CARLOS J. MOREIRO GONZÁLEZ

MEASURING THE PACE OF LITIGATION BEFORE THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

1. INTRODUCTION

Due process of law is fundamental in an adversary system, the best system yet devised by man to reach the truth.

It requires, inter alia, that each side have notice of the claims made and that there be an opportunity to present each side to an impartial judge, including adequate time to prepare the case.

Therefore, each major step in the process from the triggering event to the resolution must be measured in order for the judges to be able to do justice. But the quality of justice they deliver does not equate with unreasonable delay in delivering justice.

To define delay is a preliminary step to focus the object of delay control, and it seems that this challenge would be better accomplished through different approaches and analysis in each jurisdiction.

Nevertheless, no-one who advocates for control of delay would suggest that due process be sacrificed in a trade-off for quick resolution.

On the other hand, delay is an old and deep-rooted problem that erodes quality of justice throughout the history of civilisation as it is showed by some provisions of the Code of Hammurabi (1792–50 BC) ([1]), or of the British Magna Carta ([2]). This situation contributes creating similar patterns of public opinion against the quality of Justice delivered by the courts all around the world ([3]).

Obviously both, the European Court of Justice (ECJ) and the Court of First Instance (CFI), couldn't be immunised against this 'pandemia'.

Bearing in mind the supranational nature of the European justice, any suggestion about the remedies must be tailored to its specific role and dimension.

2. DELAY, THE FIRST AND FOREMOST CONCERN OF THE QUALITY OF JUSTICE IN EUROPE

2.1. Unreasonable delay affects each of the purposes for which courts exist. The erosion of evidence before trial; the hardships in waiting for fair compensation; the increased cost; etc., these are some of the negative consequences in the litigation process. Thus, delay results in the loss of justice through the loss of the facts necessary to do justice.

Furthermore, there is a psychological impact of delay on plaintiffs and defendants ([4]).

([1]) Which established a time limit of six months to find the witnesses and provide their depositions before the Judge; see F. Lara Peinado, *Código de Hammurabi,* Madrid, 2ª Edición, 1992, p. 90.

([2]) See, W. Holdsworth, *A history of English law*, 7th ed., London, 1956, pp. 57–58.

([3]) According to the results of a research made by H. P. Gramckow, *Using international comparative survey results to develop better policies for the courts*, Williamsburg, VA, National Center for State Courts, 2002. Gramckow compared the results of a questionnaire used in Mongolia to findings from the United States. Despite the significant societal and cultural differences between both countries, he observed similar patterns of public opinion of the courts. However, those findings were largely based on second-hand information and not on the experience of the persons forming the sample for the survey.

([4]) As far as the impact on plaintiffs is concerned, beyond the stress of being a litigant, which subjects the individual to attacks by lawyers skilled in heightening doubt and disbelief, unnecessary delay jeopardises the potential benefits of pursuing tort claims, may increase the risk of chronicity of the underlying harm and increases the risk to become frustrated with and abandon the judicial process; see E. Smith Pryor, 'Compensation and the ineradicable problem of pain', *Geo. Wash. L. Rev.*, 59, 1991, pp. 239 ss.

But, cases must be resolved in addressing the issues fully and fairly. This means that reducing delay must not undermine duly respect for the time needed to discover the facts and to present them thoughtfully. Therefore, the avoidance of unnecessary delay is only one factor of the quality of justice.

2.2. We know that not all cases can be fairly tried within the same time frame. Not every case moves — or needs to move — at the same pace. In fact, the various participants in the system have competing interests, which may be satisfied by either slower or speedier resolution of cases. Measuring the pace of litigation only by computing the time between the date of initial filing and the recorded date of termination does not give a complete picture ([5]).

On the other hand, there is a global trend assuming a greater delay for civil cases than for criminal cases, on the only basis of the harm that delay causes. This assumption is wrong ([6]).

More realistic seem to be the approaches that are focused on court management techniques where the pace of litigation is seen as a direct consequence of calendaring, scheduling of trials, use of magistrates, etc. ([7]). Systems of case-flow management can be understood and applied no matter of local variations in Rules of Procedure.

Despite some criticisms ([8]), empirical evidence from the USA supports that judicial management works and courts with the same number of judges

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Defendants, even if they prevail on the merits, live under a debilitating stress as long as the claims remain unresolved; see D. W. Shuman, 'The psychology of deterrence in tort law', *U. Kan. L. Rev.*, 42, 1993, pp. 115 ss.
There are other consequences affecting business and investment; see on these topics: D. Kaufman et. al.: 'Governance matters, from measurement to action', *Finance & Development*, 37, 2, 2000, pp. 1 ss.

([5]) Cases with high discovery activity may involve especially complex litigation issues that require longer disposition time regardless of the extent of discovery activity, Connolly, et. al., *Judicial controls and the civil litigation process: Discovery*, Washington DC, 1978, spec. pp. 33, 58 ss.

([6]) See P. Johnston, 'Civil justice reform: juggling between politics and perfection', *Fordham L. Rev.*, 62, 1994, pp. 833 ss.

([7]) R. A. Posner, 'An economic approach to legal procedure and judicial administration', *J. of Legal Studies*, 2, 1973, pp. 399 ss.

([8]) See J. Resnik,: 'Managerial judges', *Harv. L. Rev.*, 97, 1982, pp. 374 ss.; J. S. Kakalik et. al., 'Discovery management — Further analysis of the civil justice reform act evaluation data', Boston, Coll., Rev., 2, 1998, etc.

often deal with greatly varying caseloads. Therefore, massive increase of judges and courtrooms is not the prime cure for court delay. A similar assertion can be made as regards the lack of resources ([9]).

The Federal experience of the USA, pioneer in the implementation of management techniques as a remedy for court congestion ([10]), should be compared with the European experience.

Statistics in Spain show for Madrid — an overcrowded jurisdiction with an excessive workload for the courts — that: in civil procedures, First Instance judges only work under 25 % of its optimal capacity, the Court of Appeal works under 50 % and the Supreme Court of the Region at 100 % ([11]).

Data regarding criminal procedures were as follows: the First Instance judges work under 70 %; the Court of Appeal under 85 % and the Supreme Court of the Region near to 90 % ([12]).

Data on labour procedures show 55 % (First Instance) and 75 % (Supreme Court of the Region), while those on administrative procedures present the opposite trend, 20 % (First Instance), and the unacceptable less than 0 % of its optimal capacity (Supreme Court of the Region) ([13]).

The perspective of the situation in the country, according to a 2003 research, gave an overall duration for civil procedures of 9 months (First In-

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([9]) See the contributions from E. Friesen, 'Cures for court congestion — The state of the art of court delay reduction', 23; J. Judges, 1984, pp. 4 ss.; and L. L. Sipes, 'Where do we go from here? — The next step in reducing delay', ídem, pp. 45 ss.

([10]) In 1990 was enacted the Civil Justice Reform Act, 28, U.S.C. §§ 471–482 (Supp. IV. 1992), which stated inter alia: 'Judicial control is the single factor that distinguishes courts in which similar cases are tried more expeditiously than elsewhere'.

([11]) *Source*: Tribunal Superior de Justicia de Madrid (The Supreme Court of the Region). During the last year (2008) 119 255 cases were registered (First Instance) and 94 243 were pending; 15 480 cases were registered (Court of Appeal) and 8 875 were still pending; and 4 cases were registered (Supreme Court of the Region) and none were pending.

([12]) 528 759 cases registered (First Instance) and 63 957 pending; 30 148 cases registered (Court of Appeal) and 5 437 pending: 72 cases registered (Supreme Court of the Region) and 16 pending.

([13]) Labour procedures: registered cases 57 688 (First Instance), pending 32 894; before the Supreme Court of the Region, registered cases 6 068, pending 1 648. Administrative procedures; registered cases 44 838, pending 32 876; before the Supreme Court of the Region, registered cases 32 581, pending 41 340.

stance), 10 months (Appeal), and 59 months (Supreme Court of Spain) ([14]). For criminal procedures, 3½ months (First Instance), 6 months (Appeal), and 21 months (Supreme Court of Spain) ([15]).

Labour procedures, 5 months (First Instance), 12 months (Supreme Court of the Regions), and 13 months (Supreme Court of Spain) ([16]).

Last, but not least, administrative procedures took about 8 months (First Instance), 40 months (Supreme Court of the Region), and 38 months (Supreme Court of Spain) ([17]).

The amazing consequence of the data above is that, according to an International Comparative Research on the standards of the quality of justice (delay), the duration of civil procedures in Spain is as much acceptable as in the rest of the EU Member States. Only in the USA the length of procedures before the courts gets an optimal standard of duration ([18]).

Moreover, the percentage of the budget dedicated in Spain to the improvement and the functioning of Justice (including free access to justice) is at the same level than the average percentage of the rest of the European countries ([19]).

We can make then some remarks about the cures for the situation of justice in the European context. Most of these remedies belong to the category of judicial management or to the organisation of the courts.

(i) Proceedings under the jurisdiction of specialised organs with a single Judge, at the First Instance, are developed with the highest standards of efficiency.

Nevertheless, we can perceive increasing delay in the proceedings under the jurisdiction of specialised organs of appeal and the supreme courts (either at the regional or at the national level).

([14]) S. Pastor Prieto, *Dilación, Eficiencia y Costes. Foro sobre la Reforma y Gestión de la Justicia*, Madrid, 2003, pp. 25–59.

([15]) Íbid., pp. 63–64.

([16]) Íbid., pp. 67–68.

([17]) Íbid., pp. 65–66.

([18]) See S. Djankov et. al.: 'Courts, the Lex Mundi project', *NBER W.P. Series*, No 8890, Cambridge, MA, April 2002.

([19]) About 0.6 % of the GIP.

(ii) Both, civil and administrative jurisdictions are overwhelmed because about half of the workload consists either of unimportant formalities, or cases regarding disputes on low amounts of money.

(iii) The administrative costs for the litigants are cheap. The absence of a reasonable and dissuasive system of judicial fees open the door to a massive access to justice regardless of the instance chosen by the plaintiffs. Moreover, delay is often the consequence of lawyers' strategies to introduce consecutive actions before the jurisdictional instances with the only goal of gaining time to retard a payment or an execution due by their clients. The 'Quota Litis' formula is not allowed yet by the Spanish legal system.

(iv) The excessive burden of bureaucracy, the reiteration of formalities, steps and summons, etc., which must be fulfilled to carry out the proceedings according to the law, hinder the autonomy of the courts.

In the light of the Spanish experience we can draw similar remedies for court congestion as those implemented before in the USA. The cornerstone must be a radical change of procedural laws with, at least, three key objectives: first, to give to the courts enough level of autonomy to rule every case according to its singularity; second, to introduce reasonable standards of case-flow management; third, to establish a new set of rules for access to justice in order to prevent misuse and overload.

3. SUGGESTING SOME REMEDIES TO COPE WITH THE WORKLOAD OF THE COURT OF FIRST INSTANCE

3.1. Cases referred to the CFI have grown at a steady pace since its creation ([20]). Concerned with good administration of justice, obviously threatened by the prolongation of the length of time taken for a case to come to judgment, the Court has improved its records in the last four years.

I'll focus my comments on direct action procedures, which have experienced a remarkable reduction of their duration ([21]).

([20]) According to the data delivered by the Court, during the year 2008, 592 proceedings were initiated, 767 were pending and the Court decided on 567 cases.

([21]) The length of time in direct actions has been shortened from 20.2 months (2004) to 16.9 months (2008).

This trend is being maintained despite the existence of several problems that hinder the capacity of the Court to cope with the huge workload. Some of them handicapped the Court from its creation: the limited tenure of the Judges, the procedural time-scales and delays caused by interventions, etc.

And, there are also other new constraints related mainly to the management of the accession's wave of 12 Member States in less than five years: the appointment of new Judges, the explosion of cases and the organisation of the translation resources, among others. However, as regards translation, the Court made some steps in the recent past such as the amendment, in 2005, of the Rules of Procedure, according to which not all judgments are now published; the arrangements for teaching the new languages to the staff, or the introduction of an alternative to the direct translation system ('pivot translation' system), trying to find a feasible solution to the use of 23 official languages ([22]).

The Court has been aware of all these problems, which exist for a very long time, and has submitted proposals to reform the EU judicial system, structure and procedure ([23]). These proposals were drafted on a very realistic basis, suggesting only some minimum steps to be taken urgently and according to an institutional profile of 'self-restraint' ([24]).

([22]) There are five 'pivot languages', French, English, German, Spanish and Italian, and the system works since May 2004. Despite some benefits from its implementation, the lawyer-linguists tend to use simple language and the deadlines have been shorter, it has been experienced only in few cases brought before the Court. See K. McAuliffe, 'Enlargement at the European Court of Justice: Law, language and translation', *Eur. L. Journal*, 14, 6, 2008, pp. 806 ss., specific. 810 ss.

([23]) For instance, Contribution by the CJ and the CFI to the IGC, Brussels, 20 February 2000, Doc. CONF/VAR 3964/00; Discussion Paper on the future of the judicial system of the ELI presented by the President of the ECJ to the 2 184th Council meeting, Justice and Home Affairs, Brussels, 27/28 May 1999; Report of the CJ on certain aspects of the application of the Treaty on European Union, Luxembourg, May, 1995, weekly proceedings, 5/95; Contribution of the CFI facing to the IGC 1996, Luxembourg, 17 May 1995; etc.

([24]) The main ideas were drawn, either from the institutional experience of the Court, or from relevant contributions of ad hoc reports like those elaborated by the Friends of the Presidency Group (CJ and CFI), IGC 2000, Brussels, 31 May 2000, CONFER 4747/00, as well as from the 'Report by the Working Party on the Future of the European Communities' Court System', Report of the Reflexion Group, chaired by Ole Due, Brussels, 19 January 2000.
Other relevant contributions from the scholars helped to flesh out some options which were not fully considered by the Court in order to make its proposals. See, for example, Rasmussen, the establishment of a mechanism of docket control, 1986 and 2000; Jacqué and Weiler, the creation of regional courts, 1990; Mattli and Slaughter, the revision of the institutional dimension of the Court, 1998; etc.

The legal outcomes have been remarkable but not enough to reach the goal of shortened delays. As to the topic I have chosen to focus on, it is regrettable that, in actions brought by private parties, the Court is widely accessible despite its attempts to restrict the access only to those individuals 'directly concerned' by the facts of a case. This is a well known policy of the Court against the generalisation of the idea that the Treaty System creates an 'action popularis' to challenge every decision adopted by the EU ([25]).

We can see a similar situation as regards the references to the Court of Justice for preliminary rulings that grow every year despite the implementation of some remedies indicated by the Court to national courts ([26]).

Another point that has given rise to controversy is the formalistic approach to the cases, which, in principle, must be settled in three stages if the Court decides to open an investigation ([27]).

3.2. In my view, the choice of the appropriate remedies to reduce delay in the litigation procedures pending before of the CFI should be addressed at two levels: first, the decision-making process of the EU, and second, the working rules of the Court.

(i) From 1999, the CJ and the CFI have requested the amendment of the provisions of the Treaty concerning the adoption and amendment of their Rules of Procedure ([28]). At that time, the aim was the removal of the requirement of the unanimous approval of the Council for the adoption of their Rules of Procedure. In that regard, the current version of the Treaty provides for 'qualified majority' (the second choice of the Court) ([29]). The forthcoming en-

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([25]) See generally, Albors-Llorens, *Private parties in EC law*, Oxford, 1996; and G. Bebr, *Development of judicial control of the European Communities*, Dordrecht, 1981, spec. pp. 21 ss.

([26]) The Court has indicated, among others, some guidelines that the national courts should consider before making their requests: i.e. national courts must explain on what grounds they consider an answer to their questions to be necessary for judgment of the main proceedings, if those grounds are not unequivocally evident from the file on the case; the need that the national courts establish the factual context of the dispute before making a reference and that the request will be made in very concrete terms; etc.

([27]) See Articles 20 to 33 of the Statute of the Court of Justice, March 2008.

([28]) See the Chapter III on 'The future of the judicial system of the EU', sent to the Council on May 1999, loc. cit. This position was underlined later on their Contribution to the IGC 2000, loc. cit.

([29]) See Articles 223 and 224 of the EC Treaty.

try into force of the Treaty of Lisbon will provide for a new and more flexible rule that only requires the approval of the Council ([30]) (the first choice of the Court).

Nevertheless, the Court will still be a 'rara avis' compared to the International Court of Justice and the European Court of Human Rights, which have the power to adopt their own Rules of Procedure.

A similar observation can be made as regards the adoption of its Statute that, according to Article 245 of the EC Treaty, must be amended by unanimity of the Council but, pursuant to the forthcoming Article 281 of the TFEU, will be amended through the legislative procedure, where the Council acts by QM in the second reading (save for Title I and Article 64 of the Statute).

The institutional dimension of the CJ and the CFI, as well as their key role in the day-to-day life of the Union, call for the transfer of power to adopt their Rules of Procedure. This institutional redress obviously can not be pleaded as regards either the adoption or the amendment of the Statute of the Court, ruled by a Protocol annexed to the Treaties. This competence must be kept in the hands of the Member States and the European Parliament, in view of the legal nature of the Statute.

But the establishment of a special procedure to make more flexible the amendment of some provisions related to the organisation and the procedure of the CJ and the CFI could be explored. Under a new formula, the Court should play a more relevant role than that of assigned to pursuant to the above quoted Article 281 TFEU. Moreover, the amendments of the Statute should be decided in a short period in order to prevent the prolongation of the length of time in the legislative procedure, or, eventually, to avert a disagreement between the Council and the European Parliament, which could hinder the adoption of a decision.

(ii) The CFI should explore some remedies regarding the better use of its resources, although it must be underlined that great improvements on case-flow management have been made during the last years. For instance, we can point out the rules providing for an active role of the CFI in steering the proceedings set out in Article 49 of the Rules of Procedure, which states inter

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([30]) See Articles 253 and 254 of the Treaty on the Functioning of the European Union (TFEU).

alia that, at any stage of the proceedings the CFI may prescribe any measure of organisation of procedure, or any measure of inquiry ([31]).

Thus, according to paragraphs one and two of Article 64 of the Rules of Procedure, the goal of these measures 'shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions "… (and shall) …" in particular, have as their purpose, to ensure efficient conduct of the written and oral procedure "… (and) …" to facilitate the amicable settlement of proceedings'.

Moreover, the Instructions to the Registrar of the CFI ([32]) and the Practice Directions to Parties introduce new technical remedies to promote the efficiency of the proceedings ([33]).

This set of rules is completed by Article 54 of the Statute of the Court of Justice (Title IV, The CFI of the EC), which ensures the clarification of the situations where a document has been lodged before the wrong Court, where both Courts are seized of cases relating to the same subject matter or where a Member State and an institution of the Communities are challenging the same act.

Nevertheless, delay still hampers the efficient conduct of proceedings before the CFI in direct actions for annulment ([34]), as illustrated by the average duration of 26 months for these proceedings in 2008 ([35]).

([31]) Rules of Procedure of the CFI of the EC of 2 May 1991 (OJ L 136, 30.5.1991, corrigendum in OJ L 317, 19.11.1991, p. 34); last amendments on 16 February 2009 (OJ L 60, 4.3.2009) and on 7 July 2009 (OJ L 184, 16.7.2009). This capacity is not provided in the Rules of Procedure of the Court of Justice.

([32]) Adopted by the CFI on a proposal from its President the 5 July 2007 (OJ L 232, 4.9.2007, p. 1 and p. 7, respectively), last amendment on 16 June 2009 (OJ L 184, 16.7.2009, p. 8).

([33]) See, for instance, paragraphs 2, 3 and 5 of Article 7 of the Instructions to the Registrar of the CFI, as well as points I.C.10, II.93–II.95 and II-100, II-105 of the Practice Directions to Parties of the CFI.

([34]) According to the statistics of the CFI, this procedure overcrowded the workload of the Court during the last three years: 223 cases in 2006, 249 cases in 2007 and 269 in 2008, while the records of other direct actions such as procedures against failure to act accounted for only 4 cases in 2006, 12 cases in 2007 or 9 cases in 2008. Actions for damages on the basis of the non-contractual liability of the Communities also represented a very low number of cases: 8 cases in 2006, 27 cases in 2007 and 15 cases in 2008.

([35]) The duration is more or less the same as in the previous years: 25.6 months in 2005, 27.8 months in 2006 and 29.5 months in 2007.

I believe that, at least on the medium-run, neither the Governments of the Member States nor the European Parliament will accept proposals for an amendment of the Treaties in order to restrict the access of private parties to the CJ and the CFI.

Moreover, future enlargements and the ongoing strengthening of the European Union as a 'Union of Law' will contribute increasing litigation pending before the Courts.

On the other hand, it doesn't seem realistic to think of substantive growth of the EU budget, which could afford more resources to the Court. For the time being, it should be considered to make some amendments to the Rules of Procedure of the CFI (RPCFI).

But I would like to stress some observations about the constitution of the Chambers. Under the terms of Article 10 RPCFI, the Court shall set up Chambers of three and five Judges, or a Grand Chamber of 13 Judges. This provision is completed by Article 11 RPCFI, which confers to the Court either the option that a case may be heard in a plenary session or by a single Judge upon due delegation. In my view, the last possibility could be improved.

As I noted above, in the light of the Spanish experience, the creation of specialised organs of a single Judge at the First Instance has given to these jurisdictions the highest standards of efficiency in terms of shortened delay.

Moreover, looking at the grounds on which the Council Decision 1999/291 was adopted ([36]), it was stated that the experience achieved by the Legal orders of the Member States showed that the single Judge system was appropriately designed to decide on cases that do not raise legal or factual difficulties.

From a quantitative perspective, this is however not the case when we look at the statistics of the CFI, which show an astonishing picture: in 2004 only 13 cases were delegated to a single Judge, while in 2005 and 2006 only 7, in 2007 only 2, and, in 2008 none ([37]).

([36]) Adopted on 26 April 1999 (OJ L 144, 1.5.1999).

([37]) This situation confirms the hesitations about the implementation of this option at the supranational level, see R. Muñoz, 'Le système de juge unique pour le règlement d'un problème multiple: l'encombrement de la Cour de Justice des CE et du Tribunal de première instance', *Rev. MC et de l'UE*, 444, 1, 2001, pp. 60 ss.

We can assume that there are some relevant differences — mainly the permanence and the exclusive competence — between the Spanish 'solution' and the ancillary functions that can be developed by a Judge of the CFI, according to Articles 11 and 14 of its Rules of Procedure.

Nevertheless, it can be useful to explore some amendments that could give a new dimension to the role of the single Judge within the CFI. To this end, the main obstacles to be removed are the terms and conditions of the delegation specified in Articles 14 and 51 of the RPCFI.

As far as Article 14 is concerned it should be considered to remove some of the cases that, according to the paragraph 2(b), can not be delegated to a single Judge. The judicial management of the case-flow must be the cornerstone to avoid the Court collapsing. It should then be given to the Court a vote of confidence to rule on these situations. I understand that a strict implementation of the conditions stated in the second paragraph of the Article 14 should be enough for a delegation.

On the other hand, the second paragraph of Article 51 establishes more restrictions to the discretionary power of the CFI providing for a 'veto' right of the Member States or the European institutions, which can block the delegation.

These situations are founded in a very formalistic understanding of the principle of Legal certainty, which assumes that the right of the parties to a due process of law is better protected under the terms of the first paragraph of Article 10 RPCFI. I have some hesitations about the question.

Moreover, the implementation of the mechanisms introduced in the RPCFI in 2000 — the accelerated and simplified procedures for disposing of cases ([38]) — has proved to be more than successful ([39]).

([38]) The simplified procedure set out in Article 47 of the RPCFI and the expedited procedure provided by Article 76(2) of the RPCFI entered into force on 1 February 2001 (OJ L 322, 19.12.2000, p. 4).

([39]) See a critical approach to the introduction of these mechanisms in D. Waelbroeck, 'Vers une nouvelle architecture judiciare européenne', *CDr Eur*, 36, 1–2, 2000, pp. 3–8, in p. 4.

4. CONCLUSION

The quality of justice has been on the judicial agenda of the ECJ and the CFI for a long time. If 'delay breeds cynicism about justice' — the lament of Shakespeare's Hamlet — it must be brought under control. There are many reasons to advocate for control of delay far from the mere thought that faster is better just because faster is better. Some of them have been stated above.

In the meantime there are feasible remedies for court congestion which can be implemented in the specific context of the procedures pending before the CFI. The target is not to eliminate delay but to control it sufficiently to assure a fair disposition of the case, through management techniques.

Therefore, management could be the new form of judicial activism by the ECJ and the CFI, because it enhances efficiency, which — together with democracy — are the main goals of the institutional system or the European Union since the beginning of the 'era post-Maastricht'.

Rather than action into unforeseeable future, the steps suggested above should be made or explored in the short term by the CFI, echoing a well-known expression, 'yes the Court can'.