

# 10

## PREGUNTAS A...

Stéphane Leyenberger



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**Jefe de la División  
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## Stéphane Leyenberger: “There is rule of law when citizens have easy access to a judge”

By: Ana Sanz Martín

**Stéphane Leyenberger** is the Head of Independence and Efficiency of Justice Division within the Directorate General of Human Rights and Rule of Law of the Council of Europe. Mayor of Saverne (Alsace, France) since 2014. Next October 10 he will address the issue of “Access to Justice in the European Union” in the breakfast dialogue on the role of the “Universal Access to Justice” organized by the UN Sustainable Development Goals Fund, the University of Navarra School of Law and the Spanish National and taking place in Madrid.

### 1. Article 6 (3) (c) of the European Convention on Human Rights

**establishes the right of effective access to free Justice in case of not sufficient means, how could you guarantee in the 47 State members equality in the Access to Justice, assuming this right as one of the main principles of the rule of law?**

Indeed, there is no rule of law when the individuals cannot have an easy access to a judge. This implies intellectual, physical and financial elements. They must accede both to the law (know how to make their rights protected and understand the law, or have an access to someone who will apply it on their behalf) and to a judge in a court that they can easily reach (court organisation through ought a state, the

“judicial map”, is also an issue; the organisation of court premises as well).

They must be able to pay for being advised and defended and, in most of the states to pay fees to file a procedure. All European states have implemented a legal aid system in criminal matters in compliance with the requirements of the European Convention on Human Rights. Most often, the aid provided covers legal representation before courts. With regard to the evolution of the budgets allocated to legal aid, it is possible to distinguish two trends: those endowed with the most generous systems tend to restrict the budget allocated to legal aid, and those where the amounts allocated to legal aid are the lowest tend to increase the legal aid budget. More and more legal aid is extended to the enforcement of judicial decisions or judicial mediation. In some states or entities where court users are subject to substantial court taxes/fees, access to justice of persons with limited financial means is, however, efficiently ensured through legal aid systems.

## **2. Do citizens know their right of Access to Justice in Europe? Which are the main barriers?**

Getting correct and sufficient information is essential to guarantee an effective access to justice. It is now very easy to obtain information regarding laws, procedures, forms, documents and courts from official websites. Every state or entity has established websites making available national legislation and court case-law within the Ministry of Justice, Parliament, an Official Gazette, etc. These websites, such as those containing the case law of higher courts, are often used by practitioners.

Court users seeking practical information about their rights or about the courts will make a better use of specific websites offered by the relevant courts or those created in their interest by the Ministry of Justice. Many States or entities indicate that these websites include forms that users can download to allow them to exercise their rights, applications concerning, for example, legal aid. These "practical" websites are developing in Europe.

However, the level of information may depend on the capacity to seek for information. Education, the role of the media, the organisation of the bar associations, the ability to use electronic media, the existence of NGOs are key elements to ensure that the individuals know their right as regards access to justice.

## **3. Vis-à-vis the existence of barriers to Access to justice, what do you think about the imposition of court fees to go to court?**

It is confirmed that payment of court fees is now a key characteristic of the justice system in many states in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only France and Luxembourg foresee access to court free of fees. The revenues generated by court fees can cover a significant part of the budget allocated to the judicial system, Austria, is even in the position of generating revenues that exceeds the operating cost of the whole judicial system. They exceed 20% of the budget of the judicial system in more than a quarter of the states or entities. However, to a large extent, the high level of court fees can be explained by the fact that courts are

responsible for the registers (mainly land and business registers). Fees are charged for retrieving information from these registers or for recording modifications.

#### **4. Which goals have the Justice division of the Council of Europe in the short term?**

Our Division is entrusted to promote justice as a public service in the member States, which function with efficiency and quality. We propose concrete solutions suitable for use by Council of Europe member states to promote the effective implementation of the European norms used for the organisation of justice, to ensure that public policies concerning courts take into account the needs of the justice system users, and to offer states effective solutions prior to the point at which an application would be submitted to the European Court of Human Rights and preventing violations of Article 6 of the European Convention on Human Rights, thereby contributing to reducing congestion in the Court. Access to justice is obviously one of our priorities, in all its dimensions, including the promotion of efficient legal systems.

#### **5. To what extent the access to Justice contributes in the development of other rights?**

The full exercise of any other rights may depend on the right to access to justice. Indeed, when the exercise of a right is limited, undermined, made impossible by the wrongful actions of public or private entities, only justice can re-establish such rights. If one cannot properly accede to justice, it might be difficult, or even impossible, to have such rights guaranteed.

#### **6. How civil society and private sector could contribute to provide**

#### **information on the right of Access to Justice?**

The role of Bar associations is crucial in most of the member states to provide information on the right of access to justice. Either through the legal aid system, where individuals get money from the state to pay for lawyers (or lawyers are directly paid by the state budget), and/or through *pro bono* systems where lawyers offer free of charge consultation. Specialised NGOs or law student associations are often active in this field as well, including through the management of dedicated web sites. In addition, the media have a role in raising public awareness as regards the functioning of justice.

#### **7. Do you think the use of electronic means accelerates and facilitates this right?**

The use of information technologies (IT), ranging from end user applications such as smart phones, personal computers and tablet PCs, to information infrastructures, such as internet and the services deriving from that, are taken more and more for granted. Introduced as a tool to improve performance, IT is proving to be more than a technical element, changing the relations between individuals and between individuals and organisations, both in the private and the public sector.

Information technologies have, in some respects, made it possible to improve the efficiency and quality of judicial systems. However, there seems to be no obvious link between the level of IT equipment and good results as reflected in the efficiency indicators. The States with the most highly developed IT are not necessarily the most efficient. Instead of being a simple mere tool for the courts, the integration of IT in

an organisational process of performance, coupled with a policy of change management involving all stakeholders could be a success factor. IT is essential but is not the only key to improved performance.

**8. The last report on the functionality of the European Justice system published in 2016 declares the European countries spend an average of 60 euros per inhabitant, is it possible to measure the level of the European Justice by the money invested? Should Justice receive more investment?**

Financial means allocated to the functioning of judicial systems are essential to make the system function. But many other factors intervene in such a smooth functioning: the existing legislative framework and organisation of judicial procedures, the organisation of courts and judicial professions, sociology (do people go straight to court to solve a dispute?), etc. It is difficult, or even impossible, to have an efficient judicial system, offering a public service of quality, without proper financial means. However a system can meet serious dysfunctions even with a relatively high budget.

The European average concerning the budgets of judicial systems is indeed 60 € per capita in 2014, but half of the states spent less than 45 € per capita. The differences between the 6 states whose expenditure per capita is lower than 20 € are considerable, as are the differences between the 5 states or entities where the expenditure is higher than 100 €. When underlining a budget per capita allocated to the system, it is worth taking into account the level of wealth in the country:

60 € spent in a rich country is less than 60 € spent in a poor country and the wealthier states are not necessarily the ones that proportionally make the most considerable budgetary efforts with regard to the judicial system.

The trend is towards an increase in the budget allocated to the judicial system in most of the states. The economic and financial crisis of the end of the 2000s resulted in some states in significant budgetary cutbacks. In 2014, the states concerned were able to initiate or continue additional expenditures towards the promotion of their judicial systems (Latvia, Lithuania, Romania and Slovenia). On the contrary, in Ireland, Portugal, Spain and particularly in Greece, the judicial system is still undergoing regular budgetary restrictions.

**9. Would the *Brexit* affect the right of Access to Justice of the British living in Europe? And the European living in the United Kingdom?**

On the one hand, the United Kingdom is and will remain one of the 47 member States of the Council of Europe, bound by the European Convention of Human Rights and its Article 6. On the other hand, the Convention is not aimed at the citizens of a member State, but at all the court users in the member state, whatever his/her citizenship is. Therefore the *Brexit* should not affect this essential right, neither for the British living in Europe, nor for the Europeans living in the UK.

**10. Do you consider the European judicial systems are adequately responding to guarantee the Access to Justice to vulnerable**

**migrants (refugees, victims of trafficking...)?**

Some categories of court users are more fragile than others, as they do not have access to information on how to accede to justice. Migrants are often part of such categories. The barrier of the language is often a topical one. Less than half of the Council of Europe's member States have

information mechanisms for migrants, but a little bit more than half of them foresee specific hearing modalities. In the countries where specific NGOs are active, or where Bar associations are specifically organised to receive, inform and defend migrants, their rights are better safeguarded. Generally speaking, further progress is to be expected, considering the international situation.