"PROMOTING CYBERJUSTICE IN SPAIN THROUGH CHANGE MANAGEMENT"

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BETWEEN THE MINISTRY OF JUSTICE OF THE KINGDOM OF SPAIN AND THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) FUNDED BY THE DIRECTORATE GENERAL FOR STRUCTURAL REFORM SUPPORT OF THE EUROPEAN COMMISSION

JUDICIAL ORGANISATION IN A DIGITAL CONTEXT
prerequisites for and consequences of the digital transformation of justice

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Abbreviations

BRZ	Federal Computing Centre (Austria)
CDAD	Conseil départemental d'accès au droit / Departmental Council for Access to Law (France)
CEPEJ	European Commission for the Efficiency of Justice
CMS	Case Management System
CoE	Council of Europe
COVL	Centralni Oddelek za Verodostojno Listino / Automated System for Enforcement on the Basis of an Authentic Document (Slovenia)
CTSC	Courts and Tribunals Service Centres (England and Wales)
EU	European Union
EVIP	Sistem za evidentiranje Vhodne in Izhodne Pošte / System for the Registration of Incoming and Outgoing Mail (Slovenia)
G2G	Government-to-Government
HMCTS	Her Majesty Courts and Tribunals Service (England and Wales)
ICT	Information and Communication Technologies
MJD	Maison de la Justice et du Droit / House of Justice and Law (France)
MoJ	Ministry of Justice
ODR	Online Disputes Resolution
SOKOP-Mal	Sistem za elektronsku Obradu KOmunalnih Predmeta – Mal / System for the electronic handling of utility cases and small claims (Bosnia and Herzegovina)
VC	Videoconferencing

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1. Background and methodology

The Council of Europe (CoE) and in particular its European Commission for the Efficiency of Justice (CEPEJ) is delivering technical support to the Ministry of Justice (MoJ) of the Kingdom of Spain in the scope of the action "Promoting Cyberjustice in Spain through change management (PHASE II)", supported by the European Union via the Structural Reform Support Programme[1]. The general objective of the action is to increase the accessibility and the quality of justice in Spain by promoting the implementation of cyberjustice through strategic and knowledge-centred approach, comprehensive change management and unification or full interoperability of alternative systems deployed by the MoJ and the Autonomous Regions with devolved competencies for the administration of justice. One of the specific goals of the action is to support the Spanish authorities in developing strategic proposals on improving the judicial organisation in the context of digitalisation.

Spain, already at the forefront in the development of Cyberjustice in Europe, is preparing substantial reforms related both to organisational changes in the judicial map and court system organisation and to the digital procedures. In particular, three new acts are under preparation:

- a new Law on Procedural Efficiency[2];
- a new Law on Digital Efficiency[3]
- a new Law on Organisational Efficiency[4];

Within this framework, the current study aims at investigating solutions implemented by various European systems for promoting organisational and digital efficiency, incorporating information on key aspects, from the judicial map, human and material resources, the need for legal changes, technological capabilities, to the implications for guaranteeing the access to justice as recognised by Article 6 of the European Convention on Human Rights (ECHR).

The table of contents for the study and the list of questions of interest introduced in the next section have been finalised with the Spanish MoJ, following a series of joint virtual workshops with CEPEJ experts, where the first two of the draft laws mentioned above have been presented and discussed along with related topics of interest.

As a mean of identifying relevant practices in CoE member States, and collecting initial information about them, the team prepared a series of questions which were included in an

[1] Regulation (EU) 2017/825

[2] See project outline: https://www.mjusticia.gob.es/es/ElMinisterio/GabineteComunicacion/Documents/220412%20Presentacio%CC%81n%20PLEP.pdf .

[3] See Section 2.1 of this report.

[4] See 2.2 of this report and the project outline https://www.mjusticia.gob.es/es/ElMinisterio/GabineteComunicacion/Documents/220412%20Presentaci%C3%B3n%20PLEO .pdf.

online questionnaire[5] that was shared with national experts recommended by CEPEJ focal points. The list of questions related to the topics of this study can be found in Annex 2.

Interviews and email exchanges with selected survey respondents (from Norway, Austria, Ireland and the Netherlands) and with professionals of other jurisdictions offering relevant practices (England and Wales) were carried out to complement and expand the information on the most interesting practices emerged during the investigation.[6]

Specific contributions about the solutions developed in the two countries which have been chosen for a deeper description (Latvia and Slovenia) have been provided by two CEPEJ experts, Anna Skrjabina and Rado Brezovar respectively.

A Spanish expert, Javier Luis Parra García, has contributed with a reasoned overview of the Spanish ongoing reforms.

2. Introduction

The present study focuses on the interrelation between the use of Information and Communication Technologies (ICT) and judicial organisation. Without the ambition to conduct a complete review of the possible approaches to this issue, it aims at sharing good practices, experiences and ideas that can be relevant to the Spanish context. For this reason, the research questions which lie at the basis of this report have been formulated in connection with the related planned reforms that the Ministry of Justice of Spain is considering: digital and organisational efficiency.

2.1. Spanish draft Law on Digital Efficiency

The draft Law on Digital Efficiency represents an important step paving the way for a comprehensive digital transformation of the Spanish Judicial System. After more than ten years, it replaces the seminal Law 18/2011, renewing most of its key provisions, adding interesting novelties and adapting the Spanish legislation in accordance with two European instruments which have entered into force following its adoption: the 2014 Regulation on electronic identification and trust services (better known as 'eIDAS Regulation')[7] and the 2019 Directive mandating EU Member States to allow the online formation of companies[8].

[5] Other questions were related to issues relevant for the study on digital proceedings which has been produced under the same Action.

[6] See list of interviews and contributions in Annex 1.

[7] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

[8] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law

The draft Law has been guided by the set of principles and rights contained in the recently adopted Spanish Charter of Digital Rights[9], whose main objective is the protection of the rights of citizens in the new era of the Internet and Artificial Intelligence.

The text in process improves meaningfully the use of a comprehensive Electronic Judicial Case File (EJE[10]) conceived as a cornerstone of the new Digital Justice. Indeed, the new concept represents a paradigm shift. Ten years ago the goal was the transition from paper format to digital format, however the new law pursues a data (and metadata) orientation[11], instead of mere document orientation.

In relation to the purpose of this report, there are several other relevant inputs[12] of the draft law to be highlighted:

- Automated processing[13]. The draft Law identifies judicial proceedings that can be almost fully automated, with minimal human intervention needed minimizing repetitive manual tasks. In addition, it provides legal basis for automated "*proactive operations*[14]" (such as automatic notifications or warnings, without the need for manual intervention) or automated "*supported operations*"[15] (such as automatic reporting or automated draft of judicial decisions for consideration by the judge, prosecutor or judicial counsellors).
- Digital inmediacy and non-face-to-face services for legal practitioners and citizens. The draft adopts provisions ensuring that judicial immediacy is preserved in all actions by videoconference. And to this end, the so-called "safe access points" and "safe places" are regulated, through technical and guarantee requirements, from which telematic interventions can be carried out with full procedural effects. Along the same lines, the

[9] A Spanish document conceived to articulate a reference framework that guarantees the rights of citizens in the new digital reality. Along the same lines, an important document is the EU Communication COM(2022) 27 final "Establishing a European Declaration on Digital rights and principles for the Digital Decade", available at: https://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/140721-Carta_Derechos_Digitales_RedEs.pdf

[10] EJE "*Expediente Judicial Electrónico*". A new vision of EJE structured as "set of data sets" that provide information, thus including documents, procedures, electronic actions or audiovisual recordings corresponding to a judicial procedure. They will be identified by a unique number for each procedure, and will have an electronic index.

[11] It incorporates a global concept of "open data" for the benefit of stakeholders and all citizens. Dealing with open judicial system data, the Spanish MoJ is already taking important steps with the start-up of an Open Data Portal "*La Justicia en Datos*" (https://datos.justicia.es/inicio). At internal level, other good practices can be pointed out: the "*Justice Dashboard*" (base on OBI software) for judges, prosecutors and judicial counsellors and the recent "*DataLab Justicia*" for courts executive staff: presidents, senior registrars ("*Secretario de Gobierno*") and chief prosecutors.

[12] See project outline: https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2021/201021-presentacion_anteproyecto.pdf, or video summary https://www.youtube.com/watch?v=qk-w7GrMZhA.

[13] Articile 56 and following of the draft Law.

[14] In Spanish, "*actuaciones proactivas*".

[15] In Spanish, "actuaciones asistidas".

Spanish MoJ has already put in place the Virtual Desktop of Digital Inmediation (EVID[16]), which allows easy performance of multiple online proceedings with full security and jurisdictional validity. Among other remote proceedings, EVID is currently functioning in relation to powers of attorney; acceptance of expert´s position; ratification by mutual agreement in civil matters of separation or divorce or transfers of judicial auction.

- Digital services to citizens & Justice Folder. The draft regulated the General Access Point of the Administration of Justice (PAGAJ), directing it towards a perspective of services to citizens. A new and personalized service for citizens is created within PAGAJ, the folder in the area of the Administration of Justice (or Justice Folder[17]), interoperable with the general State Citizen Folder within Public sector. It will facilitate access to services and procedures for the people who are parties or stakeholders.

Finally, since the general principle of "digital by default" has been set up, the digital gap challenge has been taken into account for those people who, for various reasons, do not have access to an electronic certificate or have difficulty using it. Therefore, in order to ensure a wider access to Justice, a non-cryptographic identification and signature system is articulated in the area of the Administration of Justice in non-face-to-face legal procedures.

2.2. Spanish draft Law on Organisational Efficiency

The draft Organic Law on the Organisational Efficiency of the Public Service of Justice (from now on: draft Law on Organisational Efficiency) represents the second generation of a important judicial reform initiated in 2010 (New Judicial Office). The first organisational reform introduced a new system of organisation for the Administration of Justice seeking greater flexibility in providing citizens as efficiently as possible with responses of the best quality. This second organisational reform aims at redrawing the judicial map in Spain and at introducing important changes in the organisation of courts. A first important piece of this reform is the abolition of the '*juzgados*', unipersonal courts, peculiar to Spain. As explained in the document introducing the public consultation on the draft law, these institutions were introduced in the 19th century, when they responded to the needs of an essentially agrarian society, dispersed and subject to great mobility limitations that have nothing to do with the needs of the modern society. Noting that this traditional judicial organisation has caused, over time, a series of dysfunctions (lack of specialisation, unnecessary dispersion of means and effort, unequal work allocation and relevant differences in the disposition time of similar cases) which the traditional answer (increase the number of *juzgados*) has not solved, the

[16] See official video summary in English: https://www.youtube.com/watch?v=ViGfxuMJrrM.

[17] Along with these means of access to Justice, a custommized access system is incorporated, the Justice Folder, a system through which each person can access their affairs, consult the files in which they are a party or interested party and request an appointment to be attended. In this way, the service of documents and other notifications will be carried out through this secure identification system, voluntarly (citizens) or mandatory (lawyers and other legal practitioners).

reformer aims at replacing these bodies with collegiate organs first instance courts ('*Tribunal de instancia*')[18].

With this reform, 3.803 -unipersonal courts would be replaced by 431 *Tribunales de instancia,* one per judicial district ('*partido judicial*'), whose borders are not being revised. Each of this new first instance courts would necessarily include a section of general jurisdiction for civil and criminal pre-trial cases (*'Sección Única, de Civil y de Instrucción*'). Specialised sections (for cases related to family, commercial, violence against women, criminal trial, minors, monitoring of prisons, administrative disputes and labour issues) would be established only in some of these courts, and may have jurisdiction for other districts within the Autonomous Community where such specialised section would not be present.[19]
Such reform would imply no changes in the number of judges nor in the number of hearing locations (i.e. physical places where cases can be heard), since the existing unipersonal courts will be transformed, according to their subject matter jurisdiction, in the corresponding Sections of the *Tribunales de instancia* which will hence in this way be constituted[20]. As a result, each *Tribunal de Instancia* should encompass in its territory several hearing locations, the ones where judges are currently sitting.

2.2. Research questions

The first group of research questions is hence related to the allocation and transfer of cases among hearing locations:

- How are cases allocated to the various hearing locations within a judicial district? Is there a possibility for parties or for court managers to choose the hearing location for a case (within or outside the court district)? And if yes, to what extent and how is this process supported by ICT?

The experiences and approaches of the reform efforts aimed at ensuring a balanced distribution of cases in Latvia will provide interesting perspectives on these issues.Not all court cases require judicial work. In some cases, what is really required are just the authority of the court and its capacity to issue enforceable decisions. It may be useful for Spain, while reorganising the work of all of its first instance courts, to consider the possibility to introduce, after looking at good practices, mechanisms that may take out from judges' workload all repetitive cases with little or no judicial content. New working processes can be designed to automate as much as possible the treatment of these cases. Under certain circumstances, it may be convenient even to create an ad-hoc court, whose greater inflow of cases may both justify and simplify the adoption of more sophisticated technological solutions.

[18] Parra J and Pasqual M: "Judicial organisational reform: towards a smart Justice in Spain" (Original title in Spanish: Oficina judicial integrada o hacia una justicia inteligente en España). Spanish MoJ Law Journal ISSN-e 0211-4267. 2009, pages 2333-2345. Full Text ; http://dialnet.unirioja.es/descarga/articulo/4017528.pdf.
[19] Article 84 of the draft Law on organisational efficiency.
[20] First transitional disposition of the draft Law on organisational efficiency.

The related research question to be answered is:

- Which type of cases can be, more efficiently and without impacting on access to justice, be dealt by redesigned business process strongly supported by ICT, in order to relieve to the largest possible extent regular courts and/or judges from handling them?

The example coming from Slovenia will be given special attention to gather useful lessons.

Besides judges and judicial counsellors[21], each unipersonal court was traditionally staffed by judicial officers, clerks and administrative staff to serve its needs. Recognising that this led to inefficiencies and duplication of work, as it has been mentioned, the Spanish Ministry of Justice had started in the last decade to introduce gradually a new organisational model, the 'New judicial office' ('*Nueva Oficina Judicial*') applying economies of scales and scope and consisting in a team of professionals serving all unipersonal courts located within the same building. The Judicial Office operates using criteria of flexibility, effectiveness, efficiency, rationalisation of work and responsibility for management, also incorporating the use of Information and Communication Technologies[22]. The reform provided legal basis for the court-bases procedural services ('*servicios communes procesales*') directed by judicial counsellors who are empowered with important managerial competences and procedural decisions held until then by judges. Therefore, this first organisational reform meant that *Letrados de la Administración de Justicia*[23] assumed important procedural competences, acting, in fact, as a sort of "procedural judges".

The digital transformation of justice makes possible to adopt the same approach, at least for some functions, on a larger scale, not bound anymore to the physical building. The proposed reform goes in this direction, envisaging that the organisation of the work of each new *Tribunal de Instancia* should be supported by a single Judicial Office ("*Oficina judicial*", whose introduction is clearly based on the experience of the *nueva oficina judicial*)[24] for the whole judicial district. Staff of the *Oficina Judicial* would be sitting in various locations within the district, not necessarily connected with a Court building, and their job would be compatible with serving in a Justice office (see below).[25] Notably, the *Oficina Judicial* has a flexible design

[21] The Spanish *Letrados de la Administración de Justicia* are judicial counsellors, former court secretaries. Taking into account the position, competences and the judiciary role of the Spanish LAJ, the position is not readily translatable into the English 'clerk', French 'greffier' or German 'rechtspfleger'.

[22] See outputs published by the Regional Court of Murcia: 10-years New Judicial Office Report (2010-2020); a document validated by the Spanish MoJ. A general outline describing the different models depending on the MoJ can be found on Youtube: https://www.youtube.com/watch?v=RXXr6vb9DSk&t=23s.

[23] See footnote 22.

[24] FIfth transitional disposition of the draft Law on organisational efficiency.

[25] Amendments to article 438.4 of the Organic Law 6/85 on the Judiciary which would be introduced by the draft Law on Organisational Efficiency.

and it could provide its services also to judicial organs beyond the borders of its judicial district, at various level, including national or regional courts.[26]

It may be relevant for Spain to look at examples in which such possibilities have been already exploited in practice. A third major question is hence related to the possibility to re-design judicial processes, centralising back-office support functions:

- Which aspects of the handling of judicial cases can be centralised thanks to ICT in order to relieve local courts and increase the overall efficiency of the system?

The answers to this question did not take into account all advantages resulting from the electronic communication in judicial proceedings, which would have a field too vast to investigate and on the other hand not very interesting for Spain which has already very well settled systems for such communication, and whose major challenge is the integration among the most used (LexNet) and other systems in use in some Autonomous Communities[27].

A last important tenet of the reform is the abolition of the offices of the Justice of peace, transferring their judicial cases to regular courts, and their replacement with Offices of Justice (*'Oficinas de Justicia'*). The Justices of peace are lay magistrates whose competences has been gradually reduced; they are now in charge of handling civil cases with a value inferior to €90, of some misdemeanour cases and to notify documents from other courts to citizens within their municipality.

The new *Oficina de Justicia* would maintain the services to the citizens which were offered by the staff of the Justice of peace offices, and expand them to enhance access to justice for citizens. One of the objectives of this reform is to prevent the citizens of these municipalities from the necessity to travel to the judicial district capital, providing these Justice Offices with the technological means necessary for the filing of procedural acts and the remote intervention to judicial proceedings[28].

The final group of questions concerns hence possible organisational measures aimed at fostering the access to justice leveraging on the possibilities offered by ICT, but without assuming that every citizen is versed in their use.

- Which measures can be put in place to avoid the widening of the digital gap in order to guarantee an equal access to justice to all while aiming towards "digital by default"

[26] Amendments to article 436 of the Organic Law 6/85 on the Judiciary which would be introduced by the draft Law on Organisational Efficiency.
[27] See for example the CEPEJ report *Driving cyberjustice reforms in Spain through change management (2019).* The interoperability challenge is fully tackled by the draft of Law on Digital Efficiency.
[28] The new draft of Law on Digital Efficiency provides legal basis for de-localized work and teleworking for Courts (Article 69 and following).

procedures? Which physical spaces can serve this purpose and how are they organised?

The four following sections present the answers which were collected for each of the groups of questions listed above.

The last section of this report provides, on the basis of the elements presented, some suggestions and recommendations which may be applied to the Spanish case.

3. Choice of the hearing location

From the investigations carried out, including the survey and direct interviews, it resulted that there are no examples in which options are given for the initial choice of the hearing location when multiple options are available within a court jurisdiction (multi-centre courts). What is made possible in some countries and under certain circumstances is the transfer of cases after their initial allocation, but before they start being handled, to another hearing location or another court. Alternatively, the movement of judges is made possible in some cases. These processes benefit very much from ICT which can provide comparative information which is crucial to guide this process. We start from discussing the increasing presence of multi-centre courts as one of the consequences of judicial maps redesign.

3.1 Multiple hearing locations in the context of judicial maps redesign

According to the last available CEPEJ report on the *Evaluation of judicial systems*[29], 14 CoE member States have reduced the number of courts of general jurisdiction as legal entities between 2010 and 2018: Armenia, Belgium, Croatia, France, Georgia, Greece, Italy, Latvia, Lithuania, Republic of Moldova, the Netherlands, Portugal, Switzerland and United Kingdom. Such revision of the judicial maps, initiated in the last decade of the last century on the wave of the increased attention to efficiency consideration triggered by the New Public Management approach[30], has been since then object of different analyses and studies.

The challenge of identifying the optimal scale of judicial decision-making has been faced by the necessity to balance the principles of territoriality and of functional specialisation[31]. The main competing factors to be considered were identified by the 2013 CEPEJ Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System[32] as follows:

- Access to justice in terms of proximity of citizens to courts;

[29] European judicial systems - CEPEJ Evaluation Report - Evaluation cycle 2020 page 82.
[30] See Sciences Po Strasbourg Consulting (2012), Comparative study of the reforms of the judicial maps in Europe
[31] See Mak, Elaine (2008), Balancing Territoriality and Functionality; Specialization as a Tool for Reforming Jurisdiction in the Netherlands, France and Germany, International Journal of Court Administration
[32] Available at https://rm.coe.int/1680748151 .

- Minimum size of a court so that the presence of various competences and functions can be ensured;
- Reduction of costs (optimisation of the use of the limited public resources);
- Maximisation of quality and adequate performance of the service provided.[33]

A reduction in the number of courts is generally associated to a possible compression of the access to justice, based on the assumption that this would entail average longer travel distance to be covered, hence higher costs for the participation to the trial which may discourage persons who received a damage to sue in court.[34]

In several instances, however, the reduction in the number of courts as legal entities was realised, as it would be the case with the Spanish planned reform, with minimal or no closure of hearing locations, which remained accessible to citizens, sometimes with a revised role.

France, for example, has substantially reduced the number of its first instance courts of general jurisdiction between 2016 and 2018 (from 786 to 168) with a minimal reduction of the geographic locations of the courts (from 786 to 641). This change in the judicial map results in particular from the abolition of the 311 proximity courts, whose jurisdiction have been divided from July 2017 between the courts of first instance *Tribunaux*[35] *d'instance* (TI) in civil matters and the police courts attached to the *Tribunaux*[14] *de grande instance* (TGI) in criminal matters[36].

A second reform, which entered into force in January 2020, further decreased the number of courts, this time without suppressing any hearing location. The TIs and the TGIs have been merged into a new *Tribunal de Justice*. As a result, each judicial district includes:

- the seat of the *Tribunal de Justice*, which replaces the former TGI and acts as first instance court for most civil and criminal cases;
- a number of hearing locations, *Tribunaux de proximité*[14], which replace the former TI. Despite their name (literally meaning "proximity courts"), they are in fact only separate chambers of the *Tribunal de Justice* they belong to. The material and the territorial jurisdiction of each of them are fixed by decree. In general, their jurisdiction include claims whose value does not exceed €10,000 and, if hearing criminal cases, for misdemeanours and minor crimes. Interestingly, the new law gives to the President of the Court of Appeal and the General Prosecutor, in consultation with the President of the Tribunal justice interested, the possibility to decide to widen the competences of a proximity court.[37]

Portugal undertook a change of its judicial map in the period 2014 – 2019. The process was not linear, as it entailed subsequent changes such as the closing and reopening, with different

[33] Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System" CEPEJ(2013)7Rev1

[34] Chappe, N and Obizinski, M (2013), The impact of the number of courts on the demand for trials

[35] "Tribunaux" is the plural form. The singular form is "Tribunal".

[36] European judicial systems - CEPEJ Evaluation Report – 2020 Evaluation cycle (2018 DATA), p 82.

[3737] Article L.212-8 of the Code of Judicial Organisation.

functions, of courts and hearing locations. [38] As a result, the 231 first instance courts were reduced to 23 District courts (*Tribunal de comarca*).

Each *Tribunal de comarca* includes the following types of hearing locations, with different competences and functions:

- One[39] central court department, *Juízo central*, which the main seat of each Tribunal de Comarca; it has competence on civil cases whose value exceed € 50.000 and criminal cases for more serious offences and jurisdiction over all district's territory
- Several local court departments, *Juízos locais*, as a rule present in each municipality which is not a seat of the central court department, and have competence to hear the cases which are not under the jurisdiction of the central court departments.
- A number of sections of proximity, *Juízos de proximidade*, which function as judicial extensions rather than as court departments in the traditional sense. They are located particularly in remote areas difficult to be reached, and are former court locations which have been re-opened with new functions. They are a point of information for the citizens (see section 6 below) but perform also some judicial services. In particular, citizens can take part to criminal hearings without the need to move from their community. Since 2019 this is possible also for hearings in civil cases.

In the **United Kingdom**, tribunals were the first to merge their jurisdictions. Since 2008, there is a single First-tier Tribunal in charge of hearing all types of administrative disputes. The First Tier Tribunal is composed of 7 Chambers, each with a variable number of hearing centres – as they are called – depending from the inflow of cases. For example, the Welfare chamber (dealing, among other, with disputes on welfare benefits, compensations for labour injuries and alimony claims) has 3 Regional Centres; the one covering the Eastern region counts 23 hearing centres distributed in 15 districts and around 100 judges, mostly (around 80%) employed part-time.[40]

Following a wide consultation in 2012, the 141 lower level County courts in England and Wales, manned by a combination of lay magistrates and, in some location, professional judges, were unified into one single County court, with 141 hearing centres.

Similarly, a single Family court has been established for the whole England and Wales, with 7 regional seats, each with a dozen or more hearing locations attached.

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[38] For which see Patrícia Branco (2019), "The geographies of justice in Portugal: redefining the judiciary's territories", International Journal of Law in Context, 1–19 and Dias JP and Gomes C, "Judicial reforms 'under pressure': the new map/organisation of the Portuguese judicial system" Utrecht Law Review 14 (2018), 174–186.

[39] With the exception of the Districts of Lisbon (which has 3 Central court departments) and Porto (2) due to their caseloads.

[40] Source: interview with Judge Hugh Howard, First-Tier Tribunal (August 25, 2021).

Multi-center courts are not necessarily the result of recent reforms aiming at consolidating the judicial map. **Ireland** judicial system since 1961[41] envisages only one District Court and one Circuit Court, but they have currently, respectively, 25 hearing locations, and 8 Circuits plus a number of other hearing locations used only on certain days.

Now that we have seen a few examples of how multi-centre courts can arise, we turn to see how they allocate cases belonging to their jurisdiction.

3.2 Allocation of cases to hearing locations

The same dilemmas that are related to the apportioning of judicial districts discussed in the previous section concern also the modalities of allocation of cases within a specific district when there are several hearing locations.

On one side we find the approach which favours access to justice and geographical proximity over specialisation and uniform distribution of workload. In **Ireland**, for example, each of the 8 Circuit seats and each of the 25 hearing centres of the District court hears the case pertaining to its territorial jurisdiction. The same principle is applied for the allocation of cases to County court hearing centres in the **United Kingdom** and to the *Tribunaux de proximité* in **France**.

At the opposite side we find the approach of **Latvia**, which allocates the cases on a random basis to any judge with the required competencies within the redesigned larger court districts. Such approach favours equal allocation of workload and specialisation over proximity. In a similar vein, Latvia had introduced earlier a mechanism for the transfer of cases between jurisdictions in order to allow their faster resolution. Before continuing the presentation of findings, we will look more in depth at the Latvian experience.

Insert 1: The Latvian approach to backlog reduction via optimal allocation of cases within and across judicial districts

The current Latvian judicial map is established as the result of a reform carried out by the Ministry of Justice, in consultation with the judiciary and the Judicial Council, from 2015 until the end of 2018. Consequently, 34 district courts of general jurisdiction (legal entities) were reorganised into 9 courts (legal entities): 4 of them based in the capital, Riga, and 5 in the regions. In the framework of this reform all judges kept their physical locations, generally also staying in the same buildings and offices, except for cases when court buildings were reconstructed. Some of these locations may be manned by as few as 2 or 4 judges, since before the reform 65 % of all first instance courts had 3-7 judges and only three district courts had more than 14 judges.

[41] Courts (Establishment and Constitution) Act, 1961

In front of this continuity for the judicial officers, the establishment of the new courts entailed a remarkable change for the courts' users. After they have been filed to a District court, the cases are now ***randomly distributed by the Court Information System*** *between the judges in the District. This ensures a uniform allocation of workload among all judges and the possibility of specialisation for certain types of cases. On the other hand, this means that there might be situations when the case could be distributed to the judge not located in the closest location to the parties. Thus, the necessity for prosecutors and lawyers to travel between the court houses arose. For this reason, the definition of the District area remains a very important choice. As usual when redesigning a judicial map, several factors were taken into consideration when deciding whether a particular court should be merged with one or another group of the courts, such as the location of land registry offices and of law enforcement authorities (police and prosecutors), the density of population and the public transport infrastructure.*

It is important to note that ***the need for travelling is mitigated by a broader usage of videoconferences (VC)****. All courts are equipped with videoconferencing facilities (110 courtrooms out of 319), so that it is possible for judges to hold hybrid hearings, authorising parties to participate from home (or another place of their choice) or from the premises of another court. Videoconferencing possibilities were broadly used also before the COVID19 pandemic and usage significantly increased in 2020 and 2021. The usage of video conferences in criminal cases increased up to 50%. Currently, approximately 20% civil and 40% criminal cases are heard with hybrid or fully remote hearings (it is not possible to have precise data, as the statistics on usage of VC are collected for court hearings and connections, not for whole cases).*

As main tool to tackle the overload of Riga courts, in 2014 the Latvian Civil Procedure Code was amended introducing the possibility of the "transfer of a case accepted for examination to another court in order to ensure its faster examination".[42] *This provision was introduced as a temporary measure, but it is still in force.*

The mechanism foresees that a court of first instance may initiate a transfer of a civil case to another court of the same instance, provided its examination on the merits has not been commenced yet, if it is considered that it may in this way reach a faster conclusion. Similarly, a regional court may initiate a transfer of a case of appeal, which has been initiated regarding a judgement of the court of first instance, to another regional court.

In both cases, the president of the court one level higher shall take a decision on the transfer upon initiation of the president of the court within the jurisdiction of which the case is started. Parties are informed of the transfer after the decision is taken. ***In case of transfer the possibility to hold a hearing using video-conference equipment is widely used****, in order to minimise the inconvenience for the parties caused by the necessity to travel to far court*

[42] Article 32 of the Latvian Civil Procedure Code.

locations. With the same aim, in 2021 the Civil procedure code provision regulating the transfer was amended, prescribing that ***the priority in transferring the cases is given to cases solved by written proceedings****.*

The choice about transfer is strongly supported by ICT. The court statistics information relevant to take the decision is provided to court presidents by the Court Administration of Latvia. Statistical data are analysed using the business intelligence tool MS Strategy and dashboards with standardised sets of data are available for court presidents to compare their court with other courts: received cases per case categories (in civil cases - types of the claims and types of procedure, in criminal cases according to the articles of criminal law and types of procedure), of pending cases, cases per judge, clearance rate. However, in practice court presidents often consult the statistician of Court Administration with the request to provide more specific data or support with the access to MS Strategy. Since case weighting is being introduced in Latvia, in 2022 the Court Administration of Latvia started, in pilot stage, including in the dashboards also the weighted workload. This will, among other effects, lead to a more realistic consideration of the opportunity to transfer cases.

This measure has contributed to a more even distribution of workload among the courts, especially before the reform of the judicial map, when they had smaller jurisdictions, and in the short term it had a positive effect on the fight against backlog. In the last three years, however, the number of the cases transferred from Riga to regions has decreased. In 2019 each of the 5 Districts courts outside of Riga had a meaningful portion of its incoming cases which were transferred from the courts in the capital, in average 8,7% (ranging from 4.8% to 16.1%). In 2020 the average portion of transferred cases on the inflow dropped to 2.6% and in 2021 only two out of 5 courts in the regions had received cases (as the workload of the other regional courts was similar to the one in the courts in the capital) and in average for only 1.0% of their received caseload.

The courts in the capital are still overloaded, especially the one responsible for Riga central part, where most of the businesses are registered, and cannot expand due to lack of premises. The possibility to merge the jurisdictions in the capital of Latvia has been tabled for discussion. Another proposal is to merge the 5 regional courts into one jurisdiction. Before proceeding with further revision, the Latvian Judicial Administration considers that courts should be relieved from the "non-judicial" work they are carrying out. The planned redesign of the process for handling uncontested money claims with a high level of automation (see Section 4 below) is expected to contribute to a general reduction of their workload.

In 2021 the Court Administration of Latvia in cooperation with the Organisation for Economic Co-operation and Development (OECD) started the development of Online Dispute Resolution (ODR) Concept, meant as a broader context for the usage of technology to facilitate dispute resolution, including not only, as in the classical definition, out-of-court and pre-trial mechanisms to facilitate the resolution of disputes between the parties but also the judicial procedures. In relation to the latter, in particular, one of the aims is to start defining the

disputes, types of cases and parties which are more prone to the use of ODR, i.e. to be treated virtually.

Provisions for the transfer of cases very similar to the Latvian ones are in place in **Lithuania**[43] while, interestingly, in **Slovakia** the dispute may be referred to another court of the same instance for reasons of expediency at the request of either party[44]. In both cases, the decision about the transfer is taken by the court which is directly superior both to the originally competent court and the court to which the dispute is to be transferred.

In **Slovenia**, rather than taking decisions on individual cases, the president of the immediately higher court may, on the proposal of the president of a court burdened with backlogs, transfer jurisdiction for the trial of a certain number of a certain type of cases to another court in its territory, and in this case will issue the rules for selecting the cases to be transferred.[45] Alternatively, a judge may be posted to perform judicial service at another court of the same or lower status (full or part time) in order to contribute to eliminate backlogs in the court's work, if he or she cannot achieve the expected volume of work at his or her appointed court due to a temporary reduction in the caseload[46]. The first solution is used more often, but assigning judges when hearings are needed turned out to be more efficient and well accepted by parties. As in the Latvian case, valuable assistance to support such decisions is provided by performance dashboards available to Court presidents, built on the data warehouse system which is in place since 2011. Recognising the importance of such tools, the CEPEJ has issued a *Handbook on Court Dashboards*[47].

In this context, it has to be noted that providing additional human resources to courts which have bigger backlogs may result, if not based on a comprehensive overview of the entire system, in rewarding with additional staff courts which are not well organised. The methodology "Balancing Human Resources" was developed by the Slovenian Supreme court as a data-based approach comparing workload, results and staffing levels for similar courts, to provide objective criteria to ensure that courts have sufficient support of judges and court staff in order to control the influx of cases. Temporary support to courts with an increased number of pending cases can be provided with a temporary increase of the number of judges and court staff to achieve standard backlog reduction target (5% decrease every year). This Methodology is used in Slovene judiciary as a standard tool in human resource management

[43] Article 35 of the Lithuanian Code of Civil Procedure.

[44] Article 39 of the Slovak Code of Civil Procedure.

[45] Slovenian Courts Act , Article 105.a.

[46] Slovene Judicial Service Act , Article 6. The judge's consent to the posting pursuant to the preceding paragraph is required if the judge is posted to a judicial post at a court that is more than 70 kilometres from the court to which the judge was appointed or more than a one-hour trip by public transport, if a judge is pregnant or breastfeeding, or if a judge is caring for a child up to three years of age,

[47] Available at https://rm.coe.int/cepej-2021-8-handbook-on-court-dashboards-en/1680a2c2f6

on all levels of the judiciary – from the Local and District Courts for operational decisions, to the Supreme Court for strategic planning and also for individual business decision-making.
The transfer of cases within the same judicial district can be more straightforward. The Ministry of Justice of **Norway** adopted in 2021 a *Regulation on the distribution of cases in the courts* which state that cases dealt by first instance courts shall be processed in the part of the court district where the cases geographically belong, but where appropriate, may be heard in other places within the jurisdiction – if appropriate in premises other than court premises. In this case, since the case remains within the same district no formal decision needs to be taken.

Similarly, the transfer of cases to another hearing location is possible in County courts or Tribunals in **England and Wales**. In order to ensure the respect of timeframes (e.g. 26 weeks for a family case or 5-14 days for urgent decisions on residence, where children have to spend most of their time) judges may look, mostly via informal communication with their colleagues, at the possibility of moving their case to another Judge, possibly in another County. The new Scheduling and Listing tool (see next section) will enable judges to search for available hearing facilities across other jurisdictions (even if, once identified, as a matter of judicial etiquette or diplomacy they would ensure that the receiving judge agrees to receive the case). Parties can also express by phone or in written form their preferences and mention their constraints. A Tribunal judge noted that often parties seem not to be aware of which information may be relevant for the judge to decide on the transfer (for example they may not mention disability issues or parking difficulties, while such elements would surely be considered). A distant location may allow for a quicker hearing, and naturally leads to an increase of requests for remote hearings.[48]

The transfer process is even more streamlined for Tribunals. Claimants send their claims (in paper, so far) to the regional Processing Centre, which sets a hearing date in the hearing centre based on the address of the claimant and forwards the claim to the Judge around 2 weeks before the hearing. According to Tribunals' policy, any address should have a hearing centre reachable within one hour travel by public transport (Regional centres check timetables to ensure it). A claimant can ask to change hearing centre, for example if someone is willing to represent them pro bono (can be a citizens' bureau, trade union or attorney) they can ask to hold the hearing at the seat of the representative.[49]

With the same goal of encouraging *pro bono* representation, the **French** National Asylum Court (*Cour nationale du droit d'asile*) deciding on disputes against administrative decision on asylum, which is based in Montreuil, has made possible the participation of legal representatives of the parties to its session via videoconference (already possible from the

[48] Source: interview with Judge Eleanor Owens (October 12, 2021).
[49] Source: Interview with Judge Hugh Howard (August 25, 2021)

French overseas territories) from the premises of the Court of Administrative Appeal of Nancy (distant 300 Km from it) and is planning to extend this possibility to other locations.[50]

3.3 Conclusions:

- No examples have been found where the initial allocation of cases to courts or hearing locations is guided by efficiency principles and assisted by ICT.
- The transfer of cases is a tool that can help a more balanced distribution of workload and, when possible, to address the needs of the parties.
- The transfer among hearing locations within a single court jurisdiction can take place with less formalities than the transfer among different courts, which implies, where it is allowed, the consent of different court managers and/or of the president of the immediately higher court.
- The transfer of cases can be facilitated by ICT:
  1) For cases which can be solved in one hearing: making available a shared calendar which can allow to identify the first available slot in each location.
  2) For more complex cases: making readily available the information (court statistics) necessary to take the decision comparing the workload of various courts or hearing locations, for example via visual dashboards designed for this purpose. This information can lead to a more effective choice if the weighted workload is used, so to take account not only the number of cases in each court but also their complexity.
  3) Once the transfer is decided: transferring the electronic case files with the initial documents filed and the corresponding metadata (followed by the paper trail, until full digital proceedings are in place).
- In transferred cases, as well as in cases originally allocated to distant locations, parties can benefit from online hearings.
- Comprehensive solutions to ensure a balanced allocation of resources presuppose adequate data collection and analysis facilities.

4. Redesigned automated proceedings

The first opportunity for profiting from the introduction of ICT to impact radically on the judicial organisation has historically been the judicial proceedings that can be almost fully automated, with minimal human intervention needed. The allocation of jurisdiction for these cases to a single court (or, in case of federal countries to a few of them) allowed to optimise the efficiency of their treatment in bulk and to free up resources at all the local courts which were previously handling them. Typical is the case of uncontested monetary obligations,

[50] Source: Rapport annuel CNDA 2021 page 57.

which has historically been the first successful example of application of technology to justice, as an application of "IT for title", to use the words by Dory Reiling[51].

In the case of undefended monetary claims, the role of the court consists to 1) make sure that the defendant has duly received the claim and 2) certify that within a certain deadline the defendant did not avail of the possibility to request a full-fledged civil case to ascertain its basis, issuing a final enforceable title. If the defendant provides a valid and timely answer, the case becomes contested, and is treated according to the general rules. The underlying principle is hence to leave to the defendant the choice to request a full trial (which will, in case of defeat, increase the costs of the proceedings, to be recovered together with the claim) or to decide not to contest the claim and let the court issue an enforceable title.

Several systems, each with its own specificities, depending on the laws governing the procedure and local circumstances, have been developed over time, as shown in the table below, which does not have the ambition to be complete:

TABLE 1: Overview of systems for the automatic handling of uncontested claims

Year	Jurisdiction	Name of the system	Location
1982	Germany	Online-mahnantrag	12 locations
2002	England & Wales	Money Claims Online	Northampton
2007	Portugal	Balcão Nacional de Injunções	Porto
2008	Slovenia	COVL[52]	Ljubljana
2011	Poland	e-court	Lublin
2017	Slovakia	Elektronické upomínacie konanie	Banská Bystrica

Latvia, as mentioned in the inset in Section 3 above, and Ireland[53] are planning to introduce such a system in the next couple of years.

The main common elements of such systems can be described as follows:

1. Claims are filed electronically. This allows to verify automatically that they are formally correct and to store all meta-data they contain in order for the court to reuse them.
2. There are two channels for the electronic filing: individual claims can be filed via a web portal while mass claimants (such as utility companies or debt collection agencies) use a server-to-server communication of structured data.
3. Claims are quickly dispatched to the defendant in paper, along with an explanatory court document. The dispatch is optimised with high-capacity printing facilities.
4. The massive reception and analysis of the returned delivery slips to confirm that the defendant has been properly notified (a crucial step!) is mostly or totally automated.

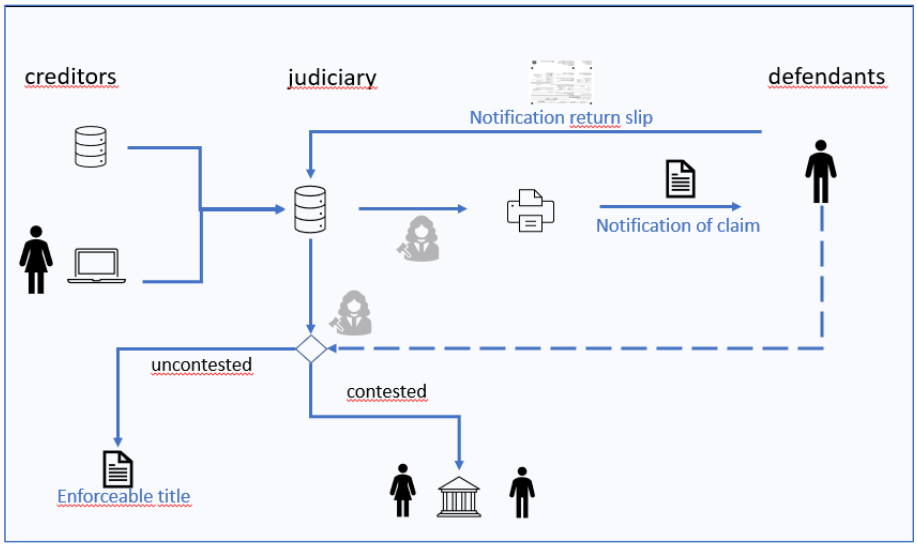
[51] Dory Reliing (2009), Technologies for Justice , Chapter 3.2.
[52] Direct enforcement cases base on authentic documents, discussed in Insert 2 below.
[53] Source: Interview with Rob Rogers, Head of ICT of the Irish Court Service (March 21, 2022).

The notification date is used as a basis to calculate, in accordance with the law, the deadline for an eventual defendant's answer to the claim to reach the court.

5. Once the time is considered sufficient for the eventual mailing in of the response elapses, and no valid contestation of the claim has been received, the court provides an enforceable title to the plaintiff.
6. If within the deadline the defendants provide an acceptable[54] answer to the claim, the case is transferred to a regular court which will handle the case with full-fledged civil proceedings.

These steps are depicted in the Figure 1 below, where the possible interventions of judges or other judicial officers to review the claim before transmitting it to the defendant and to consider the response to the claim provided by the defendant (the dashed line) are drawn in grey because they are present only in some jurisdictions.

FIGURE 1: Schematised process for the automatic handling of uncontested money claims



This procedure can largely benefit from economies of scale, especially with the use of very powerful printing and enveloping machines, that is why it is usually centralised.

[54] What is considered an acceptable answer it depends from the specific legislation. In some case sas in Germany it is sufficent to express the intention to contest the claim, while in other it is necessary to provide reasons for the contestation which have to be weighted by a judge (this is the main job of the judges working for the Slovenian COVL).

The case of the **Slovenian** COVL, which represent a perfect example of these procedures for uncontested cases, and presents additional aspects of specific interest, is discussed here below.

Insert 2: the Slovenian "Automated System for Enforcement on the Basis of an Authentic Document (COVL)"

Backlogs in the enforcement procedure represented in 2005 more than two thirds of all backlogs in the Local Courts (the first instance courts of general jurisdiction) in Slovenia. Systemic and organisational problems were determined to be the reasons for the backlogs. The law on civil enforcement enabled several legal remedies in all phases of the court procedure, several procedural actions were available to the parties to proceedings, and access to external sources of information on assets, which are crucial for an effective enforcement procedures, was limited.

The 44 Local Courts were overburdened in particular with enforcement cases initiated on the basis of an authentic document (a generic term which includes invoices, utility bills, bills of exchange, cheques, etc.). In such cases the initial claim is a request for direct enforcement, which will be carried out issuing a final decision on enforcement, unless an objection is filed by the presumed debtor and the judges find it sufficiently grounded to put in doubt the existence of the debt and stope the enforcement initiating a civil case to decide if the claim is grounded.

From the court internal organisational point of view, the enforcement procedure was extremely fragmented: most Local Courts did not have a separate enforcement department or judges and clerks specialised in enforcement. In practice, judges working on other types of cases devoted part of their time to these straightforward cases, which require lower levels of competence and require attention and time spent in repetitive acts but no real judicial work. Given the number of such cases, a consistent portion of clerks' time was also spent handling such cases, leaving less time for them to assist judges on more substantive cases.

In order to implement centralisation of the business process in one location, the Courts Act was amended and the Local Court in Ljubljana assumed competence for such cases and a special organisational unit, the Central Department for Enforcement on the Basis of an Authentic Document (COVL, from the Slovene acronym for 'Centralni Oddelek za Verodostojno Listino') was established within this court. The competence of the Higher Court in Ljubljana for appeals against the decisions of the Local Court in Ljubljana contributed to the harmonisation and unification of the case law. The Supreme Court, which in Slovenia has the competence of providing ICT solutions for all the judiciary, initiated this project.

The main results achieved implementing this Project were the following:
***Human resources savings and relief of ordinary courts**: thanks to the concentration and centralisation of the business process, which had previously (until the end of 2007) been*

performed at 44 locations by more than 250 judges and court staff, with an influx of less than 115,000 cases, all activities are now performed at one location by 4 judges and 41 court staff, with an influx of 100.000 cases (2021 data).

Flexibility: *the system proved to be robust and agile. During the economic crisis in 2011, with a doubled influx of more than 235,000 cases, the process was supported by 5 judges and 65 court staff.*

Reduction of backlogs: *despite the more than doubled influx of cases during the economic crises in 2011 and 2012, backlogs were considerably reduced after the implementation of the new concept. The number of pending enforcement cases on the basis of authentic documents was reduced by nearly 54% (from 56.000 as of 31 December 2011, to 26.000 as of 31 December 2021) and the number of all pending cases at Local Courts was reduced by more than 79% (from 416.000 as of 31 December 2009, to 87.000 as of 31 December 2021). Large proportion of this reduction falls on the enforcement and land register procedures (see below).*

Acceleration of the business process: *in nearly 60% of cases, the enforcement order was issued within two working days after receiving a complete application, and in 75% of the cases within five working days. Before the introduction of COVL, this delay was measured in weeks or months, rather than in days.*

These results confirmed the rightness of the Supreme Court's strategic approach to intervene in fields that are more "labour intensive" in order to unburden judges and court staff, re-engineer the business process in the sense of lowering the level of decision-making to the lowest possible level and enable them to focus on the substantive part of the process.

The key features of the system are:

Paperless internal operations*: more than 99,9% of applications for enforcement are filed electronically: 45,1% individually via the on-line portal and 54,9% as bulk filings by large clients. The Central Department for Enforcement on the Basis of Authentic Documents operates practically paperlessly, with only an electronic case file. The small number of incoming cases not sent electronically are digitalised (scanned), validated and transferred to the COVL case management system.*

Centralisation of all paper exchanges*: documents which have to be delivered through the case management system are centrally printed and automatically put in envelopes not within the court building but by an external service provider (outsourcer) selected through a public procurement procedure.*

Interoperability: *Automatic collection of data (G2G) on a debtor's assets and other information (from the company register, the business register, bank accounts, the debtor's employer, the land register, the clearing house register, the tax register, the health insurance register, the register of spatial units, and the register of citizens) was introduced, which considerably improved the quality of the process and unburdened human resources.*

Finally, it is useful to remark how such extensive reorganisation of a business process can have positive repercussions and fertilisation also on other types of proceedings (in addition to the indirect effect of freeing resources which ca be employed elsewhere, as mentioned above). In this case, it was possible to allow:

Provision of additional services: *during its usage the Department has taken over additional services for other court procedures. COVL receives all paper-based delivery certificates returned by the Post for all types of judicial proceedings, which are centrally scanned, validated and directly shared with the corresponding case management system.*
Re-use of specific software modules: *some modules (bulk printing, e-filing, access to external registers) which were introduced into the system are used as common building blocks also by some other case management systems implemented in the court business process (insolvency, the land register, misdemeanour procedure).*
Application of the same approach *: An approach similar to the "Automated System for Enforcement on the Basis of an Authentic Document (COVL)" Project was also implemented in the "Redesign of the Land Register" Project in 2010, with the exception that 44 Local Courts continued to be competent to decide in the registration procedure, but with the abrogation of territorial jurisdiction concerning the filing of applications and jurisdiction according to lex rei sitae. This enabled the assignment of cases to clerks on the basis of the amount of their workload and balancing the workload of the land register personnel throughout the country. In order to facilitate equal and random allocation of cases, a special algorithm was introduced. Electronic filing of all applications and their attachments through the unique E-Justice Portal for all professional users (notaries, attorneys-at-law, real estate companies, and certain state administrative bodies) became mandatory. Furthermore, the exclusive jurisdiction of the Higher Court in Koper to hear appeals, which ensured unified case law, was introduced.*

Such centralised automated systems have an important organisational impact on all first instance courts which would have handled them, since they allow to relieve them completely from receiving and handling this type of cases. Only in case the response of the debtor leads to the opening of a litigation case (generally a few percent, not more than 15% of the cases), the case is electronically transferred to the competent court for a regular trial.

Such systems fit well also with **distributed governance models**. Each of the 16 German Länder (federal units) is allowed by the federal law to assign the jurisdiction on Mahnverfahren[55] cases to a single central court. Some of them have delegated this jurisdiction to the central court of another Land, so that there are in all 12 Mahnverfahren courts in **Germany**, and not 16. All of these central courts can all be accessed by a central portal[56], which simplify a lot the procedure for mass claimants that have debtors scattered all over the country. They handle more than 8 million cases per year, providing a great relief to local courts and a cheap and very efficient service to court users.

It has to be noted that such a system has been realised also in countries (like **Poland** or, as seen below, **Austria**) in which a judicial officer has to review the relevance of the supporting evidenc**e** (not the evidence itself, which is quoted but not attached) in order to check that it

[55] This is the literal name of the procedure "Procedure to remind the existence of a debt".
[56] The portal is available at https://www.online-mahnantrag.de/.

is sufficient to proceed, before the Order for Payment is served to the defendant. While in **Germany** or **England** (for example) there is virtually no human intervention before sending the claim to the defendant, in **Poland** there are 8 judicial officers sitting in Lublin, the national e-court seat (but they could be in fact located anywhere, since they deal only with electronic documents), who approximately handle 2 million cases per year.

The redesign of processes heavily supported by ICT can achieve meaningful efficiency gains even if not centralising all the procedure in a single central court. Cases in point are other two systems to deal with uncontested claims, the Austrian *Mahnverfahren* and the system *SOKOP-Mal* from Bosnia and Herzegovina.

The electronic Mahnverfahren was introduced in **Austria** already in the 1990-ies, but at variance with Germany (in which these cases are dealt by centralised courts and there is no human control before sending to defendants the proposed decision), it was decided to leave the jurisdiction to each first instance court. Judicial officers review the evidence and sign groups (40/50) of the proposed decisions automatically created by the system on the basis of the data electronically provided by the claimant.

The dispatch of these decisions is made through the Federal Computing Centre (BRZ; see Section 5 below). Approximately 700,000 such cases (to be compared with around 3 million of regular court cases) are handled in this way every year, with minimal intervention of court judicial officers and clerks. Interestingly, since there was no provision for electronic case files, so far courts have been printing a rendering of the initial submission and the documents they create in these cases (this will be changed soon; since this did not affect much the courts operations it has not been a priority).[57]

The *SOKOP-Mal* system was introduced in 2012 in **Bosnia and Herzegovina** to handle direct enforcement cases initiated on the basis on authentic documents, as in the Slovenian case seen above. The system is not centralised, but deployed in every participating court. Inspired by the Slovenian COVL solution, which in turn had looked at the Money Claim Online experience when it was created, the system has all the usual features of such systems, and in addition it allows the continuation of the enforcement procedure, which is carried out by courts. Its features include:

- two-ways paperless electronic communication with the plaintiffs;
- task lists for all events in the case, including the expiration of deadlines, suggesting the next document to be created;
- one-click creation of document based on clever templates: addressees and way of service modalities to defendants (by post or court courier) on the basis of the coded address provided in the claim and of the court's preferences, and the text contains fixed portions and other which change according to logical operations in the meta-

[57] Source: Interview with Martin Hackl, Chief Digital Officer, Austrian MoJ (March 25, 2022).

data stored in the system (for example, a different text can be displayed for courts which apply different laws);
- possibility of one-click mass creation of documents in multiple cases (both for the court and for plaintiffs). Group creation of court documents is allowed by the system when an event has occurred which requires the creation of a specific document (e.g. an unsuccessful notification, the receipt of a particular pleading, the expiry of a deadline) and no other concurring event related to the same case is recorded in the system;
- scanning of the postal or court couriers' return slip, automatic optical recognition of the notification outcome and notification date, validation by clerks and possibility to look at groups of them by the judge.

Proceedings that can benefit from redesign and high degree of automation are not limited to uncontested monetary claims.

The **Austrian** MoJ constantly monitors the statistics for various case types in order to determine which are the procedures which would be of greater benefit to standardise and automate. The **enforcement proceedings in front of courts** (around 800,000 cases per year) have been recently reviewed in this sense. A second recent case are the **police proceedings against unknown offenders** sent to Prosecutor offices (around 900,000 cases per year). In such cases, as it does in all criminal cases, the police send all the relevant meta-data in electronic format to the public prosecution office. If the officer in charge comes to a fast decision (for example to close the case), the documents are not printed, and they are archived as electronic documents in the digital case file.[58]

In **England and Wales**, a series of **digital services** have been developed starting from an online application for a series of **specific life events**: probate (inheritance), family public law, divorce and financial remedy, immigration and asylum, social security and child support. Similarly, the Single justice service allows to submit online guilty or non-guilty pleas for **misdemeanours**; in the case of guilty pleas this allows the Magistrates to take a decision and issue a sanction. The back-office work flow is handled by the regional Courts and Tribunals Service Centres (CTSC, see section 5 below), where they are in place, relieving court staff from this.[59]

4.1 Conclusions:

- Redesign and automation of procedures such as uncontested money claims benefit from the establishment of a central location because of the highly labour-intensive

[58] Source: Interview with Martin Hackl, Chief Digital Officer, Austrian MoJ (March 25, 2022).
[59] Source: Interview with Christopher Owens, Head of Open Justice Policy at the UK MoJ, Claire Jukes and Jay Bangles (HMCTS), (March 25, 2022).

treatment of paper correspondence to be sent out to defendants and the high volume of claims[60].

- Non-litigation or criminal procedures which require a response from the court without need for judicial work may also be worth being redesigned and automated, and may profit from the support of centralised back-end processes, described in the following section.

5. Centralisation of back-end processes

While the previous section was dealing with special proceedings, this section focuses on horizontal support to the work of courts which applies in principle to any type of cases, handling paper communications, court fees, scheduling of hearings and general administrative support in case of particularly heavy backlog.

Since the last decade of the last century, all **Austrian** courts are using, as some other public institutions, the Federal Computing Centre (BRZ[61]) as a **single centralised facility for printing and dispatching all their paper correspondence[62]**. The documents to be dispatched in paper are sent electronically in PDF format along with the meta-data necessary for their delivery from the courts' Case Management System (CMS) to the BRZ. The BRZ prints and envelops them, and gives them to the Austrian Post company. Since the judiciary is traditionally the biggest client of the postal service, they have developed a system according to which, when required by the court, the postman collects with hand-held tools the signature of the recipient, which is returned in PDF format along with the relevant meta-data to the court CMS, which on its turn automatically adds them to the relevant case file. In case of failed delivery obviously only the meta-data are sent and the court will have the possibility to search for an updated address in the electronic register of citizens. While all legal professionals are obliged to communicate with the courts only electronically, citizens can choose to opt for paper. Given the small quantities of papers received, the option to use a central scanning facility in Vienna has proved to be less effective than to have each court scan its own.[63]

The approach taken by **Slovenia** is similar to the Austrian one just described. As described above in the inset about COVL, some tools created for that system were later extended to other types of cases, creating a software module for the Registry of Incoming and Outgoing Mail (named EVIP, as its Slovenian acronym) which is plugged in to different systems used by

[60] In this sense, once the Spanish draft of Law on Digital Efficiency enters into force, the provisions on mass claims and mass exchange of data may represent an significant asset.

[61] For more information, please visit: https://www.brz.gv.at/en/

[62] Along the same lines, the Spanish MoJ is currently testing the "Nofific@" project, which implies allows automated management of the printing, enveloping and generation of verifiable evidence of the delivery and receipt of all notifications and communications generated by courts so that they reach their destination in the most efficient and economical way.

[63] Source: Interview with Martin Hackl, Chief Digital Officer, Austrian MoJ (March 25, 2022).

the Slovenian judiciary (enforcement, land register, insolvency, misdemeanours). This system handle, besides the dispatching of paper documents, also their reception: the scanning is done at the COVL centre, and the resulting electronic documents are shared with the respective case management systems. It was estimated already in 2009 that more than 72 person-years of staff effort were saved, and could be re-allocated to other tasks[64]. The EVIP started later to handle also the interface with the electronic communication system which was being introduced. In the period 2017 – 2021 the number of electronic deliveries remained approximately constant, while there was a considerable decrease of paper notifications. The decrease of the total number of notifications is due to the general decrease of the workload in Slovene judiciary (source: judicial business intelligence system). In the year 2021, 3.6 million pages were printed and 1.3 million envelopes were used by the bulk printing facility, and 1.3 million notifications were carried out via electronic delivery.

Central printing facilities allow to significantly cut the time needed for preparation and shipment of court documents. Before their introduction, dispatching times were often measured in weeks – now, they are issued in days, significantly shortening the entire length of court procedures. Moreover, court staff have been relieved of the administrative work of printing, enveloping and shipping, leaving them with more time to focus on court procedures. and there is no longer need for all judicial assistants to have their own printer: central printing is faster and cheaper.

All processes related to **court fees payment** are in Austria not only handled centrally, relieving courts form this task, but are carried out automatically: the CMS calculates the amount due and sends a request for payment to the bank which obligatorily the party had indicated; if the bank responds electronically that no founds were available, the system prepares and dispatches a warning that if there will be no mean to collect the fees, the procedure will be stalled.[65]

In **England and Wales**, the agency responsible for the administration of criminal, civil and family courts and tribunals in England and Wales has established so far 4 Court and Tribunals Service Centres (CTSC) which provide, in addition to the support to the digital services mentioned in section 4, also administrative back-up for video-chat and, as part of the COVID-19 response, introduced an additional **audio/video support line for remote hearings**.[66]

CTSC also have access to **Scheduling and Listing** software facilities. Bulk listings for specific types of hearings, such as the hearings for possession orders, which are scheduled massively

[64] For this data and an expanded version of the information contained in this section, see section 7.3.2 (Moving to e-Justice) of the thematic section on Quality of Justice of the Toolbox *Modernising Quality of Public Administration*, prepared for the European Commission in 2017.
[65] Source: Interview with Martin Hackl, Chief Digital Officer, Austrian MoJ (March 25, 2022).
[66] Source: Interview with Christopher Owens (Head of MoJ Open Justice Policy), Claire Jukes and Jay Bangles (HMCTS), (25 March, 2022).

for the same day since parties very seldomly attend, are being processed at a single central facility for the whole England and Wales, and so will be for the family public law cases. More bespoken cases which need a careful planning of the hearing are, and will be also in the future, handled locally – with local and central back office sharing the same calendars in order to avoid overlaps.[67]

According to the last amendments (2019) to the **French** Code of judicial Organisation, the Registry of the Tribunal de Justice or one of its local articulations will serve also the needs of the *Conseils de prud'hommes* which would be placed in the same municipality. These bodies, composed by lay magistrates deciding on labour disputes, had so far, their own registry office.

5.1 Conclusion:

- Back-office functions which have been effectively centralised include handling of all paper communication, handling of court fees (which can also be effectively automated), booking of hearings, support to videoconferencing for remote or hybrid sessions and common Registries for different judicial bodies.

6. Access to justice: territorial proximity and the digital gap

While on one side the use of ICT can surely foster access to justice, on the other hand it is always necessary to take into account the existence of a digital gap in the society (i.e. the fact that not all citizens can be assumed to be versant in the use of technology), to avoid that digitally illiterate persons cannot be discriminated in their access to justice. The need for a proximity justice with physically accessible locations does not hence fade away with the digital transformation. In such locations it is possible to help bridging the digital gap and facilitate the use of technology for all citizens.

France has devoted particular efforts to ensure access to justice for all citizens. The legislator has entrusted the implementation of this public policy to the Departmental Councils for Access to Law (CDAD), which are established as public law legal persons (*groupement d'intérêt public*, public interest groups). Each of them is chaired by the presidents of the *Tribunal de Justice* based in the capital of the department, while the Public prosecutor attached to the same court exercises the functions of Vice-President. Other members are the prefect of the department (who represents the State), representatives of the local Departmental Council, local representatives of the legal and judicial professions (bar associations, notaries and bailiffs), the departmental association of mayors, as well as one association working on access to justice, which is proposed by the prefect, and jointly appointed by the other members. Other natural and legal persons may be members of the CDADs, such as local authorities, associations, public establishments.

[67] Source: interview with Judge Eleanor Owens (October 12, 2021).

CDAD are in charge of the administration of **Justice points** ("Points Justice"). These are free reception centres that provide local information on their rights and duties to people facing legal or administrative difficulties. They have different sizes and may be located in different places such as municipal centres for social action, France Services, prisons, etc. They may be of general type (open to everyone) or reserved for a certain type of public, such as young people, hospitalised people, prisoners. Several professionals may have a presence in the points justice: lawyers, notaries, staff of the CDAD, associations, delegates of the Defender of Rights (Ombudsman office), conciliators of justice etc.

A special category of Justice points is represented by the **Houses of justice and law** (MJD, Maisons de la justice et du droit). These are structures created by decree of the Minister of Justice, depend directly on the judicial court in whose jurisdiction they are located and are created and operate thanks to the partnership with municipalities, or communities of municipalities, that may provide for the rental of the premises and staffing.
MJDs missions are:
1. Local judicial presence by contributing to the prevention of delinquency;
2. Assistance to victims;
3. Access to the law;
4. Amicable conflict resolution.

MJDs have necessarily a permanent presence of a court Registry officer (*greffier*) who can provide information on judicial cases and contributes to the judicial identification of the MJD. It is interesting to note that in rural areas the presence of the *greffier* may be ensured via video-connection, with the assistance of the MJD staff if need be. Since 2009 a special video-terminal equipped also with scanning and printing facilities has been created to this purpose.[68]

There are currently (2022) 1,980 justice points spread throughout the territory of the Republic, out of which 148 are MJD.

The Points de Justice are currently not focused on addressing the digital divide: they are generally not equipped with ICT and they do not provide parties with help on e-filing. With the progressing of the digitalisation of the French justice, which is currently not touching much the lower level courts which are of interest for the majority of citizens, they may take over this role. Neither the Points de Justice nor the *Tribunaux de proximité* are equipped with VC facilities to make possible the participation to remote hearings from a secure location.

Regardless of the similarity in their names, the **Portuguese** *Juizos de proximidade* play a very different role from the French *Tribunaux de proximité*, which are no more and no less than local branches of the *Tribunaux de Justice*.

[68] See for example https://www.dailymotion.com/video/xjs7fo for a demonstration of their use.

For the Portuguese Ministry of Justice, the reopening since 2017 of the formerly closed courts as proximity courts (currently there are 43) returned the symbolic presence of the State in a function of sovereignty to portions of the territory that had been deprived of Justice: "The data we have confirm the correctness of the measure of non-abandonment of the citizens of the interior to the their fate, assuring all populations full citizenship".[69]

The proximity to justice is also reflected in the number of face-to-face assistance in these structures. Nearly 45 thousand people were assisted and 44 thousand telephone calls were made[70].

The **Italian** *Uffici di prossimità*, proximity offices, which have been opened in the recent years in several regions, especially in the framework of European projects aimed fostering access to justice, have a different and quite limited role, but constitute a bridge to the digital divide. They provide support to citizens on issues of voluntary jurisdiction, including more often the curacy of incapacitated adults, which are in Italy among the few cases (other than the ones dealt by Justices of Peace, lay magistrates) which do not require the obligatory representation by a lawyer. These offices contribute to bridge, for this type of cases, the digital gap since they provide assistance transmitting electronically to the court the initial request on behalf of citizens that do not have or do not know how to use the certified electronic mail which is necessary to file to court, and to communicate back to them the hearing dates received from the court, according to the agreed modalities (for examples sending them an email or calling them by phone). Since the office is manned by staff hired by the municipality, they are not able to access electronic court registers nor to provide any additional information on ongoing cases.[71]

Austria has established **service centres** for citizens. There are around 20 of them in the country (to be compared with 90 court locations for 120 courts – some are co-located), located in the court building but with a dedicated area next to the entrance. Staffed by clerks at the dependence of the court, they are meant to provide general information about the judicial system and specific information from the Business registers and Land registers for citizens that are not in condition to retrieve them online and provide general information on the status of any court case, consulting the electronic court registers. They can also assist with the technical aspects of the connection to the *Justiz online* portal (launched in November 2020) from where citizens can view their cases and, if entitled to do so, file new cases online. For specific inquiries on the case citizens are invited to address a judicial officer at the court. The setting and size of these centres varies, depending on the number of expected visitors. It may be an office with two clerks or have more rooms, terminals available for own searches.

[69] Source: https://justica.gov.pt/Noticias/Juizos-de-proximidade-receberam-1176-julgamentos

[70] Source: https://justica.gov.pt/Noticias/Juizos-de-proximidade-mais-de-264-mil-pessoas-atendidas-em-tres-anos

[71] Source: Interview with Roberto Chiarugi, Ufficio di Prossimità di Pontedera (10 May, 2021).

Service centres are not equipped with videoconferencing facilities. Until 2020 video-hearings could take place only from court premises. With the COVID-19 pandemic this requirement has been relinquished and it is possible also from home, provided both lawyers agree; the debate on how to regulate in the future is ongoing…

The same type of assistance can be obtained also remotely. Each of the Service centres can be reached also by phone, and a dedicated phone line is available to provide technical support to the users of the *Justiz online* portal. In addition, a central call centre has been established in 2018 to deal with general inquiries about the justice system.[72]

Norway is planning to establish local service centres to ensure proper guidance and provide digital infrastructure as well as to help to ensure the access to justice for each citizen and the courts dignity when attending the digital court hearings or other digital services[73].

In **Ireland** the improvement and spreading of videoconferencing (VC) has been the focus of attention in the last years, both for criminal and civil proceedings. In order to provide secure locations where to attend remote hearings, several courthouses are hosting the so-called "witness rooms" which allow one (or more, depending on the concrete setting) persons (they may also be parties) to attend hearings in another court. In addition to the VC equipment used by the witness or party they are equipped with two cameras showing all the space around, so that the court can check that there is nobody else not authorised in the room. There are 35 such rooms, and by 2025 each courthouse should have at least one. Their size may vary, but the setting is quite similar one to another (chair, desk with VC and cameras), with the exception of some which are specially designed for the participation of children and are equipped also with toys and paintings on the wall.[74]

The CTSC in **England and Wales** mentioned in the previous section, in addition to performing back-office support to judicial activities, are primarily service providers for the public. They can be reached either via toll-free phone lines or through webchat.

In addition to this, the UK Ministry of Justice is supporting a charity, the Good Will Foundation, specifically to provide support to citizens for the access to their digital services[75].

Legal aid services and civil society organisation such as charities and non-governmental organisations play an important role in bridging the digital divide.

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[72] Source: Interview with Martin Hackl, Chief Digital Officer, Austrian MoJ (March 25, 2022).

[73] Sources: Interview with Ingrid Olsen and Consultation of the Norwegian government and Response of the Norwegian Court Administration (2020)

[74] Source: Interview with Rob Rogers, Head of ICT of the Irish Court Service (21 March, 2022).

[75] Source: Interview with Christopher Owens (Head of MoJ Open Justice Policy), Claire Jukes and Jay Bangles (HMCTS), (25 March, 2022)

In the **Netherlands** a foundation established by the Ministry of Justice to provide legal information and legal aid, the 'Juridisch Loket' (literally: "judicial counter") in addition to the possibility to be reached via email, webchat or phone is present in 30 physical locations throughout the country, where citizens can get assistance with legal issues and questions and receive assistance on digital interactions.

6.1 Conclusions

- The necessity for maintaining physical spaces for citizens less versed with ICT even in a digitalised justice landscape is generally recognised, and it is realised with different means and formats.
- Civil society organisations and legal aid services may play an important role in this respect.
- It is possible to have co-located court officers and civil society, maintaining a clear distinction of roles and functions.

7. A few reflections and suggestions for Spain

Courts have been originally established as physical places, courthouses, where:

a) Documents can be filed by the parties;
b) Participants to judicial proceedings can convene for hearings and to collect or check case documents;
c) Judges can sit and work;
d) Judicial counsellors and other staff can provide all services necessary for the handling of cases.

Some or all of the above could be delegated to Court branches. In a digital context none of the above functions is necessarily linked to a physical place.

As we have seen, the definition of courts as legal entities does not have in a digital context the key importance it used to have when all the activities had to be carried out within the same building:

- from the point of view of the users of the court system, what is relevant is if they will have to go somewhere to take part to the case, and this may imply either to go the court which is handling the case or to another court or other secure location to participate remotely to a hearing, or not be necessary at all;
- from the point of view of the organisation, what counts is to decide how and where case handling will be carried out, taking advantage of business process redesign and IT support. Processes can be centralised at various levels, and the area that a back-up support service or a judge working remotely can cover have not necessarily to be linked to the jurisdiction of a court, which is created for the purpose of deciding where to hold in-person hearings.

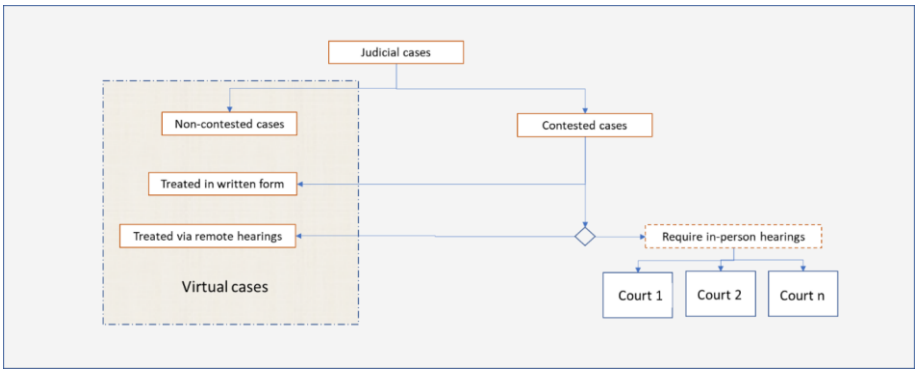
The investigation has shown that the allocation of cases is supported by ICT only when random allocation is required. Decisions on possible transfer of cases can benefit from ICT, that can show how a more balanced distribution, and hence a quicker resolution of cases, can be achieved. Once the work on the cases starts, the judges can decide if fully remote or hybrid hearings will be allowed. Looking from an organisational point of view, this workflow is suboptimal because it can end up in cases handled only remotely in the court closer to parties, while it may have been handled by a judge with less caseload sitting anywhere.

Traditionally, cases requiring written procedures, as it is often the case with administrative dispute cases, always leave the possibility of a hearing to take place under special circumstances. Considerations related to the access to justice and the distance for the parties from the court, may have barred the establishment of a single national jurisdiction even for such cases. Nowadays, thanks to the possibility to carry out hearing via videoconferencing and the possibility of easy transfer of an electronic case file if still a live hearing would be necessary, make this step much easier and able to produce meaningful efficiency gains.

7.1 Case allocation in a digital context

If we look from afresh at the issue of how to ensure a more balanced (and hence effective) allocation of cases in the world of digitalised justice, where already the filing point is irrelevant since cases can be transferred seamlessly, we come up with the following logical diagram:

FIGURE 2: Optimal allocation of judicial cases in a digitalised context



The left side of the diagram includes the cases in which an in-person hearing is not required:

- Non-contested cases, which includes civil cases which are non-litigious by nature, criminal cases in which a judge is not required or can take a decision without the presence of the accused and cases in which parties do not request a judgment (such as the uncontested monetary claims discussed above);

- Cases which have to be treated in written form;
- Cases which can be treated via remote hearings.

All these cases can be treated by administrative staff and possibly judicial officers sitting anywhere and using electronic means without physical interaction; for this reason we refer to them as virtual cases.

The allocation of such virtual cases can be realised in different ways: the more effective from an organisational point of view is to allocate them to a **virtual court**. Such fully dematerialised court should have the largest acceptable catchment area (it could be for example the territory of an Autonomous Community, or the whole country) in order to allow an optimal distribution of workload among the judges and the support staff, which means a faster resolution for parties. Judges of physical courts could be assigned also to such virtual court. This solution seems preferable to have judges devoted only to this virtual court, in order to guarantee they keep in touch with the real world, and have a more diverse experience with cases. The virtual court would keep specialisation.

There are no examples, to our knowledge, of such virtual courts where all cases are exclusively and fully treated remotely, except for China where three "Internet courts" have been established to deal with disputes which have originated online.[76] This approach would imply the definition by law (for example by the Law of organisational efficiency) of a virtual court, the assignment to it of judicial and non-judicial staff and the authority in charge for its administration and costs.

Alternatively, **virtual cases can be automatically allocated** to judges of a certain area (again, as wide as possible in order to spread them more and ensure a more balanced allocation of cases), while the administrative support could be provided either by the local Judicial office or by more centralised clerical dedicated staff.

The other (non-virtual) cases would be assigned to physical courts, but the judge may still decide to consent hybrid hearings when appropriate. What is crucial in this scheme is the discrimination of cases which can be treated virtually, and the allocation to court of those which are not. This decision point is represented by a diamond in Figure 2.

A possible solution is to introduce a case allocation mechanism, envisaged by the law and supported by ICT. Provisions should be made, for example in the future Law on organisational efficiency, for such case allocation mechanism, and to define for each type of case their default preferred hearing modality ("virtual" or "physical"). It will be interesting to follow the progress made by Latvia on this path within their ODR project (see the end of the Insert 1

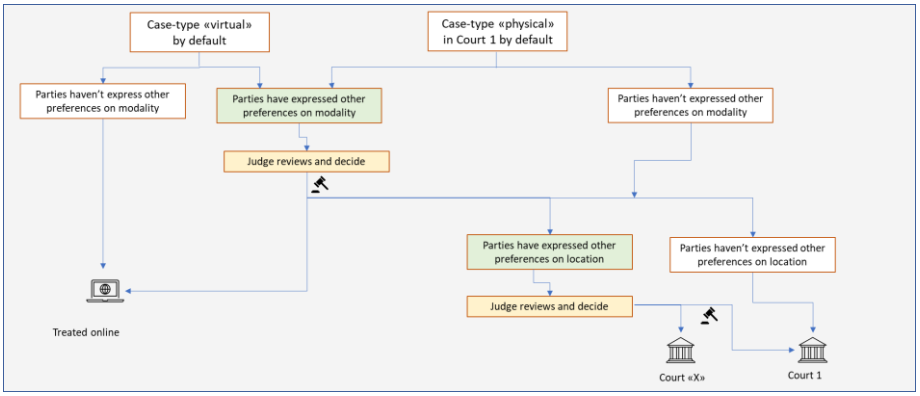
[76] See for example https://www.chinajusticeobserver.com/a/how-to-litigate-before-the-internet-courts-in-china for a brief description.

above). Particular care should be given for criminal cases in order to ensure that the rights of the suspects/accused are not compressed.[77]

Parties should be given the opportunity to provide information on specific circumstances they believe should be taken into account. To ensure that the relevant specific circumstances of each case are considered and to exclude the possibility of "forum shopping" by parties, such a mechanism should envisage that a judge should have the final word on any preference expressed. There are different possible choices for which judge should do this: it could be the judge to whom the case would be allocated according to the default rules or it could be a judge who would hear the case if treated physically. The latter choice is probably better because, in exceptional cases, it makes possible for the judge to hear the parties in person before deciding.

The concrete application of such mechanism is shown in the diagram in Figure 3. The different starting points are the two-default preferred hearing modality ("virtual" or "physical") for the case at stake; for physical cases also the traditional rules for determining the default hearing location are applied. In the diagram the default hearing location is named "Court 1".

FIGURE 3: Possible case allocation mechanism in a digital context



Parties are notified on the default way of treatment of their case and the default hearing location, and are given the possibility to express their motivated preference for other hearing modalities and/or for a different hearing location. Motivations to be provided may include, for example, their temporary or permanent disability, daily work commuting habits, presence of family in a certain place or full satisfaction with the virtual modality in order not to lose their time for this case.

[77] See for example http://www.transformjustice.org.uk/wp-content/uploads/2018/02/Court-Closures-Briefing.pdf for the expression of several concerns.

If no preferences are expressed, the case is allocated according to the default rules. Otherwise, a judge reviews the preferences and their motivations and takes a decision if the case should be heard as a virtual one or as a physical one, and in this latter case in which hearing location.

There is hence the room for conceiving, developing and piloting an ICT tool that could:

- Facilitate the expression by parties of motivated preferences for virtual or physical hearing, and for specific hearing locations in the second case;
- Allow parties to express reasons against a case to be heard online;
- Automatically detect the best allocation of "virtual" cases in order to guarantee a balanced distribution of workload;
- Support the allocation of cases within hearing location within the same judicial district.

7.2 Specific suggestions for Spain

The following suggestions are based on the previous sections of the report: Suggestion 1 is based on section 4, Suggestion 2 on section 5, Suggestions 3, 4 and 5 on section 6 and Suggestions 6 and 7 on section 7.1.

Suggestion 1.
Analyse and redesign the business processes for handling non-contested cases, starting from the ones which have a larger impact on courts operations.
These may include:

- civil cases which are non-litigious by nature
- cases in which parties do not request a judgment (such as uncontested monetary claims)
- criminal cases in which a judge is not required or can decide without the presence of the accused

starting with the ones which are more frequent and whose automation can bring greater advantages (cost/benefit analysis).

The provisions the draft Law on Digital Efficiency on massive exchanges, envisaging the possibility to establish systems to be used by legal entities and other who file a large volume of cases in the judicial bodies, and on documents created in automated form represent very useful steps in this direction.[78]

Suggestion 2.
Develop remote centralised back-office services for Judicial offices in a modular way, so to make possible their use by different ICT systems in use in Spain. The provisions on the re-use and transfer of technologies among different administrations in charge of the administration of justice are included in the *Law regulating the use of Information and Communication Technologies in the administration of justice*[79] and are also included in the draft Law on Digital Efficiency which should replace it.

In the spirit of centralisation of back-office services, the Spanish MoJ is currently testing the "Nofific@" project, which allows the automated management of the printing, enveloping and generation of verifiable evidence of the delivery and receipt of all notifications and communications generated by courts so that they reach their destination in the most efficient and economical way.

The draft Law on Judicial Organisation provides the necessary legal basis allowing judges, prosecutors, lawyers, *Letrados de la Administración de Justicia* and all courts staff de-localized intervention to judicial proceedings and carrying out their functions through cloud computing

[78] Draft Law on Digital Efficiency, articles 37 and 38.
[79] Law 18/2011, article 55 and 56.

services, from different locations, with all the security guarantees. This entails that clerks could carry out the tasks related to the *Oficinal judicial* also while located in one of the "*Oficinas de Justicia*". The draft Law provides additional flexibility for the scope of remote back-office services, since it specifies that the *Oficinal judicial '*may lend its support to orgnas at the national, autonomous community provincial or judicial district level, extending its scope of competence to that of the organs to whom they lend their support'[80].

Suggestion 3.
Widen the definition of competences of the Offices of Justice to ensure that they are considered secure locations for the participation to remote hearings in accordance with the draft Law on Judicial efficiency[81].

Suggestion 4.
Consider the possibility for Offices of Justice to host physical hearing in specific days for certain cases, with the judge moving in.

Suggestion 5.
Consider the hosting in Offices of Justice of civil society articulations in order to provide a more comprehensive assistance on matters on which judicial officers cannot provide support.

Suggestion 6.
Initiate the debate, supported by data and the experiences collected in particular with the recent expansion of remote hearings during the COVID-19 pandemic, on possible categories of cases which may be treated digitally by default, i.e. with no physical hearing unless the judge decides it is appropriate to have it.

Suggestion 7.
Initiate a Pilot project to create and test ICT tools to make possible for parties to express preferences about the way the case should be heard and support their transfer when appropriate. The tool, which should be integrated with the Case Management System, would aim at testing possible mechanism for a future allocation of cases without the necessity to introduce legal amendments. Specifically, such too could support 1) the possible reallocation of the cases to be heard in person to different hearing centres within the judicial district taking into account the preferences of the parties and 2) the possible reallocation of cases which will be treated virtually to judges in the same judicial district in order to ensure an uniform workload distribution. Since this would not change the mechanism for the initial allocation of cases but only facilitate their transfer within the judicial district – i.e. within the same *Tribunal*

[80] As reads the proposed amendment to Article 436 of the Organic Law on Judiciary Ley Orgánica del Poder Judicial (6/1985).
[81] Articles 63 and 64.

de instancia once they are introduced – it should be possible to use it within the current legal framework.

Annex 1 – List of interviews and written contributions

Interviews:

- Roberto Chiarugi, Ufficio di Prossimità di Pontedera (Pisa, Italy), 10 May, 2021
- Judge Hugh Howard, England and Wales First-Tier Tribunal, 25 August, 2021
- Judge Eleanor Owens, England and Wales Family court, 12 October, 2021
- Martin Hackl, Chief Digital Officer, Austrian MoJ, 17 March, 2022
- Rob Rogers, Head of ICT of the Irish Court Service, 21 March, 2022
- Christopher Owens, Head of Open Justice Policy at the UK MoJ, Claire Jukes and Jay Bangles (HMCTS), 25 March, 2022.

Written contributions:

- Note "Accès au droit" provided by Sophie van Puyvelde, French CEPEJ correspondent
- "Answers to the CEPEJ questions" provided by Philippe Baron, president of the Digital Committee of the French Bar Association (Conseil National des Barreaux)
- Emails from Ingrid Olsen, Head of innovation and court development, Norwegian Court Administration (9 and 11 March, 2022)
- "Latvian case" prepared by the CEPEJ expert Anna Skrjabina
- "Slovenian case" prepared by the CEPEJ expert Rado Brezovar
- Complement on Spanish reforms prepared by Javier Luis Parra García, Superior Court of Justice General Secretary, Murcia, Spain.

Annex 2 – Questions from the survey

Note: the questionnaire has been shared by the CEPEJ Secretariat with national experts recommended by CEPEJ members in October 2021. A total of 20 answers were received from respondents of the following member States: Cyprus, Ireland, Switzerland, North Macedonia, Luxembourg, Germany, Monaco, Bosnia and Herzegovina, Sweden, Norway, Latvia, the Netherlands, Lithuania, Slovakia, Ukraine, Slovenia and France.

1.1 Can parties express a preference among different physical locations (be them "branches" of the same court, premises of different courts of the same level or other designated locations) where their case can be heard?
Comments in regard to the above question.

1.2. Can court administration/managers choose among different locations where a judicial case can be heard?
If the answer to the above question 1.2 is "Yes" or "Other", for which categories of cases (civil, criminal, etc.) and according to which criteria may court administration/managers decide? Is it possible only within the same judicial district? Please add any comment you think may be important.

1.3. Are there physical locations, different from the courts, and staffed with trained personnel, that can help citizens with limited or no familiarity with technology to obtain information and services related to access to justice?"
Comments in regard to the above question.

1.3bis If there are such physical locations as mentioned in the above question 1.3, do they host: court staff, judicial officers, honorary magistrates, prosecutors, other (please specify in comments).
Comments in regard to the above question.

1.3ter If there are such physical locations as mentioned in the above question 1.3, which other services do they offer?
Comments in regard to the above question.

1.4. Are there "call centres" staffed by humans (non bots) that can help citizens with limited or no familiarity with technology to obtain information and services related to access to justice?
Comments in regard to the above question.

1.5. Are there back-office support activities for courts which are provided by staff sitting remotely?
Comments in regard to the above question.

1.5bis If the answer to the above question 1.5 is "yes", which are those back-office activities? If the answer is "other", please provide brief details.
Comments in regard to the above question.