

DIGITAL JUSTICE – A STEP TOWARDS DIGITAL SINGLE MARKET?

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ABSTRACT

The paper highlights the new phenomenon of digitalisation in legal practice. Globalisation, cross-border economy and the lockdowns due to the SARS – Covid 198 pandemic speeded the transition from personal to the digital settlement of legal matters, including disputes. The paper discusses whether the digital legal service and distribution of justice are temporary phenomena or they mean a significant and permanent change. The author introduces the recent development of the Digital Single Market in the European Union, focusing on legal cooperation. Based on the examples from the Czech Republic, the author argues that digital justice is an inevitable need for the new era of digitalisation. Persons and legal entities who handle all matters, including contacting state authorities online, will not proceed back to paper and personal work. The paper concludes that digital justice must be a part of the national e-government and the European digital single market. The author uses the method of desk research and analysis of documents and practical examples.

***Keywords:** digitalisation, justice, legal practice, digital single market, e-government*

INTRODUCTION

When describing the 21st century, we use many adjectives. D. Bell, when analysing new social phenomena of the coming period, uses the notion of post-industrial society. Bell predicted that the technologies and knowledge management would completely change global society's economic and occupational scatter. [1]

The globalised society needs digital literacy and a multidimensional, multi-civilisational and universalist way of thinking and looking at the world. [2] The loosening of borders speeded up the economic changes. Technological development led to the worldwide opening of economic, scientific and cultural scissors between states. Especially economic and war migrations have become an everyday reality. SARS-COVID-19 pandemic completed changes in the global society. The emphasis on increasing the economy's performance is one of the primary consequences of a pandemic and migration. The mentioned phenomena influence all other social needs and demands.

The European Union (EU) and its member states had and still have to react to the recent development to ensure their countries' competitiveness and sustainable development.

Therefore, introducing information technologies in public services is essential and inevitable. The current state administration, including the judiciary, should be user-friendly and offer addressees an easy way to communicate. The OECD describes the e-Government as supporting administrative processes, improving the services' quality, and increasing internal public sector efficiency. Digital public services reduce the administrative burden on businesses and citizens by making their interactions with public administrations faster, more convenient, transparent, and less costly. In addition, using digital technologies as an integrated part of governments' modernisation strategies can unlock further economic and social benefits for society.[3]

However, the cross-border economy and the digital society do not mean only positives. They are always connected with negative impacts as various types of unlawful behaviour influence private businesses and state and governmental activities.

DIGITAL SINGLE MARKET IN JUSTICE

The European Union and its member state created the Digital Single Market (DSM) in 2015 to exploit the possibilities and advantages of digitalisation. E-Justice forms one of the basic building blocks of the rule of law in the EU and the national states, as digital justice is an inevitable need in the upcoming years. The web sites, <https://e-justice.europa.eu/>, devoted to cooperation in legal matters, offer a set of formulas and information on national and EU laws and enable entry into public company registries. The cooperation in criminal matters through European Arrest Warrant and Public Prosecutor's Office is well established.

It is necessary to examine the topical challenges in administrative, commercial, and civil matters. Persons and legal entities who handle all matters, including contacting state authorities online, will not proceed back to paper and personal work. The digitalisation in member states shall influence further procedures and development in the Justice Digital Single Market and vice versa. DSM is a tool to help reduce pandemics' impacts and economic crises. When the post-crisis period comes, it will be necessary to set up interoperability across Europe in justice matters. The justice should be able to communicate with the users and between the respective judicial authorities online. Remote access and standardisation should be the first option for every participant and the public service. [4]

The end of 2021 and the whole year 2022 are signs of the extended EU digitalisation, which are based on Europe's Digital Decade targets till 2030. Modernisation and information exchange form the core of digital justice. The

European digital identification (e- ID) should include an interoperable digital signature and improve access to national and cross-border public services. [5] However, the practical implementation depends on economic possibilities, human capital, connectivity and integration of digital technology into everyday life and public services of each member country.

DIGITAL LEGAL SERVICES

The main challenge is how to grasp digitalisation in legal practice. E-Justice cannot be limited just to the courts, state prosecution, probation or prison service or other public services administered by the Ministry of Justice. The material rule of law demands broad access and enforceability of laws.

That is why regulated legal professions like attorneys, public notaries, and executors form part of legal services, even if their role in the judicial system differs. The state empowers notaries and executors to exercise public office and administration. The role of advocates is variable based on whether the legal system is Anglo-American or continental, which does not have the entire adversarial court procedure.

Playing their diverse roles, the lawyers mentioned above have a comparative legal education. They all must dispose of a similar digital literacy. However, its use depends on the material possibilities of each part of the judiciary. There are differences not only between EU member states but also directly between individual national judiciary components. Big multinational attorneys' offices' material and personnel possibilities are much more robust when comparing small local advocates and the state administration.

A global information society enables sharing of information, rationalising service delivery, and spreading of highly innovative technologies in legal services. However, entering information technologies into this area might relate to privacy protection or confidentiality duty risks. It could also lead, especially in state services and helping professions, like advocates, to weaken and loosen the relationship between the user or client and the public officer or client's attorney. [6] The pandemic speeded the demand to move from conventional face-to-face legal services to remote information sharing. In many cases, the attorney becomes more guide than someone who provides complete information, as consultancy generally moves into the virtual space.

Legal offices and professional associations opened websites with legal advisory services. Trust, client interest protection, and confidentiality form the core and basis of the relationship between a legal advisor and her client. Digitalisation changes daily practice.

Modern technologies enable better access to data sharing, as most files are kept in electronic format. Protecting personal data and providing information

about a case is the most critical legal services challenge. The client-attorney privilege covers communication and the exchange of information.

However, using cloud computing and storing documents, including blockchains, is quite risky in legal services. The technology supports systems and decentralised applications that operate independently and implement their internal rules, which often ignore or attempt to circumvent traditional control systems. The rules of code govern them. The rule of law in cyberspace might be suppressed, and the law may lose its regulation effect. [7]

The human factor is another issue. Requests for frequent access to remote repositories lead to the fear that colleagues often share their logins and passwords. Confidentiality is endangered, even if the employees have the same duty. The Czech Supreme Court underlined the significance of electronic files and cloud computing in connection with the confidentiality duty and the client-attorney privilege. The unifying opinion Tpjn 306/2014 from 25.06.2015 states: *"Premises in which a lawyer as any space that is related to the practice of advocacy and in which there is, therefore, information about clients whether in written, electronic or another form. "*

The Supreme court opinion, which is binding for courts, except for the Constitutional Court, was very much needed. Since then, the courts have ruled that just the attorneys' registered seat, branches or domicile enjoy the protection of the confidentiality duty.

Also, judges and state prosecution moved to virtual courtrooms, met procedural parties and heard evidence via Skype, Zoom or other technologies. Remote hearings enabled to deliver the justice even in disrupted times, where distancing was necessary. It also allowed for precise scheduling and avoiding obstacles with movement restrictions during lockdowns. Technological issues were the most challenging, as many courts, other state authorities, and participants did not have good access to the internet or equipment. The translation for non-native speakers or hearing evidence from the custody, uploading and sharing of documents were other obstacles during the procedure. That is why the court hearings were longer than usual. [8]

Judges also warned about the inability to observe participants' authentic reactions and nonverbal expressions, as mentioned below. The court hearings are public. Some researchers argue that online hearing limits public access. Others found that a virtual courtroom enables broad public participation. Nevertheless, everyone agrees that e-justice has changed public access to the judiciary and open justice. [8] [9]

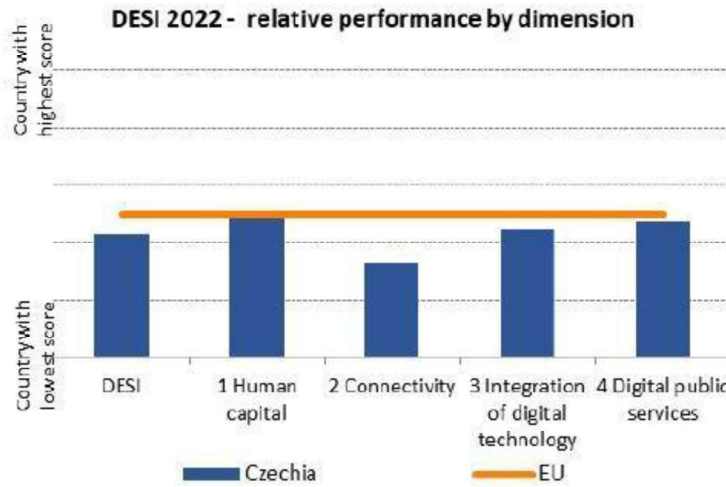
LEGAL AND SOCIAL FRAMEWORK OF DIGITAL JUDICIARY IN THE CZECH REPUBLIC

The Czech Republic introduced digitalisation and computerisation of the public sphere in the late 20th century. A series of essential laws on digitalisation has been adopted. Law No. 365/2000 Coll., on Information Systems of the Public Administration, started the real drive towards getting total values of information technologies within the public administration itself and especially towards the users. Law No. 308/2008 Coll., on Electronic Legal Acts and the Authorised Conversion of Documents, introduced a completely new system of information exchange between the public administration, courts and other authorities on the one hand and the private sector, including advocates, public notaries and executors. Generally, all regulated professions with compulsory membership in the professional association have the so-called electronic data mailbox. The system was launched in 2009. It ensures quick and safe communication and accessibility of state authorities anytime and anywhere in the world. [10] Later, the mentioned benefit became the risk due to the tax authorities' interpretation of deadlines for tax obligations. The financial administration argued that the possibility of accessing the data box at any time means that it is possible disregarding non-working days. The tax subject should fulfil the obligations anytime. The Supreme Administrative Court, in its recent decision 4 Afs 264/2018 from 26 May 2022, ruled that the forms could also be delivered personally or per post. In such cases, deadlines depend on the office hours and working days. That is why they must be the same for all communication between the state and the user. This case shows one of the risks of digitalisation - the requirement for constant online availability.

The Act on the Right to Digital Services, No. 12/2020, completed the delineation of digital public services. Every user can access public authorities online. The courts and public administration shall not demand any documents or evidence if it is in a digital public registry or available in their archive. The Law on Archival and File Services, No. 499/2006 Coll., stipulates for digitalisation of all files and documents of the public authorities.

So, the legal framework for digital public services is quite comprehensive and enables the online sharing of information nationally and internationally. Despite this, the Czech Republic ranks nineteenth among the 27 EU countries.

Fig. 1. Digital Economy and Society Index (DESI) score for 2022.



Source: <https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2022>

The lack of information technology specialist breaks the digitalisation of public services and the judiciary. Despite this, public servants have average digital skills. Human capital scores 45,6, just 0,1 points under the EU score. The connectivity score is 52,7, which is relatively low compared to the EU average of 59,9. Access to public services, especially to the courts, is limited because of the requirement for e-Identity, data mailbox or verified digital signature. The state offers digital signatures, accepted by public authorities, as a paid service. Moreover, they must be renewed every year.

Even if in the integration of digital technology, the Czech Republic generally occupies the nineteenth place in the EU (score 36,1) with a score of 33,8, electronic files and information sharing are widespread in the public service. Special software developed for courts allocates files to judges based on random selection. This arrangement should prevent corruption or influence the court proceedings.

Each court enables access to the court officials via e-mail. The electronic official board and court websites introduce information to the public and participants. The Constitutional Court, the Supreme Court and the Supreme Administrative Court publish their decisions on the electronic board. The mentioned high courts have English websites. The Constitutional Court publishes the most important rulings in English and enables participants electronic access to files. The Supreme Court summarises the case's merits, including the decision, in English. [11]

Mentioned possibilities became a very positive shift in the last decade. However, the judiciary first serves national subjects. The participant starts the

litigation at the regional and district court before she moves to high courts. The author argues that the first instance and appeal courts should provide electronic access to files, publish their decisions daily on the official electronic board and provide essential information in English. The digitalisation of everyday justice remains in the testing phase. The only reliable information on the lower court's website is the date and hour of the proceedings. The databases of regional and district courts' rulings do not exist, and even the judge does not know about the decision delivered by the colleague next door.

The author underlines that the DSM in judicial services is impossible without alternating and modernising the first instance and appeal courts.

According to the author's practical experience, the advocacy adopted digitalisation quickly in the last two decades and uses modern online marketing and remote communication. The bigger the attorney's office, the more the work depends on computing. Legal search engines, cloud contracts and application patterns, available for all advocates and other employees, belong to the standard software equipment of any office. Artificial Intelligence (AI) helps in researching literature and case law. Many advocates promote their practice through online counselling online. The Czech Bar Association (CBA) provided an explanatory opinion on online legal services. CBA underlines that the advocate must always distinguish between general legal information or commentary on the case law or judgment and the legal advice in a specific case. The website user must be able to understand the difference, too. [12] The author confirms that the clients prefer personal service after addressing the attorney by e-mail or phone. The bellow mentioned example verifies it.

The Union of family advocates in the Czech Republic oped the so-called Coro Counselling. Volunteering members helped people to solve their family, social, and legal issues online and by phone. Coro Counselling was active for 14 months, from March 2020 to June 2021. The lawyers and psychologists answered about 25.000 questions. [13] The author, as an attorney and member of the Union, participated in the remote counselling. The insights and communication were often more open than in personal client meetings. However, if the case was complicated and required multiple consultations, clients preferred phone or skype calls. They considered the direct conversation with an attorney was more personal and enabled a better explanation of their matters.

CONCLUSION

The author has already devoted her research to the issues of the digitalisation of public space and its legal consequences – see sub references 6 and 10. Her knowledge develops and changes over time and through various practical experiences. Also, the theoretical basis expands and enriches itself. Many findings have standard features and confirm the concluding considerations and remarks.

Global information society requires new legal, managerial, and practical approaches to the daily and long-term tasks of the judiciary. The legal system and the rule of law belong to essential tools. The state administration, courts, legal advisors and public officers must move from the old part of lordly decision-making to the cooperative and supporting manager position. The introduction of digitisation and AI into legal services, justice and international cooperation would help solve many problems on both theoretical and practical levels. Digital technologies speed, cheapen and make the daily administration and repetitive routine work more efficient and less time-consuming. [6]

Remote communication, cloud archives, blockchains and the possibility of an instant phone call, SMS, or e-mail because of good signal coverage almost all over the world intensify the pressure on performance. Nevertheless, efficiency does not mean constant work readiness. The occupational stress by judges, prosecutors and advocates can lead to burn-out syndrome or vicarious trauma. The enormous pressure on being available anytime and anywhere online encroach on personal time. One of the leading digital era benefits is the possibility of working in a quiet remote environment, which may lead to social withdrawal, isolation, and personal problems. The legal professional must therefore find a balance between work and free time. [14]

Being a digital legal professional needs supervision, relaxation programmes and sabbaticals. Prominent attorneys' offices are more progressive in this direction than the public authorities. Internships, change of working groups or preventive healthcare could be reasonable solutions for public servants, including judges and prosecutors.

The judiciary always includes the human factor, which is incalculable and unpredictable. As mentioned above, the judges are concerned about dehumanisation and unacceptable decision-making. It is always necessary to preserve the individualisation of the case when delivering the judgement. In 2018, the vice-president of the Supreme Court warned that even if the most significant perspective for a fast and efficient court procedure lies in its complete digitalisation., judging- deciding on human disputes, fates, guilts, and punishments should forever remain in the hands of people. [15]

The internet provides much legal information, as the reference list shows. However, digitalisation is the mean; the lawyer is the one who explains, advises, and acts.

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