Cyberjustice in European judicial systems

"Open data" and access to justice

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The Committee of Ministers of the Council of Europe affirmed in 2003 that "an efficient justice system is essential to consolidate democracy and strengthen the rule of law, as it will increase public trust and confidence in the State authority, in particular its ability to fight against crime and solve legal conflicts.

In recent years all Council of Europe member states have deployed information technology tools with a view to improving the performance and efficiency of their judicial systems. The emerging of new public management and the idea that the administration of justice looks very much an ordinary public service organisation generated anawareness that the judicial system should learn its legitimacy not only by sound juridical judgments but also by providing adequate services. The introduction of digital tools was often regarded in itself as a means of modernising justice.

The European Commission for the Efficiency of Justice uses the term "cyberjustice" which refers to a body of literature now extensive and cross-disciplinary and has its origins in information theory. This literature points to the depth of the changes taking place in human organisations and activities that make use of information systems in order to better identify the challenges facing them. Cyberjustice is therefore understood as grouping together all the situations in which the application of ICT forms part of a dispute resolution process whether in or out of court. The various applications of cyberjustice identified have been divided into four main categories according to the intended aim a) access to justice, b) communication between courts and professionals, c) court administration, d) direct assistance for the work of the judge and the registrar.

On the occasion of its 10th anniversary, the CCJE adopted, during its 11th *plenary meeting i*n Strasbourg November 2010, a Magna Carta of Judges (Fundamental Principles). CCJE declares that Justice shall be transparent and information shall be published on the operation of the judicial system. Judges shall take steps to ensure access to swift, efficient and affordable dispute resolution. Court documents and judicial decisions shall be drafted in an accessible, simple and clear language. Judges shall issue reasoned decisions, pronounced in public within a reasonable

1 http://bo-ecli.eu/conference

time, based on fair and public hearing. Judges shall use appropriate case management methods.

The Concultative Council of European Judges notices in the Opinion 14/2011 that "The introduction of IT in courts in Europe should not compromise the human and symbolic faces of justice. If justice is perceived by the users as purely technical, without its real and fundamental function, it risks being dehumanised. Justice is and should remain humane as it primarily deals with people and their disputes. Judges must identify the advantages and disadvantages of IT and identify and eliminate any risks to the proper administration of justice. IT must not diminish parties' procedural rights. Judges must be mindful of such risks as they are responsible for ensuring that parties' rights are protected.

2. Access to justice must be understood in a broad sense as it includes both ways of accessing the law (online information on one's right, publication of case law) and access to dispute settlement procedures (online granting of legal aid, referral to a mediation service). The Resolution 2081/2015 of the Parliamentary Assembly of the Council of Europe pointed out that access to justice is a cornerstone of any democratic state based on the rule of law and a prerequisite for citizens effective enjoyment of their human rights. Information technology there holds out the promise of a more accessible public justice service as long as citizens are connected to the internet and are prepared to accept this new relationship. The development of IT improves the quality of the service rendered while at the same time controlling the operating costs of the justice system.

3. In this framework judicial systems consider the developent of "open data" as the ultimate goal of policies concernig access to justice. A clear trend has emerged the last few years with strong political support at the international level, for some countries to move towards opening up judicial data to the general public. The aim is to make all judicial decisions available to everyone online free of charge, with various restrictions with regard to personal data according to the legislation. These open data policies constitute a considerable theoretical advance in access to the law by making court decisions available to everyone under the same conditions. According to Directive 2003/98/CE "making public all general available documents held by the public sector is a fundamental instrument for extending the right to knowledge which is a bacic principle of democracy. It is necessary to recall here the protection afforded by article 8 of the European Convention. The European Court of Human Rights in the Antunes and Pires v Portugal case (21.6.2007) held that judicial information systems must therefore ensure the total inviolability of data transmitted and full compliance with professional secrecy.According to the Opinion 14/2011 of the Concultative Council of European Judges "Data and information, such as those contained in case registers, individual case files, preparatory notes and drafts, judicial decisions and statistical data on the evaluation of judicial processes and court management, need to be managed with appropriate levels of data security. Within the courts, access to information should be limited to

those who need it in order to accomplish their work.Having regard to the nature of the disputes brought before courts, the online availability of certain judicial decisions could place privacy rights of individuals at risk and jeopardize the interests of companies. Therefore courts and judiciaries should ensure that appropriate measures are taken for safeguarding data in conformity with the appropriate laws".

At the same time the open data policy raise questions on the real accessibility of law made available to citizens in a raw form. This means that the impact of the development of open judicial data on access to justice must be qualified. In order to be effective this process must take into account the fact it is in practice no easy task for citizens to pick their way through such a wealth of information and utilise it to support their claim or defend their rights. In many cases they need to contact a professional intermediary because the law often is complex. In some countries new intermerdiaries may even emerge to process the free and open legal and judicial information. In addition, judicial systems have to weigh the advantages of making these data available online for certain activity sectors (insurance, baking or the employment market). Public authorities can agree to put data on line, sometimes without the knowledge of those they are supposed to serve and protect.

According to the thematic report of CEPEJ "Use of information technology in European Courts" 36 member-states of the Council of Europe use a single centralised database for all branches of law. Case law databases seem generally to be fully available and used with just ten states reporting a lower equipement rate. Five states use different databases for different branches of law- Belgium, France, Greece, Italy and Slovakia. The distinction between ordinary and administrative courts seems to be the reason for this lack of a combined database. For ordinary courts France differentiates according to level, since there is one database for appeal court decisions in civil commercial cases and another for Court of Cassation decisions covering also criminal cases. National case law databases may sometimes provide huperlink access to the case law of the European Court of Human Rights if one of the court's decisions is cited. The five states with separate national case law databases for different branches of law do not have the option of linking directly to ECHR case law. The situtation is similar for centralised legislative databases. Almost all states have such databases with just a few exceptions. It should be noted that there is no automatic corellation between access to a legislative database and access to a case law database.

4. The open judicial data is a part of a broader plan of changes which transform the organisation of justice and its relationship with the citizens. In this framework paperless communication with court users regarding their cases is already up and running in some countries and being developed in others. The users are not obliged to travel to courts in person to obtain information or initiate proceedings. The online services facilitate the organisation of the court as

they enable a reduction in waiting times. Other arrangements make possible to avoid travelling to the courts are being developed through the use of videoconferencing. These arrangements which are available to a category of individuals or in specific situtations are seen as a significant means of saving time and expence in both civil and criminal cases. As a result of all these innovations aimed at ensuring that the parties have to visit the court building only when strictly necessary, reform of judicial map to reduce the phycical presence of courts in a given area has been implemented in some countries.