings that suffer delays and then verifying the causes.

This could define the criteria for a reasonable delay per type of case (priority, complex, normal) and proceedings.

The right to a fair trial within a reasonable timeframe could be provided in constitutions without an effective appeal existing in substantive law.

One way of preventing the violation of procedural delays, including enforcement delays, would include adopting legislative provisions expressly creating an appeal against an excessive procedural delay (that the expression “application against failure to act" best reflects) having the immediate pursuit of the suspended case ordered, or the enforcement procedure of a judgment ordered, and compensation for repair of damages, itself enclosed within a timeframe and allowing the applicant to use this without having to pay excessive charges when his appeal is manifestly justified. The compensation awarded should in itself not be unreasonable, and payment of the amount from the State budget should also be subject to a timefre.

III. SIMPLIFICATION OF PROCEDURES AND ALTERNATIVE DISPUTE RESOLUTION

A. METHODS AND TECHNIQUES

RELOCATION OF COMPETENCIES OUTSIDE THE JUDICIAL CIRCLE

A process should be installed for regularly examining the functions and services that could be gradually outsourced, that is, taken outside the sphere of the court, based on a strategy designed for this.

SUMMARY OF DISCUSSIONS

Outsourcing functions or services provided by the courts is not very common in the ENPI southern Mediterranean countries and depends on the country considered. This outsourcing is not the result of a strategy but of "local" circumstances that give rise to it. Judges have full latitude in **Algeria** to refer a case to other courts for trial (the case with labour law). Similarly, in banking or construction law, for example, fines may be applied cutting off the way to any judicial procedure, another form of outsourcing. In **Israel**, the small claims and fines court (one hundred thousand cases annually with a backload of work of 80,000 cases) is independent of any court and yet takes decisions of a judicial nature. In **Lebanon**, road offences or trade registration cases are outsourced from the judicial sphere without a problem. In **Palestine**, this approach has not yet been contemplated. In **Tunisia**, however, there are regulatory courts that have been given judicial competencies such as the high council for competition, the high council for telecommunications, and the national authority for the protection of personal data. Their decisions can be appealed before the administrative courts. Similarly, the question of relocating trade registration services (supervised by a judge before twenty four tribunals throughout the whole of Tunisia) to the private sector because of workload is the order of the day.

COMMENTS

Outsourcing judicial functions and services is a measure that should be based on strategy and not applied ad hoc each time the administration of justice finds itself overburdened, and for financial reasons given priority. It should be thought out beforehand and implemented according to a programme that provides the conditions to be met for each outsourcing measure.

Outsourcing helps adjust and bring about the optimum mobilisation of the resources inherent in the administration of justice, whether human, technical or financial, and in this way improves the conditions of access to justice.

SPECIALISATION OF COURTS AND JUDGES

Specialist courts should be created and specialist judges trained on the condition that the movement of judges is controlled to avoid emptying the specialisation of its pertinence.

SUMMARY OF DISCUSSIONS

Specialist courts are common in the countries in the region (while exceptional courts are seen increasingly as contrary to rule of law). Specialist training for judges does not always follow. The Algerian experience in training judges is based on on-going training but also on the importance of specialisation in relatively recent legal fields: business law, insurance law, banking law and commercial law.

Furthermore, specialist judicial centres have recently been created in the country's four major cities to deal with cases of organised crime, terrorism, drugs, money-laundering and cyber crime. Specialist judges and prosecutors have been allocated to these locations.

Judges are given specialist training in six-month sessions at the end of which they are reallocated according to their specialisation to the courts where their particular specialisation is required.

In **Israel,** besides specialist courts (administrative, family and road law) there are also specialist judges in the district courts.

Specialist courts (in fiscal and customs cases) exist in **Jordan** as well as specialist judges. But the practice is not institutionalised because this question is not sufficiently pertinent. In fact, court specialisation does not arise because there are few cases, which makes it impractical to specialise judges who would then have little work. Of the courts (twelve district courts most of them with the same workload), only the criminal court has a heavy workload.

In **Lebanon**, there are specialist courts as well as specialist chambers within the courts although there is no specialisation for judges due to the mobility rule for judges (the High Judicial Council makes changes every four years). In fact, certain specialist judges remain at their job for a long time, the case of the labour arbitration commissions. Judges require specialisation in child cases and specialist courts should be set up to deal with these.

In **Palestine**, specialist courts include a labour court with six unique judges divided territorially, three child courts, a court for customs matters with territorial competence covering the West Bank of Jordan. Specialist judges in insurance law are divided among the courts competent to judge insurance cases.

An anti-corruption judicial centre as well as an anti-corruption public prosecutor's office with specialist judges operates with limitations in **Palestine** and has passed judgments sentencing officials, but it cannot take legal proceedings against foreigners.

There are specialist centres in **Tunisia**, such as an anti-corruption judicial centre that has ten examining judges and five members of the public prosecutor's office. The civil courts, although some of them are specialised, do not have specialist judges.

It is important for judges to be specialised to provide better justice. This specialisation should be acquired when studying at the judicial studies institute.

COMMENTS

In the context of the ENPI southern Mediterranean countries, unless the justice system is as it is in the “common law" countries where courts are organised at three levels, and these themselves divided into several specialised sections covering different sectors of

the law, it is not certain that creating specialist courts is a practice that helps improve access to justice.

Having a facility that requires limited mobility for judges allocated to it may only be justified if the workload is adequate.

Other considerations are required for certain countries that cover a large territory and where infrastructure is weak and custom-based justice continues to operate according to ancestral traditions that sometimes have little to do with respect for the principles of the law and particularly with respect for human rights and women's rights.

Within this context, creating community courts that deal with small claims, in civil, criminal and property cases, would assure access to justice on the condition that the judges allocated to these courts are generalists who can deal with personal and property cases up to a certain value, judge offences covering a number of categories among the less serious, and understand, land and property issues. Contrary to the common law courts, these courts requiring special legislation to establish their jurisdiction would only judge litigation expressly attributed to them by law.

However, specialist training could be created within the courts of first and second instance themselves when there is a demand for justice in certain territorial and economic contexts. Specialisation of judges and their mobility would be right for this circuit.

STANDARDISATION OF COMMON SERVICES

Standardising the administration of procedures through common services helps reduce delays and costs and improves the way justice functions.

SUMMARY OF DISCUSSIONS

The practice of common services is found as a whole in the different legal sectors according to the country. In **Algeria**, the judicial officers, in civil and criminal cases, are empowered by law to serve summons for judicial proceedings with the support of the judicial police, if required. In criminal cases, the clerks of court serve summons under the supervision of the Public Prosecutor's Office. There is an information system service through which judicial proceedings can be followed until their close.

In **Israel**, a separate administration operates to collect small claims in criminal cases, and fines in administrative cases. There is also a central information system service on justice that gives access to judicial proceedings and associated documents can be submitted online using this system. A telephone service is also available to litigants for information on the different courts. Each court has a department that can receive and register all documents.

In **Jordan**, an office for the enforcement of judgments falls within the competence of the courts, over which the judge presides, seconded by the enforcement agents dealing with civil affairs. In criminal cases, judgment enforcement lies with the prosecutor's office. The service for serving summons could be privatised.

In **Lebanon**, there is a centralised summoning and notification service according to territorial conscription, as well as in the judgment enforcement offices, over which

judges preside.

In **Palestine**, there is a centralised service in charge of notifications and summons as well as nine judgment enforcement offices corresponding to the competence of the district courts. The initiative to attach the judicial police offices in order to have judgments enforced only lasted for a few months and judgment enforcement has felt the effect of this.

In **Tunisia**, common court services, for both civil and commercial cases, cover the judgment enforcement service and that for managing confiscated goods. The chief clerk of court is responsible for this under the control of the Ministry of Justice. The use of an information system for data has greatly helped these common services in their operations.

IMPACT STUDIES

Best practice would be to plan an impact study prior to adopting or amending all legislation organising courts or procedures.

SUMMARY OF DISCUSSIONS

Using impact studies as provided in legislation designed to organise the courts and revise procedures was seen unanimously as a measure benefiting the process of access to justice.

The form or perception of what an "impact study" does, however, varies among the ENPI southern Mediterranean countries. It may be research done by the services of the Ministry of Justice with comments received from the stakeholders in justice who are consulted during the process f examining the draft bill, the case in **Israel and Jordan**, or the stakeholders in justice concerned are not consulted or scarcely consulted, or an ad hoc committee prepares the legislation itself, as is the case in **Algeria**, where there is a participatory process that includes judges, lawyers and jurists, as was the case for the civil and commercial procedural code. This is the procedure most used to date (**Lebanon, Tunisia**) but the tendency is to create specialist administration within the Ministry of Justice (in **Jordan**, where it is the legislation department in the Prime Minister's office that prepares almost all draft legislation, a committee having been created to modernise procedures), or within the High Judicial Council (in **Lebanon**, a secretariate is being organised within the High Judicial Council that will be in charge of conducting impact studies in preparation for draft legislation), or even in Parliament (in **Palestine**, the Palestinian legislative council includes a commission that prepares draft legislation, a number of members of Parliament having been trained in legislative policy and in legislative drafting in Europe, but it has not met again since Hamas took control of the legislative Council. The president of the Palestinian Authority may, however, pass legislative orders that remain submitted to the control of the Constitutional Council, the latter having annulled the Authority and reorganised judicial power).

COMMENTS

Documents referring to the impact study should be attached to draft legislation throughout the whole process that should lead to its being tabled with Parliament.

These documents should refer to consultations with the stakeholders concerned in

justice, explaining the reasons and objectives of the law, and they should assess the impact on the legal order. They should refer to the application of the law in the organisation of justice and judicial procedures including judgment enforcement and ways of applying provisions as well as legislation and regulations to be repealed and transitory measures proposed.

These documents should also assess economic, financial, social and other consequences, as well as the cost and financial benefits expected from the provisions planned for the administration of justice in particular, but also the benefits for users of justice as a public service.

REDUCTION IN WORKLOAD

One recommendation is to set up national support courts, without any particular territorial jurisdiction, with the task of reducing the workload, which has become structural, in certain courts according to needs as they arise.

The temporary territorial allocation of support judges or judicial auxiliaries is also recommended in courts with a high workload, as well as increasing the number of judges with a resulting sharing of cases.

Reducing the workload of the courts should also ensue from a reduction in the out-of-court activities of judges and to achieve this judges must declare these activities in a special register.

SUMMARY OF DISCUSSIONS

In the ENPI southern Mediterranean countries there is really no strategy for reducing workload based on specific tools (other than using judges who have retired or judicial assistants who are not judges), such as work modules.

Also, none of the same countries provides what is commonly known as “volunteer teams" that go to the courts buckling under a considerable workload. There is no reason for this in **Jordan** or in **Algeria** where there is a sufficient number of judges and court staff to handle the workload. This also explains the absence of judicial assistants.

(Nevertheless **Algeria** plans to set up regional commissions to filter demands for justice and to use magistrates in retirement).

This could be a solution (**Palestine**) to relieve the courts affected by too great a workload, although judges in **Palestine** have not received comprehensive training that could make them operational within such a structure.

Within the context of restructuring the justice sector in **Tunisia** after the revolution, creating “volunteer teams" would be helpful for judges allocated to them to acquire multi-disciplinary training.

Allocating supplementary judges or reallocating judges remains an unknown practice in **Palestine** (where the law similar to that of **Jordan** provides for the appointment of judges within a specific territorial area), or in **Lebanon** or **Jordan** where cases still

pending at the end of the year are redistributed to be dealt with in the following judicial year. Other countries, however, to correct the imbalance in workload among courts, use methods that differ from one country to another: in **Israel** there are six territorial jurisdictions within which judges may rarely be reallocated in the case of an imbalance of workload within the same jurisdiction. Redistributing case files among judges is also practised.

However, it should be noted that in **Lebanon** and **Tunisia**, and although this gives rise to administrative difficulties, the reallocation of magistrates of the same level from one court to another to relieve workload or compensate for an absence (in **Lebanon**, judges may be given a mandate by the High Judicial Council, or based on a proposal from the Ministry of Justice and approved by the high council, to sit concurrently in a court other than their own for a specific period of up to one year; in **Tunisia**, article 86 of the civil and commercial procedural code provides for a reporter magistrate to prepare the case file without passing a verdict on the substance, in order to submit it to the court that then continues the process).

The practice of being aided by court assistants, considered practical if confined to administrative issues (**Lebanon, Jordan**) is a trait of systems based on the Anglo-Saxon model, as in **Israel** where that was used in the Supreme Court before becoming the general practice, and in **Palestine** where judicial assistants are involved in administrative issues. A programme is underway that plans to set up a training institute for judicial studies in **Palestine** for those who have practised as a lawyer for at least one year in order to allocate them to the courts so that they can prepare studies, draft decisions and assist the activities of the clerk of court as well as accompany judges in their work on a permanent basis. The problem of confidentiality (raised by **Lebanon**) does not arise in this context because the persons in question are under oath.

In **Jordan**, the use of assistants to help judges is provided by means of what is commonly referred to as the “e-judge".

In **Tunisia**, there is no formal provision for judicial assistants. This raises the problem of professional secrecy and that of the civil and criminal liability of the same assistants.

These staff members should be given a status, not be allowed to decide on substance and sworn to discretion.

Judicial assistants in **Lebanon** are those that participate by right in the work of the courts, whether it is the employer that sits on the labour arbitration commission or the social worker taking part in the proceedings in the case of juvenile justice. Case files may only be handled by professional judges without any interference from judicial assistants. This may be moderated by allocating a judge’s assistant at stages before the courts but without allowing case files to be moved.

The work load may also be lightened by using magistrates in retirement, which is possible in **Algeria** for keeping case files in order: also, judges coming up for retirement (60 years men and 55 for women) may continue to work under contract for the courts with an excessive workload, receiving flat rate compensation and this, on agreement between the Ministry of Justice and the High Judicial Council. But it is difficult to conceive of two judges being in charge of the same case file, one present at hearings and the other to judge the case.

In **Israel**, retired judges may also return to service but only to courts handling small claims and before panels with competence to release prisoners on parole.

In **Lebanon**, the law provides for judges who have reached retirement age (sixty eight years) to sit on commissions handling compensation.

In **Tunisia**, use of the services of retired judges comes in the form of a career extension in a five-year service contract after retirement. However, magistrates contest this practice as they see in it governmental interference as well as the breakdown of equality between judges.

Several measures to relieve courts of a heavy workload were mentioned by work group participants, some of them already implemented (the number of labour courts has increased recently in **Israe**l, judges in **Lebanon** work at home three days a week in order to speed up the flow of judicial decisions, and **Jordan** plans to apply this same measure on an experimental basis).

An additional measure to relieve the courts would be to entrust commercial cases to courts formed by commercial operators. The same measure could be adopted for other professional sectors giving judicial approval to their decisions. Specialising judges also helps concentrate on cases requiring specialisation and avoids dispersion of effort.

COMMENTS

The question of reducing workload brings considerations both upstream and downstream of the actual proceedings, and is a question for judicial policy.

Therefore among other considerations: the nature of the judicial map, forecasting and follow-up in the volume of cases and workload, adoption of flexible mechanisms in allocating cases, a rational approach to timeframes as tools to be used in the practical timing of cases according to category or according to the stage in the proceedings, the limitation of secondary extra-judicial activities for judges, such as teaching, private arbitration or allocation to commissions, which are additional causes for delays.

Extending the competencies of unique judges within limits that will protect the good performance of justice in guaranteeing the rights of litigants might also be a reason for reducing workload.

This can also result from the out-of-court settlement of a number of civil and commercial cases, as well as criminal cases, regarding the victim's rights, cases involving rents or leasing, etc.

Another way to reduce workload in criminal matters would be to implement a priority policy for legal proceedings by providing a better definition of priorities in criminal policy matters.

DOWNSIZING THE WORKLOAD

Downsizing the workload of the courts should be made general by determining a profile of workload appropriate for the type of court, per type of case before the courts, per stage in the proceedings.

SUMMARY OF DISCUSSIONS

Adopting a rational approach to workload is something that has always concerned the administration of justice in the ENPI southern Mediterranean countries: in **Jordan**, a study done ten years ago recommended raising the number of judges in **Jordan** from four hundred to one thousand. The division of workload as a result of this has not been simple due to the revision in infrastructure required to respond to this approach.

In **Algeria**, the Ministry of Justice, in collaboration with court inspection, has undertaken to prepare a document on a rational approach to workload in the courts by taking into consideration the volume of cases in each region as well as the number of weekly decisions. This helps allocate a sufficient number of judges per court in order to avoid an overload, at the same time protecting the quality of justice provided.

In **Israel**, the department of research in the courts must repeatedly publish a report on workload in the courts.

In the other countries, this question is not really dealt with strategically: hence the rational approach to workload in the courts in **Lebanon** divides attributions between the appeal courts and the high courts, distributing work among the chambers using a certain flexibility in distributing cases. In **Palestine**, this rational approach is seen from the angle of revising certain legislative provisions addressing the organisation of justice and coming back to the need for the regular presence of the public prosecutor's office in all criminal cases, which contributes widely to hindering proceedings, therefore leading to an overload of work in the courts concerned. Although use of a strategic document is considered important in **Tunisia** in order to establish criteria for conducting certain proceedings, for creating courts and allocating judges, establishing objective criteria presents in this regard certain difficulties.

COMMENTS

Establishing an ideal workload per court remains a challenge, as so many parameters must be taken into consideration, namely the increase in the number of users of justice as a public service, the diversification of legal areas and the disputes arising from applying legislation to control these areas.

However, a rational approach to workload demands regular forecasting and planning as a basis for implementing experimental measures, constantly renewed to accompany the process.

TOOLS TO FACILITATE PROCEDURES FOR THOSE INVOLVED IN JUSTICE

Having the stakeholders in justice, particularly judges and court staff, use manuals and printouts on specific procedures is a practice that should become the rule.

SUMMARY OF DISCUSSIONS

Making handbooks available for the stakeholders in the justice sector, in order to facilitate procedures and improve the quality of justice, is undeniably a practice to be adopted, although this practice takes on different forms that are not always completed.

The Internet site of the Ministry of Justice in **Algeria** responds only partially to this objective of facilitating access to justice, the practice of the president of the Court of Appeal convening meetings twice monthly to help guide judges in resolving certain difficult disputes goes beyond what is meant by “handbook".

The same goes for the use of documents giving instructions on training judges in **Israel**, or meetings to impart knowledge in **Jordan** where the need for handbooks and training to respond to new types of case is clearly felt.

In **Lebanon**, information desks and screens giving information on court hearings for lawyers reflects the lack of tools responding to the concept of handbook, whether for lawyers, clerks of court or judicial experts. For the latter, the commission on reforming the status of judicial experts in the Ministry of Justice plans to prepare an exhaustive ‘vade mecum’ to guide them in their work.

In **Palestine**, a conference is organised every five years and the recommendations resulting from it guide the stakeholders involved in judicial procedures. In this regard, the High Judicial Council was questioned by the judges for having failed to implement the recommendations resulting from this process in the form of a handbook.

COMMENTS

Handbooks and practical guides have proved their merit for legal professionals, justice auxiliaries and users of justice as a public service.

Handbooks and guides are an instrument of good governance in that they harmonise practices and ensure equality for users of justice as a public service. They also ensure the transfer of knowledge and help speed up the handling of demands (by way of example, guides on admissibility are extremely useful in avoiding the courts being overloaded, while guides on specific procedures at each court level are also a way of expediting the stages in proceedings without delay etc.).

Handbooks and guides are teaching tools aimed mainly at legal practitioners and, without being exhaustive, they provide a clear and detailed reading of the conditions required in form and substance with the aim of simplifying and accelerating procedures. They may also, in a less detailed version re-drafted in terms more accessible to the greater public, be helpful to users and civil society agents active in the justice sector.

Using handbooks, and forms derived from the former, is not, however, a global answer in that they can only give a subjective and general response to certain cases that cannot be treated generically.

ALTERNATIVE DISPUTE RESOLUTION METHODS

Best practice would be to develop a judicial framework governing mediation and enforcement of decisions, which also provides for creating and organising a professional body of mediators with the status of justice auxiliaries.

Making a pre-trial information meeting obligatory on the possibility of settling the dispute using mediation.

Mediation should be considered in administrative cases, at least for individual administrative acts.

SUMMARY OF DISCUSSIONS

Apart from **Palestine** where the law on judicial mediation provides for creating a distinct body of mediating judges, and in **Israel** where the MAHUT programme is the framework for obligatory mediation upstream of judicial proceedings and provides a list of professional mediators available to the courts at a cost of around fifty euros an hour in mediator fees, mediation is not covered by law. It is more often found in fragmented provisions scattered throughout different items of legislation and sometimes comes close to mediation although without truly corresponding to it. This is the case in **Tunisia** where article 25 of the personal status code includes a rule of Islamic law that provides for mediation at two levels, a person representing each of the spouses who refer the position of the parties to the judge so that he can propose a solution, after a period of reflection of one month in which these spouses can reconsider their decision to divorce.
Criminal mediation is provided for in article 335 a) of criminal procedural code with a view to repairing damages caused to victims of which the detainee is accused, during a stage prior to legal proceedings. The mediation stage provided for minor offences is obligatory. The possibility of negotiating through mediation is also possible in cases of economic offences (for example, violations against the principle of fair competition) or environmental offences (for example industrial pollution).

In **Jordan**, although obligatory mediation is a practice that conforms to sharia law, it is not desirable in all legal areas and should, on the whole, be optional, except in certain cases specific to the country, such as cases of family law.

In **Lebanon**, a draft bill on mediation was recently tabled with Parliament for examination. Furthermore, the Beirut Law Society has adopted legislation organising mediation with regard to disputes over lawyers' fees so as to avoid judicial proceedings in this case. A university centre for professional mediation and an association of mediators exist.

In regard to mediation with administration, the law creating the Mediator of the Republic in **Lebanon**, adopted in 2004, has no enabling legislation. This institution can only issue recommendations and does not truly correspond to the concept of mediation leading to a decision.

COMMENTS

Several methods of alternative dispute resolution are found in the ENPI southern Mediterranean countries, such as conciliation, mediation, negotiation and arbitration. However, although conciliation is covered in civil procedural codes as an obligatory stage prior to litigation proceedings, and in the code of ethics for lawyers as a professional obligation, it is relatively little used and depends entirely on legal professionals.

Other forms of dispute resolution outside the judicial order suffer in these same countries from a lack of formality and their costs are high, particularly arbitration. This is organised around centres generally housed in chambers of commerce and industry or associations of jurists who propose their arbitration services according to a regulation they have adopted.

These two cases (arbitration centres and associations of legal practitioners) are very

often closed clubs that charge administrative fees and costs that are too high and, in any case, beyond the reach of the average litigant and therefore not facilitators of access to justice.

Mediation can be the prelude to a case being submitted to the courts, but for this to happen more importance should be attached to judicial mediation and mediation centres created with accredited mediators trained, in particular, in civil and commercial cases.

However, in civil cases where the advantages of mediation seem to be more obvious, there may be a risk of this becoming a means to hold back proceedings.

In this situation, a major obstacle is the lack of aid for access to justice using out-of-court procedures, not yet provided in a number of the ENPI southern Mediterranean countries. Judicial mediation in this case would be the most likely method in the short term for dispute resolution in which case mediation should be the preliminary stage, at the start of litigation proceedings.

In mediation with public administration, this form of dispute resolution could be acceptable for types of legislation associated with individual administrative acts, administrative contracts, legal liability and, on the whole, associated with litigation aiming at a sum of money.

Family mediation, without being excluded, has little place in the State judicial system because of religious law in which mediation does not exactly fall within the same concept.

Extending mediation to criminal cases is advisable as a complement to the criminal procedure aiming at compensation for victims, but could also be envisaged in relevant cases such as juvenile delinquency, as an alternative in offering delinquents the opportunity to achieve their reinsertion into society.

RANGE OF APPLICATION OF MEDIATION

Measures encouraging the use of alternative dispute resolution should be determined by the competent national authorities, demonstrating the advantages in protecting the rights of the parties to the dispute as well as the reduction in time and cost they provide.

It would be advisable to have a law covering all aspects of mediation in all fields or, in the absence of this, special provisions in procedural codes covering both civil and criminal cases, and responding to international standards.

A transversal law covering mediation should, however, take account of the specific aspects of each branch of the law.

SUMMARY OF DISCUSSIONS

The field of mediation in the ENPI southern Mediterranean countries is not generally determined by law but left to the way in which litigant needs evolve. Therefore the

gradual spread of mediation is just beginning in civil and commercial cases that present fewer difficulties in the eyes of legal professionals familiar with the arbitration proceedings.

It is a method for avoiding litigation proceedings that has been adopted by the legislator in certain countries such as **Algeria** in these two fields since 2009 entirely excluding certain fields that may not suffer delays such as those cases submitted to the interim judge. In **Egypt,** a draft bill on mediation in civil and commercial cases is ready to go before parliament. Mediation in criminal cases is not yet used. Mediation is practised in financial and economic cases; a mediation department including judges who act as mediators does exist in the economic courts. These mediators may not judge cases in which they have acted as mediators. Any case settled amicably between the parties must be approved by the court.

In Jordan mediation has been practiced in financial and commercial cases since 1995. In **Morocco**, it is the object of legislative provisions in civil and commercial matters. In **Lebanon**, a draft bill is currently before Parliament to introduce mediation in civil and commercial cases outside the court context. Mediation in **Lebanon** and in **Israel** is provided in labour disputes and before any stage of litigation.

Mediation in family cases is seen in all the countries with a State religion (that is in all the ENPI countries of the southern Mediterranean involved in the programme with the exception of **Lebanon** where the Constitution (1926) does not provide for any State religion) as being a matter traditionally entrusted to the religious judge. This is more a cultural trait expressed in an ad hoc way than a structured framework. It is the judge who decides to entrust to the respective members of the families of the spouses involved the task of finding a common ground for understanding. In **Israel**, a support unit for spouses in dispute exists without however covering marriage issues, notably divorce, which remains under the competence of the religious courts.

Criminal mediation continues to be unknown in the countries concerned that prefer to sanction any other question, and even when mediation is provided the question of the applicable sentence is excluded from it. In **Algeria**, certain provisions in the criminal code provide for pardoning the victim in which case the public prosecutor's office may refrain from legal proceedings. In **Lebanon**, the courts take into consideration reconciliation between the family of the accused and the family of the victim in reducing the sentence in certain cases that are not serious and do not recognise any solution to crime or offence outside the court framework. In **Tunisia**, Child Protection law provides for mediation in cases of juvenile justice; and in **Tunisia** and **Egypt,** the Lebanese courts accept mediation in correctional and offence cases alone, and for offences committed by minors. Criminal mediation in **Jordan** is used to settle simple cases such as those resulting from road accidents.
However a tendency to organise criminal mediation although confined to certain cases, is beginning to appear in certain countries: in **Algeria** we see a draft law on criminal mediation covering compensation for victims and the payment of fines is being prepared within the Ministry of Justice, and in **Jordan**, since to 2011, in juvenile justice cases. In **Israel**, the concept of restorative justice covers the mediation practiced in criminal cases in which victims' needs are taken into consideration as well as the situation of the accused, who may also require support and who is submitted to alternative sentences that will rehabilitate him while at the same time being asked to apologise to the victim. The Israeli MAHUT programme, applicable in civil cases, demands that any dispute must have a value less than 50,000 Sh., and that certain types of case be settled by mediation. Flexible control is exercised over the mediation process that responds to any complaints made by those concerned.

Mediation in administrative cases in the countries in the region remains in practice unknown territory. An "administrative conciliator" does however exist in **Tunisia**. A law on the Mediator of the Republic was adopted in 2005 in **Lebanon**, but enabling laws, although ready for a year, have not yet been published.

COMMENTS

Mediation in the ENPI countries of the southern Mediterranean is beginning to take shape as an alternative dispute resolution method. Traditional mediation in family cases does not really respond to the criteria of mediation [1], any more than the custom of reconciling tribal groups that appears more like a negotiation aiming to avoid vendetta but is in no way the mediation enshrined in law. And it is certainly not the mediation used to withdraw the plea of the family of a minor who has been the victim of violation if the accused is ready to marry the victim, a practice denounced by civil society but which continues to be the object of provisions in the criminal code of a number of countries.

One of the main reasons in favour of making progress here is that this method of dispute settlement is also perceived as a way of relieving the courts of their workload by submitting certain types of case to mediation either by appointment or depending on certain criteria, particularly in criminal cases.

Although progress has been made in promoting mediation in several of the countries concerned, nowhere, however, is the culture of mediation in the modern sense of the term established (because of the view that disputes are settled by authority rather than by an amicable procedure), nor are the grounds for the profession of mediator apparent. Training remains at the early stages, curricula, when they exist, are not official and the profession of mediator as a whole has not yet been organised as such by the legislator, nor are there any particular ethical codes for the profession of mediator.

THE PRACTICE OF MEDIATION

The profession of mediator should be organised by the legislator for the liberal professions, particularly for those in the legal professions, and should include training based on an officially approved curriculum.

Best practice would consist of introducing mediation in the curricula of initial and on-going training for legal professionals and justice auxiliaries

The failure of the mediator to comply with obligations could also be sanctioned.

Organising the profession of mediator should not lead to an excess of formalities in achieving the flexibility demanded in mediation.

SUMMARY OF DISCUSSIONS

[1] Council of Europe. Recommandation Rec. (98) 1 on family mediation

The profession of mediator in the region of the southern Mediterranean is seen by rare legislative provisions, such as those in legislation passed in Algeria in 2009, as being another liberal profession, composed of members appointed for six years, who must undergo training (seventy five hours) to be commissioned by the courts to practice their competencies in cases before the judge and this at the time of the first hearing. The mediator selected is notified by the clerk of court, and must terminate his mission within three months, that can be extended for the same length of time just once. The mediator, in turn, must notify the court that he accepts the mission, determine his fees and establish a schedule that must be approved by the court and fix a hearing for the parties to hear them separately (this first hearing will not require a fee if the parties decide against mediation) prior to arranging a meeting at which the mediator determines the points where there is understanding and those where there is dispute. He then writes up the report of the agreement, of which the court will be notified, in the form of an application order for direct enforcement without recourse to appeal. However, he may renounce his mission at any time should he consider it is useless. Court supervision is seen as an important aspect in mediation because the negotiation resulting from it must be approved by the court for it to become enforceable, similar to judicial decisions. The mediator included in the approved list by the court appears as a justice auxiliary.

This view comes from the fact that there could be enforcement problems if the mediator has not observed the rules of public order. The question of mediation is in any case raised if an agreement is required concerning enforcement of a judgment passed with authority, this eventually being done when it is a question of property rights.

In **Egypt**, mediation is the object of legal provisions in economic cases, in which the president of the economic court proposes mediation to the parties, allowing a period of two months in which to reach an outcome, applying the stages known to mediation, and the agreement can then be addressed to the court for approval. Action for annulment of the agreement (due to a failure to observe the obligations of the mediator or due to lack of consent, as in the reasons for annulling a contract) should be brought to bear on the approval decision in such a case.

Mediation demands specific training from the start of training for the profession and the need to create a body of mediators working according to a code of conduct[1], so that sanctions can be applied should the mediator fail in his obligations. This does not exclude a mediator from being selected by the parties from other than the approved list of mediators.

The question of professionalism being essential (**Tunisia**), in the absence of criteria for practising mediation, to overcome the absence of training and experience use is made (**Jordan**) of legal professionals (retired judges and lawyers or professors of law) for mediation missions. It is notable that in **Algeria** most of those on the list of approved mediators are former judges or clerks of court, lawyers or university professors, although the practice is also reserved for jurists, or experts in a particular field depending on the dispute concerned, all of whom may serve as mediators. An expert may not be necessary because a mediator can ask for the opinion of an expert at any stage of the mediation process, although this might cause a delay in proceedings.

Mediation may also be practised by natural or legal persons. In this case, the role of civil society organisations must be safeguarded where these can add to the contribution of mediation in questions of general interest, notably in environmental cases. The role of

[1] *Cf. European code of conduct for mediators*

the judges is important in promoting mediation as an alternative to court proceedings. The judge should be able to provide adequate information on mediation and transmit this information during a meeting dedicated to the parties in litigation, eventually inviting the parties to use mediation if he thinks it appropriate, referring the case to a mediator or a mediation agency.

A mediation service can also be added to the courts if the use of mediation agencies is not a realistic solution.

The role of lawyers is also important and here it will be important that the code of conduct for lawyers includes an obligation, or at least a recommendation, to consider mediation in settling a dispute prior to going before the judge, and this in cases that lend themselves to this approach.

The bar associations should make available to their members a list of mediators or a mediation agency.

COMMENTS

Mediation training centres should be created in all the countries of the southern Mediterranean, their courses leading to a diploma in mediation as an accreditation acceptable to the courts and bar associations. The quality of mediation depends on this.

A mediation training programme must include:

1. the principles and objectives of mediation
2. the professional and ethical conduct of the mediator
3. explanation of the procedural stages of mediation
4. the legal context of mediation, a law being necessary for this approach to settling disputes
5. the particularities of mediation in certain fields such as family mediation or the interpretation of certain concepts such as that of the over-riding interest of the child.

On-going training should be provided for mediators trained in this way and codes of conduct may be specific for certain areas of mediation, as well as disciplinary sanctions.

Lastly, accreditation criteria, regardless of the sole criterion of the diploma, should be determined for the profession.

THE USE OF MEDIATION AS A SPECIFIC PRE-LITIGATION PROCEDURE

Mediation should be possible at any pre-litigation or litigation stage, or in executing the judgment on the dispute, providing it suits the parties and providing the legal context so permits.

SUMMARY OF DISCUSSIONS

Several opinions on the introduction of mediation are given according to the country, mediation being regarded as a contract between the parties prior to seeking justice but also, according to a draft bill currently under examination (in **Lebanon**), as an understanding that may be reached outside any litigation procedure during proceedings

but which would mean relinquishing litigation proceedings (**Tunisia**), or as a preventative procedure that should be exhausted before any litigation is begun, but taking on a judicial aspect when the judge suggests this to the parties at the start of the case (**Algeria**). Mediation at the enforcement stage may be practical in view of procedural delays that can affect this stage (**Lebanon**); it is no longer unknown at this stage (**Algeria**) and is not without difficulties (**Egypt**) or without limitation in civil cases **(Morocco**), if not rejected as being considered inoperable at this stage and being such as to weaken judicial proceedings (**Israel, Jordan**).

The timeframe for mediation proceedings requested by the judge (generally extending from two to six months) is seen as a risk in delaying the proceedings and parties could abuse the process because of the weakness of their legal means.

PRINCIPLES GOVERNING MEDIATION

It is imperative that legislation regulating the application of mediation should be exhaustive and coherent way and it should clarify the mediation process as well as the role of the mediator.

SUMMARY OF DISCUSSIONS

Voluntary action, neutrality, equality of parties, independence and impartiality of the mediator, professional secrecy and no conflict of interest, as well as the international standards enshrined in **Algerian** law and in the draft bill currently under examination in **Lebanon**, although voluntary action may be seen as contradicting cases in which the parties must attend an initial hearing (**Egypt**), or may be sanctioned by the court for not having attended the meeting to inform them about mediation (payment of costs incurred by the meeting) to which the court has convened them (**Israel**).

Mediation is provided by special laws in certain countries such as **Jordan** (domestic violence, collective mediation in labour cases) or it is conducted according to the provisions of procedural code. In **Morocco** and **Lebanon** (where mediation is, however, optional), the agreement between the parties must be approved by the court in a discretionary decision without appeal, such a possibility being seen contrary to the actual concept of mediation. When mediation is conducted outside the court sphere, it is seen as an act of private agreement that can be submitted to the enforcement agency and that may, in this case, be contested (**Lebanon**). Draft bills are currently being prepared in **Jordan** for investment cases and in the field of banking that will make mediation obligatory.

COMMENTS

On the whole, in the ENPI southern Mediterranean countries mediation is always optional and appears in a small number of fields. It is excluded from cases in which negotiation cannot be used.

It is a process that may intervene regardless of any judicial procedure or outside this procedure. It is practiced, therefore, under the supervision of the judge who may appoint a mediator who is qualified, impartial and independent. The timeframe is limited usually to a few months and confidentiality is demanded. The judge may establish the cost and the parties should contribute unless requesting legal aid, which will then cover the costs. Mutual concessions made by the parties may be shaped into a decision that may be approved by the court for the purpose of enforcement, in the same way as a judgment is

made. In other words, the mediation agreement is the same as a contract, which, if it is not enforced, must be subjected to a court procedure.

IV. ACCESS TO JUSTICE, LEGAL AID AND UNDERPRIVILEGED SOCIAL GROUPS

A. GENERAL CONSIDERATIONS

VULNERABLE GROUPS

It is advisable to train legal professionals who are specialists in issues specific to vulnerable groups in applying international conventions, where applicable in national legislation, that govern their rights.

Special legislation for vulnerable groups is advisable and should take into consideration the forms of access to justice and legal aid specific to each group.

Setting up national information networks on the law and promoting means of electronic communication for this network would facilitate access to justice for members of vulnerable groups because of the considerable risk of discrimination that affects them.

A mechanism should be set up within the Ministry of Justice for coordinating access to justice and legal aid with the bar association to facilitate the task of bringing effective assistance to the greatest number of members of vulnerable groups.

It is also advisable to reinforce the partnership between public administration and the NGOs specialised in access to justice for the members of vulnerable groups and to institutionalise this by consolidating it with the departments of the ministries concerned.

SUMMARY OF DISCUSSIONS

Vulnerable groups are defined by their very nature. Special legislation governs certain of them in most of the ENPI southern Mediterranean countries (disabled persons, children, women, victims of human trafficking, victims of terrorism, migrant workers and those in extreme poverty).

Legislation in **Algeria** provides for the removal of obstacles to access to justice for those who are disabled (including training for court staff as well as facilitating physical access to the courts), widows, women (provisional food allowance by order of the court, the priority right to remain with their children, to have somewhere where they can live with their children, custody rights), for children (law on child protection based on putting the interests of the child first, legislation on justice for juveniles and courts and judges specialised in child cases as well as specialised procedures, rehabilitation centres opened, alternative sentences to prison, returning the child to the parents, systematic reduction of sentences), for the elderly, victims of human trafficking who have the right to legal aid, victims of terrorism giving their families the facilities for access to justice, the victims of natural disasters.

In **Egypt**, besides family courts, access to justice for those in extreme poverty is provided through specialised agencies at the courts. In other words, these are semi-public

specialised agencies that give support to vulnerable groups to help them gain access to justice (council for mothers and childhood, national council for women, support centre for drug addicts, national council for those with special needs) without mentioning the organisations in civil society.

Jordan has ratified the Convention on the rights of persons with disabilities and harmonised its national legislation as a result. Courts have also passed agreements with NGOs to establish jointly lists of lawyers and interpreters for legal aid. Pilot courses for children have been created as well as minors' groups (at the same time as measures for restorative justice that allows for the out-of-court settlement of most cases), among other provisions facilitating access to justice for women and children. A provision on aid for migrant workers and refugees (interpretation, exemption of judicial rights) also exists to facilitate their access to justice.

In **Lebanon**, access to legal aid is a right guaranteed for all, both Lebanese and foreigners, including vulnerable groups (those in extreme poverty, those who are physically or mentally disabled, children in trouble with the law, refugees, stateless migrant workers and other categories). However, aid is restricted by law to the litigation phase, the bar association having contributed to this through a legal aid commission that has been active since 1993. A special law governs the status of disabled persons that provides mechanisms within the Ministry of Social Affairs and that make way for the disabled in the eligibility assessment process. The law also permits collective litigation for those who are disabled, through the associations concerned. The law on child protection also provides legal aid for children in physical or moral danger. The demand for aid may be submitted directly by the child or by specialised organisations or even by individuals. For children in trouble with the law, specialised procedures are provided during the stages of enquiry, follow-up and social monitoring at hearings, judgment and sentencing. The role of the specialist NGOs is important in **Lebanon** both in legal counselling and legal aid, particularly for women who are the victims of violence, refugees, migrant workers and prisoners, which explains the emergence of jurisprudence in line with international standards. Legal clinics are found within several universities and these provide counselling and guidance free of charge. The growing role of public administration under the influence of the specialist NGOs is found particularly in the role of the Ministries of Justice and of Social Affairs.

In **Tunisia**, the legal framework providing protection for the disabled was revised in 2004. Child protection is ensured through provisions in the Criminal, Civil and Labour Codes and the Land and Property Code. A lawyer is commissioned by the attorney general or the examining judge through the bar association, or even directly by the judicial police officer, who may not intervene without the presence of the guardian of a child under the age of fifteen in trouble with the law, or that child's lawyer.

The Code of personal status provides protection provisions should the father of the child have died, in order to appoint the mother as guardian or for the judge to indicate a guardian (public guardianship, friend, near relation, judge) who may intervene for the registration of the minor's real rights. "Kafala" may be applied through the district judge. From the institutional point of view, whoever is delegated to protect childhood has the competence to intervene on a preventative basis using measures aiming to protect the child in a risk situation.

Legal aid in **Israel** is reserved for Israeli citizens as well as residents, including representation before the religious courts, unless it is a case to determine citizenship and in criminal cases. Special laws for children and the disabled also exist that provide for legal and court aid. The services of the legal aid office also cover a number of

underprivileged social groups such as the victims of human trafficking, victims of offences and crimes and the mentally handicapped.

COMMENTS

Most categories of vulnerable groups (women, children, refugees, stateless persons, the disabled, ethnic, religious, racial or social minorities, migrants, prisoners, and the poor) are the object of international conventions, ratified on occasion with substantial reservations. The prospects of raising reservations are not usually clear and should be encouraged by the interventions of civil society. The latter may be guided by many documents available on this topic. (in particular, in the EUROMED JUSTICE II archive, Third meeting (Final conclusions. 2009) the paper: « Access to justice for the most vulnerable groups: a priority that must be improved »).

Several countries involved in the EUROMED JUSTICE III Project have created national institutions for human rights, the mandate for which complies with that provided by the United Nations principles on human rights (Resolution 48/134 of the General Assembly of the United Nations of 20/12/1993, "Theory and practice for the promotion and protection of human rights » known as the « Paris Principles ». Access to justice for the members of vulnerable groups is covered there. These institutions may have almost judicial functions, as well as those of conciliation. Their role is important in providing information.

The precursor role of the NGOs in the countries in the region regarding specialist court assistance is based on human rights.

Their action is limited essentially by the fact that their staff and lawyers involved in their work do not have enough information, and available funding is low and irregular.

Their cooperation with the authorities begins in the post-dispute period, which has been the result of changes to the regime now taking shape in the region. Difficulties may arise from a move by public administration, the police and other security agencies, towards intimidation and violence and, on the other hand, to a lack of confidence on the part of the public because of abuse. The need to promote access to justice and legal aid, particularly during the transitional phases that some of the ENPI countries in the southern Mediterranean are going through, demands consolidating the action taken by the Ministry of Justice and other ministerial departments with that of the lawyers and the NGOs to prevent a return to the earlier days of human rights violation.

B. VICTIMS

VICTIM SUPPORT

Integrated efforts should be made to protect the physical and psychological integrity of victims, more particularly those who will be heard in the proceedings, to avoid access to justice leading to sequels to the offence.

Special protection measures, including speed in gaining access to justice and accompaniment in proceedings, must be provided for victims exposed to the risk of

repeated offences, as in cases of organised crime and violence and sexual abuse, particularly in the family environment.

SUMMARY OF DISCUSSIONS

Should the victim be considered part of the procedure or recognised as participating as a witness? The victim could have a dual role (**Algeria, Egypt, Jordan**) or a single role (**Tunisia**) but slight distinctions should be made, the first being to distinguish between the direct victim, or victims, and the indirect, to leave the victim the choice (**Algeria, Morocco, Lebanon**), to advise the victim and to assist psychologically prior to an appearance before the court (**Jordan**), although in all cases the victim has special rights (law of 2001 in **Israel** that provides a unit in the State Attorney's Office to deal specifically with the promotion of the rights of the victim and application of the law).

The victim may also be considered as part of the proceedings because victimisation does not concern the victim purely on a personal basis, but society as a whole, and should the victim drop the charge this may reduce public action; it is for the judge to decide (**Algeria, Egypt, Jordan**). However, these special provisions should be adopted for the proceedings and for the televised 'in camera' session (**Jordan**) or for an appearance in the absence of the aggressor as a witness (**Lebanon, Israel**). One cannot, however, oblige a victim to be present at hearings, but in all cases the victim may eventually be a civil party with the exception of a criminal case by direct action (**Algeria, Egypt, Jordan, Lebanon, Tunisia, Morocco)**, to inform the victim and to allow the same to express an opinion before all possibility of a plea bargain, and not to release the offender of the crime or offence on parole, always respecting the conditions for a fair trial for the accused (**Israel**).

The victim may also be considered a witness who takes public action. A distinction must be made here between the victim who is an adult or a minor, in the latter case the public prosecutor decides on the action (**Algeria**).

Apart from the witness becoming a victim, what puts that witness in even more danger is that there is no legislation that provides for and organises witness protection (**Algeria, Egypt,**where a draft bill on witness protection has been prepared and is ready to be tabled before parliament and where the law addressing human trafficking includes provisions to this effect, **Jordan, Lebanon, Tunisia, Morocco**), and no general law on victim protection (**Algeria, Egypt, Jordan, Lebanon, Tunisia, Israel, Morocco**) but special laws covering protection of victims of terrorism (**Algeria, Tunisia**) or the protection of members of vulnerable groups, particularly women who are the victims of violence, and some general scattered provisions provided recently in the criminal code (**Tunisia, Morocco**) or in others (**Lebanon**) on taking public action or compensation, and possibly some special legislation.

COMMENTS

Among the vulnerable groups there is a need to define the concept of victim : this is a natural person who has suffered an aggression that qualifies as a criminal violation, this aggression being either physical or psychological, having caused moral or physical suffering, possibly more than once, as well as material damage.

The term « victim » applies also to the immediate family members or to those in the immediate vicinity of the direct victim, where pertinent .

All victims are therefore in a situation of vulnerability, and this may be subjective and arise from their particular situation (particularly children in avoiding them witnessing a repeat of the aggression of which they have been the victims, and avoiding constraints to court procedures to prevent risking their situation becoming worse. It is advisable to establish an integrated support framework for victims to be able to respond to different needs.

TECHNOLOGICAL MEANS USED IN VICTIM PROTECTION

The particular vulnerability of victims demands strict protection measures when they take part in public judicial procedures, namely excluding their physical presence from wherever the trial takes place and from hearings, and to that end the use of videoconferencing systems and closed circuit television should be provided, possibly amending legislation in force in order to permit such use.

SUMMARY OF DISCUSSIONS

Technological means, particularly for giving evidence remotely or in a separate place, are generally not provided by law in the ENPI countries of the southern Mediterranean region, although courts may be equipped with audio-visual means, the exception being **Jordan** in the case of women and minors. Videoconferencing is seen as an attack on the principle of the adversarial system that respects the right of the accused to confront the victim or the witness and to exhibit to the accused the weapon used in the crime for it to be identified, to detect in the physical attitude of the accused or the witness the means to convict (**Algeria, Tunisia, Israel**). But there is a plan underway in **Algeria** to equip the courts in order to hear individuals using audio-visual means, and certain types of case involving children under the age of 12 who are dealt with in **Israel** in this way by specialist agents who can decide whether the child victim can give evidence to the court, as well as in family cases or where there has been violence and sexual abuse which must be treated confidentially.

Nothing in the law expressly prohibits the use of audio-visual means in criminal proceedings. This rests, when all is said and done, on the discretionary authority of the judge. A draft bill on violence against women and against domestic violence does however provide for such means (**Egypt**), nothing can prevent the use of these means particularly if the law provides for hiding the identity of the victim, giving the victim another identity or a false identity or moving the victim's place of residence (**Morocco**).

In **Lebanon**, audio-visual means have not been introduced in criminal cases. This can be compensated for by the judge issuing a rogatory commission in order to hear the victim or a witness outside his territorial jurisdiction.

In **Tunisia**, a draft bill is being prepared on the use of information and communication system techniques in procedures involving women who are the victims of sexual violence.

THE RIGHT OF VICTIMS TO INFORMATION

It would be appropriate to create an information system on all aspects of pre-litigation and court procedures involving professionals and qualified justice auxiliaries so as to make the victim familiar with how the court procedure evolves, depending on the circumstances of that victim's vulnerability.

Prior information for victims on obtaining the psychological and material support available as court procedures evolve, as well as on the conditions for obtaining possible compensation, should be made accessible to them.

It is advisable to keep the victim informed of the risks involved from a court decision, particularly if the suspected offender is released.

SUMMARY OF DISCUSSIONS

Victims should be informed of their rights and status in the procedure during the pre-litigation stage. The information should be given in the language of the victim, the State being responsible for providing interpretation and translation of official documents which are sent to the victim's lawyer, so that the victim can take a decision on whether to become a civil party or not, without, however, jeopardising a change in decision at any time in the criminal proceedings (**Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia**). Information on procedure is available on the on-line information systems of the Ministry of Justice and on screens located in the courts, and the victim may always address the examining judge directly or the clerk of court to ask for information within 24 hours if the judicial police have not provided this verbally (**Algeria, Jordan, Morocco, Tunisia**). In **Israel**, information for the victim is released on the site of the Ministry of Justice, allowing the victim to access his file by using an access code to get information on the state of his proceedings and his right to protection from any contact with his aggressor, possibly keeping the latter at a distance for a week leaving the victim free to begin the procedure and find the support required. To this end, a manual in four languages is available to guide victims.

Support units for women and children who are the victims of violence or abuse are available at the district courts.

In **Morocco**, the criminal code provides for the obligation on the part of the public prosecutor and the examining judge to acquire information and to adopt the measures for the physical protection of the victim, going as far as to moving the victim to new accommodation.

However, the role of the lawyer in informing the victim remains very important. Even more so if there is no law governing the right of information for victims (**Algeria, Jordan, Egypt, Lebanon, Morocco, Tunisia**) but simply the right to receive all documents referring to the criminal case for the victim who is a civil party in the case. The law on the rights of victims in Israel is redrafted in wording accessible to the average reader and contains special provisions concerning children and the disabled.

The role of the specialised NGOs seems to be very important in bridging this gap (**Lebanon, Tunisia** where a draft law accommodating the NGOs is currently being prepared, **Israel** where the victim is informed about the support unit for victims and about the NGOs that may be helpful to the victim).

COMMENTS

The victim should be informed of the circumstances of the court procedures in which the victim will participate, in time and depending on the actual conditions of that victim's vulnerability.

The victim should also be at least informed right from the start of the involvement of the police in criminal cases, and throughout proceedings :

- of the nature of the possible judicial appeal, the means of implementation and the possibilities of obtaining redress
- of the victim's role and the rights he is about to exercise in the expected proceedings
- of the type of support the victim can receive within this framework and the agencies that are there to provide support, including legal counselling and legal aid
- of judicial decisions that could be taken and which could have repercussions on the victim's safety, particularly if the suspected or sentenced offender is released, more importantly in cases of family violence.

RESTORATIVE JUSTICE

Insufficient legislation in restorative justice for victims should not be an obstacle to the judge adopting ad hoc measures based on the spirit of the law and on the terms of international conventions in force, special attention being given to certain categories of victim.

SUMMARY OF DISCUSSIONS

The ENPI countries of the southern Mediterranean have not yet really reached the stage of restorative justice and have scarcely moved on from (this in the area of juvenile justice) punitive justice. Common law on the whole covers (badly) the rights of victims (**Lebanon**). Compensation for victims remains dependent on the result of the criminal proceedings (**Algeria, Lebanon**) but the judge should have room to decide on provisional restorative justice for victims, particularly when they are not working or are unable to earn their living or to travel (**Algeria**). Use of the aforementioned provision for this is possible (**Lebanon**). But this is seen elsewhere, apart from the case of the inevitable living allowance, as posing a problem if the accused is acquitted and if civil action is refused (**Egypt**). Here, the State needs to provide for victim compensation regardless of the criminal procedure when the perpetrator of the crime or offence is unknown or insolvent, by setting up special funds. This is even more necessary where the local culture in a number of the southern Mediterranean countries makes women who are the victims of sexual violence, the « shadow victims » and when such crimes are revealed they are again victimised because the violence is made public. This is further aggravated by the conservative approach adopted by the judges who go as far as to declaring the offenders innocent to avoid making the victim a pariah, or cannot conceive of a woman being the victim of rape within marriage (**Egypt**). In Jordan, a special course has been included in the curriculum of the institute of magistrates to lead judges to applying the law in the case of rape within marriage without giving consideration to cultural taboos and pre-conceived ideas.

An appropriate legal framework should be prepared that provides for confidentiality to help women who are the victims of sexual violence to report these cases (**Egypt, Jordan**). The use of restorative justice for the victims and perpetrators of crimes or offences is not always possible because of male attitudes and a difficulty in stooping to repent for what they have done and apologising to their victims (**Jordan, Tunisia**), the offenders themselves having once been victims. This means that the problem must be viewed globally in an attempt to negotiate a restorative result for the victim and reinsert the offender in society.

Alternative measures are possible for women and children, the latter representing more than a third of the population, and the principle of safeguarding the interests of the child should prevail and the judge should be guided buy it (**Jordan, Tunisia**).

There are many scattered measures but no other provisions than those in legislation on the rights of victims (**Israel**), and the institutions required to implement them do not exist or are not organised (**Jordan**).

Support centres are provided in **Morocco** for women and child victims. They are also open to members of vulnerable groups. A draft law on transitional justice in **Tunisia**, inspired by the Moroccan model is currently being prepared and provides for restorative justice (individual and collective), and the rehabilitation of victims, the acceptance of blame and the reintegration of all involved in society.

COMMENTS

The implementation of the idea of restorative justice in the ENPI countries of the southern Mediterranean remains difficult as long as this is not promoted with legal professionals, particularly judges, prosecutors and other stakeholders in criminal justice, advocates, specialist NGOs, and also with the victims of offences and the offenders themselves.

It is also clear, despite the transition processes in certain of the countries, particularly **Egypt, Libya** and **Tunisia**, that restorative justice is not yet in hand.

The Moroccan experience of transitional justice, which aims to put an end to the injustices of the dark years, underlying the draft law on transitional justice currently being prepared in **Tunisia**, focuses on collective and individual transitional justice and on the duty of remembrance but not on sanctions applied to those guilty of violating human rights during this period.

However, restorative justice is making progress in the field of justice for young people (**Lebanon, Jordan** in particular where the use of alternative measures to imprisonment is becoming frequent).

But it does not seem that programmes for restorative justice have really been understood in these countries in which a model is applied that requires mediation between the offender, the victim, family members or those in close proximity and possibly representatives of the local community, with a view to reconciliation implying apologies and pardon accompanied by restoration to normality and then the reinsertion of the offender in society.

The demand for restoration does not in itself constitute restorative justice and it is not such as to break the cycle of violence or to protect the dignity of the victim. When restorative justice alone is considered, the offender remains marginalised from society

and sinks into this status in the eyes of the authority that has sanctioned the same offender, and the victim continues to live in fear. Also the aims of restorative justice, particularly a better quality of justice, cannot be considered a success if considering only the results of reducing the workload of the courts and prison staff.

C. WOMEN

LEGISLATION FOR THE PRORECTION OF WOMEN WHO ARE THE VICTIMS OF VIOLENCE

Legislative, regulatory and other frameworks should be fully revised in order to take account of gender issues, more particularly the vulnerability of women.

The eligibility of women who are the victims of violence to legal aid should be automatic without taking marital status into consideration, the lawyer appointed to dispense the aid being qualified for this type of case.

SUMMARY OF DISCUSSIONS

It seems from the state of legislation in most of the ENPI southern Mediterranean countries that there are no transversal laws dealing with violence against women, but only criminal and civil legislative provisions, which are a part of this problem.

In **Tunisia**, the criminal code reinforces the sanction when the perpetrator of the violence is a spouse unless obviously a victim of the spouse. Furthermore, the legislator has entrusted to the mediator the task of collecting complaints of violence within marriage from the public prosecutor's office in order to try to use mediation to preserve marital ties and to avoid criminal proceedings unless the victim withdraws. The charge may also be dropped during proceedings or even after the judgment has been passed. Note that the concept of family is understood in **Tunisia** to mean just that, that is the family unit.

The situation in **Algeria** is not fundamentally different. There are provisions in the criminal code that provide for special protection in cases of sexual harassment in the workplace, abandoning the family, failure to pay the maintenance allowance, but nothing on violence against women.

Action taken by civil society organisations, whose role is recognised as important in this area by all work group participants, has, however, permitted an opening in legislation (**Egypt, Jordan, Lebanon, Palestine**).

In **Egypt** a draft bill has been prepared against domestic violence including the criminalisation of facts that are not sanctioned by the criminal code, among which are those of physical and psychological violence against women (attack on private life, sexual harassment, deprivation of inheritance rights, in particular). Measures are in force for the public prosecutor's office to protect women who are the victims of violence and the publication of photographs or films containing scenes of violence is prohibited.

In 2008, **Jordan** adopted a law sanctioning domestic violence. There are public structures that reinforce the application of this law, such as the department for the protection of the family within the Criminal Investigation Department, which has

branches in all the local government offices throughout the Kingdom of Jordan, and intervenes on receiving complaints as well as at its own initiative.

The rules applied in **Lebanon** in cases of violence against women are those that rule on the repression of violence against any person. A draft bill, led by the civil society organisations that are specialists in matters defining violence against women and that establishes protection measures while also widening the concept of family (extended family, recomposed family) was adopted by the Council of Ministers and sent on to Parliament. The work done by the parliamentary commission on this legislation did, however, alter the bill in such a way as to have it crack down more specifically on domestic violence.

In **Israel**, the law regulating the prevention of domestic violence (1991) provides victims with legal aid, while another law of 2001 covers the rights of victims of crimes. Measures are in place with the police, safe houses for women who are victims of violence and legal aid services to inform women victims of the support available to them in these cases.

In **Palestine**, legislation currently does not sanction violence against women other than through the application of the provisions of the criminal code, which continue, similar to other countries in the region, to allow the perpetrator of the crime to escape the sanction by marrying his victim. However there is a draft bill sanctioning domestic violence.

COMMENTS

The question of violence against women remains a cultural problem to which legislation does not bring a solution if it is not complemented by many measures of all kinds, notably the strict application of the law without systematically seeking compromise, which, after all, favours the perpetrators of violence and leaves them unpunished.

Women are often in a vulnerable situation with no autonomy to allow them to exert their rights, which results in dropping the charge, to the benefit of the perpetrator of the violence.

A clear example is that of rape in which victims are pressurised into accepting a “proposal of marriage" to “save their honour", violating their most elementary rights that they cannot exert because nothing is provided within the legal framework to give them any effective help.

The ratification of international instruments such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women does not help a great deal to resolve the problem of violence against women who structurally are kept in a state of inferiority by legislative provisions, while reservations concerning the right of the family remain exhaustive and, also, while the political will to harmonise legislation with a minimum of international standards is long in coming, while, in fact, there is no recognition of the pre-eminence of the terms of conventions over domestic legislation in the hierarchy of standards.

PUBLIC POLICIES

Access to justice and legal aid for women requires an integrated approach and for that the adoption of public policies to encourage such an approach.

Such public policies should bring about changes within public structures and provide staff training in order to break institutional resistance to change.

Preparing public policies on such matters assumes the active participation of the civil society organisations so that these policies are put into practice and do not end up being dispersed and hit by contradictions.

Co-operation among the different professional organisations concerned, lawyers and medical doctors in particular, is recommended based on an empirical study showing the gravity of the phenomenon of violence against women.

Exhaustive laws should be prepared including mechanisms for appeal, more particularly in the automatic access to legal counselling and legal aid upstream and downstream of the needs expressed by women who are the victims of violence.

The national human rights institutions, where they exist, should be given quasi-judicial functions to be able to submit cases directly to the Public Prosecutor's Office on behalf of the women who are the victims of violence and who turn to the institution.

The local authorities, particularly the municipalities, should be involved in facilitating access to justice and legal aid for these women by creating reception and guidance services.

Medical and para-medical professionals, as well as staff members, must notify the public authorities without delay of cases of violence against women they become aware of in their in their duties and to inform these women of means of protection and support available to them, a failure to inform running the risk of sanction.

SUMMARY OF DISCUSSIONS

Preparing public policies implies taking the situation of each country, the dominant culture and progress that has been made into consideration.

To set up a public policy with a view to eliminating violence against women assumes the choice of means appropriate to situations and the avoidance of general solutions.

Informal, traditional or custom-based systems may be included within this framework to the extent that they respond to the needs of rule of law.

In this regard, public policies aiming to put an end to violence against women must introduce into legislation amendments that promote the protection of women and make available to them the means with which they can exert their rights, firstly the right to an effective appeal.

COMMENTS

It is important to bear in mind that women, as an underprivileged social group, are hit by double or triple vulnerability, if not more. Access to justice and legal aid is even more complicated and to be effective requires special measures such as creating support units for women in the ministerial departments concerned, and “unique desks" to respond to their multiple needs.

Specialists should be detached from the judicial police and the public prosecutor's office to help bring the appeals made by women to effective justice.

Eventually, measures to create specialist courts to judge cases of violence against women could be a valid response to these needs by integrating all these specialist services and personnel rather than endlessly deploying services and personnel in a deployment that runs into many obstacles due to cost and a lack of specialist staff.

D. THE DISABLED

LEGISLATION

States that have not yet done so are advised to ratify the United Nations Convention on the Rights of Disabled People, create the agencies provided in the Convention and to harmonise domestic legislation with the terms of the same convention, particularly those having regard to access to justice and legal aid.

The States are advised to create the necessary conditions to guarantee that buildings housing judicial services are accessible to disabled people, and to ensure the resources necessary for them to be able to benefit.

For those suffering from a mental disability and who are institutionalised, it is advisable to provide for their judicial representation by guardianship in order to protect their rights.

It would be appropriate to have legislative and other provisions to confer quality on specialist national agencies as well as on civil society organisations in this field, so as to conduct public service litigation in order to ensure the rights of those disabled.

SUMMARY OF DISCUSSIONS

Several ENPI southern Mediterranean countries have a law covering the rights of disabled people, which perhaps can be explained by the number of armed conflicts that have ravaged these countries leaving thousands, if not millions, of people with permanent disabilities. **Egypt**, where 32 million anti-personnel mines placed during the Second World War left 3.5 million the victims of physical disability, has a law (1975) that defines the disabled person and makes an inventory of the services available to the disabled, although there are no special provisions concerning access to justice and legal aid. The new 2012 Constitution provides in its article 72 the commitment of the State to provide aid in all areas pertinent to those who are disabled. Egyptians and Palestinian

residents, as well as foreign nationals under conditions of reciprocity, benefit from law N° 35/1975 on the rehabilitation of those suffering from a physical disability. Persons suffering the disability also benefit from a 5% share of pubic service and benefit from a tax exemption on vehicles specially equipped for those with a physical disability. Legal aid is provided for those suffering from multiple disabilities.

The law in **Algeria** covers both the physically and mentally disabled. The Ministry of Justice and that of national solidarity cooperate to make effective justice accessible to those who are disabled by providing physical access to buildings and special desks as well as by supplying human resources (sign interpreters for those with hearing and speech disabilities) and material means, namely equipment adapted for the disabled (Braille typewriters, for example). In **Israel**, (there were 1,500,000 persons disabled in 2007, of which 314,000 were children, more than 65% of the disabled are over the age of 65 and 56% women), the law (1998) aims essentially to reduce the disparities in living conditions between those disabled and the rest of the population. A commission on the equality of rights for the disabled was created in 1999. This commission develops the materials to help those who have a cognitive or mental disability to be part of judicial procedures, with people given special training to take care of them (law on enquiries and evidence. 2005). Those with sight, hearing or speech disablement have access to legal aid. Those who are officially committed to an institution have the right to have their situation regularly reviewed by the legal aid services. The Ministry of Justice is responsible for managing physical accessibility to buildings housing courts and ministerial services. **Jordan** participated in the work of the International Convention on the Disabled that it ratified in 2007 and, as a result, created the high commission for which the Convention provides. A law on the rights of the disabled (5 to 7% of the population) has been published. The buildings housing justice must, in virtue of this law, be adapted to the conditions provided by the Convention. Those who are disabled are the object of positive discrimination measures and do not have to pay any duties or charges for justice. The list of approved judicial experts has been changed to include experts in visual and other forms of communication to assist the disabled in judicial proceedings. In this regard, the multiple disabilities that certain persons suffer from, gives them the status of 'incapacitated' and judicial representation is officially appointed as a result of this. A special court without any specified territorial competence has been created for persons with special needs.

In **Lebanon**, a national council for matters involving the disabled was created following ratification of the United Nations Convention on the Rights of Persons with Disabilities, which has the competence to engage in public service litigation in dealing with their rights.

Islamic law continues to rule on issues involving those with a mental disability.The law (2000) on disabled persons introduces a system of protection for the disabled including access to legal aid.

The law (1999) on the disabled (almost 50,000 disabled in 2006), in **Palestine** provides as part of access to justice, approved experts in the courts to facilitate communication for the disabled for the purposes of judicial proceedings.

The legal framework in **Tunisia** (2004) does not differ from other countries in adopting a law on the disabled. It provides for different forms of assistance for the disabled (mental, physical, motor) in all that concerns legal acts. In this regard, the mentally disabled have guardians appointed by the court, those under judicial disability receiving legal aid to have the disqualification lifted.

E. MINORS

The agencies of the juvenile justice system should apply simplified procedures that are adapted to the level of development of minors.

In this regard, the minor should be heard and should understand the content and the aim of judicial proceedings, and be guaranteed respect for his/her image and privacy.

National associations whose statutes include the defence of the rights of the child or protection of children who have been ill-treated, should be able to exercise the rights recognised to the civil party regarding violence in which minors are the victims.

SUMMARY OF DISCUSSIONS

Specialist courts exist in all the ENPI southern Mediterranean countries with the exception of **Lebanon** that has specialist sections although the judges and presidents are not themselves specialised.

The family code in **Algeria** provides access to justice and legal aid in civil and criminal matters involving minors. Specialist courts and judges, as well as a police force for minors, are in charge of procedures. In addition, there is special legislation to protect children in moral danger (2003). The representation of minors is assured by the official appointment of lawyers. Proceedings are confidential, a report on family, educational and social status initiates proceedings, the image of the minor is protected and there is the possibility of dispensing with an appearance at hearings as well as the systematic reduction to half of the sanctions provided by the criminal code, legal liability being incumbent on the guardian. Reports concerning proceedings involving minors may not be shown in the media.

In **Egypt**, the law of 1969 governs justice for minors, and amended in 2008 it provides specialist courts for children assisted by social workers and psychologists as well as specialist judges who apply a procedure specific to these courts. Only the lawyers, parents or guardians of minors, social workers and psychologists involved in the proceedings may participate. The minor may be dispensed with appearing at a hearing. Judges dealing with children receive specialist training, as do members of the public prosecutor's office. The courts may eventually sit in the institutions that protect minors in trouble with the law. The law on the child includes protection measures as well as preventative measures for children in trouble with the law. Rehabilitation measures and restorative justice are applied by the courts for children and by specialist judges according to a special procedure.The National Council for Childhood and Mothers provides legal aid for minors.

In **Israel**, it is also the courts, judges and specialist professionals who take part in court proceedings. Legal aid is ensured under the care of the Ministry of Justice. Officially appointed lawyers represent unaccompanied minors, even in the case of dispute between the parents. Lawyers may not be present at the preliminary interrogation unlike parents or guardian. The law on youth includes specific measures to help the minor understand proceedings appropriate for the level of the minor's development.

A commission is working to integrate the terms of the United Nations Convention on

Child Rights (ratified in 1991) into domestic legislation.

Access of minors to justice and legal aid in **Tunisia** is brought about due to the assignment by the Bar Association of a lawyer, and if not by the Bar by the Public Prosecutor's Office if the accusations against the minor are serious. The law on legal aid (2002) provides access to justice for minors within the civil or criminal context. Minors who are victims or in danger have the right to aid, and the minor having reached 16 years of age may appeal for justice without going through a guardian, even if becoming a civil party.

Jordan adopted a law on minors in trouble with the law that gives priority to the interest of the child. Access to justice and legal aid to the benefit of minors is ensured as are sentences alternative to prison.

In **Palestine**, there are no specialist judges or courts for children but a draft bill addressing this is currently being prepared. Several laws all apply in regard to minors, Jordanian law (1954), British law (1937) in the Gaza Strip, the Palestinian childhood code (2004), which provides for special treatment for children in trouble with the law. Confidentiality is provided in judicial procedures involving minors. Judicial representation is available in criminal cases in the pre-litigation and litigation stages. In the absence of a guardian, either the public prosecutor's office or the court exercises guardianship.

In **Lebanon** the law governing the protection of minors in danger and the situation of children in trouble with the law provides exclusive competence of the judge for children although there are neither specialist courts nor specialist judges, but judges who preside over sections of the court that have competence in juvenile justice cases. Legal aid is available through the Bar Association and specialist staff (social workers, psychologists) of the union for child protection, an association accredited since 1938 with the Ministry of Justice to ensure judicial services for minors in trouble with the law or in danger, and to administer safe houses for minors with sentences passed by the court that deprive them of their freedom. Hearings are heard 'in camera' and the minor may be dispensed from appearing at the hearing.

Lebanon ratified the Convention on Child Rights with no reservations. A plan to harmonise domestic legislation with the terms of the convention has been prepared as well as the National Human Rights Plan that covers specific provisions for access to justice and legal aid for minors.

COMMENTS

Juvenile justice presents some specific aspects in the ENPI southern Mediterranean countries because of the dual court system involving civil and religious courts in some of these countries (**Jordan, Israel, Lebanon**) and that divide the matter between these courts, personal status or family law coming under the religious courts while the protection of minors comes under the civil courts, with a grey area between the two fields of competence when they clash. In certain other countries (**Egypt Tunisia, Algeria** and **Morocco**) reforms to the judicial system eliminated the religious courts and gave competence to the civil courts to apply religious law, religious principles having been transposed formally into the laws voted by the parliaments, which almost always leave latitude to the judge to return to the source of the law, that is to religious dogma.
In third place comes the ratification of international conventions on the child, more particularly the Convention on Child Rights and the United Nations Convention on the Elimination of All Forms of Discrimination against Women, that the courts are supposed

to apply, bearing in mind reservations that have been made, in priority over domestic law, although the hierarchy of standards that this principle gives rise to is not always accepted. By way of example, the principle of the supremacy of international conventions, although reduced by reservations to the conventions, is asserted in **Morocco** but is not really applied due to laws in certain specific areas. This principle applies in **Lebanon** that included in the Preamble to the Constitution the Universal Declaration of Human Rights and the United Nations conventions on human rights, the obligation of the state to transpose these principles into all areas, and in the civil procedural code there is the obligation on the courts to respect this hierarchy of standards. This does not alter the fact that the religious courts pay no attention to this assuming that everything is as in common law, contained in religious law. The civil courts, resting on the principle of the priority interest of the child do take decisions that contradict those of the religious courts in matters of child protection, which is the object of civil law, and may themselves take legal proceedings due to the law which facilitates access to justice for children, apart from cases of children in trouble with the law.

F. REFUGEES

Special attention should be paid to refugees and asylum seekers seeking justice, and this regardless of ratification of related international conventions.

International cooperation in support for refugees should be provided using technical and financial assistance to set up specialist structures for ensuring access to justice for members of these groups

SUMMARY OF DISCUSSIONS

The problem of refugees continues to get worse in the ENPI southern Mediterranean countries although the impact on the demand for justice is still not clear. However, it is understood that these countries are not really prepared for such a demand should it become necessary.

On the other hand, a resolution of the League of Arab States prohibits its members from stabilizing the situation of Palestinian refugees in these states. This resolution applies throughout all the member states of the League.

The number of refugees from **Libya** in **Tunisia** at the time of the armed conflict in **Libya** rose to between 800,000 and 1,000,000. Several hundreds of thousands of them remain waiting to be integrated into host countries. In providing access to justice the State has the added obligation of providing interpreters. In **Jordan**, the number has exceeded one million from Syria while 135,000 Iraqi refugees still remain in Jordan more than ten years after the end of the Iraq war.

In **Israel** there are refugees who are the victims of human trafficking, as well as unaccompanied minors, who are represented by the office for legal aid of the Ministry of Justice, other refugees seeking the aid of clinics for legal aid and court assistance. Legal aid clinics exist that provide support to these groups.
The right of asylum is recognised by the 2012 Constitution in **Egypt** and in **Lebanon** due to the law on foreigners, both countries prohibiting the extradition of political refugees**.** **Lebanon** is not part of the 1951 Convention on refugee status and has neither signed nor ratified its agreement. Nor is it party to the Convention on reducing statelessness

and hosts nearly 350,000 Palestinian refugees. Due to the war in Syria, this country is facing an influx of refugees numbering around one million of which 420,000 are registered with the High Commission for Refugees in Beirut.

Access to justice is recognised for refugees as it is for other persons. There is also a legal aid program with UNRWA (excluding criminal cases) conducted in cooperation with the civil society organisations that provide lawyers for Palestinian refugees in handling family law and labour law.

In **Algeria**, refugees are eligible for legal aid in the same way as Algerian nationals. Special laws for vulnerable groups, such as the victims of human trafficking, provide legal aid for members of these groups. The same is the case in Egypt regarding human trafficking.

COMMENTS

The question of access to justice and legal aid for refugees in the ENPI southern Mediterranean countries although raising no problems of principle, is out of tune with reality, that is the reality of the living conditions of refugees that remain a priority, even more because international aid is clearly insufficient. Also, legal aid is not really organised for those who remain in the camps.

It should be remembered that Palestinian refugees form a separate group in the UNRWA zone (**Jordan, Egypt, Lebanon, Syria**), where they cannot claim the status of refugee in the sense of the 1951 Geneva Convention. It is only by leaving this zone for other countries that they can benefit from this status and from all the accompanying benefits and support, namely the right to integration in the host countries (other than the Arab League States). The offices of the UN High Commissioner for Refugees (HCR) in the countries of the UNRWA zone therefore exclude from their mandate the registration of Palestinian refugees and deal with cases of refugees coming mainly from Africa, as well as stateless persons (notably Kurds). These refugees benefit from legal aid in the same way as nationals. This is found particularly in criminal cases, due to the uncertain status of a number of them, particularly those whose demand for the status of refugee has been rejected by the HCR and who remain in the country of refuge as illegal migrants.

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