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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges and court staff

QUESTIONNAIRE

Denmark

**This copy of the questionnaire was filled in by the Danish delegation
on 21 February 2011**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges/court staff

1. Access to courts

- a) May legal proceedings be instigated by electronic means? *No. For the time being no case could be instigated by electronic means. The Land Registration Court however uses electronic means.*
- b) Is there relevant legislation? *Yes. According to the Land Registration Act (as amended by act number 539 from 2006) registrations of titles to land, mortgages and other charges are currently handled entirely on the basis of electronic means. General legislation on the matter was passed in year 2004, but has not entered into force, ref. section 148a and 156a of the Administration of Justice Act. The minister of justice is authorized to decide, when these sections (and similar sections in other acts) shall enter into force.*
- c) What are the main requirements for instigating legal proceedings by electronic means? (multiple choice possible)
- ☐ The parties must submit the claim with a qualified electronic signature
 - ☐ The parties must fill in a downloadable form to be submitted electronically
 - ☒ Other, please specify. *Entry into force of the legislation on digital communication will take place, only when courts are technologically ready to receive files electronically. An improved administrative system may be ready during the second half of 2011, and said system is expected to pave the way for a partial implementation of section 148a. Qualified electronic signature is used in the Land Registration System. Also section 148a presumes, that electronic claims or communications are to be submitted using an electronic signature.*
- d) To what extent are legal proceedings instigated by electronic means in practice? *Not for the time being except for the Land Registration Court.*

2. Procedure within courts

- a) Once a claim has been issued electronically, does the procedure differ from a traditional procedure? *Once the legislation shall enter into force, electronic communication will become part of court procedures, and at that time there will not be any difference.*
- b) Does the electronic procedure differ according to the type of case (civil, criminal, administrative, etc.)? *It is too early to tell. Section 148a is a framework for both civil and criminal cases. The Danish Court Administration is authorized to set down more detailed rules concerning digital communications with the courts, se section 148a, part 2. Such rules have not yet been issued.*
- c) How does the court communicate with the parties? *The presiding judge has the power to determine in which manner communication from the Court to the parties shall be exchanged. This may therefore include any of the below options, ref. section 154 part 1 of the Administration of Justice Act. For the time being electronic communication from a court however is without prejudice to legal effects for instance of absents, cut off of procedural time limits etc.*

<i>With parties who use electronic means themselves:</i>	<i>With other parties:</i>
☒ by traditional means?	☒ by traditional means?
☒ by using electronic communication?	☒ by using electronic communication?
☒ both?	☒ both?

- d) Do specific electronic means exist for the communication between lawyers and courts? Please specify. *In the Land Registration System the Land Registration Court exchanges encrypted e-mail correspondence with lawyers, banks and others, who have facilities to operate encrypted e-mail correspondence. All Danish courts have facilities for informal e-mail correspondence, so it is possible for lawyers to correspond with the courts in an informal way.*
- e) Do electronic files exist? *Yes, in the Land Registration System. Except for the Land Registration Court there are no official electronic court files. The official court files are in hard-copy, but judgements and other communications from the court are normally also saved electronically.*
- If an electronic file exist, is there a paper file as well? *Yes, except in the Land Registration System.*
 - If both exist, which is the "authentic" file? *The paper file, except in the Land Registration System.*
- f) If yes, is there relevant legislation? *Se section 148a and 156a of the Administration of Justice Act, section 237a and 237b of the Insolvency Act, section 115a and 115b of the Administration of the Estates of Deceased Persons Act and the Land Registration Act.*
- g) What are the main requirements with respect to electronic files? *Except for the Land Registration System practical arrangements have not yet been put in place.*
- h) Are there special regulations and safeguards with respect to electronic files containing particularly sensitive information (e.g. health information, information concerning secret services)? *Yes. According to the Act on handling personal data, particularly sensitive personal information may not be recorded, kept or used except as required in order to exercise judicial power.*
- i) What happens when the authenticity of an electronic document is doubtful/controversial among the parties? *According to the Land Registration Act a registered document normally will be upheld, if the beneficiary is in good faith. The question does not appear to relate to procedures within other courts. Disagreement between the parties of a case regarding the authenticity of a document will be handled according to the facts of the individual case. There are no special provisions for disagreement regarding electronic documents except in the Land Registration Act and in the Danish act concerning dealing with securities, se chapter 19 in this act.*
- j) If parties wish to submit documents which are **not** in an electronic form (e.g. documents on paper), what procedure will the parties and the courts follow? *It is no longer possible in the Land Registration System to submit documents on paper for registration. Persons without a digital signature have to make use of an authorized person with a digital signature. In the other courts parties may submit documents on paper at any time.*
- k) Must paper documents be kept? If yes, how long? *Yes. The duration of archiving differs.*

l) What is the procedure when a judge's or court clerk's hand signature is prescribed? Does digital signature exist? *Denmark has an elaborate official system for digital signatures. A judge or a court clerk, however, may not use their digital signature to sign official correspondence. A physical signature on paper is required. High security digital signature is used by court staff only for registration in the land register.*

m) Do parties have access to the complete court file:

- ☒ Yes, always (normally)
☐ Yes, but only with specific conditions
☐ No

Please indicate, if appropriate, the relevant legislation. *About parties' access to court documents in civil cases see chapter 24 in the Administration of Justice Act. About parties' access to court documents in criminal cases, please see chapter 66 in the same act. The access does not include internal working document such as records of the courts' deliberations. In criminal cases, access can be restricted when it is strongly needed in the interests of foreign states, the security of the state, the investigation of the case or the security of others.*

n) Do the parties or their lawyers have the possibility to follow the state of the proceedings via internet (secured)? *No.*

o) Is the access to electronic files within the court regulated? Please specify. *Yes, it is regulated by internal procedures.*

p) Have judges/court staff access: *(Court files are in paper format. Access requires physically browsing paper documents.)*

Judges		Court staff	
☒	to all court files?	☒	to all court files?
☐	only to files within their jurisdiction?	☐	only to files within their jurisdiction?

3. Oral hearing

a) Are there oral hearings based on electronic means (e.g. judges act based on electronic files accessible in computer)? *That may happen.*

b) Are the expertise, the draft decision written by the rapporteur and personal notes accessible for judges in computer? *Yes, in partial.*

c) Is the complete file accessible for the parties or their lawyers during the hearing (also in computer)? *No.*

d) Has technical equipment been installed in courts enabling to project documents on screens visible to judges, parties and audience? *Generally no. A handful of court rooms are equipped with such devices as part of a pilot scheme to gain experience in support of future investment decisions.*

e) Are oral hearings audio or video recorded? *Yes. In approximately half of the courts, audio recordings are made in criminal cases of defendant's and witnesses' evidence.*

f) Is video conference in public hearing used:

- ☐ for the hearing of witnesses?
☐ for the hearing of experts?
☐ for the hearing of parties?
☐ other? Please specify.

Please indicate the relevant legislation as well as the restrictions, if appropriate. *All of the above may apply; nevertheless video conferences take place so far mostly on an experimental basis and only in a handful of court rooms.*

- g) If possible, please detail how many courts have been equipped with an adequate and sufficient electronic equipment to assist judges, court clerks and parties during oral hearings?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic files access	☐	☐	☐	☒
Electronic data base of jurisprudence	☒	☐	☐	☐
Screen projectors	☐	☐	☐	☒
Internet access	☒	☐	☐	☐
Video conferencing	☐	☐	☐	☒
Audio conferencing	☒	☐	☐	☐
Video recording	☐	☐	☐	None
Audio recording	☐	☒	☐	☐

4. Information services for judges

Are there central databases accessible for judges containing:

Database run by State	Database run by a private institution
X national legislation	X national legislation
X European legislation	X European legislation
☐ national case-law	X national case-law
☐ international case-law	X international case-law
☐ law review articles	X law review articles

Please specify the private institution. – *Thomson Reuters dominates the market.*

5. Practical court work

- a) What is the work of the judge:
- in writing the documents? *Some judges prefer to type some documents by themselves.*
 - in delivering the documents? *No work*
 - in registering the documents? *No work*
- b) What is the work of the court staff:
- in writing the documents? *To type documents based on hand-written drafts or dictation machine recordings.*
 - in delivering the documents? *This is done by specialized staff.*

- in registering the documents? *This is fully the job of the court staff*
- c) Is there enough staff to do this work? Please specify. *Yes.*
- d) Do judges write their decisions themselves on their computer? *Yes, some judges prefer to do so.*
- e) Do judges use specific techniques (e.g. voice recognition, structure or model of decision available in a database)? Please specify. *No.*
- f) Is modern technology used to monitor the length of proceedings and for case flow management within the court (eg. alert system)? *Yes.*
- g) Are data concerning the work of each judge contained in a database which can be used for statistics, evaluations, etc.? Please specify. *No.*

6. Internet

- a) Is internet accessible for each judge in his/her office? Is this access limited ? Please specify. *Accessibility: Yes. Access limitations: No.*
- b) Do all courts have their own website? Please specify which court and the content of the website. *Yes. All Danish courts have websites. There are 31 different sub-sites, one for each court. They can all be accessed via www.domstol.dk. They contain practical information such as business hours, telephone numbers, news, lists of cases to be held, job opportunities, statistics. A common policy for website contents applies to all courts. Each court maintains its own sub-site.*

7. Use of private personal computers/laptops by judges and court staff

- a) May a judge use his private PC/laptop for professional purposes (e.g. at home or on the way home and back?) *No. All judges are, however, offered to use an electronically secured remote desktop access system. This enables them to access the computer systems of their court from their home without compromising data safety.*
- b) May e-mails be sent from the court to a judge's private e-mail address and vice versa containing professional information? *No.*
- c) Does this require special technical safeguards (e.g. excluding access by third persons, family members, etc.)? Please specify. *N/A*
- d) Is the situation the same for all court staff? *Remote desktop access is for selected staff only.*

8. Use of data

- e) Is the data contained in the procedure used for another aim than the procedure itself? *Yes, for statistical purposes only.*
- f) Is this data used for statistics? *Yes, it is used for statistical purposes.*
- g) If yes:
 - who produces these statistics? *The Court Administration.*

- how and by whom are these statistics used? *By the courts themselves and by The Court Administration. Statistics are used in order to analyze the case flow and productivity at the courts. Allocation of resources may in part be based on such statistical data.*

9. Data security

a) Does legislation exist to protect personal data processed through the electronic infrastructure of a court?

☒ Yes
☐ No

b) If yes, are there requirements applicable to processing data in courts? *Internal regulations*

☐ rules on access to data by the person concerned or other persons/institutions
☐ correction and deletion requirements
☐ other. Please specify.

c) If there is a general Data Protection Commissioner, has he or she already dealt with IT at the judiciary? *No such commissioner.*

d) Is there a special Data Protection Commissioner in each court (e.g. a judge with this additional task)? *No such commissioners.*

10. Participation of judges

Who decides about the electronic infrastructure of a court? Are judges implicated in the relevant decisions concerning the implementation of IT in courts? *The Court Administration decides. Judges and staff take part in planning and discussions, mostly such work is organized as committee work.*

11. Conclusion

Please give your opinion on the advantages and disadvantages of the development of IT in courts?

The use of information technology in Danish courts follows the same principles that apply for e-government.

E-government has come a long way the past recent years, and Denmark occupies a leading position in this field. The goal is to keep and improve this position. With its new strategy, the Government and the local authorities will build on the good experiences and further improve the unique Danish way of cooperating and taking joint initiatives in order to seize the opportunities arising in an increasingly digitalized society.

Digitalization shall be focused on creating improvements in the service to citizens and businesses;

Digitalization shall enable resources to be transferred from an administration focused to a citizen-focused service

Coordination and prioritization of digitalization efforts in the public sector shall be implemented through increasing cross-governmental collaboration at all levels.

An e-government strategy exists. An English translation of the Danish e-government Strategy for 2007-2010 may be accessed at

http://modernisering.dk/fileadmin/user_upload/documents/Projekter/digitaliseringsstrategi/Danish_E-government_strategy_2007-2010.pdf.

A new strategy paper that will cover the period to 2015 will be issued during 2011.

OECD published its evaluation of the Danish e-government project in April of 2010. OECD concluded that Denmark is at the front of development and implementation of digital government services.