JUDICIAL TRAINING, EVALUATION AND ELECTRONIC TOOLS IN COOPERATING EUROPEAN JUDICIAL SYSTEMS

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Abstract: One of the key objectives of the European Union, as stated in the Treaty of Lisbon, is to offer its citizens an area of freedom, security and justice without internal borders. To achieve this, it is necessary to ensure that the different national judicial systems of all European Union Member States work effectively together and do not create obstacles to European Union citizens whenever they are seeking access to justice.

Various measures are being taken with a view to strengthening mutual trust between the Member States' judicial systems: measures regarding the training of judges, the development of networks, the improvement of evaluation and electronic tools.

Key words: judicial training, judicial evaluation, electronic tools

I. INTRODUCTION

1. National borders within the European Union are progressively dismantled. Citizens move more freely than ever before. This means however that it is also easier for criminals to travel and operate cross-border. Combating crime involves strengthening dialogue and action between the criminal justice authorities of EU countries.[1]

The increase in free movement of people, goods and services inevitably results in an increase in the potential number of cross-border disputes.[2] In a genuine European area of justice, individuals should not be prevented or discouraged from exercising their rights.[3] The incompatibility and complexity of legal or administrative systems in European Union countries should not be a barrier.[4] The judicial cooperation is needed in the EU to ensure the free movement of persons. Civil justice cooperation covers both civil and commercial matters, and matters of family law.

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[1] Text comes from: European e-Justice Portal < https://e-justice.europa.eu>; European Judicial Atlas in Civil Matters <http://ec.europa.eu/justice_home/judicialatlascivil>; European Judicial Atlas in criminal matters <https://e-justice.europa.eu/content_european_judicial_atlas_in_criminal_ matters-102-en.do>; European Judicial Network in civil and commercial matters < http://ec.europa.eu/civiljustice/>; European Judicial Network (EJN) <www.ejn-crimjust.europa.eu/>; European Commission Directorate-General for Justice <http://ec.europa.eu/justice/index_en.htm>; The Legislative Observatory - European Parliament < http://www.europarl.europa.eu/oeil>; Summaries of EU legislation <http://europa.eu/legislation_summaries /justice_freedom_security/>.

[2] 28 Member States and about 508 million people <http://www.consilium.europa.eu/>.

[3] Viviane Reding *The European Area of Justice* <http://ec.europa.eu/commission_2010-2014/reding/justice/>

[4] For a short, clear explanation about the European Union online, see V. Pascal Fontaine *Europe in 12 lessons*, 2010, <http://ec.europa.eu/publications>.

2. European cooperation in justice and home affairs is a relatively recent phenomenon. Following a number of partnerships, for example between police chiefs (known as the TREVI group), concrete arrangements were primarily provided for by the Schengen Agreements of 1985 and 1990 and the 1999 Europol Convention. It was the Maastricht Treaty (1993), which first introduced cooperation in the area of justice and home affairs.[5]

Cooperation was stepped up in the Treaty of Amsterdam (1999). In October 1999, in Tampere, Finland, the European Council[6] decided to set the area of freedom, security and justice high on the European Union agenda. It was seen as an essential component of a true 'Union' that a free circulation of people should apply to a free circulation of judicial decisions. This is where the principle of mutual recognition leads to a real change in the philosophy of judicial cooperation. It means that each national judicial authority should recognise requests made by the judicial authority of another European Union country with minimum formalities.[7]

Enhanced mutual recognition is to improve the efficiency of cooperation between authorities. It is based on mutual confidence that EU countries have in each others' systems, founded on the common respect of human rights and fundamental freedoms as asserted in the Treaty of the European Union.

The creation of the area of freedom, security and justice (FSJ) is based on the Tampere (1999-2004), Hague (2004-2009) and Stockholm (2010-2014) programmes. It derives from Title V of the Treaty on the Functioning of the European Union, which regulates the "Area of freedom, security and justice" and comprises five chapters: (i) general provisions; (ii) policy on border controls, asylum and immigration; (iii) judicial cooperation in civil matters; (iv) judicial cooperation in criminal matters; and (v) police cooperation.

3. This is a sensitive issue because freedom, security and justice are directly related to security, public order and national legal systems. These systems have often evolved in separate countries over a matter of centuries resulting in significant differences between Member States.

4. The European Union has put in place a number of legislative instruments[8] designed to help individuals with cross-border litigation. The priorities for action are: better access to justice, mutual recognition of judicial decisions and increased convergence in the field of procedural law. It aims to ensure that people can approach courts and authorities in any European Union

[5] <http://europa.eu/legislation_summaries>.
[6] For EU institutions, see European Commission, How the European Union works, July 2012, <europa.eu/pol/index_en.htm>.
[7] <http://ec.europa.eu/justice/criminal/>.
[8] Access to European Union law (EUR-Lex): from 1 July 2013, thanks to Regulation (EU) No 216/2013, the electronic version of the Official Journal of the European Union is authentic and produces legal effects. To access it, go to the new EUR-Lex <http://new.eur-lex.europa.eu/homepage.html>.

country as easily as in their own. Alternative dispute resolution methods, such as mediation, have also played a big part in easing cross-border conflicts.[9]

5. The European Union has put in place a number of legislative instruments, designed to support freedom of movement and prevent and combat cross-border crime.

The European Union has set up specific structures to facilitate mutual assistance and support cooperation between judicial authorities:

- EUROJUST: an European Union body comprising experienced judges or prosecutors who support and strengthen coordination and cooperation between national authorities in relation to serious crime;[10]
- European judicial network in criminal matters (EJN): a network of magistrates and prosecutors who act as contact points in European Union countries to facilitate judicial cooperation.

II. JUDICIAL TRAINING

6. The European Union is built on the rule of law combining Union law and national legal systems. Both are applied by national judges who work within different legal systems and traditions. The creation of a European judicial culture that fully respects subsidiarity and judicial independence is central to the efficient functioning of a European judicial area. Judicial training is a crucial element of this process as it enhances mutual confidence between Member States, practitioners and citizens.

Union law permeates a wide number and diverse range of activities at national level. Its impact on the daily life of people and businesses is high. It creates rights and obligations, which national courts must safeguard. The national judge has become the front-line judge of Union law.

Mutual recognition is the cornerstone of judicial cooperation in civil and criminal law matters.[11] A good understanding of the different national legal systems is necessary to ensure recognition of judicial decisions, cooperation between judicial authorities and swift execution of decisions. This is also central to building mutual confidence and trust. National judges, at

[9] See Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. On 12 March 2013, the European Parliament voted to support the new legislation on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). The new legislation on ADR and ODR will allow consumers and traders to solve their disputes without going to court, in a quick, low-cost and simple way <http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm> According to the ODR Regulation, an EU-wide online platform will be set up for disputes that arise from online transactions. The platform will link all the national alternative dispute resolution entities and will operate in all official EU languages. Member States will implement the ADR/ODR rules by July 2015. The ODR platform will be operational in January 2016. Ian Macduff *Civil justice online: mediating transactional and public disputes*, 2014, <http://kluwermediationblog.com/2014/04/27/civil-justice-online-mediating-transactional-and-public-disputes/>

[10] The Treaty of Lisbon considers the possible creation of an actual European Public Prosecutor's Office from EUROJUST.

[11] Articles 67, 81 and 82 of the Treaty on the Functioning of the European Union

all levels of jurisdiction and all locations from Sicily to Lapland should have an adequate level of knowledge of Union law and national judicial systems.

7. The European Parliament has always considered judicial training as an important tool for the creation of a common judicial culture and has adopted several resolutions on that topic since 1991.

The European Commission has supported European projects on judicial training since the creation of the European Area of Justice, Freedom and Security in 1999. In 2006, it adopted a Communication to push for the development of European judicial training for all legal professions.[12]

The Lisbon Treaty (2007) has given the EU a specific legal basis for action in judicial training in civil and criminal matters.[13]

In the Stockholm Programme adopted in December 2009, the European Council requested that the Commission propose an "Action plan for raising substantially the level of European judicial training". This move followed a Council Resolution from December 2008 highlighting the importance of Member States' support to the training of judges, prosecutors and judicial staff in the EU.

8. On 13 September 2011, the European Commission has adopted the Communication "Building trust in EU-wide justice: a new dimension to European judicial training".[14]

Training for judges and prosecutors is a priority as they are responsible for the enforcement and respect of Union law, but judicial training is also essential for other legal practitioners. Court staff needs to assist victims in line with the European framework. European citizens exercising their right to free movement may encounter situations where they need the services of lawyers or notaries with expert knowledge of Union legislation. All legal practitioners have a role to play to ensure that participation of children in judicial systems is optimal.[15] Training of law enforcement officers is also important for law enforcements officials.

9. The following policy areas could be considered as priorities for training: environmental law; civil, contract, family and commercial law, competition law, intellectual property rights; criminal law (in particular the implementation of the European arrest warrant), crime against Union financial interests; fundamental rights and data protection. Priorities may also be set where the EU has identified low compliance with some sectoral legislation or where sectoral legislation is highly complex and technical.

[12] Communication from the Commission to the European Parliament and the Council on judicial training in the European Union, COM/2006/0356 final. See Consultative Council of European Judges (CCJE), Opinion no 4 of the CCJE to the attention of the Committee of Ministers of the Council of Europe on appropriate initial and in-service training for judges at national and European levels <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp>

[13] Articles 81.2 and 82.1 of the Treaty on the Functioning of the EU

[14] COM(2011) 551 final

[15] COM(2011) 60

10. Exchanges are one of the best ways to obtain hands-on knowledge of Union instruments and other legal systems, to exchange experience and thus increase mutual trust and understanding. Exchanges should be organised during initial training by national judicial training institutions. From the outset, it would enable judges and prosecutors to appreciate and fully engage in the European aspect of their role.

11. Investment in e-learning is also necessary, particularly to address the time constraints faced by legal practitioners.

Mastering a foreign language and its legal terminology is important and should form part of the continuous training of legal practitioners. It is a precondition to effective contacts across Member States, which are in turn the cornerstone for judicial cooperation.

12. The European Judicial Training Network (EJTN)[16] is the principal platform and promoter for the development, training and exchange of knowledge and competence of the EU judiciary.

Founded in 2000, EJTN develops training standards and curriculum, coordinates judicial training exchanges and programmes and fosters cooperation between EU national training bodies.

The European Judicial Training Network (EJTN) plays an important role. It:

- coordinates cooperation between the national judicial training institutions;
- publishes an online catalogue of short courses concerning various areas of law organised in EU countries;
- develops 'train the trainer' activities and recommendations for common curricula;
- organises exchanges between judges and prosecutors, mainly in courts.

European judicial training projects are also developed by groups of national judicial schools and by:

- EU level training structures such as the:
  - European Academy of Law (ERA)[17]
  - European Institute of Public Administration (EIPA)[18]
  - European University Institute (EUI) of Florence[19]
  - College of Europe[20]

- European judicial networks and professional organisations such as the:
  - Council of Bars and Law Societies of Europe (CCBE)[21]

[16] <http://www.ejtn.eu/>
[17] <https://www.era.int/>
[18] <http://www.eipa.nl/en/antenna/Luxembourg/>
[19] <http://www.eui.eu/>
[20] < https://www.coleurope.eu/>
[21] <http://www.ccbe.eu/>

- Council of the Notariats of the EU (CNUE)[22]
- International Union of Judicial Officers (UIHJ)[23]
- Association of European Administrative Judges (AEAJ)[24]

13. European judicial training on the Union acquis, whether at national or European level, remains modest. In May 2011, 51% of judges and prosecutors declared that they had never participated in judicial training on Union or another Member State's law while 74% declared that the number of cases involving Union law had increased over the years. 24% of judges and prosecutors had never attended training on Union law because no such training had been available.

With this in mind, in 2011, the European Commission set the objective of training 700000 legal practitioners – half of all those in the EU - in European law or the law of another member state, by 2020. This purely quantitative goal must be achieved with training of good quality.[25]

The Commission's work on the future financial perspectives takes into account European judicial training as a priority area.

II. EVALUATION OF PROFESSIONAL PERFORMANCE OF JUDGES

14. Mutual confidence amongst the judiciaries of the EU is required to promote mutual recognition and respect for judicial decisions in other Member States and to improve the functioning of the judicial systems throughout the EU.[26]

Judges and prosecutors should proceed on the general assumption that, even though another EU legal system may not be similar, it has the same fundamental guarantees.

In order to strengthen mutual confidence, the following steps should be taken:

- Evaluation and maintenance of minimum standards and minimum procedural safeguards;
- Promotion of judicial training;
- Strengthening existing judicial networks and the creation of new links between judiciaries, Councils for the Judiciary, courts and interpreters; and
- The creation of a database of judicial decisions in other Member States on the interpretation and application of relevant European and national legislation

[22] <http://www.cnue.be/>
[23] <http://www.uihj.com/en/>
[24] <http://www.aeaj.org/>
[25] Report on European judicial training 2011 <http://ec.europa.eu/justice/criminal/files/report_on_european_judicial_training_2011_en.pdf>
[26] ENCJ, Distillation of ENCJ Guidelines, Recommendations and Principles <http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_distillation_approved.pdf>

1. PROJECT TEAM ON DEVELOPMENT OF MINIMUM JUDICIAL STANDARDS

15. The Project Team on the "Development of Minimum Judicial Standards III" was established by the European Network of Councils for the Judiciary (ENCJ) in September 2012 as a result of the ENJC Workplan 2012-2013 approved by the General Assembly held in Dublin on 10-11 May 2012. The members of the Project Team comprised representatives of 14 member institutions (Belgium, Bulgaria, England and Wales, France, Ireland, Italy, Lithuania, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Slovenia and Spain), as well as representatives of 7 observer institutions (Austria, Germany, Finland, Hungary, Serbia, Sweden and Turkey).[27]

The Project Team was established as a continuation of the work carried out by three former ENCJ Working Groups/Project Teams, the Project Team on "Development of Minimum Judicial Standards II" and Working Groups on "Development of Minimum Judicial Standards" and "Mutual Confidence", in accordance with the conclusions and proposals made in the two former in their Reports 2011-2012 and 2010-2011 and by the latter in its Report and Recommendations 2009-2010. On the basis of the presentations by experts during their working group meetings, the replies to a questionnaire and the discussions in the working sessions, the Working Group on "Mutual Confidence" had drafted a set of conclusions, which included, among others, the following:

- The Judiciary in Europe should understand and accept its role and responsibility in developing minimum standards for the Justice Sector. A set of representative standards should be developed by the ENCJ.
- The Judiciaries of Europe should also be prepared to take the next step for evaluating compliance with these minimum standards. These common minimum standards and their evaluation will contribute to mutual confidence. Councils for the Judiciary through the ENCJ should take the lead in this (when appropriate in cooperation with others).
- Subjects that could be taken forward are amongst others competences/judicial appointments criteria, judicial training; process of information; judicial ethics (deontology). The process of developing these common standards is a goal in itself as well. The evaluation of these standards should be on the basis of dialogue and reciprocity.

The Report of the Working Group on "Mutual Confidence" also contained some proposals for future action by the ENCJ, including:

- The ENCJ should develop a set of representative minimum standards for the Justice Sector.

[27] Text comes from: ENCJ Project Team, Development of Minimal Judicial Standards III, Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, Report 2012-2013
<http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_minimum_standards_iii_approved.pdf>

- The ENCJ should study the feasibility of evaluating the compliance with these minimum standards. These standards should be evaluated on the basis of dialogue and reciprocity.

2. SUMMARY OF PROPOSALS

A. PROPOSALS OF MINIMUM STANDARDS REGARDING EVALUATION OF PROFESSIONAL PERFORMANCE OF JUDGES AND (WHERE RELEVANT) PROSECUTORS

16. As a result of the activities of the Project Team two basic types of systems of evaluation of professional performance of members of the judiciary among European countries have been identified: formal and informal systems of evaluation. The evaluation of professional performance of judges in Common Law jurisdictions (England and Wales, Ireland, Northern Ireland, Scotland, Cyprus, Malta) and in some other countries (such as Norway, Sweden and the Netherlands) tends to be made in an informal way, which excludes a formal bureaucratic and predetermined procedure where a previously defined body with responsibilities in this area issues a decision on the professional performance of the judge subject to evaluation.

On the other hand, European continental countries in line with the tradition of Civil Law (for instance, Austria, Belgium, Bulgaria, France, Germany, Hungary, Italy, Lithuania, Portugal, Romania, Spain and Turkey) have developed formal and complex mechanisms for the evaluation of the professional performance of judges (and often also of prosecutors), the basis of which tend to be regulated in primary legislation further developed in internal regulations of the respective Council for the Judiciary or Ministry of Justice. The differences in the two basic types of systems of evaluation of professional performance of members of the judiciary must be born in mind when trying to define minimum standards in this area, since most of the standards must refer necessarily to formal systems of evaluation of professional performance.

Informal systems of evaluation of professional performance are, by essence, less adjustable to a set of minimum standards.

All systems of evaluation share the common premise that the professionalism of the judge represents both the main source of legitimacy of the judicial function and a strong guarantee of its independence.[28]

B. POTENTIAL AIMS OF THE SYSTEMS OF EVALUATION

17. The following potential aims of the system of evaluation of professional performance have been agreed upon by the members of the Project Team:

[28] CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE), Opinion no 11 (2008) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions

- To improve the efficiency of the judicial systems.
- To safeguard of professional quality of judges, in order to improve the service provided by the judicial systems to the public.
- Skill development of judges, including continuing training if this appears to be necessary in view of the outcome of the evaluation.
- To prevent problems and malfunctions of the judicial systems.
- To improve the motivation and satisfaction of judges in the development of their professional activities.
- To improve management and leadership abilities within the judiciary and, indirectly, judicial accountability and public confidence in the judicial systems.

C. CRITERIA APPLIED TO THE EVALUATION OF PROFESSIONAL PERFORMANCE

18. Mechanisms of evaluation of professional performance of judges should ensure the preparation and competence of judges through the substantive verification that the judge subject to evaluation possesses a professional background suited to the exercise of judicial functions.

The criteria for the evaluation of professional performance of judges should be varied and comprehensive, including quantitative and qualitative indicators, in order to allow a full and deep assessment of the professional performance of judges.

Any method of evaluating professional performance on basis of the quality of judicial decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis.

The activities and decisions of judges should be evaluated strictly in accordance with the principle of the judicial independence without checking the legitimacy and validity of separate procedural decisions.

The quantity of the work done by a judge can be one of the criteria utilised in the evaluation of judicial performance. This method of evaluation of professional performance allows an assessment of whether cases have been handled within an appropriate timeframe, or whether a backlog exists that may justify the allocation of additional resources and the taking of measures aiming at its reduction or elimination.

The rate of success of the appeals against decision should be used cautiously as one of the various criteria for the evaluation of professional performance, since it does necessarily reflect the quality of the decisions subject to appeal.

D. COMPETENT BODY TO CONDUCT THE EVALUATION OF PROFESSIONAL PERFORMANCE

19. The procedures for the evaluation of professional performance of judges or (where relevant) prosecutors, ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved.

The body in charge of evaluation of professional performance of judges could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary), independent national or regional evaluation boards or committees, or the heads of the appropriate courts (or prosecution offices) or even the head of the judiciary.

The Ministry of Justice as a body of the executive branch of power should not directly deal with the evaluation of professional performance of individual judges as a unique body of evaluation, since it could pose a threat to judicial independence.

E. PROCESS FOR THE EVALUATION OF PROFESSIONAL PERFORMANCE

20. The process of evaluation of professional performance of judges must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process of judges (and prosecutors, where relevant): it should be independent of political influence, fair in its assessment procedures, open to all members of the judiciary and transparent in terms of public scrutiny. Moreover, the process should be based on the judge's past professional performance, using different sources of reliable information.

In case of a formal mechanism or system of evaluation of professional performance there is a need for a specific, formal procedure, whose basic rules should be established by primary legislation.

The legal acts and regulations concerning the evaluation of the performance of judges should stipulate in a clear and exhaustive manner all the relevant aspects pertaining to the evaluation.

The procedure for evaluation (particularly if it is a formal one) should allow for the judge (or public prosecutor) in question to have access to the documents being examined and to actively participate or be heard in the process by expressing his/her own point of view about his/her professional performance and commenting on any critical remarks.

Any judge subject to the evaluation of professional performance is entitled to know the outcome of the evaluation, especially if the decision on the evaluation entails negative consequences for the judge in terms of professional career, economic benefits, or the imposition of specific obligations. That implies the need for an independent complaints' or challenge process to which any judge subject to evaluation may turn if he or she believes that s/he was unfairly treated in the evaluation process.

F. PROPOSALS OF MINIMUM STANDARDS REGARDING IRREMOVABILITY OF JUDGES

21. The principle of irremovability extends to the appointment or assignment of a judge to a different office or location without his/her consent (i.e. a judge may not be transferred to a different post or switched to other functions without his/her consent). Nonetheless, there are acceptable exceptions to this general rule when a mandatory transfer of a judge to other duties, court or location has been ordered under specific circumstances as determined by law or otherwise established in a general, abstract manner, including by way of disciplinary sanction or in cases of ascertained inability to perform the judicial functions at the current post in an adequate, independent and impartial manner. The principle of irremovability renders it imperative that the grounds for transfer of judges be clearly established and that a mandatory transfer be decided by means of transparent proceedings conducted by an independent body or authority without any external influences and whose decisions are subject to challenge or review.

There is a need for a definition of disciplinary offences for which a judge may be removed from office and for disciplinary procedures to comply with the due process requirements, including the possibility of challenge, appeal or judicial review against the decision issued by the competent body in the area of judicial discipline.

This independent body in charge of judicial discipline could be the appropriate national Council for the Judiciary (or a specific disciplinary committee or department within the Council for the Judiciary), independent national or regional disciplinary boards or committees, the heads of the appropriate courts or even the head of the judiciary.

III. ELECTRONIC TOOLS

22. It has been said that the cyberspace environment also needs cyber justice. Traditional justice does not adapt well to this new social order, since it approaches the resolution of conflicts on an independent basis, not taking into account the benefits provided by the use of computers. There is no doubt whatsoever that when applied appropriately, technology can make a significant contribution to improving the accessibility and efficiency of judicial systems. It is clear that this will require important changes in procedural law and in the way in which legislation is written and conceived.[29]

European e-Justice is the use of information and communication technologies in the area of justice at EU level. It serves to improve citizens' access to justice, to facilitate procedures

[29] ENCJ Working Group e-Justice <http://www.encj.eu/images/stories/pdf/workinggroups/ejustice20082009.pdf> Some judges' concerns and areas of interest in this field are: Protection of data and fundamental rights; DNA profiles and databases; Legal articles, studies or decisions on crimes committed with information and communication technologies (cybercrime); Criminal investigation and new technologies; Judicial rulings on the implementation of Directives that affect or refer to e-justice; Audiovisual piracy; Protection of intellectual and industrial property rights; International court jurisdiction in cases of civil liability on the internet; Legislative framework for the international activity of information society service providers; Decisions concerning conflicts in the online environment; The electronic judicial document; Procedural consideration of the so-called electronic evidence (2008-2009 Report ENCJ Working Group e-Justice).

within the EU and to make the resolution of disputes or the punishment of criminal behaviour more effective.[30]

This initiative is integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and to strengthen cooperation between administrative and judicial authorities.

Information Technologies (IT) should be a tool or means to improve the administration of justice, to facilitate the user's access to the courts and to reinforce the safeguards laid down in Article 6 European Convention on Human Rights (ECHR)[31]: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings. The introduction of IT in courts in Europe should not compromise the human and symbolic faces of justice1. 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. This is best seen when evaluating the demeanour of litigants and their witnesses, which is an exercise performed in a court of law by the judge trying the case.[32]

23. The most visible part of European e-Justice is the European e-Justice Portal.[33]It is a one-stop-shop, targeted at citizens, businesses and legal practitioners. Lawyers, notaries and judges can get access to legal databases, contact colleagues through judicial networks and find information on European judicial training. They can also find practical information on arranging multi-country videoconferences. The European e-Justice Portal includes a section on European judicial training which will be enriched progressively by additional documents and training tools to reach more end-users.

24. e-CODEX (e-Justice Communication via Online Data Exchange)[34] is an e-justice project to improve the cross-border access of citizens and businesses to legal means in Europe as well as to improve the interoperability between legal authorities within the EU.

25. Another element is the European Criminal Records Information System (ECRIS).[35] It allows for the exchange of information between EU countries through the electronic interconnection of criminal records databases.

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[30] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - Towards a European e Justice Strategy SEC(2008)1947 SEC(2008)1944 /COM/2008/0329 final /

[31] <http://www.echr.coe.int/Documents/Convention_ENG.pdf>

[32] CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE), Opinion No.(2011)14 of the CCJE, "Justice and information technologies (IT)" <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp>

[33]<https://e-justice.europa.eu/home.do> With more than 12 000 pages of content –in 23 official EU languages- , the portal provides a wealth of information and links on laws and practices in all EU countries. The resources range from information on legal aid, judicial training, European small claims and videoconferencing to links to legal databases, online insolvency and land registers. It also includes user-friendly forms for various judicial proceedings, such as the European order for payment.

[34] <http://www.e-codex.eu/home.html>

[35] Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States; Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System

1. VIDEOCONFERENCING AS A PART OF EUROPEAN E-JUSTICE

26. Videoconferencing is an efficient tool that has the potential to facilitate and speed up cross-border proceedings and to reduce the costs involved. In the context of European e-Justice, video-conferencing may be a new concept but it is one that already exists and has been widely used at national level, and which can still be developed further at European level and as an integral part of the European e-Justice portal.[36]

The European e-Justice action plan approved by the Council in November 2008[37] states that simplifying and encouraging communication between the judicial authorities and the Member States is of particular importance (e.g. videoconferencing or secure electronic networks).

In terms of the use of videoconference in cross border cases, studies have shown that from a technical perspective videoconferencing systems employed in different Member States are interoperable. In several Member States videoconferencing equipment is widely available in court rooms. In the absence of technical obstacles more attention should be devoted to awareness-raising about the potential use of videoconferences and to creating practical tools to facilitate videoconferencing.[38]

A. THE FRAMEWORK FOR VIDEOCONFERENCING

27. More use could be made of the possibilities under existing Community legislation, in particular conducting witness, expert or victim hearings via videoconferencing, in accordance with legal instruments such as:

- The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[39] (Convention of 29 May 2000, the 2000 MLA Convention, Article 10).
- Council Regulation (EC) on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (No 1206/2001 of 28 May 2001, Article 10(4) and Article 17(4)).[40]
- Council Directive relating to compensation to crime victims (2004/80/EC of 29 April 2004, Article 9(1)).[41]
- Regulation (EC) of the European Parliament and of the Council establishing a European Small Claims Procedure (No 861/2007 of 11 July 2007, Articles 8 and 9(1)).[42]
- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA of 15 March 2001, Article 11(1)).[43]

[ECRIS] in application of Article 11 of Framework Decision 2009/315/JHA<http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm>

[36] Tex comes from: Videoconferencing as a part of European e-Justice, <https://e-justice.europa.eu/content_videoconferencing-69-en.do>

[37] OJ C 75, 31.3.2009, p.1.

[38] <https://e-justice.europa.eu/content_videoconferencing-69-en.do>

[39] OJ C 197, 12.7.2000, p. 24.

[40] OJ L 174, 27.6.2001, p. 1.

[41] OJ L 261, 6.8.2004, p. 15.

[42] OJ L 199, 31.7.2007, p. 1.

For most EU Member States most of these instruments are already applicable.[44]

B. VIDEOCONFERENCING TODAY

28. Currently there is already some information available concerning the use of cross-border videoconferencing in criminal or civil and commercial proceedings. It is clear that videoconferencing can be a useful tool in these proceedings[45]. The taking of evidence is the most important use of videoconferencing in cross-border proceedings. Videoconferencing has proven especially practical in cases involving the hearing of vulnerable or intimidated witnesses. Furthermore, expert hearings (e.g. of forensic and medical experts) conducted via videoconferencing have ensured a more effective use of resources. For a number of countries, videoconferencing has also proved to be a practical option for administrative proceedings.[46]

The European Judicial Network in criminal matters[47] provides a special service called Atlas, which helps potential users of videoconferencing to check the availability of equipment at the other court.

EUROJUST[48] has been successfully using videoconferencing technology in many cross-border investigations for the past years.

C. SOME GOOD PRACTICES

a. Creating a booking system for videoconferencing – Austria

29. Austria has created a centralised booking system for the national courts for videoconferencing. The system is available for all national courts and it is possible to make direct bookings for the courtrooms with videoconferencing equipment.

b. Making videoconferencing flexible – Finland

30. Finland has started installing different kinds of videoconferencing equipment for different purposes. For the court sessions, there is a complete set, with high-definition HD quality of picture in cameras and screens. For the preliminary hearings, there is a separate set for meeting rooms. For hearing witnesses there is a basic set with a terminal, camera and

[43] OJ L 82, 22.3.2001, p. 1.
[44] Typical videoconferencing scenarios, <https://e-justice.europa.eu/content_videoconferencing-69-en.do>
[45] Available information on cross-border videoconferencing: European Judicial Network in civil and commercial matters: <http://ec.europa.eu/civiljustice/index_en.htm> (Links under Taking of evidence and mode of proof); European Judicial Network: <http://www.ejn-crimjust.europa.eu/> (Links under Mutual Legal Assistance); Studies in judicial cooperation in civil and commercial matters: <http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm>; Study on the application of Council Regulation (EC) N°1206/2001, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matter: <http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm >; Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research (Article by Molly Treadway Johnson and Elizabeth C. Wiggins, in LAW & POLICY, Vol. 28, No. 2, April 2006)
[46] < https://e-justice.europa.eu/content_videoconferencing-69-en.do>
[47] <http://www.ejn-crimjust.europa.eu/>
[48] <http://www.eurojust.europa.eu/>

microphone. For mobile use, e.g. in social centres, hospitals, asylum centres etc. the portable solution is available, including a laptop with software and a camera.

c. Assisting vulnerable witnesses – United Kingdom

31. In the United Kingdom, remote witness room videoconferencing links have been installed in a handful of Victim Support Offices and police premises as part of centrally funded national rollouts.

d. Utilising interpretation in videoconferencing –Germany

32. A simultaneous interpreting facility has occasionally been inserted into the videoconferencing equipment, so that an interpreter can be used in proceedings in which a number of defendants speak a foreign language. In administrative court proceedings, interpreters have also been involved via a video conference link in order to reduce costs.

e. Speeding up the process – United Kingdom

33. Virtual Court, as a video link between a court and a police station, has made it possible to deal with first hearings within 2-3 hours of charge in simple cases and has the potential to hear a significant number of first hearings on the same day. Speed of process has proved an asset in cases involving domestic violence and many victims and witnesses are expected to receive a more responsive service.

2. e-CODEX (e-Justice Communication via Online Data Exchange)

34. e-CODEX is a large-scale project designed to improve access by European citizens and businesses to legal resources across borders - specifically information on laws and procedures in other EU countries.[49] Moreover, the project seeks to improve the interoperability of the information systems of legal authorities within the EU, and supports the implementation of common standards and solutions that make cross-border case-handling activities easier.

Belgium, Germany and the Netherlands establish electronic cross-border cooperation between the national prosecuting authorities. The solutions of e-CODEX enable this cooperation between the "Tri-national working group on digitalisation of EURegios' cross-border communication in criminal matters" and e-CODEX. The new pilots focus is on secure data exchange for criminal matters.

The new e-CODEX Pilot EURegio started between Belgium, Netherlands and North Rhine-Westphalia on March 17th 2014. [50] In Aachenthe representative of Belgium (Hubert Cooreman), the ministers of Germany (North Rhine-Westphalia, Thomas Kutschaty) and the Netherlands (Ivo Opstelten) officially kicked-off the cooperation, which contributes

[49] <http://www.e-codex.eu/home.html> e-CODEX fits into the logic of the Council Action Plan on European e-Justice and the communication 'Towards a European e-Justice Strategy ' published by the Commission (COM/2008/0329 final /).
[50] The project involves 17 participants

to the realisation of the EU-Convention 2000 on Mutual Assistance in Criminal Matters and its Additional Protocol 2001.

A. ABOUT THE PROJECT

35. The aim of the project is:

- Contributing to the implementation of the EU legal framework and the e-Justice action plan, in due respect of subsidiarity
- Achieving interoperability between existing national judicial systems
- Enabling all Member States to work together towards a more effective judicial system in Europe
- Improving the effectiveness and efficiency of the processing of the increasing number of cross-border proceedings, especially in civil, criminal and commercial matters
- Contributing to a safer environment for citizens inside the EU
- Modernizing the judicial systems in Europe
- Increasing collaboration and exchange between judicial systems of the Member States

The use of ICT makes judicial procedures more transparent, efficient and economic while facilitating access to justice for citizens, businesses, administrations and legal practitioners. In the long-term, fully electronic European procedures could be created.[51]

To achieve a pan-European interoperability layer, e-CODEX will build on national solutions as well as on the European e-Justice Portal , contributing to the further development of the latter.

Connecting the existing systems will allow communication and data exchange based on the development of common technical standards and foster cross-border cooperation in the area of European e-Justice.

36. The following building blocks will be addressed by developing common approaches and standards:

- e-Identity management for natural and legal persons, roles, mandates and rights, user authentication and authorisation;
- e-Signatures - verification and implementation;
- e-Payment ;
- e-Filing, exchange of documents and data;
- Document standards.

B. PILOTS

37. e-CODEX will demonstrate and measure how e-Justice services can contribute to achieving the goals of the e-Justice Action Plan. This will be done through the validation of

[51] European Small Claims Procedure <http://ec.europa.eu/justice/civil/commercial/eu-procedures/small_claims/index_en.htm>

the specifications, modules and systems developed – it is the reality check rolled out to several business / service cases and countries across Europe.

38. For the purpose of the pilots, five procedures have been identified as use cases:

- *European Payment Order (EPO)*[52]
  based on Regulation (EC) No 1896/2006 of the European Parliament;

  The swift and efficient recovery of outstanding debts is of paramount importance for citizens and companies in the EU, as late payments constitute a major reason for insolvency threatening the survival of small, medium-sized and even large businesses and resulting in numerous job losses. The EU has taken the initiative to simplify and speed up the recovery of uncontested monetary claims in cross-border cases by creating a harmonized European order for payment procedure.

  Cross-border communication used to be mainly paper-based. This e-CODEX pilot will implement the necessary technical interfaces for secure electronic cross-border submission of business documents from the European order for payment procedure.

- *Small Claims (SC)*[53]
  based on Regulation (EC) No 861/2007 of the European Parliament;

  The small claims procedure is based on European regulation. It seeks to improve and simplify procedures in civil and commercial matters where the value of the claim does not exceed 2 000 € excluding interest, expenses and disbursements.

  The Small Claims Procedure operates on the basis of standard forms. It is a written procedure unless an oral hearing is considered necessary by the court. This pilot will enable European Union citizens and companies to process civil claims and deliver related documents online.

  Cross-border small claims used to be complex and time consuming. With the help of e-CODEX the procedure will be fully available online. It will be simpler, faster and more secure. e-CODEX will help to eliminate existing barriers in legal disputes that cross national borders.

- *Secure cross-border exchange of sensitive judicial data*[54]
  based on Council Decision 2005/671/JHA of 20 September 2005;

  Secure cross-border exchange of sensitive data is based on a desire to increase the cross-border communication between judicial authorities particularly in combating terrorism and cross-border crime. This pilot will help the relevant parties to deal with the cases in

[52] <http://www.e-codex.eu/pilots/european-order-for-payment.html>
[53] <http://www.e-codex.eu/pilots/small-claims.html>
[54] <http://www.e-codex.eu/pilots/secure-exchange-of-data.html>

which any kind of cross-border judicial cooperation among European Member States is needed by means of the electronic exchange of sensitive data.

The target group for this pilot is judicial authorities. This pilot will allow the transmission of any kind of judicial documents or information between judicial authorities in different EU countries, provided that certain conditions as to the legibility and reliability of the document received are observed. This will help to improve and expedite the transmission of judicial and extrajudicial documents across borders within Europe.

The aim is to get better interaction between judicial authorities and less travel of judges or any other legal practitioner involved. It will shorten the time it takes to reach decisions and to issue a judgment with the right resources available at the right time.

- *European Arrest Warrant (EAW)*[55]
  based on Council Framework Decision 2002/584/JHA of 13 June 2002;

  The aim of the European Arrest Warrant (EAW) is to avoid the exploitation of open borders within the European Union to evade justice. It requires each national executing judicial authority to recognise requests for the surrender of a person made by the judicial authority of another Member State (the issuing judicial authority). It is to be used when a Member State considers it necessary to have a person present on its territory in order to prosecute that person or to put them in upon that person.

  In e-CODEX, the EAW pilot will focus on the electronic transmission of the arrest warrant and exchanges between the issuing and the executing authority.

  It is important that justice adapts to a Europe with open borders and takes advantage of technological progress to improve its processes. The EAW improves the system and provides judicial authorities with an efficient mechanism to ensure that offenders are not able to evade justice within the European Union.

  e-CODEX will take the EAW process a step further. Via the electronic transmission of the EAW, the process will be much faster and more secure than in the paper world. By setting up a common solution, e-CODEX will reinforce the harmonisation of procedures and practices around EAW in the Member States participating in e-CODEX. It will also make the process more efficient and less cumbersome for judicial authorities.

- *Mutual recognition of financial penalties*[56]
  based on Framework Decision 2005/214/JHA of 24 February 2005:

  The principle of mutual recognition of decisions applies to financial penalties. The competent authorities must recognise decisions relating to financial penalties transmitted

[55] <http://www.e-codex.eu/pilots/european-arrest-warrent.html>
[56] <http://www.e-codex.eu/pilots/financal-penalties.html>

by another Member State without any further formality. Financial Penalties apply to the obligation to pay a sum of money on conviction of an offence imposed in a decision. This covers actions such as participation in a criminal organisation, terrorism, trafficking in human beings, trafficking in arms, swindling, trafficking in stolen vehicles, rape or event penalties for road traffic offences.

Previously, many of these offences went unpunished due to their transnational nature. The Member States of the EU lost income because they were unable to collect the related fines. This also meant that offenders were sometimes not punished for their crimes and had no incentive to change their behaviour. The Framework Decision on the mutual recognition of financial penalties changed this situation so that financial penalties can now be executed across borders.

Today's systems of enforcement are rapidly evolving thanks to the use of information technology. A step in this process is the digitization of documents to exchange legal information between EU-countries. The e-CODEX project will help to facilitate this exchange of documents in a cross-border context.