



17 June 2021

CEPEJ(2021)1

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

"FOR A BETTER INTEGRATION OF THE USER IN THE JUDICIAL SYSTEMS":

Guidelines

**and comparative studies on the centrality of the user in legal proceedings in civil matters
and on the simplification and clarification of language with users**

*Document adopted by the CEPEJ at its 36th plenary meeting
on 16 and 17 June 2021*

CONTENT

GENERAL INTRODUCTION	5
-----------------------------------	----------

PUTTING THE USER AT THE CENTRE OF THE LEGAL PROCEEDINGS IN CIVIL MATTERS

GUIDELINES

INTRODUCTION	6
---------------------------	----------

1. Reducing formalities to the strict minimum and offering a “right to rectification” of defective acts..... 7
2. Restoring procedural rights to users which they have lost because of a fact that is not imputable to them..... 7
3. Ensuring that the plurality of jurisdictions within the same legal system does not harm the user..... 7
4. Ensuring that in cases in which several means of appeal are available against the same judgment the differences between them are sufficiently clear to enable the person concerned to apply to the competent authority..... 8
5. Giving to the users appropriate information on the proceedings to which they are a party 8
6. Ensuring that written communication via existing official forms and templates leaves a degree of flexibility, rather than relying on blind formalism 8
7. Encouraging the user’s right to be heard personally by the judge 9
8. Taking users’ needs into account when framing the obligation to give reasons for judicial decisions.. 9

COMPARATIVE STUDY

INTRODUCTION	10
---------------------------	-----------

I : SETTING UP CIVIL PROCEDURE AND THE JUDICIAL SYSTEM FROM THE USER’S VIEWPOINT ...12

1. Reducing formalities to the strict minimum and offering a “right to rectification” of defective acts..... 12
2. Restoring procedural rights to users which they have lost because of a fact that is not imputable to them..... 14
3. Avoiding that the plurality of jurisdictions within the same legal system may harm the user 16
4. Cases in which several means of appeal are available against the same judgment 18

II: IMPROVING INTERACTION BETWEEN COURT USERS AND JUDGES19

1. Users’ right to be given appropriate information on the proceedings to which they are a party 19
2. Written communication via pre-determined forms and templates? 21
3. The user’s right to be heard personally by the judge 23
4. Users’ right to obtain a reasoned decision 25

SIMPLIFICATION AND CLARIFICATION OF LANGUAGE WITH LITIGANTS, PARTICULARLY IN THE DRAFTING AND COMMUNICATION PHASE OF JUDICIAL DECISIONS

GUIDELINES

INTRODUCTION	27
1. GUIDELINE ON TRAINING	27
Prepare training on oral and written communication with litigants for judges and court staff with topics such as: rhetoric, use of non-scientific language, psychological issues, dealing with angry or emotional persons, etc.	27
2. GUIDELINE ON MANUALS AND OTHER RECOMMENDATIONS	28
Create special manuals, guidelines, or recommendations regarding written and oral communication with litigants at court hearings, preliminary hearings, or other dealings with the court users (at the reception desk, ADR proceedings, etc.) while respecting the independence of the judge	28
3. GUIDELINE ON TEMPLATES AND DESIGN FOR DRAFTING JUDICIAL TEXTS	28
Create special textual templates for courts' final decisions and for other court texts while respecting the independence of the judge	28
4. GUIDELINE ON INFORMATION BROCHURES AND WEBSITES	29
Create special tools providing information to court users	29
5. GUIDELINE ON THE EVALUATION OF THE ORAL AND WRITTEN SKILLS OF JUDGES	30
Develop tools for evaluation of the oral and written skills of judges, which are not in opposition to judges' independence	30
6. GUIDELINE ON A PUBLIC E-PLATFORM FOR JUDICIAL DECISIONS AND OTHER IT TOOLS	30
Develop an e-platform for judicial decisions and other IT tools with special care given to plain and clear language.....	30
7. GUIDELINE ON QUALITY MEASUREMENTS	31
Provide a measurement of court users' satisfaction, with special care given to user-friendly language	31

COMPARATIVE STUDY

INTRODUCTION	32
1. GUIDELINE ON TRAINING	34
1.1. Trainings for judges related to oral communication	34
1.1.1. ExampleS.....	34
1.2. Trainings for judges related to written communication.....	35
1.2.1.ExampleS.....	35
1.3. Training for court staff	36
1.3.1. Example	36
1.4. Conclusion.....	36
2. GUIDELINE ON MANUALS AND OTHER RECOMMENDATIONS	36
2.1. Communication with litigants on court hearings.....	36
2.1.1. ExampleS.....	37

2.2. Judge's decision's writing	37
2.2.1.Examples	37
2.3. Other court texts (non-final judge's decisions, invitation letters, etc.)	39
2.3.1.ExampleS.....	39
2.4. Conclusion.....	39
3. GUIDELINE ON TEMPLATES AND DESIGNS FOR DRAFTING JUDICIAL TEXTS	40
3.1. Special textual templates for court's final decision.....	40
3.1.1.ExampleS.....	40
3.2. Special textual templates for court texts of the trial proceedings (invitation to the hearing or preliminary hearing etc.).....	41
3.2.1. ExampleS.....	41
3.3. Design of the court's writing	42
3.3.1. ExampleS.....	42
3.4. Conclusion.....	42
4. GUIDELINE ON INFORMATION BROCHURES AND WEBSITES	42
4.1. ExampleS.....	43
4.2. Conclusion.....	44
5. GUIDELINES ON THE EVALUATION OF THE ORAL AND WRITTEN SKILLS OF JUDGES.....	44
5.1. ExampleS.....	44
5.2. Conclusion.....	45
6. GUIDELINE ON PUBLIC E-PLATFORMS FOR JUDICIAL DECISIONS AND OTHER IT TOOLS	45
6.1. ExampleS.....	45
6.2. Conclusion.....	47
7. GUIDELINE ON QUALITY MEASUREMENTS	47
7.1. ExampleS.....	47
7.2. Conclusion.....	49
CONCLUSION.....	49
APPENDIX : BIBLIOGRAPHY	50

GENERAL INTRODUCTION

The place of the litigant and the apprehension of the latter as a user of the public service of justice are at the heart of the reflections led by the CEPEJ and its working group on the quality of justice (CEPEJ-GT-QUAL).

As early as 2005, the Consultative Council of European Judges (CCJE) pronounced itself on the educational role of courts in a democracy as well as on the accessibility, simplification and clarity of language in judgments and decisions¹. He stressed that if justice was the cornerstone of democratic constitutional systems, its maintenance at the heart of the city presupposed that it opened up to the outside world and learned to make itself known. This was the *sine qua non* condition for those subject to the law to respect it and give it the confidence necessary to fulfil its mission.

At the same time, the evaluation conceived by the CEPEJ, initially limited to the jurisdictional performance, was then enriched by also taking into account the perception that the users have of the functioning of the public service of justice². Thus, a checklist for the training of courts in the framework of user satisfaction surveys and a manual for carrying out these surveys in the courts of the Council of Europe member states have been drawn up, alongside guides and guidelines on issues directly or indirectly affecting the relationship of the judicial system with users, such as the judicial map, the accessibility of court buildings, court communication and digital justice.

In the continuity of its previous work, and in line with the recommendations of the Consultative Committee of European Judges, the CEPEJ has entrusted its working group on the quality of justice with the task of elaborating two new comparative studies enriched with guidelines.

The first study concerns the simplification and clarification of the language with litigants, in particular at the stage of drafting and communicating judicial decisions. In order for a litigant to accept a decision, he or she must understand it and grasp its procedural path and legal logic. While it is not a question of denying the specificity of legal language, it is, on the contrary, a question of "achieving this democratic objective of reconciling it with everyday language"³. On the basis of the good practices observed in the Member States, seven guidelines have been developed in this sense.

The second study concerns the desire to place the user at the centre of judicial procedures in civil matters. Starting from the observation that Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the right to a fair trial sets out several cardinal principles whose scope may restrict the place of the litigant in civil matters, it suggests several options likely to strengthen the consideration of the latter. Through the prism of the organisation of procedural rules on the one hand, and the strengthening of interactions with the judge on the other, its eight guidelines are part of a collective effort to make the law intelligible, which is inherent in any democratic society⁴.

Thanks to these two comparative studies and the guidelines which result from them, the CEPEJ thus intends to feed the movement started several years ago in the European countries so that, to quote Jean-Paul JEAN, "the citizens in justice are not any more treated as simple litigants (in the original sense of persons convened in justice by an institution which dominates them), but as users of an institution respected also because it respects them as subjects of right"⁵.

¹ Opinion No. 7 (2005) of the CCJE on "Justice and society"

² Jean Jean-Paul, "Du justiciable à l'utilisateur de la justice", *Les Cahiers de la Justice*, 2013/1 (No. 1), pp. 13-20. DOI: 10.3917/cdlj.1301.0013. URL: <https://www.cairn.info/revue-les-cahiers-de-la-justice-2013-1-page-13.htm> "Two conceptions of the evaluation of the functioning of the public service. The one that starts from the top (top down) to conduct a public policy offering the best possible level of service to all users, by measuring overall performance and relying on statistical devices and more or less relevant indicators, and the one from the bottom (bottom up) integrated into a quality policy, which starts from the users whose perception evolves according to their personal experience of the service actually rendered, but also from the perception they have of it through the usual stereotypes (slowness, cost, inequality) and mediated court cases."

³ Association syndicale des magistrats, *Dire le droit et être compris - Comment rendre le langage judiciaire plus accessible*, Guide pour la rédaction des actes judiciaires, Preface by Paul MARTENS, Anthémis 2nd edition, 2018, 156 pages.

⁴ "Dire le droit et être compris", *Les Cahiers de la Justice*, 2014/4 (No. 4), pp. 527-528. DOI 10.3917/cdlj.1404.0527. URL: <https://www.cairn.info/revue-les-cahiers-de-la-justice-2014-4-page-527.htm>

⁵ Jean Jean-Paul, 'Du justiciable à l'utilisateur de la justice', *Les Cahiers de la Justice*, 2013/1 (No. 1), pp. 13-20. DOI 10.3917/cdlj.1301.0013. URL: <https://www.cairn.info/revue-les-cahiers-de-la-justice-2013-1-page-13.htm>

GUIDELINES

INTRODUCTION

Court users, who have been a focus of attention for the Council of Europe for many years, have often been at the heart of the work of the CEPEJ. Several of the CEPEJ's studies look into various aspects of judicial systems and procedures as seen from the user's viewpoint.⁶

It is no surprise, therefore, that the CEPEJ's GT-QUAL working group should have decided to further develop its work from the user's point of view. Research into legal procedures in civil-law matters was thus undertaken for the following purposes:

- placing the user at the heart of civil judicial proceedings because justice is a key public service when it comes to securing the rule of law and social cohesion;
- ensuring that the justice system is always organised and run as a tool to protect the public's rights;
- ensuring that users retain genuine trust in the justice system regardless of the outcome of proceedings concerning them, because such trust is essential in all democratic societies.

The independence and impartiality of judges and the compliance with the reasonable time requirement are prerequisites to achieve these goals. Once this has been achieved, other measures are necessary to strengthen the citizen's right to be heard by a judge and to reinforce the principles of transparency and accountability, two basic principles that directly involve the citizen in the judicial process.

The first of these envisaged measures is to establish procedural rules and judicial systems which are founded on the user's viewpoint. Then, there is a need to improve the interaction between users and judges: if the user has the impression of being relegated to the role of a passive onlooker in the proceedings they will very likely feel that they have been a victim of summary justice, even if the "finished product", i.e. the judicial decision, is beyond reproach.

This prompted us to adopt Article 6§1 of the ECHR and the relevant case law of the European Court of Human Rights as a starting point, a minimum standard which we might even exceed with the aim of making users even more central to judicial proceedings. We have also drawn ideas from judicial practice in various Council of Europe member States, with a focus on the non-professional user, whether assisted by a lawyer or otherwise.

The main results of this analysis are concentrated in the eight guidelines set out below, which are further developed in the appended study.

⁶ See for example its court user satisfaction surveys (Handbook for conducting satisfaction surveys aimed at Court users in the Council of Europe's member States - (12/2016)), the reform of judicial maps in Europe to facilitate access to the courts (Guidelines on the creation of judicial maps to support access to justice within a quality judicial system - (06/2013)), the organisation and accessibility of court premises (Guidelines on the organisation and accessibility of court premises - (12/2014)), the use of information technologies to share information between users and courts. Most recently, see the chapter on court users in the CEPEJ Evaluation Report on European Judicial Systems (Assessment Cycle 2020 - data 2018), pp. 88 *et seq.*

1. Reducing formalities to the strict minimum and offering a “right to rectification” of defective acts

Organising the judicial procedure from the user’s viewpoint should entail, first of all, making changes to the procedural rules so as to allow users to take part actively, and then doing away with all formalities which result more from a tradition, however venerable it may be, than from the need to ensure that the trial is conducted properly.

Subsequently, and with the same goal in mind, it should become a general rule that any procedural act should be validated retroactively where the goal of a formal requirement that was not fulfilled in the case in question has been achieved in practice.

Lastly, where a procedural defect or any other impediment to the decision on the merits has occurred, the court should not just terminate the proceedings but rather, at its own initiative, give the parties a short time to submit a rectified procedural document, provide the required information or satisfy the requirements that have not been met.

These measures, which may of course be qualified in appeal and cassation proceedings, are based on the idea that the judgment on the merits is the physiological outcome of civil proceedings, the rules governing which are designed to guarantee the rights of the defence and the right to a fair trial.

2. Restoring procedural rights to users which they have lost because of a fact that is not imputable to them

In all judicial proceedings, users enjoy a whole range of procedural rights, which often go hand in hand with procedural obligations, and the former may be lost if the latter are not observed.

From the user’s viewpoint, such consequences are unacceptable if compliance with a time limit or another procedural obligation is physically impossible. The same applies where the failure to meet the time limit or to fulfil a procedural obligation is the fault of the judge or his or her assistants, other public authorities or the opposing party.

Problems of this kind can arise in proceedings at first instance (in the case of a default judgment, for example) as well as on appeal.

So it should generally be provided that negligence is a circumstance which the court must verify before declaring that a user is stopped from exercising a procedural right, and/or that users can ask to be given leave to proceed out of time if they lose a procedural right as a result of facts beyond their control.

3. Ensuring that the plurality of jurisdictions within the same legal system does not harm the user

As it is almost a standard feature of Council of Europe member States’ legal systems for them to have several different courts, three types of measures should be envisaged to make sure that this does not place too heavy a burden on the user.

Firstly, the courts should be allowed to decline jurisdiction only *in limine litis*, at a preliminary stage of the proceedings, as declining jurisdiction in favour of another court at a late stage in the proceedings can cause excessive delays.

Secondly, it should be remembered that conflicts between courts over the attribution of jurisdiction may well deprive users of access to a court. Such is the case in the event of a negative conflict of jurisdiction. It should therefore be provided that (a) once a court has declined jurisdiction and designated the court with jurisdiction, the latter may not decline jurisdiction in turn but must rule on the merits of the case, or (b) that the latter court be allowed to ask a higher court to rule on the potential conflict of jurisdiction and determine once and for all which court has jurisdiction.

Thirdly, in so far as court users may well definitively lose their substantive right as a result of an error regarding the court to which the matter was referred, *translatio iudicii* should be systematically applied, at least in proceedings which have no connection with a foreign country, notably where there is interaction between courts belonging to different judicial orders (e.g. civil courts and administrative courts). This principle may take the

form of referral of the case by the court without jurisdiction to the court with jurisdiction while preserving the procedural relationship, or by the obligation for the party to bring a new action before the competent court, on condition that it provides for the retrospective validation of *lis alibi pendens* including preservation of the effects of the action originally brought before the court which did not have jurisdiction.

4. Ensuring that in cases in which several means of appeal are available against the same judgment the differences between them are sufficiently clear to enable the person concerned to apply to the competent authority

Where several means of appeal are available against the same judgment the differences between them must be sufficiently clear to enable the person concerned to apply to the competent authority in good time.

It may also happen that in a given case the choice of remedy against a judgment depends on how the judge categorises the action brought or on the legal basis of the decision in question. In this case, in choosing which remedy to pursue, the person in question must either accept the categorisation of the action or the legal basis specified by the judge who issued the contested decision, irrespective of its accuracy, or must choose the remedy which seems more appropriate in the light of the categorisation/legal basis which the judge should have specified.

5. Giving to the users appropriate information on the proceedings to which they are a party

Access to certain basic information about the proceedings helps to prevent users from feeling that they have been relegated to a passive role in their trials. When the parties are represented by members of the legal profession the court is entitled to presume that appropriate information has been provided by those representatives, provided that they have easy access to the information they must pass on to the parties.

The information concerned should relate primarily to the objectively foreseeable duration of the proceedings, legal costs (particularly where fees are charged to the parties for opening the file or drafting the judgment), and the potentially prejudicial consequences of the parties' actions and omissions. Furthermore, parties should be able to request information on the progress of their proceedings and relevant explanations when they are unable to understand the purport of certain communications from the court.

In this course of action, the registry and non-judicial staff, who constitute a natural "link" between users and judges, can play a crucial role, even considering the increasing use of information technologies. It cannot be ruled out that the user prefers to keep a personalised interaction with the judicial institution; and more importantly, we must not underestimate the risks of the "digital gap", since not all users always have easy access to these technologies, or a highly developed practical command of digital services and interactions.

States should also put in place specific measures to assist users (or, if necessary, their representatives) in their electronic interaction with the courts.

6. Ensuring that written communication via existing official forms and templates leaves a degree of flexibility, rather than relying on blind formalism

The fact that forms and procedural templates are made available to the public is certainly a valuable means of promoting dialogue between the courts and the parties, insofar as it reduces the number of flawed pleadings and makes it easier for the judge to understand the parties' claims.

However, we must not underestimate the difficulties caused when the forms and templates available do not allow for the specificities of each individual case. It would probably be advisable to provide two types of form, one of which should be as general as possible, for use in the great majority of civil cases, and the other more specific and limited to proceedings of a repetitive and frequent nature.

Above all, we must make sure that the use of standard forms and templates does not make interaction between the user and the judge more complicated.

When the use of forms is compulsory the penalty potentially incurred should never so prejudice the user's position as to jeopardise his or her participation in the proceedings; they should be given an opportunity to rectify the procedural defect. In the same vein, once a certain template has been adopted at legislative level, it is essential to avoid situations where users are faced with several different interpretations of the template in the different national courts, and the concomitant risk that their applications will be declared inadmissible (or that they will lose a certain procedural right).

7. Encouraging the user's right to be heard personally by the judge

Being allowed to address the judge personally gives users the impression that they have been properly involved in the judicial process. Communication in writing or through a representative does not achieve the same result, although it can be much more effective in presenting legal reasoning or discussing the probative value of the evidence that has been filed.

It is useful for the user to be heard in person, for example in situations where one of the parties is in a position of greater vulnerability, in particular when the proceedings concern deprivation of liberty or the conditions under which such deprivation of liberty takes place, or when the person's civil capacity is at stake; the same applies to proceedings concerning minors and cases where the personal conduct of the parties, or their personal knowledge of the factual circumstances, is material.

As the judge's personal hearing of the parties can also facilitate an amicable resolution of the dispute, it would be desirable for the parties to be able to express themselves without fear of making a confession which, in the event of failure of the friendly settlement, could prejudge the outcome of the dispute.

Precautions should also be taken to make sure the personal hearing of the parties is not used to extort a confession.

It is important that during the hearing the judge uses language that can be understood by the user, at least where the user is not represented by a lawyer, and that he or she is given specific training in this respect.

8. Taking users' needs into account when framing the obligation to give reasons for judicial decisions

Judgments should be sufficiently clear for the users to understand them. This means, first of all, a coherent structure of the decision, based on arguments that are clear and accessible. It is essential for decisions to be drafted in terms that are sufficiently clear to be accessible to the public.

A concise reasoning can serve this purpose. At the same time, it is important that reasoning reflects the main pleas raised and addresses the essential aspects of the case, in order to reassure users that the judge has given sufficient attention to their case.

COMPARATIVE STUDY

INTRODUCTION

The idea that state-run public services must show concern for their users is not new. This approach to relations between the authorities and civil society, which originated in the 1980s, has gradually established itself in all the Council of Europe member states. It even formed the basis for a particular trend in administrative science called New Public Management, which first emerged in the 1950s.⁷ This was a general turning point in relations between the state and civil society,⁸ and it is no surprise that it is also applied to judicial institutions, which moreover are entrusted with a public service of the utmost importance, namely protecting litigants' rights, settling disputes and hence upholding the rule of law.

The desire to make justice accessible is reflected in the Council of Europe's recommendations. One of the first of these relating to judicial institutions, adopted in 1981, focuses on ways of improving access to civil justice⁹ and states that "it is [...] desirable to take all necessary measures in order to simplify the procedure in all appropriate cases with a view to facilitating access to justice of the individual". It is also the first mention of the users of public judicial services, referred to here as "the individual". In contrast to the European Court of Human Rights' (ECtHR's) well-known *Golder v. the United Kingdom* judgment, which considers the matter solely from the viewpoint of the right to a fair trial, the aforementioned recommendation takes a much broader approach to the issue. For instance it looks at the information that should be available to the public¹⁰ or means of simplifying the settlement of disputes through increased use of mediation.¹¹

Court users, to which the Council of Europe has been paying attention for many years, have often been at the heart of the work of the CEPEJ. Several of the CEPEJ's studies assess various aspects of judicial systems and procedures as seen from the user's viewpoint.¹²

Now that we have set out these points which justify the choice of the subject matter for this study, it remains for us to delimit the scope of our analysis and provide a few further details.

Initially, it should be noted that in the course of this study, "users" shall be understood to mean persons who have brought a case to court or been sued and hence act as parties in civil judicial proceedings. This means firstly, that this study will not be touching on the question of accessibility of courts, which has already been the subject of numerous surveys¹³ and measures¹⁴ and, secondly, that it will leave aside all matters relating to criminal proceedings.

⁷ Diana Woodhouse., In Pursuit of Good Administration – Ministers, Civil Servants, and Judges, Clarendon Press, Oxford , 1997, pp. 41 et seq.

⁸ Cf. Woodhouse, *op. cit.*, p. 24.

⁹ Rec 81(7) of 14 May 1981 on measures facilitating access to justice.

¹⁰ Articles 2 and 3 of Rec 81(7) of 14 May 1981.

¹¹ Article 3 of Rec 81(7) of 14 May 1981.

¹² See for example its court user satisfaction surveys (Handbook for conducting satisfaction surveys aimed at Court users in the Council of Europe's member States - (12/2016)), the reform of judicial maps in Europe to facilitate access to the courts (Guidelines on the creation of judicial maps to support access to justice within a quality judicial system - (06/2013)), the organisation and accessibility of court premises (Guidelines on the organisation and accessibility of court premises - (12/2014)), the use of information technologies to share information between users and courts. Most recently, see the chapter on court users in the CEPEJ Evaluation Report European Judicial Systems (Assessment Cycle 2020 - data 2018), p. 88 et seq.

¹³ The keystone in the studies on this subject was the Florence Access to Justice Project, the results of which were published in 1978 in four volumes, edited by Mauro Cappelletti and published by the media companies Sijthoff (Leyden and Boston) and Giuffré (Milan); more recent studies are Francesco Francioni (ed.), Access to Justice as a Human Right, Oxford University Press, 2007, and Virginie Donier - Béatrice Lapérou Scheneider (ed.), *L'accès au juge, recherche sur l'effectivité d'un droit*, Bruylant, Brussels, 2013.

¹⁴ In addition to Recommendation 81(7) of 1981, cited above, see Recommendation Rec (2006)8 to Member States on Assistance to Victims of Crime, Checklist for Promoting the Quality of Justice and the Courts, p. 19-21 (Access to Justice) (2008); (Guidelines on the creation of judicial maps to support access to justice within

Secondly, it should be said that this work will focus primarily on non-professional users, namely members of the public. Of course such users may resort to the assistance of a lawyer. Lawyers are crucial players in the relationships between party and judge in the course of judicial proceedings, possessing the necessary knowledge and skills to prevent the technicalities of such proceedings from undermining their clients' rights. The legal assistance of a lawyer is therefore eminently desirable, and should be encouraged through appropriate measures to overcome those obstacles (not just financial ones) which the more deprived and vulnerable users may face.

However, despite measures of this type, it may be that because of the varying traditions in Council of Europe member states vis-à-vis mandatory assistance in the course of judicial proceedings, the litigant is not assisted by a legal professional. Nor can it be ruled out that even where legal assistance is provided, for some reason such as a dissatisfactory relationship with their lawyer, litigants feel uninvolved in the proceedings and lose confidence in the justice system.

Given that the departure point for the analysis will be the viewpoint of non-professional users, the conclusions will be adjusted where appropriate to take account of cases in which litigants have made use of the services of a lawyer.

Thirdly, for the purposes of the assessment, we must look into the role of the guarantees arising from Article 6§1 of the European Convention on Human Rights (ECHR) and the relevant case law of the European Court of Human Rights (the Court).

In the abstract, it would be tempting to think that the guarantees of proper administration of justice enshrined in Article 6§1 of the ECHR are capable of placing litigants at the centre of judicial concerns. This does not seem to us however to be the case. In fact, a large number of the guiding principles for trials serve other purposes, against which the user's needs have to be balanced. For example, compliance with the reasonable time requirement may entail setting up a procedure which is less accessible to litigants but more expeditious. Likewise, access to appeals against judicial decisions – which may be of crucial importance to the losing party – is not safeguarded by the Convention in civil proceedings and is subject to stricter national regulations on conditions for referral than for first instance proceedings. Furthermore, several aspects of the right to a fair trial which the central role of users in proceedings might prompt us to maximise (for example the requirement for reasons to be given for judicial decisions and for public adversarial hearings) are often weighed against other demands which are just as deserving of consideration when ensuring that justice systems are run properly and efficiently. Lastly, users may have difficulties when faced with the requirement to observe the formal rules of procedure. However, this requirement may be deemed “valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court”.¹⁵

In the light of the foregoing, our decision to look at civil judicial proceedings from the viewpoint of users will prompt us to adopt Article 6§1 of the ECHR and the relevant case law of the Court as a starting point, or a minimum standard which we might even exceed with the aim of protecting users still more. In other words, it is not impossible that our conclusions and the measures proposed will give greater weight to the demands of users in the process of balancing them with other guarantees of proper administration of justice, which is the responsibility of public decision-makers.

The focus should be on placing users at the heart of civil judicial proceedings because justice is a key public service whose aim is to secure the rule of law; ensuring that the justice system is always organised and run as a tool to protect the public's rights; and ensuring that users retain genuine trust in the justice system regardless of the outcome of proceedings concerning them because such trust is essential in all democratic societies. Of course, both the independence and impartiality of judges¹⁶ and compliance with the reasonable

a quality judicial system (06/2013), Guidelines on the organisation and accessibility of court premises(12/2014), Access to Justice in Europe, CEPEJ Studies No. 9 (2010).

¹⁵ European Court of Human Rights (ECtHR), *Zubac v. Croatia*, No. 40160/12, judgment of 5 April 2018, § 96.

¹⁶ See, in this connection, the explanatory memorandum to the European Charter on the Statute for Judges and the explanatory memorandum to Recommendation CM/Rec(2010)12 on “Judges: independence, efficiency and responsibilities”; among CCJE activities, it is worth pointing to the **Magna Carta of Judges (Fundamental Principles)** and more recently, Opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence.

time requirement¹⁷ are prerequisites to achieving these goals. Once this has been accomplished, other measures are necessary. The first of these is to establish procedural rules and judicial systems which are founded on the user's viewpoint (I). Then, there is a need to improve the interaction between users and judges (II).

I : SETTING UP CIVIL PROCEDURE AND THE JUDICIAL SYSTEM FROM THE USER'S VIEWPOINT

1. Reducing formalities to the strict minimum and offering a "right to rectification" of defective acts

Civil proceedings, which are triggered by legal action, are governed by a series of rules which protect the rights of the defence and compliance with the guarantees of a fair trial, the practical outcome of which is a judgment on the merits. This is the spirit in which we will approach the formal requirements and conditions for the decision on the merits, in which the possibility of rectification or retroactive validation is always desirable.

1.1. Overview of the case law of the Court

The European Court of Human Rights has pointed out that right of access to a court may be infringed where a litigant is forced to observe formal rules comprising disproportionate requirements.¹⁸ However, restrictions on the right of access to a court are only liable to pose a problem if they are final. Where a legal claim is rejected for a formal defect and may still be filed again, the Court holds that there is no interference with the right of access to a court,¹⁹ or at least that such interference is proportionate²⁰.

With regard in particular to the rules on access to courts of appeal and cassation, the Court often points out, firstly, that Article 6 of the Convention does not force Contracting Parties to set up courts of appeal or cassation and secondly, that if such courts exist, the requirements of Article 6 must be satisfied, particularly where it comes to offering litigants an effective right of access to courts for decisions on their civil rights and obligations. The Court also recognises that the way in which Article 6§1 applies to these courts depends on the special features of the proceedings concerned "and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the Court of Cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal".

According to the European Court of Human Rights, blind observance of formalities which do not contribute to any further understanding as to the subject of a dispute constitutes a disproportionate restriction on the right of access to a court.²¹ This applies even if the formal rule is designed to enable a court to check rapidly whether the criteria for the admissibility of an appeal have been satisfied.²² If a party does not refer correctly to certain legal provisions, this alone is not enough for his or her appeal to be dismissed.²³ However a stricter approach (and hence one which is more prepared to accept the formal requirements provided for in domestic law) is discernible in other judgments.²⁴

¹⁷ See the summary of relevant principles in the study (CEPEJ(2018)26) "Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights", prepared by F. Calvez and N. Regis (3rd edition by F. Regis), pages 8-10.

¹⁸ See the founding judgment, *Levages Prestations Services v. France*, No. 21920/93, judgment of 23 October 1996, Reports of Judgments and Decisions 1996-V. For an example of application: *Boulougouras v. Greece*, No. 66294/01, judgment of 27 May 2004, § 27.

¹⁹ ECtHR, *Ivanova v. Finland*, No. 53054/99, decision on admissibility of 28 May 2002.

²⁰ ECtHR, *Tsenov v. Bulgaria*, No. 28591/03, decision on admissibility of 30 March 2010.

²¹ ECtHR, *Roubies v. Greece*, No. 22525/07, judgment of 30 April 2009, § 41.

²² ECtHR, *Evaggelou v. Greece*, No. 44978/07, judgment of 13 January 2011, §§ 20-24.: the lawyer of a party who appealed to the Court of Cassation omitted to say that he had already assisted him in the appeal court. The admissibility of the appeal on points of law depended on this.

²³ ECtHR, *Běleš v. the Czech Republic*, No. 42273/99, judgment of 12 November 2002, Reports of Judgments and Decisions 2002-IX, §§ 48-51.

²⁴ See, for example, ECtHR, *Trevisanato v. Italy*, No. 32610/07, judgment of 15 September 2016, according to which the requirement – provided for in the Italian legislation in force at the time – to conclude the statement of grounds with a "question of law" was not in breach of Art. 6§1 ECHR, regardless of the fact that in the instant case, the statement of grounds had put the Court of Cassation entirely in a position to understand the applicant's contentions and complaint.

As to the assessment of the proportionality of a given restriction on access to the courts, the Court has highlighted the need to draw “a distinction between an excessive formalism and an acceptable application of procedural formalities” in the light of the requirements of “legal certainty” and “proper administration of justice”: the right of access to a court is held to be “impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court”.²⁵

Although the European Court of Human Rights has never ruled clearly in favour of a right to the rectification of a defective procedural measure, it found against the Czech Republic for interpreting a rectification as a fresh appeal, filed belatedly.²⁶

1.2. National practices and courses of action

The approach generally adopted by the European Court of Human Rights is certainly entirely warranted in the light of the principle of subsidiarity and can also be explained by a desire to respect the national authorities’ margin of discretion.

In our opinion, however, this should not make it impossible, in a more general context, for the question of the technical nature or the formalism of the procedure to be assessed in a different way, at least with regard to first instance authorities.

A) Organising the judicial procedure from the user’s viewpoint should entail, first of all, making changes to the procedural rules so as to allow users to take part actively and then doing away with all formalities which result more from a tradition, however respectable it may be, than from the need to ensure that the trial is conducted properly.

In this connection, we can welcome the fact that reforms undertaken in several member states to improve the functioning of judicial systems and reduce the length of proceedings have led to an “update” of procedural rules and judicial practices. Sometimes these reforms have amounted to a complete break with the approaches deriving from a previous political system. Digitisation or part digitisation of procedures has also helped to modernise procedures and challenge some obsolete rules.

Reference can also be made to the increasingly widespread use of digital signatures on procedural documents, which has almost entirely eliminated procedures relating to their authentication.

In addition, in Italy, it is no longer necessary to ask the registrar to make a copy of the procedural documents, as lawyers can take a copy from the digital case file and authenticate this.²⁷ In Estonia, parties, who used to have to add the originals of documents to the case file, may now simply provide a copy.²⁸

In Germany, the party may propose an amicable settlement or accept the terms of an amicable settlement indicated by the judge not only at the hearing but also in writing.²⁹ In Belgium, the law now stipulates that the parties are no longer systematically obliged to appear personally before the judge to confirm their desire to divorce by mutual consent, the procedure taking in principle place in writing.³⁰

B) Subsequently, and with the same goal in mind, it should become a general rule, as it already is in several member states, that any procedural defect should be validated retroactively where the goal of the formal requirement that has not been fulfilled in the case in question has been achieved in practice.³¹ The formal requirements for procedural measures serve the purpose either of assigning certain powers of response to the parties to the case or assigning these powers or duties to the court; if these goals have been attained despite the procedural defect, declaring them null and void will serve only to impede progress of the proceedings

²⁵ ECtHR, *Zubac v. Croatia*, cited above, § 98 (and the references included therein).

²⁶ ECtHR, *Kadlec and Others v. the Czech Republic*, No. 49478/99, judgment of 25 May 2004.

²⁷ See Article 16-bis, paragraph 9-bis, of Decree-Law No. 179 of 18 October 2012.

²⁸ See Article 273 of the Estonian Code of Civil Procedure, which provides that courts may order that the original of a document is submitted if there is a doubt that it exists or that the copy matches the original. A similar provision exists in Swiss law (Article 180 al. 1 of the Code of Civil Procedure). See also the Austrian ZOP 299.

²⁹ See § 278.6 of the Code of Civil Procedure.

³⁰ Art. 1289 §§ 1 and 2 of the judicial code.

³¹ For example, Albania (Article 119 of the Code of Civil Procedure (CCP)); ITALY (Article 156 CCP).

towards a decision on the merits. There is good reason to recommend this type of approach given that, for example, a rule of this type was introduced into Monegasque law only as recently as 2015.³²

C) Lastly, it should be reiterated that since the main aim of civil judicial proceedings is to settle disputes and protect users' rights, in principle such proceedings should not end in judgments finding that there was a procedural defect or that a prerequisite for a decision to be given on the merits had not been fulfilled (for example, the legal incapacity of one of the parties).

Rectification of procedural defects affecting the parties' acts is possible in some member states at the instigation of the party who committed the irregularity.³³ Furthermore, the legislation of a larger number of European countries enables courts to order rectification at their own initiative.³⁴

It would therefore be desirable to establish the following rule in all the Council of Europe member states: where a procedural defect or any other impediment to the decision on the merits has occurred, the court should not just terminate the proceedings but, at its own initiative, give the parties a short time to submit a rectified procedural document, provide the required information or satisfy the requirements that have not been met. This rule may be qualified where the party has purely and simply omitted to carry out a procedural act.

2. Restoring procedural rights to users which they have lost because of a fact that is not imputable to them

In all judicial proceedings, users enjoy a whole range of procedural rights, which often go hand in hand with procedural obligations, and the former may be lost if the latter are not observed. From the user's viewpoint, such consequences are unacceptable if compliance with a time limit or another procedural obligation is physically impossible. The same applies where the failure to meet the time limit or to fulfil a procedural obligation is the fault of the judge or his or her assistants, other public authorities or the opposing party.

2.1. Overview of the case law of the Court

The European Court of Human Rights does not accept that a private party must suffer the consequences of procedural error committed by a court or its officials. In the *Leoni v. Italy* case for instance, it found that the right of access to a court had been restricted disproportionately by a judgment of the Italian Court of Cassation declaring an appeal inadmissible because of an error in the identification of the date of its registration.³⁵ The same applies where a court declines jurisdiction and transfers a case belatedly to a court with jurisdiction³⁶ or it takes too long to appoint a lawyer to represent a poor litigant.³⁷ If a bailiff serves the wrong document, the national courts cannot make the recipient suffer the consequences of this error.³⁸ Where the available remedies are not properly communicated by a court – in breach of a clear internal procedural rule – the recipient of a notice may rely on the mistaken information and cannot be blamed for failing to check him or herself if the information was correct.³⁹

³² See Law No. 1.423 of 2 December 2015.

³³ Article 66.2 of the Dutch Code of Civil Procedure (in respect of measures taken by bailiffs and provided that the measure or the procedural defect has not been regularised by the court at its own initiative); Article 115 of the French Code of Civil Procedure.

³⁴ See Article 132 of the Swiss Code of Civil Procedure; §84 of the Austrian Code of Civil Procedure; Article 231 of the Spanish *Ley de enjuiciamiento civil*; Article 861.2 of the Belgian Judicial Code; Article 162 of the Italian Code of Civil Procedure (and Article 164 on the invalidity of summons and Article 291 on the invalidity of the serving of summons); articles 340¹ of the code of civil procedure of Estonia; Articles 177.1 and 179.2 of the Romanian Code of Civil Procedure; Article 43 of the Czech Code of Civil Procedure; Articles 119.2 and 130.1 of the Turkish Code of Civil Procedure. The same is true in Norwegian law, but where the defect is strongly attributable to a party, the party can obtain validation only for compelling reasons (Article 16-5 of the Norwegian Code of Civil Procedure). In Dutch law, rectification by the courts is provided for only if a party fails to comply with the rules on the completion of procedural measures by electronic means (Article 30c.6 of the Dutch Code of Civil Procedure) or if specific information is omitted from the document instituting proceedings served on the defendant (Article 120.4 of the Dutch Code of Civil Procedure, referring to Article 30a.3.f and g). In other cases, rectification of a procedural defect at the court's initiative is possible only if the defect has caused no damage to the claimant (Article 122.2 of the Dutch Code of Civil Procedure).

³⁵ ECtHR, *Leoni v. Italy*, No. 43269/98, judgment of 26 October 2000, §§ 21-28.

³⁶ ECtHR, *Freitag v. Germany*, No. 71440/01, judgment of 19 July 2007.

³⁷ ECtHR, *Staszko v. France*, No. 52124/08, judgment of 6 October 2011.

³⁸ ECtHR, *Platakou v. Greece*, No. 38460/97, judgment of 11 January 2001, Reports of Judgments and Decisions 2001-I, § 39.

³⁹ ECtHR, *Lesjak v. Croatia*, No. 25904/06, judgment of 18 February 2010, §§ 35-42.

Lastly, and this should go without saying, courts cannot expect parties to comply with procedural rules if this is impossible in the case in question. For instance, a person without a permanent place of residence cannot be expected to give his or her address in a document instituting proceedings⁴⁰ or to produce an administrative decision which does not exist.⁴¹

2.2. National practices and courses of action

National law establishes general principles, most often in the form of case law, which are similar to those identified in the case law of the European Court of Human Rights.

In German and Austrian law, inaccurate information on available remedies does not prevent the lapse of time limits for appeals but may warrant leave to appeal out of time (*Wiedereinsetzung in den vorigen Stand*; § 233 of the German Code of Civil Procedure; § 146 of the Austrian Code of Civil Procedure) if the error seems to have been the cause of the delay.⁴² This approach has also been adopted by the Swiss Federal Court, the minor difference being that the Swiss supreme court does not require an application for leave to proceed out of time to be filed, but considers that the time limit has lapsed validly only where the recipient of the notice was in a position to detect the error easily.⁴³

The French Court of Cassation⁴⁴ has held that the effect of errors in the information on appeals and the means of exercising them is that the related time ceases running for the recipient of the notice.⁴⁵ In a similar vein, the Spanish Constitutional Court has held that the time limit to present it with an individual appeal (*amparo*) does not expire if an appellant previously filed an inadmissible appeal on the basis of erroneous information provided by the lower court.⁴⁶

In several countries, the failure of a party to appear or to contest the facts alleged by the opposing party has serious consequences as the court may (or even must) give a judgment by default, or at least hold that the facts have been established. Similarly, debtors who receive a payment order may be required to object within a certain time limit to avoid confirmation of the order.

Assistance by a lawyer is probably a sufficient guarantee for parties to proceedings to be able to weigh up the consequences of a failure to contest the facts. However, the same does not apply in the other scenarios outlined above. In this connection, we must welcome: (a) legal systems which make it possible for users to contest judgments by default, arguing that they did not know that they had been summoned to appear or on what date the hearing was to be held or that their failure to appear was the result of another fact beyond their control;⁴⁷ b) legal systems in which debtors can be granted leave to proceed out of time to contest a payment order arguing that there were defects in the way in which it was served, an unforeseen accident or force majeure.⁴⁸

⁴⁰ ECtHR, *Sergey Smirnov v. Russia*, No. 14085/04, judgment of 22 December 2009, §§ 22-33 and ECtHR, *Nowiński v. Poland*, No. 25924/06, judgment of 20 October 2009, §§ 33-36.

⁴¹ ECtHR, *Vasilyev et Kovtun v. Russie*, No. 13703/04, judgement of 13 december 2011, §§ 45-56.

⁴² For a summary of the case law, see: Decision (*Beschluss*) of the Federal Court of Justice of 24 March 2016, IX ZB 67/14, § 12 (Germany); and Supreme Court judgment of 22 December 2004, 7Ob290/04d (Austria).

⁴³ Federal Court judgment 135 III 374.

⁴⁴ See decisions of the 2nd Civil Division of the Court of Cassation of 3 March 2016, on application No. 15-12129, BICC 2016 II No. 1030, and of 4 September 2014, on application No. 13-23.016, Bull civ. II, No. 176.

⁴⁵ Where the judgment is given in an instrument served by a bailiff, as is generally the case, information on appeals is the act of the serving bailiff, not the court. The court secretariat must provide information on appeals, however, in judgments served at the instigation of the court.

⁴⁶ Constitutional Court Judgment (*Sentencia*) No. 241/2006 of 20 July 2006.

⁴⁷ See Article 153b, §4, of the Czech Code of Civil Procedure; Articles 571 et seq. of the French Code of Civil Procedure and, in a similar vein, Article 340 § 3 of the German Code of Civil Procedure.

⁴⁸ See, for example, Article 650 of the Italian Code of Civil Procedure. In the same vein, Article 1416 of the French Code of Civil Procedure provides that any objection to a payment order must be filed within a month of the date on which the order was served; "however, if the order was not served in person, objections shall be admissible up to one month following the first document served on a person or, failing that, from the date of the first execution measure whose effect was to make all or part of the debtor's assets inaccessible". It is also worth mentioning Article 20 (Review in exceptional cases) of Regulation EC No. 1896/2006 of 12 December 2006 creating a European order for payment procedure.

In this light, and bearing in mind that similar impediments may arise during proceedings or when filing appeals, it should generally be provided that negligence is a circumstance which the court must verify before declaring that a user is estopped from exercising a procedural right⁴⁹ and/or that users can ask to be given leave to proceed out of time if they lose a procedural right as a result of facts beyond their control.⁵⁰

3. Avoiding that the plurality of jurisdictions within the same legal system may harm the user

It is almost a standard feature of the Council of Europe member states' legal systems for them to have several different courts.

In addition to the horizontal apportionment of judicial power between several courts on a geographical basis, there is often a vertical apportionment depending on the status of the case and/or the subject. The need for specialisation among judges, which can contribute both to the quality of justice rendered and a reduction in the length of proceedings, may be reflected in the creation of specialised courts or specialist divisions within the judicial system. In some countries, there are also several judicial branches, reflected in particular in the distinction between civil and administrative courts.

In this context, users may find themselves confronted with three types of risk.

Firstly, if the question of jurisdiction is raised at a late stage in the proceedings, this may prolong them. As a result, several legal systems provide that courts may only decline jurisdiction *in limine litis*, namely at a preliminary stage of the proceedings.⁵¹

Secondly, it may be that conflicts between courts over the apportionment of jurisdiction end up depriving users of access to a court. Such is the case in the event of a negative conflict of jurisdiction,⁵² which may lead to an infringement of Article 6§1 ECHR.

Such scenarios can be avoided in several ways. Firstly, it can be provided that once a court has declined jurisdiction and designated the court with jurisdiction, the latter may not decline jurisdiction in turn and must rule on the merits of the case.⁵³ Secondly, in such cases, it can be decided that the "second court" referred to may question its own jurisdiction and ask a higher court to rule on this potential conflict of jurisdiction, giving a final decision.⁵⁴ Lastly, users may be granted the right to ask the higher court to rule on a negative conflict of jurisdiction that has already arisen.⁵⁵ Our preference is for the first two solutions, which seem to place less of a burden on users.

Thirdly, it is important to focus on the consequences of a decision to decline jurisdiction.

⁴⁹ In this sense cf. art. ZPO 296. In the same vein, art. 363, 1st paragraph, of the Danish Administration of Justice Act excludes the sanction of inadmissibility where it would be disproportionate in view of the consequences on the law of the party.

⁵⁰ See, for example, Article 151 of the Albanian Code of Civil Procedure; Articles 233 and 236 of the German Code of Civil Procedure; Article 153 of the Italian Code of Civil Procedure; Article 168 of the Polish Code of Civil Procedure; Articles 64 and 67 of the Code of civil procedure of Estonia.

⁵¹ See for example Article 38 of the Italian Code of Civil Procedure; Articles 66 and 67 of the Bosniac Code of Civil Procedure.

⁵² ECtHR, *Beneficio Cappella Paolini v. San Marino*, judgment of 13 July 2004, Report of Judgments and Decisions 2004-VIII, §§ 26-29.

⁵³ See Article 76 § 4 of the Estonian Code of Civil Procedure; Article 44 of the Italian Code of Civil Procedure, with regard to decisions to decline jurisdiction on geographical grounds (with the exception of inalienable jurisdiction) or on grounds of the importance of the case; § 281 of the German Code of Civil Procedure, under which a designated second court may only relinquish jurisdiction over a case if the decision regarding its jurisdiction was arbitrary; Articles 200 et seq. of the Polish Code of Civil Procedure, under which, where a lower court has declared that a higher court has jurisdiction, it is for the latter to make the final binding decision on its jurisdiction.

⁵⁴ See Article 45 of the Italian Code of Civil Procedure, with regard to decisions to decline jurisdiction on grounds of subject matter or inalienable geographical criteria.

⁵⁵ See, for cases of conflict between civil and administrative courts, the Czech system, as established by Law No. 131 of 2002.

Several legal systems have adopted the principle of *translatio iudicii*, in other words the referral of the case by the court without jurisdiction to the court with jurisdiction while preserving the procedural relationship.⁵⁶ Some countries, such as Switzerland or Spain do not necessarily allow *translatio iudicii* in civil cases but consider that the court without jurisdiction must simply declare the claim inadmissible; claimants must then apply to the court with jurisdiction within a given time limit and provided they do, the procedural relationship will remain uninterrupted.⁵⁷ It follows that in both cases, the time limits to take action are considered to have been observed if the litigant has applied to a court without jurisdiction.

Translatio iudicii is subject, however, to many exceptions, which prevent the parties from benefiting from a continued procedural relationship despite the decision to decline jurisdiction. This can be the case where jurisdiction lies beyond the ordinary courts⁵⁸ or if claimants must apply to foreign courts.⁵⁹

Furthermore, under German law, the Code of Civil Procedure stipulates that a referral to the competent court does not become pending (*anhängig*) until the court receives the files.⁶⁰ Case law is based on the general principle that any previously established *lis alibi pendens* shall continue in the case of *translatio iudicii*,⁶¹ but courts have occasionally applied this provision strictly, holding that a referral to a court which does not have jurisdiction makes it impossible to comply with a specified time-limit, particularly in certain commercial disputes.⁶² This means that a limitation period may expire while the file is being forwarded, especially if this phase takes a long time because of organisational failings of the secretariat of the court which has ruled that it does not have jurisdiction. Such a situation gave rise to a judgment of the European Court of Human Rights which found that there had been a violation of Article 6 § 1 ECHR.⁶³ Although the Supreme Court has ruled in favour of a general application of *lis alibi pendens* in the course of *translatio iudicii*,⁶⁴ the appeal courts continue to dismiss it in certain commercial cases.⁶⁵ Given the lack of an unconditional right of appeal to the Supreme Court,⁶⁶ there is a danger that this uncertainty will continue for many years to come.

The Italian Constitutional Court has ruled that a failure to apply the principle of *translatio iudicii* to interaction between courts belonging to various judicial orders (e.g. civil courts and administrative courts) is incompatible with the right to judicial protection of legitimate rights and interests, a right which is enshrined in Articles 24 and 111 of the Italian Constitution (and whose scope is similar to the right of access to a court within the meaning of Article 6 § 1 ECHR), in so far as court users may well definitively lose their substantive right as a result of an error regarding the court to which the matter was referred.⁶⁷

⁵⁶ See Article 82.2 of the French Code of Civil Procedure; Article 662.2 of the Belgian Judicial Code; § 261.6 of the Austrian Code of Civil Procedure; Article 132.3 of the Romanian Code of Civil Procedure; and Article 20.1 of the Turkish Code of Civil Procedure.

⁵⁷ Article 65.5 of the *Ley de enjuiciamiento civil*; Article 63.1 of the Swiss Code of Civil Procedure. It should be noted that in Swiss law, *translatio iudicii* is allowed by means of a decision of the court in respect of appeals (Federal Court judgment 140 III 636).

⁵⁸ Article 660 of the Belgian Judicial Code.

⁵⁹ Article 81.1 of the French Code of Civil Procedure; Article 65.3 of the *Ley de enjuiciamiento civil*.

⁶⁰ Section 281 paragraph 2, third sentence of the German Code of Civil Procedure.

⁶¹ Federal Court of Justice, decision (*Beschluss*) of 28 February 2019, III ZR 16/18, § 13 and the judgments cited.

⁶² For example, regarding the *squeeze-out* procedure for public limited companies: OLG Frankfurt am Main, decision (*Beschluss*) of 18 October 2005, 20 W 118/04. For a more detailed discussion see: Harald Kollrus, *Analoge Anwendung des § 281 ZPO auf die Antragsstellung beim sachlich oder örtlich unzuständigen Gericht in Squeeze-Out-Verfahren*, *Monatsschrift für Deutsches Recht*, 2009, pp 607 et seq.

⁶³ ECtHR, *Freitag v. Germany*, No. 71440/01, judgment of 19 July 2007.

⁶⁴ Cf. for a series of facts similar to those giving rise to the *Freitag v. Germany* judgment: Federal Court of Justice, decision (*Beschluss*) of 13 March 2006, II ZB 26/04, §§ 18 to 21.

⁶⁵ OLG Düsseldorf, decision (*Beschluss*) of 17 December 2015, I-26 W 22/14, § 39 and the judgments cited.

⁶⁶ With regard to the requirements relating to the amount in dispute that may adversely affect the exercise of the right of appeal where the dispute concerns the valuation of shares, see Federal Court of Justice, decision (*Beschluss*) of 18 February 2018, published in BGHZ 219, 348.

⁶⁷ Italian Constitutional Court, judgment No. 77 of 12 March 2007, § 5 of the legal considerations: “*The principle of non-communication between courts belonging to different judicial orders – which is understandable in other historical periods [...] – is today no longer compatible with fundamental constitutional values. While, with regard to the many types of courts, the Constitution does indeed reflect the situation as it was [when it entered into force], nonetheless, the same Constitution has assigned to the judicial system, as a whole, the task of ensuring the judicial protection of rights and legitimate interests. Since this is the true raison d’être of every court, both ordinary and special, the fact that there are many types of courts cannot result in a reduction of the efficiency of justice or in rendering futile the judicial protection of rights: this is precisely what happens when the rules governing the relationships between the various courts – worse if in the context of a very complex division of jurisdiction – are such that an incorrect identification of the competent court (or an error by the court regarding its own jurisdiction) may constitute an insurmountable obstacle to the very possibility of obtaining an examination of the merits of the action.*”

In the light of the above, we believe that as a matter of good practice it should be recommended that *translatio iudicii* be systematically applied, at least in proceedings which have no connection with a foreign country.⁶⁸ In practice, however, this principle can be applied in a variety of ways. It is not necessary for the case to be formally transferred from one court to another, with a new role number possibly being assigned upon receipt by the court to which it is transferred. The national legislature may very well make a formal distinction between the two procedures and thereby oblige a party to bring a new action before the competent court, on condition that it provides for the retrospective validation of *lis alibi pendens* including preservation of the effects of the action originally brought before the court which did not have jurisdiction.

4. Cases in which several means of appeal are available against the same judgment

Where several means of appeal are available against the same judgment, the differences between them must be sufficiently clear to enable the person concerned to apply to the competent authority within the appropriate time limit.

This would appear to be the case: *a*) between an application to set aside a judgment by default and an appeal against a judgment deemed to have been given in proceedings in which both sides were represented (France⁶⁹); *b*) between an appeal to the Supreme Court against a judgment given on appeal and an application to reopen proceedings (Bosnia⁷⁰) or to review a judgment given on appeal (Italy⁷¹). Similarly, Czech law does not appear to raise any problems in terms of regulating the relationship between the various legal remedies available against an appeal judgment.⁷²

However, in a partially similar case, the European Court of Human Rights found a violation of Article 6 § 1 ECHR in respect of the Czech Republic: before submitting their complaint of a violation of a fundamental right to the Constitutional Court, users were obliged to appeal to the Court of Cassation in order not to have their constitutional appeal declared inadmissible for non-exhaustion of remedies; however, in assessing whether the 60-day time limit for lodging a constitutional appeal had been complied with, the Constitutional Court often failed to take into account that the user had lodged an appeal to the Court of Cassation and that this appeal was still pending before that court.⁷³

It may also happen that in a given case the choice of remedy against a judgment depends on how the judge categorises the action brought⁷⁴ or on the legal basis of the decision in question.⁷⁵ In this case, in choosing which remedy to pursue, the person in question must either accept the categorisation of the action or the legal basis specified by the judge who issued the contested decision (irrespective of its accuracy)⁷⁶ or must choose the remedy which seems more appropriate in the light of the categorisation/legal basis which the judge should have specified.⁷⁷ In short, it cannot be held that an error made by a judge should prejudice the choice which court users are able to make.

⁶⁸ For Italy, see Article 59 of Law No. 69 of 2009 and Article 11 of the Code of Administrative Procedure; for the Czech Republic, see Article 82.3 of the Code of Civil Procedure and Article 73.3 of the Code of Administrative Procedure.

⁶⁹ Cf. Article 473 and 476-478 of the Code of Civil Procedure.

⁷⁰ Cf. Article 265 of the Code of Civil Procedure.

⁷¹ Cf. Article 398 of the Code of Civil Procedure.

⁷² Cf. Article 235b of the Code of Civil Procedure.

⁷³ See, for example, ECtHR, *Rechtová v. Czech Republic*, No. 27088/05, judgment of 26 June 2008, §§ 23-24; ECtHR, *Mourek v. Czech Republic*, No. 17999/03, judgment of 3 April 2008, §§ 17-19; ECtHR, *Drahorád and Drahorádová v. Czech Republic*, No. 10254/03, judgment of 30 March 2008, §§ 23-25; ECtHR, *Geco A.S. v. Czech Republic*, No. 4401/03, judgment of 21 September 2006, § 26; ECtHR, *Janyr and others v. Czech Republic*, Nos. 12579/06, 19007/10 and 34812/10, judgment of 13 October 2011, § 51.

⁷⁴ For example, under Italian law, regarding the challenges that may be raised during the enforcement procedure, a judgment on the *opposizione all'esecuzione* (Articles 615 et seq CCP) may be appealed against, unlike a judgment on the *opposizione agli atti esecutivi* (Articles 617 et seq CCP).

⁷⁵ For example, if it is a judgment rendered by default or not.

⁷⁶ This is the solution adopted in case law by the Italian Court of Cassation (see, for example, judgment No. 12872 of 22 June 2016).

⁷⁷ In accordance with the German principle of *Meistbegünstigung*.

II: IMPROVING INTERACTION BETWEEN COURT USERS AND JUDGES

Interactions between court users and the courts are a key guarantee of the accessibility of justice. If people have the impression that they have been relegated to the status of a passive subject in the proceedings, there is a good chance that they will feel that they are victims of summary justice even though the “final product”, i.e. the court decision, cannot be faulted. The best way to avoid such an outcome is to encourage interaction between judges and the public.

To date, the case law of the European Court of Human Rights has not addressed this issue to any great extent. Generally speaking, European case law does not consider that the right to a fair trial goes so far as to enshrine the right to personal participation by the parties in the proceedings.⁷⁸ Participation via a representative – such as a lawyer – is in principle sufficient in civil matters,⁷⁹ unless the proceedings relate more specifically to the character, lifestyle or conduct of one of the parties.⁸⁰ Apart from these particular situations, the European Court of Human Rights does not lay down a requirement for the personal participation of the parties in the proceedings. This means that civil proceedings can take place without the judge ever meeting the parties, without the parties being allowed to speak at a hearing, or even without them having a real understanding of the issues at stake and how the proceedings unfold.

There has been some academic criticism of the strictness shown by the European Court of Human Rights in its case law.⁸¹ It also runs counter to a more recent approach, based on sociological observations, recommending greater involvement of the parties in the proceedings, even when they have access to professional representation.⁸² Furthermore, the need to ensure the participation in practice of parties who appear unaccompanied and might have difficulties with the procedural rules has also been highlighted at European level and abroad.⁸³ However, these recent developments have so far had only a limited impact on national legislation, which is still rooted in a procedural tradition that has a tendency to disregard the actual role played by a party in a case and the possibilities he or she has to exert any influence. It is to be hoped that this paper and, more particularly, the avenues to be explored outlined below can prompt a change in approach.

1. Users' right to be given appropriate information on the proceedings to which they are a party

1.1 Why it is necessary

Access to certain basic information about the proceedings is the first step towards giving users a more central role in those proceedings. If certain basic information is regularly provided to the parties throughout the proceedings, they will have a greater sense of being players, even if, ultimately, they choose to no longer defend themselves or adopt detrimental defence strategies. The aim is to avoid situations where a party does something or fails to do something due to a lack of information of what can and cannot be done. In other words, the purpose of providing regular information to the parties is to enable them to act in full knowledge of the facts. The underlying intellectual mechanism is the same as that implemented through the concept of “*free and informed consent*” referred to in Article 5 of the Oviedo Convention of 4 April 1997 on Human Rights and

⁷⁸ ECtHR, *Karpenko v. Russia*, No. 5605/04, judgment of 13 March 2012, § 90.

⁷⁹ ECtHR, *Khuzhin v. Russia*, No. 13470/02, judgment of 23 October 2008, § 104.

⁸⁰ ECtHR, *Urbšienė and Urbšys v. Lithuania*, No. 16580/09, judgment of 8 November 2016, § 59.

⁸¹ Among many others: Ola Johan Settem, Applications of the ‘Fair Hearing’ Norm in ECHR Article 6(1) to Civil Proceedings – with special emphasis on the balance between procedural safeguards and efficiency, Springer 2016, pp. 332-333 for whom a party’s personal participation in the hearing should be subject to the same criteria as the right to a public hearing.

⁸² Cf. among many others: Gordon Renouf, A client-centred approach to access to justice, in Access to Justice Roundtable Proceedings of a Workshop July 2002, Law and Justice Foundation of New South Wales, Sydney 2003, pp. 77 et seq; Nourit Zimmerman/Tom R. Tyler, Between access to counsel and access to justice: A psychological perspective, 37 Fordham Urb. L.J. 473 (2010), especially pp. 488 et seq; Alexandra D. Lahav, Participation and Procedure, 64 DePaul L. Rev. (2015), especially pp. 523 et seq.

⁸³ This is particularly true in the United States, where the difficulties encountered by “pro se litigants” have been the subject of numerous academic studies. Cf. among many others: Paris R. Baldacci, Assuring Access to Justice: The Role of the judge in assisting pro se litigants in litigating their cases in New York City’s Housing Court, 3 Cardozo Public Law, Policy, and Ethics Journal 659 (2006); Drew A. Swank, The Pro Se Phenomenon, 19 BYU J. Pub. L. 373 (2005).

Biomedicine. The European Court of Human Rights has partially recognised such an obligation to provide information, holding that there is a violation of a party's right of access to a court if that party is not informed of the available means of appeal against a judgment and the time limit within which he or she must act,⁸⁴ or if the information provided is inaccurate.⁸⁵

1.2 National practices

National law may at times ensure that the parties are informed of the judicial process. While there is usually a specific provision on the obligation to warn defendants of the risk of a judgment in absentia if they fail to defend themselves against a claim,⁸⁶ or on the remedies available against a judgment,⁸⁷ few countries have gone beyond these two requirements.⁸⁸ Those that have include Switzerland and Spain, whose national legislation obliges judges to warn the parties at each stage of the proceedings of the risks involved if they do not comply with certain formalities⁸⁹ and to provide information to unassisted parties on costs and the possibility of applying for legal aid.⁹⁰

In the most recent years, the use of new information and communication technologies (ICTs) and the shift to Cyberjustice, which can be seen in the generality of the CoE countries, have had a significant impact on the effectiveness of the user's right to obtain adequate information about the procedure that concerns him/her. Beyond the general online information about the extent of the rights of litigants and the procedural ways to implement or defend them, users can increasingly obtain, through dynamic questionnaires that help them better clarify the dispute in question, personalized and contextualized information allowing them to continue their institutional journey with the appropriate institutions. Above all, the user now has the opportunity to follow online the progress and the status of his "procedure" (stages, schedule of hearings, deadlines provided) with the competent court, as long as the competent court uses a computer system in the management of cases⁹¹.

1.3 Courses of action

The information given by the court to encourage the parties' participation must be of a general nature. It should not oblige the judge to act as counsel for the parties by indicating the best defence strategy to be implemented or by drawing their attention to the evidence they have to provide.

Where the parties are represented by a professional (barrister, lawyer or other counsel), the court is entitled to presume that appropriate information has been provided by the representative. In fact, it is important to ensure that these professionals have easy access to the information they must pass on to the parties. Furthermore, parties should be able to request, by telephone or e-mail, information on the progress of their proceedings and relevant explanations when they are unable to understand the purport of certain communications from the court. This channel of communication could be specific to each court, for example by allowing the parties to contact the registry, or in a centralised form for all courts, on condition that the officials responsible for providing information are kept abreast of the state of progress of the proceedings.

The information to be provided by the courts should primarily relate to the objectively foreseeable duration of the proceedings, irrespective of any possibility of shortening the proceedings by means of a friendly settlement. This information is of particular importance where the parties are not assisted by a professional. All too often the parties underestimate the likely duration of the proceedings and embark on a lawsuit somewhat too readily, thinking that it will last only a few months, whereas a final decision may not in fact be reached for several years.

In addition to the duration of the proceedings, the courts should also provide appropriate information on costs,

⁸⁴ ECtHR, *Assunção Chaves v. Portugal*, No. 61226/08, judgment of 31 January 2012, §§ 70 to 88.

⁸⁵ ECtHR, *Gajtani v. Switzerland*, No. 43730/07, judgment of 9 September 2014, §§ 65 to 77.

⁸⁶ Article 54.3.6 of the French Code of Civil Procedure; Articles 227. 2 and 563 of the Portuguese Code of Civil Procedure; Section 215.1 of the German Code of Civil Procedure.

⁸⁷ Article 680 of the French Code of Civil Procedure; Article 792.2 of the Belgian Judicial Code; Section 232 of the German Code of Civil Procedure; Article 414.2 of the Austrian Code of Civil Procedure (where one party is not represented by a lawyer); Article 238.f of the Swiss Code of Civil Procedure.

⁸⁸ For example, Article 145 of the Austrian Code of Civil Procedure explicitly provides that the consequences of an omission must be specified only where the law expressly so provides.

⁸⁹ Article 147.3 of the Swiss Code of Civil Procedure; Article 152.4 of the *Ley de enjuiciamiento civil*.

⁹⁰ Article 97 of the Swiss Code of Civil Procedure.

⁹¹ See European Judicial Systems (Evaluation cycle 2020 - data 2018), above, p. 89 and follow; The use of information technology in the courts (Cepej Studies, No. 24), 30 and following; Guidelines on how to drive change towards Cyberjustice (CEPEJ Document (2016)13), paras. 14-20.

particularly where fees are charged to the parties for opening the file or drafting the judgment. As regards the evidence administration costs, which largely depend on the parties' procedural strategy, the information provided could be limited to general information, such as the average cost of an expert opinion in a construction dispute, the costs of summoning a witness residing near the court, etc.

Parties should also be made aware of the potentially prejudicial consequences of their actions and omissions. Defendants should be informed in detail of the consequences of failure to file a response in time, in particular where they are deemed to have admitted the facts alleged against them, or in cases where a judgment may be given on the sole basis of the evidence provided by the opposing party. Most codes of civil procedure already contain such an obligation, but its scope may vary from one country to another. We believe it essential to provide the most detailed information possible, if necessary by means of an information brochure handed out at the same time as individuals are notified of the claim against them.

In this course of action, the registry and non-judge staff, who constitute a natural "link" between users and judges, can play a crucial role. Indeed, these non-judge staff are able to explain the issues of the dispute to users ahead of the proceedings, to inform them about the applicable procedural rules and the procedure process; in some CoE countries, they can even help users explore amicable resolution options⁹².

This mission remains very current even in view of the spread of ICT. On the one hand, it cannot be ruled out that the user prefers to keep a personalized interaction with the judicial institution. On the other hand, we must not underestimate the risks of the "digital gap", since all users do not always have easy access, nor a highly developed practical culture of services and digital interactions.

In view of the above and the possibility of flaws in computer systems, States should also put in place specific measures to assist the user (or, if necessary, his representative) in the dematerialized interaction with the courts.

2. Written communication via pre-determined forms and templates?

2.1. Why it is necessary

In order to prevent the parties from committing too many procedural errors, practice has been to provide the parties with pre-determined forms for drafting their submissions. The idea behind this is that it is easier to obtain properly drafted pleadings if the parties work from a template. The use of forms, especially where this is mandatory, is not something that appears in the published case law of the European Court of Human Rights. However, given that the Court itself imposes the lodging of applications by means of forms, it is unlikely that making them mandatory can be regarded as a disproportionate restriction on the right of access to a court guaranteed by Article 6 § 1 ECHR.

2.2. National practices

At national level, in most case, this issue is not regulated in the Procedural Code. The use of these forms by parties is laid down in legislative provisions, as in Switzerland⁹³ and the United Kingdom.⁹⁴

While in Switzerland the number of forms is relatively small⁹⁵ and their use is far from systematic,⁹⁶ the official form in the United Kingdom includes a range of templates designed to cover almost all the customary procedural acts undertaken by parties,⁹⁷ and its use is mandatory,⁹⁸ with any changes being allowed only if they are justified in the light of the circumstances of the particular case.⁹⁹ In addition to national regulations, it should be borne in mind that the EU regulations establishing, respectively, a European Small Claims Procedure¹⁰⁰

⁹² See Guidelines on How to drive Change towards Cyberjustice, cited above, at para. 30 (as well as the references listed).

⁹³ Article 400 CCP.

⁹⁴ Rule 4 Civil Procedure Rules.

⁹⁵ Cf. <https://www.bj.admin.ch/bj/fr/home/publiservice/zivilprozessrecht/parteieingabenformulare.html> In some cantons, for example in Geneva, the judiciary has drawn up its own forms, which may be more numerous, particularly in family matters (<http://ge.ch/justice/formulaires>).

⁹⁶ Article 400.1 CCP provides that these forms are "made available" to the parties.

⁹⁷ Cf. <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>.

⁹⁸ Rule 4(1) Civil Procedure Rules.

⁹⁹ Rule 4(2) and (4) Civil Procedure Rules.

¹⁰⁰ EC Regulation No. 861/2007 of 11 July 2007.

and a European Order for Payment Procedure¹⁰¹ provide forms for the main formalities relating to these procedures, and this is not simply to overcome the differences in the procedural rules in force in the member states.

Moreover, it is above all in the practice of the courts in the CoE countries, often following consultation procedures with the bar associations or other stakeholders, that the use of forms is most frequent.

2.3. Courses of action

a) Typology and content of templates

The fact that forms and procedural templates have been made available to the public is certainly a valuable means of promoting dialogue between the courts and the parties. By channelling litigants' written communication, it reduces the number of flawed pleadings and makes it easier for the judge to understand the parties' claims. In repetitive cases, the form may also set out briefly the relevant facts to be presented to the court and the evidence proving those facts. On this latter point, one particular example would be a list of questions relating to the economic situation of the parties in divorce proceedings with an indication of the most common means of proof (pay slips, bank account statements, tax notices, etc.). Ideally, the detailed form could be accompanied by a brief "user's guide" to explain to the parties the course of the proceedings and the issues at stake¹⁰² and include not only a petition template, but also suggested responses by the defendant.¹⁰³

Apart from ensuring better communication between the court and the parties, and inevitable time savings, the use of such forms also means that the judge himself or herself does not have to ask for the information, or has to give judgment on the basis of incomplete facts if he or she does not have the power to require the parties to provide the missing information.

b) Consequences of non-use

However, the use of templates and forms is not a panacea for users in civil proceedings. If they are poorly understood, this can make it more difficult for them to take part effectively in the proceedings. A particular risk lies in making their use compulsory in all circumstances. If a user fails to comply with an obligation, the penalty incurred should never so prejudice his or her position as to jeopardise his or her future participation in the proceedings. As we have already explained in general in relation to procedural defects, it is preferable to order any such defects to be rectified. Users should therefore be asked to reformulate their submissions using the prescribed templates.

In the same vein, once a certain template has been adopted at legislative level, it is essential to avoid any situation in which users are faced with several different interpretations of this template in the various national courts, thereby running the risk of having their applications declared inadmissible or of losing a certain procedural right.¹⁰⁴ The standardisation of certain acts should facilitate interaction with the judge rather than procedural formalism.

In addition to the risk outlined above, another problem is the disconnect between the templates and forms available and the particular features of a dispute. The many types of litigation submitted to the civil courts means that an exhaustive catalogue of templates could easily cover a hundred or so different standard procedures. As the public resources set aside to produce the templates and forms are, for obvious reasons, only a fraction of the funds available to the administration of justice, it is essential to be pragmatic.

¹⁰¹ EC Regulation No. 1896/2006, cited above.

¹⁰² For an example in the field of separation and divorce, see: <https://www.jura.ch/Htdocs/Files/Departements/DFCS/EGA/Documents/pdf/Seseparer-divorcer2010.pdf>

¹⁰³ Cf. See the German federal forms for calculating the amount of child maintenance: https://justiz.de/formulare/zwi_bund/festsetzung_unterhalt_ab_01_01_17.pdf;jsessionid=19E75901F3A74B64E9D6484A42209A19 (application form); https://justiz.de/formulare/zwi_bund/einwendungen_festsetzung_unterhalt_ab_01_01_18.pdf;jsessionid=19E75901F3A74B64E9D6484A42209A19 (response form); https://justiz.de/formulare/zwi_bund/kindesunterhalt_merkblatt_Antrag_01_01_20.pdf;jsessionid=19E75901F3A74B64E9D6484A42209A19 ("user guide")

¹⁰⁴ In this connection reference can be made to the Polish experience, where in 2009 Article 5052 of the Code of Civil Procedure was repealed; this provision prescribed the use of forms provided for by law in a whole series of simplified procedures.

As a first step, there should ideally be two sets of template, one that is as general as possible and could be used in the vast majority of civil proceedings, and the other, more specific and limited to the most repetitive and frequent proceedings, such as proceedings in family matters, disputes over residential leases or proceedings concerning the dismissal of a worker.¹⁰⁵

Over time, and if sufficient resources can be regularly allocated to it, the number of standard proceedings for which there are templates and forms can always be expanded. In addition, and in order to avoid any risk of excessive application of the rules relating to the templates, there should always be the possibility of adapting them to the needs of a particular dispute.

3. The user's right to be heard personally by the judge

3.1 Why this is necessary

The possibility of being heard personally by the judge is an important means of enabling litigants to take an active part in their proceedings. By allowing them to address the judge personally, they gain the impression that they have been sufficiently involved in the judicial process.¹⁰⁶ Communication in writing or through a representative does not achieve the same result, although it can be much more effective in presenting legal reasoning or discussing the probative value of the evidence that has been filed.

3.2 The case law of the European Court of Human Rights

There is a large and varied body of case law of the European Court of Human Rights concerning the personal hearing of the parties. While in criminal matters personal participation is considered a highly protected right¹⁰⁷ and must be ensured in practice,¹⁰⁸ in civil matters nothing so clear has been asserted. As already noted, the Court considers that in cases of a non-criminal nature,¹⁰⁹ the personal participation of the parties is not required, since representation by lawyers can ensure a fair trial,¹¹⁰ even in a public hearing.¹¹¹ An exception is made, however, where the proceedings relate more specifically to the character, lifestyle or conduct of one of the parties.¹¹² As will be seen in the following paragraphs, the case law relating to these exceptions is relatively strict in its interpretation; however, it seems that more recent case law requires there to be a reasoned decision explaining the reasons for waiving the right to be heard in person of a party who has asked to be heard.¹¹³

With regard to the first exception, concerning the character of the parties, the Court has repeatedly held that proceedings relating to the deprivation of the exercise of civil rights on the ground of psychiatric disorder require the individual concerned to be heard in person,¹¹⁴ unless his or her behaviour is of a querulous nature¹¹⁵. The principle that an individual who is the subject of a protection procedure should be heard in person is also laid down in a Council of Europe recommendation¹¹⁶ which is, moreover, cited by the Court¹¹⁷.

With regard to the third exception, i.e. the question of the personal conduct of a party, the case law is particularly strict. While in one case it accepted the obligation to hear in person the party whose conduct in a civil

¹⁰⁵ These few examples include the most common categories of civil trials?

¹⁰⁶ Settem, op. cit., p. 320.

¹⁰⁷ See the leading judgments: *Colozza v. Italy* [GC], No. 9024/80, judgment of 12 February 1985, § 27; *Stanford v. United Kingdom*, No. 16757/90, judgment of 23 February 1994, § 26; *Hermi v. Italy* [GC], No. 18114/02, judgment of 18 October 2006, §§ 58-67.

¹⁰⁸ On this concept, see: Abenaa Owusu-Bempah, The interpretation and application of the right to effective participation, *The International Journal of Evidence and Proof*, Vol. 22 Issue 4 (2018), pp. 321-341.

¹⁰⁹ This also includes a large part of litigation considered as administrative in countries with a tripartite division of the branches of litigation.

¹¹⁰ ECtHR, *Yevdokimov and others v. Russia*, Nos. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12, judgment of 16 February 2016, § 22.

¹¹¹ ECtHR, *Khuzhin v. Russia*, No. 13470/02, judgment of 23 October 2008, § 104.

¹¹² ECtHR, *Urbšienė and Urbšys v. Lithuania*, No. 16580/09, judgment of 8 November 2016, § 59.

¹¹³ ECtHR, *Yevdokimov and others v. Russia*, judgment cited above, § 52 ; *Igranov and others v. Russia*, No. 42399/13 et seq, judgment of 20 March 2018, § 35.

¹¹⁴ ECtHR, *Shtukaturov v. Russia*, No. 44009/05, judgment of 27 March 2008, §§ 69-76.

¹¹⁵ ECtHR, *Berkova v. Slovakia*, No. 67149/01, judgment of 24 March 2009, §§ 148-152.

¹¹⁶ Principle 13 of Recommendation R (99) 4 of 23 February 1999 on principles concerning the legal protection of incapable adults.

¹¹⁷ ECtHR, *A.N. v. Lithuania*, No. 17280/08, judgment of 31 May 2016, § 96.

case was also the subject of criminal proceedings¹¹⁸, another judgment held that representation by a lawyer was sufficient if the link between the civil and criminal proceedings was purely legal and did not call for a particular assessment of the facts.¹¹⁹ In general, the Court has recognised a civil claimant's right to be heard in person when the proceedings concern facts of which he or she has personally acquired knowledge, such as police brutality,¹²⁰ unlawful deprivation of liberty¹²¹ or the conditions of his or her detention.¹²² In contrast, a commercial dispute, even between spouses, does not require the personal appearance of the parties¹²³ and nor do civil proceedings concerning the validity of a lease contract relating to the residence of one of the two parties.¹²⁴

3.3. National practices

Generally speaking, legislation in the various countries does not oblige the courts to systematically hear litigants in person in proceedings affecting them. In principle, the hearing is left to the courts' discretion.¹²⁵ As to the nature of such a hearing, legislation in some countries considers that the hearing is a means of proof,¹²⁶ in other countries a distinction is made between a hearing for information purposes and a party's statement as means of proof,¹²⁷ and in still others a hearing of the parties is not considered a means of proof; only statements made under oath have evidential value.¹²⁸ There is also the case that one party can plead guilty during the hearing by the judge, thereby exempting the opposing party from having to prove his or her allegations.¹²⁹

¹¹⁸ ECtHR, *Buterlevičiūtė v. Lithuania*, No. 42139/08, judgment of 12 January 2016, § 64.

¹¹⁹ ECtHR, *Margaretić v. Croatia*, No. 16115/13, judgment of 5 June 2014, §§ 129-133.

¹²⁰ ECtHR, *Kovalev v. Russia*, No. 78145/01, judgment of 10 May 2007, § 37; *Gryaznov v. Russia*, No. 19673/03, judgment of 12 June 2012, §§ 44-51.

¹²¹ ECtHR, *Sokur v. Russia*, No. 23243/03, judgment of 15 October 2009, §§ 35-38.

¹²² ECtHR, *Rozhin v. Russia*, No. 50098/07, judgment of 6 December 2011, §§ 33-34; *Pashayev v. Azerbaijan*, No. 36084/06, judgment of 28 February 2012, § 68; *Beresnev v. Russia*, No. 37905/02, judgment of 18 April 2013, § 126. Other decisions, however, are based on the implicit principle that a hearing in person is not required at the appeal stage, even where the proceedings concern conditions of detention: ECtHR, *Artyomov v. Russia*, No. 14146/02, judgment of 27 May 2010, §§ 209-212; *Gasiński v. Poland*, No. 31535/12, inadmissibility decision of 10 March 2015, §§ 21-24.

¹²³ ECtHR, *Siwiec v. Poland*, No. 28095/08, judgment of 3 July 2012, § 50.

¹²⁴ ECtHR, *Kozlov v. Russia*, No. 30782/03, judgment of 17 September 2009, § 45.

¹²⁵ Article 184 of the French Code of Civil Procedure; Article 169 of the Turkish Code of Civil Procedure; Section 141 of the German Code of Civil Procedure; Articles 183.1.1 and 184 of the Austrian Code of Civil Procedure; Article 30k.4 of the Dutch Code of Civil Procedure, article 117 of the code of civil procedure of Italy.

¹²⁶ Article 168.1.f of the Swiss Code of Civil Procedure; Article 299.1.1 of the Spanish *Ley de enjuiciamiento civil*. Article 198 of the French Code of Civil Procedure provides that the court may draw any consequence from the parties' statements, or their refusal to reply, and that it may state this as prima facie evidence in writing. As regards proof of an obligation, only a confession and oath are considered as evidence originating from the parties (Articles 1383 and 1384 of the French Civil Code).

¹²⁷ Article 30l.2 of the Dutch Code of Civil Procedure expressly provides that statements made by the parties during a hearing do not constitute evidence in their favour, but may constitute a judicial confession within the meaning of Article 154 of the same Code. There has long been a similar distinction in German law between the hearing of the party (*Anhörung der Partei*) within the meaning of Section 141 of the Code of Civil Procedure, which enables parties to supplement their statement and provide the court with certain additional information, and Evaluation of the evidence obtained in examining a party (*Parteivernehmung*) within the meaning of Sections 453 et seq of the Code of Civil Procedure, which is a means of evidence. However, recent case-law accepts that the court may, in pursuance of the free evaluation of evidence, take facts as established on the basis of statements made by the party in question during his or her hearing: Federal Court of Justice, Decision (*Beschluss*) of 27 September 2017, XII ZR 48/17; OLG Köln, judgment of 19 March 2020, 3 U 136/19, § 54. The Supreme Court of Austria has held that a party who did not co-operate in establishing the truth during his or her hearing by the court within the meaning of Article 184 of the Code of Civil Procedure was liable to have this circumstance taken into account in the assessment of the evidence and to have the opposing party's statements deemed to have been proven (see judgment of 11 May 2005, 9Ob12/05p). Italian law distinguishes between the declarations rendered during the *interrogatorio libero* to the senses of art. 117 of the Code of Civil Procedure, where questions are raised by the judge on the facts of the case and the declarations rendered in the context of the formal *interrogatorio* in the senses of art. 230 and following of the Code of Civil Procedure, where the questions are detailed by the counter-party and known in advance by the respondent: only the latter may constitute a confession, while the former are not a means of proof.

¹²⁸ This is the case under Turkish law. Examination of the parties (*isticvap*; Articles 169 et seq. of the Code of Civil Procedure) is not included among the means of evidence, as it is not intended to elicit a confession that would allow a fact to be taken as established without adducing evidence (Article 188 of the Code of Civil Procedure). If parties wish to use their own statements as evidence, they must offer evidence by oath, which is subject to strict conditions (*yemin*; Articles 225 et seq. of the Code of Civil Procedure).

¹²⁹ Article 266.1 of the Austrian Code of Civil Procedure; Section 288 of the German Code of Civil Procedure. The Portuguese Code de Civil Procedure makes a distinction between two means of proof involving the parties themselves: *depoimento* (deposition) (Articles 452 et seq.) – which may be ordered ex officio (cf. Article 452.1), during which the party must swear to tell the truth (Article 459) and whose confirmatory statements are deemed to be a judicial confession

By way of exception, national law generally considers that the judge has an obligation to hear the parties in person in disputes concerning an individual's capacity¹³⁰ and in family-related matters.¹³¹

3.4 Courses of action

It would therefore appear that it is not recommended to require the systematic hearing of the parties in person, as the resolution of many disputes, particularly commercial ones, does not require the personal participation of the parties. On the contrary, this could be considered a waste of time for both the parties and the judge.

Personal appearance should be reserved first of all for situations where one of the parties is in a position of greater vulnerability, in particular when the proceedings concern deprivation of liberty or the conditions under which such deprivation of liberty takes place, or if his or her civil capacity is at stake. The same applies to proceedings concerning minors, who moreover have a right to be heard as guaranteed by the United Nations Convention on the Rights of the Child.¹³² Courts should also hear parties in person when the proceedings concern their personal conduct, in particular when they are being sued for civil liability, or where their personal knowledge of the factual circumstances is relevant.

In order to ensure that a hearing in person is not used to extort a confession from one of the parties, the judge must use open questions that are as neutral as possible to have the person in question explain in his or her own words the facts of the dispute. To this end, the questions should be formulated in general terms and avoid asking the individual whether he or she confirms, or acknowledges, certain facts as presented in the written submissions. Where there are discrepancies between a party's statements and other evidence in the case file, the judge will draw the party's attention to them and will record the party's response in the minutes, without insisting that the party retract his or her statements. If another participant in the proceedings, has the right to put questions directly to the parties, he or she must follow the same rules and show the same sensitivity as the judge. Finally, a confession can be recognised only having regard to express statements made and provided that no other evidence in the case file points to a different conclusion.

Moreover, it should also be kept in mind that the judge's personal hearing of the parties can also facilitate an amicable resolution of the dispute. To this end, it would be desirable for the parties to be able to express themselves without fear of making a confession which, in the event of failure of the amicable settlement, could prejudice the outcome of the dispute. Therefore, it would be necessary either to distinguish between a final hearing in the amicable settlement and a final hearing on the formation of the evidence or to entrust another judge/non-judge staff with the function of facilitating the amicable settlement, ensuring that the declarations rendered in that framework could not be placed in the case file.

Lastly, it is important that during the hearing the judge uses language that can be understood by the user, at least where the latter is not represented by a lawyer, and is given specific training in this respect.¹³³

4. Users' right to obtain a reasoned decision

National law generally lays down an obligation to give reasons for judgments.¹³⁴ The quality of the reasons given in the court decision is also an important point. The European Court of Human Rights has already had

(*confissão*; Article 465), and a statement (*declaração*) which the judge may freely assess, particularly as regards whether it constitutes a confession (Article 466).

¹³⁰ Article 759.1 of the Spanish *Ley de enjuiciamiento civil*; Articles 896 and 897 of the Portuguese Code of Civil Procedure; Article 1244.2 of the Belgian Judicial Code; Sections 278 and 319 of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; Article 447.1 of the Swiss Civil Code.

¹³¹ Sections 128 (marital matters), 160 (matters relating to minor children), 175 (matters concerning parentage), and 192 (adoptions) of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; Articles 278 and 297 of the Swiss Code of Civil Procedure. In Belgian law, the hearing in person of the parties is mandatory when the fate of minor children is at stake (Article 1253ter.2 of the Belgian Judicial Code). Where this is not the case, the personal appearance of the parties is not compulsory (cf. Article 1255.6 of the Belgian Judicial Code).

¹³² Articles 9.2 and 12.2 of the United Nations Convention of 20 November 1989 on the Rights of the Child.

¹³³ This is the case in several countries: Albania, Austria, Czech Republic, France, Germany, Monaco, Poland and Sweden.

¹³⁴ Cf. Article 455 of the French Code of Civil Procedure; Section 313.1.6 of the German Code of Civil Procedure; Article 417.1.4 of the Austrian Code of Civil Procedure; Article 780.3.3 of the Belgian Judicial Code; Article 230.1.e of the Dutch Code of Civil Procedure; Articles 607 and 608 of the Portuguese Code of Civil Procedure; Article 238.g of the Swiss Code of Civil Procedure; Article 297.c of the Turkish Code of Civil Procedure.

occasion to emphasise that the reasons for a court decision must be clear.¹³⁵ In addition, Council of Europe recommendations make the point that decisions should be concise¹³⁶, whereas, more recently, the CCJE stressed that "a proper balance must be struck between brevity and a good understanding of the decision".¹³⁷

From the user's point of view, such requirements should be understood first in the sense that judgments and decisions should be drafted in terms that are sufficiently clear to be accessible to the public¹³⁸. This requires, first, a coherent decision structure as well as the articulation of the argument in a clear and accessible style to all.

Second, it is essential that the motivation be written in terms clear enough to be accessible to litigants. A judgment full of archaic expressions, references in the form of abbreviation or with unnecessary developments as an obiter dictum is always more difficult to understand. Of course, the technical nature of certain areas of litigation makes it impossible to avoid the use of abstract concepts which may be difficult to understand, but this does not mean that the courts are exempt from doing what they can to make the reasons given more comprehensible.

At the same time, it is important that the concise nature of the reasoning, often an additional result of the pressure of the judge's workload, should not leave users with the feeling that the judge has not given sufficient attention to their case.

Of course, the obligation of the courts to justify their decisions should not be understood as requiring a detailed response to each argument raised by the parties, the motivation needs to demonstrate that the essential issues for the purposes of the decision were dealt with by the judge¹³⁹. Nevertheless, while it is undeniable that the motivation "allows a better understanding and acceptance of the decision by the litigant", which is also a guarantee against arbitrariness, it should be reaffirmed here that "good motivation is an urgent necessity that cannot be overlooked in favour of speed".¹⁴⁰

¹³⁵ ECtHR, *Hadjianastassiou v. Greece*, No. 12945/87, judgment of 16 December 1992, Series A No. 252, § 33

¹³⁶ Cf. Principle 6 in the Appendix to f Recommendation R (84)5 of 26 February 1984 on the principles of civil procedure designed to improve the functioning of justice.

¹³⁷ See CCJE, Opinion 11 (2008) on the quality of court decisions, paragraph 40.

¹³⁸ See CCJE, Opinion 11, cited above, points 32-33

¹³⁹ See ECtHR, Grand Chamber, *Taxquet v. Belgium*, judgment of November 16, 2010, 91 (as well as the references listed).

¹⁴⁰ See Opinion n° 11 (2008), cited above, points 34-41.

PART II :
SIMPLIFICATION AND CLARIFICATION OF LANGUAGE WITH LITIGANTS, PARTICULARLY IN THE DRAFTING AND COMMUNICATION PHASE OF JUDICIAL DECISIONS

GUIDELINES

INTRODUCTION

The CEPEJ Working Group on Quality of justice (CEPEJ-GT-QUAL) of the European Commission for the Efficiency of Justice (CEPEJ) has worked on and studied different topics and tools used in Council of Europe (CoE) member States to improve the quality of courts' work. It has been observed that from the court user's perspective communication of the courts is better, they are more open, and their work is more transparent, but there is still one field that needs to be addressed: namely the language used in hearings, judgements and other judicial texts, and in general communication with the public especially with court users. It is observed that the courts' tradition of formal and legal language in hearings and especially in writing, even if many member states are working on that issue, still lives on.

The starting point of the activity developing new and better communication, namely the simplification of legal language, between the courts and recipients was a comparative study of the practical solutions, approaches, and best practices that have been adopted in member States as a part of efforts to simplify and clarify legal language. The study covers how member States perform with textual improvements and simplifying, or clarifying, legal language. The study investigates what the Member States consider important content in regard to a court decision/judgement, and how a written court decision/judgement should be constructed. It can serve as a source of comparison for Member States wishing to adapt practices on simplifying and clarifying their own legal language.

Through collaborative work with national correspondents of the member states and the CEPEJ Network of pilot courts, an overview of these practices was presented to the members of CEPEJ-GT-QUAL. At the end of this process, it was deemed appropriate to develop guidelines and principles aimed at presenting tools and means that could improve courts' work, especially by enriching the communication of judges and court staff with tools which can help to better interactions with litigants and other court users. This document highlights good practices that have had an enormous impact on the quality of the judicial system as a whole by providing better communication and with it, a better understanding of how courts function. It is addressed especially to the training institutions, courts' management, and judicial councils, which have key roles to play in developing open and transparent working of courts.

1. GUIDELINE ON TRAINING

Prepare training on oral and written communication with litigants for judges and court staff with topics such as: rhetoric, use of non-scientific language, psychological issues, dealing with angry or emotional persons, etc.

For judges and court staff it is imperative to know how to communicate. With basic knowledge, they know that first and foremost, the principal rule of good communication is using language which is clear and simple.

Many member States have trainings that are related to oral communication and psychology in the courtroom, working with emotional people etc. Some respondents emphasized that their training is interactive, with mock trials and role plays. In most member States these trainings are not mandatory for judges but in some they are, also for senior, and not only new, judges. Mostly, in member States with mandatory training, it is reserved for the new judges, who are at the beginning of their careers. It is encouraging that many member States have

special trainings for judges and court staff which are focused on dealings with children, minors, victims, and other vulnerable parties or witnesses in the proceedings.

The writing of the decisions of judges (structure of the decision, use of plain and easily understandable language, short sentences, grammar, etc.) is a very important topic when clear and simple communication with court users is discussed. Most of the member States have trainings on the writing of decisions. In some states trainings for candidate judges are obligatory, and in some they also have it for senior judges on a voluntary basis. In some states, writing a judicial decision is a part of the apprenticeship and is taught in special workshops. Most of the trainings are organised at the national level by judicial academies or similar institutions.

Training institutions are encouraged to develop trainings for judges and court staff with special emphasis on the use of clear and non-scientific language, both in oral and written communication with court users.

2. GUIDELINE ON MANUALS AND OTHER RECOMMENDATIONS

Create special manuals, guidelines, or recommendations regarding written and oral communication with litigants at court hearings, preliminary hearings, or other dealings with the court users (at the reception desk, ADR proceedings, etc.) while respecting the independence of the judge

Clear communication and the use of understandable language are important concerns. The acceptance of a decision by the unsuccessful party depends very much on a comprehensible and understandable explanation. Nevertheless, legal language, with its technical terms, differs from the language used day-to-day. This is unavoidable. It is therefore essential that the facts of the case and the assessment of the evidence are understandable to the parties.

By dealing with this topic we must be aware of the risk of creating false myths. Unfortunately, legal/judicial language has its own technicalities, because the situations that it has to describe can be very complex. This means that a certain number of “technicalities” are unavoidable (and even recommended, in given cases). What should be avoided is that the “complicated” language is used to conceal problems.

The quantitative analysis shows that approximately half of the respondents have some kind of guidelines or recommendations regarding this topic. Some have provisions for clear language in rules of the court. Some have special brochures and guidelines for judges regarding victims, witnesses, and their protection. Some have those guidelines written in codes of judicial ethics, others have special compliance guidelines for the judiciary including parts that are also guidelines on clear oral and written communication. Some have special guidelines for judicial spokespersons. Some mentioned mediation, which is not a coincidence because language in mediation is simple, clear, and, above all, adapted to the user. That means that a mediator speaks with the parties in a simple and informal legal language. Practices on the implementation of different tools vary between member States. In some States courts take the initiative, in other ministries, judiciary councils or another national body for all courts in the state.

Nevertheless, the use of manuals, guidelines and recommendations is not without risk. While all of the above-mentioned tools are important factors in improving communication with litigants and judges’ work, they cannot, and are not meant to, replace judges’ discretionary power in decision making processes which guarantees an independent and impartial justice. The judge must always be able to renounce the tools and usefully enrich the prepared documents.

3. GUIDELINE ON TEMPLATES AND DESIGN FOR DRAFTING JUDICIAL TEXTS

Create special textual templates for courts’ final decisions and for other court texts while respecting the independence of the judge

33 respondents answered that they have templates for final decisions. In most cases, these templates define common graphic design and a basic structure. In the introduction of the judgment the information is added automatically, e. g. name of the court, case number, names of the parties etc. These are imported automatically to a specific draft by the case management system. The software provides standard texts, for example, articles

on the conditions for a transfer of parental custody to one parent in a divorce case. However, decisions are much more closely related to a specific case, thus essential parts of a decision must be formulated individually.

Some of the member States emphasized that clear and easily understandable language is very important. The courts continuously strive for judgments and other court decisions to be written in plain, clear, and easily understandable language. The style of judgments is formal, meaning there are no personal overtones. Judges never use the first person singular when writing their judgments or other court decisions. One member States emphasized that the Supreme Court demands that courts must show in each decision that the arguments of the losing party have been understood and dealt with. This limits the use of standard phrases and templates. In one sole member States, a judge is required to use templates in some circumstances, whereas in all others, templates are not obligatory for judges.

Most of the respondents answered that they do have templates for (other than final decisions) court texts. Some are obligatory to use and others are not. Some are automatically generated in a computer system and others are written according to different court rules, so must be written explicitly in such a way. Some member States have templates for all courts and in other member States, each court provides its own templates, meaning they are not uniform for the entire country. In some member States there is special care given to clear language, and in one member States, Supreme Court judges verify the content of a template. In one member States the courts employ linguists.

16 respondents answered that they have procedures for alterations of the templates. Upon the proposal of judges, when it comes to content and templates, all changes within the system are reviewed and approved by a permanent verification body for the case management system. In some cases that body is a ministry, in others a board of judges, in yet others supreme court judges etc.

However tempting the use of the templates is, it should be very clear that impartiality and independence of the judiciary imply that the heart of the decision making, reasoning, and consequently also the use of templates, drafts, and other tools, must be the result of the judge's personal reflection and responsibility.

4. GUIDELINE ON INFORMATION BROCHURES AND WEBSITES

Create special tools providing information to court users

It is very important that court users understand the functioning of the court. It is imperative that communication with court users does not make them feel inferior or talked down to. Information should be accurate and easily understood. For a quality judiciary it is of greatest importance that not only court users, but also the general public, has basic knowledge of their rights in the courts and what to expect when going there.

Some member States send litigants and other persons summons with the rules of the Code of Procedure applied, explaining their role in court. In some member States special brochures are sent on rights and obligations of witnesses in criminal proceedings. The brochure of the Witness Support Unit is delivered to witnesses and victims. A form for property and legal claims is also provided to the victims. Some member States send brochures together with court texts, while others provide information about court proceedings on their website. Some have both. Extra care is given that language in these brochures is plain and simple. Some member States have brochures in the courthouse, where they are available for the parties or other users of the court. Some member States refer to the judiciary website in their summons to court. There, they can find information about their role in a particular case (defendants, witnesses etc.).

It is encouraging that many member States see how important information is for court users and the general public. Citizens are more likely to trust the judiciary if they understand its functioning in general and individual proceedings, especially their own. Information must be provided in clear, easily understandable language adapted to lay persons. However, it is very important that this information is accurate and in the line with the law. It should not be oversimplified because many legal questions are complex and legal rights can be "lost in translation" into simple language.

5. GUIDELINE ON THE EVALUATION OF THE ORAL AND WRITTEN SKILLS OF JUDGES

Develop tools for evaluation of the oral and written skills of judges, which are not in opposition to judges' independence

The CCJE in its Opinion No. 11 (par. 57. – 61.) on evaluation of the quality of judicial decisions stresses that the merits of individual judicial decisions are primarily controlled by the appeal or review procedures available in national courts, and by the right of access to the European Court of Human Rights. The CCJE underlines that any method of evaluating the quality of judicial decisions should not interfere with the independence of the judiciary, either as a whole or on an individual basis. Above all, any evaluative procedure should aim at identifying the need, if any, for amendment of legislation, to change or improve judicial procedures and/or for further training of judges and court staff.

25 respondents answered that they do evaluate judges' oral and written skills. In some states, judges are evaluated only at the beginning of their service. Periods vary from three to seven years. In most cases, the judges' oral skills are evaluated on, for example: clarity, professionalism, comprehensibility, ability to convince, social competence (being receptive and considerate of others' contributions; citizen-friendly behaviour), negotiation skills (empathy, patience, fairness, balance, purposeful leadership / co-design of negotiations), assertiveness (representing and asserting different points of view with convincing arguments). In most cases, the judiciary council carries out an evaluation, but in some member States, this is done by the presidents of the court or second instance judges in an informal context.

26 respondents answered that they do periodically evaluate a judge's writing skills. In most member States the criteria for evaluating a judge's writing skills are the following: whether the conclusion is comprehensive and certain; clarity, comprehensiveness and synthesis capacity in the drafting of the judicial decisions and judgments, relating to the factual and legal situations to dealt with; as well as to how the procedural or investigative problems are addressed; legal reasoning; application of substantive and procedural law provisions included in the judgments; the legal technique. In some member States, the use of clear and simple language in court texts is evaluated too.

However, tools which intervene with a judge's position must be used in very limited manner and under strict conditions. The essence of the rule of law and quality judiciary is the independence of judges. It is of the greatest importance that the evaluation of judges is carried out in a transparent way and by independent bodies such as judiciary councils.

6. GUIDELINE ON A PUBLIC E-PLATFORM FOR JUDICIAL DECISIONS AND OTHER IT TOOLS

Develop an e-platform for judicial decisions and other IT tools with special care given to plain and clear language

We live in a time of great expansion of information technology. The general public (and lawyers) seek information via IT tools and the judiciary is no exception in that regard. Citizens expect courts to provide information about their decisions on an e-platform which is user friendly. They need a judiciary which can function even in times of crisis. IT tools (online access to proceedings, the possibility to submit online applications at any time, hearing by videoconference etc.) can ensure that this is the case.

43 respondents answered that they do have a version of a platform for judicial decisions or other IT tool for court users. Some judgments are published on the official websites of the courts, while some are managed by the private sector. Most court-led websites are free of charge. Sometimes some of them are accessible only after paying a yearly fee. The access to some of the most relevant collections and legal data bases—namely that of the Supreme Court of Cassation—is offered free of charge only to judges and prosecutors.

Courts in some member States must publish all judgments within a specific timeframe (e.g. one month), others must publish only the second and third instance judgments. In some member States, there is an obligation to publish decisions (anonymously) which the public has or may have an interest in. Some member States have

very sophisticated IT tools for litigants so they can use electronic legal communication for submissions to the courts and prosecution offices. In some member States citizens have online access to their proceedings and the possibility to submit online applications anytime and anywhere without having to go to court.

Nevertheless, the use IT tools is not without risk and has shown some limitations, especially when there is too much information which is not properly sorted. That can lead to their saturation and is not court user friendly. This is why it appears so important to ensure organising and proper storage of information (for example: all court decisions in the state) in a structured and relevant way by using keywords or other artificial intelligence tools.

It is also very important that tools enabling online access to clients' proceedings and the submission of online applications are user friendly and keep vulnerable persons (poor, old, refugees, etc.) who are unable to access IT justice in mind. Courts should be careful that in an effort to open themselves via e-tools, they do not create injustice towards disabled or vulnerable persons.

7. GUIDELINE ON QUALITY MEASUREMENTS

Provide a measurement of court users' satisfaction, with special care given to user-friendly language

For every organisation, it is of the utmost importance what their users think of their performance. Courts are no exception. It is recommended that a periodical user satisfaction measurement is part of the regular workings of the court. It should include questions about language used in the court, both oral and written. Only when court management knows what a court's users need can they provide it.

21 respondents answered that they do have some sort of user satisfaction measurement, eighteen of them do it periodically (in most cases every three years). Nineteen member States' surveys include questions about the judge's language. In two cases, no distinction is made between oral or written language.

It is very inspiring that many member States have seen the importance of quality measurement. But it is equally, if not even more important to work on the results of such monitoring. Users and the public who were part of the survey expect courts to do something about it. One thing is monitoring, the second is analysing the results and third is working on the identified problems.

COMPARATIVE STUDY

INTRODUCTION

This paper aims to provide an overview of the practices and tools implemented in Council of Europe (CoE) member states that contribute to improve the quality of justice by combating the tradition of so called “*verba legalia*” in communication with court users. Use of complicated and unclear/ non-transparent language persists in many judicial decisions and oral communication with litigants.

This overview is based on the examination of various information documents, as well on the replies to a questionnaire¹⁴¹ submitted to national correspondents and pilot courts.

To give an example of the importance of good enough communication, the use of clear and simple language which can be understood by users and the public is very important to build trust in courts. If the judgement is written in clear and understandable language, the litigant who lost will know the reasons for their failure and they will be less likely to appeal.

It should be noted that these issues have been partially addressed in several CoE documents. This topic is especially important for the Consultative Council of the European Judges (CCJE). In their Opinion No. 7 (2005) on “Justice and Society” the CCJE states (par. 56. - 61.) that the language used by the courts in their procedures and decisions is not only a powerful tool available for them to fulfil their educational role, but it is obviously, and more directly, the “law in practice” for the specific litigants of the case. Accessibility, simplicity, and clarity of the language of courts are therefore desirable.

CCJE in its Opinion No. 11 (2008) on “The Quality of Judicial Decisions” states (par. 31. - 33.) that to be of high quality, a judicial decision must be perceived by the parties and by society in general as being the result of a correct application of legal rules, fair proceedings, and of a proper factual evaluation, as well as being effectively enforceable. Only then will the parties be convinced that their case has been properly considered and dealt with, and society will perceive the decision as a factor for restoring social harmony. The CCJE notes that in some European countries, judges believe that very short judgments reinforce the authority of the judgment; in some other countries, judges feel obliged, or are obliged by the law or practice, to explain extensively in writing all aspects of their decisions. Without the aim to deal with a subject, which is heavily influenced by national legal styles, in depth, the CCJE considers that a simple and clear judicial language is beneficial as it makes the rule of law accessible and foreseeable by the citizens, with the assistance of a legal expert if necessary, as the case-law of the European Court of Human Rights suggests. The CCJE considers that judicial language should be concise and plain.

The CCJE in its Opinion No. 11 (par. 57. – 61.) on evaluation of the quality of judicial decisions stresses that the merits of individual judicial decisions are primarily controlled by the appeal, or other review procedures available in national courts, and by the right of access to the European Court of Human Rights. Countries should ensure that their national procedures meet the requirements laid down in the decisions of the latter Court. The CCJE underlines that any method of evaluating the quality of judicial decisions should not interfere with the independence of the judiciary either as a whole or on an individual basis. The evaluation of the quality of a judicial decision must be done above all on the basis of the fundamental principles of the ECHR. It cannot be done only in the light of economy or management. Any quality evaluation system should strictly aim at promoting the quality of judicial decisions and not serve as a mere bureaucratic tool or an end in itself. It is not an instrument of external control of the judiciary. Above all, any evaluative procedure should aim at identifying the need, if any, for the amendment of legislation, to change or improve judicial procedures, and/or for further training of judges and court staff.

¹⁴¹The CEPEJ’s working group on quality of justice (CEPEJ-GT-QUAL) approved the Questionnaire (annex 2) at the meeting on June 18 2020. Secretariat of working group sent the questionnaire to the national correspondents and the members of the CEPEJ network of pilot courts. There were 53 answers to the questionnaire from national correspondents and pilot courts.

These topics were discussed broadly in theory.¹⁴² Tyler writes about procedural justice which is not about (only) proceedings, but also about justice, and mostly communication with litigants. He states that even if someone loses in court, they will be more willing to accept the judge's solution if they have had the opportunity to tell their side of the story in their own words before decisions were made about how to handle the dispute or problem (1. Voice); if the judge is neutral/ objective – to emphasize this aspect of the court experience, judges should be transparent and open about how the rules are being applied and how decisions are being made. Clear explanations emphasizing how the relevant rules are being applied are helpful (2. Neutrality); if judges respect them; that is if they treat people with courtesy and politeness, as well as showing respect for people's rights. For example, when people come to court, they are often confused. Providing people with information about what to do, where to go and when to appear, all demonstrate respect both for the people and for their right to have their problems handled fairly by the courts. Brochures or websites explaining court procedures, as well as aids such as information desks, are found to be valuable (3. Respect); and if the litigants believe they can trust judges, it means that the judges are listening to and considering their views, are being honest and open about the basis of their actions, are trying to do right by everyone involved, and are acting in the best interests of the parties, not out of personal prejudices (4. Trust).

These concepts refer to the practices already existing in the courts or judicial systems of some member States. Most of the member States believe this to be a very important topic. In short it could be said that most of the member States know that more should be done on this issue; that clear and simple communication is necessary if the judiciary wants to be understood and it is *conditio sine qua non* for the access to justice.

It is important to understand reasons for complicated language in courts if tools for improving communication with users are to work. Many respondents emphasize that due to the nature of the judicial work, wording is necessarily legal and formal. Legal language has its own technicalities because the situations which have to be described, can be very complex. Often to the higher courts the use of "*verba legalia*" seems to be essential for the persistence of a decision, even though the parties might not understand it. Judges fear the decisions of higher judicial instances and the Constitutional court that might quash their decision due to the fact that some issues or legal questions were not sufficiently addressed. Such fears lead to the inclusion of relevant and irrelevant parts in the judicial decision, making it hard to read and understand (Austria¹⁴³, Slovenia). Some respondents see the heavy workload of the judges as an obstacle, which means that they do not have enough time to be concerned about the nature of the language they use as well.

Judges also have a habit of writing in a complicated language and using the same style that has been in use so far because usage of a standard legal text is safe - when a judge starts using a simplified text, they must pay extra attention so as not to make the text appear too rudimentary or informal (Estonia, Norway). There is also the inability to break from tradition of looking at how previous judgements and decisions have been written and the tendency to include too much irrelevant information (Sweden).

Problems with over-technical language tend to arise out of fear of criticism of insufficient reasoning, and of temptation to demonstrate erudition or originality, or, in parallel, out of legitimate career concerns bearing in mind the evaluation systems in place for judges. Above all, it is a question of a professional culture based on the legal profession, with the inherent resistance to change and overcoming any suspicion of threat to the individuality and freedom of expression of each judge, if not primarily to judicial independence itself (Portugal). Most of the member States are working on these issues in some manner even if their starting points might be different. Some of the member States think that the main goal should be an increased usage of IT in courts, others are thinking of efficient-court PR, but most of them see the real problem and the solution is better oral and written communication between judges, court officers and users. Some of the member States did analyse obstacles for this – they could be possibly found in complicated legislation, complex social relationships, and judicial culture. It is therefore necessary to present these practices in order to initiate and deepen a reflection on how to improve the court's communication with their users.

member States developed different tools to achieve better communication with litigants.

These tools can be divided into seven groups:

1. training

¹⁴²T. Tyler, *Procedural Justice and the Courts*, Court Review: Volume 44, Issue 1/2 –2007, Kurt Schellhammer, *Die Arbeitsmethode des Zivilrichters*, 17. Auflage, C.F. Müller, 2014 and others.

¹⁴³ According to the reply from the CEPEJ Pilot court in Austria (District Court Bezirksgericht Graz-West)

2. manuals and other recommendations
3. templates, designs, and other good practices on drafting judicial texts
4. brochures, websites and other tools providing the required information
5. evaluations of judges' oral and written skills
6. public e-platforms for judicial decisions and other information technology tools
7. quality measurements.

Most of the member States have undergone trainings for language related topics for judges and court staff, have a set of guidelines, judges are evaluated on language they use. Some practices are very innovative and can be a role model.

1. GUIDELINE ON TRAINING

1.1. Trainings for judges related to oral communication

1. For judges and also court staff is imperative to know how to communicate. If they have basic knowledge they know that the first and most important rule of good communication is the use of clear and simple language.
2. Many member States have trainings that are related to oral communication and psychology in the courtroom, working with emotional people etc. Some respondents emphasized that their training is interactive, with mock trials and role plays. In most member States these trainings are not mandatory for judges but in some they are, also for senior, and not only new, judges. Mostly, in member States with mandatory training, it is reserved for the new judges, who are at the beginning of their careers. It is encouraging that many member States have special trainings for judges and court staff which are focused on dealings with children, minors, victims, and other vulnerable parties or witnesses in the proceedings.

1.1.1. EXAMPLES

3. In **Austria** candidate judges, during their training of usually about three years, participate in obligatory seminars, in which they have to re-enact typical court room scenes with angry, emotional or in other ways difficult parties. By this means, they learn how to react and communicate in these special situations in a correct and appropriate manner. In addition to that, regular social skills seminars are offered to candidate judges, judges, and prosecutors aiming at sharpening their communication skills.
4. In **Lithuania** training for judges on communication with litigants is organised on a regular basis. In 2015-2017, training was organised for judges on the quality of service in the courts (including conduct and communication with clients; communication with aggressive individuals), psychological support for victims and witnesses and their protection during proceedings etc.; the training included aspects of communication with litigants. The implementation of the programme also involved training for judges on communication with children during questioning (questioning methodology). In 2020 for example the subjects included: The psychological aspects of questioning children; Establishing contact with the child having regard to peculiarities of their age; Children's cognitive processes and their impact on giving evidence as a witness); in 2019: when victims of violence refuse to give evidence: numbers, causes and solutions; sexual behaviour of minors – how to assess it in cases of sexual violence; in 2018: Efficient methods of listening to the child's opinion and methods of communication with a judicial psychologist, having regard to the child's age, development, maturity etc.; Questioning in complicated cases, children with special needs, children with particular mental, developmental, or cognitive disorders), 2019 – principles of persuasive communication in the work of judges; meeting the needs of people with psychosocial disabilities in civil and criminal proceedings; emotional competences in the work of judges: responding to psychological aggression; 2020 – communication with aggressive persons; critical conversations and their management.

5. In **Montenegro** in accordance with the Programme of In-service Training for Judges and State Prosecutors has had a two-day training on judicial skills annually for some time now. This training covers the following topics: communication: general terms and concepts; non-verbal communication; active listening; communication styles; conflict resolution and conflict styles; stress and prevention of burnout syndrome; psychology of assessment and deciding on moral and ethical decisions of a person and deciding on guilt; evolutionary psychology and social behaviour; behavioural control; stereotypes and prejudices in a courtroom; court decision-making: emotional impact of statements; psychological manipulations in a courtroom etc. The theoretical part of the Programme of Initial Training for Candidates for Judges and Candidates for State Prosecutors includes a special six-day module dedicated to judicial and prosecutorial skills in which a lecturer is a psychologist, a communicologist, a judge or a state prosecutor.

1.2. Trainings for judges related to written communication

6. The writing of the decisions of judges (structure of the decision, use of plain and easily understandable language, short sentences, grammar, etc.) is a very important topic when clear and simple communication with court users is discussed. Most of the member States have trainings on the writing of decisions. In some states trainings for candidate judges are obligatory, and in some they also have it for senior judges on a voluntary basis. In some states, writing a judicial decision is a part of the apprenticeship and is taught in special workshops. Most of the trainings are organised at the national level by judicial academies or similar institutions.

1.2.1. EXAMPLES

7. Within its programmes on offer, the **Croatian** Judicial Academy has the following modules related to writing judge's decisions: "Techniques of writing judgments in civil matters", "Techniques of writing judgments in criminal matters", "Content and writing of a judge's decision", "The way to a written judgment". They have been developed by the county-court (second instance court) judges, high court judges and Supreme Court judges. These are the topics contained in the modules: key elements of a judgment; types of judgments; analysis of the elements of a judgment; practical examples; glossary of the typical mistakes in writing a judgment that should be avoided.
8. In **Denmark** written communication is a mandatory module for judges in training. It is a three day course which focuses on the structure of decisions and correct use of language in criminal cases. The judges are trained in case presentation and to understand the principles behind correct and structured decisions in court. Furthermore, they offer a course which focuses on the Danish language including grammar and the use of punctuation. This course is offered to court staff as well as judges.
9. In 2018 **North Macedonia** conducted a pilot project whose purpose was to improve the quality of judgment and prosecution acts, without putting the uncontested behaviour of the judge/public prosecutor in their decision into question. The target group for this training were judges from criminal departments and public prosecutors with 10 years of service. The training was conducted over a period of one year. The training was attended by judges and public prosecutors. Each of the participants on the training produced a written judgement/prosecution act which was handed over to the lecturer. Three months after completing of the training, during the half-day meeting, every participant drafted a new prosecution act/ new judgment which was afterwards handed over to the lecturer who compared the two documents.
10. **Norway** has training on how to write a judge's decision included in basic training for judges. Simple language is generally emphasized as a necessary tool. The ideal is that the decision should be written in a language the parties understand. Academic language is generally avoided as much as possible. There is also an online training course available.
11. In 2020 the National School of Judiciary and Public Prosecution in **Poland** organized courses for civil and criminal judges entitled "Justification of judgments". These courses were a continuation of the cycle that began in 2016. The aim of the cycle was primarily to draw attention to using a simple and understandable language when providing information to participants in legal proceedings, while complying with legal requirements. Above mentioned courses covered the following topics: choosing the most efficient way of communication, linguistic correctness, linguistic errors in legal communication,

legal requirements of the judge's decision. Trainings addressed to criminal judges also covered topics related to preparation of oral justifications and justifications on an official forms.

1.3. Training for court staff

12. Most member States have communication trainings for court staff. One respondent emphasized that it is reserved for staff dealing with the media. Some member States have mandatory trainings for the court staff. Most member States have similar trainings for judges and court staff relating to soft skills. It is an interesting idea to train mentors for the court staff, who are responsible for the in-house training of staff in each court in the country and court volunteers, who are persons other than members of staff who assist the court's clients to orientate themselves in the court environment.

1.3.1. EXAMPLES

13. In **Finland**, training is organised regularly for the legal secretaries, court registry staff and the process servers on how to deal with difficult clients and challenging situations. Much of the preparatory interaction with the parties, such as invitations, is dealt with by legal secretaries. The regular yearly training days for legal secretaries (both general and administrative courts) include the topic of good communication ("good administrative language"). The training for the process servers includes communication topics, such as, for example, multiculturalism and "encountering a difficult or violent client".
14. In **Latvia** the Court Administration provided training for court staff on communication with the parties, both on-site and in writing, such as the Writing and Visualization Skills (for communicators), business Latvian language, emotional intelligence, and respectful, effective communication.
15. In **Lithuania** training on communication with litigants is organised for court staff when possible. In recent years, more attention has been devoted to the development of mentors in the field of service of individuals: the mentors are responsible for in-house training of the court staff. There is an institute of volunteers in place in Lithuania's courts. Such volunteers undergo training on communication with litigants (children, injured parties, and witnesses; persons with disabilities) on a regular basis.
16. In **Sweden** among the different court staff categories, law clerks are required to attend a compulsory training on communication with litigants organized by the Swedish Judicial Training Academy. Both the introduction and follow-up course for law clerks deal with matters such as: how to communicate inside and outside the courtroom, how to handle phone calls and personal meetings.

1.4. Conclusion

17. Training institutions are encouraged to develop trainings for judges and court staff with special emphasis on the use of clear and non-scientific language both in oral and written communication with court users.

2. GUIDELINE ON MANUALS AND OTHER RECOMMENDATIONS

2.1. Communication with litigants on court hearings

18. The quantitative analysis shows that approximately half of the respondents have guidelines or recommendations regarding this topic. Some have provisions for clear language in rules for the court. Some have special brochures and guidelines for judges regarding victims, witnesses, and their protection. Some have those guidelines written in codes of judicial ethics, some have special compliance guidelines for the judiciary of which parts are also guidelines about clear oral and written communication. Some have special guidelines for judicial spokespersons. Some mentioned mediation, which is not a coincidence because language in mediation is simple, clear and, above all, adapted to the user. That means that the mediator speaks with the parties in a simple and informal legal language. Practices on the implementation of different tools vary between member States. In some States courts take the initiative, in other ministries, the council of the judiciary or another national body for all courts in the state.

2.1.1. EXAMPLES

19. In **Belgium**, use of clear and simple communication with litigants and other court users is a matter of prime importance for the High Council of Justice. The 2017-2020 Project Plan of the High Council of Justice (known as the "Crocus Plan") includes a point specifically dedicated to the use of accessible and understandable legal language. The Superior Council of Justice has therefore adopted the mission of ensuring that magistrates and non-magistrates are attentive to the use of accessible and understandable judicial language so as to allow or facilitate the application of the law. To carry out this mission, the Superior Council of Justice made recommendations to the various authorities encouraging the use of clear judicial language. To this end, they organize consultations (including the States General) with all the parties concerned (legislator, universities, lawyers, civil servants, police, etc.).

The College of Courts and Tribunals issued Recommendation to use a "correctional judgment" model. A working group has been formed to work on simplifying the system by emphasizing the readability and computerization of the data transmission of the judgment system. The main recommendations of the Superior Council of Justice contained in the "Spice project - Clear language on the menu of the judiciary" are as follows: To the heads of bodies and the heads of professional orders: Encourage all members of your body or professional order to use existing tools to communicate in a more understandable way. To the institutions responsible for training the legal professions: Organize awareness-raising activities for legal professionals on the need to communicate in an accessible manner. To the Orde van Vlaamse Balies, to Avocats.be and to other professional orders: Organize training aimed at clarifying language. To the Judicial Training Institute, the College of Courts and Tribunals, the College of the Public Prosecutor's Office, the Court of Cassation, the heads of corps: Encourage all the staff concerned to follow the same training courses as those for magistrates, the ideal being for the training to be followed as a functional duo, for example by the judge and his usual clerk. These recommendations are reproduced exhaustively in the document "Spices project - Clear language on the menu of the judiciary".

20. In **Bosnia and Herzegovina**, several courts including the CEPEJ pilot court, District Court in Novi Travnik have guidelines for the handling of litigation procedure, written by the courts themselves. The courts have written the guidelines following the initiative by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.
21. **Denmark's** courts have guidelines for the usage of language. In certain criminal cases, many judges use the same manual and guidelines for the first part of the hearing.

2.2. Judge's decision's writing

22. Many member States have documents such as manuals, guidelines, recommendations regarding the quality standard of the judge's decision's writing. Some have special manuals, some documents on language and law with examples of good and bad judge's decision's writing (especially concerning grammar and expression), which are on the intranet for the country's judiciary. Some member States have detailed manuals for quality judgments and some have detailed procedural rules for the writing of a judgement. Most manuals contain examples of whole judgments or at least of a verdict for different types of cases. Some member States carried out studies on the application of quality standards for judicial procedural decisions; it included analysis and evaluation of the conformity towards the recommended standards for judicial procedural decisions, guidelines for improving the production of judicial procedural documents and measures for implementing the guidelines. Practices on implementation of different tools vary between member States. In some countries, courts take initiative, in others it is the ministries, Councils of the judiciary or other national bodies for all courts in a state. One respondent answered that such guidelines or manuals would be detrimental to the independence of their judges.

2.2.1. EXAMPLES

23. The Civil Court of Appeal of **Armenia** reports that in 2019 a manual was published which is titled: "The language of legal writing". It was co-authored together with linguists by the Chair of the Civil Court of

Appeal. The idea of the manual is to help judges and staff of the court to write in a way that will be accessible and clear to the public. The manual is an advisory guideline.

24. On the intranet of the **Austrian** judiciary, there is, amongst other seminar materials, a document on language and law with examples of well and badly written of judges' decisions (especially concerning grammar and expression). These examples have been taken from real decisions and collected by a second instance judge.
25. The **Danish** courts have a language policy that must help ensure that written communication appears uniform and accessible to many different target groups. It is important that everyone can read and understand the texts of the Danish Court of Justice, regardless of whether they are judgments, letters or instructions – even if the readers do not have special prerequisites or knowledge of the work of the courts. In their letters and judgements, they try to adhere to the advice, which is a part of their language policy, as much as possible. They have guidelines for the usage of language. There are different materials about this topic. For example, a longer note has been prepared, which describes the framework for “the good appeal”. The memorandum is also useful for judgments at first instance. The memorandum was prepared by a quality working group that has reviewed a number of judgments and which served as the basis upon which it prepared a proposal for a guide with “Practical tips when writing a judgment”. There is also a guide from 2011 on the same subject. The language is contemporary and there is an awareness of which words not to use, etc. that risk of escalating the conflict/dispute between litigants.
26. In **Finland**, Section 9 of the Administrative Procedure Act requires authorities to use appropriate language. It stipulates that “An authority shall use language that is clear, easy to understand and to the point.” Although this Act does not apply to the administration of justice, the principle of clear communication is also accepted by the judiciary. The Institute for the languages of Finland (KOTUS) studies and gives guidance on the use of both of the official languages (Finnish and Swedish), also for administrative language and drafting of laws. It provides guidance also for judges. They also have a free phone service where you can call and ask questions, such as, for example, what is the correct term for “online chat” in Finnish (the English term is commonly used in spoken language). The case management system also produces templates which are used when writing decisions. This template provides the structure and font, for example. The Helsinki Court of Appeal and the Rovaniemi Court of Appeal lead quality projects. These projects produce reports, and in 2014, for example, the report led by Rovaniemi Court of Appeal discussed the structure and quality and quantity of reasoning as well as language and other questions related to the written form. The report also gave recommendations.
27. In **Germany** questions of language style and using easy language are subject to legal training in universities, in the jurists' vocational training (Referendariat) and later on the job. Questions of style and convincing and understandable argumentation within the motivation of a judgment is a matter of discussion between the judges of any panel when drafting and finalizing the motivation. When a single judge is called to decide - which is often the case in first instance proceedings- there is no prior discussion of linguistic aspects in a panel.
28. Several years ago, the Judiciary Council of **Lithuania** approved the Recommended Quality Standards for Procedural Decisions by Courts (the ‘Standards’), which are intended for final court acts, irrespective of the type of the proceeding. They are recommendatory and do not replace requirements set for court decisions in legal acts or case law. The Standards are applicable to other procedural decisions rendered by courts as necessary. The Standards establish recommendations for the form, content, and structure of court decisions. There are published recommendations of the judge's decision's quality standards. These recommendations include language (for example, recommendations to avoid complicated judicial phrases, phrases in Latin, complex sentences, etc), content (recommendations to avoid unnecessary and/or repeated text, rewriting the testimonies, to shorten the decision, write and use only case related material, etc), recommendations on used font, letter size, decisions' structure, etc.
29. **Norway** has guidelines which contain motivation inter alia for the use of plain and easily understandable language, alternatives for choice of words, short sentences, grammar, etc. There are also special comments regarding the structure and content of civil and penal judgments.
30. In **Sweden** clear and simple communication by courts as well as governmental agencies is mandated by the Language Act. It is also vital for the public's perception of courts. For these reasons the Courts of Sweden continuously work on maintaining and improving communication with litigants and other

court users. There is a strategy document for the Courts of Sweden on drafting judgements and decisions, which contains two particular main goals. The first is that whoever reads a judgement or decision should be able to understand the language, find relevant parts in the text and comprehend the court's reasoning. The second is that the resources spent on drafting judgements and decisions should be used in an adequate and efficient way. According to a 2013 report by a working group of judges, the main reasons for judgements and decisions not being clear and understandable enough are the inability to break from a tradition of looking at how previous judgements and decisions have been written and the tendency to include too much irrelevant information. The report also points to organizational matters and the fact that, in cases where several people are involved in the writing process, the demand for efficiency could lead to the judges not having enough time to edit complicated language in a draft judgement.

2.3. Other court texts (non-final judge's decisions, invitation letters, etc.)

31. Some member States have documents such as manuals, guidelines, recommendations regarding the quality standard of other court texts (non-final judge's decisions, invitation letters, etc.). Some have special manuals for language in legal texts, some templates in the case handling system, some have drafts, which were mostly developed by the working groups, which judges from different courts were involved in. One member State has a special inspection of court's administration ensuring the secretaries and other staff prepare the documents (invitations letters, requests, etc.) properly. Some member States think that the visual aspect of these texts is important because all key elements can be spotted at first glance.

2.3.1. EXAMPLES

32. At the Court of Appeal of Rovaniemi (**Finland**) they have had several working groups where they have modified and simplified invitation letters etc. considering not only the amendments to the law, but also the clarity and comprehensibility of the content of the document.
33. In **Lithuania** the special legal act sets the standards (on content and form) for all documents issued by the state institutions (courts included). In the District Court of Vilnius City, the courts administration periodically inspects whether the secretaries and other staff prepare the documents (invitations letters, requests, etc.) properly. Non-final judges' decisions should be prepared according to the decisions quality standards.

2.4. Conclusion

34. Clear communication and the use of understandable language are important concerns. The acceptance of a decision by the unsuccessful party depends very much on an understandable explanation. Nevertheless, legal language, with its technical terms, differs from normal language. This is hardly avoidable. It is therefore essential that the facts of the case and the assessment of the evidence are understandable to the parties. It is also very important that those recommendations do not interfere with the independence of judges (**Germany**).
35. By dealing with this topic we must be aware of the risk of creating false myths. Unfortunately, the legal/judicial language has its own technicalities because the situations that it has to describe can be very complex. If someone says "marriage", everybody understands what they are talking about; but if someone says "statute of limitations", very few people (if they are not jurists) will understand; however the alternative to this very short expression ("Statute of limitation," prescription in French, prescrizione in Italian, or Verjährung in German) is to say: "the legal situation in which a person loses his/her right(s) because he/she did not exercise it, during the period of time prescribed for by the law, provided that it is a disposable right and no act of suspension of interruption was done by the owner of the said right". This means that a certain number of "technicalities" are unavoidable (and even recommendable, in given cases). What we have to avoid is that the "complicated" language is used (as it really happens sometimes) to conceal problems and to avoid showing what the real reasons behind a decision are (**Italy**, Turin court).
36. Nevertheless, the use of manuals, guidelines and recommendations is not without risk. While all the above-mentioned tools are important factors in improving communication with litigants and judges' work they cannot, and are not meant to, replace judges' discretionary power in the decision making

process which guarantees an independent and impartial justice. The judge must always be able to renounce the tools and usefully enrich the documents prepared.

3. GUIDELINE ON TEMPLATES AND DESIGNS FOR DRAFTING JUDICIAL TEXTS

3.1. Special textual templates for court's final decision

37. 33 respondents answered that they have templates for final decisions. In most cases, these templates define a common graphic design and basic structure. In the introduction, the information is added automatically, e. g. name of the court, case number, names of the parties etc. These are automatically inserted into the template by the case management system. The software provides standard texts, such as articles on the conditions for a transfer of parental custody to one parent in divorce case. However, decisions are much more closely related to a specific case, thus essential parts of a decision must be formulated individually. Some of the member States emphasized that clear and easily understandable language is very important. The courts continuously strive for judgments and other court decisions to be written in a plain, clear, and easily understandable language. The style of judgments is formal, meaning there are no personal overtones. Judges never use the first person singular when writing their judgments or other court decisions. One member States emphasized that the Supreme Court demands that courts must show in each decision that the arguments of the losing party have been understood and dealt with. This limits the use of standard phrases and templates. In solely one member States, a judge is required to use templates under some circumstances, meanwhile in all other templates are not obligatory for judges. One respondent states that the independence of their judges does not allow such guidelines or manuals guiding the judges' decisions.

3.1.1. EXAMPLES

38. In **Denmark** they have templates for judgements and judgement summaries.
39. In **Finland** a judgment of a civil case begins with the case identification details – name of the court and the ID-number of the case, date of the judgment and the judge handling the case. These are imported automatically to the draft by the case management system. Then, it identifies the parties of the case. These are also imported to the draft by the case management system. Next, the judgment states the topic of the case and the date it was filed to the court. These are also imported to the draft by the case management system.
40. In **Germany**, their computer software provides a template for the base of the decision, but any juridical consideration, individual aspects and causes for the custody decision are individually worded by the judge and based on the hearings of the children, the parents, the children's guardian and the youth welfare office in family cases. The software provides standard texts, for example, articles on the conditions for the transfer of parental custody to one parent. However, these decisions are much more closely related to the specific case, so that essential parts of the decision must be formulated individually.
41. In 2013 in **Hungary**, the Kúria (the Hungarian Supreme Court) examined the national practice of drafting decisions. The Kúria published its findings and recommendations, which are available online. Furthermore, templates for non-final decisions and other court documents are available on the central intranet site of the courts.
42. In **Italy** the High Council of Judiciary occasionally prepares recommendations on specific court texts. Here, among other things, the High Council of the Judiciary recommend the use of specific templates to make the document more user-friendly, so that all key elements can be spotted at a glance.
43. The **Republic of Moldova** has templates for court rulings and court decisions as a compendium, but they are not mandatory for courts.
44. The **Romanian** Code of Criminal Procedure and the Romanian Civil Procedure Code regulate the contents of the summons and of other forms of communication of judgments/of the courts' decisions. Once the necessary data are entered, they are automatically generated by the ECRIS software, in a predetermined format. Addresses issued by courts for requesting information or documents do not have standardised content.

45. In the **Russian Federation** the existence of textual templates varies. Usually, if a judge has been considering a particular category of disputes for many years, then they have a collection of their own templates for the most typical cases.
46. In **Slovenia** templates define a common graphic design and basic structure. In criminal cases templates for pronouncements are available to judges as part of a compendium for judges.

3.2. Special textual templates for court texts of the trial proceedings (invitation to the hearing or preliminary hearing etc.)

47. Most of the respondents answered that they do have templates for (other than final decision) court texts. Some are obligatory and some are not. Some are automatically generated in a computer system and some are written in different court rules and must be written in a certain way. A few have templates, for example, for the structure of an invitation or decision. Some member States have templates for all courts and in some member States, each court provides its own templates, but they are not uniform for the entire country. Some countries emphasised that the content of a summons or other court texts are prescribed by law. In some member States there is special care given to clear language, and in one member States, Supreme Court judges verify the content of a template. In one member States the courts employ linguists.
48. 28 respondents answered that the templates for court texts are unified for all courts in the country. In some member States, unified court texts can be changed if a judge deems it necessary in their particular case. In some member States templates of court texts of the trial proceedings are recommended, not obligatory.
49. 16 respondents answered that they have procedures for the alternation of templates. In some member States, templates for court texts are unified and integrated into the software system. Upon the proposal of judges, when it comes to content and templates, all changes within the system are reviewed and approved by a permanent verification body for the case management system. In some cases that body is a ministry, in some a board of judges, in some supreme court judges etc.

3.2.1. EXAMPLES

50. In **Azerbaijan** all forms of documentation related to clerical work on cases considered in the courts are defined by the "Instruction on conducting clerical work in the courts of the Republic of Azerbaijan". Templates are prepared in the E-court System, which are automatically generated.
51. In **Belgium** they do not have special body for court text revision, however, the project "Spices" - Plain language on the judicial menu of the Superior Council of Justice recommends the creation of a permanent office of readability. This office will be able to give opinions, revise texts and regularly communicate brief writing recommendations. In this way judges can benefit from constructive criticism and new ideas.
52. In **Croatia** all templates for court texts are unified and integrated into the case management system. All changes within the system, when it comes to content and templates, upon the proposal of judges, are reviewed and approved by the permanent verification body for the Case management system. That body is appointed by the Minister of justice and composed of judges and officials from the Ministry of Justice.
53. In **Finland** there are currently several case managements systems (civil, criminal, and administrative) which have slightly different possibilities. The new case management system (HAIPA) has replaced the one for administrative/special courts and another one (AIPA) will replace the older ones for general courts. The templates for AIPA are currently under revision and the revised versions will be included in the new case management system. Special attention will be paid to clear communication, of for example the requests, obligations, or the consequences of failure to comply. The Development Department of the National Courts Administration (staff with a background as a judge) is participating in this revision, jointly with one Chief judge of a District Court, one District Court Judge and one legal secretary.

3.3. Design of the court's writing

54. Most member States indicated that the important parts of the final decision are bold or underlined. In one member States, the layout of the judgment is designed so that the customer can easily find what they are looking for – the topics are displayed on the left of the page in bold and/or capital letters and the text is indented. One of the main focuses of the templates is that of better customer service, so the perspective for evaluating the templates is that of a client. Two respondents answered that their court texts are in process of visual change.

3.3.1. EXAMPLES

55. In **Albania**, the District Court of Durres court decisions do not include figures, photographs or other graphic information directly related to the information, but they may include Surveillance Plans, Maps, Acts of Expertise, various other acts attached to the court decision itself, becoming an integral part of it, by order of the judge or the relevant trial panel.
56. In **Denmark** in summons they use bold writing to draw attention to the meeting time for the witnesses, defendant etc. Court records and judgments contains headlines which make it easier for the persons involved to navigate the content, for example statements, testimonies, the court's justification and result etc. For example, they use bold, when they want to clarify deadlines, meeting times, etc.
57. In **Finland** the layout of the judgment is designed so that the customer can easily find what they are looking for – the topics are displayed on the left of the page in bold and/or capital letters and the text is indented. One of the main focuses of the current review of the templates is that of serving the customers better – so the perspective for evaluating the templates is that of the client.

3.4. Conclusion

58. However tempting the use of templates may be, it should be very clear that impartiality and independence of the judiciary imply that the heart of the decision making, reasoning and consequently also the use of templates, drafts and other tools must be the result of the judge's personal reflection and responsibility.

4. GUIDELINE ON INFORMATION BROCHURES AND WEBSITES

59. It is very important that court users understand the functioning of the court. It is imperative that communication with court users is not haughty and treats them as equals. Information should be accurate and easily understood. For a quality judiciary it is of the greatest importance that not only court users, but also the general public has basic knowledge of their rights in the courts and what to expect when going there.
60. Some member States send litigants and other persons summons with the rules of the Code of Procedure applied, explaining their role in court. In some member States special brochures are sent on the rights and obligations of witnesses in criminal proceedings. The Brochure of the Witness Support Unit is delivered to witnesses and victims. A form for property and legal claims is also provided to victims. Some member States send brochures together with court texts, while others provide information about court proceedings on their website. Some have both. Extra care is given that language in these brochures is plain and simple. Some member States have brochures in the courthouse, where they are available for the parties or other users of the court. Some member States refer to the judiciary website in their summons to court. There, they can find information about their role in a particular case (defendants, witnesses etc.).

4.1. EXAMPLES

61. In **Bosnia and Herzegovina** (district court in Novi Travnik) they send brochures to witnesses and victims in criminal proceedings on their rights and obligations as witnesses in criminal proceedings. Brochure of the Witness Support Unit are also delivered to witnesses and victims by their court. A form for the property and legal claim is also provided to the victims.
62. In **Germany**, brochures are not offered nationwide. Only a few Landers offer them as standard, or only after request. The brochure "Psychosocial support in court" is also available especially for victims of violent and sexual crimes. This brochure informs victims of violent and sexual crimes about the support services available in the context of psychosocial support. One part of the address section contains information about websites where further information for victims can be found.
63. In **Ireland**, for the current panels and probably from now on there is also an information leaflet on what COVID-19 precautions have been taken. Information is available online and there are various information leaflets in areas around the courthouses. Victims' groups and Garda liaison officers would also have contact with victims to help them through the process.
64. In **Lithuania**, there is a network of volunteers assisting witnesses and injured parties. Court psychologists are involved in the proceedings by assisting in the questioning of minors including young children, preparing children and/or their statutory or legal representatives for questioning, evaluating child development considerations (incl. cognitive, emotional, behavioural aspects among others) that are important for each action in judicial proceedings, having regard to assessments of the child already made by other competent authorities, providing appropriate psychological assistance to children, providing consulting to their statutory/legal representatives, judges and other participants in the proceedings regarding the child's needs and development as required for the proceedings, and to judges and/or pre-trial investigation institutions regarding aspects of questioning. Methodological publications: Judicial Communication Guide; Guide for Volunteers: How to Provide Assistance to Injured Parties and Witnesses in Court; Psychological Support for Victims and Witnesses and Their Protection in Judicial Proceedings. Animation films about judicial proceedings 'How to Witness in Court?', 'How to Use the e-service Portal of Lithuanian Courts e.teismas.lt?', 'About Work of a Judge', 'About Remote Court Hearings' etc., are published on the website of the National Court Administration.: An educational tool – a virtual courtroom - has been created in order to acquaint the public at large with participants in the proceedings and their functions and responsibilities as well as the course of a court hearing.
65. In **Slovenia**, victims of crimes receive a notification of their rights in court proceedings. There are links to online information regarding individual proceedings included in templates for court texts (where appropriate). The online information can be found on the judicial website. There are animations about being a witness and about court system in Slovenia. The paper brochures about all kind of proceedings and the court system are available at all courts. Extra care is given to plain and simple language in all these tools.

To address the identified problems with communication with litigants and other court users the president of the Supreme Court took a decision to set up a project¹⁴⁴ with a specific organizational structure, consisting of 12 members - judges, court staff and external professionals. This steering committee supervises the work of three project groups. The first group has been dealing with the skills of judges and the second with the skills of court staff. The third group has been addressing communication between courts and different court users in general and the low trust in the judiciary in Slovenia. It consists of communication professionals as well as judges and court staff dealing with public relations. The activities started in 2016 and the project is still on-going. Deliverables of the project are brochures, new user friendly website, animations, manuals for judges and court staff on the court's user friendly proceedings and procedural justice, and different kind of trainings for them. One of the most important issues was that users in all contacts with courts must feel that they are respected and heard. One of the main goal was and still is that judges and court staff use clear and plain language when they have any kind contact with court users. Judges and court staff prepared brochures and other tools for court users. Then, communication experts redesigned them with plain

¹⁴⁴ Project won the CEPEJ 2019 award Crystal Scale of Justice.

and understandable language and better visibility, and then judges again read and checked these texts, ensuring that everything was in line with the law handled by a particular brochure (for example a description of the divorce procedure) or animation or websites, etc.

4.2. Conclusion

66. It is encouraging that many member States see how important information is for court users and the general public. Citizens' trust in the judiciary will increase if they understand its functioning in general and individual proceedings, especially their own. Information must be provided in clear, easily understandable, and lay persons adapted language. However, it is important that information regarding courts in general or individual cases is accurate and in line with the law. It should not be oversimplified because many of the legal questions are complex and legal rights can be "lost in translation" in simple language.

5. GUIDELINES ON THE EVALUATION OF THE ORAL AND WRITTEN SKILLS OF JUDGES

67. The CCJE, in its Opinion No. 11 (par. 57. – 61.) on evaluation of the quality of judicial decisions, stresses that the merits of individual judicial decisions are primarily controlled by the appeal, or are review procedures available in national courts, and by the right of access to the European Court of Human Rights. The CCJE underlines that any method of evaluating the quality of judicial decisions should not interfere with the independence of the judiciary, either as a whole or on an individual basis. Above all, any evaluative procedure should aim at identifying the need, if any, for amendment of legislation, to change or improve judicial procedures, and/or for further training of judges and court staff.
68. 25 respondents answered that they evaluate judges' oral and written skills. In some countries, judges are evaluated only at the beginning of their service. Periods vary from three to seven years. In most cases, the judge's oral skills are evaluated, for example, on: clarity, professionalism, comprehensibility, ability to convince, social competence (being receptive and considerate of others' contributions; citizen-friendly behaviour), negotiation skills (empathy, patience, fairness, balance, purposeful leadership / co-design of negotiations), assertiveness (representing and asserting different points of view with convincing arguments). In most cases, a judiciary council carries out an evaluation, but in some member States, this is done by the presidents of the court or second instance judges in an informal capacity.
69. 26 respondents answered that they do evaluate a judge's writing skills periodically. In most member States the criteria for evaluating a judge's writing skills are the following: whether the conclusion is comprehensible and certain; clarity, comprehensibility and synthesis capacity in the drafting of judicial decisions and judgments, relating to the factual and legal situations being dealt with; as well as to whether the procedural or investigative problems are addressed; legal reasoning; application of substantive and procedural law provisions included in the judgments; the legal technique. In some member States, the use of clear and simple language in court simple is evaluated too.

5.1. EXAMPLES

70. In **Austria** the evaluation of written and oral skills is part of a general assessment of the judge's skills by a panel of judges at least once within the first three years of their career.
71. In the Appeal Court of Rovaniemi and the District Courts falling under its jurisdiction (**Finland**) they regularly evaluate their quality of adjudication. An important part of that evaluation is customer satisfaction concerning the hearings and decisions. They carry out customer surveys where their customers can give feedback. There is also a designated group of experts (chief judges, university professors, representatives of the press etc) who evaluate their decisions and likewise the production of decisions.
72. In **Germany** communication skills are largely assessed in the standard appraisal every four or five years by the line manager. It may include the following aspects: oral/written expression: clear, professional, comprehensible, convincing oral/written expression; social competence: open reception

and appropriate consideration of the contributions of others; citizen-friendly behaviour, negotiation skills: empathetic, patient, fair, balancing, purposeful leading / co-designing of negotiations, assertiveness: Representing and asserting points of view with convincing arguments.

73. In **Italy**, the judge's skills are evaluated every four years for a total period of 28 years. Among the criteria for evaluation are "the clarity, comprehensiveness and synthesis capacity in the drafting of the judicial decisions and judgments, in relation to the factual and legal situations to deal with, as well as to the procedural or investigative problems addressed, as ascertained (by the evaluating body) through the assessment of the documents and decisions acquired by sample (from the evaluating body) as well as of those, when possible, produced by the concerned judge or prosecutor."
74. In **Monaco** the ability to listen and exchange with litigants is an element of assessment in the evaluation of judges by the head of the court.
75. In **Slovenia** communication skills are periodically assessed (every 3 years and every year for new judges) as one of the criteria for the assessment of the judicial service by the personnel councils (generally judges of hierarchically higher courts). The assessment is required by law and criteria are set by the Judicial Council. It formally includes: ability of oral and written expression as part of work ability and expert knowledge (use of correct Slovenian, exact and clear expression, use of correct law terms), communication skills as part of social skills (ability to listen to different opinions, ability to share knowledge and exchange experience, ability of mediating/settling, and clear, understandable and respectful communication), ability of handling conflicts as part of social skills (keeping calm and reserved, thoughtful conduct) and respectful attitude towards parties, co-workers and others and respecting their dignity as part of social skills.

5.2. Conclusion

76. Tools which interfere with a judge's work must be used rarely and under strict provisions. The essence of the rule of law and quality judiciary is a judge's independence. It is of great importance that the evaluation of judges is done in a transparent manner and by independent bodies.

6. GUIDELINE ON PUBLIC E-PLATFORMS FOR JUDICIAL DECISIONS AND OTHER IT TOOLS

77. We live in a time of great expansion of information technology. The general public (and lawyers) seek information via IT tools and the judiciary is no exception in that regard. Citizens expect courts to provide information about their decisions on an e-platform which is user friendly. They need a judiciary which can function even in times of crisis. IT tools (online access to proceedings, the possibility to submit online applications at any time, hearing by videoconference etc.) can ensure that this is the case.
78. 43 respondents answered that they do have a version of a platform for judicial decisions or other IT tool for court users. Some judgments are published on the official websites of the courts, while some are managed by the private sector. Most court-led websites are free of charge. Sometimes some of them are accessible only after paying a yearly fee. The access to some of the most relevant collections and legal data bases - namely that of the Supreme Court of Cassation - is offered free of charge only to judges and prosecutors.

6.1. EXAMPLES

79. In **Azerbaijan** they have an e-database of anonymized judicial decisions. All court decisions must be published on the website within one month.
80. In **Austria** the litigants can use electronic legal communication (ELC) for submissions to the courts and prosecution offices. ELC enables electronic transmission of submissions and an automatic receipt of the details of the case in the IT applications of the justice system. The courts and prosecution offices also use the ELC lane for return communication. In 2007 ELC was migrated to web service technology using MTOM. ELC, which is secured by SSL and certificates, can be accessed via several transmission points and, *inter alia*, allows the sending of documents as attachments in pdf/A format

together with the electronically submitted brief as XML data. Since early 2009 courts and public prosecutors' offices have been transmitting judgments, transcripts, and other documents as pdf attachments via ELC. Since 2013 Austrian citizens are able to send all submissions to all courts and public prosecutors' offices online via the website by way of secured communication. The citizens must use their mobile phone signature or citizen card to authenticate themselves before submission. Foreign nationals can use an eIDAS-compliant identification for authentication since 2018. With the new web service, citizens will also be able to view important case documents online (online file inspection). The mobile phone signature or citizen card will be required for authentication.

These tools make court trials and investigation procedures more efficient, communication easier, and save costs. Yearly savings on postage worth more than EUR 12 million are made in this way. The websites/web services are easier to update and it is easier to provide instructions in simple and clear language (i.e. by creating a "simple language version" of existing pages / articles).

81. In **Denmark** only selected high court and district court judgments are being published at the moment. In 2021 a new electronic database is expected to be launched, containing almost all judgments from all Danish Courts. All Supreme Court decisions are publicly available on the website of the Supreme Court and there is also a selection of them.
82. In **Finland**, in addition to the information provided on the webpages of the Supreme Court and Supreme Administrative Court, there is free and public database (FINLEX) which includes laws (original and updated) and decisions of the courts. For the Supreme Court the database contains the precedents, descriptions of the judicial issue in cases where the Supreme court has allowed an appeal but has not yet issued the decision, and summaries of the decisions which are not precedents. For Supreme Administrative Court the database contains the precedents, short summaries of certain other judicially relevant decisions as well as certain cases considered to have societal, regional, or other wider public interest rather than judicial significance. The database also includes a collection of decisions from the Courts of Appeal, Administrative Courts, Market Court, Labour Court, and Insurance Court. The database does not contain the decisions of the district courts. This is partly because the anonymisation of the judgments is still not automated. However, there is an ongoing project to find a solution to automate anonymisation of the judgments. The database also includes decisions or summaries of decisions of the European Court of Human Rights and old decisions of the Court of Justice of the European Union.

The new case management system of the administrative courts allows the citizens to file and receive documents online. Both general and administrative courts also use email in communication with the clients.

The National Courts Administration maintains webpages with more general information on the courts, so the courts do not have to produce and maintain all the information themselves. This reduces the resources needed by the courts. The webpages of different courts have a unified look, but each of them can customize the content of their own webpage to suit their needs. They may, for example, post announcements there. This way the public stays well informed. This, in turn, builds trust. The National Courts Administration can provide expertise to the courts on communication.

83. In **Germany**, decisions are not generally published. However, there is an obligation to publish decisions (in anonymous form) in which the public has or may have an interest. This can be done on the court's homepage (this is the practice of the Federal Court of Justice and the Federal Constitutional Court as well as some other courts). A few Landers have recently established so-called "transparency portals", where official information including important court decisions can be found. However, the decisions are usually sent to legal databases for publication. The operators of the databases made commitments to the Landers to publish such decisions.
84. In **Portugal** concerns around communication/relationship between citizens and the justice system have been mainly addressed through the "Justiça + Próxima Plan" (Justice + Closer Plan), an ambitious plan to modernise the justice sector. Launched in 2016, the second edition (2020-2023) further develops several measures already in place and includes new ones. As regards courts, this plan aims to provide the conditions to courts and all legal professionals for the exercise of justice by ensuring maximum quality, swiftness and efficiency, defending articulation and autonomy for an efficient administration of means, changing perceptions and strengthening confidence. Based in this plan, the "Tribunal +" (Court +) and the Digital Platform of Justice projects stand out for their dimension and impact. The first one establishes a new paradigm on the front-office service between courts/court

staff and citizens. The second one gathers in a single website all the information from justice services, in a clearer and more accessible language. Additionally, citizens have online access to their proceedings (not to mention the possibility to submit online applications for several types of certificates), anytime and anywhere without having to go to court. Initially limited to enforcement proceedings, today online access encompasses all type of proceedings. In a nutshell, the communication between courts and its users is now much more direct, simpler, and accessible. With regard to a more immediate relation/communication between courts and litigants, the more direct and objective communication project should be highlighted, which started in 2017. Initially, it was limited to judicial notifications regarding the order for payment procedure (a simplified and fast-track procedure for handling civil and commercial cases for claims up to a certain amount). These notifications now employ simpler language and different text formatting (character size, word spacing and use of bold and underlined areas). This project was conducted without any amendment to the legal framework on that procedure. The current edition of the “Justiça + Próxima Plan” will extend this measure to other areas/situations not yet covered. The initial goal was to promote agile, transparent, citizen-friendly justice, simplifying processes and procedures in order to achieve greater efficiency, to monitor results and to respond more effectively to what the users of the justice system need. Getting closer to citizens and changing both the feeling of distrust in the justice system, and the perception of its slowness, were the objectives of the plan. This plan puts the citizen at the centre of the justice activity, clarifying and simplifying the language, but also making new services available through several channels, thus avoiding unnecessary travels to the reception desks of the different justice services. “Justiça + Próxima Plan” measures are aimed to bring justice closer to citizens and businesses. There were language simplification measures included. Judicial notifications (court communications to citizens and businesses) have been simplified, both in terms of the language used and the information structure. The purpose of this measure was to facilitate the (i) understanding of the communicated information; (ii) finding of information in a quick and effortless way. Communications are now characterized mainly by a clearer language, a more readable text, and an added logical textual organization, that easily allows the identification of various types of information, including as much as possible relevant for the reader. Simplification does not mean dropping the accuracy of technical legal concepts nor does it mean lightening the grounds of the decision. Excesses tend to arise out of fear of criticism of insufficient reasoning and temptation to demonstrate erudition or originality or, in parallel, out of legitimate career concerns bearing in mind the judge evaluation system in place.

6.2. Conclusion

85. The use of IT tools is not without risk and has shown some limitations, especially when there is too much information which is not properly sorted. That can lead to saturation of them and is not court user's friendly. This is why it seems so important to ensure organising and proper storage of information (for example: all court decisions in the state) in structured and relevant ways by using keywords or artificial intelligence tools.
86. It is also very important that tools which enable online access to a client's proceedings and the possibility to submit online applications are user friendly and keep vulnerable persons in mind (poor, old, refugees, etc.) who are unable to access IT justice. Courts should be careful that in effort to open themselves via e-tools, they do not create injustice towards disabled persons or other vulnerable individuals.

7. GUIDELINE ON QUALITY MEASUREMENTS

87. For every organisation, it is of the utmost importance what their users think of their performance. Courts are no exception. It is recommended that a periodical user satisfaction measurement is part of the regular workings of the court. It should include questions about language used in the court, both oral and written. Only when court management knows what a court's users need can they provide it.
88. Twenty-one respondents answered that they do have some sort of user satisfaction measurement, eighteen of them do it periodically (in most cases every three years). Nineteen member States' surveys include questions about the judge's language. In two cases, no distinction is made between oral or written language.

7.1. EXAMPLES

89. In **Denmark** they measure the non-professional users' satisfaction on the parameter: "The judges' language is comprehensible", which impacts satisfaction on another, related parameter: "I was treated properly at the hearings" and they measure non-professional and professional users' satisfaction with the following parameters, across different types of cases: "The decision is conveyed in a comprehensible language", "The decision contains an adequate description of the case", "The decision contains an adequate justification". The survey covers both verbal and written decisions.
90. In **Finland**, in Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, the quality standards concerning the decision writing and the process are defined on the Quality Benchmark System which has been used in since 2006. It defines quality in the decision as lawfulness, correspondence to the common sense of justice, adequate and clear reasons, responding to the questions that have been raised, comprehensibility, structural uniformity, material uniformity, linguistic correctness, and predictability. More specifically, the language used in the decision should be such that also an outside reader can easily understand the main thrust of the decision. Comprehensibility requires the use of general language. Legal terms should be avoided or their meaning should at least be explained when they are used in the decision. The clarity of the decision can also be improved by the use of headings and a consistent structure.
- They also have a Quality Assessment System, where one part of quality assessment is the decision writing. The purpose of the quality assessment is to collect information on development and training needs.
91. In the **Republic of Moldova** user satisfaction is measured ad hoc (not every year or every 3 years) but they plan to measure it periodically. There are specific questions about the judge's language at the hearings and preliminary hearings. Also, about the language used in court decisions.
92. In **Slovenia** they measure satisfaction with the judiciary periodically (biannually) and it is measured among the general public, court users, legal professionals, judges, and the court staff. The survey's questions for court users ask about the judge's language. The survey's questions for legal professionals enquire about their satisfaction with the communication between the courts and professionals, and satisfaction with the judge's language and terminology. The survey's questions for court users also include questions about: the clarity of prescribed forms, clarity of the court's requests, and clarity of court decisions; meanwhile, the survey's questions for legal professionals enquire about the clarity of court decisions.
93. In **Sweden** most of the courts have language-related questions included in their surveys carried out at the court-level. Since 2010, the Courts of Sweden have been continuously working on communication (both oral and written) and the comprehensibility of court judgments. As a part of the Swedish courts' long-term commitment to this subject, many courts conduct court user satisfaction surveys on a regular basis. The surveys aim to cover topics such as: the level of satisfaction with the services of the court, safety and security at the court, overall perception of accessibility and the comprehensibility of the information provided by the courts, the communication skills of the court staff and the simplicity of the language of the court judgments and other decisions. The surveys are performed at each and every court at the court-level. Such surveys can be conducted in many different forms, for example as questionnaires directed to one or more specific reference groups, as qualitative interviews with the parties using the court services, or in dialog and cooperation with legal professionals taking part in the court hearings. Depending on the results of the survey, each court must decide what further measures and actions should be taken in order to ensure satisfactory level of court services.

At the central level, since 2010 the Swedish National Courts Administration remains dedicated to continually working in the field of communication (both verbal and written) and the comprehensibility of the court judgments. This task is carried out in close cooperation with the representatives of the Swedish courts. The courts themselves can also adopt further measures at the court-level in order to improve their communication with the court users. In such case, the measures are coordinated at the local level as a part of a court's activity plan. For instance, it can be mentioned that many courts continuously monitor and assess what kind of measures can be introduced in order to improve their day-to-day communication with the court users. Typical measures undertaken by the courts are aimed to improve the customer service of the court including the accessibility of the court service (e.g. physical accessibility, availability of online information about the services offered by the court).

7.2. Conclusion

94. It is inspiring that many member States see the importance of quality measurement. But it is equally if not even more important to work on the data such monitoring provides. Users and the public who were part of it expect courts to do something about it. One thing is monitoring, second is analysing the results and third is working on the identified problems.

CONCLUSION

95. It can be concluded that many member States are working within the line of the CCJE's Opinions, theoretical articles, and the Justification of the CEPEJ-GT-QUAL on clear and simple language in courts. They know that communication adapted to laypersons on the hearings (or pre-hearings) ,and in final and non-final texts, are equally important for court users. Most important is that they know how important trust in the judiciary is, and that plain and simple but legally accurate communication is fundamental to achieve that goal. It is extremely encouraging that all respondents think that clear and simple communication with court users is important because that is the cornerstone for CEPEJ's future work on the trust of the public in member States judiciaries.
96. Many member States developed tools for identifying problems with overly formal legal language, they have recommendations and other papers working on oral and written communication with court users, they develop user's friendly IT platforms. There are some interesting practices which should not be overlooked because they could be helpful for other member States who are working on their first steps to resolve these issues.

APPENDIX : BIBLIOGRAPHY

- ✓ Dessau Linda, Wodak Tom, Seven Steps to Clearer Judgment Writing
- ✓ Gossner Meyer, Die Urteile in Strafsachen, Verlag Franz Vahlen, 2008
- ✓ Günther Carsten, Grounds for the judgment– Report for Germany
- ✓ Huber Michale, das Strafurteil, Verlag C.H. Beck, 1993
- ✓ Jean Jean-Paul, “La qualité des décisions de justice au sens du Conseil de l’Europe”, Colloquy organised on 8 and 9 March 2007 by the Faculty of Law and Social Sciences, University of Poitiers, on “The quality of judicial decisions” – see “CEPEJ Studies” N°4
- ✓ Norkus Rimvydas, Grounds for the judgment, Report for Lithuania
- ✓ Schellhammer Kurt, Die Arbeitsmethode des Zivilrichters, 17. Auflage, C.F. Müller, 2014
- ✓ Skujeniece Vineta, The Quality of Court Judgements, Latvia, Providus 2003
- ✓ Guide on Article 6 of the European Convention on Human Rights, ECHR, 2020
- ✓ Tyler Tom, Procedural Justice and the Courts, Court Review: Volume 44, Issue 1/2 –2007
- ✓ Verbung André, Schueler Ben, Procedural Justice in Dutch Administrative Court Proceedings, UtrechtLawReview, Volume 10, Issue 4, November 2014
- ✓ Ziegler Theo, Das Strafurteil, Verlag Franz Vahlen, 2013
- ✓ Opinion No. 7 (2005) of the Consultative Council of the European Judges (CCJE) on “Justice and Society”
- ✓ Opinion No. 11 (2008) of Consultative Council of the European Judges (CCJE) on “The Quality of Judicial Decisions”
- ✓ European Commission, Implementation of the Pilot project- European Judicial Training, Lot 1 Study on Best Practices in training of judges and prosecutors, Final report, April 2014
- ✓ European Commission in Communication on Justice Scoreboard 2019
- ✓ Rovaniemi Court of Appeal, Evaluation of the adjudication in courts of law, Principles and proposed benchmarks
- ✓ Rovaniemi Court of Appeal Model for the Quality Assessment System, 2013: <https://oikeus.fi/hovioikeudet/rovaniemenhovioikeus/fi/index/rovaniemenhovioikeudenlaadunarviointijarjestelma.html>
- ✓ Supreme Court of Slovenia, Enotno oblikovanje sodnih odločb Vrhovnega sodišča Republike Slovenije, May 2011