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Are fewer new cases good news or bad news for the judiciary? Members of the legal community deliver a mixed verdict to **SANTHA OORJITHAM**.
GOING to court is no longer the only option for legal redress.
The Consumer Claims Tribunal decided on more than 16,000 cases over the past four years. The Homebuyer Claims Tribunal registered 15,698 cases up to December last year.
And from its birth in January last year until the end of April this year, the Financial Mediation Bureau has registered 3,748 cases.
Over at the courts, 416,414 civil cases and 1,057,786 criminal cases were registered last year — 32 per cent and 22 per cent fewer than the civil and criminal cases filed in 1999.
These new cases do not include the pre-2000 backlog, which is still being cleared.
It is too early to deduce a trend of filing fewer cases. But lawyers and judges are nevertheless startled by the figures the Federal Court's Statistics Unit released recently to the New Straits Times (See table).
The jury is still out on whether that is a good or a bad sign for the judiciary.
Last year, the number of new civil cases dropped by 38 per cent in the High Courts, 36 per cent in the Sessions Courts and 28 per cent in the magistrates' courts compared with 1999.
The only increase was in the criminal cases filed in the Sessions Courts, which shot up by 84 per cent compared with 1999.
Criminal cases dropped by 15 per cent in the High Courts and 22 per cent in the magistrates' courts during the same period.
The apparent decline in civil litigation may be incidental, however. Former High Court judge Datuk Syed Ahmad Idid Syed Abdullah points out that in 1999, Malaysia was just pulling out of the Asian economic crisis.
"There was a backlog of problems and contracts not being honoured," he recalls.
Some plaintiffs, instead of going to court, have found other avenues, including the Kuala Lumpur Regional Centre for Arbitration (KLRCA) of which Syed Ahmad Idid is director.
In addition to the KLRCA, the Homebuyer Claims Tribunal, the Consumer Claims Tribunal and the Financial Mediation Bureau are being turned to for dispute resolution.
Professionals such as architects and engineers can also handle their own arbitration.
All these tribunals are between five to seven years old, notes the KLRCA director.
"You can see the shift. Instead of going to court, they have these tribunals that have actually been set up by the Government to facilitate the solution of problems and disputes in commercial affairs."
Former Court of Appeal judge Datuk Shaikh Daud Md Ismail says some are also turning to voluntary mediation.
"Both parties present their case to the mediator, who tries to narrow down the issue as much as possible and they may come to a settlement. Or they may withdraw a case after filing, due to mediation."
The time it takes to obtain court decisions is also a likely factor in the resort to alternatives.
Nahendran Navaratnam, partner in a Kuala Lumpur law firm, reckons that some companies may be choosing other methods of recovering loans and debts.
"They must be filing fewer cases because they can't afford to wait that long. So they write it off, negotiate a settlement or turn to debt collectors. They have not necessarily lost confidence in the ability of the judge but the efficiency of the system."
Bar Council vice-president Ambiga Sreenevasan cites cases not being heard fast enough, the cost of litigation and the increasing popularity of arbitration as possible causes for the drop.
"The policy was that pre-2000 cases had to be cleared but that is still happening and it is now 2006," she says, although the Court of Appeal and the Federal Court are "doing pretty well" in reducing the backlog.
"Six years is rather bad," says Shaikh Daud. "Witnesses forget or are not available; documents are missing. Within three years would be very good. We should clear them as fast as we can."
More judges are needed to keep up with the new

Written by Administrator

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cases and clear the backlog, lawyers say. The Federal Court has seven judges, the Court of Appeal has 12, the High Courts have 44 judges and 19 judicial commissioners, the Sessions Courts have 77 judges and the magistrates' courts have 130 magistrates, according to the Statistics Unit.

"Judges in Malaysia are overworked and often moved around, either for promotions or transfers," says Navaratnam. Civil Court 4 in Wisma Denmark had no judge for three years, he points out, while the Court of Appeal president's post was vacant for about a year until it was filled in July 2004.

"They are playing catch-up," Navaratnam says. "If there is no judge, cases sit and may be transferred to another court. A case may be started and fixed for two or three days. When we can't finish, it may be adjourned for a year because the judge has no free dates."

Some judges say they do not have enough support staff. Shaikh Daud had one secretary when he was a Court of Appeal judge and shared a researcher with two or three other judges.

A senior judge (who does not wish to be named) says there has been "some improvement" in the clearance of the backlog and the number of transfers has also been minimised.

Insufficient staff does affect the disposal of cases. Judges want more support staff, he says. Like his fellow judges, he takes down his notes by hand and has only a registrar and a secretary to assist him.

But, he says: "We are increasing all the support staff so it is improving and is less of a problem."