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## **Conference of Ministers of Justice of the Council of Europe 14-15 October 2019**

*Conference organised in the framework of the French Chairmanship of the Committee of Ministers of the Council of Europe*

### **Digital challenges to Justice in Europe – the Council of Europe's contribution**

The Council of Europe is the largest pan-European human rights organisation. The principles laid down in the European Convention on Human Rights, in particular in Article 6, which enshrines the right to a fair trial, are common reference standards for the judicial systems of the 47 Member States. The various bodies and sectors of the Council have been committed, from the very beginning of the digital transformation of justice, to ensuring that it is carried out in accordance with the Convention and that information technology is used as a lever to improve the efficiency and quality of justice. The adoption of this technology is now a reality in all European judicial systems.

The constant innovation of technologies is leading judicial systems and the legal professions to confront a number of new challenges. Access to justice is now greatly facilitated by online services that are available at all times and can inform individuals about their rights, the different ways of bringing cases before the courts or alternative dispute resolution procedures. More and more countries have implemented online case management and reminder of hearing summonses by text message. The development of private online dispute resolution mechanisms diversifies the options open to potential litigants and encourages friendly settlement. New means of automation and information processing, such as artificial intelligence, create new opportunities such as advanced search engines or case law analysis. Moreover, in the criminal field, law enforcement and prosecution authorities have ever more effective means at their disposal to prevent and combat crime.

However, the use of these digital tools must always be accompanied by in-depth reflection in order not to weaken the fundamental principles guiding judicial systems or violate the guarantees of the right to a fair trial. How can we ensure that the ongoing spread of dematerialised services does not aggravate the digital divide or compromise the equality of arms? How can we find a balance that would not trivialise court proceedings without overly complicating access to the judge? How can we do justice in an online procedure whilst being reassured that we have been heard fairly by a judge behind a screen? How do we identify, administer and exchange new evidence in this new dematerialised space? In particular, how much value should be placed on an electronic document

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or information stored in a "blockchain"? How can we ensure that judicial services operate under strict conditions of respect for fundamental rights and the rule of law?

**The added value of the Council of Europe** lies in its ability to assist public authorities and national judicial systems in developing common standards on substantive and procedural aspects of the functioning of justice in a dematerialised context. In this respect, the Organisation has unique mechanisms and a common legal space unlike any other. The 47 States have a *positive legal obligation* to guarantee the same fundamental rules on human rights, democracy and the rule of law, foremost amongst which is the European Convention on Human Rights. The effective application of the principles of this text is guaranteed by the European Court of Human Rights, which interprets conventional law in the light of contemporary challenges, including those posed in this new dematerialised environment. Other Council of Europe conventions with relevance to these digital challenges even have a global scope since they have already been ratified by many non-member States. These include the Convention on Cybercrime and the Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The European Convention on Mutual Assistance in Criminal Matters, in particular its Second Additional Protocol (ratified by 40 countries, including non-European countries) is another example, allowing hearings to be held by videoconference between countries and communications and requests to be transmitted by electronic means of telecommunication.

**The Council of Europe is now working to assess and anticipate the impact of digital technologies and to develop legal and practical instruments to ensure that these technologies remain respectful of human rights and the principles of democracy and the rule of law.** Our Organisation has more than 50 years of experience in intergovernmental cooperation in the development of European standards, an inclusive process that involves consultation with all stakeholders, including civil society, academia and the private sector. The Organisation has **recognised targeted expertise**: its committees in the field of justice, such as the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) have already worked on several occasions on the issues of digital technologies applied to justice and have even pioneered in specific areas. It is worth mentioning the recent [CEPEJ Charter](#) on the use of artificial intelligence in judicial systems and their environment, published in December 2018, which has established itself as a reference document on a European and international scale. [The guidelines on electronic evidence](#) in civil and administrative proceedings, drawn up by the European Committee on Legal Cooperation (CDCJ) and adopted in January 2019, are also a reference instrument. The European Committee on Crime Problems (CDPC) is considering the development of an international legal instrument to establish common standards for the criminal law aspects of automated technologies, in particular automated vehicles. Finally, the Committee of the Council of Europe Convention on Cybercrime (T-CY) is currently negotiating a protocol to this treaty to assist prosecution services in obtaining evidence on servers in foreign, multiple or unknown jurisdictions.

Through its mandate, the Council of Europe thus brings high-level expertise to the definition of standards in this field, in perfect complementarity with that of other international organisations and in particular the European Union. The latter supports its Member States in the implementation of digital technologies in their judicial systems and offers services aimed at strengthening the emergence of a European cross-border justice system.

In addition, the Council of Europe actively supports efforts to regulate digital technologies, including those based on artificial intelligence, and its effects on individuals and society as a whole. In particular, it intends to be part of the United Nations' overall digital cooperation architecture. The Council of Europe has also been an observer in the independent high-level expert group on artificial intelligence set up by the European Commission, which has adopted ethical guidelines for trustworthy AI and policy and investment recommendations. The Council of Europe has also been attentive to the results of the OECD's work, in particular its Recommendation published on 22 May 2019 on artificial intelligence, as well as the Principles on Human-Centred Artificial Intelligence, adopted by the G20 on 9 June 2019. Finally, the Council of Europe was represented at the UNESCO conference "Principles for AI: towards a humanistic approach?" on 4 March 2019, which anticipated the conclusions of a preliminary study on the technical and legal aspects related to the desirability of a standard-setting instrument on the ethics of artificial intelligence, published on 21 March 2019.

## **WORK OF THE COUNCIL OF EUROPE TO DATE**

The Council of Europe mainly prepares conventions, recommendations, guidelines and studies. More than twenty instruments dealing with many aspects of the application of digital technology in the field of justice (access to law, data processing and human rights, use of artificial intelligence in judicial systems, impact of digital technologies on criminal law) have already been or will soon be published (see appendix).

More specifically, the impact of artificial intelligence on justice is analysed in more general Council of Europe documents. The recommendation of the Commissioner for Human Rights "[Unboxing artificial intelligence: 10 steps to protect human rights](#)", or [PACE Recommendation 2077 \(2015\) on "Enhancing cooperation against cyber-terrorism and other large-scale attacks on the Internet"](#). On 13 February 2019, the Committee of Ministers adopted a [Declaration](#), thus constituting the first global instrument to formalise the substantial risks of the capacity to manipulate algorithmic processes. Finally, the Council of Europe co-organised, together with the Finnish Chairmanship of the Committee of Ministers, the Conference "Mastering the rules of the game - the impact of the development of artificial intelligence on human rights, democracy and the rule of law" in Helsinki on 26 and 27 February 2019. Its [Conclusions](#) (some of which concern the impact of artificial intelligence on justice in particular) have influenced the Committee of Ministers' subsequent discussions and actions.

## FUTURE ACTION OF THE COUNCIL OF EUROPE

At its 129th Session held in Helsinki on 16-17 May 2019, the Committee of Ministers instructed its Deputies to examine, on the basis of multi-stakeholder consultations, the feasibility and potential elements of a legal framework for the development, design and application of artificial intelligence, based on Council of Europe standards in the field of human rights, democracy and the rule of law. To this end, the **terms of reference of a new ad hoc committee on artificial intelligence (CAHAI) were adopted in September 2019**. A draft Recommendation of the Committee of Ministers on the impact of algorithmic systems on human rights is also being prepared by CDMSI/MSI-AUT.

In addition, the Council of Europe's 2016-2019 Strategy for Internet Governance is coming to an end and **a new Digital Governance Strategy** should be adopted by the end of the year. This Strategy will describe the scope of the Council of Europe's action in this field in the coming years and a plan for coordination with other international organisations. The actions to be undertaken by the Organisation in the field of justice and digital technologies will be specified in this Strategy.

It should also be noted that guidelines on the **design of online dispute resolution mechanisms**, in accordance with Articles 6 and 13 of the ECHR, are currently being prepared by the CDCJ.

In the field of criminal law, two areas of activity are relevant: (i) ongoing work on common standards on criminal liability arising from automated technologies, in particular automated vehicles, and (ii) with regard to evidence in criminal proceedings, both the existing Council of Europe treaties on mutual legal assistance and the future Protocol to the Convention on Cybercrime dealing with cloud evidence.

Finally, many initiatives to promote, monitor and implement the principles of the Ethical Charter on the use of artificial intelligence in judicial systems and its environment are already undertaken by the CEPEJ. It **is currently exploring the feasibility of a certification mechanism for artificial intelligence tools** used in judicial systems under the Charter, which will be based, inter alia, on the operationalisation of its principles. The objective is to anchor in reality and in everyday judicial practice an adaptive and innovative legal text in the field of digital justice, aimed at public decision-makers, entrepreneurs and citizens alike.

## Appendix : Main texts of the Council of Europe, ordered by subject

### *Justice and digital technologies :*

- CEPEJ Toolkit for the implementation of the Guidelines on Cyberjustice (2019);
- Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings (CM(2018)169-add1 final) (2019)
- Edition 2018 of the CEPEJ report "European judicial systems - Efficiency and quality of justice" and in particular its chapter 4.2 on the state of development of information technologies in European judicial systems
- CEPEJ Guidelines on how to drive change towards Cyberjustice (2016)
- CEPEJ Study N°24 on the use of information technologies in courts in European courts (2016)
- CCJE Opinion N°14 on justice and information technologies (IT) (2011)
- Recommendation Rec(2003)15 on archiving of electronic documents in the legal sector
- Recommendation Rec(2003)14 on the interoperability of information systems in the justice sector

### *Access to law and justice:*

- CEPEJ Guidelines on the organisation and accessibility of court premises (2015)
- CEPEJ Guidelines on the creation of judicial maps to support access to justice within a quality judicial system (2013)

### *Data processing and human rights:*

- CDMSI study on the implications of advanced digital technologies (including AI systems) for the concept of accountability within a human rights framework (2019)
- CDMSI study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications (2017)
- T-PD Guidelines on AI and Data Protection and on the Protection of Individuals with regard to the Processing of Personal Data in a World of Big Data (2017)

*Use of AI by judicial systems:*

- CEPEJ European ethical charter for the use of artificial intelligence in the judicial systems and their environment (2018)
- Technical study of the CDCJ on online dispute resolution mechanisms in relation to Articles 6 and 13 of the European Convention on Human Rights (ECHR) (2018); draft guidelines on the compatibility of these mechanisms with Article 6 and 13 of the ECHR are under preparation by CDCJ

*Impact of digital technologies on criminal law:*

- Recommendation CM/Rec(2018)7 of the Committee of Ministers on Guidelines to respect, protect and fulfil the rights of the child in the digital environment
- Convention on the protection of children against exploitation and sexual abuse (CETS No. 201) (2007), commonly referred to as the “Lanzarote Convention”
- Convention on Cybercrime (ETS No. 185) (2001) and its Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189) (2003), commonly referred to as the “Budapest Convention”
- Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 182) (2001)

*AI and the fight against discrimination:*

- ECRI's study on "Discrimination, artificial intelligence and algorithmic decision-making" (2019)